



East London Line Project

Rolling Stock - Train Services Agreement (TSA)

ELM-COM-109-45-06-0002 Issue 01

September 2006

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Part 1 – Document details

Title of document Rolling Stock – Manufacture and Supply Agreement (MSA)		
Document number ELM-COM-109-45-06-0001	Issue 01	Date 06.09.2006
Configuration Item (CI) - (Yes/No) Yes		

Part 2 – Final approvals

East London Line project team			
Approver's name	Function	Signature of approval	Date
[Redacted]	Head of Engineering	[Redacted]	06/09/06
[Redacted]	Head of Commercial	[Redacted]	6/9/06

TfL corporate management			
Approver's name	Function	Signature of approval	Date

Stakeholders			
Approver's name	Function	Signature of approval	Date

Part 3 – Final authorization



Not to be authorized until part 2 is complete.

Authorizer's name	Function	Signature of approval	Date
[Redacted]	ELLP Project Director	[Redacted]	7/9/06
The authorizer is normally the ELLP Project Director.			

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Client Transport for London
Project East London Line Project
Report no. ELM-COM-109-45-06-0002 Issue 01
Title Rolling Stock - Train Services Agreement (TSA)

Issue record

<i>Issue</i>	<i>Date</i>	<i>Author</i>	<i>Approved</i>	<i>Description</i>
01	06.09.2006			Issued as the record of the Train Services Agreement at signature.

Note: this report is uncontrolled when printed.

Summary

This report records the Train Services Agreement (TSA) as signed by Transport Trading Limited and Bombardier Transportation UK Limited on 30 August 2006.

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Rolling Stock - Train Services Agreement (TSA)

1 Introduction

This report records the Train Services Agreement (TSA) as signed by Transport Trading Limited and Bombardier Transportation UK Limited on 30 August 2006.

It is not intended that this report will be updated following issue.

The Manufacture and Supply Agreement (MSA) between Transport Trading Limited, London Underground Limited and Bombardier Transportation UK Limited is recorded in document ELM-COM-109-45-06-0001.

The documents produced by the parties as Conditions Precedent to both the MSA and TSA are recorded in document ELM-COM-109-45-06-0003.

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2 Content of the Agreement

The content of the TSA (and this document) are on the following page. The Schedules to the TSA then follow. The Schedules are bookmarked within the .pdf file.

TSA Final Document Numbers

Document Description or Schedule Number	
	Main Body
1	Maintenance Window Plan and Train Plan Parameters
2	Maintenance and Cleaning Services
2	Appendix 1
2	Appendix 2
2	Appendix 3
3	Performance Regime
4	Not Used
5	Pricing & Payment
6	Contract Management
	Part A Part B
7	Equality & Inclusion
	Appendix A Appendix A Presentation
	Appendix B
	Appendix C
	Appendix D i Appendix D ii
8	Joint Safe Working Plan
9	Maintenance Facility Obligations
9	Obligations Matrix - Appendix 1
10	Variation Procedure
11	Technical Support & Spare Supply
12	Insurance

Document Description or Schedule Number	
13	Handback
14	Fault Notification Procedure
15	Dispute Resolution Procedure
Pt A	Fast Track DRP Schedule
16	Preparation, Presentation & Return Procedure
17	In-Service Support Procedure
18	Safety, Quality & Environmental Planning Part A Part B
19	Maintenance Implementation Plan
	Appendix 1
20	Agreed Form Documents:
Pt A	Certificate of Compliance
Pt B	Certificate of Commencement
Pt C	Form of Guarantee
Pt J	Bonding Guarantee
Pt K	Form of Loss of Qualifying Status Notice
21	Routes



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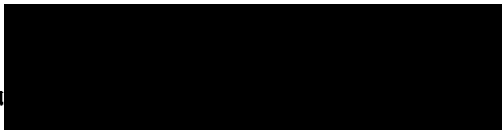
CERTIFICATE OF COMMENCEMENT

Train Services Agreement dated 30 August 2006 and made between Transport Trading Limited and Bombardier Transportation UK (the "Train Services Agreement").

1. Words and expressions defined in the Train Services Agreement shall have the same meanings when used in this Certificate of Commencement and the provisions of the Train Services Agreement (including Clause 56 "Governing Law and Jurisdiction") shall, as applicable, apply to this Certificate of Commencement.
2. This certificate constitutes a Certificate of Commencement under the Train Services Agreement.
3. We, Transport Trading Limited, hereby:
 - 3.1 acknowledge and agree that the conditions precedent set out in Clause 2.1 of the Train Services Agreement have been satisfied (or agree to their waiver or deferral, as applicable); and
 - 3.2 notify you Bombardier Transportation UK Limited that the Commencement Date shall be 30 August 2006

Signed for and on behalf of Transport Trading Limited

Signature



Name.....

Position.....

Date.....

Herbert Smith

Dated..... 2006

TRANSPORT TRADING LIMITED
and
BOMBARDIER TRANSPORTATION UK LIMITED

TRAIN SERVICES AGREEMENT

Herbert Smith LLP

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THIS AGREEMENT is made on the day of 2006

BETWEEN:

- (1) **TRANSPORT TRADING LIMITED**, (Registered No: 03914810) a company incorporated under the laws of England and Wales whose registered office is at Windsor House, 42-50 Victoria Street, London SW1H 0TL (the "**Purchaser**"); and
- (2) **BOMBARDIER TRANSPORTATION UK LIMITED**, (Registered No: 02235994) a company incorporated under the laws of England and Wales whose registered office is at Litchurch Lane, Derby, Derbyshire DE24 8AD (the "**Maintainer**").

WHEREAS:

- (A) London Underground Limited ("**LUL**") currently operates passenger services on the East London Line as part of the London underground railway services. LUL has obtained orders under the Transport and Works Act 1992 authorising a northern and southern extension to the East London Line which shall become the East London Railway.
- (B) As part of the Mayor of London's transport strategy, Transport for London is sponsoring a project to extend the existing East London Line and enhance the level of passenger services operating on it. The project will result in the existing East London Line being closed and its infrastructure converted to national rail standards. Transport for London will appoint the operator of passenger services on the East London Railway and has been delegated by the Secretary of State for Transport to appoint the operator of passenger services on the North London Railway.
- (C) The Purchaser and the Manufacturer have entered into a Manufacture and Supply Agreement by which the Manufacturer will design, build, test, commission and supply certain rolling stock Spares and Special Tools for use in the provision of passenger services on the extended East London Railway and the North London Railway and jointly procure Maintenance Facilities.
- (D) The Parties wish to enter into this Agreement to record the terms by which the Maintainer will provide maintenance and related services and supply Spares to the Purchaser in connection with the rolling stock used in the provision of passenger services on the East London Railway and the North London Railway.
- (E) A passenger services operator will be appointed by Transport for London to provide passenger services on the East London Railway and the North London Railway using the rolling stock procured under the Manufacture and Supply Agreement and may accede to this Agreement or be nominated to exercise some or all of the Purchaser's rights and obligations in accordance with this Agreement.

IT IS AGREED:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

"Access Contract" has the meaning ascribed to it in Section 17(6) of the Act;

"Act" means the Railways Act 1993;

"Actual Mileage" has the meaning ascribed to it in paragraph 1 of Schedule 5 (Pricing and Payment);

"Additional Capital Investment Requirement" has the meaning ascribed to it in Schedule 10 (Variation Procedure);

"Additional Spares" has the meaning ascribed to it in the Manufacture and Supply Agreement;

"Additional Services" has the meaning given to that term in paragraph 3 of part 1 of Schedule 2 (Maintenance and Cleaning Services);

"Additional Services Notice" has the meaning given to that term in paragraph 3 of part 1 of Schedule 2 (Maintenance and Cleaning Services);

"Additional Service Payments" means the payments to be made by the Purchaser to the Maintainer in respect of the provision of the Additional Services;

"Adjusting Payment" has the meaning ascribed to it in paragraph 1 of Schedule 5 (Pricing and Payment) for the purposes of that Schedule only;

"Adjustment Date" has the meaning ascribed to it in Schedule 10 (Variation Procedure);

"Adjustment Payment" has the meaning ascribed to it in paragraph 1 of Schedule 5 (Pricing and Payment) for the purposes of that Schedule only;

"ADR Notice" has the meaning ascribed to it in paragraph 1.5 of Schedule 15 (Dispute Resolution Procedure);

"Aesthetic Condition Inspection Services" has the meaning ascribed to it in paragraph 1 of Schedule 5 (Pricing and Payment);

"Agreed Cleaning Standard" means:

- (a) the standard required to comply with paragraph 2.11 of part 1 of Schedule 2 (Maintenance and Cleaning Services) in the case of exterior cleaning; and
- (b) the standard to be developed by the Purchaser in conjunction with the Maintainer under the Cleaning Option referred to in Clause 9 in respect of the Interior Cleaning Service;

"Agreed Communications Plan" has the meaning ascribed to it in paragraph 1.10.1 of Schedule 7 (Equality and Inclusion Requirements);

"Agreed Diversity Training Plan" means the diversity training plan set out in Appendix B to Schedule 7 (Equality and Inclusion Requirements);

"Agreed Equality Policy" means the equality and diversity policy set out in Appendix A to Schedule 7 (Equality and Inclusion Requirements);

"Agreed Supplier Diversity Plan" means the supplier diversity plan set out in Appendix C to Schedule 7 (Equality and Inclusion Requirements);

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

"Allowable Failure" has the meaning ascribed to it in paragraph 1.1 of Schedule 3 (Performance Regime);

"Annual Deductions Cap" has the meaning ascribed to it in Schedule 3 (Performance Regime);

"Annual Improvement Plan" has the meaning ascribed to it in paragraph 2.9.1 of Schedule 6 (Contract Management);

"Applicable Laws" means, as the context may require, all or any laws, statutes, by-laws, codes of practice which have the force of law, directives, regulations, statutory instruments, rules, orders, rules of court, delegated or subordinate legislation, rules of common law or any European Union legislation at any time or from time to time in force in the United Kingdom or the European Union (including Environmental Laws) and which are or may become applicable to this Agreement, any agreement or document referred to therein, any Unit or TSA Equipment and/or the Maintainer Obligations (including their performance) under this Agreement;

"Approved Operator Fault" means an Operator Fault which is to be remedied as an Additional Service which has been approved by the Purchaser under Schedule 2 (Maintenance and Cleaning Services) or is otherwise an Operator Fault which will be remedied as a Generally Approved Additional Service;

"Assumptions" has the meaning ascribed to it in paragraph 1 of Schedule 5 (Pricing and Payment);

"Auditor General" means the person appointed from time to time under section 6 of the Exchequer and Audit Departments Act 1866 and section 1 of the National Audit Act 1983;

"Available" has the meaning ascribed to it in:

- (A) Schedule 2 (Maintenance and Cleaning Services) during the Maintenance Period; and
- (B) Part B of Schedule 3 (Performance Regime) during the TSSSA Period,

and **"Availability"** shall be construed accordingly;

"Base Case Financial Model" has the meaning ascribed to it in paragraph 1 of Schedule 5 (Pricing and Payment);

"Base Index" has the meaning ascribed to it in paragraph 1 of Schedule 5 (Pricing and Payment);

"Baseline Assessment" means the analysis of soil and groundwater situated at the relevant Carriage Servicing Depot to be undertaken immediately following the date on which any Historic Remediation Works in respect of the relevant Carriage Servicing Depot are completed, as set out in paragraph 4.1.2 of Schedule 9;

"Baseline Assessment Date" means the date on which the Baseline Assessment is undertaken;

"BME or Black and Minority Ethnic Business" has the meaning ascribed to that term in Appendix 1 to Schedule 7 (Equality and Inclusion Requirements);

"Bonding Guarantee" means a bonding guarantee in the form set out in Part J of Schedule 20 (Agreed Form Documents);

"Bond Provider" means the Qualifying Issuer who is providing a Bonding Guarantee;

"Carriage Servicing Depot" means the ELR Carriage Servicing Depot or the NLR Carriage Servicing Depot as the context requires;

"Certificate of Approval" has the meaning ascribed to it in the Manufacture and Supply Agreement;

"Certificate of Commencement" means the certificate in the form or substantially in the form set out in Part B of Schedule 20 (Agreed Form Documents);

"Certificate of Compliance" means the declaration to be given by a director of the Maintainer to the Purchaser in the form or substantially in the form set out in Part A of Schedule 20 (Agreed Form Documents);

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

"Cessation" means the coming into effect of the Maintainer's obligations to comply with the provisions of Schedule 11 (Technical Support and Spare Supply) on the Cessation Date;

"Cessation Date" has the meaning ascribed to it in Clause 28.3.2;

"Cessation Notice" has the meaning ascribed to it in Clause 28.3.1;

"Change" has the meaning ascribed to it in Schedule 2 (Maintenance and Cleaning Services) for the purposes of Schedule 2 only;

"Change in Law" means the application to any person of any Applicable Law or Standard which did not previously apply to such person, or any change (whether with immediate, prospective or retrospective effect) in, or any change in application of, any Applicable Law or Standard (including any Applicable Law or applicable Standard ceasing to apply, being withdrawn or not being renewed, being introduced or varied and any change in interpretation of any Applicable Law or applicable Standard by any Competent Authority);

"Change in Service Payments" has the meaning ascribed to it in Schedule 10 (Variation Procedure) for the purposes of that Schedule only;

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

- (a) the holding and/or possession of the legal or beneficial interest in, and/or the ability to exercise the voting rights applicable to, shares or securities of the Maintainer (or any person having a direct or indirect interest in the Maintainer) by the relevant person (or persons acting in concert); or
- (b) the power of the relevant person (or persons acting in concert) (directly or indirectly) to secure that the business and/or affairs and/or policies of the Maintainer (or any person who has a direct or indirect interest in the Maintainer) are conducted in accordance with the wishes of that person (or persons); or
- (c) the right of the relevant person (or persons acting in concert) to receive (directly or indirectly) on a winding up the greater part of the assets of the Maintainer (or any person having a direct or indirect interest in the Maintainer) which are available for distribution;

"Check" has the meaning ascribed to it in Schedule 2 (Maintenance and Cleaning Services) for the purposes of Schedule 2 only;

"Clean" has the meaning ascribed to it in Schedule 2 (Maintenance and Cleaning Services) for the purposes of Schedule 2 only;

"Cleaning Commencement Date" has the meaning ascribed to it in Clause 9.4;

"Cleaning Contractor" has the meaning ascribed to it in Clause 9.3.2;

"Cleaning Management Fee" means the amount to be agreed between the Parties in the event that the Purchaser exercises the Cleaning Option and to be paid by the Purchaser to the Maintainer for managing the provision of the Interior Cleaning Services;

"Cleaning Option" means the option for the Interior Cleaning Service contemplated by and described in Clause 9;

"Cleaning Standard" has the meaning ascribed to it in Schedule 2 (Maintenance and Cleaning Services) for the purposes of Schedule 2 only;

"Cleaning and State of Repair Standard" has the meaning ascribed to it in Schedule 2 (Maintenance and Cleaning Services) for the purposes of Schedule 2 only;

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

"Compensation Sum" has the meaning ascribed to it in paragraph 1 of Schedule 5 (Pricing and Payment);

"Competent Authority" means any legislative, judicial, regulatory or administrative body or agency (or any subdivision of them) of the United Kingdom or the European Union or any supranational body which has rule-making power or whose directions, instructions, rulings, laws or regulations are directly enforceable against either of the Parties in connection with the performance of this Agreement;

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

"Confidential Information" has the meaning ascribed to it in Clause 39.1;

"Consequential Loss"

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

"Contingency Facility" means:

- (a) a Contingency Maintenance Facility; and
- (b) a Contingency Stabling Facility (including any carriage cleaning facilities);

"Contingency Maintenance Facility" has the meaning ascribed to "Contingent Maintenance Facility" in Schedule 10 of the MSA;

"Contingency Stabling Facility" means those facilities where some or all of the Fleet may be stabled in accordance with Schedule 10 (NXG Facility) of the MSA or such other facilities as may be determined by the Purchaser (acting in its absolute discretion) from time to time;

"Contract Progress Report" means the report referred to in paragraph 2.2.1 of Schedule 6 (Contract Management) and described in paragraph 2.12.3 of Schedule 2 (Maintenance and Cleaning Services);

"Contract Review Meeting" has the meaning ascribed to it in paragraph 2.4.1 of Schedule 6 (Contract Management);

"Contract Year" means:

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

"Control Room Presence Cost" has the meaning ascribed to it in paragraph 1 of Schedule 5 (Pricing and Payment);

"Corrective Action" has the meaning ascribed to it in Clause 17.6;

"Damage & Vandalism Spares" means those Spares required to be fitted on, or to, a Unit to remedy damage and/or vandalism to a Unit, including (but not limited to) those Spares set out in Table 1 of Part A of Schedule 8 of the Manufacturer and Supply Agreement;

"Damaged Unit" means, in respect of any calendar year, each Unit which has been taken out of service for one month or more in that calendar year;

"Day" has the meaning ascribed to it in paragraph 1 of Schedule 5 (Pricing and Payment) for the purposes of that Schedule only;

"Dedicated Store" has the meaning ascribed to it in paragraph 1.1.3 of Part 2 of Schedule 11;

"Deduction" has the meaning ascribed to it in Schedule 3 (Performance Regime);

"Deemed Acceptance" means Acceptance of an ELR Unit pursuant to paragraph D.7.9(A) of Appendix D to Schedule 3 (Rolling Stock Requirements – Assurance) of the MSA;

"Default Interest" means interest on late payment at the rate of [REDACTED] per annum above LIBOR (calculated on the basis of the actual number of days elapsed and a year of 365 days) and applicable in accordance with the terms of this Agreement;

"Defect" has the meaning ascribed to it in the Manufacture and Supply Agreement;

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

"Delivery Note" has the meaning ascribed to it in the Manufacture and Supply Agreement;

"Demand" means a demand as contemplated by and pursuant to paragraph 1.5 of part 1 of Schedule 5 (Pricing and Payment);

"Demobilisation Costs" means the sums to be paid by the Purchaser pursuant to Clause 28;

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

"Detailed Design" has the meaning given to that term in the Manufacture and Supply Agreement;

"DFO" means a person who is the Facility Owner of a light maintenance depot, as such terms are used in Section 6 of the Act;

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

"Dispute" means a difference or dispute of whatever nature between the Maintainer and the Purchaser or the Operator arising under, out of or in connection with this Agreement (including any question of interpretation);

"Dispute Resolution Procedure" means the procedure set out in Schedule 15 (Dispute Resolution Procedure);

"Diverse Supplier" has the meaning ascribed to that term in Appendix 1 to Schedule 7 (Equality and Inclusion Requirements) for the purposes of that Schedule only;

"Diversity Infraction" has the meaning ascribed to it in paragraph 1.13.5 of Schedule 7 (Equality and Inclusion Requirements);

"Documentation" means the specifications, drawings, networks, programmes of work, computer standards, listings, programs, software, data, test scripts, test procedures, test plans, test certificates, quality programmes, quality certification, operating manuals, maintenance manuals and all information whether on paper or magnetic format or in any other form which is prepared by the Maintainer in accordance with or in relation to this Agreement and including but not in any way limited to, documents, plans, manuals, diagrams, statements, handbooks, procedures and other items which the Maintainer is required to prepare and provide in accordance with the Agreement;

"Document Structure Tree" has the meaning ascribed to it in paragraph 2 of Schedule 16 (Preparation, Presentation and Return Procedure) and paragraph 2 of Schedule 17 (In Service Support Procedure) for the purposes of those Schedules only;

"Duration" means that period commencing upon Acceptance of the first Unit and ending (subject to earlier termination in accordance with the provisions of this Agreement) on the expiry of the thirtieth calendar year following the Acceptance of the last Unit;

"Duty On Call Manager" has the meaning ascribed to it in paragraph 1.3.1 of Schedule 17 (In-Service Support Procedure);

"ELR Actual Annual Unit Mileage" has the meaning ascribed to it in paragraph 1 of Schedule 5 (Pricing and Payment);

"ELR Adjusting Payment" has the meaning ascribed to it in paragraph 1 of Schedule 5 (Pricing and Payment);

"ELR Carriage Servicing Depot" means:

- (a) the ELR Maintenance Facility; and
- (b) the ELR Stabling Facilities (including any carriage cleaning facilities);

"ELR Deficit Amount" has the meaning ascribed to it in paragraph 1 of Schedule 5 (Pricing and Payment);

"ELR Excess Amount" has the meaning ascribed to it in paragraph 1 of Schedule 5 (Pricing and Payment);

"ELR Final Adjusting Payment" has the meaning ascribed to it in paragraph 1 of Schedule 5 (Pricing and Payment);

"ELR Final Period" has the meaning ascribed to it in paragraph 1 of Schedule 5 (Pricing and Payment);

"ELR Final TSSSA Adjusting Payment" has the meaning ascribed to it in paragraph 1 of Schedule 5 (Pricing and Payment);

"ELR Final TSSSA Period" has the meaning ascribed to it in paragraph 1 of Schedule 5 (Pricing and Payment);

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

"ELR Floor Amount" has the meaning ascribed to it in paragraph 1 of Schedule 5 (Pricing and Payment);

"ELR Maintenance Facility" means the NXG Facility or such other facility where the Maintainer may undertake the maintenance of the ELR Units as agreed between the Purchaser and the Maintainer from time to time in accordance with this Agreement (but excluding any Contingency Facility);

"ELR Planned Annual Unit Mileage" has the meaning ascribed to it in paragraph 1 of Schedule 5 (Pricing and Payment);

"ELR Service Payment Variance" has the meaning ascribed to it in paragraph 1 of Schedule 5 (Pricing and Payment);

"ELR Scheduled Standard Service Payment" has the meaning ascribed to it in paragraph 1 of Schedule 5 (Pricing and Payment);

"ELR Stabling Facilities" means the facilities where the Units may be stabled or where the Maintainer may undertake exterior cleaning of the Units as agreed between the Purchaser and the Maintainer from time to time located on or near the East London Railway;

"ELR TSSSA Payment" has the meaning ascribed to it in paragraph 1 of Schedule 5 (Pricing and Payment);

"ELR Unit" means an electric multiple unit in 4 car formation supplied pursuant to the MSA and to be operated by the Operator on the East London Railway from time to time;

"ELRT Deficit Amount" has the meaning ascribed to it in paragraph 1 of Schedule 5 (Pricing and Payment);

"ELRT Excess Amount" has the meaning ascribed to it in paragraph 1 of Schedule 5 (Pricing and Payment);

"Emergency Variation" has the meaning ascribed to it in Schedule 10 (Variation Procedure);

"Employee Liability Information" has the meaning ascribed to it in Clause 19.3.2;

"Entry Point" means, in respect of a Unit, the physical location specified in a Diagram where such Unit is to enter service as set out in the Maintenance Window Plan;

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

"Environment" means:

- (a) land, including, without limitation, surface land, sub-surface strata, sea bed and river bed under water (as defined in Paragraph (b)) and natural and man-made structures;
- (b) water, including, without limitation ground waters and water in drains and sewers;

- (c) air, including, without limitation, air inside buildings and in other natural and man-made structures above or below ground; and
- (d) any and all living organisms or systems supported by those media, including without limitation, humans;

"Environmental Condition" means:

- (a) any Environmental Damage; or
- (b) any event, circumstance, condition, operation or activity which is reasonably foreseeable as likely to result in Environmental Damage which in the Purchaser's reasonable opinion could result in the Purchaser, the Owner, the Operator, TfL, LUL or any other member of the TfL Group incurring, any material liability or being subject to the direction of any Competent Authority;

"Environmental Consultant" means an environmental consultant with at least 10 years' relevant experience, who (i) has not personally acted in his or her own capacity for either party and (ii) is not employed by and is not a partner of a firm or other environmental consultancy practice which has acted for either party;

"Environmental Damage" means any material injury or damage to persons, living organisms or property (including offence to man's senses) or any pollution or impairment of the environment resulting from the discharge, emission, escape or migration of any substance, energy or, where there are specific requirements regarding noise and vibration included in the relevant Local Working Procedures, noise or vibration, save to the extent any of the foregoing are within the requirements of the Local Working Procedures;

"Environmental Laws" means, as the context may require, all or any laws, statutes, by-laws, codes of practice which have the force of law, directives, regulations, statutory instruments, statutory guidance, rules, orders, rules of court, delegated or subordinate legislation, rules of common law or any European Union legislation at any time or from time to time in force in the United Kingdom or the European Union and which are or may become applicable to this Agreement, any agreement or document referred to therein which relates to the Environment;

"Equality and Inclusion Requirements" means those requirements set out in Schedule 7 (Equality and Inclusion Requirements);

"Escalation Notice" has the meaning ascribed to it in paragraph 1.2 of Schedule 15 (Dispute Resolution Procedure);

"Escalation Procedure" means the procedure set out in part A of Schedule 15 (Dispute Resolution Procedure);

"Evaluation Principles" has the meaning ascribed to it in paragraph 1 of Schedule 5 (Pricing and Payment);

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

- (a) the actual or constructive total loss, or destruction, of such Unit, Initial Spares and/or Initial Special Tools, or its being damaged beyond repair or rendered permanently unfit for normal use for any reason whatsoever, including any destruction or damage caused by a Force Majeure Event or requisition for use or

hire which, in either case, results in an insurance settlement on the basis of a total loss; or

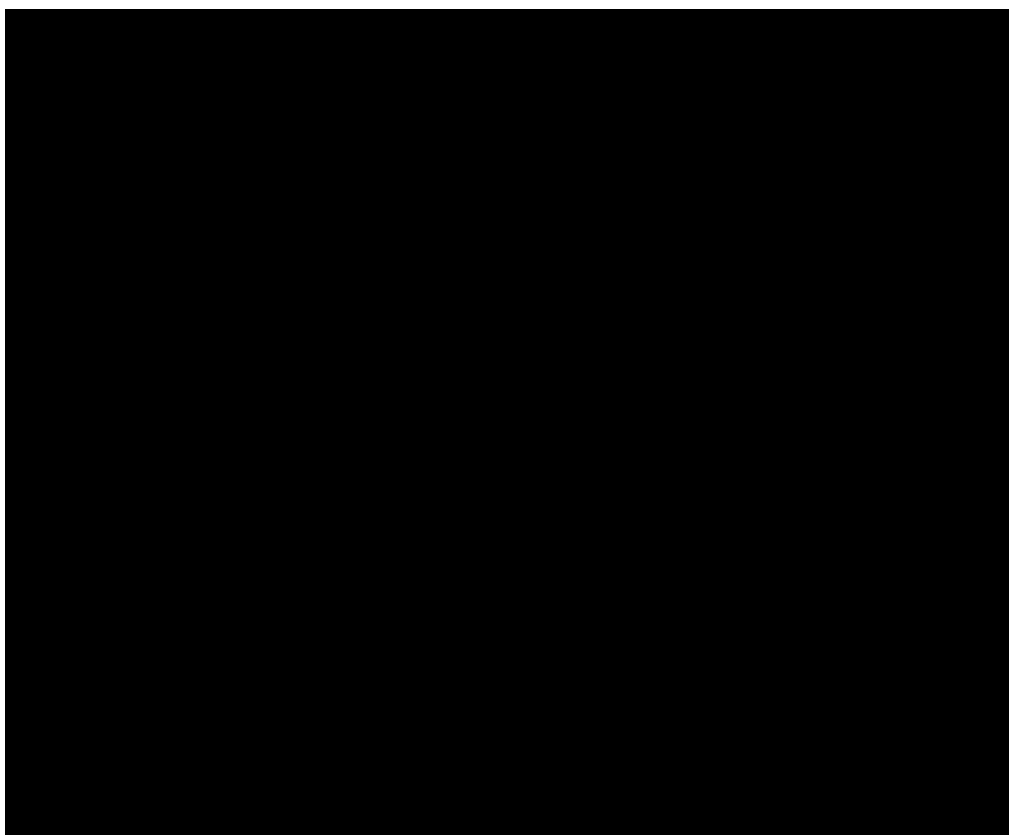
- (b) the requisition of title, or other compulsory acquisition, requisition, expropriation or confiscation for any reason of such Unit, Initial Spares and/or Initial Special Tools, by any Competent Authority, other than the Purchaser, TfL, LUL or other member of the TfL Group but excluding acquisition for use or hire not involving requisition of title; or
- (c) the condemnation, confiscation, capture, deprivation, seizure or requisition for use or hire of such Unit, Initial Spare and/or Initial Special Tool, (other than requisition for use or hire by any Competent Authority) which deprives any person permitted by this Agreement to have possession and/or use of such Unit and/or Initial Spares and/or Initial Special Tools, its possession and/or use for more than one hundred and eighty days;

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

"Excluded Assets" has the meaning ascribed to it in the Manufacture and Supply Agreement;

"Excluded Liabilities" means:

- (a)
- (b)
- (c)
- (d)
- (e)
- (f)
- (g)
- (h)



"Exercise Period" means the period of time specified in the Clause 9 during which the Purchaser may exercise the Cleaning Option;

"Exhibited" has the meaning ascribed to it in Appendix 1 of Schedule 2 (Maintenance and Cleaning Services) for the purposes of that Schedule only;

"Exhibiting" has the meaning ascribed to it in Appendix 1 of Schedule 2 (Maintenance and Cleaning Services) for the purposes of that Schedule only;

"Exit Assessment" means the analysis of soil and groundwater situated at the relevant Carriage Servicing Depot to be undertaken, prior to the expiry, Cessation or earlier termination of this Agreement, as set out in paragraph 4.3.4 of Schedule 9;

"Exit Point" means, in respect of a Unit, the physical location specified in a Diagram where such Unit comes out of service as set out in the Maintenance Window Plan;

"Exit Survey" has the meaning ascribed to it in paragraph 4.4.1 of Schedule 9;

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

"Exonerating Event" means each of the following:

- (a) any breach by the Operator under this Agreement;
- (b) any breach by the Purchaser under this Agreement;
- (c) any damage or excessive or unusual wear and tear caused to the Units as a direct result of any Railway Infrastructure (other than Railway Infrastructure maintained by the Maintainer) being in a condition which is worse than that to be expected of it assuming that such Railway Infrastructure is being maintained by a competent maintenance contractor having regard to (i) Railway Group Standards applicable to such Railway Infrastructure which is controlled by Network Rail and such applicable standards (to be determined by LUL) in relation to the Core ELL Infrastructure which shall be controlled by LUL and (ii) the condition of such Railway Infrastructure (if such Railway Infrastructure exists) at the date of this Agreement taking into account that the condition of certain parts of such Railway Infrastructure may not be compliant with Railway Group Standards. For the avoidance of doubt, in the event that the Maintainer believes that an Exonerating Event pursuant to this limb (c) has occurred it shall be required to prove that the alleged damage or excessive or unusual wear and tear has been caused by circumstances falling within this limb (c) including, if required by the Purchaser, providing to the Purchaser written evidence from a reputable and independent third party with relevant experience, or
- (d) the Operator operating the Units other than in accordance with the Permitted Use where the Maintainer is able to prove that this directly results in increased costs or an adverse effect upon the Maintainer's ability to perform the Services;

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

"Expert" has the meaning ascribed to it in paragraph 2.4 of Schedule 15 (Dispute Resolution Procedure);

"Expert Procedure" means the procedure set out in part B of Schedule 15 (Dispute Resolution Procedure);

"Expert Notice" has the meaning ascribed to it in paragraph 2.2 of Schedule 15 (Dispute Resolution Procedure);

"Extension" has the meaning ascribed to it in paragraph 1.8.3(B) of Part 2 of Schedule 11;

"Extensive" has the meaning ascribed to it in Appendix 2 of Schedule 2 (Maintenance and Cleaning Services) for the purposes of that Schedule only;

"Extrapolated Mileage" means:

- (a) in respect of a Total Loss Unit in any calendar year, the aggregate of:
 - (i) the mileage run by that Total Loss Unit in that calendar year prior to the relevant Event of Loss; and
 - (ii) the mileage that Total Loss Unit would have run from the time of the relevant Event of Loss to the end of that calendar year assuming that such Total Loss Unit continued to run each day at the daily average of the mileage referred to in Part 2A of Schedule 5 (Pricing and Payment) above; and
- (b) in respect of a Damaged Unit in that calendar year:
 - (i) the actual mileage run by that Damaged Unit in that calendar year; and
 - (ii) the mileage that Damaged Unit would have run assuming that on each day it was out of service it ran the daily average of the mileage referred to in (b)(i) above;

"Extremely" has the meaning ascribed to it in Appendix 2 of Schedule 2 (Maintenance and Cleaning Services) for the purposes of that Schedule only;

"Facility Costs" has the meaning ascribed to it in paragraph 4.6.1 of Schedule 9 (Maintenance Facility Obligations) for the purposes of that Schedule only;

"Facility Cost Balance" has the meaning ascribed to it in paragraph 4.6.1 of Schedule 9 (Maintenance Facility Obligations) for the purposes of that Schedule only;

"Facility Costs Estimate" has the meaning ascribed to it in paragraph 4.6.1 of Schedule 9 (Maintenance Facility Obligations) for the purposes of that Schedule only;

"Facility Design" has the meaning ascribed to it in Schedule 10 (NXG Facility) of the MSA;

"Facility Management Fee" has the meaning ascribed to it in paragraph 4.6.1 of Schedule 9 (Maintenance Facility Obligations) for the purposes of that Schedule only;

"Facility Service Charge Year" has the meaning ascribed to it in paragraph 4.6.1 of Schedule 9 (Maintenance Facility Obligations) for the purposes of that Schedule only;

"Facility Services" has the meaning ascribed to it in paragraph 4.6.1 of Schedule 9 (Maintenance Facility Obligations) for the purposes of that Schedule only;

"Facility Owner" has the meaning ascribed to it in the Act;

"Facility Tests" has the meaning ascribed to that term in the Manufacture and Supply Agreement;

"Failure" has the meaning ascribed to it in Schedule 3 (Performance Regime);

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

"Fault" means in relation to a Unit, Vehicle or Spare, that the Unit, Vehicle or Spare does not comply with the Specification, the Safety, Quality and Environmental Plan, any Applicable Law and/or Standard, any Relevant Approval or is otherwise not Fit for Service or that it has a Defect;

"Fault Free" means in respect of a Unit, Vehicle or Spare, that such Unit, Vehicle or Spare has no Faults (excluding Operator Faults unless approved by the Purchaser pursuant to paragraph 3 of Part 1 of Schedule 2 (Maintenance and Cleaning Services) and in respect of which the Remedy Period has expired for such Fault);

"Fault Matrix" has the meaning ascribed to it in paragraph 1.2.3 of Schedule 17 (In-Service Support Procedure);

"Fault Notification Procedure" means the procedure set out in Schedule 14 (Fault Notification Procedure);

"Fault Report" has the meaning ascribed to it in paragraph 1.2.3 of Schedule 14 (Fault Notification Procedure);

"Final Inspection" has the meaning ascribed to that term in paragraph 2.1 of Schedule 13 (Handback);

"Financial Model" has the meaning ascribed to it in paragraph 1 of Schedule 5 (Pricing and Payment);

"First Party" has the meaning ascribed to it in paragraph 1 of Schedule 5 (Pricing and Payment) for the purposes of that Schedule only;

"Fit for Service" has the meaning ascribed to it in Appendix 1 to Schedule 2 (Maintenance and Cleaning Services);

"Fit to Remain in Service" has the meaning ascribed to it in Appendix 1 of Schedule 2 (Maintenance and Cleaning Services);

"Fit to Run" has the meaning ascribed to it in Appendix 1 of Schedule 2 (Maintenance and Cleaning Services);

"Fixed Assets" has the meaning ascribed to it in the Manufacture and Supply Agreement;

"Fleet" means the ELR Fleet or the NLR Fleet as the context requires and the **"Fleets"** means both the ELR Fleet and the NLR Fleet;

"FM Affected Party" has the meaning ascribed to it in Clause 31.1.1;

"FM Notice" has the meaning ascribed to it in Clause 31.3;

"FOI Legislation" has the meaning ascribed to it in Clause 40.1.1;

"Forbidden Act" has the meaning ascribed to it in Clause 19.8;

"Force Majeure Event" means:

- (a) fire, earthquake, explosion, epidemic, extreme weather conditions (other than variations in temperature that are within the range of temperatures as set out in the Rolling Stock Requirements - Technical within which the Units are to operate) or flood;
- (b) act of terrorism;
- (c) war, invasion, acts of foreign enemies, hostilities, civil war, revolutions, insurrection, riots or civil unrest; and/or
- (d) strikes, lock-outs or other industrial action not solely affecting the Maintainer's and/or their Subcontractors' employees or those of any of its Subcontractors,

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

"Foreseeable Change in Law" means the coming into effect after the date of this Agreement of any Applicable Law or Standard (whether by means of any enactment, repeal or amendment) to the extent that that Applicable Law or Standard has been published on or before the date of the Agreement in substantially the same form and/or with substantially the same effect as the relevant Applicable Law or Standard when it comes into legal effect:

- (a) in a draft bill as part of a government department consultation paper;
- (b) in a bill;
- (c) in a draft statutory instrument;
- (d) as a proposal in the Official Journal of the European Union or as a common position adopted by the European Parliament; or
- (e) in a draft Standard that has been published by:
 - (1) the RSSB (and any successor) in relation to Railway Group Standards;
 - (2) Network Rail (and any successor) in relation to Network Rail Company Standards;
 - (3) BSI Group Limited (and any successor) in relation to British standards;
 - (4) the European Committee for Standardization (and any successor in relation to European standards); or
 - (5) the International Organisation for Standardization (and any successor) in relation to international standards;

"Free Issue Materials" means those items provided by the Purchaser (if any) to the Maintainer but does not include any:

- (a) Spares;
- (b) Special Tools;
- (c) Maintainer Moveable Assets;
- (d) Moveable Assets;
- (e) Fixed Assets;
- (f) Excluded Assets; and/or
- (g) Maintainer Excluded Assets;

"Generally Approved Additional Service" means any Additional Service carried out, or to be carried out, in accordance with paragraph 3 of part 1 of Schedule 2 (Maintenance and Cleaning Services);

"Graffiti" has the meaning ascribed to it in Appendix 2 of Schedule 2 (Maintenance and Cleaning Services);

"Group" means, in relation to any company (which for the purposes of this Agreement shall include Tfl), that company and any company which is a holding company or subsidiary of that company and any subsidiary of any such holding company; for which purposes **"subsidiary"** and **"holding company"** have the meanings respectively given to them by sections 736 and 736A of the Companies Act 1985 as supplemented by section 144 of the Companies Act 1989;

"Guarantee" means the guarantee to be provided by the Guarantor in favour of the Purchaser in the form or substantially in the form set out in Part C of Schedule 20 (Agreed Form Documents);

"Guaranteed Amount" has the meaning ascribed to it in paragraph 3 of the Bonding Guarantee;

"Guarantor" means Bombardier Inc a company incorporated under the laws of Canada whose registered office is at 800 René-Lévesque Blvd West, Montréal, Québec, Canada, H3B 1Y8;

"Handback" means the handback of any assets from the Maintainer to the Purchaser in accordance with the provisions of this Agreement.

"Handback Condition" means the condition for the return of any Unit or TSA Equipment or TSA Facilities on expiry or earlier termination of this Agreement which is described in paragraph 4 of Schedule 13 (Handback) and in Schedule 9 (Maintenance Facility Obligations);

"Handback Location" means the location referred to in Schedule 13 (Handback);

"Handback Plan" has the meaning ascribed to it in paragraph 5 of Schedule 13 (Handback);

"Hazardous Substances" means any or all materials or substances of any form whether natural or artificial, solid, liquid, gas or vapour or any mixture thereof which are present in such quantities and concentration as:

- (a) may be harmful or prejudicial to the Environment;
- (b) are regulated under any Environmental Law; or
- (c) would require investigation or remediation under any Environmental Law;

"Historic Pollution" means any substance in, on or under the Environment at the Baseline Assessment Date;

"Historic Remediation Works" means any action which is required to remove, remedy, clean-up or treat the presence or effect of any Historic Pollution to a standard which is suitable for the relevant use;

"Ilford Facility" has the meaning ascribed to it in paragraph 1 of Schedule 9 (Maintenance Facility Obligations);

"Incident Spares" means those Spares (other than Damage & Vandalism Spares) required to be fitted on, or to, a Unit as a result of an unforeseen incident, including (but not limited to) those Spares set out in Table 2 of Part A of Schedule 8 of the Manufacture and Supply Agreement;

"Increased Costs" has the meaning ascribed to it in paragraph 1 of Schedule 5 (Pricing and Payment);

"Indemnified Parties" has the meaning ascribed to it in Clause 36.3;

"Indemnity Sum" has the meaning ascribed to it in paragraph 1 of Schedule 5 (Pricing and Payment);

"Independent Surveyors" has the meaning ascribed to it in paragraph 4.4.2 of Schedule 9 (Maintenance Facility Obligations);

"Indexation Adjustment Formula" means the formula set out in Paragraph 9 of Part 1 of Schedule 5 (Pricing and Payment);

"Indexation Amount" means the difference between the Guaranteed Amount as adjusted by the Indexation Adjustment Formula and the unadjusted Guaranteed Amount;

"Infrastructure Manager" has the meaning given to that term under the Railways and Other Guided Transport Systems (Safety) Regulations 2006;

"Infrastructure Manager Matter" has the meaning ascribed to it in Schedule 3 (Performance Regime);

"Initial Maintenance Spares Provisioning Sum" has the meaning ascribed to it in paragraph 1 of Schedule 5 (Pricing and Payment);

"Initial Order" has the meaning ascribed to it in Clause 4.1 of the Manufacture and Supply Agreement;

"Initial Spares" means those Incident Spares, Damage & Vandalism Spares and Overhaul Spares supplied to the Purchaser by the Manufacturer pursuant to the Manufacture and Supply Agreement;

"Initial Special Tools" means those Special Tools (forming part of the Initial Order) provided by the Manufacturer to the Purchaser pursuant to the Manufacture and Supply Agreement;

"In-Service Support Procedure" means the procedure set out in Schedule 17 (In-Service Support Procedure) and reference to "In-service Support Procedure" shall be treated as references to the In-Service Support Procedure so set out;

"Insolvency Event" in relation to any person means:

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

"Inspect" has the meaning ascribed to it in Schedule 2 (Maintenance and Cleaning Services) for the purposes of that Schedule only;

"Insolvent" means:

- (a) in the case of a company that:
 - (i) it is in liquidation (other than a solvent company in voluntary liquidation for the purpose of amalgamation or reconstruction);
 - (ii) it has had a winding up petition or petition for an administration order made against it, which petition has not been dismissed;
 - (iii) it is unable to pay its debts as and when they fall due within the meaning of section 123 of the Insolvency Act 1986 (as that section may be amended from time to time);

- (iv) it has entered into a composition with its creditors or a scheme of arrangement of its affairs; or
 - (v) there is current an appointment of an administrator, an administrative receiver, a receiver or a manager over all or any part of its undertaking or assets;
- (b) in the case of an individual that:
- (i) he has had a bankruptcy order or an interim order made against him and such order has not been discharged;
 - (ii) he has entered into a composition with his creditors or a scheme of arrangement of his affairs; or
 - (iii) there is current an appointment of an interim receiver in respect of his property;
- (c) in either case that circumstances exist or proceedings have been instituted (and not dismissed) or events have occurred or are occurring outside the jurisdiction of the courts of England which have an analogous effect to any referred to in paragraphs (a) and (b) above;

"Insurances" has the meaning ascribed to that term in Appendix 1 to Schedule 12 (Insurance);

"Intellectual Property Rights" means all intellectual property rights in any part of the world, including any patent, patent application, trade mark, trade mark application, registered design, registered design application, utility model, trade name, discovery, invention, process, formula, specification, copyright (including rights in the Software and any other computer software and database and topography rights) or unregistered design rights;

"Interior Cleaning Service" means the cleaning of the interiors of the Units by the Maintainer or a third party managed by the Maintainer;

"Interior Cleaning Standard" has the meaning ascribed to it in Clause 9.2.1(A);

"IPR Claim" has the meaning ascribed to that term in Clause 16.7;

"Joint Safe Working Plan" means the plan set out in Schedule 8 (Joint Safe Working Plan) of this Agreement as amended by agreement between the Purchaser and the Maintainer from time to time;

"Key Personnel" means any or all of those people listed in Appendix 1 of Schedule 6 (Contract Management);

"Last Initial Unit" means the last Unit forming part of the Initial Order in respect of which a Provisional Acceptance Certificate or a Qualified Provisional Acceptance Certificate is issued in accordance with the terms of the MSA;

"Lead Time" has the meaning ascribed to it in paragraph 1.3.2 of Part 2 of Schedule 11 for the purposes of that Schedule only;

"Level 1 Fault-Finding" has the meaning ascribed to it in paragraph A 2 17.1 of Part 3 of Schedule 11;

"Level 2 Fault-Finding" has the meaning ascribed to it in paragraph A 2 17.2 of Part 3 of Schedule 11;

"Level 3 Fault-Finding" has the meaning ascribed to it in paragraph A 3 17.3 of Part 3 of Schedule 11;

"LIBOR" means:

- (a) the applicable Screen Rate; or
- (b) if no Screen Rate is available for sterling the arithmetic mean of the rates rounded (upwards to four decimal places) quoted to the Purchaser at its request in the London interbank market,

as of 11.00 am on the Quotation Day for the offering of deposits in sterling and for a period of ninety (90) days;

"Listed Person" has the meaning ascribed to it in Clause 32.1.2;

"Local Community" has the meaning ascribed to it in paragraph 1.10.1 of Schedule 7 (Equality and Inclusion Requirements);

"Local Working Procedures" has the meaning ascribed to it in paragraph 4.2.9 of Schedule 9 (Maintenance Facility Obligations);

"Loss" means any damage, loss, liability, claim, action, cost, expense, proceedings, demand, Tax or charge whether arising under statute, contract or at common law and **"Losses"** shall be construed accordingly;

"Loss of Qualifying Status Notice" means the loss of qualifying status notice in the form or substantially in the form of Part K of Schedule 20 (Agreed Form Documents);

"LU Drugs and Alcohol Policy" means London Underground Limited's Drugs and Alcohol Policy set out in Appendix D to Schedule 7 (Equality and Inclusion Requirements);

"LUL Hours" has the meaning ascribed to it in paragraph 1 of Schedule 5 (Pricing and Payment);

"Main Works Contract" means the contract between LUL and the Main Works Contractor under which the Main Works Contractor shall undertake certain upgrades, renewals and extensions to the Railway Infrastructure on the East London Line including the construction of the Maintenance Facility;

"Main Works Contractor" means the person appointed by LUL to carry out certain upgrades, renewals and extensions to the existing Railway Infrastructure on the East London Line;

"Maintainer Aesthetic Inspection" has the meaning ascribed to it in Schedule 2 (Maintenance and Cleaning Services);

"Maintainer Aesthetic Exam" has the meaning ascribed to it in Schedule 2 (Maintenance and Cleaning Services);

"Maintainer Document" means this Agreement, any other document designated by the Maintainer, the Owner and the Operator as a Maintainer Document and all other notices, consents, certificates and other documents and agreements to which the Maintainer is a party issued pursuant to or in connection with a Maintainer Document;

"Maintainer Event of Default" means any of the events or circumstances listed in Clause 33.1;

"Maintainer Excluded Assets" means any plant, equipment or other assets belonging to the Maintainer but not used solely and exclusively in the performance of the Services;

"Maintainer Fault" has the meaning ascribed to it in Schedule 3 (Performance Regime);

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

"Maintainer IPR" means any existing or new Intellectual Property Rights owned by the Maintainer which:

- (A) are used by the Maintainer for the performance of the Services and to which the Purchaser requires access during the Maintenance Period as specifically provided in the Agreement; or
- (B) arise in connection with or by reason of any modification, update, or enhancement of any Maintainer IPR by reason of the performance of the Services; or
- (C) arise in connection with the provision or use of any TSA Equipment from time to time,

but excludes any other existing or new Intellectual Property Rights owned by the Maintainer and any confidential information or know-how owned by the Maintainer which relates predominantly to the operation of the business of the Maintainer which is used, or arises, incidentally to the performance by the Maintainer of its obligations under this Agreement ("**Maintainer Know-how**");

"Maintainer Know-how" has the meaning ascribed to it in the definition of "**Maintainer IPR**";

"Maintainer Moveable Assets" has the meaning ascribed to it in Clause 5.4.1;

"Maintainer Notice of Proposed Variation" has the meaning ascribed to that term in paragraph 4.1 of Schedule 10 (Variation Procedure);

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

"Maintainer Owned Spares" means any Spare owned by the Maintainer, including Consumable Spares and any Supplemental Overhaul Spares;

"Maintainer's Notice of Objection" has the meaning ascribed to it in paragraph 3.2.7 of Schedule 10;

"Maintainer's Project Manager" has the meaning ascribed to it in Paragraph 1.2.1 of Schedule 6 (Contract Management);

"Maintainer's Project Team" has the meaning ascribed to it in Paragraph 1.2.2 of Schedule 6 (Contract Management);

"Maintainer's Records" has the meaning ascribed to it in Clause 17.3.1(A);

"Maintainer's Representative" has the meaning ascribed to it in paragraph 1.2.4 of Schedule 17;

"Maintainer Safety Certificates" means any certificate evidencing that the statement of procedures, standards and internal regulations prepared by the Maintainer satisfy the requirements of the Railways and Other Guided Transport Systems (Safety) Regulations 2006 required for the performance of the Maintainer Obligations;

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

"Maintenance Facility" means the ELR Maintenance Facility or the NLR Maintenance Facility as the context requires and any Contingency Facilities;

"Maintenance Implementation Plan" means the plan set out at Schedule 19 (Maintenance Implementation Plan);

"Maintenance Obligations" has the meaning ascribed to it in paragraph 4.2.2(A) of Schedule 9;

"Maintenance Period" means:

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

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

"Maintainer's Representative" has the meaning ascribed to it in paragraph 1.21 of Schedule 17 (In-Service Support Procedure);

"Maintenance Window Plan" means the maintenance window plan for the East London Railway or the North London Railway as the context requires and as set out in Schedule 1 (Maintenance Window Plan and Train Plan Parameters);

"Maintenance Window" means, in respect of each Unit, the period of time in which the Unit must be made available to the Maintainer as represented in the Maintenance Window Plan;

"Major Exonerating Event" has the meaning ascribed to that term in Clause 25.4.1;

"Manuals" has the meaning given to that term in the Manufacture and Supply Agreement;

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

"Manufacturer" has the meaning ascribed to that term in the Manufacture and Supply Agreement;

"Manufacturer IPR" has the meaning ascribed to that term in the Manufacture and Supply Agreement;

"Material Adverse Effect" means a material adverse effect on the Maintainer's or Guarantor's financial condition, assets or business or their ability to perform their respective obligations under the Maintainer Documents or the Guarantee or on the Owner's rights and interests under the Maintainer Documents or the Guarantee;

"Maximum Liability" has the meaning ascribed to it in Clause 37.2;

"Minimum Aesthetic Condition" has the meaning ascribed to it in Schedule 2 (Maintenance and Cleaning Services);

"Minimum Records" has the meaning ascribed to it in paragraph 1.14.5 of Schedule 7 (Equality and Inclusion Requirements);

"Minor Exonerating Event" has the meaning ascribed to that term in Clause 25.3.1;

"Mobilisation Fee" has the meaning ascribed to it in paragraph 1 of Schedule 5 (Pricing and Payment);

"Modification" means any modification or addition to any Unit, Vehicle or Spare and/or Special Tool;

"Monitoring Obligations" has the meaning ascribed to it in paragraph 4.2.2(B) of Schedule 9 (Maintenance Facility Obligations);

"Monthly Deductions Cap" has the meaning ascribed to it in Schedule 3 (Performance Regime);

"Monthly Service Payment" means the appropriate Service Payment for each Railway Period as determined in accordance with Schedule 5 (Pricing and Payment);

"Moveable Assets" has the meaning ascribed to it in the Manufacture and Supply Agreement;

"Network" means the East London Railway and/or the North London Railway;

"Network Monitoring System" has the meaning ascribed to it in Schedule 3 (Performance Regime);

"Network Rail" means Network Rail Infrastructure Limited, a company incorporated under the laws of England (registered number 2904587), whose registered office is at 40 Melton Street, London NW1 2EE, and any successors to its functions or any relevant part thereof;

"Network Rail Company Standards" means a standards document issued by Network Rail that is applicable to the East London Line Railway and/or the North London Railway;

"New Pollution" means the release by the Maintainer or any Subcontractor or their respective employees of Hazardous Substances (other than Historic Pollution) into or in, on or under the Environment after the Baseline Assessment Date;

"New Provider" has the meaning ascribed to it in Clause 19.3.1;

"New Remediation Works" means any action which is required to remove, remedy, clean-up or treat the presence or effect of any New Pollution caused by any act or omission of the Maintainer or any Subcontractor;

"New Shareholder" has the meaning ascribed to it in Clause 32.3.2;

"NLR Actual Annual Unit Mileage" has the meaning ascribed to it in paragraph 1 of Schedule 5 (Pricing and Payment);

"NLR Adjusting Payment" has the meaning ascribed to it in paragraph 1 of Schedule 5 (Pricing and Payment);

"NLR Carriage Servicing Depot" means:

- (a) the NLR Maintenance Facility; and
- (b) the NLR Stabling (including any carriage cleaning facilities) Facility;

"NLR Deficit Amount" has the meaning ascribed to it in paragraph 1 of Schedule 5 (Pricing and Payment);

"NLR Excess Amount" has the meaning ascribed to it in paragraph 1 of Schedule 5 (Pricing and Payment);

"NLR Final Adjusting Payment" has the meaning ascribed to it in paragraph 1 of Schedule 5 (Pricing and Payment);

"NLR Final Period" has the meaning ascribed to it in paragraph 1 of Schedule 5 (Pricing and Payment);

"NLR Final TSSSA Adjusting Payment" has the meaning ascribed to it in paragraph 1 of Schedule 5 (Pricing and Payment);

"NLR Final TSSSA period" has the meaning ascribed to it in paragraph 1 of Schedule 5 (Pricing and Payment);

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

"NLR Floor Amount" has the meaning ascribed to it in paragraph 1 of Schedule 5 (Pricing and Payment);

"NLR Maintenance Facility" means the NLR Satellite Maintenance Facility (as defined in Schedule 10 of the Manufacture and Supply Agreement) or such other facility where the Maintainer may undertake the maintenance of the Units as agreed between the Purchaser and the Maintainer from time to time in accordance with this Agreement;

"NLR Planned Annual Unit Mileage" has the meaning ascribed to it in paragraph 1 of Schedule 5 (Pricing and Payment);

"NLR Service Payment Variance" has the meaning ascribed to it in paragraph 1 of Schedule 5 (Pricing and Payment);

"NLR Scheduled Standard Service Payment" has the meaning ascribed to it in paragraph 1 of Schedule 5 (Pricing and Payment);

"NLR Stabling Facilities" means such facilities where the Units may be stabled or where the Maintainer may undertake exterior cleaning of the Units as agreed between the Purchaser and the Maintainer from time to time located on or near the North London Railway;

"NLR TSSSA Adjusting Payment" has the meaning ascribed to it in paragraph 1 of Schedule 5 (Pricing and Payment);

"NLR Unit" means an electric multiple unit in 3 car formation supplied pursuant to the MSA to be operated by the Operator on the North London Railway from time to time;

"NLRT Deficit Amount" has the meaning ascribed to it in paragraph 1 of Schedule 5 (Pricing and Payment);

"NLRT Excess Amount" has the meaning ascribed to it in paragraph 1 of Schedule 5 (Pricing and Payment);

"No Fault Found Matter" has the meaning ascribed to it in Schedule 3 (Performance Regime);

"Notified National Technical Rules" has the meaning ascribed to it in Section 2 of the Railways (Interoperability) Regulations 2006;

"NXG Facility" has the meaning ascribed to it in Schedule 10 (NXG Facility) of the MSA;

"NXG Facility Constraints" has the meaning ascribed to that term in Schedule 10 (NXG Facility) of the Manufacture and Supply Agreement;

"NXG Facility Functional Output Specification" has the meaning ascribed to it in Schedule 10 (NXG Facility) of the Manufacture and Supply Agreement;

"NXG Facility Layout Drawing" has the meaning ascribed to it in Schedule 10 (NXG Facility) of the MSA;

"Operator" means the person(s) appointed by TfL or a subsidiary of TfL, that operates the Units to provide the passenger services on the East London Line Railway and/or the North London Railway;

"Operator's Control Room" means a room within an operational control building adjacent to or within ELR Carriage Servicing Depot and/or such other additional or substitute facility along the line of route as shall be advised to the Maintainer by the Purchaser in writing;

"Operator Documents" means:

- (a) the Operator's Safety Management System together with the Safety Certificate in respect of that Safety Management System;
- (b) any agreement between the Operator and a member of the TfL Group relating to the operation of passenger services on the East London Railway and/or the North London Railway;
- (c) any Access Contracts between the Operator and a Facility Owner or between a member of the TfL Group and a Facility Owner in connection with the operation of passenger services on the East London Railway and/or the North London Railway;
- (d) any leases or other property arrangements between:
 - (i) the Operator and Network Rail;
 - (ii) a member of the TfL Group and Network Rail; and/or
 - (iii) the Operator and a member of the TfL Group;
- (e) any licences obtained by the Operator in accordance with section 8 of the Act and/or the Railway (Licensing of Railway Undertaking) Regulations 2005;

"Operator Fault" means a Fault which results solely from:

- (a) the Operator:
 - (i) operating the relevant Unit, Vehicle, Initial Spare or Initial Special Tool other than in accordance with the Permitted Use; or
 - (ii) maintaining the relevant Unit, Vehicle, Initial Spare or Initial Special Tool other than in accordance with the Maintenance Plan and the Manuals; or
- (b) damage (including that resulting from vandalism, suicide or other passenger action) to a Unit whilst that Unit is not, in accordance with the terms of this Agreement or the Manufacture and Supply Agreement, in the Maintainer's, the Manufacturer's or any Subcontractor's care, custody or control;
- (c) any damage and/or vandalism to a Unit whilst that Unit is at a Carriage Servicing Depot at any time when the security of such Carriage Servicing Depot is not a Maintenance Obligation pursuant to Schedule 9,

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

"Operator's Safety Management System" means the Safety Management System prepared by the Operator, and certified by the applicable Competent Authority pursuant to the Railway and Other Guided Transport Systems (Safety) Regulations 2006;

"Option" has the meaning ascribed to it in the Manufacture and Supply Agreement;

"Order" has the meaning ascribed to that term in Clause 15.1;

"Outstation" means any agreed berthing locations constituted by platforms and carriage sidings at a Relevant Location;

"OTMR or On Train Monitor Recorder" means the black box recorder used to record each state change of all monitored signals;

"Overhaul" has the meaning ascribed to it in Schedule 2 (Maintenance and Cleaning Services);

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

"Owner" means the Purchaser or such other person nominated by the Purchaser to take title, to have supplied to it, and own, the Purchased Equipment;

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

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

"Performance Monitoring Deduction" means the Deduction referred to in and calculated in accordance with paragraph 1.8 of Part 3 of Schedule 3 (Performance Regime);

"Performance Regime" means the performance regime set out in Schedule 3 (Performance Regime);

"Periodic Audit" means the carrying out by the Purchaser of soil and groundwater analysis in, on or under the relevant Carriage Servicing Depot during the Duration from time to time (acting reasonably);

"Permitted Change" means a change contemplated by Clause 24.2;

"Permitted Changes Regime" means the regime referred to in Clause 24.2;

"Permitted Use" means the operation of the Units on the North London Railway and/or East London Railway in accordance with all Applicable Laws and Standards, Relevant Approvals, Relevant Consents and the Manuals;

"Persistent Breach" has the meaning ascribed to it in Clause 33.1A;

"PFI Contractors" has the meaning ascribed to it in Clause 39.2.8;

"Planned Mileage" has the meaning ascribed to it in paragraph 1 of Schedule 5 (Pricing and Payment);

"PPP Company" has the meaning ascribed to it in Section 210(5) of the Greater London Authority Act 1999;

"PPP Contractors" has the meaning ascribed to it in Clause 39.2.7;

"Preliminary Design" has the meaning given to that term in the Manufacture and Supply Agreement;

"Prepared" has the meaning ascribed to it in paragraph 1.21.1 of Schedule 16 (Preparation, Presentation and Return Procedure) for the purposes of that Schedule only;

"Preparation, Presentation and Return Procedure" means the procedure set out in Schedule 16 (Preparation, Presentation and Return Procedure);

"Presentation Certificate" has the meaning ascribed to the "Train Presentation Certificate" in the Preparation, Presentation and Return Procedure;

"Proceedings" has the meaning ascribed to it in Clause 57.2;

"Prohibited Act" has the meaning ascribed to it in Clause 42.1;

"Project Management Fee" has the meaning ascribed to it in paragraph 1 of Schedule 5 (Pricing and Payment);

"Proposal" has the meaning ascribed to it in paragraph 4.7.1 of Schedule 9;

"Proposed Variation" has the meaning ascribed to it in Schedule 10 (Variation Procedure);

"Provisional Acceptance" has the meaning ascribed to it in the MSA;

"Provisional Acceptance Certificate" has the meaning ascribed to it in the MSA;

"Purchaser" has the meaning ascribed to it in paragraph 1.1.4 of Schedule 6 (Contract Management);

"Purchased Equipment" has the meaning ascribed to it in the MSA;

"Purchaser Default Notice" has the meaning ascribed to that term in Clause 33.6;

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

"Purchaser Event of Default" means any events or circumstances as described in Clause 33.2;

"Purchaser Information" has the meaning ascribed to it in Clause 40.1.2;

"Purchaser Information Request" has the meaning ascribed to it in Clause 40.1.3;

"Purchaser's Notice of Objection" has the meaning ascribed to it in paragraph 4.2.2 of Schedule 10 (Variation Procedure);

"Purchaser's Notice of Rejection" has the meaning ascribed to it in paragraph 4.2.1 of Schedule 10 (Variation Procedure);

"Purchaser Notice of Proposed Variation" has the meaning ascribed to that term in paragraph 3.1 of Schedule 10 (Variation Procedure);

"Purchaser Owned Spares" means the Initial Spares and the Purchaser Supplemental Spares;

"Purchaser's Project Team" has the meaning ascribed to it in paragraph 1.1.1 of Schedule 6 (Contract Management);

"Purchaser Supplemental Spares" has the meaning ascribed to it in Clause 7.6.1;

"Purchaser Termination Notice" has the meaning ascribed to that term in Clause 33.3.2;

"Purpose" has the meaning ascribed to it in Clause 11.7.1(A);

"PWENVS" has the meaning ascribed to it in paragraph 1 of Schedule 9 (Maintenance Facility Obligations);

"Qualified Provisional Acceptance" has the meaning ascribed to it in the MSA;

"Qualified Provisional Acceptance Certificate" has the meaning ascribed in the MSA;

"Qualifying Change in Law"



[REDACTED]

"Qualifying Change in Law Cap" means [REDACTED] (Indexed) per calendar year;

"Quarterly Meeting" has the meaning ascribed to it in paragraph 2.5.1 of Schedule 6 (Contract Management);

"Qualifying Issuer" means, at any time, a bank or financial institution which satisfies the following conditions:

- (a) it possesses a current [REDACTED] rating or better awarded by Standard & Poor's Corporation or other equivalent rating from another rating agency of equal repute; and
- (b) it has been accepted by the Purchaser in writing as a Qualifying Issuer;

"Quotation Day" means, in relation to any period for which an interest rate is to be determined, the first day of that period;

"Railway Group Standards" means:

- (a) technical standards with which railway assets, or equipment used as part of railway assets, must conform; and
- (b) operating procedures with which the operation of railway assets must comply,

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

"Railway Infrastructure" means the fixed assets used for the operation of a railway including its permanent way and plant used for signalling or exclusively for supplying electricity for operational purposes to the railway, but it does not include a station;

"Railway Period" means each consecutive twenty-eight (28) day period, the first of which starts at midnight on 1st April in each year and, in respect of the first or last such period in any year, as may be varied by Network Rail;

"RAVERS" means the railway vehicle record system operated by ATOS Origin UK Limited;

"Recalculation Data" has the meaning ascribed to it in paragraph 1 of Schedule 5 (Pricing and Payment);

"Recalculation Date" has the meaning ascribed to it in paragraph 1 of Schedule 5 (Pricing and Payment);

"Recognised Investment Exchange" has the meaning ascribed to it in section 285 of the Financial Services and Markets Act 2000;

"Record" has the meaning ascribed to it in Schedule 2 (Maintenance and Cleaning Services) for the purposes of that Schedule only;

"Rectify" has the meaning ascribed to it in Schedule 2 (Maintenance and Cleaning Services) for the purposes of that Schedule only;

"Refurbish" has the meaning ascribed to it in Schedule 2 (Maintenance and Cleaning Services) for the purposes of that Schedule only;

"Regulatory Documents" has the meaning ascribed to it in the MSA;

"Relevant Approvals" means all consents, approvals, permissions, authorisations, acceptances, certifications, licences, exemptions, filings, registrations, notarisations, declarations and other matters required in relation to the Units in order to permit the testing and operation of the Units and Vehicles with or without passengers in revenue earning service and otherwise on the East London Railway and/or North London Railway, including, without limitation, under the Railways and Other Guided Transport Systems (Safety) Regulations 2006 (including any Unit Safety Certificates but excluding the Operator's Safety Certificates) and under the Railways (Interoperability) Regulations 2006 including in respect of the TSIs;

"Relevant Consents" means such consents, permissions, procedures, approvals, authorisations, acceptances, certifications, licences, exemptions, filings, registrations, notarisations and other matters, official or otherwise, which are required from time to time (whether in existence on the Commencement Date or which come into existence following the Commencement Date) (or which would, in accordance with the standards of a reasonable and prudent person, normally be obtained) in connection with the Maintainer Obligations (including advice that there is no objection to a particular proposal or that a particular proposal is not inconsistent with policy or guidelines), and the operation and occupation of any TSA Facility (including any planning consent or agreement entered into with any Competent Authority in connection with the operation and occupation of any TSA Facility to the extent only that such is incorporated specifically into the Local Working Procedures related to the relevant TSA Facility), of or from any Competent Authority or third party and, where a Competent Authority or third party is authorised to prohibit a proposal, the passing of the time limit for such prohibition without the proposal being prohibited, relating to the matters contemplated by this Agreement;

"Relevant Employee" has the meaning ascribed to it in Clause 19.3.2(A);

"Relevant Location" means such location to be agreed between the Parties;

"Remedial Plan" has the meaning ascribed to it in Clause 33.3.2(B);

"Remedy Notice" has the meaning ascribed to that term in Clause 33.3.2;

"Remedy Period" has the meaning ascribed to it in paragraph 3.4.1(c)(1) of Schedule 2 (maintenance and Cleaning Services);

"Remote Maintainer Control Centre" has the meaning ascribed to it in paragraph 1.2.9 of Schedule 14 (Fault Notification Procedure);

"Repair" has the meaning ascribed to it in Schedule 2 (Maintenance and Cleaning Services);

"Repeat Faults" has the meaning ascribed to it in paragraph 1.2.14 of Schedule 14 (Fault Notification Procedure);

"Replacement Event" means the occurrence, at any time prior to the Step-Down Date of the Required Bonding Guarantee of one or more of the following events:

- (a) the Required Bonding Guarantee is rescinded, becomes illegal, unlawful or unenforceable or is terminated for whatsoever reason or howsoever; or
- (b) the Required Bonding Guarantee ceases for any reason to constitute the legal, valid, binding and enforceable obligation of the Bonding Guarantee Provider; or
- (c) the Required Bonding Guarantee does not constitute an on demand, irrevocable and unconditional standby guarantee; or
- (d) there has been a failure to obtain any consents necessary to permit an intended assignment of the Required Bonding Guarantee;

"Replacement Services" has the meaning ascribed to it in Clause 37.3.5;

"Request for Additional Services Authorisation" has the meaning given to that term in paragraph 3.2 of Schedule 2 (Maintenance and Cleaning Services);

"Required Bonding Guarantee" has the meaning ascribed to it in paragraph 1.1 of Part 2 of Schedule 5 (Pricing and Payment);

"Required Insurance" has the meaning ascribed to it in Clause 33.1.8;

"Required Variation" has the meaning ascribed to it Schedule 10 (Variation Procedure);

"Responsibility Structure" has the meaning ascribed to it in paragraph 2 of Schedule 16 (Preparation, Presentation and Return Procedure) for the purposes of that Schedule only;

"Restricted Information" has the meaning ascribed to it in Clause 11.7.1;

"Retail Price Index" or "RPI" means the "all items" RPI figure excluding mortgage payments (RPI(x)) published on a monthly basis by the Office for National Statistics;

"Retention Period" has the meaning ascribed to it in Clause 17.3.1(B);

"Return Certificate" has the meaning given to that term in Schedule 16 (Preparation, Presentation and Return Procedure);

"Review Date" has the meaning ascribed to it in Clause 28.1.3;

"Rolling Stock Requirements - Technical" has the meaning ascribed to it in the Manufacture and Supply Agreement;

"RSSB" means the Rail Safety and Standards Board and any successor body;

"Rule Book" has the meaning ascribed to it in Appendix 1 of Schedule 2 (Maintenance and Cleaning Services);

"Rules of the London Stock Exchange" means the market rules of the same name enforced by the London Stock Exchange as amended from time to time;

"Running Costs" has the meaning ascribed to it in paragraph 4.6.1 of Schedule 9 (Maintenance Facility Obligations) for the purposes of that Schedule only;

"Safety Certificate" has the meaning ascribed to it in the Railways and Other Guided Transport Systems (Safety) Regulations 2006;

"Safety Critical Defect" has the meaning ascribed to it in paragraph 1.2.13 of Schedule 14 (Fault Notification Procedure);

"Safety Management System" has the meaning ascribed to that term in the Railways and Other Guided Transport Systems (Safety) Regulations 2006;

"Safety Of The Line" has the meaning ascribed to it in paragraph 1.3.9 of Schedule 17 (In-Service Support Procedure);

"Safety, Quality and Environmental Plan" means the plans set out in Schedule 18 (Safety Quality and Environmental Plan);

"Scheduled Maintenance" means planned maintenance to any Unit or Vehicle carried out in accordance with Schedule 2 (Maintenance and Cleaning Services) the implementation of which is consistent with the Maintenance Window Plan and the Manuals;

"Scheduled Standard Service Payments" has the meaning ascribed to it in Part 1 of Schedule 5 (Pricing and Payment);

"Screen Rate" means the British Bankers' Association Interest Settlement Rate for sterling for a period of 90 days displayed on the appropriate page of the Reuters screen. If the agreed page is replaced or service ceases to be available, the Purchaser may specify another page or service displaying the appropriate rate after consultation with the Maintainer;

"Second Review Date" has the meaning ascribed to it in paragraph 1.5.1 of Part 2 of Schedule 5 (Pricing and Payment);

"Second Variation Report" has the meaning ascribed to it in paragraph 7.2.1 of Schedule 10 (Variation Procedure);

"Security Costs" has the meaning ascribed to it in paragraph 4.6.1 of Schedule 9 (Maintenance Facility Obligations);

"Security Interest" means:

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

"Service Affecting Fault" has the meaning ascribed to it in paragraph 1.2.1 of Schedule 14 (Fault Notification Procedure);

"Service Losses" means Losses falling into one or more of the following categories:

- (a) Losses incurred in the temporary hiring of rolling stock if the Units are unavailable as a result of the failure by the Maintainer to carry out the Maintainer Obligations;
- (b) Not used;
- (c) Losses incurred in completing outstanding work of the Maintainer;
- (d) Losses relating to additional costs of maintenance being performed by the Purchaser, the Operator or another maintainer including:
 - (i) Losses relating to the procurement of a replacement contractor to provide maintenance services which are wholly or partially similar to the Maintainer Obligations;
 - (ii) where this Agreement terminates in the period starting on the Commencement Date and ending on the Second Review Date the difference between the aggregate of the Scheduled Standard Service Payments (assuming the termination of this Agreement had not occurred) for the period commencing on the date of termination and ending on the Second Review Date and the total value of the payments to be made by the Purchaser, Operator or replacement contractor for the maintenance services described in (i) above for an equivalent period;
 - (iii) where this Agreement terminates in the period starting on the Second Review Date and ending on the third Review Date, the difference between the aggregate of the Scheduled Standard Service Payments (assuming that termination of this Agreement had not occurred) for the period commencing on the date of termination and ending on the third Review Date and the total value of the payments to be made by the Purchaser, Operator or replacement contractor for the maintenance services described in (i) above for an equivalent period; and
 - (iv) where this Agreement terminates in the period starting on the third Review date and ending on the expiry of this Agreement, the difference between the aggregate of the Scheduled Standard Service Payments (assuming that termination of this Agreement had not occurred) for the period commencing on the date of termination and ending on the date of expiry of this Agreement and the total value of the payments to be made by the Purchaser, Operator or replacement contractor for the maintenance services described in (i) above for an equivalent period,
- (e) Losses relating to any additional staffing or personnel costs reasonably and properly incurred by reason of the termination of this Agreement resulting from a Maintainer Event of Default to the extent not covered by (d) above;
- (f) Losses relating to additional running, testing, stabling, re-diagramming and depot costs reasonably and properly incurred by reason of the termination of this Agreement resulting from a Maintainer Event of Default;
- (g) legal or other professional fees reasonably and properly incurred by reason of termination of the Agreement resulting from a Maintainer Event of Default;

"Service Payments" means the service payments calculated in accordance with paragraph 2 of Schedule 5 (Pricing and Payment) as varied or amended from time to time pursuant to Clause 9 and/or Clause 29 and Schedule 11 (Technical Support and Spare Supply);

"Service Provision Change" has the meaning ascribed to it in Clause 19.2;

"Service Provision Change Notification" has the meaning ascribed to it in Clause 19.3;

"Service Records" means the records maintained by the Maintainer under Clause 11;

"Service Subcontractor" means a direct Subcontractor of the Maintainer which is engaged in the provision of services to the Maintainer at a Carriage Servicing Depot using labour employed by such Service Subcontractor;

"Services" means in the case of the relevant Fleet:

- (a) from Acceptance of the first Unit the services, work and activity necessary to meet the requirements of Schedule 2 (Maintenance and Cleaning Services) only; and
- (b) from the date upon which any Cessation Notice becomes effective the services, work and activity necessary to meet the requirements of Schedule 11 (Technical Support and Spare Supply);

"Site" means any place, including any Maintenance Facility, a Stabling Facility, an Outstation and/or an Operator's Control Room, together with so much of the area surrounding such place as the Maintainer shall use, occupy or otherwise be responsible for in connection with the performance of its obligations under this Agreement;

"Site Manager" has the meaning ascribed to it in paragraph 4.2.19 of Schedule 9;

"SME or Small Medium Enterprise" has the meaning ascribed to that term in Appendix 1 to Schedule 7 (Equality and Inclusion Requirements);

"Source Code" means the source code version of any Software which is licensed to the Purchaser in a form capable of being read and interpreted by humans, together with related interpretative documentation and material;

"Spare" means all spare parts of any description including fluids, parts and assemblies required in connection with the Units supplied or to be supplied by the Maintainer and/or any Subcontractor in accordance with this Agreement or by the Manufacturer under the Manufacture and Supply Agreement and includes any Spare which is a Maintainer Owned Spare, a Purchaser Owned Spare or a redesigned Part;

"Spare List" has the meaning ascribed to it in paragraph 1.3.2 of Part 2 of Schedule 11;

"Special Event" has the meaning ascribed to it in Clause 24.3;

"Specification" means the specification for the maintenance and cleaning of Units set out in Schedule 2 (Maintenance and Cleaning Services) of this Agreement, as may be amended from time to time by the Variation Procedure under and as defined in this Agreement, or by a Permitted Change under and as defined in this Agreement;

"Spotlessly Clean" has the meaning ascribed to it in Appendix 2 of Schedule 2 (Maintenance and Cleaning Services) for the purposes of that Schedule only;

"Stabling Facilities" means the ELR Stabling Facilities or the NLR Stabling Facilities and any other site as may be agreed from time to time as the context requires;

"Standards" means the relevant Network Rail Company Standards, British, European and international standards each as specified in this Agreement (together with any other individual standard specified in this Agreement), Notified National Technical Rules, TSIs, Railway Group Standards, and/or any equivalent standard or any standard amending, replacing or superseding any of the foregoing;

"Standard Services" means the services, work and activities set out in paragraph 2 of Schedule 2 (Maintenance and Cleaning Services) carried out by the Maintainer;

"Standard Service Payments" has the meaning ascribed to Scheduled Standard Service Payments;

"Step-Down Date" has the meaning ascribed to it in paragraph 1.2 of Part 2 of Schedule 5 (Pricing and Payment).

"Step-In Notice" has the meaning ascribed to it in Clause 18.1;

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

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

"Substitute Maintenance Management System" has the meaning ascribed to it in paragraph 1.2.5 of Schedule 14 (Fault Notification Procedure);

"Suitable Lessor" means a person (other than a Competitor) approved by the Maintainer (such approval not be unreasonably withheld or delayed) as having the capability to meet any payment obligations under this Agreement as may be novated to it and in circumstances where such person does not have the capability to meet such payment obligations, then any such person (other than a Competitor) whose payment obligations are supported by TfL in a manner acceptable to the Maintainer (acting reasonably);

"Supplemental Overhaul Spares" means any Overhaul Spares (other than those Overhaul Spares forming part of the Initial Spares) acquired by the Maintainer pursuant to Clause 7.3;

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

"Technical Documentation" means:

- (a) the Safety, Quality and Environmental Plan;
- (b) the Fault Notification Procedure;
- (c) the Preparation, Presentation and Return Procedure;

- (d) the Service Records;
- (e) the Maintenance Plan;
- (f) the Manuals;
- (g) the Maintenance Window Plan;
- (h) the Software and, where any Maintainer Software exists, the Maintainer Software;
- (i) the In-Service Support Procedure

"Technical File" has the meaning ascribed to it in the Railways (Interoperability) Regulations 2006;

"Technical Library" means:

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

"Technical Option" has the meaning ascribed to it in paragraph 1 of Schedule 5 (Pricing and Payment);

"Technical Option Amount" has the meaning ascribed to it in paragraph 1 of Schedule 5 (Pricing and Payment);

"Technical Services" means the services set out in Schedule 11 (Technical Support and Spare Supply);

"Technical Support Personnel" has the meaning ascribed to it in paragraph 1.1 of Part 3 of Schedule 11;

"Technical Support Secondment" has the meaning ascribed to it in paragraph 1.1 of Part 3 of Schedule 11;

"Technical Support Services" has the meaning ascribed to it in paragraph 1.2 of Part 3 of Schedule 11;

"Template Maintenance Plan" has the meaning ascribed to it in paragraph 1 of Schedule 16 (Template Maintenance Plan);

"Test" has the meaning ascribed to it in Schedule 2 (Maintenance and Cleaning Services) for the purposes of that Schedule only;

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

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

"Third Party IPR" has the meaning ascribed to that term in Clause 16.3.1(B);

"TMS" means Train Management System;

"TMS Auto-Report" has the meaning ascribed to it in paragraph 1.2.6 of Schedule 14 (Fault Notification Procedure);

"TMS Display" has the meaning ascribed to it in paragraph 1.2.1 of Schedule 14 (Fault Notification Procedure);

"TMS Download" has the meaning ascribed to it in paragraph 1.2.7 of Schedule 14 (Fault Notification Procedure);

"Total Fleet Mileage" means, in respect of any Fleet in any calendar year, the aggregate for that Fleet of:

- (a) the total mileage in that calendar year of all Accepted Units (other than Total Loss Units and Damaged Units); and
- (b) the Extrapolated Mileage in that calendar year of all Total Loss Units and Damaged Units;

"Total Loss Unit" means, in respect of any calendar year, each Unit which has been the subject of an Event of Loss in that calendar year;

"Train Cleaning Service Payment" has the meaning ascribed to it in paragraph 1 of Schedule 5 (Pricing and Payment);

"Train Plan" has the meaning ascribed to it in paragraph 1 of Schedule 5 (Pricing and Payment);

"Train Plan Parameters" means the Train Plan Parameters contained in Schedule 1 (Maintenance Window Plan and Train Plan Parameters);

"Train Presentation Certificate" has the meaning ascribed to it in paragraph 1.2.1.5 of Schedule 16 (Preparation, Presentation and Return Procedure);

"Train Preparation" has the meaning ascribed to it in paragraph 1.2.1.1 of Schedule 16 (Preparation, Presentation and Return Procedure);

"Train Preparation Services" has the meaning ascribed to it in paragraph 1 of Schedule 5 (Pricing and Payment);

"Train Preparation Service Payment" has the meaning ascribed to it in paragraph 1 of Schedule 5 (Pricing and Payment);

"Train Presentation Certificate" has the meaning ascribed to it in paragraph 1.2.1.5 of Schedule 16 (Preparation, Presentation and Return Procedure);

"Transfer Regulations" means the Transfer of Undertakings (Protection of Employment) Regulations 2006 SI No 246;

"Trigger Event" means the date on which the provider of a Required Bonding Guarantee ceases to satisfy any of the requirements for a Qualifying Issuer;

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

"TSA Facilities" means each and any of the ELR Maintenance Facility, the ELR Carriage Servicing Depot, the ELR Stabling Facility, the NLR Maintenance Facility, the NLR Carriage Servicing Depot, the NLR Stabling Facility and the Operator's Control Room and **"TSA Facility"** shall be construed accordingly.;

"TSA Payment Period" has the meaning ascribed to it in paragraph 1 of Schedule 5 (Pricing and Payment);

"TSIs" has the meaning ascribed to it in the Railways (Interoperability) Regulations 2006;

"TSSSA Adjusting Payment" has the meaning ascribed to it in paragraph 1 of Schedule 5 (Pricing and Payment);

"TSSSA Initial Spares" has the meaning ascribed to it in paragraph 1.2 of Part 2 of Schedule 11;

"TSSSA Payment Period" has the meaning ascribed to it in paragraph 1 of Schedule 5 (Pricing and Payment);

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

"TSSSA Service Payment" has the meaning ascribed to it in paragraph 1 of Schedule 5 (Pricing and Payment);

"Unapproved Operator Fault" means an Operator Fault which is the subject of a Request for Additional Services which has not been approved by the Operator under paragraph 3 of Schedule 2 (Maintenance and Cleaning Services);

"Unavailable" has the meaning ascribed to it in:

- (A) Part A of Schedule 3 (Performance Regime) during the Maintenance Period; and
- (B) Part B of Schedule 3 (Performance Regime) during the TSSSA Period.

"Undesirable Transferee" means

- (a) any person who is Insolvent; or
- (b) any person or any of such person's Affiliates:
 - (i) who has been convicted of a criminal offence or a series of offences, or is the subject of ongoing investigation, inquiry or regulatory or judicial proceedings (including in relation to any breach of health and safety laws) in the last five years from the date of the notice issued by the Maintainer pursuant to Clause 32.2.1;

- (ii) whom it would be reasonable for a contracting authority to exclude from consideration on grounds of national security; or
- (iii) from a country which is, or who is otherwise, the subject of economic or security sanctions imposed by the United Kingdom (including sanctions which take the form of the prevention of the supply of goods or services to the country or restrictions on the freedom of movement of diplomats and/or consular personnel of that country) whether the sanctions are in full force or suspended;

"Unit" means an ELR Unit and/or an NLR Unit as the context requires;

"Unit Design Life" means, in respect of a Unit or Vehicle, [REDACTED] years;

"Unit Failure" has the meaning ascribed to it in paragraph 2.8 of Schedule 2 (Maintenance and Cleaning Services);

"Unit Log Book" has the meaning ascribed to it in the Manufacture and Supply Agreement;

"Unscheduled Maintenance" means maintenance or repairs carried out to any Unit or vehicle otherwise than under the Maintenance Plan;

"Utilities" has the meaning ascribed to it paragraph 1 of Schedule 9 (Maintenance Facility Obligations);

"Variation" has the meaning ascribed to it in Schedule 10 (Variation Procedure);

"Variation Order" has the meaning ascribed to it in paragraph 7.1.1(A) of Schedule 10 (Variation Procedure);

"Variation Procedure" means the procedure set out in Schedule 10 (Variation Procedure);

"Variation Report" has the meaning ascribed to it in paragraph 4.2.6 of Schedule 10 (Variation Procedure);

"Variation Response" means a written response made by the Maintainer to a Purchaser Notice of Proposed Variation made by the Purchaser in the form or substantially in the form set out in Annex 1 to Schedule 10 (Variation Procedure);

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

"Vehicle" means each vehicle which forms part of a Unit on Acceptance of that Unit whether or not that Vehicle continues to form part of that Unit after Acceptance;

"Voluntary Termination" means termination in accordance with Clause 28.1;

"Warranty Work Units" has the meaning ascribed to it in paragraph 11 of Schedule 3 (Performance Regime);

"Worked Variation Examples" has the meaning ascribed to it in paragraph 1 of Schedule 5 (Pricing and Payment); and

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

1.2 Interpretation

In this Agreement, except where the context otherwise requires:

- 1.2.1 any reference to this Agreement includes the Schedules, Appendices and Annexes to it each of which forms part of this Agreement for all purposes;
- 1.2.2 a reference to an enactment, statutory provision or Standard shall, unless otherwise expressly specified in this Agreement, include a reference to any subordinate legislation made under the relevant enactment, statutory provision, or Standard and unless otherwise expressly specified in this Agreement, is a reference to that enactment, statutory provision, Standard or subordinate legislation as from time to time amended, consolidated, modified, re-enacted or replaced;
- 1.2.3 words in the singular shall include the plural and vice versa;
- 1.2.4 references to one gender include other genders;
- 1.2.5 a reference to a person shall include a reference to a firm, a body corporate, an unincorporated association, a partnership, limited partnership, limited liability partnership or to an individual's executors or administrators;
- 1.2.6 a reference to a Clause, or Schedule (other than to a schedule to a statutory provision) shall be a reference to a clause, or schedule (as the case may be) of or to this Agreement and a reference in a Schedule to a paragraph, Annex or Appendix shall mean references to that paragraph, annex or appendix of that Schedule;
- 1.2.7 if a period of time is specified as "from" or "within" a given day, or "from" or "within" the day of an act or event, it shall be calculated exclusive of that day;
- 1.2.8 references to any English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall in respect of any jurisdiction other than England be deemed to include what most nearly approximates the English legal term in that jurisdiction and references to any English statute or enactment shall be deemed to include any equivalent or analogous laws or rules in any other jurisdiction;
- 1.2.9 references to writing shall include any modes of reproducing words in any legible form and shall include email except where expressly stated otherwise;
- 1.2.10 a reference to "includes" or "including" shall mean "includes without limitation" or "including without limitation";
- 1.2.11 the contents page and headings in this Agreement are for convenience only and shall not affect its interpretation;
- 1.2.12 references to this Agreement include this Agreement as amended or supplemented in accordance with its terms;

- 1.2.13 words and expressions defined in the Railways Act 1993 shall, unless otherwise defined in this Agreement or unless the context otherwise requires, have the same meaning in this Agreement;
- 1.2.14 a reference to the "Purchaser" or the "Maintainer" includes their respective (and any subsequent) successor(s) in title, and their respective permitted transferee(s) or assignee(s);
- 1.2.15 references in this Agreement to costs, expenses and Losses which are to be indemnified to, or recovered by, the person incurring the same shall be construed as references to an amount equal to the amount of such costs, expenses and losses together with any amount that represents VAT or other similar Tax properly chargeable therein in any jurisdiction;
- 1.2.16 references to amounts expressed to be "indexed" are references to amounts calculated in accordance with the Indexation Adjustment Formula;
- 1.2.17 reference to a "third party" is a reference to any person who is not a Party;
- 1.2.18 references in this Agreement to any other agreement or other instrument (other than an enactment or statutory provision) shall be deemed to be references to that agreement or instrument as from time to time amended, varied, supplemented, substituted, novated or assigned;
- 1.2.19 references to "otherwise" and words following "other" shall not be limited by any foregoing words where a wider construction is possible;
- 1.2.20 a reference to provisions of this Agreement expressed as being from one provision "to" another provision shall be taken to include the last mentioned provision;
- 1.2.21 save to the extent expressly defined in this Agreement (or where the context otherwise so requires) words and expressions defined in the MSA shall have the same meaning where used in this Agreement; and

2. CONDITIONS PRECEDENT

2.1 Maintainer Conditions Precedent

Subject to Clause 2.2.1, the Maintainer shall provide to the Purchaser:

- 2.1.1 a copy of the Guarantee duly executed by the Guarantor;
- 2.1.2 the Manufacture and Supply Agreement duly executed by the Manufacturer;
- 2.1.3 the Certificate of Compliance duly executed by the Maintainer;
- 2.1.4 a certified copy of:
 - (A) a resolution of the board of directors of the Maintainer or where the Maintainer is not incorporated in England and Wales, an equivalent statement of authority (in either case in a form and substance satisfactory to the Purchaser) passed at a duly convened and held meeting;

- (1) approving the terms of and the transactions contemplated by this Agreement and all the other related documents to which it is a Party; and
 - (2) authorising a specified person to approve amendments to and execute this Agreement and all the other related documents to which it is a Party;
- (B) a resolution of the board of directors of the Guarantor or where the Guarantor is not incorporated in England and Wales an equivalent statement of authority (in either case in a form and substance satisfactory to the Purchaser) passed at a duly convened and held meeting:
- (1) approving the terms of and the transaction contemplated by the Guarantee; and
 - (2) authorising a specified person to approve amendments to, and execute the Guarantee; and
- (C) certified copies of the most recent:
- (1) statutory audited accounts;
 - (2) memorandum of association; and
 - (3) articles of association,
- (or the equivalent documentation in any jurisdiction other than England and Wales) in respect of the Maintainer and the Guarantor;
- 2.1.5 a legal opinion (in a form and substance satisfactory to the Purchaser) that the Guarantor has the requisite power and authority to execute the Guarantee and that following such execution the terms of the Guarantee will be binding on and enforceable against the Guarantor;
- 2.1.6 evidence that the insurances that the Maintainer is required to take out and maintain in accordance with this Agreement are in full force and effect and a letter of undertaking in the form set out in Appendix 1 to Schedule 12 (Insurance);
- 2.1.7 evidence in a form satisfactory to the Purchaser that:
- (A) the Maintainer has obtained all licenses under section 8 of the Act and/or the Railways (Licensing of Railway Undertakings) Regulations 2005 that are necessary for it to perform its obligations under this Agreement; or
 - (B) the Maintainer is exempt from the requirement to hold a particular licence.

2.1A Purchaser Condition Precedent

Subject to Clause 2.2.2, the Purchaser shall provide to the Maintainer:

- 2.1A1 a certified copy of a resolution of the board of directors of the Purchaser passed at a duly convened and held meeting:

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

2.2 Waiver

2.2.1 The Purchaser may, by written notice to the Maintainer, waive any condition precedent specified in Clause 2.1 in whole or in part.

2.2.2 The Maintainer may, by written notice to the Purchaser, waive any condition precedent specified in Clause 2.1A in whole or in part.

2.3 Satisfaction of Conditions Precedent

The Maintainer shall use its best endeavours to satisfy or procure as soon as possible the satisfaction of any condition precedent set out in Clause 2.1 not already satisfied or waived. The Purchaser shall use its best endeavours to satisfy or procure as soon as possible the satisfaction of any condition precedent set out in Clause 2.1A not already satisfied or waived.

2.3A Original Guarantee

The Maintainer undertakes to the Purchaser to provide to the Purchaser the original of the duly executed Guarantee within three (3) Working Days of the date of this Agreement.

2.4 Certificate of Commencement

On the later of:

2.4.1 the Purchaser being satisfied that each of the conditions precedent set out in Clause 2.1 has been satisfied, waived or deferred; and

2.4.1 the Maintainer being satisfied the conditions precedent set out in Clause 2.1A (unless waived or deferred) have been satisfied,

the Purchaser shall issue to the Maintainer a Certificate of Commencement which shall specify the Commencement Date. The obligations of the Purchaser, and the Maintainer under this Agreement (other than this Clause 2, Clause 1, Clauses 39 to 57, which shall come into effect on the date of this Agreement), shall come into effect on the Commencement Date.

2.5 Information

If at any time the Maintainer becomes aware of any matter that might prevent or delay a condition precedent in Clause 2.1 from being satisfied, it shall inform the Purchaser as soon as is reasonably practicable. If at any time the Purchaser becomes aware of any matter that might prevent or delay a condition precedent set out in Clause 2.1A from being satisfied it shall inform the Maintainer as soon as is reasonably practicable.

2.6 Representations and Warranties

The Maintainer makes the representation and warranty described in Clause 42.3 and represents and warrants to the Purchaser as at the date of this Agreement that:

- 2.6.1 it is a corporation, duly incorporated and validly existing under the laws of England and Wales and that it has the power to own its assets and carry on its business as it is being conducted;
- 2.6.2 the execution by it of this Agreement does not contravene any provision of:
 - (A) any existing law, treaty or regulation in force, binding on the Maintainer;
 - (B) the memorandum of association or articles of association of the Maintainer or their equivalent in a jurisdiction other than England and Wales;
 - (C) any order or decree of any Court or arbitrator existing as at the date of this Agreement and binding on the Maintainer; or
 - (D) any obligation which is binding upon the Maintainer or upon any of its assets or revenues;
- 2.6.3 it has the requisite power and authority to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of this Agreement and the transactions contemplated by this Agreement;
- 2.6.4 it has obtained all necessary shareholder and board approvals in respect of the execution of this Agreement and the performance of its obligations under it;
- 2.6.5 its obligations under this Agreement are valid, binding and enforceable at law and in equity in accordance with its terms;
- 2.6.6 so far as it is aware, no litigation, arbitration or administrative proceeding is current, pending or threatened to restrain the entry into, exercise of any of its rights under and/or performance or enforcement of or compliance with any of its obligations under this Agreement;
- 2.6.7 no meeting has been convened or is intended to be convened and/or so far as it is aware, no petition, application or the like is outstanding with a view to its winding-up;
- 2.6.8 the certified copies of the most recent statutory audited accounts, memorandum of association and articles of association (or the equivalent documentation in any other jurisdiction other than England and Wales) of the Maintainer delivered to the Purchaser under Clause 2.1.4(C) are true and accurate and that no proposals are outstanding to amend those documents;
- 2.6.9 the Maintainer (and/or the relevant Subcontractors) is/are the absolute and unencumbered proprietor of all Intellectual Property Rights described in Clause 16 or (where such Intellectual Property Rights are licensed) has/have the right to exercise those Intellectual Property Rights and grant the relevant licences of those Intellectual Property Rights to the Purchaser as contemplated by this

Agreement in each case to the extent that such Intellectual Property Rights exist as at the date of this Agreement; and

- 2.6.10 the entering into or performance of its obligations or exercising of its rights under this Agreement or any related document will not be in breach of, or cause to be breached, any restriction (whether arising in contract or otherwise) binding on the Maintainer or any Subcontractor or any of their respective assets or undertakings.

2A EXERCISE OF PURCHASER'S RIGHTS OR ACCESSION OF THE OPERATOR

2A.1 The Maintainer acknowledges and agrees that:

2A.1.1 the Purchaser may nominate the Operator at any time to exercise some or all of its rights or perform some or all of its obligations in connection with this Agreement, in which case the Maintainer will perform the Maintainer Obligations in accordance with the relevant provisions of this Agreement as if the Operator were the Purchaser, and accept the instructions, requests, notifications, claims and demands of the Operator in substitution for the Purchaser accordingly subject to the Purchaser providing the Maintainer with at least five (5) Working Days' written notice countersigned by the nominated Operator and setting out the extent to which the Operator shall be entitled to exercise the Purchaser's rights and/or perform the Purchaser's obligations;

2A.1.2 the Operator may accede to this Agreement and exercise some or all of the Purchaser's rights and/or perform some or all of its obligations and the Maintainer will perform the Maintainer Obligations in accordance with any such accession, subject to the Purchaser providing the Maintainer with at least five (5) Working Days' written notice countersigned by the Operator and setting out the extent to which the Operator shall be entitled to exercise the Purchaser's rights and/or perform the Purchaser's obligations.

2A.2 The Maintainer shall be entitled to rely and act upon the exercise by the Operator of any right permitted in accordance with Clause 2A.1 and any performance by the Operator of any obligation on the part of the Purchaser permitted in accordance with Clause 2A.1 shall constitute good and valid discharge of the Purchaser's obligation in question.

2A.3 Notwithstanding Clauses 2A.1.1 and 2A.1.2 the Purchaser shall retain its payment obligations under this Agreement save where permitted to deal with those obligations in accordance with Clause 44 and provided that whilst that Purchaser shall otherwise retain its payment obligation, payment by the Operator to the Maintainer of sums due from the Purchaser to the Maintainer shall constitute good and valid discharge of the relevant payment obligation of the Purchaser.

3. PRIORITY OF DOCUMENTS

3.1 Priority of provisions in the Agreement

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

3.2 Maintainer's acknowledgements regarding discrepancies and errors

The Maintainer confirms to the Purchaser that as at the Commencement Date:

3.2.1 it has considered in detail this Agreement and has satisfied itself that no discrepancies or errors exist within the Agreement; and

3.2.2 it has:

(A) obtained all necessary information as to risk, contingencies and all other circumstances which may influence or affect the level of payment arising under or in connection with this Agreement; and

(B) satisfied itself that the Maintainer's performance of its obligations under and in accordance with this Agreement will be in accordance with all Applicable Laws.

3.3 Notification of errors and discrepancies

The Purchaser and the Maintainer shall notify the Purchaser or the Maintainer (as the case may be) in writing forthwith upon becoming aware of a discrepancy or error within the Agreement and the party in receipt of such notice shall provide proposals for resolving such error or inconsistency. Without prejudice to Clause 3.5 the Purchaser and the Maintainer shall consult with each other and seek to agree the manner in which any error or discrepancy should be resolved.

3.4 Maintainer Acknowledgement

The Maintainer acknowledges and confirms that:

3.4.1 the Purchaser and the Operator may enter into a concession agreement in respect of the East London Railway and the North London Railway after the Commencement Date; and

3.4.2 if so, the Operator will enter into or be bound by other Operator Documents,

and waives any right to make any claim whatsoever under this Agreement in respect of any of the Operator Documents.

3.5 Exclusions of Claims or Relief

The Maintainer acknowledges and agrees that it shall not be entitled to make any claim against the Purchaser for any additional payment or compensation or any extension of time or any relief from the due performance of its obligations in respect of any such errors or discrepancies or in respect of any of the matters set out in Clauses 3.2 and 3.4.

4. AGREEMENT DURATION

This Agreement shall continue for the Duration, unless terminated beforehand pursuant to Clause 28 or 33.

5. MAINTENANCE FACILITIES

5.1 Information pertaining to Maintainer Obligations

The Maintainer shall be deemed prior to entering into this Agreement to have obtained for itself all necessary information as to risks, contingencies and all other circumstances which may influence or affect the amounts payable to the Maintainer under this Agreement and/or

the Maintainer Obligations as required by the provisions of this Agreement. The Maintainer shall be responsible for the interpretation of all such information for the purposes of this Agreement.

5.2 Provision of NXG Facility

5.2.1 In the event that the Purchaser:

- (A) does not make available to the Maintainer the NXG Facility in accordance with the requirements of the NXG Facility Condition by 31 March 2009 the Purchaser shall initiate a Variation pursuant to Schedule 10 to address the effect on the provision of the Services in respect of the ELR Units only;
- (B) does not make available either (i) an operational Dalston Link or (ii) the NLR Satellite Maintenance Facility by 31 December 2011 the Purchaser shall initiate a Variation pursuant to Schedule 10 to address the effect on the provision of the Services in respect of the NLR Units and ELR Units;
- (C) does not exercise either of the options set out in paragraphs 1.4.1(A) and 1.4.1(B) of Schedule 10 the Purchaser shall initiate a Variation pursuant to Schedule 10 to address the effect on the provision of the Services in respect of the NLR Units only;
- (D) has exercised the option set out in paragraph 1.4.1(A) of Schedule 10 and has not made available to the Maintainer the NXG Facility in accordance with the requirements of the NXG Facility Condition by 31 August 2009 the Purchaser shall initiate a Variation pursuant to Schedule 10 to address the effect on the provision of the Services in respect of the NLR Units only;
- (E) has exercised the option set out in paragraph 1.4.1(B) of Schedule 10 and has not made available to the Maintainer the NXG Facility in accordance with the requirements of the NXG Facility Condition by 31 December 2011 the Purchaser shall initiate a Variation pursuant to Schedule 10 to address the effect on the provision of the Services in respect of the NLR Units only.

5.2.2 During the Maintenance Period the Purchaser shall procure that the Maintainer is granted twenty-four hour access to the Maintenance Facility to carry out the Services save to the extent that this is not possible as a result of:

- (A) a breach by the Maintainer or any Subcontractor of its obligations under this Agreement or any breach by the Manufacturer of its obligations under the MSA, any member of the Maintainer's Group or the Manufacturer's Group or the agents, employees or suppliers of any of them;
- (B) a Maintainer Fault;
- (C) any Force Majeure Event; or
- (D) any of the matters referred to in Clause 5.3.

- 5.2.3 The Parties acknowledge and agree that if the circumstances set out in Clause 5.2.1 occur, the matter shall not constitute an Exonerating Event but the Maintainer's performance of its obligations under this Agreement are likely to be affected and accordingly the Maintainer shall be entitled to a Variation Order to take account of the fact that the facilities anticipated by the Parties at the time of entering into this Agreement have not been made available and to make all necessary and appropriate changes to this Agreement including without limitation any changes to the Maintainer Obligations, any changes to the Scheduled Standard Service Payments and any changes to the Performance Regime.
- 5.2.4 If the Purchaser exercises the option set out in paragraph 1.4.1 of Schedule 10 of the MSA then at all times while the Ilford Facility is being used by the Maintainer for the performance of its obligations under this Agreement in respect of any NLR Units, the Maintainer's liability pursuant to the Performance Regime shall be amended as follows:
- (A) The Maintainer shall not be liable for any Impact Minute Deductions in respect of any Relevant Delay Incident that occurs prior to a Unit entering passenger service or after a Unit finishing passenger service while such Unit is being moved to or from Ilford Facility;
 - (B) In the event of an in service cancellation as referred to in paragraph 6 of Schedule 3, where the Maintainer can demonstrate that a replacement Unit was available at the Ilford Facility such that the Cancellation Deductions set out in paragraph 6.1.3 or 6.1.4 of Schedule 3 would have applied, but the Purchaser is unable to deliver such replacement Unit to the location of the in service cancellation then, despite such replacement Unit not entering into service, the reduced Cancellation Deductions shall apply in respect of that in service cancellation as if the replacement Unit had entered into service at the point of the in service cancellation; and
 - (C) During the Reliability Growth Period the additional mileage run by the NLR Units by reason of such Units being maintained at Ilford Facility shall be excluded from the calculation of Fleet miles for the purposes of the definition of Reliability Growth Period 1, Reliability Growth Period 2, Reliability Growth Period 3, Reliability Growth Period 4 and Reliability Growth Period 5 as set out in Schedule 3.

5.3 New Cross Gate Facility

- 5.3.1 The Maintainer shall be deemed, prior to entering into this Agreement, to have inspected, understood, and be aware of all provisions as at the Commencement Date of Schedule 10 of the Manufacture and Supply Agreement.
- 5.3.2 Save as permitted pursuant to a Variation under Clause 5.2.3, the Maintainer acknowledges and agrees that provided the Manufacturer has provided to the Purchaser a completed Certificate of Approval pursuant to paragraph 3.4.6 of Schedule 10 of the MSA or been deemed pursuant to paragraph 3.4.7 of Schedule 10 of the MSA to have accepted that the NXG Facility has successfully completed each of the Facility Tests, then it shall not be entitled to:
- (A) any relief from the performance of the Maintainer Obligations;

- (B) any adjustment to the Service Payments and/or any other form of compensation or remedy;
- (C) any relief from the application of the Performance Regime; and/or
- (D) to claim any Exonerating Event has occurred,

in respect of the adequacy and/or sufficiency of the NXG Facility to enable performance of the Maintainer obligations.

5.4 Ownership of Assets

5.4.1 The Maintainer and the Purchaser acknowledge and agree that the legal and beneficial title to any plant, equipment and/or other assets:

- (A) installed by the Maintainer at a Site;
- (B) located by the Maintainer at a Site; and/or
- (C) otherwise acquired by the Maintainer in connection with the Maintainer's occupation, maintenance and/or use of a Site and/or in performing the Maintainer Obligations at a Site,

(together "**Maintainer Movable Assets**") shall remain the property of the Maintainer at all times during the Maintenance Period and shall, except for Maintainer Excluded Assets, transfer to the Purchaser on Handback, subject to the provisions of Schedule 13 (Handback), with full title guarantee and free from any Security Interest.

5.5 Outstations

5.5.1 The Parties have agreed that the Maintainer shall carry out train preparation in accordance with Schedule 16 (Preparation, Presentation and Return Procedure) at up to an aggregate of four (4) Outstations on the East London Railway and/or the North London Railway and the Purchaser shall obtain from the relevant Facility Owners all rights of access and other such rights as may be reasonably necessary to enable the Maintainer to undertake such train preparation at such locations.

5.5.2 Subject to Clause 5.5.3 the Maintainer shall be entitled at any time to undertake train preparation in accordance with Schedule 16 (Preparation, Presentation and Return Procedure) at any further Outstations (in addition to those referred to in Clause 5.5.1) at its own cost and risk provided that there shall be no additional cost or risk whatsoever to or for the Purchaser or the Operator in its doing so.

5.5.3 The Maintainer shall not be entitled to exercise its rights under Clause 5.5.2 unless and until each of the following requirements have been fulfilled:

- (A) the Maintainer has obtained from the relevant Facility Owners at its cost and to the reasonable satisfaction of the Purchaser all rights of access and such other rights as may be reasonably necessary to enable the Maintainer to undertake train preparation in accordance with Schedule 16 (Preparation, Presentation and Return Procedure) at the proposed additional Outstations; and

- (B) the Maintainer has given written notice to the Purchaser identifying the proposed Outstations and the train preparation to be undertaken in accordance with Schedule 16 (Preparation, Presentation and Return Procedure) at those Outstations at least sixty (60) Working Days prior to intended commencement of the train preparation at the proposed Outstations.
- 5.5.4 The Maintainer shall remain fully responsible for the performance of all Maintainer Obligations to be undertaken by it and/or a Subcontractor at an Outstation.
- 5.5.5 The Purchaser shall also be entitled from time to time to require the Maintainer to carry out train preparation in accordance with Schedule 16 (Preparation, Presentation and Return Procedure) at more than four (4) Outstation on the East London Railway and/or the North London Railway provided that it shall pay the additional reasonable and properly incurred costs of the Maintainer in carrying out train preparation in accordance with Schedule 16 (Preparation, Presentation and Return Procedure) at an Outstation and that such costs shall be calculated in accordance with Schedule 5 (Pricing and Payment);
- 5.5.6 The Purchaser shall not be entitled to exercise its rights under Clause 5.5.5 unless and until each of the following requirements have been satisfied:
- (A) the Purchaser has obtained from the relevant Facility Owners all rights of access and such other rights as may be reasonably necessary to undertake train preparation in accordance with Schedule 16 (Preparation, Presentation and Return Procedure) at the proposed Outstation; and
 - (B) the Purchaser has given written notice to the Maintainer identifying the proposed Outstation and the train preparation to be undertaken at those Outstations in accordance with Schedule 16 (Preparation, Presentation and Return Procedure) at least twenty (20) Working Days prior to the commencement of the Services at the proposed Outstation.
- 5.6 **Not used**
- 5.7 **Free Issue Materials**
- 5.7.1 The Purchaser shall not be entitled to provide or be treated as having provided any Free Issue Materials for use in the provision of the Services and shall bear no liability in respect of such Free Issue Materials unless on each occasion where any such Free Issue Materials are to be issued it is agreed in advance, in writing, between the Purchaser and the Maintainer:
- (A) that the Maintainer shall carry out such tests and inspections as are necessary in order to satisfy itself as to the suitability of the Free Issue Materials;
 - (B) which of the Parties shall be responsible for the rectification of any defects revealed by the tests or inspections described in Clause 5.7.1A; and
 - (C) which of the Parties shall have liability in respect of any defect in the Free Issue Materials,

and the Free Issue Materials shall at all times remain the property of the Purchaser and shall only be used by the Maintainer for the purposes of the Services.

5.8 Maintenance Facility Obligations

The Parties shall comply with the requirements of Schedule 9 (Maintenance Facility Obligations) during the Maintenance Period.

5.9 Tax Allowances

The Maintainer undertakes and confirms to the Purchaser that neither it nor any other person which is a member of the Maintainer's Group, a Subcontractor, a supplier or a provider of finance to the Maintainer or any of those persons has claimed and that it will not claim and shall procure that no such other person shall claim any capital allowances or analogous Tax allowances in respect of any Unit, any other item of Purchased Equipment, or any Maintainer Movable Asset.

6. PROVISION OF MAINTENANCE SERVICES

6.1 Commencement of Services

The Maintainer shall provide, in accordance with the provisions of this Agreement, the Services to the Purchaser from the Acceptance of the first Unit by the Purchaser. In doing so, the Maintainer shall:

- 6.1.1 provide the relevant Services to the Purchaser; and
- 6.1.2 the Maintainer shall make the Units Available for service in the condition required by the provisions of this Agreement during the Maintenance Period.

6.2 Maintainer's Responsibilities

Without limiting the obligations of the Maintainer set out in Clauses 6.1.1 and 6.1.2, during the Maintenance Period the Maintainer shall be responsible for procuring:

- 6.2.1 the servicing, maintenance, support, cleaning, inspection, repair of, and remedy of defects in the Units strictly in accordance with Schedule 2 (Maintenance and Cleaning Services) and the other provisions of this Agreement;
- 6.2.2 provision of all services, labour (including the supervision of labour), plant, goods, materials, equipment, work facilities, patterns, jigs, tools, fixtures, Spares (other than Purchaser Owned Spares), test equipment, Software data and other resources save where expressly stated otherwise in this Agreement;
- 6.2.3 transport of its staff and materials to and from and in and about each Site;
- 6.2.4 everything whether of a temporary or permanent nature required for the performance of its obligations under this Agreement; and
- 6.2.5 the provision in a timely manner of such technical assistance and advice as the Purchaser may reasonably require in connection, and in accordance, with this Agreement.

6.3 **Cost**

Unless expressly stated otherwise in this Agreement, the Maintainer shall perform its obligations under this Agreement at its own cost and shall provide or procure, at its own cost, all labour, equipment, support services and other facilities necessary for the full performance by the Maintainer of its obligations under this Agreement.

6.4 **Independent Maintainer**

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

6.5 **Equality and Inclusion**

The Maintainer shall comply with the Equality and Inclusion Requirements set out in Schedule 7 (Equality and Inclusion Requirements).

6.6 **Maintainer's Precautions**

Without prejudice to or limiting any of the Maintainer's other obligations under this Agreement, the Maintainer shall take all reasonable precautions to prevent loss of or damage to:

- 6.6.1 the Units;
- 6.6.2 the Purchaser Owned Spares and Special Tools;
- 6.6.3 any equipment or assets owned by the Purchaser or provided by the Purchaser and owned by any third party including the Moveable Assets, the Fixed Assets, and the Maintainer Moveable Assets;
- 6.6.4 any Maintenance Facility, Outstation, and/or Stabling Facility;
- 6.6.5 such other parts of the Sites, and
- 6.6.6 resulting from theft or vandalism at all times and during such periods as it shall have care, custody and/or control of them.

6.7 **Licences and Fees**

The Maintainer shall obtain and maintain such Relevant Consents, and give all notices and pay all fees, required or necessary for the proper performance of the Maintainer's duties and obligations under this Agreement, including without limitation an obligation to obtain and maintain at all times, any licence or any exemption from obtaining such licence which the Maintainer shall be required to hold under the Act.

6.8 **Third Party Works**

- 6.8.1 The Maintainer shall not:
 - (A) without the prior written consent of the Purchaser, permit any activities of whatever type (whether as part of the performance of the Maintainer

Obligations or ancillary thereto or for any other purposes) to be carried out at a Carriage Servicing Depot by any person other than the Maintainer or its Subcontractors, whether such other person is managed or overseen by the Maintainer or any of its Subcontractors; and

- (B) without the prior written consent of the Purchaser undertake or permit to be undertaken any activities of whatever type (other than the Maintainer Obligations) on behalf of (in consideration of any payment from, or as part of the performance of any contract with) any person other than the Purchaser, at a Carriage Servicing Depot.

6.8.2 Where the Purchaser arranges for works to be undertaken by a third party at a Carriage Servicing Depot used by the Maintainer in performing the Services, the Purchaser shall procure that such third party complies with the reasonable and appropriate security arrangements of the Maintainer where the third party has been notified of such arrangements in sufficient time to enable it to comply and provided that the Maintainer supplies details of those arrangements to the Purchaser on request to enable the Purchaser to comply with this Clause 6.8.2.

6.9 Liability for Performance

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

7. SPARES AND SPECIAL TOOLS

During the Maintenance Period the following provisions of this Clause 7 shall apply:

7.1 General Obligations

7.1.1 The Maintainer shall at its own risk and expense be responsible for all necessary safety approvals required under any Applicable Laws and/or applicable Standards with respect to the storage, maintenance, use and disposal of Spares.

7.1.2 The Maintainer shall not use a Purchaser Owned Spare for any purpose other than performing its obligations under this Agreement and the Maintainer shall ensure that no Purchaser Owned Spare shall be fitted to any rolling stock other than an ELR Unit or a NLR Unit.

7.1.3 The Maintainer shall be responsible for procuring, replacing and managing the Maintainer Owned Spares and any other Spares which are required by the Maintainer in order to perform its obligations under this Agreement, and shall be responsible for managing the Purchaser Owned Spares. Without prejudice to the foregoing the Maintainer shall be responsible for:

- (A) making all payments to the supplier of such Spares;
- (B) the storage, safety, maintenance and insurance of the Maintainer Owned Spares and the Purchaser Owned Spares;

- (C) ensuring the suitability and quality of the Spares for undertaking the Services;
- (D) the transit of any Spares between any supplier and the Maintainer, and the transit of any Spares that are taken to a location to be overhauled and/or repaired; and
- (E) managing any warranty claims arising in relation to a Purchaser Owned Spare or a Maintainer Owned Spare.

7.1.4 The Maintainer shall not, without the prior written consent of the Purchaser, store any Purchaser Owned Spare (other than those Spares which are temporarily being overhauled and/or repaired) on any land or premises the freehold of which is not owned by the Maintainer, the Purchaser, TfL or any member of the TfL Group.

7.2 Provision of Initial Spares

- 7.2.1 Upon Acceptance by the Purchaser of an Initial Spare in accordance with the Manufacture and Supply Agreement, the Purchaser shall make that Initial Spare available to the Maintainer for use in the provision of the Services.
- 7.2.2 The Maintainer warrants to the Purchaser that the Initial Spares (other than those Initial Spares which are Incident Spares and Damage & Vandalism Spares) will be sufficient to enable it to perform its obligations under this Agreement.
- 7.2.3 Where the Maintainer uses an Overhaul Spare forming part of the Initial Spares in performing the Services and in accordance with this Clause 7 by installing such Overhaul Spares on a Unit, the Maintainer shall procure that the part which has been replaced by such Overhaul Spare shall be overhauled in accordance with the Manuals, or, where such Part is life expired or such part is damaged beyond economic repair, that such part is replaced and such replacement may be a brand new Overhaul Spare or an Overhaul Spare that has been removed from an ELR Unit or a NLR Unit and repaired and/or overhauled. Title to such replacement Overhaul Spare shall vest in the Purchaser immediately following delivery of such Overhaul Spare to the Maintainer.

7.3 Supplemental Overhaul Spares

- 7.3.1 The Maintainer shall monitor the level of usage of the Initial Spares in the provision of the Services and shall be responsible for acquiring at its own cost any further Overhaul Spares ("**Supplemental Overhaul Spares**") which the Maintainer (acting reasonably) considers necessary to increase the stock of Overhaul Spares to a level which enables the Maintainer to efficiently and economically perform the Standard Services except for any Services required for the purposes of replacing any Damage and Vandalism Spare, Incident Spare or Spare which has been the subject of an Operator Fault, an Exonerating Event or a No Fault Found Matter (excluding Eligible No Fault Matter).
- 7.3.2 Title to the Supplemental Overhaul Spares shall remain with the Maintainer until the circumstances contemplated by Clause 7.4.4 and 7.4.6 apply, save where any Supplemental Overhaul Spares have been fitted in or on a Unit, Vehicle or (as the case may be) Part in which case title to such Supplemental Overhaul Spare shall vest in the Purchaser (with full title guarantee and free

from all Security Interests other than those created by or attributable to the Purchaser or the Operator).

- 7.3.3 Title to any Part which is replaced by a Supplemental Overhaul Spare shall pass to the Maintainer at the same time title to such Supplemental Overhaul Spare vests in the Purchaser in accordance with this Clause 7.3.3 free of all Security Interests other than those created by or attributable to the Maintainer.

7.4 Maintainer Owned Spares – General Obligations

- 7.4.1 The Maintainer shall at its own risk and cost maintain adequate stocks of Maintainer Owned Spares and other materials to enable it to perform its obligations under this Agreement. In the event that there are insufficient Maintainer Owned Spares the Maintainer shall at its own cost procure the necessary additional Spares.
- 7.4.2 The Maintainer shall ensure that each Contract Progress Report describes the quantity and usage of each type of Maintainer Owned Spare in the 4 week period covered by that Contract Progress Report.
- 7.4.3 If a Maintainer Owned Spare is not available and this prevents the Maintainer performing its obligations under this Agreement, including any of the Standard Services, the Maintainer shall not be entitled to any relief from any of its obligations and/or any claim, remedy or compensation under this Agreement, except to the extent that such unavailability is directly caused by any breach by the Purchaser of its obligations under this Agreement.
- 7.4.4 Upon the earlier of the expiry of this Agreement or the termination of this Agreement arising from a Maintainer Event of Default or the occurrence of a Force Majeure Event the Maintainer hereby agrees that the Purchaser shall have the option to purchase some or all of the Maintainer Owned Spares from the Maintainer at a price equivalent to the fair book value of such Maintainer Owned Spares.
- 7.4.5 The Purchaser shall be entitled to exercise the option granted by the Maintainer pursuant to Clause 7.4.4 by giving written notice to the Maintainer at least thirty-five (35) Working Days prior to the expiry or termination of this Agreement as contemplated by Clause 7.4.4 identifying the type, quantity and fair book value of each Maintainer Owned Spare the Purchaser wishes to acquire. No later than five (5) Working Days after receipt by the Maintainer of the notice served by the Purchaser pursuant to this Clause 7.4.5 the Parties shall meet and seek to agree the type, quantity and fair book value of each of the Maintainer Owned Spares to be acquired by the Purchaser. If the Parties are unable to reach agreement within five (5) Working Days of first meeting either Party may refer the matter or matters in dispute for expert determination in accordance with Schedule 15A (Fast Track Dispute Resolution Procedure).
- 7.4.6 Upon termination of this Agreement pursuant to Clause 28 (Voluntary Termination and Cessation, Purchaser Contract Review and Maintainer Price Review) or pursuant to Clause 33.2 (Purchaser Event of Default) the Purchaser shall purchase from the Maintainer at a price equivalent to its fair book value the stock of Maintainer Owned Spares which exists as at the date the Purchaser served on the Maintainer notice of termination. No later than thirty-five (35) Working Days prior to termination of this Agreement in the circumstances contemplated by this Clause

7.4.6 the Maintainer shall give written notice to the Purchaser identifying the type, quantity and fair book value of each Maintainer Owned Spare. No later than five (5) Working Days after receipt by the Purchaser of the notice served by the Purchaser pursuant to this Clause 7.4.6 the Parties shall meet and seek to agree the type, quantity and fair book value of each of the Maintainer Owned Spares to be acquired by the Purchaser. If the Parties are unable to reach agreement within five (5) Working Days of first meeting either Party may refer the matter or matters in dispute for expert determination in accordance with the procedure in Schedule 15A (Fast Track Dispute Resolution Procedure).

7.5 Purchaser Owned Spares – General Obligations

7.5.1 The Maintainer undertakes to the Purchaser and the Operator that it shall:

- (A) not attempt to hold itself out as having any power to sell, charge, lease or otherwise encumber or dispose of the Purchaser Owned Spares, nor create any Security Interest over any of the Purchaser Owned Spares;
- (B) not do any act or thing which might jeopardise the title, rights and interest of the Purchaser in any of the Purchaser Owned Spares;
- (C) store all Purchaser Owned Spares in a safe and orderly manner and at a safe location, identified as Purchaser Owned Spares and capable of being differentiated from any other Spares. The Maintainer shall not, except to the extent permitted by this Agreement or as otherwise agreed by the Purchaser and the Operator, remove or permit the removal of any of the Purchaser Owned Spares from such location.

7.5.2 The Maintainer shall monitor and record the usage of the Purchaser Owned Spares and shall make such information available to the Purchaser and the Operator within five (5) Working Days of a request by the Purchaser or the Operator and without prejudice to the foregoing the Maintainer shall ensure that each Contract Progress Report describes the quantity and usage of each Purchaser Owned Spare in the 4 week period covered by that Contract Progress Report.

7.5.3 Where this Agreement expires or is terminated pursuant to Clause 33, whichever is earlier, the Maintainer shall deliver possession of the Overhaul Spares forming part of the Initial Spares (or any replacement of the same pursuant to Clause 7.2.3) and any unused Incident Spares and any unused Damage and Vandalism Spares to the Purchaser at an agreed location, at no additional cost to the Purchaser and in accordance with Clauses 7.9 and 7.10.

7.6 Purchaser Supplemental Spares

7.6.1 The Maintainer shall monitor its monthly usage of Incident Spares and Damage & Vandalism Spares and shall notify the Purchaser in the Contract Progress Report (or if urgent by written notice) as to whether any further Incident Spares and/or Damage & Vandalism Spares which are additional to (and do not constitute part of) the Initial Spares (the "**Purchaser Supplemental Spares**") are required for the continued performance of the Additional Services. The Contract Progress Report or the written notice (as the case may be) shall specify what level of Purchaser Supplemental

Spares (if any) are required and contain a quote for the additional cost to the Purchaser of acquiring such Purchaser Supplemental Spares.

7.6.2 If the Purchaser consents to the acquisition of the quantity of Purchaser Supplemental Spares specified in the Contract Progress Report or any written notice given in accordance with Clause 7.6.1 (as the case may be) at the cost specified therein, the Maintainer shall procure for the best possible value and at the Purchaser's expense such Purchaser Supplemental Spares on behalf of the Purchaser, and the Purchaser shall reimburse the Maintainer the cost of such Purchaser Supplemental Spares by way of adjustment to the next Service Payment due and payable to the Maintainer following the delivery of the Purchaser Supplemental Spares.

7.6.3 Title to the Purchaser Supplemental Spares shall vest in the Purchaser (with full title guarantee and free from all Security interests other than those created by or attributable to the Purchaser or the Operator) on delivery of those Purchaser Supplemental Spares to the Maintainer. Immediately following the Purchaser receiving title to the Purchaser Supplemental Spares the Purchaser shall make the Purchaser Supplemental Spares available to the Maintainer.

7.7 Use of Damage & Vandalism Spares and Incident Spares

7.7.1 Subject to Clause 7.7.2 the Maintainer hereby acknowledges and agrees that the Damage & Vandalism Spares and the Incident Spares are to be used exclusively for the provision of Additional Services.

7.7.2 If the Maintainer wishes for any reason to use any Damage & Vandalism Spares and/or Incident Spares (including any Damage & Vandalism Spare and/or Incident Spares which are Purchaser Supplemental Spares) in the provision of any Standard Services it shall, prior to using such Damage & Vandalism Spares and/or Incident Spares, notify the Purchaser in writing of the quantity of such Damage & Vandalism and/or Incident Spares it wishes to so use, and the reason for which it wishes to use such Damage & Vandalism and/or Incident Spares.

7.7.3 Subject to the Purchaser's giving its written consent to the proposed use of the Damage & Vandalism Spare and/or Incident Spare, the Maintainer shall proceed to procure at the Maintainer's expense any further Damage & Vandalism Spares and/or Incident Spares which are required for use in the provision of any Standard Services (or to replace any Damage & Vandalism and/or Incident Spares which have been or are to be used in the provision of any Standard Services).

7.7.4 Where the Maintainer uses an Incident Spare or a Damage & Vandalism Spare in performing the Services and in accordance with this Clause 7, the Maintainer shall, subject to Clause 7.6, procure a replacement for such Incident Spare or Damage & Vandalism Spare (as the case may be), and such replacement may be a brand new Incident Spare or Damage & Vandalism Spare or an existing Incident Spare or Damage & Vandalism Spare that has been removed from a ELR Unit or a NLR Unit and repaired and/or overhauled.

7.8 Additional Spares treated as Initial Spares

- 7.8.1 Where the Purchaser exercises any rights under the Manufacture and Supply Agreement to acquire Additional Spares from the Manufacturer pursuant to an Option, the Parties agree that for the purposes of this Agreement any Additional Spares shall be treated as if they were Initial Spares and the provisions of this Clause 7 shall be construed accordingly.
- 7.8.2 Where the Purchaser exercises any rights under Clause 23 of the Manufacture and Supply Agreement to purchase further Spares and/or Special Tools, the Parties agree that for the purposes of this Agreement those Spares shall be treated as if they were Initial Spares and those Special Tools shall be treated as if they were Initial Special Tools and the provisions of this Clause 7 shall be construed accordingly.

7.9 Standard of Spares on Handback

- 7.9.1 On the termination or expiry of this Agreement the Maintainer shall deliver possession to the Purchaser of the Purchaser Owned Spares and the Maintainer Owned Spares to be acquired and/or received (as the case may be) by the Purchaser in accordance with Clauses 7.4.4, 7.4.6 or 7.5.4 (if any) in compliance with the Handback Condition. Without prejudice to the above, all such Spares shall be in a condition consistent with their having been maintained in accordance with the Maintenance Plan, the Manuals and this Agreement. To the extent that the Purchaser Owned Spares and the Maintainer Owned Spares to be acquired by the Purchaser do not satisfy the above requirements due to the act, omission, neglect or default of the Maintainer, the Maintainer shall promptly repair or replace such Spares at its own cost to ensure that such Spares are put into the Handbook Condition.
- 7.9.2 Where, in accordance with the Clauses 7.4.4 or 7.4.6 the Purchaser is to acquire any Maintainer Owned Spares on the termination or expiry of this Agreement, title to such Maintainer Owned Spares shall vest in the Purchaser, free of all Security Interests other than those created by or attributable to the Purchaser or the Operator on the later of delivery of the Maintainer Owned Spares or payment for such Spares by the Purchaser.

7.10 Assignment of Warranties on Termination

- 7.10.1 Upon termination or expiry of this Agreement the Maintainer agrees in so far as it is reasonably able to (without incurring any material cost or expense) to:
- (A) assign to the Purchaser the benefit of any contracts which it has in place in relation solely to the supply, storage, maintenance and/or disposal of Spares;
 - (B) to the extent not covered by Clause 7.10.1(A), assign to the Purchaser the benefit of any warranties related to the Spares and/or any other rights it may have against any third party in respect of the Spares; and
 - (C) provided that following any assignment pursuant to Clause 7.10.1(A) the Maintainer shall be relieved of its obligations and liabilities under this Agreement in so far as they relate to the supply, storage, maintenance

and/or disposal of Spares to which the assigned contracts relate from the date of such assignment or the date of termination or expiry of this Agreement whichever is the earlier.

7.11 Special Tools

- 7.11.1 The Maintainer warrants that the Initial Special Tools will be sufficient to enable it to perform its obligations under this Agreement and that, in the event that there are insufficient Initial Special Tools the Maintainer shall at its own cost procure the necessary additional Special Tools.
- 7.11.2 The Purchaser shall make the Initial Special Tools available to the Maintainer for the Maintenance Period at the risk and expense of the Maintainer.
 - 7.11.3 During the Maintenance Period the Maintainer undertakes to the Purchaser that it shall maintain the Special Tools to enable the Maintainer to comply with its obligations under this Agreement, including so that the Handback Condition is satisfied at all times in respect of such Special Tools.

8. GENERAL UNDERTAKINGS

8.1 General Undertaking

The Maintainer undertakes that it will carry out the Maintainer Obligations under this Agreement:

- 8.1.1 in accordance with the Safety, Quality and Environmental Plan;
- 8.1.2 in a manner consistent with the Specification or, following Cessation, in a manner consistent with Schedule 11;
- 8.1.3 in a manner consistent with the Operator's Safety Certificates;
- 8.1.4 in a manner consistent with the Maintenance Plan, Maintenance Window Plan and the Manuals;
- 8.1.5 in accordance with all Applicable Laws and Standards, Relevant Consents, Relevant Approvals and any consents obtained by the Manufacturer under the Manufacture and Supply Agreement including the giving of all notices and the paying of all fees and shall ensure that the Services comply therewith;
- 8.1.6 in accordance with good industry practice from time to time relating to the activity concerned;
- 8.1.7 during the Maintenance Period, so that the Units, Vehicles, Spares and Special Tools are Fault Free, and are, at all times, in the Handback Condition;
- 8.1.8 so that that none of the Units, Spares and Special Tools are maintained in a discriminatory manner during the Maintenance Period;
- 8.1.9 in accordance with any relevant Maintainer Safety Certificates;
- 8.1.10 in accordance with any relevant Licence granted to the Maintainer under Section 8 of the Act authorising the Maintainer to operate light maintenance depots;

- 8.1.11 in accordance with the rights and obligations in respect of access to the TSA Facilities or Outstation granted to and imposed upon the Maintainer in accordance with this Agreement;
- 8.1.12 in accordance with any reasonable instructions or directions properly issued by the Purchaser pursuant to this Agreement; and
- 8.1.13 otherwise in accordance with this Agreement;

and that it will provide all such co-operation and assistance as the Purchaser shall reasonably require to enable it to exercise its rights under this Agreement effectively, efficiently and without incurring unreasonable cost, expense or delay.

8.2 Relevant Knowledge

The Maintainer agrees with the Purchaser and undertakes that it shall, in the performance of the Maintainer Obligations, use all relevant knowledge obtained by it in maintaining the Units or Spares or other TSA Equipment.

8.3 Relevant Consents

- 8.3.1 The Maintainer shall be responsible for providing all documentation, information, advice and assistance that is necessary to enable the Purchaser or the Operator to obtain the Depot Safety Certificates and obtain all Relevant Consents (including any required from Network Rail and/or LUL) which, according to Applicable Law, must be obtained in the name of the Purchaser or the Operator and cannot, according to Applicable Law, be obtained by the Maintainer.
- 8.3.2 The Purchaser shall assist the Maintainer in carrying out its obligation under Clause 8.3.1 to enable the Purchaser or the Operator to obtain all Relevant Consents and obtain the Depot Safety Certificates on the reasonable request of the Maintainer by:
 - (A) attending meetings with qualified personnel;
 - (B) providing information; and
 - (C) executing documents, provided that in each case:
 - (1) the extent of such assistance is, in the opinion of the Purchaser, reasonable in all the circumstances; and
 - (2) such attendance, provision of information or execution of documents could not otherwise have been carried out by the Maintainer itself.

8.4 Hazardous Substances

- 8.4.1 The Maintainer shall not use any Hazardous Substances in the performance of the Maintainer Obligations unless:
 - (A) their use is permitted under any relevant Applicable Law;
 - (B) the Purchaser has given its prior written approval of their use;

- (C) the Maintainer has given the Purchaser not less than fourteen (14) days' written notice of how such Hazardous Substances have been or are intended to be used and giving full details of the precautions to be taken by the Maintainer, the Purchaser or any Purchaser's Employee on the delivery of such Hazardous Substances and their subsequent storage, handling and use and agreed to implement any requirements in respect of those matters which are notified to it in writing by the Purchaser within seven (7) days of receipt of the notice from the Maintainer; and
- (D) the Maintainer uses such Hazardous Substances in the manner notified to the Purchaser pursuant to Clause 8.4.1(C) or where different, in the manner required by the Purchaser pursuant to Clause 8.4.1(C),

provided that neither the use of or any approval or requirement of the Purchaser in respect of such Hazardous Substances nor such precautions shall in any way limit or restrict the Maintainer's obligation to provide the Services in accordance with this Agreement or its liability in respect of those Hazardous Substances or their use.

- 8.4.2 If any New Pollution is caused at the relevant Carriage Servicing Depot by the spillage, deposit, release, escape, discharge, leak, disposal of, use, storage or handling of Hazardous Substances the Maintainer will immediately undertake New Remediation Works.

8.5 Fines

Without prejudice to and/or without limiting the generality of Clause 36 if the Maintainer does not fulfil its responsibilities and/or obligations under this Clause 8 and as a result any fine or penalty is thereby imposed by a Competent Authority on the Purchaser or on any Purchaser's Employee for which the Purchaser or Purchaser's Employee would not otherwise have been liable (under any Applicable Law) the amount of such fines or penalties shall be reimbursed by the Maintainer to the Purchaser and/or the appropriate Purchaser's Employee together with Default Interest which shall accrue from the date of payment of the fine or penalty by the Purchaser or the Purchaser's Employee until reimbursement of that payment to it.

8.6 Not Used

8.7 Compliance

The Maintainer shall:

- 8.7.1 comply with all Environmental Laws and all Relevant Consents in providing the Services (including ensuring) that no unauthorised discharge of Hazardous Substances occurs as a result of the act, omission or default of the Maintainer anywhere at the Site so that the risk of Environmental Damage occurring at the Site is as low as reasonably practicable; and
- 8.7.2 during the Maintenance Period, dispose of all components removed from any Unit in compliance with all Applicable Laws, safely and without risk of any Environmental Damage.

8.8 Standards

All resources, goods, materials, work procedures, facilities and any other matter provided and/or undertaken by the Maintainer in connection with the Services and/or the Units, shall be in accordance with the relevant Standards which apply from time to time to the Services and/or the Units.

8.9 Interference with the Public or Operations of Infrastructure Manager or Operator

8.9.1 All operations necessary for the execution of the Maintainer's duties and obligations under this Agreement shall be carried out in accordance with this Agreement so as not to interfere unnecessarily or improperly with traffic or the convenience of the public or the access to, use and occupation of, public or private roads or footpaths to or of properties whether in the possession of the Purchaser or of any other person.

8.9.2 The Maintainer shall not unreasonably or improperly obstruct, hinder or permit any obstruction, interruption or hindrance by its employees or Subcontractors or any of their respective servants or agents to the safe and/or efficient activity or operations of any Infrastructure Manager or Operator their employees or Subcontractors or their respective servants or agents or the safe and/or, to the extent materially detrimental to the Purchaser's ability to perform its obligations, the efficient operation of any rail service or trains on the East London Railway or the North London Railway.

8.9.3 The Purchaser shall not and shall ensure that the Operator shall not unreasonably or improperly obstruct, hinder or permit any obstruction, interruption or hindrance by its employees or subcontractors or any of their respective servants or agents to the safe and/or, to the extent materially detrimental to the Maintainer's ability to perform the Maintainer Obligations, the efficient activity or operations of the Maintainer its employees or Subcontractors or its servants or agents.

8.10 Obstruction to use of the Site

The Maintainer shall not obstruct, interrupt or hinder, or permit any obstruction, interruption or hindrance by its employees or Subcontractors or any of their respective servants or agents to the use of a Site by the Purchaser, any Purchaser's Employee, LUL, or any other person permitted to use that Site, and the Purchaser undertakes to the Maintainer that it shall not grant access to any person to enter or remain on a Site other than persons who are aware of and agree to comply with all applicable Site safety and security procedures and practices and which have been previously notified in writing to the Purchaser by the Maintainer in reasonable time to allow it to notify persons accessing the Site and obtain such agreement.

8.11 Noise

All operations necessary for the performance of the Maintainer's duties and obligations under this Agreement shall be carried on without unreasonable noise and disturbance.

8.12 Stacking of Materials

The Maintainer shall stack and place all materials, plant and appliances (including any TSA Equipment) in a manner so as to prevent them causing injury or damage to persons or

property and at a safe distance from the East London Railway and the North London Railway tracks and platform edges. The Maintainer will also strictly observe any directions given by the Purchaser and/or the Operator as to the precautions to be taken and the distance from the said tracks and platform edges within which materials, plant and appliances may not be stacked or placed.

8.13 Alcohol and Drugs

8.13.1 The Maintainer shall not at any time at the Site give, sell or barter any alcoholic liquors or drugs or permit or suffer any such sale, gift or barter to be made by any Subcontractor, or any employee or agent of the Maintainer or of any Subcontractor. The Maintainer and its employees and agents shall observe and comply, and shall ensure that its Subcontractors, their employees and agents observe and comply with the LUL Drugs and Alcohol Policy as amended from time to time.

8.13.2 The Maintainer shall comply with paragraph 1.6 of Schedule 7 (Equality and Inclusion Requirements).

8.14 Not used

8.15 Handback Condition

At the expiry of the applicable Maintenance Period and where later, at expiry or termination of this Agreement, shall comply with its obligations as set out in Schedules 13 (Handback) and 9 (Maintenance Facility Obligations).

8.16 Fault Rectification during Maintenance Period

8.16.1 Without prejudice to the Purchaser's rights under the Performance Regime, the Maintainer shall during the relevant Maintenance Period either:

- (A) remedy any Fault which occurs in any Unit, Vehicle, or TSA Equipment;
or
- (B) produce a draft fault rectification plan setting out the steps that the Maintainer will take to remedy such Fault,

within two (2) Working Days after the Maintainer is notified of such Fault or otherwise becomes aware of such Fault.

8.16.2 If the Maintainer produces a draft fault rectification plan pursuant to Clause 8.16.1(B) it shall forward such plan to the Purchaser within the period referred to in Clause 8.16.1 and the Maintainer and the Purchaser shall then meet within seven (7) Working Days (or such lesser or greater period as the Parties shall agree) in order to agree such fault rectification plan (the agreement of the Purchaser not being unreasonably withheld or delayed).

8.16.3 If:

- (A) any Fault is not remedied under Clause 8.16.1(A); or
- (B) the Maintainer has not produced the fault rectification plan under Clause 8.16.1(B) or the fault rectification plan produced under Clause 8.16.1(B)

was not approved in writing by the Purchaser (acting reasonably) within seven (7) Working Days following receipt of it under Clause 8.16.1(B),

the Purchaser may remedy, or procure that an appropriately qualified third party remedies, such Fault and the Maintainer shall (except to the extent that such Fault is an Operator Fault) indemnify the Purchaser on demand in respect of any Loss reasonably incurred in doing so.

- 8.16.4 If any Fault is an Operator Fault the Maintainer shall rectify such Operator Fault pursuant to Part 3 of Schedule 2 (Maintenance and Cleaning Services) and shall be entitled to payment for such Additional Services in accordance with the terms of this Agreement.

8.17 Standard of Services

The Maintainer undertakes that the Services will be provided:

- 8.17.1 in accordance with good industry practice in the activity concerned and with all due skill, care, diligence, prudence and foresight to be expected of appropriately qualified and experienced professional engineers, technicians and artisans with experience in carrying out work of a similar scope, type, nature and complexity to the Services and as otherwise required under this Agreement;
- 8.17.2 so that the Units shall during the Maintenance Period be fit for and capable of being used and operated on or in relation to the East London Railway and the North London Railway, in accordance with and as specified in this Agreement;
- 8.17.3 so that the rights of the Purchaser pursuant to the Manufacture and Supply Agreement shall not in any way be prejudiced or adversely affected;
- 8.17.4 in a safe manner exercising all due, skill, care, diligence and good industry practice in safety matters and not in a manner endangering or involving any reasonably avoidable risk to the health and well-being of persons using, operating or maintaining the Units, the Vehicles or the Spares or the Special Tools or involved in the management thereof and in a manner so as to keep the risk of pollution, nuisance, interference or hazard as low as reasonably practicable;
- 8.17.5 only using materials and goods which are of sound and satisfactory quality.

8.18 Professional Superintendence, Skills, Qualifications and Experience

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

8.19 Units and Vehicles

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

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

9. INTERIOR CLEANING SERVICES

9.1 Cleaning Option

- 9.1.1 The Maintainer hereby grants the Purchaser the option ("**Cleaning Option**") to require the Maintainer to undertake or procure the undertaking of the Interior Cleaning Services in accordance with this Clause 9.
- 9.1.2 The Purchaser shall be entitled to exercise the Cleaning Option at any time and from time to time during the Maintenance Period by serving written notice on the Maintainer that it is exercising the Cleaning Option pursuant to this Clause 9.

9.2 Scope of Works, Standards and Performance Regime

- 9.2.1 Where the Purchaser has served notice on the Maintainer in accordance with Clause 9.1.2, the Maintainer and the Purchaser shall meet no later than 10 Working Days from the receipt by the Maintainer of such notice and seek to agree:
 - (A) a scope of work in respect of the Interior Cleaning Services which, assuming such interior cleaning services were undertaken by a reasonable, diligent and suitable qualified cleaning contractor, enable the Units to satisfy an agreed standard of cleanliness reflecting the Purchaser's requirements (the "**Interior Cleaning Standard**"); and
 - (B) to the extent not inconsistent with the Interior Cleaning Standard, the standards to which the Interior Cleaning Services identified in the scope of work shall be effectively measured against and which shall be no worse than current industry standards for similar interior cleaning services;

- (C) a performance regime which creates a significant incentive on the person undertaking the Interior Cleaning Services identified in the scope of work to perform such Interior Cleaning Services, at a minimum, in a manner that satisfies the Interior Cleaning Standard and any other standards agreed;
- (D) the proposed terms of any agreement for the Interior Cleaning Services to be entered into by the Maintainer and the relevant contractor;
- (E) the amount of the Cleaning Management Fee;
- (F) the tender evaluation criteria and applicable weightings of each criterion;
- (G) any other matters reasonably requested by the Purchaser or the Maintainer to be agreed prior to the conducting any competitive tender; and
- (H) any amendments to this Agreement to reflect the undertaking of the Interior Cleaning Services, including the relevant amendments (if any) to:
 - (1) the definition of Fit for Service;
 - (2) Schedule 2 (Maintenance and Cleaning Services);
 - (3) Schedule 3 (Performance Regime); and
 - (4) Schedule 5 (Pricing and Payment).

9.2.2 If the Parties are unable to agree any of the matters described in Clauses 9.2.1(A) to (H) within 20 Working Days of first meeting then either Party may refer the matter or matters in dispute for expert determination in accordance with Schedule 15A (Fast Track Dispute Resolution Procedure).

9.2.3 Where the matters described in Clauses 9.2.1(A) to (H) have been agreed by the Parties or otherwise determined those changes shall be recorded in writing within five (5) days of such agreement or determination. The record produced pursuant to this Clause 9.2.3 shall be deemed to be a complete Variation Order which shall be deemed to be confirmed immediately and the provisions of paragraph 7.4 of Schedule 10 (Variation Procedure) shall apply accordingly.

9.2.4 Within 15 Working Days of the agreement or determination of all of the matters described in Clause 9.2.1 the Maintainer:

- (A) shall be entitled to give written notice to the Purchaser that it wishes to undertake the Interior Cleaning Services itself on the matters set out in Clauses 9.2.1(A) to (H) as agreed or otherwise determined; and
- (B) if the Maintainer does not serve any notice as contemplated by Clause 9.2.4(A), the Maintainer shall conduct a competitive tender to appoint a suitably qualified and experienced cleaning contractor to carry out the Interior Cleaning Services in accordance with the scope of work, standards and performance regime and upon the terms agreed and/or determined pursuant to Clause 9.2.1.

9.3 **Competitive Tender**

- 9.3.1 The Maintainer shall ensure that the competitive tender process is operated strictly in accordance with the requirements agreed with the Purchaser pursuant to Clause 9.2.1.
- 9.3.2 The Maintainer shall, in accordance with the agreed tender evaluation criteria select a contractor ("**Cleaning Contractor**") to undertake the Interior Cleaning Services in accordance with matters set out in Clause 9.2.1 as agreed or otherwise determined. The Maintainer shall provide regular reports to the Purchaser in relation to the progress of the competitive tender.
- 9.3.3 Prior to appointing any person as preferred bidder or otherwise awarding or execute any contract relating to the provision of the Interior Cleaning Services the Maintainer shall submit to the Purchaser for approval (not to be unreasonable withheld or delayed):
- (A) the identity of the proposed Cleaning Contractor;
 - (B) any changes to the proposed terms for undertaking the Interior Cleaning Services agreed or determined pursuant to Clause 9.2.1 together with an explanation, in reasonable detail, of the rationale for such changes;
 - (C) a description of the proposed amounts to be paid to the proposed Cleaning Contractor and the proposed payment profile; and
 - (D) any further information reasonably requested by the Purchaser in respect of the competitive tender and/or the proposed arrangements between the Maintainer and the proposed Cleaning Contractor.
- 9.3.4 Following the approval by the Purchaser of each of the matters described in Clause 9.3.3 the Maintainer shall promptly execute the relevant agreement(s) with the proposed Cleaning Contractor and following receipt of a written request from the Purchaser (acting reasonably), provide the Purchaser with a copy of such agreement and any ancillary documentation.
- 9.3.5 Unless the Parties agree otherwise on and from the Cleaning Commencement Date the amendments to this Agreement agreed by the Parties or otherwise determined in accordance with Clauses 9.2.1 and 9.2.2 shall become effective.

9.4 **Management of Cleaning Contractor**

Without prejudice to Clause 14.2 the Maintainer acknowledges and agrees that on and from the date ("**Cleaning Commencement Date**") a Cleaning Contractor commences performing the Interior Cleaning Services the Maintainer shall be responsible for the management of the Cleaning Contractor and the performance by the Cleaning Contractor of the Interior Cleaning Services.

9.5 **Adjustment to the Service Payments**

For the duration of the relevant cleaning contract, the Service Payments payable by the Purchaser to the Maintainer each Railway Period shall be adjusted to reflect:

- 9.5.1 any Deductions that have been incurred by the Maintainer as a result of the performance of the Interior Cleaning Services by the Cleaning Contractor in the relevant Railway Period;
- 9.5.2 unless the Parties agree otherwise, an amount equal to one thirteenth (1/13) of the Cleaning Management Fee agreed by the Parties or otherwise determined; and
- 9.5.3 an amount equal to the payment made by the Maintainer to the Cleaning Contractor pursuant to the relevant contract in relation to the provision of the Interior Cleaning Services by the Cleaning Contractor.

10. CONTRACT DOCUMENTATION

10.1 Maintenance Plan and Manuals

- 10.1.1 The Purchaser shall procure that all Manuals provided by the Manufacturer pursuant to the MSA are delivered to the Maintainer and the Maintainer acknowledges and agrees that it shall not be entitled to any additional payment or any relief or remedy in the event the Manuals provided pursuant to the MSA are not sufficient to enable the Maintainer to perform the Services.
- 10.1.2 The Purchaser makes no warranty or representation whatsoever as to the accuracy, sufficiency, completeness or otherwise of the Manuals delivered to the Maintainer.

10.2 Plans and Procedures

- 10.2.1 The Parties shall comply with:
 - (A) the Safety Quality and Environmental Plan;
 - (B) the Preparation, Presentation and Return Procedure for the duration of the Maintenance Period;
 - (C) the Fault Notification Procedure for the duration of the Maintenance Period;
 - (D) the In-Service Support Procedure for the duration of the Maintenance Period; and
 - (E) the Joint Safe Working Plan for the duration of the Maintenance Period.

11. TECHNICAL DOCUMENTATION

11.1 Service Records

During the Maintenance Period:

- 11.1.1 The Maintainer shall keep and maintain clear, complete and accurate electronic records and documentation of all Services performed on the Units, Vehicles and Spares at the relevant Maintenance Facility and shall provide the Purchaser with access at all times to such electronic records. These records and the Unit Log Books shall form the "Service Records" for the purposes of this Agreement.

- 11.1.2 The Service Records shall be completed and maintained in a manner which allows the Purchaser and Operator to satisfy themselves that the Services have been and are being carried out in accordance with this Agreement, the Maintenance Plan and the Manuals.
- 11.1.3 The Service Records shall detail:
- (A) the performance of the Parts of the Units which are the subject of maintenance and repairs in a manner which allows the Purchaser to understand thoroughly the repair cycle, rate of deterioration and/or failure of such components;
 - (B) the usage of each type of Part; and
 - (C) any outstanding work which is required in respect of any Unit, Vehicle or Spare and is still to be performed on any Unit, Vehicle or Spare.
- 11.1.4 The Maintainer shall maintain all Service Records in English in accordance with all Applicable Laws and Standards and Relevant Consents and otherwise in a form and substance satisfactory to the Purchaser. The Maintainer shall update the Service Records on a daily basis. The Maintainer shall submit the format proposed for the Service Records to the Purchaser for approval at least nine (9) months before maintenance of the Units is scheduled to commence. The Maintainer acknowledges and agrees that the Purchaser may pass to the Operator details of the format of Service Records in connection with the Operator's Safety Certificates.
- 11.1.5 The Maintainer shall make the Service Records available to the Purchaser for inspection at the relevant Maintenance Facility at which such Service Records are maintained on one (1) day's notice from the Purchaser, in hard copy or electronic format as requested by the Purchaser.
- 11.1.6 The Maintainer shall keep back-up copies of all Services Records in a secure location which is separate from the Carriage Servicing Depots.

11.2 **RAVERS**

During the Maintenance Period:

- 11.2.1 In addition to the hard copy Service Records maintained by the Maintainer under Clause 11.1, the Maintainer will maintain the Service Records using RAVERS or any such substitute system which complies with the relevant Standards as the Maintainer and the Purchaser shall agree.
- 11.2.2 If the Maintainer or the Purchaser wishes to substitute another system for RAVERS the other party shall co-operate with a view to agreeing what such substitute system should be and how any additional costs incurred as a result of using such substitute system should be shared (where applicable) between the Purchaser and the Maintainer.
- 11.2.3 The Maintainer shall bear all costs associated with the processing, transmission and support of information on RAVERS or any agreed substitute system.

11.2.4 The Maintainer shall input all required data into RAVERS as soon as reasonably practicable and in any case no later than two (2) hours before the time specified in the Maintenance Window Plan as the Entry Time for that Unit.

11.3 Retention of Service Records and Manuals

The Maintainer shall retain all Service Records and Manuals at all times during the Maintenance Period and shall not dispose of any Service Records or Manuals during the Maintenance Period without the prior written consent of the Purchaser.

11.4 Ownership of the Service Records and Manuals

11.4.1 The Service Records and Manuals shall be the property of the Purchaser and title to them shall vest in the Purchaser:

- (A) in the case of the Manuals, on their delivery pursuant to Schedule 7 (Manuals) of the Manufacture and Supply Agreement;
- (B) in the case of the Unit Log Books, on their delivery to the Purchaser pursuant to the Manufacture and Supply Agreement; and
- (C) in the case of the Service Records (other than the Unit Log Books), on their creation.

11.4.2 Clause 11.4.1 shall not operate to transfer, assign or licence any Intellectual Property Rights in the Manuals, Unit Log Books or the Service Records except as expressly provided otherwise in this Agreement.

11.5 Responsibilities for Technical Documentation

Without prejudice to any other provision of this Clause 11, the Maintainer shall be fully responsible for and bear the cost and risk of:

- 11.5.1 any mistake, inaccuracy, discrepancy or omission in the Technical Documentation whether or not the same shall have been approved by the Purchaser, as applicable, and the Maintainer shall correct the same without delay;
- 11.5.2 any failure by the Maintainer properly to prepare any of the Technical Documentation or submit it to the Purchaser, as applicable, in a timely manner; and
- 11.5.3 any failure by the Maintainer to draw to the attention of the Purchaser, as applicable, any mistake, discrepancy or omission in any documents, drawings or other written information produced by the Manufacturer under the MSA or provided by the Purchaser under this Agreement in connection with the Maintainer Obligations of which the Maintainer becomes aware.

11.6 Technical Library

11.6.1 During the Maintenance Period and subject to Clause 11.6.2 the Maintainer shall keep the Technical Library in a secure place at the relevant Maintenance Facility and shall maintain back-up copies of all documents and information contained in

the Technical Library of a secure location away from which is separate from Carriage Servicing Depots.

- 11.6.2 To the extent that any of the contents of the Technical Library are not generated by the Maintainer pursuant to its obligations under this Agreement the Purchaser shall supply such parts of the Technical Library at the Commencement Date or on such later date as they shall come into the possession of the Purchaser.
- 11.6.3 The Maintainer in consultation with the Manufacturer as the design authority for the Units shall update the Software and each document in the Technical Library following any Variation and otherwise when necessary and on a timely basis during the Maintenance Period. In the case of updates to the Software and/or the Technical Library resulting from Services or Variations carried out by a third party, the Maintainer's obligation under this Clause 11.6.3 shall be limited to the extent that it receives the necessary information under Clause 13.1.3.
- 11.6.4 The Technical Library shall be maintained in a clear format and in a form and manner which would allow an appropriately qualified independent auditor to verify and understand the contents of the Technical Library.
- 11.6.5 The Maintainer shall provide access to the Technical Library to the Purchaser on not less than two (2) Working Days prior written notice.
- 11.6.6 The Purchaser may not use, take copies of or adapt the Technical Library contrary to the provisions of Clause 39.
- 11.6.7 On the termination, Cessation or expiry of this Agreement, the Maintainer shall deliver the Technical Library to the Purchaser at such location designated by the Purchaser.

11.7 Accident investigation

- 11.7.1 The Maintainer shall, promptly on request, make available to a Competent Authority with a copy to the Purchaser any specifications, drawings, programmes of work, computer standards, listings, programs, software, data, test scripts, test procedures, test plans, test certificates, quality plans, quality programmes, quality certification, operating manuals, maintenance manuals, information and know how, whether on paper or in magnetic or electronic format or in any other form which is prepared by or on behalf of the Maintainer in accordance with this Agreement, or as a result of performing the Maintenance Obligations and which is required in accordance with a request from a Competent Authority, provided that the Purchaser acknowledges, agrees and undertakes that where, but for this Clause 11.7, it would not otherwise be entitled to receive this information (the "**Restricted Information**"):
 - (A) It will treat that Restricted Information as confidential and will only be entitled to use it in connection with the accident investigation (the "**Purpose**") (including without limitation any internal investigation into matters of safety which arises from the accident or accident investigation) and for no other purpose whatsoever;
 - (B) Access to the Restricted Information shall be restricted to those employees of the Purchaser who need to see such information in

connection with the Purpose only and further agrees not to disclose Restricted Information to any third party, save where required to do so by Applicable Law;

- (C) It will make no additional copies of the Restricted Information and will return the Restricted Information to the Maintainer as soon as reasonably practicable following conclusion of the Purpose; and
- (D) Without prejudice to the foregoing the Restricted Information may be commercially sensitive for the purposes of the FOI Legislation and will take due account of the Maintainer's reasonable representations in advance of making any disclosure of the Restricted Information under the FOI Legislation.

12. CONTRACT MANAGEMENT REQUIREMENTS

For the Duration the Parties shall comply with the requirements set out in Schedule 6 (Contract Management).

13. MAINTAINER OBLIGATIONS AND THIRD PARTIES

13.1 Entitlement to place performance of Maintainer Obligations with a third party

13.1.1 The Purchaser shall only be entitled to place performance of any of the Maintainer Obligations or any Modification with a third party (including the Operator) in order that the third party may perform any Maintainer Obligations or remedy a Fault or carry out a Modification to the following extent:

- (A) if a Maintainer Event of Default under Clause 33.1.1, 33.1.13 or Clause 33.1.2 or 33.1.3 occurs and is continuing;
- (B) to the extent that the Maintainer is in breach of any of the Maintainer Obligations or the Maintainer Obligations have not been performed by the Maintainer and, after written notice of such breach or non-performance having been given by the Purchaser pursuant to this Agreement such breach or non-performance has not been remedied within a reasonable time and in event within three (3) days following receipt such notice;
- (C) in accordance with their rights under Clauses 8.16.3, 15 and 18 in order to remedy the relevant Fault; and
- (D) in the case of a Modification, provided that a Variation has been concluded in respect of the effects of that Modification on the Maintainer Obligations.

13.1.2 The Maintainer shall indemnify the Purchaser against Losses reasonably incurred by the Purchaser as a result of placing the performance of any of the Maintainer Obligations with a third party pursuant to Clause 13.1.1(B) within 5 days following receipt of written notice of such Losses from the Purchaser.

13.1.3 If the Purchaser places any of the Maintainer Obligations or the carrying out of any Modification with a third party pursuant to this Clause 13, the Purchaser

shall use reasonable endeavours to provide to the Maintainer all information relating to that third party's performance of the Maintainer Obligations or carrying out of the Modification that is required by the Maintainer in order for it to carry out its obligations under this Agreement, including but not limited to its obligations relating to the maintenance and updating of the Technical Documentation and the Technical Library.

14. SUBCONTRACTING

14.1 Consent for subcontracting

The Maintainer may subcontract its obligations under this Agreement either in whole or in part to any Subcontractor provided that:

14.1.1 the written consent of the Purchaser (acting in its absolute discretion) is obtained by the Maintainer prior to the Maintainer entering into any Subcontract of the whole of its obligations under this Agreement;

14.1.2 in subcontracting any part of its obligations under this Agreement the Maintainer agrees with the Purchaser that it shall:

(A) co-operate with the Purchaser in complying with ACOP/EC/01003 in respect of the supply of safety critical Spares; and

(B) maintain an appropriate accreditation process for suppliers of non-safety critical Spares;

14.1.3 the Maintainer shall procure that all guarantees or warranties given to it by a Subcontractor are also expressed to be for the benefit of, enforceable by and capable of being transferred to the Purchaser; and

14.1.4 the provisions of Clauses 19.1.3 and 19.7 are complied with.

14.2 Continuing liability of Maintainer

The appointment or authorisation by the Maintainer of any Subcontractor shall not relieve the Maintainer of its liability to perform its obligations under this Agreement. The Maintainer shall be responsible and liable to the Purchaser for the acts and omissions of its Subcontractors and all references to the act, breach, omission, negligence or default of the Maintainer shall be construed to include any such act, breach, omission, negligence or default of a Subcontractor.

14.3 Exclusion of Purchaser's Liabilities

To the extent that any action is approved by the Purchaser under Clause 15.1, the Purchaser shall not be liable for any Loss suffered by the Purchaser or any other person, as a result thereof.

15. RECTIFICATION

15.1 Rectification

The Purchaser shall be entitled to order in writing by reasonable prior notice (except in cases of emergency when shorter, oral notice may be given) (the "**Order**") from time to

time the re-execution, (notwithstanding any previous tests and/or payments in respect), of any work done by the Maintainer or for which it is responsible which in respect of materials or workmanship does not comply with this Agreement.

15.2 Maintainer Default

15.2.1 If the Maintainer fails to comply with an Order made by the Purchaser pursuant to Clause 15.1, the Purchaser shall be entitled to employ and pay other persons to do so.

15.2.2 Without prejudice to or limiting the generality of Clause 36, the costs and expenses of the Purchaser incurred in procuring compliance with the Order shall be borne by the Maintainer and shall be recoverable (together with Default Interest which shall accrue from the date the cost or expense is borne by the Purchaser until recovery from the Maintainer in full) from it by the Purchaser as a debt or may be deducted by the Purchaser from any monies due or to become due to the Maintainer.

15.2.3 The exercise by the Purchaser of its rights under this Clause 15 shall not in any way prejudice or affect any other of the Purchaser's other rights under this Agreement nor shall it relieve the Maintainer from any of its obligations and liabilities under this Agreement.

16. INTELLECTUAL PROPERTY RIGHTS

16.1 Ownership of Intellectual Property Rights

Save to the extent otherwise provided for in this Agreement, each Party acknowledges and agrees that the Maintainer IPR and Maintainer Know-how shall remain the property of the Maintainer.

16.2 Subcontractors

The Maintainer agrees that it will use reasonable endeavours to procure that all Subcontracts that are entered into by the Maintainer which include a licence or rights which have equivalent effect in favour of the Maintainer in respect of Third Party IPR shall permit the Maintainer to assign or novate such licence to the Purchaser without the consent of the relevant Subcontractor.

16.3 Licences

16.3.1 The Maintainer hereby:

(A) grants to the Purchaser [REDACTED] an [REDACTED] licence of the Maintainer IPR and the Maintainer Software; and

(B) shall use its reasonable endeavours to grant or procure the grant to the Purchaser (for no additional payment) of an irrevocable, perpetual, royalty-free, transferable and non-exclusive sub-licence, of any Intellectual Property Rights owned by a third party and arising in connection with the performance of any of the Maintainer Obligations and/or the provision or use of any TSA Equipment ("Third Party IPR"),

and in respect of each of the licences in Clauses 16.3.1(A) and (B), solely and to the extent reasonably necessary for the purpose of:

- 16.3.2 this Agreement;
- 16.3.3 the maintenance, use and operation of the Units in providing passenger carrying services;
- 16.3.4 modifying and converting, refurbishing, repairing, maintaining and overhauling the Units, and/or any other item of TSA Equipment or any related activity;
- 16.3.5 training the Purchaser's employees to carry out any of the activities described in Schedule 2 (Maintenance and Cleaning Services);
- 16.3.6 inviting tenders for any of the activities described in Clause 16.3.2 to 16.3.5 inclusive;
- 16.3.7 complying with all Applicable Laws and Applicable Standards and all Relevant Consents;
- 16.3.8 using and copying the Manuals to the extent necessary to perform any of the above;
- 16.3.9 without prejudice to Clause 16.3.2, for the purposes of Clauses 18.2 and 18.3;
- 16.3.10 in the event of the occurrence of a Maintainer Event of Default, procuring fulfilment and performance of the Maintainer Obligations, including the provision of any of the Services and/or any TSA Equipment for use in connection with the ELR Units and/or the NLR Units;

together with the right to sublicense or sub-sublicense (as the case may be).

16.4 Modifying and converting

Prior to exercising any of the rights granted to it pursuant to Clause 16.3 in respect of the modification or conversion of the Units and/or any TSA Equipment described under Clause 16.3.4:

- 16.4.1 the Purchaser shall invite the Maintainer to submit a tender for the performance of the proposed modification or conversion work;
- 16.4.2 no later than the date falling twenty one (21) working days after the date of such invitation the Maintainer shall submit its tender in respect of the modification or conversion work to include, amongst other things:
 - (A) the price for such modification or conversion work; and
 - (B) whether any Third Party IPR necessary to complete the modification or conversion work are subject to any restriction and, if so, the cost of obtaining a licence permitting the use of such Third Party IPR;
- 16.4.3 the Purchaser may either accept such tender from the Maintainer, with or without further negotiation with the Maintainer or, if the Purchaser determines (acting reasonably) that such tender is not competitive in respect of price, time of delivery or quality of the work or the Purchaser does not receive a tender within

the required time period for the submission of such tenders, then the Purchaser may itself perform such modification or conversion work and/or engage a third party to perform such work; and

16.4.4 if any modification or conversion work is performed by the Purchaser and/or any third party appointed by the Purchaser:

(A) the Manufacturer's warranty obligations under Clause 16 of the MSA shall not apply in relation to any Defect (as such terms are defined in the MSA) that arises to the extent that the modification or conversion work was the principal cause of such Defect;

(B) any Failure that arises to the extent that the modification or conversion work was the principal cause of such Failure shall be deemed to be an Operator Fault for all the purposes of the TSA.

16.5 Documentation

The Maintainer shall at no cost to the Purchaser execute such further documents, provide copies of any documents or records and do such other things, as the Purchaser may reasonably request, in order to obtain for the Purchaser the full benefit of this Clause 16 and the licences granted in Clause 16.3 shall permit the Purchaser to take and use copies of those documents in order to obtain that benefit.

16.6 Warranties

The Maintainer represents and warrants to the Purchaser that (excluding any Manufacturer IPR or Software as such terms are defined in the MSA):

16.6.1 the Maintainer is the sole legal and beneficial owner and, where applicable, the sole registered proprietor of all Maintainer IPR and Maintainer Software existing at the date of this Agreement and such rights are not subject to any encumbrances;

16.6.2 the Maintainer has the right and power to grant the licence set out in clause 16.3.1(A);

16.6.3 in addition to all IPR licensed to the Purchaser pursuant to the MSA, the Maintainer IPR, the Maintainer Software and the Third Party IPR constitute all the Intellectual Property Rights required by the Purchaser for the purposes set out in Clause 16.3; and

16.6.4 to the best of the Maintainer's knowledge, information and belief (having made all reasonable and prudent enquiries), the performance of the Maintainer Obligations and the use and exploitation of any of the TSA Equipment, the Maintainer IPR, the Third Party IPR and/or the Maintainer Software and as contemplated by and under and in accordance with this Agreement (including pursuant to this Clause 16) will not result in the infringement of any rights in or to intellectual property belonging to any third party.

16.7 Notification and Handling of Claims

If either Party becomes aware of a matter which might give rise to a claim for infringement of any rights in or to intellectual property against the Purchaser arising out of the use or

exploitation by the Purchaser of any TSA Equipment, Maintainer IPR, Third Party IPR and/or Maintainer Software ("**IPR Claim**"):

16.7.1 such Party shall notify the other Party promptly of the scope and nature of the proposed claim and the grounds on which it is based;

16.7.2 if the IPR Claim is against the Purchaser, the Purchaser shall, at the Maintainer's cost:

(A) take such action as the Maintainer may reasonably request to:

(1) dispute, resist, appeal, compromise, defend, remedy or mitigate the IPR Claim; or

(2) enforce the Purchaser's rights in relation to the IPR Claim; and

(B) in connection with proceedings related to the IPR Claim, if the Maintainer so requests, allow the Maintainer exclusive conduct of those proceedings,

in each case subject to the Maintainer indemnifying the Purchaser against any Loss incurred by the Purchaser as a result of any matter arising under this Clause 16.7;

16.7.3 the Purchaser may not admit liability in respect of or settle any IPR Claim without first obtaining the Maintainer's prior written consent, such consent not to be unreasonably withheld, delayed or conditioned; and

16.7.4 where the Maintainer exercises its right pursuant to Clause 16.7.2(B) to exclusive conduct of any proceedings the Maintainer shall keep the Purchaser informed of the progress of the IPR Claim, and the Purchaser shall be entitled to be consulted by the Maintainer and given a reasonable opportunity to express their opinions prior to the Maintainer taking any decision material to the conduct of the IPR Claim including any admission of liability by the Maintainer or the settlement or compromise by the Maintainer of the IPR Claim.

16.8 Remedy for Infringement

If the use of any TSA Equipment, Maintainer IPR, the Maintainer Software and/or Third Party IPR (to the extent licensed pursuant to this Agreement) is an infringement of the Intellectual Property Rights of another person, the Maintainer shall, at its expense, either:

16.8.1 procure for the Purchaser the right to continue to use that TSA Equipment, Maintainer's IPR, the Maintainer Software and/or Third Party IPR (to the extent licensed pursuant to this Agreement); or

16.8.2 modify the TSA Equipment so that it no longer infringes those rights, or replace the TSA Equipment with non-infringing TSA Equipment provided however that the modified or replacement item of TSA Equipment shall at all times comply with all the requirements of this Agreement.

16.9 Software

16.9.1 The Maintainer shall ensure in respect of all Maintainer Software:

- (A) that there is orderly documented progress from the functional requirements to the final code and provision for regular verification and testing at each stage of the design process;
- (B) that the documentation for the Maintainer Software is such as to enable an appropriately qualified person (who was not involved in the original design) to relate the Maintainer Software to the performance of the relevant equipment under normal and fault conditions, and to verify its compliance with the functional requirements of that equipment; and
- (C) that it is designed and documented following a nationally or internationally recognised standard using recognised quality control methods.

16.9.2 The Maintainer shall at all times during:

- (A) retain updated "as made" copies, in machine readable form, of the final structure of the Maintainer Software, and of the intermediate stages leading to it (including Source Code and object codes);
- (B) retain updated usable copies of any ancillary computer programmes used to generate such codes (such as, without limitation, compilers);
- (C) keep copies of the materials referred to in this Clause 16.10.2 in a secure manner and place such that they will not deteriorate;
- (D) retain the Maintainer Software designed by the Maintainer and implement and satisfactorily document any changes to the same; and
- (E) allow the Purchaser reasonable access to the Software (excluding Source Code) and its documentation to the extent necessary to enable the Purchaser to exercise its rights pursuant to Clause 16.3.

17. AUDIT RIGHTS

17.1 Access to Facilities for Purpose of Audits

To the extent necessary for the purpose of exercising any of the rights granted under Clause 17.3 the Purchaser shall at its own cost be granted access during normal business hours and on reasonable prior notice to any premises used by the Maintainer in performing the Maintainer Obligations pursuant to this Agreement and, to the extent that the Maintainer using all reasonable endeavours can procure such access, to those premises used by any Service Subcontractors.

17.2 The Maintainer shall use reasonable endeavours to ensure that each Subcontract between the Maintainer and a Service Subcontractor shall contain a similar provision to Clause 17.1 of this Agreement.

17.3 Right of Audit

17.3.1 The Maintainer shall, and shall use reasonable endeavours to procure that its Service Subcontractors shall:

- (A) maintain a complete and correct set of records pertaining to all activities relating to the performance of the Maintainer's obligations under this Agreement and all transactions and Subcontracts entered into by the Maintainer for the purposes of performing its obligations under this Agreement (in respect of the Maintainer) and the performance by each Service Subcontractor of its obligations under its Subcontract (in respect of the Service Subcontractor) (the "**Maintainer's Records**"); and
- (B) retain all the Maintainer's Records for a period of not less than 6 years (or such longer period as may be required by law) following termination of this Agreement (the "**Retention Period**").

17.3.2 Notwithstanding any other right of audit that the Purchaser is entitled to under this Agreement, in order to verify the Maintainer's performance of and compliance with the Agreement, the Purchaser shall be entitled on reasonable written notice, either itself or using such agents or representatives as it may authorise:

- (A) to audit, inspect or witness any aspects of the performance of any Maintainer Obligations;
- (B) to inspect to the extent necessary to verify the Maintainer's compliance with this Agreement any and all of the Maintainer's Records during the Retention Period but not including any part of the Maintainer's Records containing commercially confidential information which the Purchaser is not otherwise entitled to pursuant to this Agreement, including without limitation information as to commercial terms of supply between the Maintainer and its Subcontractors and information which, according to Applicable Law may not be disclosed;
- (C) to audit the management systems of the Maintainer and those of any Service Subcontractor;
- (D) to inspect and/or audit compliance by the Maintainer and its Service Subcontractors with the Maintainer's obligations under this Agreement;
- (E) to carry out a Periodic Audit,

provided that each of the audits and inspections described in paragraphs (A) to (E) shall not unreasonably disrupt the commercial and industrial operation of the Maintainer or its Service Subcontractors.

17.3.3 The Maintainer acknowledges and agrees that the Purchaser may nominate the Auditor General to exercise any or all of the rights granted to the Purchaser under this Clause 17, and the Maintainer shall produce oral and/or written responses (as requested) to any of his questions.

17.4 **Co-operation with Audit Procedure**

To the extent necessary for the purpose of exercising any of the rights granted under Clause 17.3.2 the Maintainer shall provide, and shall procure that its Service Subcontractors shall provide, all reasonable co-operation to the Purchaser including:

- 17.4.1 ensuring that appropriate security systems are in place to prevent unauthorised access to, extraction of and/or alteration to any of the Maintainer Records;
- 17.4.2 subject to Clause 17.3.2(B) making all the Maintainer Records available for inspection and within a reasonable time (or within a time specified by the Purchaser if such a time is specified) if requested; and
- 17.4.3 making the Maintainer's employees and/or any Service Subcontractor's employees available for discussion with the Purchaser or its nominee.

17.5 No Claim for Relief

Any audit, inspection and/or testing by the Authority pursuant to Clause 17.3.2 shall not relieve the Maintainer (or any of its Service Subcontractors) from any of its obligations under this Agreement or prejudice any right, power and/or remedy of the Purchaser against the Maintainer.

17.6 Corrective Actions Arising

- 17.6.1 To the extent that any audit carried out by the Purchaser reveals any actions necessary to ensure that the Maintainer is complying with its obligations under this Agreement such actions shall be carried out by the Maintainer (a "**Corrective Action**"). The Maintainer shall acknowledge formally within two (2) Working Days receipt of any request for a Corrective Action raised by the Purchaser and/or its nominee, together with the Maintainer's confirmation of the timescale allocated by the Purchaser and/or its nominee for the Maintainer to close out the Corrective Action. The Maintainer shall advise the Purchaser and/or its nominee upon its close-out of the Corrective Action, together with details of the Corrective Action applied. The Purchaser shall be entitled to undertake a close out audit of any Corrective Actions on the same basis as set out in Clause 17.3 to 17.5.
- 17.6.2 If the Maintainer (acting reasonably) disputes any Corrective Action it shall notify the Purchaser whereupon the Maintainer and the Purchaser shall consult with each other and seek to resolve such dispute and in default of such resolution either the Purchaser or the Maintainer may refer the dispute for determination in accordance with Clause 41.

17.7 Plans for Remedial Action

If at any time in the course of any participation or inspection by the Purchaser in accordance with Clauses 17.3, 17.4 and 17.6, the Purchaser reasonably determines that the Maintainer is not complying with, or is unlikely in the future to comply with, any of the requirements of Clause 6 and/or Clause 8, the Purchaser shall notify the Maintainer of such determination. The Purchaser and the Maintainer shall thereafter use all reasonable endeavours to agree a plan for necessary remedial action to be implemented by the Maintainer, at the Maintainer's cost, to ensure that that the Maintainer provides or will provide the Services in compliance with Clause 6 and/or Clause 8.

18. STEP-IN RIGHTS

18.1 Step-In Notice

If the Maintainer fails to perform any of the Maintainer Obligations in accordance with this Agreement the Purchaser may give the Maintainer ten (10) days' notice in writing (or such shorter period of notice as the Purchaser considers necessary) ("**Step-In Notice**") requiring the Maintainer to remedy such failure.

18.2 Failure to comply with Step-In Notice

18.2.1 If the Maintainer fails to comply with a Step-In Notice, the Purchaser shall be entitled to carry out any such Maintainer Obligations or part thereof or any such requirement by means of its own personnel or other resources obtained from a third party or other alternative source.

18.2.2 Without prejudice to or limiting the generality of Clause 36, or to any other right or remedy of the Purchaser under this Agreement or under the general law, all expenditure properly incurred by the Purchaser in carrying out any such Maintainer Obligations or part of them or any requirement by means of its own personnel or other resources obtained from a third party or other alternative source (including any VAT for which the Purchaser is unable to obtain a credit as input tax) shall (together with Default Interest which shall accrue from the date the cost or expense is borne by the Purchaser until recovery from the Maintainer in full) be recoverable by the Purchaser from the Maintainer as a debt.

18.3 Urgent Work

18.3.1 If:

- (A) by reason of any accident or failure or other event occurring to or in connection with any of the Maintainer Obligations, any remedial or other work shall in the opinion of the Purchaser be urgently necessary and the Maintainer is unable or unwilling promptly to do such remedial or other work at all or within such timescale as the Purchaser determines is required; or
- (B) where a Force Majeure Event prevents the Maintainer from performing any of the Maintainer Obligations in accordance with this Agreement,

the Purchaser may authorise the carrying out of such remedial or other work by a person other than the Maintainer and/or by means of its own personnel.

18.3.2 If the remedial or other work so authorised by the Purchaser in accordance with Clause 18.3.1 is work which, in the Purchaser's opinion, the Maintainer was liable to do under this Agreement, all costs and expenses properly incurred by the Purchaser in carrying out or procuring the carrying out of the same except when arising from the Force Majeure Event shall, without prejudice to or limiting the generality of Clause 36, be recoverable by the Purchaser from the Maintainer together with Default Interest which shall accrue from the date on which the cost or expense is borne by the Maintainer until recovery from the Maintainer in full as a debt.

18.4 Access to Facilities

The Maintainer hereby grants the Purchaser and any third party authorised or appointed by the Purchaser the right to use any Maintainer's plant and facilities (whether belonging to the Maintainer or used by the Maintainer in connection with the Maintainer Obligations) and to use, test, operate and do all such things as may be required or necessary (in respect of the Maintainer Obligations, each Carriage Servicing Depot, the Maintainer's equipment, facilities and anything else under the Maintainer's control or possession) to assist or enable the Purchaser and the third party to carry out work to make up for or remedy any deficiency in the performance of the Maintainer Obligations pursuant to an exercise of the Purchaser's rights under this Clause 18, provided that the Purchaser shall be responsible for ensuring that such plant equipment and facilities shall only be used or operated by appropriately trained and skilled personnel in accordance with all appropriate safety and operating procedures.

18.5 Maintainer's Personnel

If, by reason of this Clause 18, the Purchaser is required to carry out any such Services or part thereof, whether or not by means of its own personnel or other resources obtained from a third party or other alternative source, the Maintainer will indemnify the Purchaser, for itself and on behalf of any third party who takes over in whole or in part the provision of the Services pursuant to this Clause 18, against any losses, costs, claims, demands, actions, fines, penalties, awards, liabilities and expenses (including legal expenses and interest) arising out of any claims by any current or former employee of the Maintainer or any Subcontractor that their employment has transferred to the Purchaser or such third party by reason of any Applicable Law, including in connection with the summary dismissal by the Purchaser or such third party of any such employee, provided that the liability of the Maintainer under this Clause 18.5 is subject to neither the Purchaser nor such third party having made or given any representation to such employee that the employment of such employee had transferred to the Purchaser or such third party.

19. EMPLOYMENT ARRANGEMENTS

19.1 Removal of Personnel

19.1.1 The Purchaser may require the Maintainer by written notice to remove any employee of the Maintainer (or the relevant Maintainer Group company) or of any Subcontractor (or the relevant Subcontractor Group company) from working in connection with this Agreement or on the Site who, in the reasonable opinion of the Purchaser:

- (A) misconducts himself;
- (B) is incompetent or negligent in the performance of his duties or any other conditions of this Agreement;
- (C) persists in any conduct which is, or is reasonably likely to be, prejudicial to safety or health;
- (D) by his conduct (whether or not in connection with the performance of the Services), has brought or is reasonably likely to bring the Purchaser into disrepute; or

(E) should be removed for other good cause.

19.1.2 Any employee of the Maintainer (or the relevant Maintainer Group company) or of any Subcontractor (or the relevant Subcontractor Group company) that has been removed from working in connection with this Agreement or on the Site shall not be employed or engaged again directly or indirectly under or in connection with this Agreement without the permission of the Purchaser and the Maintainer shall, or shall procure that any Subcontractor shall, at its cost (or the cost of such Subcontractor, as the case may be), replace such employee with a competent substitute.

19.1.3 The Maintainer shall provide that the terms of each Subcontract include a similar right of removal as set out in this Clause 19.1.

19.1.4 The provisions of this Clause 19.1 are without prejudice to the operation of Clause 42.

19.2 **Transfer of Undertakings (Protection of Employment) Regulations**

The Purchaser and the Maintainer acknowledge that in the event that

19.2.1 the Services; or

19.2.2 any part of the Services

are no longer provided by the Maintainer and are transferred to the Purchaser or to a third party in accordance with the terms of this Agreement or on termination, variation, amendment or other alteration of this Agreement or of any Subcontract (any such event being a "**Service Provision Change**"), then the Transfer Regulations may apply to such Service Provision Change.

19.3 During (i) the 12-month period ending at the expiry of the Duration, or (ii) any period of notice determining this Agreement prior to that date, or after the commencement, for whatever reason, of any procedure under this Agreement which would, or would be likely to result in a Service Provision Change ("**Service Provision Change Notification**"), the following provisions shall apply:

19.3.1 the Maintainer shall co-operate with (or, as the case may be, procure co-operation with) the Purchaser and/or any third party who takes over (or who the Maintainer is notified will be taking over) the provision of some or all of the Services pursuant to a Service Provision Change (together the "**New Provider**"), in ensuring the smooth handover and continued running of the Services during such handover and, in particular, the Maintainer shall render such assistance to the Purchaser and/or to the New Provider as the Purchaser may reasonably request;

19.3.2 the Maintainer shall provide (or, as the case may be, procure the provision of) such information to the Purchaser and/or the New Provider as is reasonably required by the Purchaser (and to the extent that it is able to do so without breaching any other legal obligation in which case the Maintainer shall use all reasonable endeavours to procure such disclosure without breach of legal obligation) relevant to the potential employment liabilities of any New Provider arising under the Transfer Regulations including but not limited to information on the following:

- (A) the name of any employee of the Maintainer (or the relevant Maintainer Group company) or a Subcontractor (or the relevant Subcontractor Group company) who is employed wholly or mainly in or assigned to the provision of the Services as at the date of the Service Provision Change Notification (or, where no such procedure has been commenced, as at the date 3 months prior to the to the date of termination of this Agreement or the expiry of the Duration) (a "**Relevant Employee**"), his salary, age, length of service and his terms and conditions of employment (whether or not evidenced in writing and including pension benefits) and any promised change to such terms and conditions;
- (B) the method of organisation of the Relevant Employees and documentary evidence relating to such organisation;
- (C) any collective agreement which will apply to any Relevant Employees following any transfer of their employment;
- (D) any disciplinary action taken against any Relevant Employee within the previous two years;
- (E) any grievance raised by any Relevant Employee within the previous two years;
- (F) any legal action taken by any Relevant Employee against the Maintainer (or any Subcontractor) within the previous two years;
- (G) any legal action that the Maintainer (or the relevant Maintainer Group company) or any Subcontractor (or the relevant Subcontractor Group company) has reasonable grounds to believe may be brought by any Relevant Employee arising out of his employment with the Maintainer or, as the case may be, a Subcontractor; and
- (H) the proposals for consultation with affected employees, including the Relevant Employees,

such information together being the "**Employee Liability Information**" as defined in Regulation 11 of the Transfer Regulations. The Maintainer will provide, or procure the provision of, the Employee Liability Information promptly and, in any event, no later than 42 days in advance of the date of completion of any Service Provision Change, pursuant to the terms of this Agreement and shall use its best endeavours to ensure that all the information disclosed shall be full, true, accurate and up to date to the best of its knowledge and belief having made due and careful enquiry and thereafter the Maintainer undertakes to notify the Purchaser and/or the New Provider (as the case may be) promptly of any changes to the Employee Liability Information.

19.4 Consultation obligations

- 19.4.1 The Maintainer shall comply with (or, as the case may be, procure compliance with) the provisions of Regulation 13 of the Transfer Regulations in connection with any termination of this Agreement or any Service Provision Change for whatever reason.

19.4.2 Where the Purchaser is the New Provider it shall, and where it is not the New Provider the Purchaser shall use its best endeavours to procure that the New Provider shall, comply with the provisions of Regulation 13 of the Transfer Regulations in connection with any termination of this Agreement or any Service Provision Change for whatever reason.

19.5 Indemnities

19.5.1 The Maintainer shall indemnify the Purchaser for itself and on behalf of any New Provider against any losses, costs, claims, demands, actions, fines, penalties, awards, liabilities and expenses (including legal expenses and interest) arising in connection with any breach by the Maintainer of its obligations under Clauses 19.3 and/or 19.4.1.

19.5.2 The Maintainer shall indemnify the Purchaser for itself and on behalf of any New Provider against any losses, costs, claims, demands, actions, fines, penalties, awards, liabilities and expenses (including legal expenses and interest) arising out of

- (A) any claim by any current or former employee of, or any person currently or formerly engaged by, the Maintainer (or the relevant Maintainer Group company) or any relevant Subcontractor (or the relevant Subcontractor Group company) that such individual is or was an employee of the Purchaser during the course of this Agreement except where the Purchaser shall have made or given any representation to such individual that the employment of such individual has transferred to the Purchaser;
- (B) in the event of a Service Provision Change, any claim by any current or former employee of the Maintainer (or the relevant Maintainer Group company) or any Subcontractor (or the relevant Subcontractor Group company), resulting from any change to such individual's working arrangements which does not consist of a breach of the individual's terms and conditions of employment but which, nonetheless, the individual considers to be a material and substantial change to his working conditions, save where such change to the individual's working conditions is instigated by the Purchaser or the New Provider.

19.6 Cessation of Service

19.6.1 If:

- (A) this Agreement terminates other than by reason of a Purchaser Event of Default; or
- (B) any part of the Services is no longer provided by the Maintainer either itself or through a Subcontractor (or is transferred to a third party on termination, variation, amendment or other alteration of any Subcontract or by reason of any Applicable Law),

then the Maintainer will indemnify the Purchaser for itself and on behalf of any New Provider against any losses, costs, claims, demands, actions, fines, penalties, awards, liabilities and expenses (including legal expenses and interest) arising:

- (1) out of any act or omission of the Maintainer and/or the relevant Maintainer Group company (or any relevant Subcontractor and/or the relevant Subcontractor Group company) prior to the date of termination of this Agreement or the ending of the provision in whole or in part of such Services by the Maintainer (or any relevant Subcontractor) in relation to the employment or termination of employment of any employee who is or has been employed by the Maintainer and/or the relevant Maintainer Group company (or any relevant Subcontractor and/or the relevant Subcontractor Group company) to any extent in providing the Services or any part of the Services; and/or
- (2) out of any claim by any trade union, works council, staff association, worker representative (whether or not recognised by the Maintainer and/or the relevant Maintainer Group company or relevant Subcontractor and/or the relevant Subcontractor Group company) or employee or former employee in respect of all or any of the employees working in the provision of the Services arising directly out of a failure or alleged failure by the Maintainer and/or the relevant Maintainer Group company or relevant Subcontractor and/or the relevant Subcontractor Group company to comply with its legal obligations to provide information to and/or consult with employees or their representatives under any Applicable Law; and/or
- (3) from the transfer of the contract of employment pursuant to Applicable Law of any person engaged in the provision of the Services the details of whom are not provided pursuant to Clause 19.3 including the summary termination of the employment of any such person.

19.6.2 The Purchaser shall indemnify the Maintainer for itself and on behalf of any Maintainer Group company or relevant Subcontractor and/or relevant Subcontractor Group company against all Losses arising:

- (1) out of any act or omission of the Purchaser and/or any New Provider subsequent to the date of termination of this Agreement or the ending of the provision in whole or in part of such Services by the Maintainer (or any relevant Subcontractor) in relation to the employment or termination of employment of any employee who is or has been employed by the Maintainer and/or the relevant Maintainer Group company (or any relevant Subcontractor and/or the relevant Subcontractor Group company) and whose employment transfers from the Maintainer to the Purchaser or the New Provider pursuant to the Transfer Regulations, (save in respect of any employee whose employment transfers to the Purchaser or the New Provider pursuant to the Transfer Regulations but whom the Maintainer has not identified pursuant to Clause 19.3.2 above) to any extent in providing the Services or any part of the Services prior to the date of such termination or ending of the provision in whole or in part of the Services; and/or

- (2) out of any claim by any trade union, works council, staff association, worker representative (whether or not recognised by the Purchaser and/or any New Provider) or employee or former employee in respect of all or any of the employees working in the provision of the Services arising directly out of a failure or alleged failure by the Purchaser and/or any New Provider to comply with its legal obligations to provide information to and/or consult with employees or their representatives under any Applicable Law; and/or
- (3) in connection with any breach by the Purchaser of its obligations under Clause 19.4.2.

19.7 Agreements with Third Parties

If any part of the Services are to be provided to the Purchaser by any Subcontractor, then the Maintainer shall ensure that the terms of this Clause 19 are repeated in any Subcontract incorporating such changes as are necessary to ensure the sense of the clause.

19.8 Forbidden Acts

19.8.1 The Maintainer shall not and shall procure that any Maintainer Group company and/or any Subcontractor and/or any Subcontractor Group company shall not:

- (A) in the event of notice of termination of this Agreement for any reason, with effect from the date on which such notice is given; and/or
- (B) in the event of a Service Provision Change for any reason, with effect from the date of a Service Provision Change Notification; and/or
- (C) from a date 12 months before the expiry of the Duration of this Agreement,

carry out a Forbidden Act in relation to a Relevant Employee except with the prior written consent of the Purchaser, such consent not to be unreasonably withheld or delayed.

19.8.2 Subject to Clause 19.8.3 "Forbidden Acts" mean:

- (A) the termination of the employment of any Relevant Employee for any reason whatsoever except for gross misconduct, gross negligence or repeated poor performance;
- (B) the alteration or change in any way of any terms and conditions of employment of any Relevant Employee (whether with or without the consent of such Relevant Employee);
- (C) the recruitment (except as a replacement for an employee whose employment is terminated and where the replacement is being recruited on terms which are not materially better than the terms of the employee being replaced) of any employee to provide the Services except where the Purchaser's prior consent has been given, in which case such employees will be deemed to be Relevant Employees; or

- (D) the relocation or assignment of any Relevant Employee wholly or partly to new duties unconnected with the Services.

19.8.3 An act shall not be a Forbidden Act if:

- (A) it is done in the ordinary course of business;
- (B) it is not material; and
- (C) it is neither intended, nor likely, to frustrate or affect adversely and materially any business which may pass to any New Provider.

19.9 Relevant Employees

Without prejudice to Clause 19.3.2, the Maintainer shall, after notice of termination of this Agreement or a Service Provision Change Notification for whatever reason, (and to the extent it is able to do so without breaching any other legal obligation in which case the Maintainer shall use all reasonable endeavours to procure such disclosure without breach of legal obligation) deliver to the Purchaser promptly on request details of any terms and conditions of the Relevant Employees and their benefits (including bonuses), whether contractual or discretionary and whether or not evidenced in writing, working arrangements relating to shift patterns and hours worked and a skills database for each employee detailing the task or skill for which the employee has been trained during this Agreement and thereafter the Maintainer undertakes to notify the Purchaser promptly of any changes to such terms and conditions of employment, benefits or arrangements. The Maintainer acknowledges that the Purchaser requires this information for a legitimate business purpose, namely the smooth implementation of a Service Provision Change to a New Provider, and hereby authorises the Purchaser to pass such information on to such other third parties as a Purchaser considers necessary for the purposes of enabling the New Provider to take over the performance of the Services in whole or in part.

19.10 Employee Records

On the date of termination of this Agreement or the date of coming into effect of a Service Provision Change, however it arises, the Maintainer shall (and to the extent it is able to do so without breaching any other legal obligation in which case the Maintainer shall use all reasonable endeavours to procure such disclosure without breach of legal obligation) deliver, or procure the delivery to the Purchaser of, copies of all personnel and employment records (including national insurance and PAYE records), employment contracts and statements of terms and conditions of employment and disciplinary records relating to Relevant Employees including full particulars of:

- 19.10.1 each Relevant Employee, including name, sex, and the date on which continuity of employment began for each Relevant Employee for statutory purposes;
- 19.10.2 terms and conditions of employment of each Relevant Employee;
- 19.10.3 all payments, benefits or changes to terms and conditions of employment promised to any Relevant Employee;
- 19.10.4 dismissals of Relevant Employees or termination of employment effected in the 12 months preceding the date of termination of this Agreement and disciplinary records relating to Relevant Employees;

- 19.10.5 all agreements or arrangements entered into in relation to the Relevant Employees between the Maintainer (or relevant Maintainer Group company) or any relevant Subcontractor (or relevant Subcontractor Group company) or relevant employer and any trade union or association of trade unions or organisation or body of employees including elected representatives; and
- 19.10.6 all strikes or other industrial action taken by any Relevant Employee in the 12 months preceding the date of termination of this Agreement.

The Maintainer acknowledges that the Purchaser requires this documentation for a legitimate business purpose, namely the smooth implementation of a Service Provision Change to a New Provider, and hereby authorises the Purchaser to pass such documentation on to such other third parties as the Purchaser considers necessary for the purposes of enabling a New Provider to take over the performance of the Services in whole or in part.

19.11 Key Personnel

19.11.1 The Maintainer shall appoint and maintain in post persons responsible for the TSA Facilities and/or for safety matters in accordance with the following provisions:

- (A) subject to sub-clause (B) below on and from the Commencement Date the Key Personnel listed in Appendix 1 of Schedule 6 (Contract Management); shall be employed in the posts and responsible for the matters specified therein;
- (B) where the Maintainer plans any action which would mean that the Key Personnel are not so employed or responsible the Maintainer shall notify the Purchaser as soon as possible and in any event 20 Working Days prior to taking such action or where the Key Personnel are not so employed or responsible pursuant to (A) above for whatever reason. The Maintainer shall notify the Purchaser immediately and in either case it shall take all such steps as it shall reasonably require to ensure that those responsibilities are properly carried out pending their replacement; and
- (C) the Maintainer shall consult with the Purchaser before appointing any person to the post of or to carry out the responsibilities of those Key Personnel, such person to be competent, suitably qualified and experienced in each case.

20. SERVICE PAYMENTS

20.1 Accrual of Scheduled Standard Service Payments

The Service Payments payable in relation to each Unit shall accrue from the date of the Acceptance of that Unit under the Manufacture and Supply Agreement in accordance with the provisions of Schedule 5 (Pricing and Payment).

20.2 Invoices for Service Payments

Within five (5) Working Days following the end of the Railway Period in which the Payment Commencement Date falls and thereafter following the end of each subsequent Railway Period, the Maintainer shall deliver to the Purchaser a report setting out:

- (A) the Service Payments due in respect of the immediately preceding Railway Period, calculated in accordance with Schedule 5 (Pricing and Payment);
- (B) any VAT payable in respect of the above amounts;
- (C) any adjustments to reflect previous over-payments and/or underpayments (each adjustment stated separately); and
- (D) the net amount owing by the Purchaser to the Maintainer or by the Maintainer to the Purchaser in so far as such amount has been finally ascertained.

If the report delivered pursuant to this Clause 20.2 shows a net amount owing by the Purchaser to the Maintainer, it shall be accompanied by a valid invoice from the Maintainer to the Purchaser in respect of such amount. If the report shows a net amount owing by the Maintainer to the Purchaser, the Purchaser shall issue a VAT invoice to the Maintainer in respect of such amount promptly following the receipt of such report. Payment shall be made by the Purchaser or the Maintainer (as applicable) within twenty (20) Working Days following receipt of the other party's invoice, subject to Clause 20.3 (Disputed Invoices).

20.3 Disputed invoices

- 20.3.1 The Purchaser shall notify the Maintainer in writing of any dispute regarding the invoices or report submitted pursuant to Clause 20.2 (including any disputes as to the calculations of any Service Payment or Deduction) stating the reasons for such dispute within twenty-one (21) Working Days following receipt of such invoice.
- 20.3.2 Subject to the provisions of Clause 20.3.3 any disputes in relation to an invoice or report (including any disputes as to the calculations of any Service Payments or Deduction) shall be resolved in accordance with Clause 41.
- 20.3.3 Any disputes in relation to Additional Service Payments shall first be referred to the next Contract Review Meeting in accordance with Schedule 6 (Contract Management) and, if unresolved, shall be resolved in accordance with Clause 41. In relation to a dispute as to the calculation of a Deduction, the provisions of Clause 23.2 shall apply.
- 20.3.4 In the event of any disputed invoice, the undisputed part of such invoice shall be paid in accordance with Schedule 5 (Pricing and Payment).

21. PAYMENT

The Parties shall comply with the provisions of Schedule 5 (Pricing and Payment) in the calculation and payment of the Service Payments.

22. VAT

22.1 Payment of VAT

Where any taxable supply for VAT purposes is made under or in connection with this Agreement by one Party to the other, the payer shall, in addition to any payment required for that supply, pay such VAT as is chargeable in respect of it.

22.2 Reimbursement of VAT

Where under this Agreement one Party is to reimburse or indemnify the other in respect of any payment made or cost incurred by the other, the first Party shall also reimburse any VAT paid by the other which forms part of its payment made or cost incurred to the extent such VAT is not available for credit for the other Party (or for any person with whom the indemnified party is treated as a member of a group for VAT purposes) under sections 25 and 26 of the Value Added Tax Act 1994.

22.3 VAT Credit Note to be Issued on Repayment

Where under this Agreement any rebate or repayment of any amount is payable by one Party to the other, and the first Party is entitled as a matter of law or of HM Revenue and Customs practice to issue a valid VAT credit note, such rebate or repayment shall be paid together with an amount representing the VAT paid on that part of the consideration in respect of which the rebate or repayment is made, and the first Party shall issue an appropriate VAT credit note to the other Party.

23. PERFORMANCE REGIME

23.1 Obligations under the Performance Regime

The Maintainer and the Purchaser shall comply with the provisions of the Performance Regime.

23.2 Deductions

23.2.1 Any Deductions shall be deducted from the Service Payments in accordance with the Performance Regime and the provisions of Schedule 5 (Pricing and Payment).

23.2.2 Subject to the Purchaser's other express rights under this Agreement, the making of any Deductions in accordance with the Performance Regime and the provisions of Schedule 5 (Pricing and Payment) shall, in each case, be the Purchaser's sole remedy for the failure to provide Services as a result of the event giving rise to the calculation of those Deductions.

23.2.3 Nothing in this Clause 23 shall prevent or restrict the right of the Purchaser to seek injunctive relief or a decree of specific performance or other discretionary remedies of Court.

24. VARIATION PROCEDURE

24.1 Variation Procedure

24.1.1 Subject to Clause 24.1.4 any amendment to this Agreement shall be made in accordance with the Variation Procedure, save in the case of:

- (A) a Permitted Change made in accordance with Clause 24.2;
- (B) a change to the Service Payment pursuant to Clause 26 (Change in Law);
- (C) a change to the Service Payments pursuant to Schedule 5 (Pricing and Payment) and Clause 31.4 (Effect on payments);
- (D) a change to the Services and Service Payment pursuant to Clause 28.3 (Cessation of Maintenance Services) and/or Clause 9;
- (E) the Maintainer undertakes any Maintainer Obligations at any Outstations (pursuant to a requirement of the Purchaser notified under Clause 5.5.5 above) or a change to the Technical Library under Clause 11,

or where otherwise expressly permitted by this Agreement and all such amendments and changes shall be made in accordance with the relevant provisions referred to in this Clause 24.1.1.

24.1.2 Any amendment to this Agreement occurring in the circumstances listed in Clause 24.1.1(A) to (E), shall be agreed or determined in accordance with the relevant provision recorded in writing within five (5) days of such amendment. The record produced pursuant to this Clause 24.1.2 shall be deemed to be a complete Variation Order which shall be deemed confirmed immediately and the provisions of paragraphs 7.4.1(A)(B) and (C) (but not (D), (E), (F) or (G)) shall apply accordingly in relation to those amendments.

24.1.3 The Maintainer shall not be entitled to any upward adjustment to the Service Payments or any relief from its obligations under this Agreement or other claim, remedy or compensation in respect of a Variation arising from a breach by the Manufacturer of its obligations under the Manufacture and Supply Agreement or a breach by the Maintainer of the Maintainer Obligations or a failure by the Maintainer and/or the Manufacturer to satisfy any conditions precedent under this Agreement and/or the Manufacture and Supply Agreement or an amendment listed in Clause 24.1.1 save to the extent expressly provided in the relevant provision.

24.1.4 The provisions of Clause 31.6 shall apply in respect of any termination of some but not all of the Services.

24.2 Permitted Changes

Subject to Clause 24.3, the Purchaser shall be entitled on giving at least ten (10) Working Days notice to the Maintainer to:

24.2.1 change any Entry Time and any Exit Time of any Diagram provided that such Entry Time or Exit Time remains within the time period represented by the spaces either side of the Maintenance Window for that Diagram set out in the Maintenance Window Plan; and/or

24.2.2 amend any of the Diagrams and the Train Plan Parameters provided that such change does not require a change to the Maintenance Window Plan,

and the Maintainer shall not be entitled to any amendment to or relief from its obligations under this Agreement or to any additional payment or other compensation or claim or remedy in respect of any implementation of a Permitted Change.

24.3 **Special Events**

24.3.1 Where the Maintainer, acting reasonably, considers that it has had to undertake additional work as a direct result of a Permitted Change arising from a Special Event, the Maintainer shall be entitled to be reimbursed reasonable and documented cost in accordance with Schedule 10 (Variation Procedure);

24.3.2 For the purposes of this Agreement the expression "**Special Event**" means a day nominated by the Purchaser as a day on which it should be assumed no maintenance or other work under the TSA may be carried out by the Maintainer, provided that the total number of Special Events per annum shall be no greater than four (4) (which total shall include the day of the 31 December in the relevant year).

25. **EXONERATING EVENTS**

25.1 **Relief and Reimbursement of Costs**

If an Exonerating Event increases the cost of, or has an adverse effect on, the performance by the Maintainer of its obligations under this Agreement, the Maintainer shall be entitled to relief from those obligations to the extent that its performance is so affected in accordance with the provisions of this Clause 25 and to be reimbursed for any reasonable increase in costs properly and demonstrably incurred by the Manufacturer directly arising from the Exonerating Event.

25.2 **Notice of Exonerating Events**

The Maintainer shall give written notice to the Purchaser as soon as the Maintainer can foresee, or is aware of, an Exonerating Event occurring.

25.3 **Minor Exonerating Events**

25.3.1 If, in the opinion of the Maintainer (acting reasonably), an Exonerating Event will increase the cost of or adversely affect the performance by the Maintainer of its obligations under this Agreement for a period of five (5) Working Days or less (a "**Minor Exonerating Event**"), the Maintainer shall give written notice as soon as reasonably practicable to the Purchaser setting out details of the Minor Exonerating Event. The notice shall include:

- (A) full and detailed particulars of the Minor Exonerating Event;
- (B) the Maintainer's view of the likelihood and probable extent of the increased cost of, or the adverse effect on, the performance by the Maintainer of its obligations under this Agreement as a result of the Minor Exonerating Event; and
- (C) details of the measures which the Maintainer has adopted and/or proposes to adopt to avoid or reduce the effects of the Minor Exonerating Event on the performance of its obligations under this Agreement.

- 25.3.2 On receipt of any notice served by the Maintainer in accordance with Clause 25.3.1, the Purchaser shall allocate a unique number to the claim (which he shall notify in writing to the Maintainer) and he shall also maintain a sequentially numbered register of all claims made, and relief granted, under this Clause 25 in respect of Minor Exonerating Events. All subsequent correspondence between the Parties in relation to any claim in respect of Minor Exonerating Events made under this Clause 25 shall bear the relevant allocated number.
- 25.3.3 If any Minor Exonerating Event notified to the Purchaser in accordance with Clause 25.3.1 increases the cost of, or has an adverse effect on, the performance by the Maintainer of its obligations under this Agreement, then, as soon as reasonably practicable in the circumstances, the Purchaser, acting reasonably, shall determine, grant and notify to the Maintainer:
- (A) the relevant relief to which the Maintainer is entitled under Clause 25.1 by written notice and shall detail in such notice the extent to which the Maintainer is relieved from performing its obligations under this Agreement and the time period for which such relief shall apply; and
 - (B) the amount which the Maintainer is entitled to pursuant to Clause 25.1 and which the Purchaser shall reimburse the Maintainer by way of an adjustment to the next Service Payment becoming due and payable.
- 25.3.4 If the Purchaser reasonably considers, on the basis of the information provided under this Clause 25.3 that the Maintainer is not entitled to relief from the performance of its obligations under this Agreement as a result of a Minor Exonerating Event notified to the Purchaser in accordance with Clause 25.3.1, and/or the Maintainer has not suffered any increase in costs it is entitled to recover pursuant to Clause 25.1, the Purchaser shall notify the Maintainer accordingly in writing. This decision may be based on (but shall not be limited to) the Purchaser's opinion, acting reasonably, that the event constitutes a Major Exonerating Event, in which case the Purchaser shall notify the Maintainer accordingly. If the Maintainer does not agree with any decision of the Purchaser under this Clause 25.3.4, the dispute shall be resolved in accordance with Clause 41.

25.4 Major Exonerating Events

- 25.4.1 If, in the opinion of the Maintainer, an Exonerating Event will increase the cost of, or have an adverse effect on, the performance by the Maintainer of its obligations under this Agreement for a period of more than five (5) Working Days (a "**Major Exonerating Event**"), the Maintainer shall give written notice as soon as reasonably practicable to the Purchaser setting out details of the occurrence of the Major Exonerating Event.
- 25.4.2 Any notice given by the Maintainer under Clause 25.4.1 shall not in any event be given later than five (5) Working Days after the Maintainer becomes aware of the occurrence of such Major Exonerating Event or, if the event was originally a Minor Exonerating Event, within one (1) Working Day of the event ceasing to be a Minor Exonerating Event and becoming a Major Exonerating Event, and in either case that notice shall include:
- (A) full and detailed particulars of the Major Exonerating Event;

- (B) the Maintainer's current view of the likelihood and probable extent of the increased cost of, or the adverse effect on, the Maintainer's performance of its obligations under this Agreement as a result of the Major Exonerating Event;
 - (C) details of the measures which the Maintainer has adopted and/or proposes to adopt to avoid or reduce the effects of the Major Exonerating Event on its performance of its obligations under this Agreement; and
 - (D) details of any documents that will be relied upon to support any claim of the Maintainer that it should be relieved to any extent from the performance of its obligations under this Agreement.
- 25.4.3 On receipt of any notice served by the Maintainer in accordance with Clause 25.4.1 the Purchaser shall allocate a unique number to the claim (which he shall notify in writing to the Maintainer) and he shall also maintain a sequentially numbered register of all claims made, and relief granted, under this Clause 25 in respect of Major Exonerating Events. All subsequent correspondence between the parties in relation to any claim in respect of Major Exonerating Events made under this Clause 25 shall bear the relevant allocated number.
- 25.4.4 If a Major Exonerating Event continues for more than ten (10) Working Days or at any time when the Maintainer is unable to determine the extent of the effect of the Major Exonerating Event on the performance of its obligations under this Agreement, the Maintainer shall continue to submit to the Purchaser, at intervals of not more than ten (10) Working Days, further updated written particulars of the Major Exonerating Event including updates as to the matters set out in the notice given under Clause 25.4.2.
- 25.4.5 If any Major Exonerating Event notified to the Purchaser under Clause 25.4.2 increases the cost of, or has an adverse effect on, the performance by the Maintainer of its obligations under this Agreement, then, as soon as practicable in the circumstances the Purchaser shall determine, grant and notify to the Maintainer:
- (A) the relevant relief to which the Maintainer is entitled under Clause 25.1 by written notice the details of the extent to which the Maintainer is relieved from carrying out its obligations under this Agreement and the time period for which such relief shall apply;
 - (B) the amount which the Maintainer is entitled to pursuant to Clause 25.1 and which the Purchaser shall reimburse the Maintainer by way of an adjustment to the next Service Payment becoming due and payable.
- 25.4.6 If the Purchaser reasonably considers, on the basis of the information provided this Clause 25.4, that the Maintainer is not entitled to relief from the performance of its obligations under this Agreement as a result of any Major Exonerating Event notified to the Purchaser under Clause 25.4.2 or 25.4.4 and/or the Maintainer has not suffered any increase in costs it is entitled to recover pursuant to Clause 25.1, the Purchaser shall notify the Maintainer in writing.
- 25.4.7 If the Maintainer does not agree with any decision of the Purchaser under this Clause 25.4, the dispute shall be resolved in accordance with Clause 41.

25.5 Mitigation of Exonerating Event

The Maintainer shall take all reasonable steps to mitigate the consequences of an Exonerating Event on the Maintainer's ability to perform its obligations under this Agreement and any claim under this Clause 25.

25.6 Insured Losses

25.6.1 In relation to any payments to the Maintainer which would not have been due but for Clause 25.1, such payment shall be calculated on the basis that the Maintainer shall be in no better or worse position than it would have been had the Exonerating Event not occurred, and any assessment of whether the Maintainer is in a better or worse position shall take account of any amount which the Maintainer will or has recovered under any Required Insurance.

25.7 General

25.7.1 Any relief and/or costs given by the Purchaser under this Clause 25 shall not of itself entitle the Maintainer to any other relief and/or costs under this Agreement and where an Exonerating Event gives rise to an Allowable Failure the Maintainer shall only be entitled to the relief permitted under Schedule 3 (Performance Regime) in respect of that Allowable Failure but without prejudice to any entitlement to costs or (in the case of consequences of the Exonerating Event other than an Allowable Failure) other relief pursuant to this Clause 25.

25.7.2 The Maintainer must make a separate claim under this Clause 25 for relief and/or costs each time an Exonerating Event occurs or the Maintainer believes an Exonerating Event will occur.

25.7.3 Any relief and/or costs granted by the Purchaser to the Maintainer shall be in full compensation and satisfaction for any loss sustained or sustainable by the Maintainer in respect of any matter or thing in connection with which that relief and/or costs are granted.

25.7.4 The Maintainer shall not be entitled to relief for any:

- (A) Minor Exonerating Event if it fails to give notification in accordance with Clause 25.2 to the Purchaser within five (5) Working Days following the Maintainer becoming aware of such Minor Exonerating event; and
- (B) Subject to Clause 25.4.2 any Major Exonerating Event if it fails to give notification in accordance with Clause 25.4.1 and 25.4.2 to the Purchaser within five (5) Working Days following the Maintainer becoming aware of such Major Exonerating Event.

26. CHANGE IN LAW

26.1 Change in Law

The Maintainer acknowledges that any Change in Law other than a Qualifying Change in Law shall be at the sole risk and cost of the Maintainer.

26.2 Necessary Steps

The Maintainer shall take all steps necessary to ensure that the Services are performed in accordance with the terms of this Agreement following any Change in Law.

26.3 Qualifying Changes in Law

Subject to Clauses 26.5 and 26.6, on the occurrence of any Qualifying Change in Law, the Parties shall be entitled to seek adjustments to the Service Payments to compensate for any increase or decrease (as the case may be) in the net cost to the Maintainer of performing the Services. Such adjustments (if any) will be calculated in accordance with Clauses 26.4 to 26.8.

26.4 Occurrence of Qualifying Change in Law

26.4.1 Either of the Purchaser or the Maintainer may give notice to the other of the purported occurrence of the Qualifying Change in Law.

26.4.2 The Purchaser and the Maintainer shall meet within twenty (20) Working Days following the notice referred to in Clause 26.4.1 to consult and seek to agree the effect of the Qualifying Change in Law. If within twenty (20) Working Days following this meeting the parties have not agreed the occurrence and/or the effect of the Qualifying Change in Law, either the Purchaser or the Maintainer may refer the dispute as to the occurrence of a Qualifying Change in Law and/or the effect of any Qualifying Change in Law for determination in accordance with Clause 41.

26.4.3 Where it is agreed or determined that a Qualifying Change in Law has occurred within ten (10) Working days following the agreement or determination of the effect of the Qualifying Change in Law referred to in Clause 26.4.2 above, the Purchaser shall issue a Notice of Proposed Variation and the relevant provisions of Schedule 10 (Variation Procedure) shall apply.

26.5 Reasonable Endeavours

Each of the Parties shall, without prejudice to its general obligation to comply with the terms of this Agreement:

26.5.1 use its reasonable endeavours to mitigate the adverse effects of any Qualifying Change in Law and take all reasonable steps to minimise any increase in costs arising from such Qualifying Change in Law; and

26.5.2 use its reasonable endeavours to take advantage of any positive or beneficial effects of the Qualifying Change in Law and take all reasonable steps to maximise any reduction in costs arising from such Qualifying Change in Law,

in each case, including without limitation:

- (A) providing evidence that reasonable endeavours have been used (including where practicable the use of competitive quotes) to oblige Subcontractors and suppliers to minimise costs;
- (B) demonstrating that in incurring any costs, Foreseeable Changes in Law have been taken into account;

- (C) providing evidence as to how the Qualifying Change in Law has affected other maintainers carrying out maintenance services which are of a similar nature to the Service to the extent that such evidence is in the public domain, free of confidentiality obligations;
- (D) demonstrating that any expenditure that has been avoided which was previously anticipated to be incurred in the replacement or maintenance of assets affected by the Qualifying Change in Law has been taken into account.

26.6 Adjustment to Service Payments

Any adjustment to the Service Payments pursuant to this Clause 26 shall be calculated in accordance with Clauses 26.7 and 26.8, provided that the amount of and adjustment to the Service Payment shall not take into account any amounts incurred or to be incurred as a result of a failure to comply with Clause 26.5 on the part of either the Maintainer or the Purchaser where the adjustment will not exceed the Qualifying Change in Law Cap or on the part of the Maintainer in the case of any adjustment to the extent it exceeds the Qualifying Change in Law Cap.

26.7 Risk Allocation

26.7.1 Subject to Clause 26.7.2 the Parties shall adjust the Service Payment by [REDACTED] the amount calculated pursuant to Clause 26.8;

26.7.2 Where an adjustment pursuant to Clause 26.7.1, either alone or when aggregated with any other adjustment made pursuant to this Clause 26 in respect of any prior Qualifying Change in Law in the same calendar year:

- (A) is less than the Qualifying Change in Law Cap, no adjustment shall be made to the Service Payments; and
- (B) exceeds the Qualifying Change in Law Cap the adjustment pursuant to Clause 26.7.1 shall include the amount in excess of the Qualifying Change in Law Cap.

26.7.3 The Maintainer shall not be entitled to any other remedy, claim, payment, compensation and/or, save as expressly provided otherwise in this Agreement, relief in respect of such Qualifying Change in Law or associated Variation (or the consequence of either) and the provisions of this Agreement shall be construed accordingly.

26.8 Compensation

Subject to Clause 26.7 in determining any adjustment to the Service Payments, pursuant to this Clause 26, the increase or decrease in the net cost to the Maintainer of performing the Services shall be calculated on the basis that the Maintainer shall be placed in no better or no worse position that it would have been in had the Qualifying Change in Law not occurred, and any assessment of whether the Maintainer is in a better or worse position shall take account (inter alia) of the provisions of Clauses 26.5 and 26.6 and:

26.8.1 the extent to which the Maintainer has been (or will be) compensated as a result of any indexation of the Service Payments under this Agreement; and

- 26.8.2 any decrease in its costs resulting from such Qualifying Change in Law; and
- 26.8.3 any amount which the Maintainer will recover under any Required Insurance (or would have recovered if it had complied with the requirements of this Agreement) or of any other policy of insurance;

27. INSURANCE AND RISK

27.1 Risk

During the Maintenance Period, risk in Units and Vehicles shall:

- 27.1.1 transfer to the Maintainer upon signature by the Maintainer of a Return Certificate in relation to that Unit or Vehicle; and
- 27.1.2 transfer to the Purchaser upon signature by the Purchaser of a Presentation Certificate in relation to that Unit or Vehicle.

27.2 Insurance

The Parties shall comply with the requirements of the insurance regime set out in Schedule 12 (Insurance).

28. VOLUNTARY TERMINATION AND CESSATION, PURCHASER CONTRACT REVIEW AND MAINTAINER PRICE REVIEW

28.1 Termination

28.1.1 The Purchaser shall be entitled to terminate this Agreement on serving written notice on the Maintainer on or prior to a date which is [REDACTED] months following the Review Date stating that the Purchaser is exercising its right under this Clause 28.1.1 to terminate the Agreement and that termination will be effective no earlier than the date which is [REDACTED] months following the date of the notice or such other date as shall be specified which shall be no later than a date which is [REDACTED] months following the date of the notice.

28.1.2 Where the Purchaser has served notice on the Maintainer in accordance with Clause 28.1.1 this Agreement shall terminate with effect from the date specified in such notice, or where the notice fails to specify a date, on the Review Date.

28.1.3 For the purposes of this Agreement the expression "Review Date" means:

- (A) [REDACTED]
- (B) [REDACTED]
- (C) [REDACTED]

or such other dates as the Purchaser shall notify to the Maintainer in writing provided that the Purchaser shall only be entitled to specify three (3) Review Dates at any one time which occur at no more frequent intervals than those specified in Clause (A), (B) and (C) and the first of which shall not fall before [REDACTED]

28.2 Consequences of Termination

- 28.2.1 Where the Purchaser serves notice on the Maintainer pursuant to Clause 28.1.1 the Maintainer shall comply with Clause 33.7.1 (provided that in the case of 33.7.1(H) it agrees to comply provided that the Purchaser makes the payment in Clause 33.7.2(A) and 28.2.3 only) and with Clause 33.5.1(H).
- 28.2.2 Where this Agreement is terminated by the Purchaser in accordance with Clause 28.1, subject to the provisions of Clause 28.2.3 the Purchaser shall pay the Demobilisation Costs and comply with the provisions of Clause 33.7.2(A) to the Maintainer in full compensation for any Losses incurred by the Maintainer as a result of such termination and the Maintainer shall not be entitled to any other payment, compensation or relief or make any claim whatsoever against the Purchaser in respect of such Losses.
- 28.2.3 The Demobilisation Costs payable by the Purchaser in accordance with Clauses 28.2.2 or 28.4 shall be in the amount of:
- (A) [REDACTED] if this Agreement is terminated by the Purchaser in accordance with Clause 28.1 on or prior to a date which is six (6) months following the Review Date mentioned in Clause 28.1.3(A); and
 - (B) [REDACTED] if this Agreement is terminated by the Purchaser in accordance with Clause 28.1 on or prior to a date which is six (6) months following either of the Review Dates mentioned in Clauses 28.1.3(B) or 28.1.3(C).

28.3 Cessation of Maintenance Services

- 28.3.1 The Purchaser shall be entitled to serve written notice on the Maintainer on or prior to a date which is [REDACTED] months following a Review Date stating that the Purchaser is exercising its right under this Clause 28.3.1 and instructing the Maintainer to cease complying with the requirements set out in Schedules 2 (Maintenance and Cleaning Services) (a "Cessation Notice") and to comply instead with the provisions of Schedule 11 (Technical Support and Spare Supply) as may be amended from time to time (before or after Cessation) in accordance with the Variation Procedure.
- 28.3.2 Where the Purchaser has served a Cessation Notice on the Maintainer in accordance with Clause 28.3.1 the Maintainer shall cease complying with the requirements set out in Schedule 2 (Maintenance and Cleaning Services) and comply instead with the provisions of Schedule 11 (Technical Support and Spare Supply) with effect from a date (the "Cessation Date") being the date specified in such Cessation Notice, or where the Cessation Notice fails to specify a date being the date that is [REDACTED] months following the date of the Cessation Notice.

28.4 Consequences of Serving a Cessation Notice

- 28.4.1 Where the Purchaser has served a Cessation Notice on the Maintainer in accordance with Clause 28.3.1:
- (A) the provisions of Clause 35 shall apply;

- (B) the Maintainer shall comply with Clause 33.7.1 as if references to "Purchaser Termination Notice" were references to "Cessation Notice" and references to "expiry" "terminates" and "termination" and "termination" were references to Cessation;
- (C) subject to the operation of Clause 28.4.2 the Purchaser shall pay to the Maintainer the Demobilisation Costs to the Maintainer in full compensation for any Losses incurred by the Maintainer as a result of the service and effect of the Cessation Notice.

28.4.2 The Demobilisation Costs payable by the Purchaser in accordance with this Clause 28.4 shall be in the amount of:

- (A) [REDACTED] if a Cessation Notice is served by the Purchaser in accordance with Clause 28.3.1 on or prior to a date which is [REDACTED] following the Review Date mentioned in Clause 28.1.3(A); and
- (B) [REDACTED] if a Cessation Notice is served by the Purchaser in accordance with Clause 28.3.1 on or prior to a date which is [REDACTED] following either of the Review Dates mentioned in Clauses 28.1.3(B) or 28.1.3(C).

28.5 Price Review

28.5.1 On either or both of the later two (2) Review Dates the Maintainer may request a review of the Services Payments to be payable pursuant to this Agreement for the remainder of the Duration, such request to be made in writing no later than six (6) months prior to the applicable Review Date.

28.5.2 Following any such request as set out in Clause 28.5.1 the Purchaser and the Maintainer shall meet within thirty (30) days to review the Services Payments and the Maintainer shall be required to demonstrate with adequate supporting information to allow the Purchaser to assess its claim:

- (A) that the cost to the Maintainer of providing the Services has risen to an extent in excess of Indexation due to factors outside of the Maintainer's control, being:
 - (1) an increase in the Maintainer's cost of labour by reason of factors affecting the Maintainer and (a) other employers providing services similar to the Services and/or (b) other employers employing labour in the same or similar geographic location as the Maintenance Facilities, but not affecting all employers in the UK; and/or
 - (2) an increase in the Maintainer's cost of materials by reason of factors affecting the Maintainer and other suppliers of services similar to the Services but not affecting all companies in the UK,

provided in each case that any such increase in costs does not arise by reason of:

- (a) any breach by the Maintainer of its obligations under this Agreement;

(b) an Exonerating Event;

and

(B) that the Maintainer has taken all reasonable steps to mitigate the increase in its costs without prejudicing the delivery of the Services.

28.5.3 Subject to Clause 28.5.3(A) and (B) if the Maintainer demonstrates to the reasonable satisfaction of the Purchaser that its costs have increased as required pursuant to Clause 28.5.2(A) and that it has taken all reasonable steps to mitigate such increase in costs in accordance with Clause 28.5.2(B) then the Maintainer and the Purchaser, each acting reasonably, shall agree an appropriate increase in the Service Payments to compensate the Maintainer in respect of such increased costs, provided that:

(A) such increase in the Service Payments shall be calculated such that the Maintainer shall be in no better and no worse position than it would otherwise have been had the Maintainer's costs not increased to the extent (and for the reasons) demonstrated by the Maintainer pursuant to this Clause 28.5.3 and;

(B) the Maintainer shall not be entitled to be compensated to the extent that it has failed to mitigate such increase in its costs in accordance with Clause 28.5.2(B).

29. TECHNICAL SUPPORT AND SPARE SUPPLY

29.1 Application

With effect from the Cessation Date each party shall comply with the provisions set out in Schedule 11 (Technical Support and Spare Supply).

30. SUSPENSION

30.1 Right to Suspend Maintenance

The Purchaser may at any time instruct the Maintainer to suspend the provision of the Services.

30.2 Protection of Work in Progress

The Maintainer shall during any such suspension protect and secure the affected Units and any affected TSA Equipment in its possession or control and/or the possession or control of a Subcontractor affected at the relevant Carriage Servicing Depots (or other location agreed with the Purchaser) against any deterioration, loss or damage.

30.3 Entitlement to Costs

The additional reasonably and properly incurred costs of the Maintainer in protecting and securing the affected Units and any affected TSA Equipment shall be reimbursed by the Purchaser save that the Maintainer shall not be entitled to be paid any additional costs:

30.3.1 where the suspension was necessary by reason of any neglect or default on the part of the Maintainer or any of its Subcontractors; or

30.3.2 arising from remedying any deterioration, defect or loss caused by faulty workmanship or materials or by the Maintainer's failure to comply with this Clause 30.

31. FORCE MAJEURE

31.1 Consequence of a Force Majeure Event and Notification Requirements

Neither Party shall be in breach of an obligation under this Agreement to the extent that it is unable to perform that obligation in whole or in part by reason of the occurrence of a Force Majeure Event provided that:

31.1.1 if either Party seeks to rely on this Clause 31 (the "FM Affected Party"), as soon as reasonably practicable and in any event no more than five (5) Working Days after the start of the claimed Force Majeure Event the FM Affected Party shall notify the other Party in writing of the act, event or circumstance relied on as a Force Majeure Event; and

31.1.2 within a further five (5) Working Days the FM Affected Party shall notify the other Party in writing of the date on which such act, event or circumstance commenced, including an estimate of the period of time required to overcome it and its effects, details of any failure by the FM Affected Party to perform its obligations under this Agreement, the effect on the FM Affected Party's ability to perform its obligations under this Agreement and the action being taken to mitigate its consequences in accordance with Clause 31.2 below.

31.2 Mitigation

31.2.1 The FM Affected Party shall make all reasonable efforts to mitigate the effects of the claimed Force Majeure Event (including, in the case of the Maintainer, complying with the requests of the Purchaser and, in relation to any TSA Facility or any Outstation Facility, using all reasonable endeavours to find alternative facilities at which to carry out its obligations), to continue to perform its obligations under this Agreement and to resume performance as soon as possible and shall furnish written reports every thirty (30) Working Days to the other Party on its progress in doing so, and any proposals to mitigate the effect of the claimed Force Majeure Event, including any reasonable alternative means for performance of the affected obligations and provide any information relating to the claimed Force Majeure Event and its effects that the other Party may reasonable request.

31.2.2 The FM Affected Party shall not be relieved from liability under this Agreement to the extent that it is not able to perform its obligations under this Agreement due to its failure to comply with its obligations under Clause 31.2.1 above.

31.3 Termination for Force Majeure

The Purchaser shall be entitled to terminate this Agreement (in whole or in part) by notice in writing (a "FM Notice") to the Maintainer if any of the Services have been delayed for more than a total of [REDACTED] days as the sole and exclusive result of a Force Majeure Event.

31.4 Effect on payments

If a Force Majeure Event results in the Maintainer being unable to carry out its obligations, the Purchaser shall cease to be liable to make any payment which would otherwise have been due on fulfilment of that obligation until and to the extent that the Maintainer performs the obligations.

31.5 Cessation of Force Majeure

Immediately after the end of the Force Majeure Event, the FM Affected Party shall notify the other Party in writing that the Force Majeure Event has ended and shall resume performance of its obligations under this Agreement in so far as the Agreement has not been terminated or varied in accordance with Clause 31.3 or 31.6.

31.6 Variation and Termination

In the event this Agreement is terminated pursuant to Clause 31.3 in respect of some of the Services, this Agreement shall be deemed to be varied in accordance with Clause 24 and the Variation Procedure, to the extent of the Services terminated, forthwith upon receipt by the Maintainer of the FM Notice.

31.7 Consequences of Termination for Force Majeure

Where the Purchaser serves notice on the Maintainer pursuant to Clause 31.3 the Maintainer shall comply with Clauses 33.5.1.

31.8 Continuing Obligations

The Parties shall not be released from any of their obligations under this Agreement as a result of a Force Majeure Event, and this Agreement shall, subject to Clause 31.3 remain in effect for the duration of a Force Majeure Event.

32. CHANGE OF CONTROL

32.1 Restriction on Change of Control

32.1.1 Subject to Clauses 32.1.2, 32.1.3 and 32.1.4 the Maintainer shall procure that for the Duration no Change of Control occurs in respect of:

- (A) the Maintainer; and/or
- (B) any person who has a direct or indirect shareholding or interest in the Maintainer, including any member of the Maintainer Group who has a direct or indirect shareholding or interest in the Maintainer,

without the prior consent to such Change of Control being given by the Purchaser in writing.

32.1.2 Subject to Clause 32.1.3 the provisions of Clause 32.1.1(B) shall not apply to any Change of Control in a person whose direct or indirect shareholding or interest in the Maintainer solely arises from holding equity securities or securities convertible into equity securities in a person ("**Listed Person**") who has a direct or indirect shareholding or interest in the Maintainer and those equity

securities or securities convertible into equity securities are listed on a Recognised Investment Exchange.

- 32.1.3 Clause 32.1.2 shall only apply for so long as the equity securities or securities convertible into equity securities in the Listed Person are quoted on a Recognised Investment Exchange, and the sale or disposal of equity securities and/or securities convertible into equity securities as a result of which any third party acquiring title to such equity securities and/or securities convertible into equity securities becomes capable of and/or proposes to remove the equity securities of the Listed Person from being quoted on a Recognised Investment Exchange shall constitute a Change of Control and the provisions of this Clause 32 shall apply.
- 32.1.4 The provisions of Clause 32.1.1 shall not apply to any Change in Control to the Maintainer and/or a person described in Clause 32.1.1(B) if following the Change of Control the Maintainer or the person described in Clause 32.1.1(B) (as the case may be) continues to be part of the Maintainer Group.

32.2 Procedure for Approving Change of Control

- 32.2.1 In the event that a Change of Control is proposed in respect of the Maintainer and/or any person described in Clause 32.1.1(A) the Maintainer shall (unless prevented from doing so by any law or securities regulation applicable to the Maintainer or any member of the Maintainer's Group) give the Purchaser not less than sixty (60) days written notice of the proposed Change of Control together with all such information about the proposed Change of Control as may be reasonable for the Purchaser to determine whether it ought to consent to such Change of Control.
- 32.2.2 If the Purchaser does not consent to the proposed Change of Control the Maintainer shall withdraw the proposed Change of Control and shall procure that such Change of Control is not implemented by any person.
- 32.2.3 Where the Maintainer is not permitted by law or securities regulation to give the Purchaser at least sixty (60) days prior notice of a proposed Change of Control, the Maintainer shall give the Purchaser written notice of the Change of Control as soon as it is permitted to do so in accordance with such law or securities regulation.

32.3 Grounds of Objection

Without limitation to the Purchaser's right to withhold its consent to a Change of Control, the Maintainer acknowledges and agrees that, it shall be reasonable for the Purchaser to withhold its consent to a proposed Change of Control where:

- 32.3.1 the transfer of equity securities and/or securities convertible into equity securities does not comply with the requirements of this Clause 32;
- 32.3.2 the proposed new holder ("New Shareholder") of equity securities and/or securities convertible into equity securities is an Undesirable Transferee;

- 32.3.3 the Change of Control would result in a breach of the terms of any Relevant Consent and/or any Relevant Approval;
- 32.3.4 the Purchaser reasonably considers that as a result of the proposed Change of Control the Maintainer would:
- (A) be unable to perform, or would be materially prejudiced in its ability to perform, its obligations under this Agreement;
 - (B) cease to be able to satisfy the relevant Competent Authority as to its ability to continue to satisfy the requirements of the Railway and Other Guided Transport Systems (Safety) Regulations 2006;
 - (C) cease to have the appropriate management skills, resources, technical competence and financial standing (or the technical and financial resources available) to enable it to perform its obligations under this Agreement;
 - (D) cease to have the requisite capacity, power, and authority (including any necessary authorisations and consents) to perform its obligations under this Agreement; and/or
 - (E) cease to be able to provide the requisite stability of service delivery to enable it to perform its obligations under this Agreement.

32.4 Unapproved Change of Control

If a Change of Control occurs without the written approval of the Purchaser being given under this Clause 32, a Maintainer Event of Default shall be deemed to have occurred in accordance with Clause 33.1 of this Agreement.

33. TERMINATION

33.1 Maintainer Events of Default

The occurrence of one or more of the following shall constitute a Maintainer Event of Default:

- 33.1.1 the Maintainer commits a material breach;
- 33.1.2 an Insolvency Event occurs in relation to the Maintainer, the Bond Provider or the Guarantor;
- 33.1.3 the Maintainer fails to make payment of any sum not in dispute when due and payable to the Purchaser in accordance with this Agreement within five (5) Working Days of a written demand for payment;
- 33.1.4 the Maintainer is not liable to suffer Deductions in accordance with the Performance Regime because the Annual Deductions Cap has been reached in any Contract Year;
- 33.1.5 the Guarantor or the Bond Provider fails to comply with any payment or performance obligations expressed to be assumed by it in the Guarantee or the Bonding Guarantee (as the case may be), or the Guarantee or any Bonding Guarantee ceases to be valid and enforceable by the Purchaser;

- 33.1.6 the Maintainer commits a Diversity Infraction that is not remedied in accordance with paragraph 1.13 of Schedule 7 (Equality and Inclusion Requirements);
- 33.1.7 a Change of Control occurs in relation to the Maintainer to which the Purchaser has objected;
- 33.1.8 the Maintainer fails to take out and/or maintain the insurances specified in Schedule 12 (Insurance) (each a "**Required Insurance**");
- 33.1.9 there is a Manufacturer Event of Default under the Manufacture and Supply Agreement resulting in the termination of the Manufacture and Supply Agreement;
- 33.1.10 a representation or statement of fact made or repeated by the Maintainer or the Guarantor under a Maintainer Document or the Guarantee is incorrect when made or repeated and such misrepresentation has or is likely to have a Material Adverse Effect unless the circumstances giving rise to the misrepresentation are capable of remedy and are remedied within fourteen (14) Working Days following the Maintainer or the Guarantor becoming aware of the misrepresentation;
- 33.1.11 the Maintainer fails to obtain or renew any Relevant Consent necessary for the Maintainer to fulfil its obligations under this Agreement or any such Relevant Consent is revoked or withdrawn or expires (unless that failure, revocation, withdrawal or expiry is attributable to any act or omission of the Purchaser) and not the Maintainer and the Maintainer fails to remedy or to take substantial steps towards remedying such failure within seven (7) days of such failure;
- 33.1.12 the Maintainer fails to extend or replace any Required Bonding Guarantee or provide alternative security in each case as required by the relevant provisions of Part A of Schedule 11;
- 33.1.13 the Maintainer commits a Persistent Breach; or
- 33.1.14 the Maintainer breaches its undertaking in Clause 2.3A.

33.1A Persistent Breach

- 33.1A.1 If the Maintainer breaches any of its obligations (where those obligations are of the same type or nature) under this Agreement, more than twice in any nine (9) month period, then the Purchaser may serve a notice on the Maintainer:
 - (A) specifying that it is a formal warning notice;
 - (B) giving reasonable details of such breach; and
 - (C) stating that such breach is a persistent breach which, if it continues unremedied or a breach of the same type or nature occurs within six (6) months of the date of service of the notice, it may result in a termination of this Agreement in accordance with this Clause 33.1A.
- 33.1A.2 If, following service of such a warning notice pursuant to Clause 33.1A the breach specified has continued unremedied or a breach of the same type or nature has occurred within six (6) months following the date of service of such notice,

then the Purchaser may, no later than the date falling seven (7) months following the date of service of the warning notice pursuant to Clause 33.1A serve another notice on the Maintainer:

- (A) specifying that it is a final warning notice; and
- (B) stating that if such failure continues unremedied or a breach of the same type or nature occurs within the six (6) month period after the date of service of the final warning notice, this Agreement may be terminated.

33.1A.3 The continuance of any failure to remedy specified in the final warning notice or any further breach of the same type or nature within six (6) months after service of the final warning notice in accordance with Clause 33.1A.2 shall constitute a "**Persistent Breach**" for the purposes of Clause 33.1.13.

33.2 **Purchaser Event of Default**

A Purchaser Event of Default shall occur when:

- (A) the Purchaser fails to make payment of any sum which is due and payable to the Maintainer in accordance with this Agreement and not in dispute and such amount is not paid within thirty (30) days following a subsequent written demand for payment;
- (B) an Insolvency Event occurs in relation to the Purchaser;
- (C) the cap on the Purchaser's maximum liability under this Agreement (as specified in Clause 37.3) has been reached and the Purchaser has not elected to increase the maximum liability cap specified in Clause 37.3;
- (D) the Purchaser exercises any rights accruing to the Purchaser pursuant to Clause 16 relating to the Maintainer IPR, the Third Party IPR, Software and/or Source Code in breach of the provisions of Clause 16; or
- (E) the Purchaser discloses any Confidential Information in breach of the provisions of Clause 39 and/or 11.7.

33.3 **Procedures in relation to Termination for an Maintainer Event of Default**

33.3.1 The Maintainer shall notify the Purchaser promptly on the Maintainer becoming aware of the occurrence of a Maintainer Event of Default.

33.3.2 Following the occurrence of a Maintainer Event of Default which is continuing, the Purchaser may by notice in writing to the Maintainer signed on behalf of the Purchaser ("**Purchaser Termination Notice**") specifying the Maintainer Event of Default in question terminate this Agreement either in respect of a single Fleet or in respect of both Fleets, in either case, with effect from the date specified in the Purchaser Termination Notice (being not less than seven (7) days after the date of the Purchaser Termination Notice or, in the case of Insolvency, forthwith) provided that, in respect of a Maintainer Event of Default under Clause 33.1.1 which is capable of remedy, the Purchaser shall serve a notice in

writing on the Maintainer signed on behalf of the Purchaser (a "**Remedy Notice**") requiring the Maintainer either:

- (A) to remedy such breach(es) referred to in the Remedy Notice within thirty (30) Working Days of that notice; or
- (B) within ten (10) Working Days of the Remedy Notice, to put forward a plan (a "**Remedial Plan**") to remedy the breaches referred to in the Remedy Notice which shall be in writing and shall specify the proposed remedy in reasonable detail and the latest date by which it is proposed that that remedy will be completed, in which case Clause 33.4 shall apply.

33.4 Remedial Plan

- 33.4.1 Where the Maintainer puts forward a Remedial Plan in accordance with Clause 33.3.2, the Purchaser shall have twenty (20) Working Days after receipt of it in which to notify the Maintainer in writing that they do not accept it, failing which the Purchaser shall be deemed to have accepted that Remedial Plan.
- 33.4.2 If the Purchaser notifies the Maintainer that it does not accept that Remedial Plan, the Parties, each acting reasonably, shall endeavour in the following five (5) Working Days to agree any necessary amendments to that plan in order for it to be acceptable to the Purchaser. In the absence of agreement in that period of five (5) Working Days, the Purchaser may treat the Maintainer Events of Default as not being capable of remedy and terminate this Agreement in accordance with Clause 33.3.2. Where the Parties agree the form of the Remedial Plan the Maintainer shall implement such plan and comply with its terms.
- 33.4.3 If any breach specified in a Remedy Notice served under Clause 33.3.2 is not remedied:
 - (A) before the expiry of the period referred to in Clause 33.3.2 (if applicable); or
 - (B) where the Maintainer puts forward a Remedial Plan (which has been accepted or been deemed to be accepted by the Purchaser pursuant to this Clause 33.4), in accordance with that Remedial Plan, or the Maintainer otherwise fails to comply with the terms of the Remedial Plan,

then the Purchaser may exercise its rights under Clause 33.3.2 as if the Maintainer Event of Default not capable of remedy.

33.5 Consequences of Termination or Expiry

- 33.5.1 Where the Purchaser has served a Purchaser Termination Notice in accordance with Clause 33.3.2 (and, where relevant, the Maintainer Event of Default has not been or is not being remedied pursuant to Clause 33.3.3 or is not the subject of an extent Remedial Plan) or on expiry of this Agreement (whichever is the earlier) or where this Agreement terminates pursuant to Clause 42.6, the Maintainer shall, in relation to each Fleet:
 - (A) if requested by the Purchaser prepare in a form satisfactory to the Purchaser and implement a Handback Plan;

- (B) no later than twenty (20) Working Days following the date of the notice served by the Purchaser provide the Purchaser with the information specified in Schedule 13 (Handback);
- (C) co-operate with the Purchaser and any replacement contractor appointed by the Purchaser and comply with any reasonable request made by the Purchaser, and co-operate to minimise the disruption caused to the Purchaser's and the Operator's business due to the termination of this Agreement;
- (D) make the relevant Maintainer's employees available to attend such meetings with the Purchaser and/or any replacement contractor appointed by the Purchaser;
- (E) pay to the Purchaser all outstanding and accrued amounts, including any Deductions accrued but not deducted from any Service Payment payable under this Agreement;
- (F) comply with the requirements of Schedule 13 (Handback) and Schedule 9 (Maintenance Facility Obligations) and where required to hand back any asset under this Agreement, transfer title to it to the Purchaser;
- (G) the Maintainer shall continue to perform the Services and meet its obligations under this Agreement until the date upon which the termination of this Agreement becomes effective;
- (H) the Maintainer shall extend to the Purchaser the benefit of any then subsisting guarantee, condition or warranty which may have been given to the Maintainer or which is implied by law in favour of the Maintainer in respect of the Services provided by the Maintainer for the Duration if a corresponding guarantee, condition or warranty has not been provided by the Maintainer to the Purchaser under this Agreement and to the extent that the Maintainer can extend such benefit without losing access to the same benefit; and
- (I) the Purchaser shall be entitled to enter the premises of the Maintainer and any Carriage Servicing Depot or premises referred to in a Landlord Waiver pursuant to Clause 7 and take possession of the Units and the TSA Equipment and take the benefit of any Services part performed on such Units and/or TSA Equipment.

33.5.2 Subject to any rights of the Purchaser under Clauses 22 and 50 on termination of this Agreement pursuant to and in accordance with Clause 33.3 the Purchaser shall pay to the Maintainer all amounts due and outstanding under this Agreement in respect of obligations performed in respect of each Fleet prior to the termination of this Agreement becoming effective and subject to and without prejudice to any prior written claims served on the Purchaser in respect of rights accrued, the Maintainer shall not be entitled to any other payment, compensation or relief or make any claim whatsoever against the Purchaser.

33.6 Procedures in relation to Termination for a Purchaser Event of Default

If a Purchaser Event of Default occurs, the Maintainer may deliver to the Purchaser a notice (a "**Purchaser Default Notice**") specifying the Purchaser Event of Default which has occurred and the Maintainer may, subject to Clause 33.7 terminate this Agreement by notice in writing to the Purchaser, such termination to have immediate effect or to be effective on such later date as is specified in the Purchaser Default Notice. If, following service of a Purchaser Default Notice but prior to termination of this Agreement by the Maintainer, the relevant Purchaser Event of Default is remedied, then the applicable Purchaser Default Notice will be deemed to have been withdrawn and will no longer be outstanding.

33.7 Consequences of Termination for Purchaser Event of Default

33.7.1 Where the Maintainer has served a Purchaser Default Notice on the Purchaser pursuant to Clause 33.6 the Maintainer shall in relation to each Fleet:

- (A) if requested by the Purchaser prepare in a form satisfactory to the Purchaser and implement a Handback Plan;
- (B) co-operate with the Purchaser and any replacement contractor appointed by the Purchaser and comply with any reasonable request made by the Purchaser;
- (C) make the relevant Maintainer's employees available to attend such meetings with the Purchaser and/or any replacement contractor appointed by the Purchaser;
- (D) pay to the Purchaser all outstanding and accrued amounts, including any Deductions accrued but not deducted from any Service Payment payable under this Agreement;
- (E) deliver and where required under this Agreement transfer to the Purchaser title to the Units, the TSA Equipment and all related Service Records and Manuals in each case in compliance with the relevant Handback Condition and the provisions of this Agreement;
- (F) continue to perform the Services and meet its obligations under this Agreement until the date upon which the termination of this Agreement becomes effective;
- (G) co-operate with the Purchaser and the Operator to minimise the disruption caused to the Purchaser's and the Operator's business due to the termination of this Agreement;
- (H) provided that the Purchaser has paid the Maintainer the amounts specified in Clause 33.7.2(A):
 - (1) no later than twenty (20) Working Days following the date of notice served by the Purchaser provide the Purchaser with the information specified in Schedule 13 (Handback); and
 - (2) comply with its obligations under the provisions of Clauses [*] which provisions shall be deemed to apply to a termination of this Agreement pursuant to Clause 33.2 and deemed to survive such termination; and

(I) comply with the requirements of Schedule 13 (Handback) and Schedule 9 (Maintenance Facility Obligations),

and

(J) the Purchaser shall be entitled to enter the premises of the Maintainer and any Carriage Servicing Depot and any premises referred to in a Landlord Waiver pursuant to Clause 7 and take possession of the Units and the TSA Equipment and (provided that the Purchaser has paid the Maintainer the amounts specified in Clause 33.7.2(A)) take the benefit of any Services part performed on such Units and/or TSA Equipment.

33.7.2 If this Agreement is terminated pursuant to Clause 33.3, the Purchaser will, subject to Clause 21 and 33.8, pay the Maintainer:

(A)

(B)

(C)

in full compensation for Losses incurred by the Maintainer as a result of such termination and the Maintainer shall not be entitled to any other payment compensation or relief or to make any claim whatsoever against the Purchaser save where expressly provided in this Agreement.

33.8 Service Loss Indemnity

33.8.1 The Maintainer shall indemnify each of the Indemnified Parties on demand against any Services Losses incurred in connection with the occurrence of a Maintainer Event of Default and/or any consequent termination in whole or in part of this Agreement resulting from such Maintainer Event of Default.

33.8.2 Notwithstanding any other provision of this Agreement, the Maintainer's total liability to the Purchaser for the termination of this Agreement shall not exceed an amount equivalent to [REDACTED] per cent. of the aggregate of the annual Service Payments (assuming that termination of this Agreement had not occurred) for the period commencing on the date of termination of this Agreement and ending on the next Review Date.

34. NOT USED

35. SURVIVAL OF CLAUSES

35.1 Effect of Expiry or Cessation or Termination

35.1.1 Subject to Clauses 35.1.2 and 35.2, the rights and obligations of the Parties under this Agreement shall cease:

- (A) upon expiry or termination of this Agreement for any reason; or
- (B) with effect on and from a Cessation Date insofar as they relate to the requirements of Schedule 1 (Maintenance Window Plan and Train Plan Parameters) and Schedule 2 (Maintenance and Cleaning Services) and to the extent that they relate solely to the obligations in and provisions of Schedule 1 (Maintenance Window Plan and Train Plan Parameters) and Schedule 2 (Maintenance and Cleaning Services) any other connected, related or derivative rights and obligations set out elsewhere in this Agreement whether or not those other provisions refer specifically to the requirements of Schedules 2 (Maintenance and Cleaning Services).

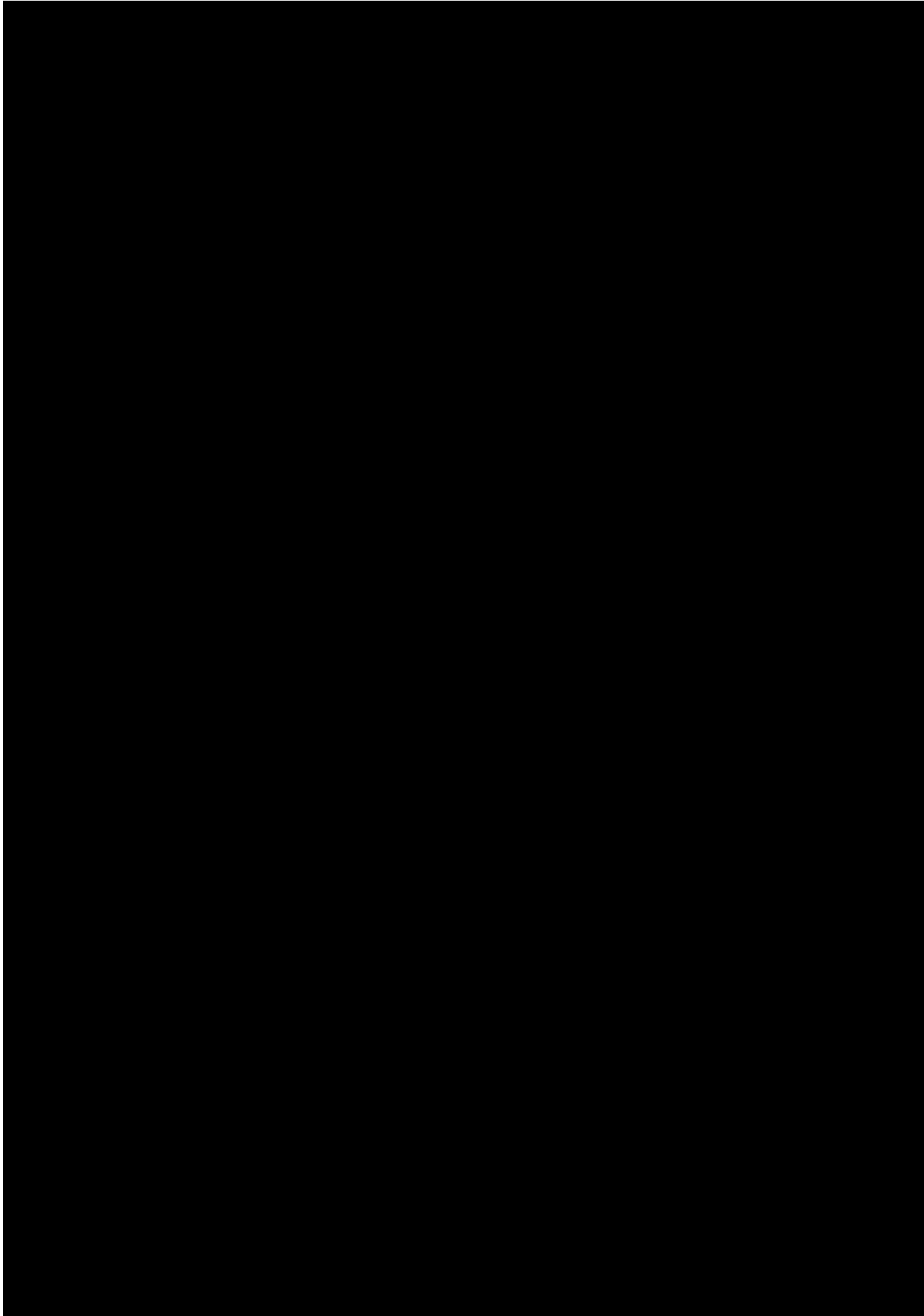
35.1.2 The operation of Clause 35.1.1:

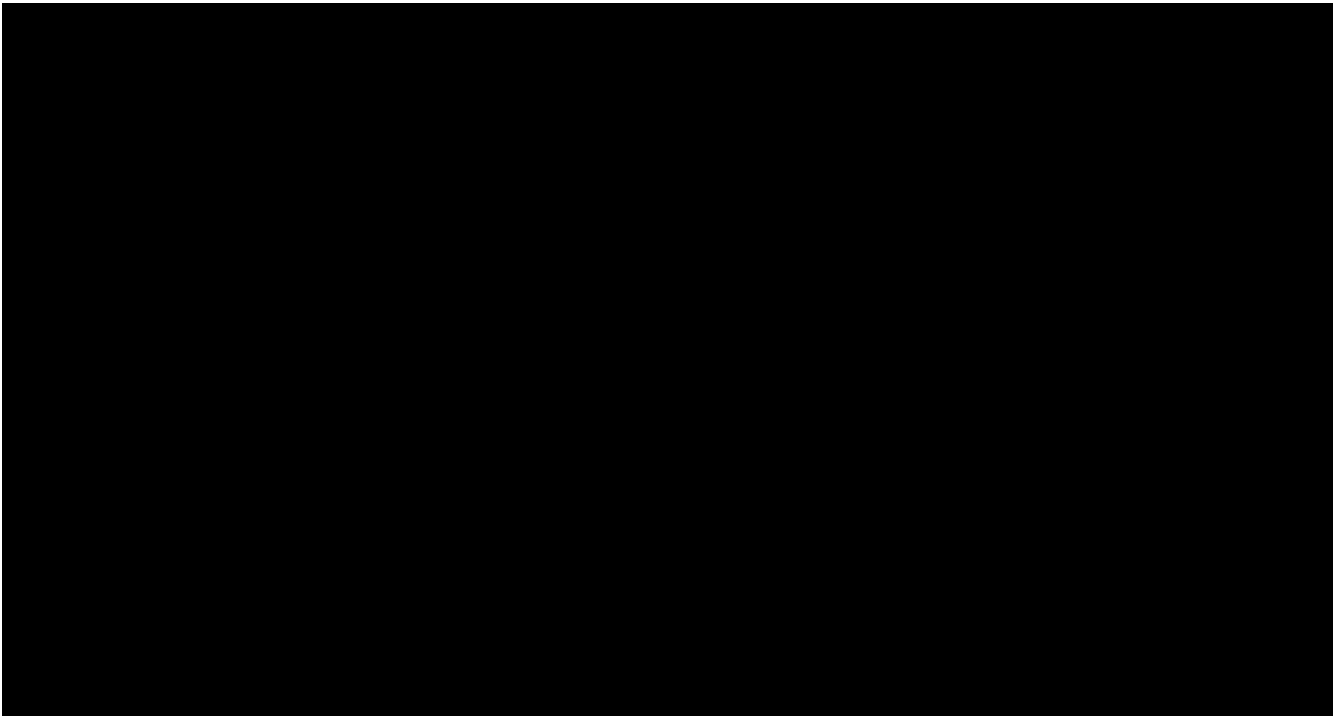
- (A) shall be without prejudice to any rights or obligations which shall have accrued or become due prior to the date of termination or expiry or a Cessation Date;
- (B) shall not prejudice the rights or remedies which any Party may have in respect of any breach of the terms of this Agreement prior to the date of termination or expiry or a Cessation Date;
- (C) shall not affect any rights and obligations which are expressed to continue in accordance with the terms of this Agreement;
- (D) shall not affect any other rights and obligations which give effect to the termination or expiry of this Agreement or to the consequences of such termination or expiry or which otherwise apply (expressly or impliedly) on or after such termination or expiry; and
- (E) shall not affect any other rights and obligations which give effect to Clause 28 or to the consequences of the Cessation of the requirements set out in Schedule 2 (Maintenance Cleaning Services) and/or 3 (Performance Regime) or which otherwise apply (expressly or impliedly) in on or after a Cessation Date).

35.2 Survival of Clauses

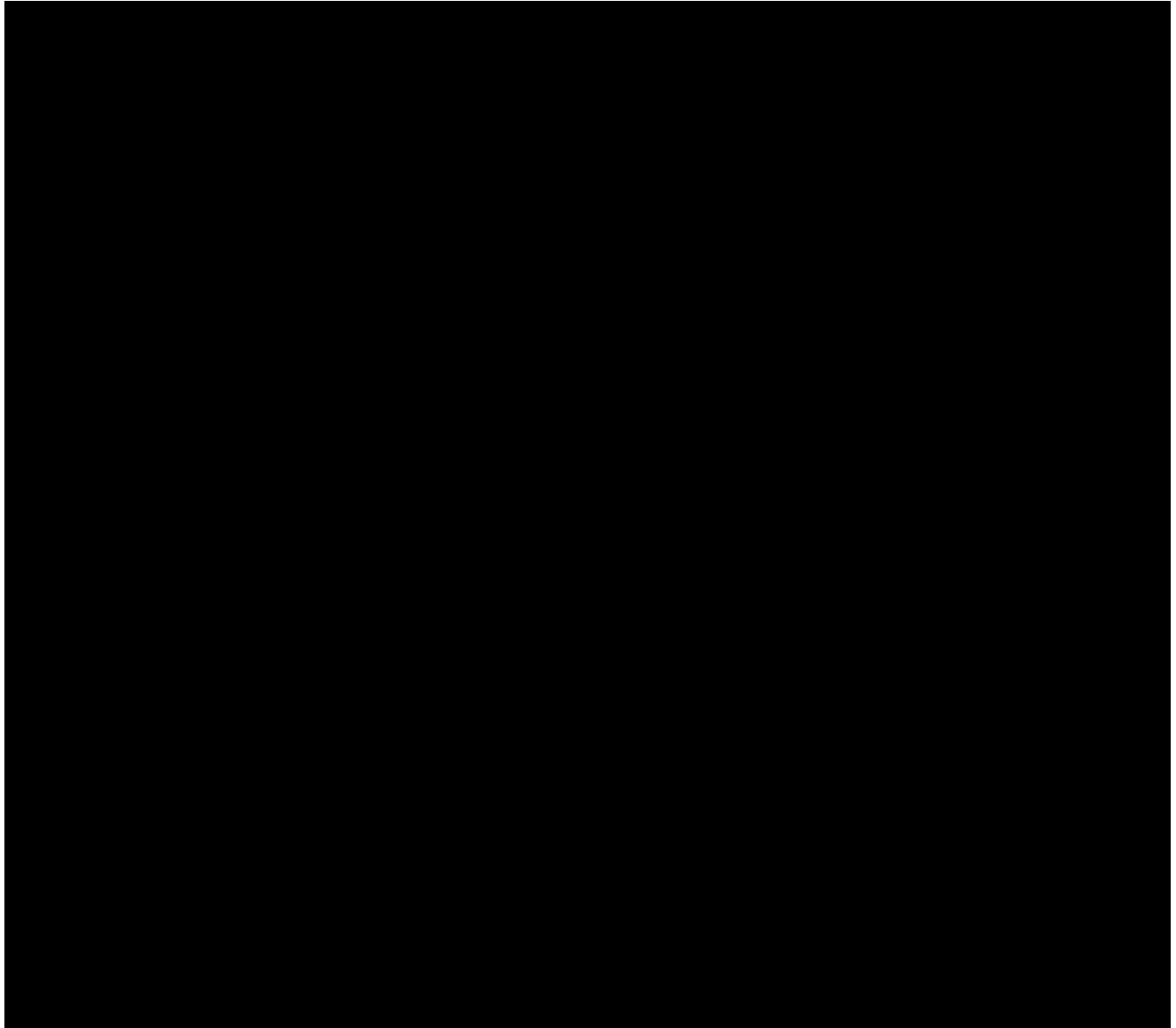
The provisions of Clauses 1, 3, 14.1.3, 14.2, 16, 17, 19.6, 35, 37, 39, 40, 41, 43, 44, 45, 46, 47, 48, 49, 50, 51, 53, 54, 55 and 57 and the provisions of Schedule 9, paragraph 3 of Schedule 13, Schedule 15 and Schedule 21 shall remain in full force and effect following the termination or expiry of this Agreement.

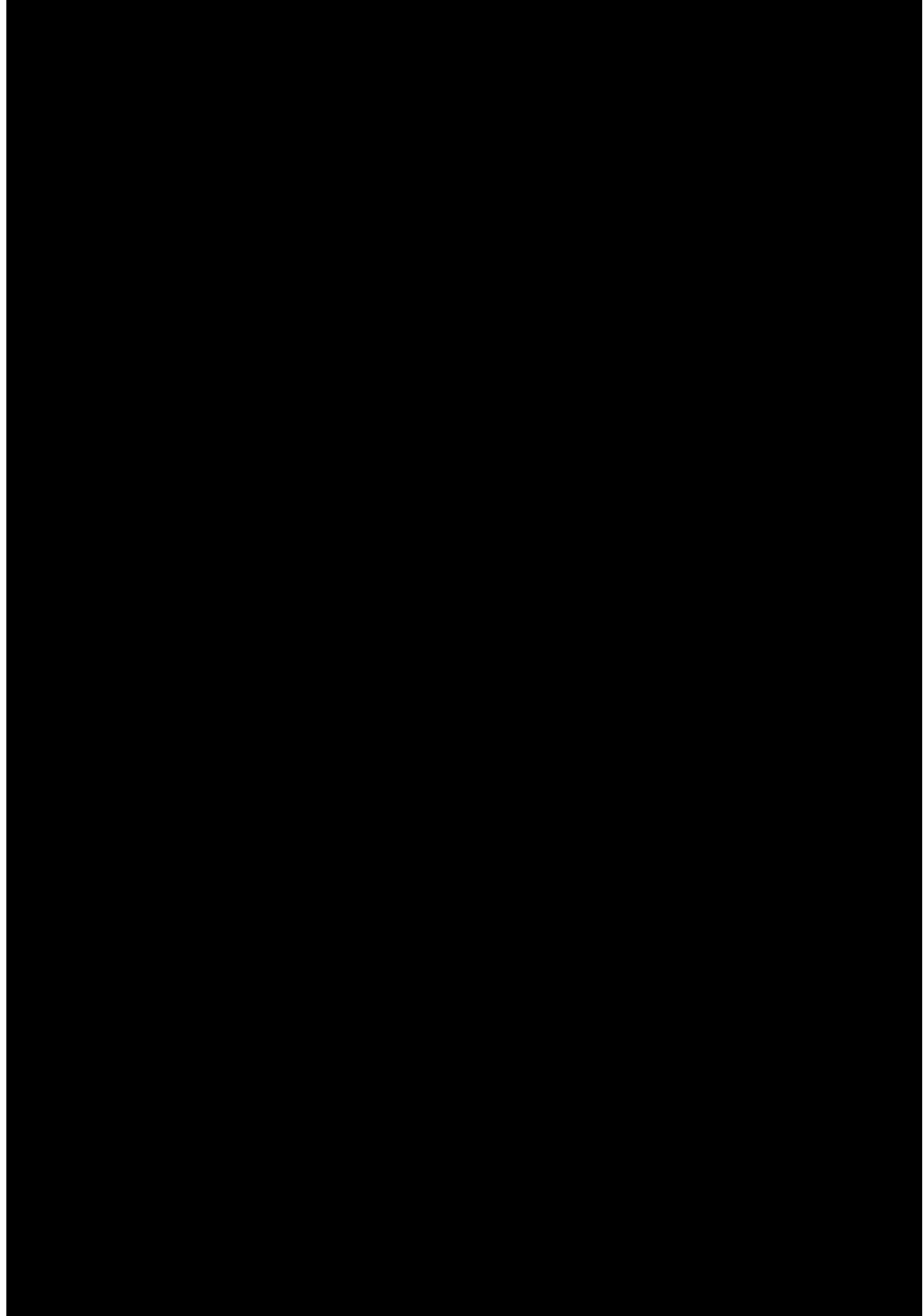
36. INDEMNITIES





37. LIMITATIONS ON LIABILITY





38. GUARANTEE

The performance of the Maintainer Obligations under this Agreement shall be guaranteed by the Guarantor pursuant to the Guarantee.

39. CONFIDENTIALITY

39.1 Obligations of Confidentiality

Subject to Clause 39.2 the contents of this Agreement and any documents referred to in this Agreement and any information whether written or oral, provided by the Purchaser to the Maintainer or by the Maintainer to the Purchaser in connection with this Agreement shall be treated by the Maintainer and the Purchaser as confidential ("**Confidential Information**"). Neither the Purchaser nor the Maintainer shall (and the Maintainer shall procure that its officers, employees, advisers and agents and the officers, employees, advisers and agents of its Subcontractors do not) without the prior written consent of the other Party or by failure to exercise due care or otherwise by any act or omission:

- 39.1.1 disclose Confidential Information to any person whomsoever;
- 39.1.2 use or exploit Confidential Information commercially for its or their own purposes; or
- 39.1.3 use Confidential Information otherwise than for the purpose for which it was provided.

39.2 Permitted Disclosure

This Clause 39 shall not preclude the Purchaser from disclosing Confidential Information:

- 39.2.1 in accordance with any requirement under any Applicable Law to do so;
- 39.2.2 to their respective professional advisers and auditors who are bound to such Party by a duty of confidentiality which applies to any information disclosed;
- 39.2.3 for the purposes of exercising its obligations under the Manufacture and Supply Agreement or to the Manufacturer (or its successors and/or assigns);
- 39.2.4 to any banks and financial institutions providing finance, or advising on or envisaging the provision of finance for any purpose in connection with this Agreement;
- 39.2.5 to Network Rail or any Competent Authority;
- 39.2.6 to the Mayor of London and/or the Greater London Authority;
- 39.2.7 to any member of the TfL Group, the Main Works Contractor, Tube Lines Limited, Metronet Rail SSL Limited or Metronet Rail BCV Limited or any other PPP Company (together the "**PPP Contractors**") provided that no information relating to payment under the MSA or the TSA is contained in such disclosure;
- 39.2.8 to CityLink Telecommunications Limited, EDF Energy Powerlink Limited or Transaction Systems Limited or their respective successors and/or assigns (together the "**PFI Contractors**") provided that no information relating to payment under the MSA or the TSA is contained in such disclosure;

- 39.2.9 to any replacement contractor appointed by the Purchaser and their professional advisers;
- 39.2.10 to the extent that the relevant Confidential Information is in the public domain otherwise than by breach of this Agreement by the Purchaser;
- 39.2.11 which was made available to the disclosing Party on a non-confidential basis;
- 39.2.12 which is required in connection with a disposition or other transfer of rights permitted in accordance with this Agreement;
- 39.2.13 which is required by law or by order of a Court of a competent jurisdiction (but only to the extent required by such law or order) to be disclosed in connection with any Dispute, litigation or other dispute resolution procedure;
- 39.2.14 to any replacement contractor appointed by the Purchaser and its professional advisers provided that no information relating to payment under the MSA or the TSA is contained in such disclosure;
- 39.2.15 which is required to be disclosed under the Rules of the London Stock Exchange or the rules of any other recognised investment exchange in force from time to time; and
- 39.2.16 to an Operator, any person participating in a tender to appoint the Operator, the financier of an Operator (if not the Purchaser) or the Owner (if not the Purchaser),

nor shall it preclude the Maintainer subject to Clause 39.2A from disclosing Confidential Information for the purposes set out in Clauses 39.2.1, 39.2.2, 39.2.3, 39.2.4 or 39.2.5.

39.2A If the Purchaser notifies in writing or otherwise indicates to the Maintainer that any Confidential Information is connected with a PFI Contractor and/or PPP Contractor, the Maintainer shall not be permitted to disclose such Confidential Information without the Purchaser's written consent.

39.3 Confidentiality Undertaking

Where disclosure is permitted under Clause 39.2, other than Clauses 39.2.1, 39.2.9, 39.2.10, and 39.2.13, the Party disclosing the Confidential Information shall procure that the recipient of the Confidential Information shall be subject to the same obligation of confidentiality as that contained in this Agreement.

39.4 Prior Notice of Disclosure

If a Party becomes required in circumstances contemplated by Clauses 39.2.1 to 39.2.6 to disclose any Confidential Information, such Party shall give to the other Party as much notice as is practical in the circumstances of such disclosure and shall co-operate with the other Party, having due regard to the other Party's views, and take such steps as the other Party may reasonably require in order to enable it to mitigate the effect of, or avoid the requirements for, any such disclosure. Where the disclosing Party giving notice is the Purchaser, it shall only be obliged to give notice to co-operate with, have due regard to the views of, and take steps as reasonably required by the Maintainer.

39.5 **Standard of Care**

In fulfilling its obligations under this Clause 39, each Party shall be required to use the same degree of care to prevent unauthorised disclosure of such Confidential Information as it would use to prevent the disclosure of its own commercial and financial information of the same or similar nature and which it considers proprietary or confidential.

39.6 **Announcements**

The Maintainer shall not (and shall procure that each Subcontractor does not) without the consent of the Purchaser (such consent not to be unreasonably withheld or delayed) advertise or otherwise disclose or give any publicity in any form to any matter relating to this Agreement or announce or disclose their involvement in the servicing, cleaning, maintaining, supporting, repairing, reinstatement and replacing of the Units or the performance of any other Maintainer Obligations.

39.7 **Reputation**

The Maintainer shall not knowingly do or omit to do anything in relation to this Agreement which may bring the standing or reputation of the Purchaser into disrepute or otherwise attract adverse publicity in relation to the Purchaser.

40. **FREEDOM OF INFORMATION ACT**

40.1 **Freedom of Information Act Definitions**

For the purposes of this Agreement:

- 40.1.1 **"FOI Legislation"** means the Freedom of Information Act 2000, all regulations made under it and 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, or the Department for Environment Food and Rural Affairs (including in each case its successors) in relation to such legislation;
- 40.1.2 **"Purchaser Information"** means information recorded in any form held by the Purchaser or by the Maintainer on behalf of the Purchaser; and
- 40.1.3 **"Purchaser Information Request"** means a request for any Purchaser Information under the FOI Legislation.

40.2 **Acknowledgement of Application of Act to the Purchaser**

The Maintainer acknowledges and agrees that the Purchaser:

- 40.2.1 is subject to the FOI Legislation and agrees to assist and co-operate with the Purchaser to enable the Purchaser to comply with its obligations under the FOI Legislation, including providing to the Purchaser all information it may reasonably request; and
- 40.2.2 may be obliged under the FOI Legislation to disclose Purchaser Information without consulting or obtaining consent from the Maintainer.

40.3 **Maintainer Freedom of Information Act Obligations**

Without prejudice to the generality of this Clause 40, the Maintainer shall:

- 40.3.1 transfer to such person as may be notified by the Purchaser to the Maintainer each Purchaser Information Request relevant to this Agreement, as soon as practicable and in any event within two (2) days of receiving such Purchaser Information Request; and
- 40.3.2 in relation to Purchaser Information held by the Maintainer on behalf of the Purchaser, provide the Purchaser with details about and/or copies of all such Purchaser Information that the Purchaser requests and such details and/or copies shall be provided within 5 days of a request from the Purchaser (or such other period as the Purchaser may reasonably specify), and in such forms as the Purchaser may reasonably specify.

40.4 **Confidential Information and Purchaser Information Requests**

The Purchaser shall be responsible for determining whether Purchaser Information is exempt information under the FOI Legislation and for determining what Purchaser Information will be disclosed in response to a Purchaser Information Request in accordance with the FOI Legislation, save that, where any Purchaser Information Request relates to Confidential Information disclosed by the Maintainer under this Agreement, the Purchaser shall, where practicable, in advance of making any disclosure under the FOI Legislation, acting reasonably, take due account of all reasonable representations by the Maintainer that such Confidential Information is exempt information. The Maintainer shall not itself respond to any person making a Purchaser Information Request, save to acknowledge receipt, unless authorised in writing to do so by the Purchaser.

41. **DISPUTE RESOLUTION**

41.1 **Dispute Resolution**

If any Dispute should arise under this Agreement, the Parties shall refer the Dispute by an Escalation Notice to the Escalation Procedure at Part A of Schedule 15 (Dispute Resolution Procedure).

42. **PROHIBITED ACTS**

42.1 **Prohibited Act**

Neither the Maintainer nor any person acting on its behalf (including employees of the Maintainer or those employed within the Maintainer's Group) shall commit a Prohibited Act. The expression "**Prohibited Act**" means:

- 42.1.1 offering, giving or agreeing to give to any of the personnel of the Purchaser, TfL and/or a member of the TfL Group, or any other person any gift or consideration of any kind as an inducement or reward for doing, or not doing, or for having done or not having done any act in relation to the obtaining or performance of this Agreement or any other contract with the Purchaser, TfL and/or a member of the TfL Group, or for showing or not showing favour or disfavour to any person in relation to this Agreement, or any other contract with the Purchaser;

42.1.2 entering into this Agreement (or any other contract with the Purchaser, TfL and/or a member of the TfL Group) in connection with which commission has been paid or agreed to be paid by it or on its behalf or to its knowledge unless before this Agreement was entered into particulars of any such commission and of the terms and conditions of any contract for the payment thereof have been disclosed in writing to the Purchaser;

42.1.3 committing any offence:

(A) under the Prevention of Corruption Acts 1889 – 1916;

(B) under any Applicable Laws creating offences in respect of fraudulent acts;

(C) at common law in respect of fraudulent acts in relation to this Agreement or any other contract with the Purchaser; or

42.1.4 defrauding or attempting to defraud or conspiring to defraud the Purchaser, TfL or any other member of the TfL Group.

42.2 **Audit**

The Purchaser shall have the right to audit the Maintainer's records in order to monitor compliance with Clause 42.1 until the termination or expiry of this Agreement whichever is earlier and for three (3) years thereafter.

42.3 **Maintainer Warranty**

The Maintainer represents and warrants that in entering into this Agreement it has not committed any Prohibited Act.

42.4 **Associated Companies and Subcontractors**

The Maintainer shall use its best endeavours to procure that neither any member of the Maintainer's Group nor any Subcontractor of the Maintainer shall commit any Prohibited Act.

42.5 **Permitted payments**

42.5.1 Nothing in this Clause 42 shall prevent the Maintainer from paying any proper commission or bonus to its officers, employees, contractors or agents pursuant to the terms of their employment or engagement.

42.5.2 Nothing in this Clause 42 shall prevent any Subcontractor from paying any proper commission or bonus to its officers, employees, contractors or agents pursuant to the terms of their employment or engagement.

42.6 **Termination for Prohibited Act**

42.6.1 If the Maintainer or any Subcontractor (or anyone employed by or acting on behalf of any of them) or any of its or their agents or contractors commits any Prohibited Act, then the Purchaser shall be entitled to act in accordance with Clauses 42.6.2 to 42.6.6 below.

- 42.6.2 If a Prohibited Act is committed by the Maintainer or by an employee not acting independently of the Maintainer, then the Purchaser may immediately terminate the Agreement by giving notice to the Maintainer.
- 42.6.3 If the Prohibited Act is committed by an employee of the Maintainer acting independently of the Maintainer, then the Purchaser may give notice to the Maintainer of termination and this Agreement will immediately terminate, unless within (30) days of receipt of such notice the Maintainer terminates the employee's employment and (if necessary) procures the performance by another person of such part of the work carried out by that employee.
- 42.6.4 If the Prohibited Act is committed by a Subcontractor or by an employee of that Subcontractor not acting independently of that Subcontractor, then the Purchaser may give notice to the Maintainer of termination and this Agreement will immediately terminate, unless within thirty (30) days of receipt of such notice the Maintainer terminates the relevant Subcontract and procures the performance by another person of such part of the work carried out by that Subcontractor.
- 42.6.5 If the Prohibited Act is committed by an employee of a Subcontractor acting independently of that Subcontractor, then the Purchaser may give notice to the Maintainer of termination and this Agreement will immediately terminate, unless within thirty (30) days of receipt of such notice the Subcontractor terminates the employee's employment and (if necessary) procures the performance by another person of such part of the work carried out by that employee.
- 42.6.6 If the Prohibited Act is committed by any other person not specified in Clauses 42.6.2 to 42.6.5 above, then the Purchaser may give notice to the Maintainer of termination and the Agreement will immediately terminate, unless within thirty (30) days of receipt of such notice, the Maintainer procures the termination of such person's employment and of the appointment of their employer (where not employed by the Maintainer or the Subcontractor) and (if necessary) procures the performance by another person of such part of the work carried out by that person.
- 42.6.7 Any notice of termination under this Clause 42.6 shall specify:
- (A) the nature of the Prohibited Act;
 - (B) the identity of the party whom the Purchaser believes has committed the Prohibited Act; and
 - (C) the date on which the Agreement will terminate, in accordance with the applicable provision of this Clause.
- 42.6.8 The Purchaser shall exercise any rights arising out of this Clause 42.6 in a manner that is proportionate to the events that have occurred with regard to their effects on the Purchaser's confidence in the business integrity of its relationship with the Maintainer.

43. ASSIGNMENT OR TRANSFER BY THE MAINTAINER

The Maintainer shall not assign (whether absolutely or by way of security and whether in whole or in part), transfer, mortgage, charge, declare itself a trustee for a third party of, or

otherwise dispose of (in any manner whatsoever) its rights and/or obligations under this Agreement:

- 43.1 to any member of the Maintainer's Group unless the Guarantor has, to the reasonable satisfaction of the Purchaser, provided a guarantee in the form of the Guarantee in respect of the assignee's obligations; or
 - 43.2 to any other person without the prior written consent of the Purchaser (acting in its absolute discretion) such consent not to be unreasonably withheld or delayed,
- and any purported dealing in contravention of this Clause 43 shall be ineffective.

44. ASSIGNMENT AND NOVATION OR GRANTING OF SECURITY BY THE PURCHASER

44.1 Transfers to Third Parties

Subject to Clause 44.2, the Purchaser shall not assign (whether absolutely or by way of security and whether in whole or in part), transfer, mortgage, charge, declare itself a trustee for a third party of, or otherwise dispose of its rights and/or obligations under this Agreement without the prior written consent of the Maintainer such consent not to be unreasonably withheld or delayed and any purported dealing in contravention of this Clause 44 shall be ineffective.

44.2 Permitted Transfers

44.2.1 The Purchaser shall be entitled without the consent of the Maintainer to:

- (A) assign (whether absolutely or by way of security and whether in whole or in part), transfer, novate, mortgage, charge or otherwise dispose of its rights and/or obligations under this Agreement to any member of the TfL Group; or
- (B) assign (whether absolutely or by way of security and whether in whole or in part), transfer, novate, mortgage, charge or otherwise dispose of any or all of its rights and/or obligations under this Agreement (including its payment obligations) to a third party, provided that such third party is a Suitable Lessor; or
- (C) the Purchaser shall be entitled, subject to the Maintainer giving its consent (such consent not to be unreasonably withheld or delayed) to assign (whether absolutely or by way of security and whether in whole or in part), transfer, mortgage, charge or otherwise dispose of its rights and/or obligations to a third party for the purposes of financing its obligations under this Agreement provided that it retains its payment obligations under this Agreement.

44.3 Implementation of Transfers

44.3.1 If the Purchaser wishes to deal with its rights and/or obligations in this Agreement (either in whole or in part) pursuant and subject to Clauses 44.1 or 44.2, the Maintainer shall execute such documents and do such other things as the Purchaser may reasonably request in order to facilitate and perfect such dealing.

44.3.2 The Purchaser shall indemnify the Maintainer on an after tax basis against any costs, expenses and liabilities it would not have incurred but for an assignment charge or other dealing in accordance with Clause 44.1 or 44.2.

44.3.3 The Maintainer shall indemnify the Purchaser on an after tax basis against any costs, expenses and liabilities it would not have incurred but for an assignment, charge or other dealing in accordance with (and to the extent permitted under) Clause 43.

45. NOTICES

45.1 Form of Communications

A notice (including any approval, consent or other communication) in connection with this Agreement:

45.1.1 must be in writing; and

45.1.2 must be left at the address of the addressee or sent by pre-paid first class post (airmail if posted to or from a place outside the United Kingdom) to the address of the addressee or sent by facsimile to the facsimile number of the addressee in each case which is specified in this Clause 45.1.2 in relation to the Party to whom the notice is addressed, and marked for the attention of the person so specified, or to such other address or facsimile number in England or Wales, and/or marked for the attention of such other person as the relevant Party may from time to time specify by notice given in accordance with this Clause 45.1.2.

The relevant details of each Party at the date of this Agreement are:

Purchaser

Address: Transport for London
15 Bonhill Street
London
EC2A 4DN

Facsimile: [REDACTED]

Attention: Rolling Stock Project Manager (currently [REDACTED] at the date of this Agreement)

Maintainer

Address: Bombardier Transportation UK Limited
Litchurch Lane
Derby
Derbyshire
DE24 8AD

Facsimile: [REDACTED]

Attention: The Company Secretary

45.2 Time of Receipt

Each such communication shall, unless otherwise shown, be deemed to have been received:

- 45.2.1 if personally delivered, at the time of delivery;
- 45.2.2 if sent by first class post, on the third Working Day following the date on which it was posted or, if posted to or from a place outside the United Kingdom, the seventh Working Day after posting; and
- 45.2.3 in the case of a facsimile, on production of a transmission report from the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient.

45.3 Receipt on a Non-Working Day

A notice received or deemed to be received in accordance with Clause 45.2 above on a day which is not a Working Day or after 5.00 p.m. on a Working Day according to local time in the place of receipt, shall be deemed to be received on the next following Working Day.

45.4 Change of Address

Each Party undertakes to notify immediately the other Party by notice served in accordance with this Clause 45 if the address specified herein is no longer an appropriate address for the service of notice.

46. ENTIRE AGREEMENT

46.1 Whole Agreement

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

46.2 Non Reliance

Each Party acknowledges and agrees that:

- 46.2.1 in entering into this Agreement it has not relied on any representation, warranty, assurance, covenant, indemnity, undertaking or commitment which is not expressly set out or referred to in this Agreement or any other documents referred to in this Agreement; and
- 46.2.2 neither Party has any other right or remedy in respect of the matters set out in Clause 46.2.1 (whether by way of a claim for contribution or otherwise) in tort (including negligence) or for misrepresentation (whether negligent or otherwise, and whether made prior to, and/or in, this Agreement) save for any liability for fraudulent misrepresentation or fraudulent misstatement.

47. RIGHTS CUMULATIVE WITH THOSE AT LAW

47.1 Rights Cumulative

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

47.2 Equitable Remedies

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

48. FURTHER ASSURANCE

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

49. SET-OFF

The Purchaser shall be entitled to withhold from any sum or sums expressed in this Agreement to be payable by it to the Maintainer, any amounts due or expressed to be due by the Maintainer to the Purchaser. Any payment payable by the Maintainer under this Agreement shall be made in full without any set-off or counterclaim howsoever arising and shall be free and clear of, and without deduction of, or withholding for or on account of, any amount which is due and payable to the Maintainer under this Agreement.

50. NO WAIVER

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

51. SEVERANCE

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

52. COSTS

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

53. LANGUAGE

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

54. CURRENCY AND EXCHANGE RATE

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

55. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

With the exception of the right of:

- 55.1 LUL and any member of the TfL Group that lets the concession;
- 55.2 any Operator;
- 55.3 any person expressly stated to be indemnified by a Party; or
- 55.4 the Owner (where it is not the Purchaser),

to enforce any term of this Agreement which either expressly or by implication confers any benefit upon such person, no term of this Agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a signatory to this Agreement. The Parties to this Agreement may in accordance with Schedule 10 (Variation Procedure) rescind or vary any term of this Agreement without the consent of the persons identified in Clauses 55.1, 55.2, 55.3 and 55.4.

56. COUNTERPARTS

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

57. GOVERNING LAW AND JURISDICTION

57.1 Governing Law

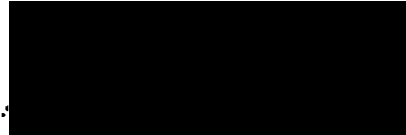
This Agreement shall be governed by, and construed in accordance with, English law.

57.2 Exclusive Jurisdiction

Subject to the terms of Clause 41, the English Courts have exclusive jurisdiction in relation to any claim, dispute or difference ("**Proceedings**") concerning this Agreement and any matter arising from it. For these purposes, each Party hereto or thereto irrevocably submits to the jurisdiction of the English Courts.

EXECUTED for and on behalf of)
BOMBARDIER TRANSPORTATION)
UK LIMITED acting)
by a Director and Secretary)
or two Directors

by:



Title: *Director*

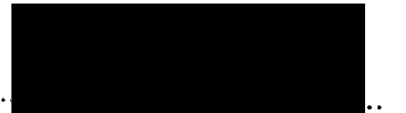
by:



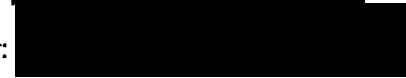
Title: *Director*

EXECUTED for and on behalf of)
TRANSPORT TRADING LIMITED)
acting by)

by:



Director:



TRAIN SERVICES AGREEMENT – SCHEDULE 1

MAINTENANCE WINDOW PLAN / TRAIN PLAN PARAMETERS

1. EAST LONDON RAILWAY

All times in section 1 (East London Railway) of this Schedule are based on the May 2006 feasibility timetable timings.

The tables in section 1.1 show the times in the feasibility timetable at which :

(a) Units are scheduled to arrive at the berths in the sidings at New Cross Gate Carriage Servicing Depot (the Exit Times).

(b) Units are scheduled to depart from the berths in the New Cross Gate Carriage Servicing Depot (the Entry Times).

Section 1.2 describes the effects on the arrival / departure times in section 1.1 which would arise from the adoption of “LUL hours” on East London Railway services.

In each case of a Unit arriving at its stabling berth (as listed in section 1.1 and 1.2), the Maintenance Window would commence at the time shown. The Operator shall present the Unit to the Maintainer at a time no later than that which is the time of commencement of the Maintenance Window.

In each case of a Unit leaving its stabling berth (as listed in section 1.1 and 1.2), the Maintenance Window would end at the time shown. The Maintainer shall present the Unit to the Operator at a time no later than that which is the time of the ending of the Maintenance Window.

1.1 East London Railway Scenario 1 - base ELL specification (May 2006 feasibility timetable timings)

Arrivals

Arrive Carriage Servicing Depot ("CSD") from north (reverse from Up ELL at Canal Jn.) - 7 days/week

Diagram no.	From	berth in through sidings	Maintenance Window commences
13 and 15	Crystal Palace	00.08	00.23
1	New Cross	00.15	00.30
14 and 16	West Croydon	00.20	00.35
4	New Cross	00.27	00.42
17 and 3	Crystal Palace	00.38	00.53
18 and 2	West Croydon	00.50	01.05
6	Crystal Palace	00.58	01.13
5	West Croydon	01.05	01.20

Arrive CSD from north direct from Down East London - 7 days/week

Diagram no.	From	carriage washing machine	berth in south-facing sidings via headshunt	Maintenance Window commences
7	Dalston Jn.	00.22/24	00.30	00.45
8	Dalston Jn.	00.28/30	00.36	00.51
9	Dalston Jn.	00.34/36	00.42	00.57
10	Dalston Jn.	00.40/42	00.48	01.03
11	Dalston Jn.	00.46/48	00.54	01.09
12	Dalston Jn.	00.52/54	01.00	01.15

Departures

Depart CSD northbound via Up ELL - Monday to Saturday

(Sunday depart (and Maintenance Window ends) 90 minutes later)

Diagram no.	depart berth	To	Works	to	Maintenance Window ends
1	05.06	Dalston Jn.	05.31	New Cross	04.51
2	05.10	Dalston Jn.	05.36	West Croydon	04.55
3	05.14	Dalston Jn.	05.41	Crystal Palace	04.59
4	05.18	Dalston Jn.	05.46	New Cross	05.03
5	05.22	Dalston Jn.	05.51	West Croydon	05.07
6	05.26	Dalston Jn.	05.56	Crystal Palace	05.11
7	05.30	Surrey Quays	05.35	Dalston Jn.	05.15
9	05.40	Surrey Quays	05.45	Dalston Jn.	05.25

Depart CSD northbound (Canal Jn. - reverse) via Down ELL - Monday to Saturday

(Sunday depart (and Maintenance Window ends) 90 minutes later)

Diagram no.	depart berth	to	Works	To	Maintenance Window ends
8	05.15	New Cross	05.35	Dalston Jn.	05.00
11	05.30	New Cross	05.50	Dalston Jn.	05.15

Depart CSD southbound via Down ELL - Monday to Saturday

(Sunday depart (and Maintenance Window ends) 90 minutes later)

Diagram no.	depart berth	To	Works	To	Maintenance Window ends
12	05.03	West Croydon	05.33	Dalston Jn.	04.48
10	05.11	Crystal Palace	05.31	Dalston Jn.	04.56
14	05.18	West Croydon	05.48	Dalston Jn.	05.03
13	05.26	Crystal Palace	05.46	Dalston Jn.	05.11
16	05.33	West Croydon	06.03	Dalston Jn.	05.18
15	05.38	Crystal Palace	06.01	Dalston Jn.	05.23
17	05.42	New Cross Gate	05.45	West Croydon	05.27
18	05.47	New Cross Gate	05.50	Crystal Palace	05.32

1.2. East London Railway - Scenario 2 – “LUL Hours”

Arrivals

- CSD arrivals (and start of Maintenance Window) early hours of Monday 30 minutes later than current
- CSD arrivals (and start of Maintenance Window) early hours of Tuesday to Friday one hour later than current
- CSD arrivals (and start of Maintenance Window) early hours of Saturday and Sunday 90 minutes later than current

Departures

- CSD departures (and end of Maintenance Window) Monday to Friday same as current Monday to Saturday
- CSD departures (and end of Maintenance Window) Saturday one hour later than current Monday to Saturday
- CSD departures (and end of Maintenance Window) Sunday same as current Sunday

2. NORTH LONDON RAILWAY

All times in section 2 (North London Railway) of this Schedule are based on the current diagrams.

The tables in section 2.1 show the times at which :

(a) Units are scheduled to arrive at the stabling berth at the overnight locations on the North London Railway (the Exit Times).

(b) Units are scheduled to depart from the stabling berth at the overnight locations on the North London Railway (the Entry Times).

Section 2.2 describes the effects on the arrival / departure times in section 2.1 which would arise from the adoption of "LUL hours" on East London Railway services.

In each case of a Unit arriving at its stabling berth (as listed in section 2.1 and 2.2), the Maintenance Window would commence at the time shown. The Operator shall present the Unit to the Maintainer at a time no later than that which is the time of commencement of the Maintenance Window.

In each case of a Unit leaving its stabling berth (as listed in section 2.1 and 2.2), the Maintenance Window would end at the time shown. The Maintainer shall present the Unit to the Operator at a time no later than that which is the time of the ending of the Maintenance Window.

2.1 North London Railway - Scenario 1 – Current Services

Current Overnight Locations and Arrival / Departure Times

2.1.1 NORTH LONDON RAILWAY				
MONDAY NIGHT - TUESDAY				
MORNING				
TO THURSDAY NIGHT - FRIDAY MORNING				
			Maintenance Window Commences	Maintenance Window Ends
EUSTON*				
Arrivals	20	23	20 38	
	23	35	23 50	
	00	16	00 31	
	00	27	00 42	
	00	36	00 51	
	00	42	00 57	
	00	48	01 03	
Departures	04	57		04 42
	04	57		04 42
	05	27		05 12
	05	35		05 20
	05	42		05 27
	05	51		05 36
	06	33		06 18
STRATFORD				
Arrivals	23	51	00 06	
	00	09	00 24	
Departures	05	42		05 27
	06	07		05 52
WATFORD JN CARR. SIDINGS				
Arrivals	20	49	21 04	
	21	50	22 05	
Departures	05	46		05 31
	06	36		06 21

*Units stabled overnight at Euston currently make a trip to Camden CS to pass through the washing machine during the night (typical duration 35 mins from dep. Euston to return Euston)

(Cont'd)

**2.1.1 NORTH LONDON RAILWAY
 MONDAY NIGHT - TUESDAY
 MORNING
 TO THURSDAY NIGHT - FRIDAY MORNING
 (CONT'D)**

			Maintenance Window Commences	Maintenance Window Ends
WATFORD YARD				
Arrivals	21	02	21 17	
	21	02	21 17	
	22	20	22 35	
Departures	05	26		05 11
	05	48		05 33
	05	57		05 42
WILLESDEN				
Arrivals	18	59	19 14	
	19	48	20 03	
Departures	06	29		06 14
	07	17		07 02
WATFORD JN D.C.				
Arrivals	23	14	23 29	
	23	20	23 35	
	23	44	23 59	
	00	14	00 29	
	00	21	00 36	
	00	46	01 01	
Departures	05	00		04 45
	05	04		04 49
	05	28		05 13
	05	32		05 17
	05	49		05 34
	06	03		05 48

2.1.2 NORTH LONDON RAILWAY FRIDAY NIGHT - SATURDAY MORNING			Maintenance Window Commences	Maintenance Window Ends
EUSTON*				
Arrivals	20	23	20 38	
	23	35	23 50	
	00	16	00 31	
	00	27	00 42	
	00	36	00 51	
	00	42	00 57	
	00	48	01 03	
Departures	04	54		04 39
	04	54		04 39
	05	21		05 06
	05	27		05 12
	06	10		05 55
	06	21		06 06
	09	00		08 45
STRATFORD				
Arrivals	23	51	00 06	
	00	09	00 24	
Departures	06	07		05 52
	06	37		06 22
WATFORD JN CARR. SIDINGS				
Arrivals	20	49	21 04	
	21	50	22 05	
Departures	09	00		08 45
	09	00		08 45
WATFORD YARD				
Arrivals	21	02	21 17	
	22	20	22 35	
Departures	04	56		04 41
	05	45		05 30

*Units stabled overnight at Euston currently make a trip to Camden CS to pass through the washing machine during the night (typical duration 35 mins from dep. Euston to return Euston)

(Cont'd)

2.1.2 NORTH LONDON RAILWAY FRIDAY NIGHT - SATURDAY MORNING (CONT'D)			Maintenance Window Commences	Maintenance Window Ends
WILLESDEN				
Arrivals	18	59	19 14	
	19	48	20 03	
Departures	05	47	06 02	05 32
	06	02	06 17	05 47
WATFORD JN D.C.				
Arrivals	23	14	23 29	
	23	20	23 35	
	23	44	23 59	
	00	14	00 29	
	00	21	00 36	
	00	46	01 01	
Departures	05	01		04 46
	05	31		05 16
	05	49		05 34
	06	01		05 46
	06	21		06 06
	07	21		07 06
RICHMOND				
Arrival	21	02	21 17	
Departure	06	29	06 44	06 14

2.1.3 NORTH LONDON RAILWAY SATURDAY NIGHT - SUNDAY MORNING			Maintenance Window Commences	Maintenance Window Ends
EUSTON*				
Arrivals	18	00	18 15	
	22	02	22 17	
	23	38	23 53	
	00	24	00 39	
	00	27	00 42	
	00	32	00 47	
	00	44	00 59	
	00	49	01 04	
Departures	06	48		06 33
	07	18		07 03
	08	12		07 57
	08	32		08 17
	09	00		08 45
	13	56		13 41
	17	44		17 29
	17	44		17 29
STRATFORD				
Arrivals	23	51	00 06	
	00	04	00 19	
Departures	08	28		08 13
	08	58		08 43
WATFORD JN CARR. SIDINGS				
Arrivals	18	00	18 15	
	18	00	18 15	
Departures	09	00		08 45
	09	00		08 45
				23 45
WATFORD YARD				
Arrivals	22	20	22 35	
Departures	07	52		07 37

*Units stabled overnight at Euston currently make a trip to Camden CS to pass through the washing machine during the night (typical duration 35 mins from dep. Euston to return Euston)

(Cont'd)

2.1.3 NORTH LONDON RAILWAY SATURDAY NIGHT - SUNDAY MORNING (CONT'D)			Maintenance Window Commences	Maintenance Window Ends
WILLESDEN				
Arrivals	19	18	19 33	
	19	48	20 03	19 33
Departures	09	00		08 45
	09	00		08 45
WATFORD JN D.C.				
Arrivals	20	04	20 19	
	23	44	23 59	
	00	14	00 29	
	00	17	00 32	
	00	46	01 01	
	02	38	02 53	
Departures	06	52		06 37
	07	22		07 07
	08	03		07 48
	08	03		07 48
	09	00		08 45
	09	00		08 45
RICHMOND				
Arrival	23	29	23 44	
Departure	09	38		09 23

2.1.4 NORTH LONDON RAILWAY SUNDAY NIGHT - MONDAY MORNING			Maintenance Window Commences	Maintenance Window Ends
EUSTON*				
Arrivals	18	00	18 15	
	23	11	23 26	
	23	17	23 32	
	23	52	00 07	
	00	09	00 24	
	00	13	00 28	
	00	22	00 37	
Departures	04	57		04 42
	04	57		04 42
	05	27		05 12
	05	35		05 20
	05	42		05 27
	05	51		05 36
	06	33		06 18
STRATFORD				
Arrivals	23	50	00 05	
	23	57	00 12	
Departures	05	42		05 27
	06	07		05 52
WATFORD JN CARR. SIDINGS				
Arrivals	18	00	18 15	
	18	00	18 15	
Departures	05	46		05 31
	06	36		06 21
WATFORD YARD				
Arrivals	18	12	18 27	
	18	12	18 27	
	22	55	23 10	22 40
Departures	05	26		05 11
	05	48		05 33
	05	57		05 42

*Units stabled overnight at Euston currently make a trip to Camden CS to pass through the washing machine during the night (typical duration 35 mins from dep. Euston to return Euston)

(Cont'd)

2.1.4 NORTH LONDON RAILWAY SUNDAY NIGHT - MONDAY MORNING (CONT'D)			Maintenance Window Commences	Maintenance Window Ends
WILLESDEN				
Arrivals	18	00	18 15	
	18	00	18 15	
Departures	06	29		06 14
	07	17		07 02
WATFORD JN D.C.				
Arrivals	18	00	18 15	
	18	00	18 15	
	23	33	23 48	
	00	04	00 19	
	00	21	00 36	
	00	33	00 48	
Departures	05	00		04 45
	05	04		04 49
	05	28		05 13
	05	32		05 17
	05	49		05 34
	06	03		05 48

2.2 North London Railway - Scenario 2 – “LUL Hours”

The North London Railway is expected to move towards "LUL hours", with the same type of change from the current North London Railway timings as described for the East London Railway in section 2.

The details of this for North London Railway, and for individual routes within the North London Railway, are not known at this stage.

SCHEDULE 2

Maintenance and Cleaning Services

GLOSSARY

"Additional Services Allowance Period" means one hundred and fifteen (115) hours divided between the number of days in the relevant Railway Period subject to being no more than four (4) hours per day;

"Change" means remove the original part and fit a new or overhauled part or assembly in its place;

"Check" means to compare against a known parameter;

"Clean" means to remove all dirt and deposits;

"Cleaning Standard" means that when assessed against and in accordance with paragraphs 1.1.1, 1.1.2, 1.1.3 and 1.1.4 of Appendix 2 to this Schedule 2, the Unit scores at least eight (8) in respect of each of those paragraphs;

"Cleaning and State of Repair Standard" means that when assessed against and in accordance with the relevant paragraphs in Appendix 2 to this Schedule 2 the Unit scores at least eight (8);

"Failure" has the meaning ascribed to it in Schedule 3;

"Inspect" means to determine conformity to required standards during or after repair;

"Maintainer Aesthetic Inspection" means an internal and external inspection of the Unit by the Maintainer for the purposes of identifying if the Unit is in the Minimum Aesthetic Condition and the work required (if any) to ensure that the Unit achieves and continues to achieve the Minimum Aesthetic Condition;

"Maintainer Aesthetic Exam" means an internal and external examination of the Unit by the Maintainer for the purposes of identifying whether the Cleaning and State of Repair Standard and the work required (if any) in order to ensure that it meets or continues to meet the Cleaning and State of Repair Standard;

"Minimum Aesthetic Condition" means the condition which is at least Fit for Service as defined in Appendix 1 to this Schedule 2;

"Overhaul" means do what is necessary to make an assembly, or sub-assembly reusable i.e. dismantle, strip, clean, examine, fit new parts, repair, re-assemble, test and inspect;

"Record" means put down in writing a finding from examinations, tests, inspections or special checks;

"Rectify" means to set right;

"Refurbish" means to overhaul and enhance an existing assembly by incorporating design improvements;

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

"Test" means to prove correct operation by trial;

"Train Plan Parameters" means the Train Plan Parameters contained in Schedule 1 (Maintenance Window Plan and Train Plan Parameters) to this Agreement.

1. THE SERVICES – GENERAL OBLIGATIONS

1.1 Purpose

This Schedule sets out the Standard Services and the Additional Services to be undertaken by the Maintainer in respect of each of the NLR Fleet and the ELR Fleet (save where an obligation is only applicable to one of those Fleets and expressed as such).

1.2 Services

1.2.1 The Maintainer will provide the following services:

- (A) the Standard Services (as described in Part 2 of this Schedule); and
- (B) the Additional Services (as described in Part 3 of this Schedule),

and comply with the following general obligations as part of those services:

- (1) the Maintainer shall be responsible (except as otherwise expressly provided in this Agreement) for all plant, goods, materials, equipment, road vehicles, support services and all labour (including supervision and management labour) and other resources, whether temporary or permanent in nature, required for the performance of the Maintainer Obligations;
- (2) the Maintainer shall be responsible for train movements within the maintenance facility building (save for the delivery and collection of the Units by the Operator's driver from a berthing location within the maintenance facility building nominated by the Maintainer);
- (3) the Maintainer shall in relation to those ELR Units forming part of the Initial Order make available to the Operator on a daily basis 18 Units for service in accordance with the Operator's diagram requirements and the Train Plan Parameters. The Maintainer further confirms that if any Options are exercised by the Purchaser under the MSA which increase the ELR Fleet to 31 Units in total, it shall make available to the Operator on a daily basis 28 Units for Service in accordance with the Operator's diagram requirements and the Train Plan Parameters;
- (4) The Maintainer shall in relation to those NLR Units forming part of the Initial Order make available to the Operator on a daily basis 22 Units for service in accordance with the Operator's diagram requirements and the Train Plan Parameters. The

Maintainer further confirms that if any Options are exercised by the Purchaser under the MSA which increase the NLR Fleet to 34 Units in total, the Maintainer shall make available to the Operator on a daily basis 31 Units for service in accordance with the Operator's diagram requirements and the Train Plan Parameters;

- (5) the Maintainer will comply with its obligations under Schedule 8 (Joint Safe Working Plan), Schedule 9 (Maintenance Facility Obligations), Schedule 14 (Fault Notification Procedure), Schedule 16 (Preparation, Presentation and Return Procedure), Schedule 17 (In-Service Support Procedure), Schedule 18 (Safety Quality and Environmental Plan) and Schedule 19 (Maintenance Implementation Plan).

1.2.2 The Purchaser will comply with its obligations under Schedule 8 (Joint Safe Working Plan), Schedule 9 (Maintenance Facility Obligations), Schedule 14 (Fault Notification Procedure), Schedule 16 (Preparation, Presentation and Return Procedure) and Schedule 17 (In-Service Support Procedure).

2. THE STANDARD SERVICES

In relation to each Unit, the Maintainer shall carry out all the Standard Services in accordance with this paragraph 2 of this Schedule 2.

2.1 Presentation of Units

2.1.1 The Maintainer shall deliver each Unit to the Operator on a daily basis in accordance with the Maintenance Window Plan, Train Plan Parameters and the Preparation, Presentation and Return Procedure. When presented for service each Unit will:

- (A) subject to Fair Wear and Tear comply in all respects with the Rolling Stock Requirements – Technical and the Technical Description (as defined under the MSA), the Maintenance Plan, the Manuals and associated procedures;
- (B) comply in all respects with all Applicable Laws and applicable Standards, all Relevant Approvals, Relevant Consents, the Safety, Quality and Environmental Plan and the provisions of this Agreement;
- (C) be Fit for Service; and
- (D) be otherwise free from Defects.

2.1.2 A Unit delivered in accordance with paragraph 2.1.1 above shall be "**Available**".

2.2 Collection of Units

2.2.1 The Maintainer shall take delivery of and the Purchaser shall deliver the Units in accordance with the Preparation Presentation and Return Procedure and the Maintenance Window Plan.

2.2.2 Any Entry Time and any Exit Time of any Diagram may be changed in accordance with Clause 24.2 of this Agreement.

2.2.3 The Diagrams may be amended in accordance with Clause 24.2 of this Agreement.

2.3 Maintenance

2.3.1 The Maintainer will maintain each Unit and Vehicle in accordance with:

- (A) the Maintenance Plan;
- (B) the Manuals and any other associated maintenance procedures; and
- (C) this Schedule 2.

2.3.2 The Maintainer shall provide at weekly intervals (or such other intervals as are agreed with the prior written approval of the Purchaser) a programme of Units required for scheduled maintenance.

2.4 Repairs

The Maintainer will undertake any repairs in accordance with the procedures set out in the Manuals for the repair of the Units and Vehicles. All changes to the repair procedures will be subject to approval by the Purchaser in accordance with the ATOC ACOP 01006 *Approved Code of Practice – Inter Company Train Engineering Change Approval Process*.

2.5 Diligence in Fault Finding

The Maintainer will undertake any Fault finding with due diligence in accordance with the procedures set out in the Manuals. In Fault finding, the Maintainer will structure his activities to mitigate to the greatest extent possible the risk of a repeat Fault occurring at a later date through not being adequately detected and diagnosed at the Fault-finding stage.

2.6 Work arising

The Maintainer shall conduct the examinations and inspections referred to in the Maintenance Plan and the Manuals and shall undertake all work arising from and required as a result of such examinations and inspections, the cost of which work arising shall be determined in accordance with the provisions of paragraph 3 (Additional Services) of this Part 1 of this Schedule 2 to the extent that it arises as a direct result of an Operator Fault.

2.7 Overhauls and refurbishment

2.7.1 The Maintainer shall undertake the Overhauls in accordance with the Maintenance Plan and the Manuals.

2.7.2 The Maintainer shall undertake the periodic refurbishment of the Units and Vehicles in accordance with the Maintenance Plan and the Manuals (where applicable) including but not limited to all work required to:

- (A) restore equipment and assemblies such as bogies, couplers and other vehicle systems, equipment and components to an “as-new” condition to provide satisfactory service in accordance with the requirements of this Agreement for the design life of the Vehicles and in any event in periods not greater than those described in Appendix 3 to this Schedule 2;

- (B) repair corrosion or other damage to bodyshell and underframe and underframe equipment;
- (C) re-seal windows where necessary;
- (D) replace windows where necessary;
- (E) replace saloon floor coverings including vestibules and gangways;
- (F) replace soft furnishings, seat moquette (if any);
- (G) repair gangways and repair/replace gangway seals;
- (H) re-paint/re-finish interior hard surfaces, vestibule surrounds, exterior door interior panels;
- (I) re-finish exterior door tread plates;
- (J) re-paint/re-finish cab interior panelling;
- (K) re-paint/re-finish saloon interior ceiling panels;
- (L) re-paint exteriors and carry out re-livery (for the avoidance of doubt the Maintainer shall undertake one repaint/re-livery of each Unit no later than 15 years from Acceptance of such Unit); and
- (M) overhaul, check and test the heating and ventilation/air-conditioning system at periods not exceeding seven (7) years.

2.7.3 Refurbishment shall be undertaken on at least a like-for-like basis provided that the Maintainer shall offer and, if approved by the Purchaser, incorporate any technical enhancements if such technical enhancements are available at no additional cost to the Maintainer compared to like-for-like refurbishment.

2.8 Unit Failure

Where any Unit is not Fit to Remain in Service and/or is not Fit to Run (including without limitation, as a result of an Operator Fault) (a "**Unit Failure**"), then the Maintainer shall provide all or any of the following services as shall be required promptly after the occurrence of any such Unit Failure (irrespective of any disputes as to which Party should bear the responsibility for and should pay the costs of any such Unit Failure):

- 2.8.1 appropriately qualified and competent persons to attend such Unit and technical advice to be provided on an immediate basis to the relevant driver and other relevant Operator staff to promote rapid Fault-finding;
- 2.8.2 investigation and evaluation of the causes of the relevant Unit Failure;
- 2.8.3 protection of the Operator's and Purchaser's interests in respect of such Unit;
- 2.8.4 effecting the isolation of that Unit;
- 2.8.5 technical assistance in connection with the rail and non-rail transportation of Units where requested; and
- 2.8.6 re-railing or wheel skating of derailed or failed Units.

The cost of providing the above services shall be borne by the Maintainer unless the relevant Unit Failure occurred as a direct result of an Operator Fault, in which case those services shall be Generally Approved Additional Services and to the extent reasonably and properly incurred, the cost of such Generally Approved Additional Services shall be determined in accordance with paragraph 3 (Additional Services) of this Part 1 of this Schedule 2 by the Purchaser.

2.9 Co-Location with Operator's Control Room

The Maintainer shall provide a suitably qualified and competent person in the Operator's Control Room to deal with requests made by the Operator for in-service technical support and provision of the services referred to as above. The Maintainer shall ensure that such person is able to fully access and utilise data from the train management systems and that procedures (to be approved by the Operator) are adopted to encourage close working co-operation between the Operator and the Maintainer in delivering fast and effective remedial action and other in-service technical support and ensure compliance with the In-Service Support Procedure.

2.10 Response times

The Maintainer shall attend a Unit in respect of which a Unit Failure has been reported as soon as reasonably practicable in the circumstances, and in any event will use all reasonable endeavours to comply with the following response times in respect of any Unit Failures reported to it:

- 2.10.1 verbal advice and assistance by telephone, radio or other means as soon as reasonably possible but within five (5) minutes at the latest; and
- 2.10.2 the provision of an appropriately qualified and competent person on site as soon as reasonably practical but within one (1) hour at the latest.

2.11 Information and Instructions

The Purchaser shall procure that the Operator shall comply with the reasonable instructions and reasonable requests of the Maintainer in respect of the services referred to in paragraph 2.8 of this Part 1 of Schedule 2 and shall procure that the Operator ensures that the Operator's train crew present at the location of the Unit Failure shall provide the Maintainer with such co-operation and assistance as the Maintainer shall reasonably require, provided that this shall be without prejudice to and shall not in any way relieve the Maintainer of its obligations to interrogate the Units and obtain information pursuant to the In-Service Support Procedure, the Fault Notification Procedure and the Train Preparation Presentation and Return Procedure. The Maintainer shall comply with the requirements set out in Part 2 of this Schedule 2.

2.12 Reporting

2.12.1 Notification of Fault, loss or damage to Vehicles

- (A) Where any Party or the Operator becomes aware of any material loss or damage sustained in respect of a Unit or a Vehicle (including as a result of an Operator Fault), it shall notify the other parties of the same as soon as reasonably practicable in accordance with the Fault Notification Procedure.

- (B) Each of the parties shall notify the other of any Faults in accordance with the Fault Notification Procedure.
- (C) The Purchaser shall procure that the Operator complies with the requirements of this paragraph 2.12.1.

2.12.2 *Notification of safety critical Issues*

- (A) If the Maintainer becomes aware of any matters which are or may be safety critical in respect of a Unit, Vehicle, Spare (including as a result of an Operator Fault), it shall notify the Operator and the Purchaser via verbal report to the Operator's Control Room immediately (with all details known at the time), and then provide to the Purchaser written details of the matters then known to the Maintainer as soon as possible thereafter and in any event within 2 days. Full written details shall be notified by the Maintainer to the Purchaser as soon as possible thereafter and in any event within 5 days.
- (B) The Parties shall co-operate in respect of the provision of details of any matters which are or may be safety critical to other parties for the purpose of complying with procedures under Railway Group Standard GE/RT 8250 "*Safety Performance Monitoring and Defect Reporting of Rail Vehicles, Plant and Machinery*", issue 1 (June 2001) or equivalent procedures which may from time to time replace Railway Group Standard GE/RT 8250 "*Safety Performance Monitoring and Defect Reporting of Rail Vehicles, Plant and Machinery*", issue 1 (June 2001).

2.12.3 *Monthly reports*

The Maintainer shall provide monthly reports to the Purchaser on its progress in connection with the provision of maintenance and related services and in satisfying each of the other requirements specified in this Agreement (the "**Contract Progress Report**"). The Maintainer shall ensure the Contract Progress Report contains the following information (unless otherwise specified by the Purchaser):

- (A) an undertaking that the provision of maintenance and related services is proceeding in accordance with the requirements of this Agreement and the Maintenance Plan, or details of the reason the undertaking cannot be given;
- (B) the physical status of each Unit in respect of its maintenance, including outstanding jobs list;
- (C) analysis of any Unit Failures and/or Facility Failures (including information as to the root causes of any Unit Failures and/or Facility Failures and trends in the condition of the Units) and details of preventative/corrective action taken to address any Unit Failures and/or Facility Failures;
- (D) cleaning performance;

- (E) details of Units that have not been Available on presentation to the Purchaser or Operator and details of corrective work carried out to such Units (including timescales taken to complete such work);
- (F) internal audit performance as required by the Quality, Safety and Environmental Plan;
- (G) configuration and modification reports in a form agreed by the Parties and in connection with the operation of a configuration management system to be implemented by the Maintainer (and approved by the Purchaser) so as to ensure that the state of each Unit is known at all times;
- (H) interpretative analysis of material supply performance (to include unsatisfied demand, failure analysis reports from original equipment manufacturers, statistical analysis of materials failure, recommendations for long term material stock levels);
- (I) status of warranty claims (to include details of parts sent away for repair and their return dates);
- (J) where applicable, details of the presence of any corrosion to the bodysells, underframes and underframe equipment and the measures that the Maintainer has taken to correct it;
- (K) progress/cost/breakdown of any Additional Services provided in accordance with paragraph 3 of this Part 1 of this Schedule 2;
- (L) commentary on any activities where the Maintainer considers that any problems may arise, including:
 - (1) the reason for the problem;
 - (2) the extent of the problem and the potential impact on the Availability and/or operation of the Units;
 - (3) the mitigation measures that the Maintainer has taken or proposes to undertake to reduce the impact; and
 - (4) the measures taken, and the measures proposed, to prevent recurrence of the event which caused the problem and/or similar such events in the future;
- (M) subject to any obligations of confidentiality to which the Maintainer is subject, a section highlighting any defects, or design, maintenance or operational issues that have arisen:
 - (1) in respect of any analogous rolling stock maintained (or being maintained) by the Maintainer that the Maintainer reasonably considers may occur or otherwise affect the maintenance of the Units;
 - (2) in respect of any related services provided (or being provided) by the Maintainer in respect of any analogous rolling stock that the

Maintainer reasonably considers may occur or otherwise affect the Units; or

- (3) in respect of any analogous spares or Special Tools provided (or being provided) by the Maintainer or in any spares or special tools that it has a knowledge of, that the Maintainer reasonably considers may occur or otherwise affect the TSSSA Spares or TSSSA Special Tools; and

(N) any other information reasonably required by the Operator or Purchaser.

2.13 Other Standard Services

2.13.1 General engineering support and advice

The Maintainer shall at all times provide the Purchaser and the Operator with such professional, engineering and technical support and advice in relation to the Maintainer Obligations as the Purchaser and/or the Operator may reasonably require including, without limitation, (i) enabling the Purchaser and the Operator to maintain and comply with all Relevant Approvals, (ii) enabling the Operator to comply with the terms of the Operator's Safety Certificate, (iii) providing input to the Operator in relation to Fault handling and (iv) participating in Fault handling exercises and technically validating Operator training material.

2.13.2 Technical investigations requested by the Purchaser or the Operator

- (A) Promptly following a reasonable request by the Purchaser or the Operator, the Maintainer shall undertake any technical investigations in relation to the Units and Vehicles including investigations in relation to the condition or performance of any Unit or Vehicle or to determine whether such Unit or Vehicle has any Faults and any investigations in relation to defects, incidents and accidents in relation to the Units (or arising from information provided by third parties which may be relevant to the Units), providing that it shall give the Purchaser and the Operator two (2) days' notice of such investigation and allow a representative of one or both to attend and observe the investigation. The Maintainer shall provide written reports on the results of such investigations to the Purchaser and the Operator.
- (B) The costs of any such investigations shall be borne as follows:
 - (1) where any such technical investigation lasts [REDACTED] hours or less or any such investigation of any duration reveals a Maintainer Fault, the Maintainer shall bear the costs of such technical investigation;
 - (2) where any such technical investigation exceeding [REDACTED] hours reveals an Operator Fault, then such technical investigation shall be a Generally Approved Additional Service and the costs of such technical investigation shall be determined in accordance with paragraph 3 (Additional Services) of this Part 1 of this Schedule 2.

- (3) where any such technical investigation exceeding [REDACTED] hours does not reveal any Fault, the Purchaser shall bear the costs of such technical investigation.
- (C) If a technical investigation reveals a Fault, the Maintainer shall take such action in respect of that Fault as required by the terms of this Agreement.

2.13.3 *Maintenance Plan and Manual Development*

The Maintainer's obligations pursuant to Clause 11.6.3 shall include:

- (A) liaising with the Purchaser and the Operator to understand any concerns or problems the Purchaser or the Operator has with the Maintenance Plan, Manuals and/or the In Service Support Procedures as supplied by the Manufacturer and progressing these with the Manufacturer to ensure that they are adequately addressed;
- (B) developing the Maintenance Plan and Manuals in the light of experience gained in maintaining the Units and Vehicles so as to optimise their usability;
- (C) developing, amending and/or updating and validating maintenance examinations and supporting documentation as reasonably required by the Purchaser or the Operator from time to time, including taking into account reasonable requests from or on behalf of the Infrastructure Controller;
- (D) amending and/or updating and validating the Maintenance Plan and Manuals to accommodate any changes to the working practices and procedures described therein which are adopted by the Maintainer in the performance of maintenance and/or overhaul of the Units;
- (E) amending and/or updating and validating the Maintenance Plan and Manuals to accommodate any changes to the working practices and procedures which result from any Modification to the Units or Vehicles; and
- (F) amending, updating and/or validating any manifest error or omission in the Maintenance Plan and/or Manuals

provided that:

- (1) any amendments to the Maintenance Plan or Manuals arising from or related to any of the matters referred to in paragraphs (C) or, where the Modification is proposed by the Purchaser, (E) above, shall be dealt with pursuant to the Variation Procedure unless in each case the amendments arise from the exercise of an Option pursuant to the MSA; and
- (2) in all other cases the Purchaser and the Maintainer shall agree any consequential changes required to this Agreement. But for the avoidance of doubt the Maintainer shall not be entitled to any relief, compensation, change in Service Payment or Additional Capital Expenditure. Where the Parties have been unable to agree

the extent of the consequential changes within 28 days of first meeting to discuss such changes either Party may refer the change or changes in dispute to expert determination pursuant to Schedule 15A (Fast Track Dispute Resolution Procedure). Where the consequential changes required to this Agreement have been agreed by the Parties or otherwise determined those changes shall be recorded in writing within five (5) days of such agreement or determination. The record produced pursuant to this paragraph 2.13.3(2) shall be deemed to be a complete Variation Order which shall be deemed confirmed immediately and the provisions of paragraph 7.4.1 (A), (B) and (C) but not 7.4.1 (D), (E), (F) or (G) of Schedule 10 (Variation Procedure) shall apply accordingly.

2.13.4 Monitoring Changes in Law

The Maintainer shall monitor all Changes in Law relating to rolling stock which may affect the Maintainer's ability to perform its obligations under this Agreement or require a modification and shall, promptly after becoming aware of such Change in Law, advise the Purchaser and the Operator accordingly.

2.13.5 Provision of Technical Services for Modifications

The Maintainer shall provide technical support services in respect of design Modifications and obtaining the necessary approvals for and implementing Modifications and

- (A) where those Modifications are proposed by the Purchaser these matters shall be dealt with in accordance with the Variation Procedure unless arising from the exercise of an Option pursuant to the MSA; and
- (B) in all other cases, the Parties shall agree the changes which are required to this Agreement in order to give effect to such Modifications. But for the avoidance of doubt the Maintainer shall not be entitled to any relief, compensation, change in Service Payment or Additional Capital Expenditure. Where the Parties have been unable to agree the extent of the consequential changes within twenty-eight (28) days of first meeting to discuss such changes either Party may refer the change or changes in dispute to expert determination pursuant to Schedule 15A (Fast Track Dispute Resolution Procedure). Where the consequential changes required to this Agreement have been agreed by the Parties or otherwise determined those changes shall be recorded in writing within five (5) days of such agreement or determination. The record produced pursuant to this paragraph 2.13.5(B) shall be deemed to be a complete Variation Order which shall be deemed confirmed immediately and the provisions of paragraph 7.4.1 (A), (B) and (C)) but not 7.4.1 (D), (E) ,(F)or (G) of Schedule 10 (Variation Procedure) shall apply accordingly .

2.13.6 OTMR, CCTV and TMS

The Maintainer shall make available to the Purchaser and the Operator as appropriate OTMR, CCTV and TMS data as reasonably requested from time to

time within two (2) Working Days of such request, including, without limitation, if requested as a result of an Operator Fault.

2.13.7 *Operations and Provision of Drivers*

The Parties intend that the control of train movements other than within the maintenance facility building will be with the Infrastructure Manager. The Maintainer shall provide staff who are competently and legally authorised to move Units in the Maintenance Facilities and between there and the Carriage Servicing Depot, including, without limitation, any movement required as a result of an Operator Fault. The arrangements with regard to depot movements will be finalised between the Parties in accordance with Schedule 9 (Maintenance Facility Obligations).

3. THE ADDITIONAL SERVICES

3.1 The Additional Services

3.1.1 If any Unit or Purchaser Owned Spare has an Operator Fault, the Maintainer shall promptly on becoming aware of such Operator Fault submit a written notice ("**Additional Services Notice**") to the Operator's Control Room notifying the Operator and Purchaser of services, work or activities as are necessary to rectify such Operator Fault (the "**Additional Services**").

3.1.2 Additional Services may include without limitation:

- (A) removal of graffiti;
- (B) replacement of internal or external deliberately damaged glass;
- (C) replacement of broken fixtures and fittings caused by Operator or passenger misuse or abuse;
- (D) Unit repairs following in-service incidents other than in-service incidents caused by the Maintainer;

to the extent directly resulting from an Operator Fault in each case. Each Additional Services Notice shall include all relevant details of the circumstances requiring such Additional Services and the details of the Additional Services required, including the information required as set out below to be included in the Request for Additional Services Authorisation.

3.1.3 The Maintainer shall use all reasonable endeavours to work with the Operator in order to establish a solution to each Operator Fault which, so far as practicable, best meets the Purchaser's requirements in terms of cost, minimising the effects on the Standard Services and the impact on the Maintenance Window Plan and the Diagrams.

3.1.4 The Maintainer shall make available to the Purchaser the Additional Services Allowance Period each day (but no longer period except at the Maintainer's entire discretion) for the carrying out of Additional Services by the Maintainer in addition to the Standard Services and shall utilise this Additional Services Allowance Period fully for such Additional Services where they have been approved in accordance with this paragraph 3 of Part 1 of Schedule 2.

3.2 Request for Approval

Each time the Maintainer sends an Additional Services Notice in respect of Additional Services other than Generally Approved Additional Services, the Maintainer shall, at the same time, submit a written request (each a "**Request for Additional Services Authorisation**") to the Operator's Control Room requesting authority from the Purchaser to undertake the relevant Additional Services and containing the information set out in paragraph 3.4.1.

3.3 Generally Approved Additional Services

3.3.1 Subject to the Maintainer (acting reasonably) being satisfied that the relevant Additional Service is a Generally Approved Additional Service, the Maintainer shall as soon as reasonably practicable commence and diligently carry out and complete (without specific approval from the Purchaser) any Additional Services the cost (labour and materials) of which, calculated in accordance with Agreed Benchmark Cost Provisions, is less [REDACTED] (Indexed), provided that:

- (A) the aggregate cost of all Additional Services carried out by the Maintainer under this paragraph shall not exceed [REDACTED] per Railway Period or such other amount as agreed between the Purchaser and the Maintainer from time to time, it being acknowledged that the Purchaser may from time to time revise or reduce such amount upwards or downwards (including a reduction to nil) or further specify or restrict the nature of the work which may constitute Generally Approved Additional Services if it so chooses (acting in its absolute discretion) having provided fourteen (14) days written notice of the date from which such change shall take effect;
- (B) the carrying out of that Additional Service will not result in the Maintainer (in its reasonable opinion) applying for any relief; and
- (C) the Additional Service can be carried out in accordance with the Maintenance Window Plan.

3.3.2 Where the Maintainer carries out a Generally Approved Additional Service, it shall as soon as reasonably practicable and in any event within two (2) days of the date the Maintainer commences such work, advise the Purchaser of all relevant information required in respect of Additional Services at paragraph 3.4.1.

3.4 Information From Maintainer: Additional Services

3.4.1 Each Request for Additional Services Authorisation shall detail, without limitation:

- (A) the identity and location of the affected Unit, Vehicle, Purchaser Owned Spare ;
- (B) the nature and extent of the requirement for the relevant Additional Service;
- (C) the Maintainer's reasonable proposals for carrying out the relevant Additional Service required, including as appropriate:

- (1) the period of time to undertake the relevant Additional Service (from the time the proposal is approved by the Purchaser) and for the Unit to become Available (the "**Remedy Period**"). In proposing the duration of the Remedy Period for the relevant Additional Service the Maintainer shall:
 - (a) in utilising the Additional Services Allowances Period, prioritise the undertaking of all proposed Additional Services (including any Generally Approved Additional Services) in each case so as to maximise, on a daily basis, the Availability of the Units;
 - (b) takes into consideration the Maintainer's obligations pursuant to paragraph 3.1.4;
 - (c) propose a Remedy Period which is that specified for the relevant Additional Service where it is set out in Appendix 4 of Schedule 5 (Pricing and Payment) and where the performance of that Additional Service would, when taken together with the performance of other approved or proposed Additional Services (including any Generally Approved Additional Services) which have been given higher priority by the Maintainer in accordance with paragraph (a) above (if any), result in the Maintainer's staff performing no more than the Additional Services Allowance Period each day;
 - (d) where the relevant Additional Service is not included in Appendix 4 of Schedule 5 (Pricing and Payment) or paragraph (c) does not otherwise apply, propose such reasonable Remedy Period for carrying out the relevant Additional Service (i) as would be expected of a professional maintainer of trains taking into account all relevant factors (including the availability of staff, the capacity of the relevant maintenance facilities available to the Maintainer, the workload of the Maintainer and the availability of materials) and (ii) is consistent with the principle of prioritising the undertaking of the Additional Services amongst the different items so as to maximise, on a daily basis the Availability of the Units.
- (2) proposals to ensure that the Maintainer's staff utilise the full Additional Services Allowance Period each day to undertake the Additional Services, prioritised in accordance with paragraph 3.4(1) (a), regardless of whether, given the Remedy Period proposed, the work would be completed within that Additional Services Allowance Period;
- (3) any Parts to be replaced or refurbished;
- (4) any effects on the Spares which are held, or which it will be necessary or desirable to hold, following the completion of the relevant Additional Service;

- (5) any effects on the Standard Services, the Maintenance Window Plan or the Diagrams and the extent to which the relevant Additional Services may result in the Maintainer (acting reasonably) claiming any relief;
- (6) the cost of the relevant Additional Service, calculated in accordance with Agreed Benchmark Cost Provisions, but recognising that where it is not possible to identify a fixed cost the Maintainer will provide its best estimate of the costs and its proposed basis for calculating the actual cost;
- (7) the time when the affected Unit or Vehicle would be delivered back to the Operator (if any amendment is required to the then current Diagrams);
- (8) any restrictions or limitations which may apply to the affected Unit or Vehicle pending carrying out the relevant Additional Service;
- (9) any additional track or other access requirements or safety requirements necessary to facilitate the carrying out of the relevant Additional Service;
- (10) the level of labour resources required to carry out the relevant Additional Service; and
- (11) the location where the Additional Service will be carried out.

3.5 Approval of the Additional Services

3.5.1 If the Purchaser approves a Request for Additional Services Authorisation, the Purchaser shall so notify the Maintainer and on receipt of such notification the Maintainer shall as soon as reasonably practicable commence and diligently carry out and complete that Additional Service in accordance with the approved Request for Additional Services Authorisation.

3.5.2 If the Purchaser does not approve a Request for Additional Services Authorisation, then it shall so notify the Maintainer in writing. In such circumstances, the Purchaser may direct the Maintainer to present the Unit for service at the Entry Point at the next Entry Time, notwithstanding the occurrence of any of the events referred to above, and in such circumstances the Maintainer shall not be liable for any Deduction pursuant to the Performance Regime in respect of such Unit including any Cancellation Deduction.

3.6 Costs

Subject to the provisions of paragraph 4.2 of Part 1 of Schedule 5 (Pricing and Payment) relating to the cost free threshold referred to therein, all Additional Services shall be performed at the cost and expense of the Purchaser and determined in accordance with the provisions of paragraph 4 of Part 1 of Schedule 5 (Pricing and Payment).

3.7 Disputes

If a dispute arises as to whether any services, work or activities are a Standard Service, an Additional Service or a Generally Approved Additional Service, the Maintainer shall carry out the relevant work without delay if requested to do so by the Purchaser and the aggregate cost of the relevant services, work or activities is [REDACTED] or less. Any such disputes and any other disputes relating to Additional Services shall be dealt with in accordance with the Dispute Resolution Procedures.

4. CO-OPERATION AND LIAISON

4.1 Co-operation between Parties

The Maintainer and the Purchaser shall co-operate in order to ensure that each party is able to comply with the terms of this Agreement, and so as to facilitate in the most efficient manner possible the carrying out by each of the Parties of its obligations under this Agreement.

4.2 Daily Liaison

The Maintainer shall liaise on a daily basis with the Purchaser and the Operator in relation to the Maintainer's requirements for Units for scheduled and unscheduled maintenance.

PART 2 –CLEANING REQUIREMENTS

1. EXTERIOR CLEANLINESS

1.1 The Maintainer shall clean the exterior of the Units at intervals of no less than forty eight hours in accordance with the Train Preparation Presentation and Return Procedure and shall achieve the Cleaning Standard in respect of each Unit.

2. MONITORING OF CLEANLINESS AND STATE OF REPAIR

2.1 The Maintainer shall carry out a daily Maintainer Aesthetic Inspection on each Unit due to enter passenger service from the NLR Maintenance Facility, ELR Maintenance Facility, NLR Carriage Cleaning Facility or ELR Carriage Cleaning Facility before the Unit enters passenger service.

2.2 The Maintainer shall carry out a Maintainer Aesthetic Exam on each Unit at least once every 28 days.

2.3 Full details of any Faults identified or areas where the Minimum Aesthetic Condition is not met pursuant to a Maintainer Aesthetic Inspection shall be entered into the Maintainer's maintenance management system pursuant to the provisions of Schedule 14 (Fault Notification Procedure).

2.4 Full details of any Faults identified or areas where the Cleaning and State of Repair Standard is not met pursuant to a Maintainer Aesthetic Exam shall be entered by the Maintainer in the Maintainer's maintenance management system pursuant to the provisions of Schedule 14 (Fault Notification Procedure).

APPENDIX 1

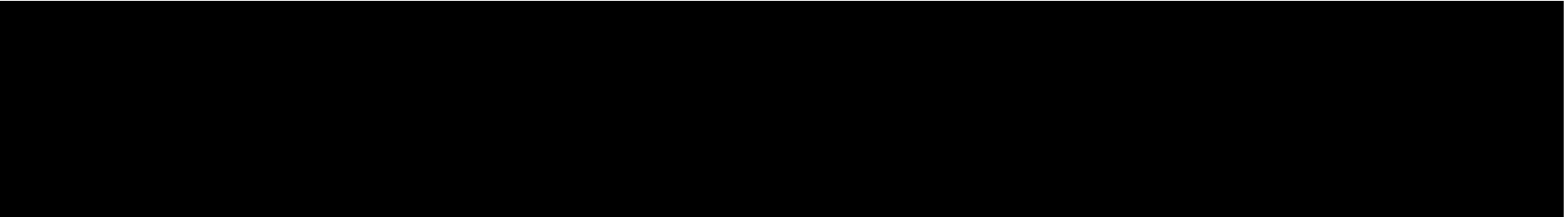
Definitions of Fit for Service, Fit to Remain in Service and Fit to Run

1. DEFINITIONS

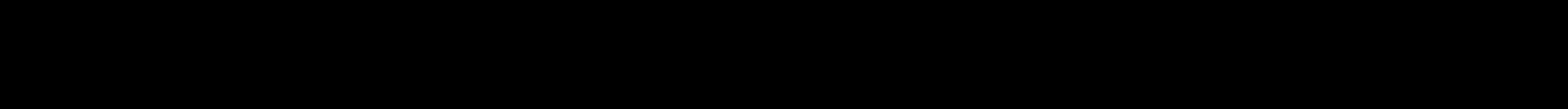
1.1 In this Agreement the following words and expressions shall have the following meanings:

“Exhibited” means in the context of this Appendix 1 that the system or component has a Fault or that any diagnostic tool indicates it has a Fault and **“Exhibiting”** shall be construed accordingly.

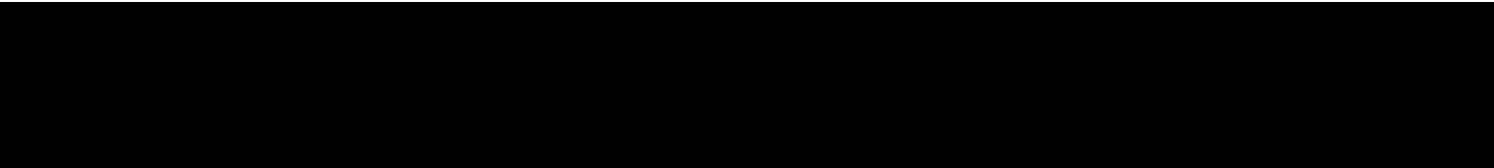
“Fit for Service” means that a Unit:



“Fit to Remain in Service” means that a Unit:



“Fit to Run” means that a Unit:



“Rule Book” means Railway Group Standard GE/RT8000 as may be amended from time to time.

1.2 In this Appendix 1 to Schedule 2 the phrase "only as permitted by the Operator" shall mean only as permitted by the Operator acting reasonably in all the circumstances.

TABLE 1**Fit for Service, Fit to Remain in Service or Fit to Run: Safety Requirements**

Part Exhibiting a Fault	Column A Safety Requirement to be Satisfied:
AWS	The standard permitted in the Rule Book
Bodyside windows	The standard permitted in the Rule Book
Brake systems	The standard permitted in the Rule Book
Cab heating, cooling and ventilation equipment	The standard permitted in the Rule Book
Couplers	The standard permitted in the Rule Book
Doors	The standard permitted in the Rule Book (if a wheelchair access door is out of use, the Unit is not Fit for Service or Fit to Remain in Service)
Driver's reminder appliance (DRA)	The standard permitted in the Rule Book
Driver's safety device (DSD)	The standard permitted in the Rule Book
Driver's vigilance equipment	The standard permitted in the Rule Book
Driving cab windows	The standard permitted in the Rule Book
Saloon Windows	The standard permitted in the Rule Book
Emergency bypass switch (EBS)	The standard permitted in the Rule Book
Fire detection system	The standard permitted in the Rule Book
Fixed radio equipment	The standard permitted in the Rule Book
Headlights, marker lights, tail lamps and external hazard warning indication	The standard permitted in the Rule Book
Hot axle boxes and activation of hot axle box detectors	The standard permitted in the Rule Book
Hot axle box detectors built into vehicles	The standard permitted in the Rule Book

Part Exhibiting a Fault	Column A Safety Requirement to be Satisfied:
Hustle alarm	The standard permitted in the Rule Book
Lifeguards	The standard permitted in the Rule Book
Lighting of passenger vehicles	The standard permitted in the Rule Book
On-train emergency equipment	The standard permitted in the Rule Book
On-train data recorder (OTDR)	The standard permitted in the Rule Book
Passenger communication apparatus (PCA)	The standard permitted in the Rule Book
Public address system	The standard permitted in the Rule Book
Sanding equipment to assist train braking	The standard permitted in the Rule Book
Selective door opening (SDO)	The standard permitted in the Rule Book
Speedometer	The standard permitted in the Rule Book
Traction Interlock Switch	The standard permitted in the Rule Book
Train protection and warning system (TPWS)	The standard permitted in the Rule Book
Trains or vehicles that are defective or have a 'NOT TO BE MOVED' board attached	The standard permitted in the Rule Book
Vehicles with locked wheels, wheel flats or dragging brakes	The standard permitted in the Rule Book
Warning horn	The standard permitted in the Rule Book
Wheel slip/slide protection (WSP) equipment	The standard permitted in the Rule Book

TABLE 2

Fit for Service, Fit to Remain in Service and Fit to Run: Technical Requirements

Fault Exhibited in a Part	Column A Does the Unit meet the standard required for it to be Fit for Service?	Column B Does the Unit meet the standard required for it to be Fit to Remain in Service?	Column C Does the Unit meet the standard required for it to be Fit to Run?
Air Supply			
Compressor failed	No	No	No
Compressor Running Continuously	No	Only as permitted by the Operator	Only as permitted by the Operator
Air Pressure lower than normal, within operational limits, systems operational (i.e. minor leak or defective gauge).	Yes	Yes	Yes
Major air leak and system cannot maintain minimum pressure	No	No	No
Brakes			
Dynamic Brake (Rheostatic and/or regenerative) failed	Yes	Yes	Yes
Cab Equipment and Controls			
Broken 'tell tales' or seals on safety critical circuit switches or circuit breakers	No	No	Yes
Emergency Equipment missing or damaged	No	No	No
Driving controls and ancillary equipment missing or damaged or not adequately illuminated	No	No	No
Driver's cab instrument illumination not working	No	Only as permitted by the Operator	Only as permitted by the Operator
Trainbourne doorway CCTV camera or in-cab display not	No	No	Yes

Fault Exhibited in a Part	Column A Does the Unit meet the standard required for it to be Fit for Service?	Column B Does the Unit meet the standard required for it to be Fit to Remain in Service?	Column C Does the Unit meet the standard required for it to be Fit to Run?
operational for Driver Only Operation			
Train Management System Display Screen (TMS) defective	No	Only as permitted by the Operator	Yes
Windscreen wiper (driver's side) Defective	No	No	Only as permitted by the Operator
Windscreen wiper (trainer's side) Defective	Only as permitted by the Operator	Yes	Yes
Cab Interior			
Evidence of water ingress in cab	No	Only as permitted by the Operator	Only as permitted by the Operator
Sun blind defective	No	Only as permitted by the Operator	Only as permitted by the Operator
Drivers seat defective – does not move within range of adjustment	No	No	Only as permitted by the Operator
Trainers seat defective	Only as permitted by the Operator	Yes	Yes
HVAC – cab outside of specified temperature range	Only as permitted by the Operator	Only as permitted by the Operator	Yes
HVAC unit exceeds specified noise level in the cab	Only as permitted by the Operator	Only as permitted by the Operator	Yes
HVAC ventilation defective	No	No	Yes
Communication Systems			
Pre recorded announcements not available	Only as permitted by the Operator	Only as permitted by the Operator	Yes
Saloon or external displays defective	Only as permitted by the Operator	Only as permitted by the Operator	Yes
Doors			

Fault Exhibited in a Part	Column A Does the Unit meet the standard required for it to be Fit for Service?	Column B Does the Unit meet the standard required for it to be Fit to Remain in Service?	Column C Does the Unit meet the standard required for it to be Fit to Run?
Cab to saloon door damaged, unable to close, open or lock	No	No	Yes
Detrainment door damaged, unable to close, open or lock	Only as permitted by the Operator	Only as permitted by the Operator	Yes – if door secure for transit move.
Saloon Gangway end door damaged, unable to close, open or lock	Only as permitted by the Operator	Only as permitted by the Operator	Yes
Bodyside indicator light (BIL) defective	Yes	Yes	Yes
HVAC - Saloon			
HVAC – saloon outside of specified temperature range	Only as permitted by the Operator	Only as permitted by the Operator	Yes
HVAC unit exceeds specified noise level in the saloon	Only as permitted by the Operator	Only as permitted by the Operator	Yes
HVAC ventilation defective	No	No	Yes
Lighting - Internal			
All Cab Lighting (not instrument lamps) defective	No	No	Yes
More than 3 saloon (non battery feed) lighting tubes defective or more than 3 (battery feed) lighting tubes defective in that saloon	No	Only as permitted by the Operator	Yes
Broken glass in saloon interior	No	Only as permitted by the Operator	Yes
Saloon Interior			
Seat damaged – risk of cutting, abrasion or trapping	No	Only as permitted by the Operator	Yes
Equipment cubicle cannot be locked	No	Only as permitted by the Operator	Yes
Floor damaged – trip hazard	No	Only as permitted by the Operator	Only as permitted by the Operator

Fault Exhibited in a Part	Column A Does the Unit meet the standard required for it to be Fit for Service?	Column B Does the Unit meet the standard required for it to be Fit to Remain in Service?	Column C Does the Unit meet the standard required for it to be Fit to Run?
Saloon CCTV defective	Only as permitted by the Operator	Only as permitted by the Operator	Yes
Saloon grab rails/handles damaged –risk of cutting, abrasion or trapping	No	Only as permitted by the Operator	Yes
Saloon draught screen broken	No	No	Yes
Evidence of Water leaks in saloon environment	No	Only as permitted by the Operator	Yes
Cover missing from emergency device (e.g. door egress handle/ passenger alarm unit	No	Yes	Yes
Traction & Auxiliary Supply			
Traction failure – one traction package (able to run to timetable)	No	Yes	Yes
Traction package(s) failure, unable to run to timetable	No	No	Only as permitted by the Operator
Auxiliary power supply output defective	No	Only as permitted by the Operator	Yes - if battery charger serviceable
Pantograph or AC current collection circuit defective	No	No	Only as permitted by the Operator
AC transformer defective	No	No	Only as permitted by the Operator
Underframe and Bogie			
Auto Coupler (no electrical coupling)	No	Yes	Yes
Wheel Flats -severe (at or above the Infrastructure Manager's or Manufacturer's maximum limit)	No	No	Yes, at reduced speed
Wheel Flats -serious	No	No	Yes, at reduced speed

Fault Exhibited in a Part	Column A Does the Unit meet the standard required for it to be Fit for Service?	Column B Does the Unit meet the standard required for it to be Fit to Remain in Service?	Column C Does the Unit meet the standard required for it to be Fit to Run?
(excessive noise or vibration).			
Wheel Flats –slight	Yes	Yes	Yes
Primary suspension unit defective	No	No	Only as permitted by the Operator
Secondary suspension air bag defective	No	Only as permitted by the Operator	Yes, at reduced speed.
Equipment case covers missing.	No	No	Yes
One 3 rd rail current collector shoe lost per side or shoe fuse blown	No	Only as permitted by the Operator	Yes
More than one 3 rd rail current collector shoe lost per side or shoe fuses blown	No	Only as permitted by the Operator	Only as permitted by the Operator
Shoegear worn below allowable limit	No	Yes	Yes

APPENDIX 2

Aesthetic Condition Standards

DEFINITIONS

In this Agreement the following words and expressions shall have the following meanings:

"Extensive" means the area of coverage of the aesthetic defect is greater than 33% but less than 66% of the area being assessed;

"Extremely" means the area of coverage of the aesthetic defect is greater than 66% of the area being assessed;

"Graffiti" means painted, written, sprayed or scratched graffiti and stickers; and

"Spotlessly Clean" means the area being assessed has no evidence of dirt and the finish is not dulled.

1. EXTERNAL CONDITION

1.1 External Cleanliness of a Unit

1.1.1 Bodysides and Roof: Assessment Procedure

Assess the bodysides and roof of each Vehicle as follows:

- (A) identify the condition of the exterior of the bodysides and roof of the Vehicle including but not limited to the windows of the Vehicle;
- (B) do not include Graffiti and other damage; and
- (C) score the Vehicle in accordance with Table 1.1.1.

Table 1.1.1: Bodysides and Roof Scoring Matrix

Condition	Score
a) Spotlessly Clean.	10
<i>Condition falls between a) and b)</i>	9
b) Very clean appearance, i.e. no dirt noticeable but "dull" not shiny	8
<i>Condition falls between b) and c)</i>	7
c) Generally clean, i.e. some minor marks, dust, dirt or "streaking"	6
<i>Condition falls between c) and d)</i>	5
d) Many dirty marks	4
<i>Condition falls between d) and e)</i>	3
e) Extensive dirt, including door steps or door controls having inadequate contrast with their surroundings, or visibility of platform signs through windows reduced	2
<i>Condition falls between e) and f)</i>	1
f) Extremely dirty with risk of soiling upon contact or any stain caused by the striking of birds, animals or humans or by lubricants, or visibility through windows very poor	0

1.1.2 Driving End: Assessment Procedure

Assess the driving end of each Vehicle as follows:

- (A) identify the condition of the exterior of the driving end of the Vehicle including but not limited to the windows of the Vehicle;
- (B) do not include Graffiti and other damage; and
- (C) score the Vehicle in accordance with Table 1.1.2 below.

Table 1.1.2: Driving End Scoring Matrix

Condition		Score
a)	Spotlessly Clean	10
	<i>Condition falls between a) and b)</i>	9
b)	Very clean appearance, i.e. no dirt noticeable but "dull" not shiny	8
	<i>Condition falls between b) and c)</i>	7
c)	Generally clean , i.e. some minor marks, dust, dirt or "streaking" or "flystrike"	6
	<i>Condition falls between c) and d)</i>	5
d)	Many dirty marks or areas of "flystrike"	4
	<i>Condition falls between d) and e)</i>	3
e)	Extensive dirt or extensive "flystrike" or any stain caused by the train striking birds	2
	<i>Condition falls between e) and f)</i>	1
f)	Extremely dirty with risk of soiling upon contact or dirt or detritus on windscreen or areas painted 'warning yellow' or lights affecting visibility or any stain caused by the striking of animals or humans or by lubricants	0

1.1.3 Intermediate Bodyend: Assessment Procedure

Assess the intermediate bodyend of each Vehicle as follows:

- (A) identify the condition of the exterior of the intermediate bodyend of the Vehicle including the windows of the Vehicle ;
- (B) do not include Graffiti and other damage; and
- (C) score the Vehicle in accordance with Table 1.1.3 below.

Table 1.1.3: Intermediate Bodyend Scoring Matrix

Condition		Score
a)	Spotlessly Clean	10
	<i>Condition falls between a) and b)</i>	9
b)	Very clean appearance, i.e. no dirt noticeable but "dull" not shiny	8
	<i>Condition falls between b) and c)</i>	7
c)	Generally clean , i.e. some minor marks, dust, dirt or "streaking"	6
	<i>Condition falls between c) and d)</i>	5
d)	Many dirty marks	4
	<i>Condition falls between d) and e)</i>	3
e)	Extensive dirt	2
	<i>Condition falls between e) and f)</i>	1

Condition	Score
f) Extremely dirty with risk of soiling upon contact	0

1.1.4 Underframe: Assessment Procedure

Assess the underframe of each Vehicle as follows:

- (A) identify the condition of the underframe of the Vehicle;
- (B) do not include Graffiti and other damage; and
- (C) score the Vehicle in accordance with Table 1.1.4 below.

Table 1.1.4: Underframe Scoring Matrix

Condition	Score
a) Light patina of dirt and safety labels wiped clean and no Graffiti removal staining (staining from Graffiti removal chemicals washed off liveried areas of Vehicle)	10
<i>Condition falls between a) and b)</i>	8
b) Some Graffiti removal staining	4
<i>Condition falls between b) and c)</i>	3
c) Debris from the train striking a bird or extensive Graffiti removal staining	2
<i>Condition falls between c) and d)</i>	1
d) Extremely dirty or stained by Graffiti removal or safety labels obscured or human or animal debris	0

1.2 External State of Repair

1.2.1 External level of Scratched Graffiti: Assessment Procedure

Assess the external level of scratched Graffiti on each Vehicle as follows:

- (A) identify all scratched Graffiti but not other (painted) Graffiti on the exterior of the Vehicle, wherever it is on the exterior of the Vehicle including but not limited to any windows, glass panels and paintwork;
- (B) score the Vehicle as follows:
 - (1) if any offensive Graffiti or any damaged Logo or branding to the extent that it is unrecognisable has been identified under paragraph 1.2.1(A), score the Vehicle in accordance with Table 1.2.1; or
 - (2) if no offensive Graffiti or damaged Logo or branding to the extent that it is unrecognisable has been identified under paragraph 1.2.1(A) find the worst area (1 square metre) of the Vehicle affected by Graffiti which has been identified under that paragraph (if any). Estimate how many A5 areas are needed to cover up all the Graffiti so identified (if any) and score the Vehicle in accordance with Table 1.2.1 below.

Table 1.2.1: External Level of Scratched Graffiti Scoring Matrix

Condition		Score
a)	No scratched Graffiti whatsoever	10
	<i>Condition falls between a) and b)</i>	9
b)	One area of scratched Graffiti of up to 4 inches (i.e. equal to two LUL Travelcards)	8
	<i>Condition falls between b) and c)</i>	7
c)	2 A5 size areas to cover all the scratched Graffiti on the worst area of the Vehicle	6
	<i>Condition falls between c) and d)</i>	5
d)	4 A5 size areas to cover all the scratched Graffiti on the worst area of the Vehicle	4
	<i>Condition falls between d) and e)</i>	3
e)	8 A5 size areas to cover all the scratched Graffiti on the worst area of the Vehicle	2
	<i>Condition falls between e) and f)</i>	1
f)	12 or more A5 size areas to cover all the scratched Graffiti on the worst area of the Vehicle	0
g)	any offensive Graffiti (regardless of size of area)	0
h)	any Logo or branding damaged to the extent it is unrecognisable (regardless of size of area)	0

1.2.2 External Level of Other (non-scratched) Graffiti: Assessment Procedure

Assess the external level of non-scratched Graffiti on each Vehicle as follows:

- (A) identify all Graffiti which is not scratched Graffiti, including but not limited to any painted, written or sprayed Graffiti, stickers, marks where Graffiti has been, wherever it is on the exterior of the Vehicle including but not limited to any windows, glass panels and paintwork;
- (B) score the Vehicle as follows:
- (1) if any offensive Graffiti or any damaged Logo or branding to the extent that it is unrecognisable has been identified under paragraph 1.2.2(A), score the Vehicle in accordance with Table 1.2.2; or
 - (2) if no offensive Graffiti or damaged Logo or branding to the extent that it is unrecognisable has been identified under paragraph 1.2.2(A) find the worst area (1 square metre) of the Vehicle affected by Graffiti which has been identified under that paragraph (if any). Estimate how many A5 areas are needed to cover up all the Graffiti so identified (if any) and score the Vehicle in accordance with Table 1.2.2 below.

Table 1.2.2: External Level of Other (non-scratched) Graffiti Scoring Matrix

Condition		Score
a)	No sprayed, painted or written Graffiti whatsoever (no marks)	10

Condition		Score
<i>Condition falls between a) and b)</i>		9
b)	No Graffiti but there are marks where previously present in the worst area of the Vehicle	8
<i>Condition falls between b) and c)</i>		7
c)	2 A5 size areas to cover all the non-scratched Graffiti on the worst area of the Vehicle	6
<i>Condition falls between c) and d)</i>		5
d)	4 A5 size areas to cover all the non-scratched Graffiti on the worst area of the Vehicle	4
<i>Condition falls between d) and e)</i>		3
e)	8 A5 size areas to cover all the non-scratched Graffiti on the worst area of the Vehicle	2
<i>Condition falls between e) and f)</i>		1
f)	12 or more A5 size areas to cover all the non-scratched Graffiti on the worst area of the Vehicle	0
g)	any offensive Graffiti (regardless of size of area)	0
h)	any logo or branding damaged to the extent it is unrecognisable (regardless of size of area)	0

1.2.3 Colour and Gloss Level : Assessment Procedure

Assess the colour and gloss level of each Vehicle as follows:

- (A) identify the level of colour and gloss on the exterior of the Vehicle; and
- (B) score the Vehicle in accordance with Table 1.2.3 below.

Table 1.2.3: Colour and Gloss Level Scoring Matrix

Condition		Score
a)	Gloss level at the maximum level defined on the reference sample and homogeneous. No discolouration or fading when compared with the colour-match reference sample	10
<i>Condition falls between a) and b)</i>		8
b)	Gloss level within the maximum and minimum limits (as defined by the reference samples). Slight but homogeneous discolouration	6
<i>Condition falls between b) and c)</i>		5
c)	Gloss level within the maximum and minimum limits (as defined by the reference samples). Slight non homogeneous discolouration	3
<i>Condition falls between c) and d)</i>		2
d)	Gloss level lower than the minimum level on the reference samples. Excessive homogeneous or non homogeneous discolouration	0

1.2.4 Surface corrosion/Paint Chips/ Scratches: Assessment Procedure

Assess the external level of corrosion, chipped paint and scratching on each Vehicle as follows:

- (A) identify all corrosion, chips, scratches (but not scratched Graffiti) and/or dents revealing undercoat or metal substrata on the exterior of the Vehicle;
- (B) score the Vehicle as follows:
 - (1) find the worst area of one (1) square metre or more of the Vehicle affected by corrosion, chips, scratches and/or dents identified under paragraph 1.2.4(A) (if any). Estimate how many A5 areas are needed to cover up all the corrosion, chips, scratches or dents revealing undercoat or metal substrata identified under paragraph 1.2.4 (A) above (if any) and score the Vehicle in accordance with Table 1.2.4 below.

Table 1.2.4: Surface Corrosion/ Paint Chips/Scratches Scoring Matrix

Condition		Score
a)	No corrosion, chips or scratches or dents revealing undercoat or metal substrate	10
	<i>Condition falls between a) and b)</i>	9
b)	No corrosion, chips or scratches or dents revealing undercoat or metal substrate but patch repairs made and not visible from 5m	8
	<i>Condition falls between b) and c)</i>	7
c)	2 A5 size areas to cover all the corrosion, chips scratches or dents revealing undercoats or metal substrate on the worst area of the Vehicle and any patch repairs not visible from 5m	6
	<i>Condition falls between c) and d)</i>	5
d)	4 A5 size areas to cover all the corrosion, chips scratches or dents revealing undercoat or metal substrate on the worst area of the Vehicle and any patch repairs not visible from 5m	4
	<i>Condition falls between d) and e)</i>	3
e)	either 8 A5 size areas to cover all the corrosion, chips scratches or dents revealing undercoat or metal substrate on the worst area of the Vehicle or any patch repairs greater than A6 size visible from 5m	2
	<i>Condition falls between e) and f)</i>	1
f)	either 12 or more A5 size areas to cover all the corrosion, chips scratches or dents revealing undercoat or metal substrate on the worst area of the Vehicle or any patch repairs greater than A6 size visible from 10m	0

2. INTERNAL CONDITION

2.1 Internal State of Repair

2.1.1 Internal Level of Scratched Graffiti: Assessment Procedure

Assess the internal level of scratched Graffiti in each Vehicle as follows:

- (A) identify all scratched Graffiti but not other (painted) Graffiti on the interior of the Vehicle wherever it is on the Vehicle including but not limited to any windows, glass panels and paintwork;
- (B) score the Vehicle as follows:
 - (1) if any offensive Graffiti has been identified under paragraph 2.1.1(A), score the Vehicle in accordance with Table 2.1.1; or
 - (2) if no offensive Graffiti has been identified under paragraph 2.1.1(A) find the worst area (1 square metre) of the Vehicle affected by the Graffiti identified under that paragraph (if any). Estimate how many A5 areas are needed to cover up all the Graffiti so identified (if any) and score the Vehicle in accordance with Table 2.1.1 below.

Table 2.1.1: Internal Level of Scratched Graffiti Scoring Matrix

Condition	Score
a) No scratched Graffiti whatsoever	10
<i>Condition falls between a) and b)</i>	9
b) One very small area of scratched Graffiti, up to 4 inches (the size of two LUL Travelcards) in the worst area of the Vehicle	8
<i>Condition falls between b) and c)</i>	7
c) 2 A5 size areas to cover all the scratched Graffiti in the worst area of the Vehicle	6
<i>Condition falls between c) and d)</i>	5
d) 4 A5 size areas to cover all the scratched Graffiti in the worst area of the Vehicle	4
<i>Condition falls between d) and e)</i>	3
e) 8 A5 size areas to cover all the scratched Graffiti in the worst area of the Vehicle	2
<i>Condition falls between e) and f)</i>	1
f) 12 or more A5 size areas to cover all the scratched Graffiti in the worst area of the Vehicle	0
g) any offensive Graffiti (regardless of size of area)	0

2.1.2 Internal Level of Other (non-scratched) Graffiti: Assessment Procedure

Assess the internal level of scratched Graffiti in each Vehicle as follows:

- (A) identify all Graffiti which is not scratched Graffiti, including but not limited to painted, written or sprayed Graffiti, stickers, marks where Graffiti has been

removed on the interior of the Vehicle wherever it is on the Vehicle including but not limited to any windows, glass panels and paintwork;

- (B) score the Vehicle as follows:
- (1) if any offensive Graffiti has been identified under paragraph 2.1.2 (A), score the Vehicle in accordance with Table 1.2.1; or
 - (2) if no offensive Graffiti has been identified under paragraph 2.1.2(A) find the worst area (1 square metre) of the Vehicle affected by Graffiti identified under that paragraph (if any). Estimate how many A5 areas are needed to cover up all the Graffiti so identified (if any) and score the Vehicle in accordance with Table 1.2.1 below.

Table 2.1.2: Internal Level of Other (non-scratched) Graffiti Scoring Matrix

Condition		Score
a)	No sprayed, painted or written Graffiti whatsoever. No marks where previously present	10
	<i>Condition falls between a) and b)</i>	9
b)	No Graffiti but there are marks where previously present in the worst area of the Vehicle	8
	<i>Condition falls between b) and c)</i>	7
c)	2 A5 size areas to cover all the non-scratched Graffiti in the worst area of the Vehicle	6
	<i>Condition falls between c) and d)</i>	5
d)	4 A5 size areas to cover all the non-scratched Graffiti in the worst area of the Vehicle	4
	<i>Condition falls between d) and e)</i>	3
e)	8 A5 size areas to cover all the non-scratched Graffiti in the worst area of the Vehicle	2
	<i>Condition falls between e) and f)</i>	1
f)	12 or more A5 size areas to cover all the non-scratched Graffiti in the worst area of the Vehicle	0
g)	any offensive Graffiti (regardless of size of area)	0

2.1.3 Colour and Gloss Level: Assessment Procedure

Assess the level of gloss and colour in each Vehicle as follows:

- (A) identify the level of colour and gloss on the interior of the Vehicle; and
- (B) score the Vehicle in accordance with Table 2.1.3 below.

Table 2.1.3: Colour and Gloss Level Assessment Procedure Scoring Matrix

Condition		Score
a)	loss level at the maximum level defined on the reference sample and homogeneous. No discolouration or fading when compared with the colour-match reference sample	10

Condition		Score
<i>Condition falls between a) and b)</i>		8
b)	Gloss level within the maximum and minimum limits (as defined by the reference samples). Slight but homogeneous discolouration	6
<i>Condition falls between b) and c)</i>		5
c)	Gloss level within the maximum and minimum limits (as defined by the reference samples). Slight non homogeneous discolouration	3
<i>Condition falls between c) and d)</i>		2
d)	Gloss level lower than the minimum level on the reference samples. Excessive homogeneous or non homogeneous discolouration	0

2.1.4 **Surface Corrosion/Paint Chips/ Scratches: Assessment Procedure**

Assess the internal level of corrosion, chipped paint and scratching or denting in each Vehicle as follows:

- (A) identify all corrosion, chips, scratches (but not scratched Graffiti) and/or dents revealing undercoat or metal substrata on the interior of the Vehicle;
- (B) score the Vehicle as follows:
 - (1) find the worst area of one (1) square metre or more of the Vehicle affected by corrosion, chips, scratches and/or dents identified under paragraph 2.1.4(A). Estimate how many A5 areas are needed to cover up all the corrosion, chips, scratches or dents revealing undercoat or metal substrata identified under paragraph 2.1.4 (A) above and score the Vehicle in accordance with Table 2.1.4 below.

Table 2.1.4: Surface Corrosion/Paint Chips/ Scratches Scoring Matrix

Condition		Score
a)	No corrosion, chips or scratches or dents revealing undercoat or metal substrate	10
<i>Condition falls between a) and b)</i>		9
b)	No corrosion, chips or scratches or dents revealing undercoat or metal substrate but patch repairs made and not visible from 2m	8
<i>Condition falls between b) and c)</i>		7
c)	1 A5 size areas to cover all the corrosion, chips scratches or dents revealing undercoats or metal substrate on the worst area of the Vehicle and any patch repairs not visible from 2m	6
<i>Condition falls between c) and d)</i>		5
d)	2 A5 size areas to cover all the corrosion, chips scratches or dents revealing undercoat or metal substrate on the worst area of the Vehicle and any patch repairs not visible from 2m	4
<i>Condition falls between d) and e)</i>		3

Condition		Score
e)	4 A5 size areas to cover all the corrosion, chips scratches or dents revealing undercoat or metal substrate on the worst area of the Vehicle or any patch repairs greater than A7 size visible from 2m	2
	<i>Condition falls between e) and f)</i>	1
f)	More than 4 A5 size areas to cover all the corrosion, chips scratches or dents revealing undercoat or metal substrate on the worst area of the Vehicle or any patch repairs greater than A7 size visible from 2m	0

2.1.5 Floor Coverings: Assessment Procedure

Assess the state of the floor covering in each Vehicle in accordance with the following procedure:

- (A) identify the state of the floor covering in the Vehicle; and
- (B) score the Vehicle in accordance with table 2.1.5

Table 2.1.5: Floor Coverings Scoring Matrix

Condition		Score
a)	No delamination, bubbles or ripples	10
	<i>Condition falls between a) and b)</i>	9
b)	No delamination, bubbles or ripples but patch repairs made and not visible from 2m	8
	<i>Condition falls between b) and c)</i>	
c)	1 A5 size areas to cover all the delamination, bubbles or ripples in the worst area of the Vehicle and any patch repairs not visible from 2m	6
	<i>Condition falls between c) and d)</i>	5
d)	2 A5 size areas to cover all the delamination, bubbles or ripples in the worst area of the Vehicle and any patch repairs not visible from 2m	4
	<i>Condition falls between d) and e)</i>	3
e)	either 4 A5 size areas to cover all the delamination, bubbles or ripples in the worst area of the Vehicle or any patch repairs greater than A6 size visible from 2m	2
	<i>Condition falls between e) and f)</i>	1
f)	either more than 4 A5 size areas to cover all the corrosion, chips scratches or dents revealing undercoat or metal substrate in the worst area of the Vehicle or any patch repairs greater than A6 size visible from 4m	0

2.1.6 Labelling: Assessment Procedure

Assess the labelling on the interior of each Vehicle in accordance with the following procedure:

- (A) identify the state of the labelling in the Vehicle; and
- (B) score the Vehicle in accordance with table 2.1.6

Table 2.1.6: Labelling Scoring Matrix

Condition	Score
No labelling missing, damaged or defaced.	10
1 label missing, damaged or defaced in any Vehicle	8
2 labels missing, damaged or defaced in any Vehicle	6
3 labels missing, damaged or defaced in any Vehicle	4
More than 3 labels missing, damaged or defaced in any Vehicle	2
Any mandatory labelling (including safety and RVAR labelling) missing or rendered illegible by damaged or defacing	0

2.1.7 Condition of Arm Rests between Seats: Assessment Procedure

Assess the presence, proper positioning (e.g., not loose or bent) and condition of the arm rests in each Vehicle in accordance with the following procedure:

- (A) identify the presence, positioning and condition of the arm rests in the Vehicle including the absence of any which should be there; and
- (B) score the Vehicle in accordance with table 2.1.7.

Table 2.1.7: Condition of Arm Rests between Seats Scoring Matrix

Condition	Score
a) All are in place, intact, in good condition, and with no scratches	10
<i>Condition falls between a) and b)</i>	9
b) All are in place but with minor scratches or chips	8
<i>Condition falls between b) and c)</i>	6
c) One missing or substantially damaged	4
<i>Condition falls between c) and d)</i>	3
d) Two or more missing or substantially damaged	2
<i>Condition falls between d) and e)</i>	1
e) Five or more missing or substantially damaged	0

2.1.8 Condition of Hand Rails and Hangers: Assessment Procedure

Assess the existence, positioning and condition of hand rails and hangers, other rails and straps in each Vehicle in accordance the following procedure:

- (A) identify the presence, positioning and condition of the hand rails and hangers, other rails and straps in the Vehicle including the absence of any which should be there; and
- (B) score the Vehicle in accordance with table 2.1.8.

Table 2.1.8: Condition of Hand Rails and Hangers Scoring Matrix

Condition	Score
a) All are in place, intact, in good condition, and with no scratches	10
<i>Condition falls between a) and b)</i>	9
b) All are in place and but with minor scratches or chips	8
<i>Condition falls between b) and c)</i>	6
c) One missing or substantially damaged (e.g. stretched or bent out of shape)	4
<i>Condition falls between c) and d)</i>	3
d) Two to four missing or substantially damaged (e.g. stretched or bent out of shape)	2
<i>Condition falls between d) and e)</i>	1
e) Five or more missing or substantially damaged (e.g. stretched or bent out of shape).	0

2.1.9 Condition of Train Seats: Assessment Procedure

Assess the condition of the seating in each Vehicle in accordance the following procedure:

- (A) identify the condition of the seating in the Vehicle taking into account all aspects of seating;
- (B) do not include cleanliness; and
- (C) score the Vehicle in accordance with table 2.1.9.

Table 2.1.9: Condition of Train Seats Scoring Matrix

Condition	Score
a) All in as new condition. No detached upholstery components	10
<i>Condition falls between a) and b)</i>	9
b) All in good condition but with slight fading. No detached upholstery components	8
<i>Condition falls between b) and c)</i>	7
c) Some evidence of wear (e.g. worn upholstery). No detached upholstery components. No repairs evident	6

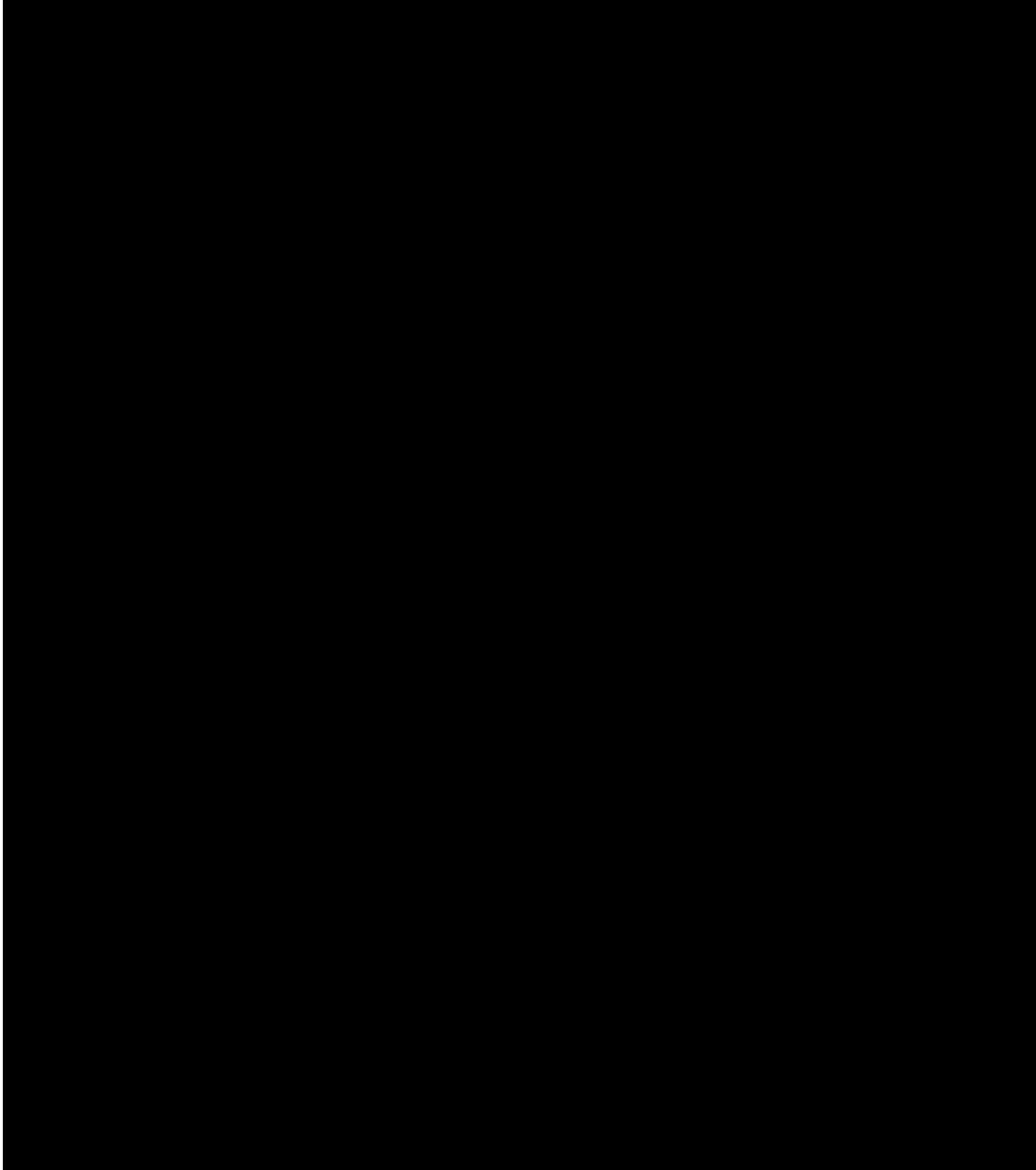
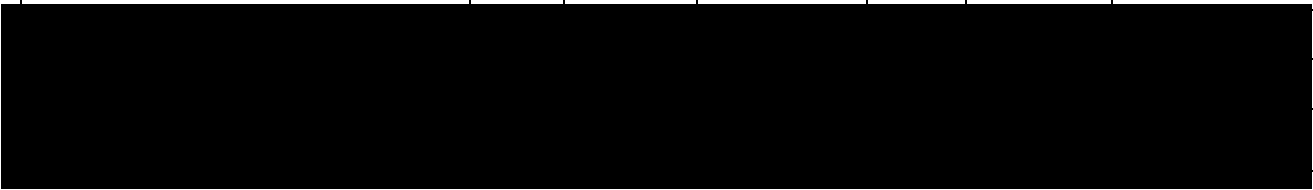
Condition		Score
<i>Condition falls between c) and d)</i>		5
d)	General evidence of wear or evidence of repairs. No detached upholstery components	4
<i>Condition falls between d) and e)</i>		3
e)	Extensive wear or un repaired rips less than 2.5cm in length or cigarette burns on more than 10% of seats. No detached upholstery components	2
<i>Condition falls between e) and f)</i>		1
f)	More than 5% of seats extremely worn or with un repaired rips longer than 2.5 cm Detached upholstery components	0

3. GENERAL

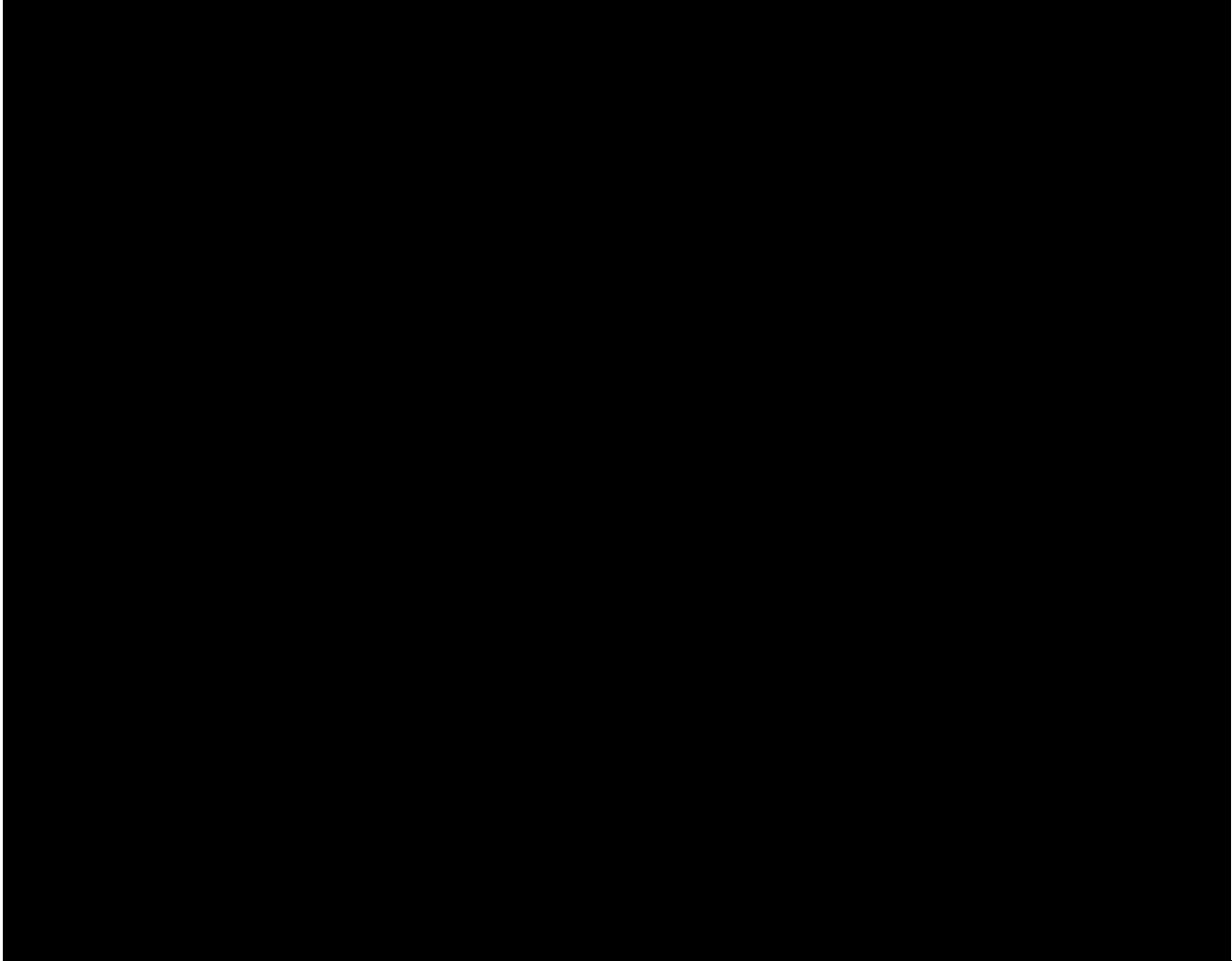
Each Party acknowledges and agrees that any reference standards or samples referred to in this Appendix 3 shall be agreed between the Purchaser and Maintainer no later than 25 weeks prior to Acceptance of the first Unit.

APPENDIX 3

Component Refurbishment Periods

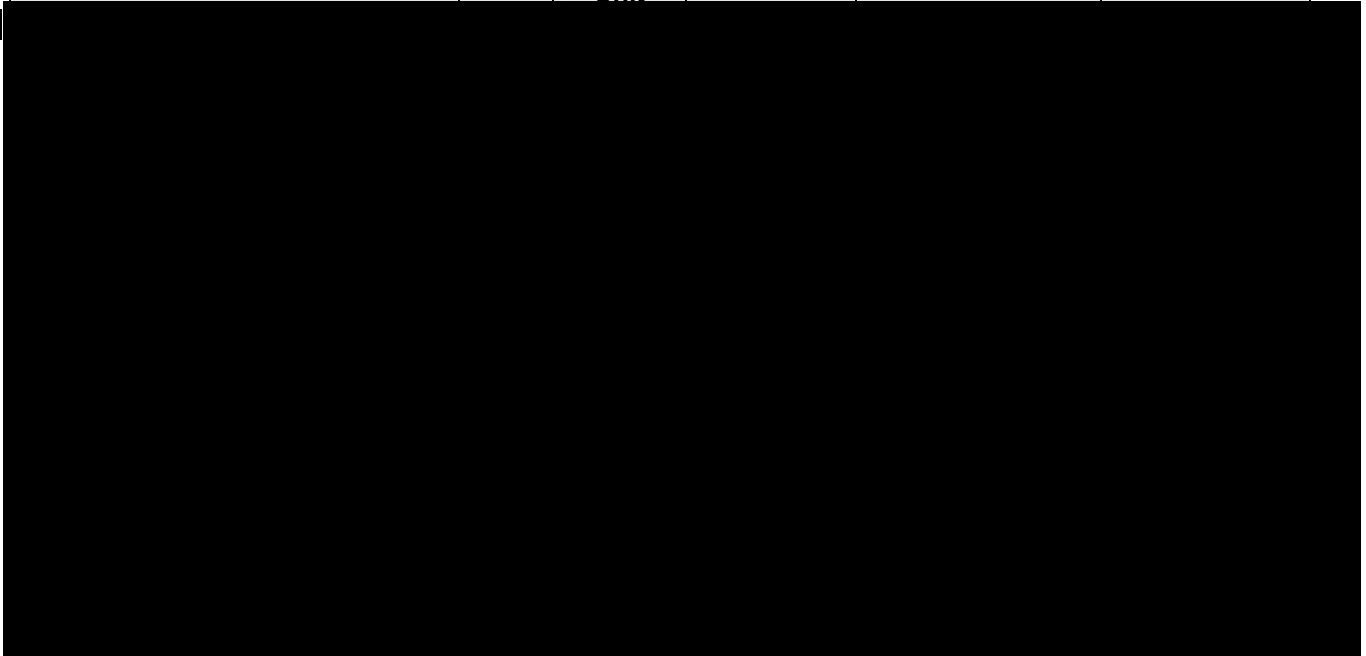
Component	Applies to		Activity	Period						
	NLR dc Unit	ELR dual voltage Unit		Time	Distance					
1. Car Body										
										
						2. Bogies & Running Gear				
										

Component	Applies to		Activity	Period	
	NLR dc Unit	ELR dual voltage Unit		Time	Distance

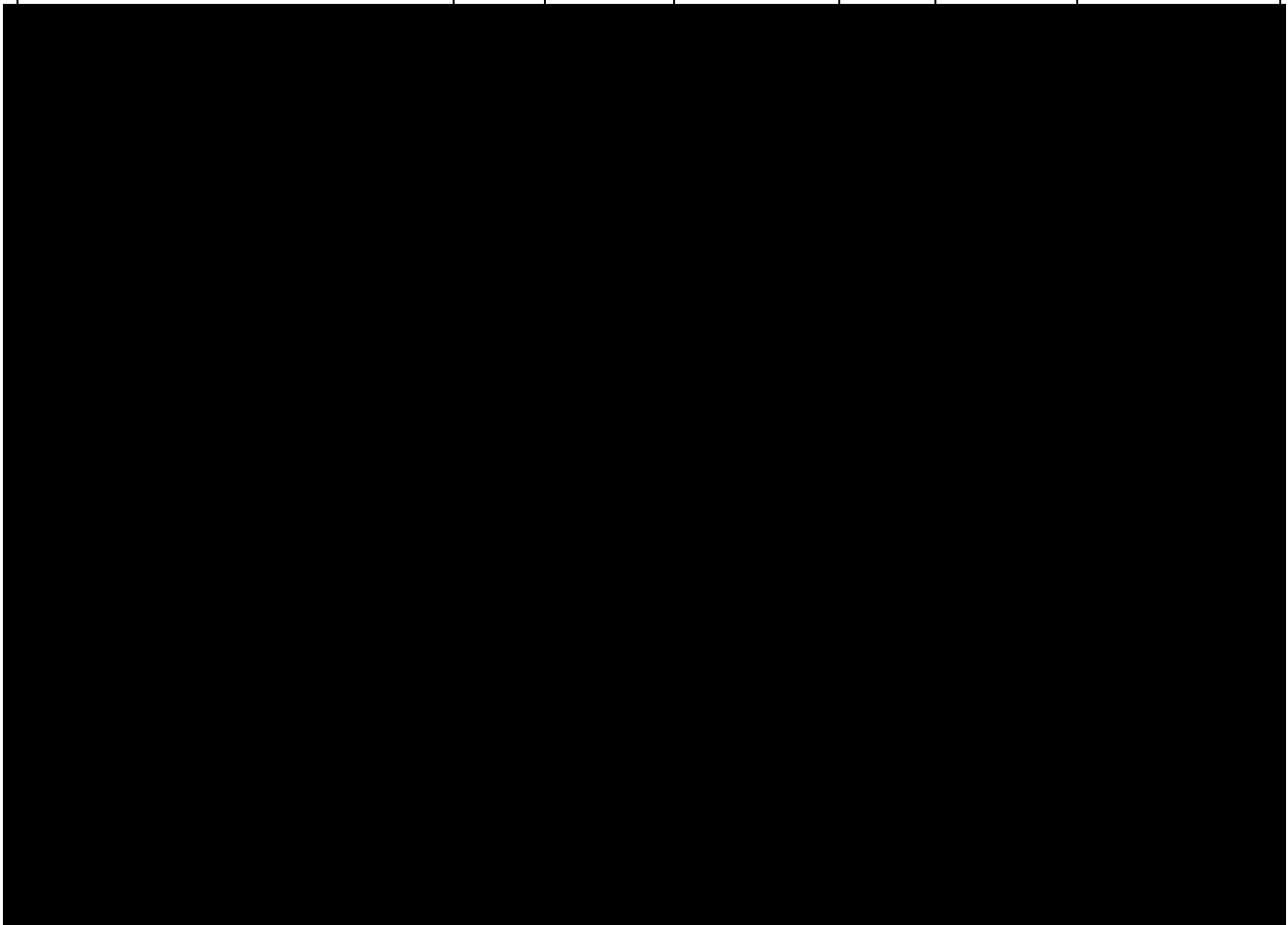


3. Power supply						

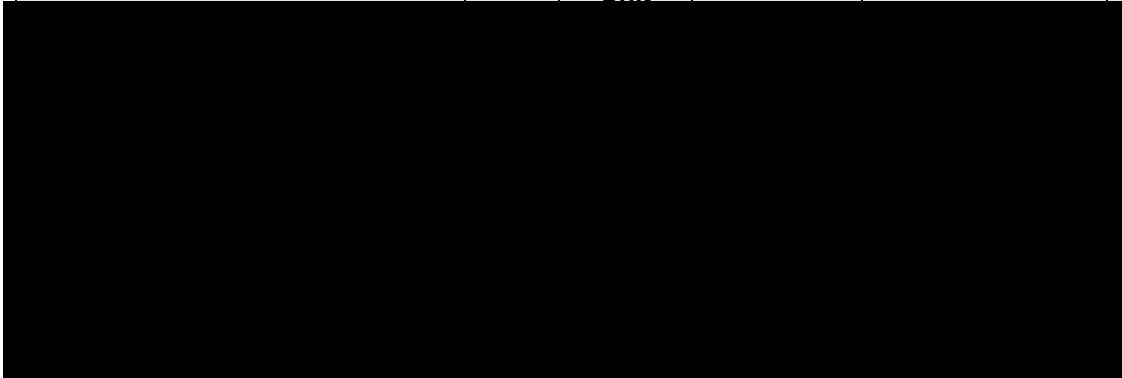
Component	Applies to		Activity	Period	
	NLR dc Unit	ELR dual voltage Unit		Time	Distance



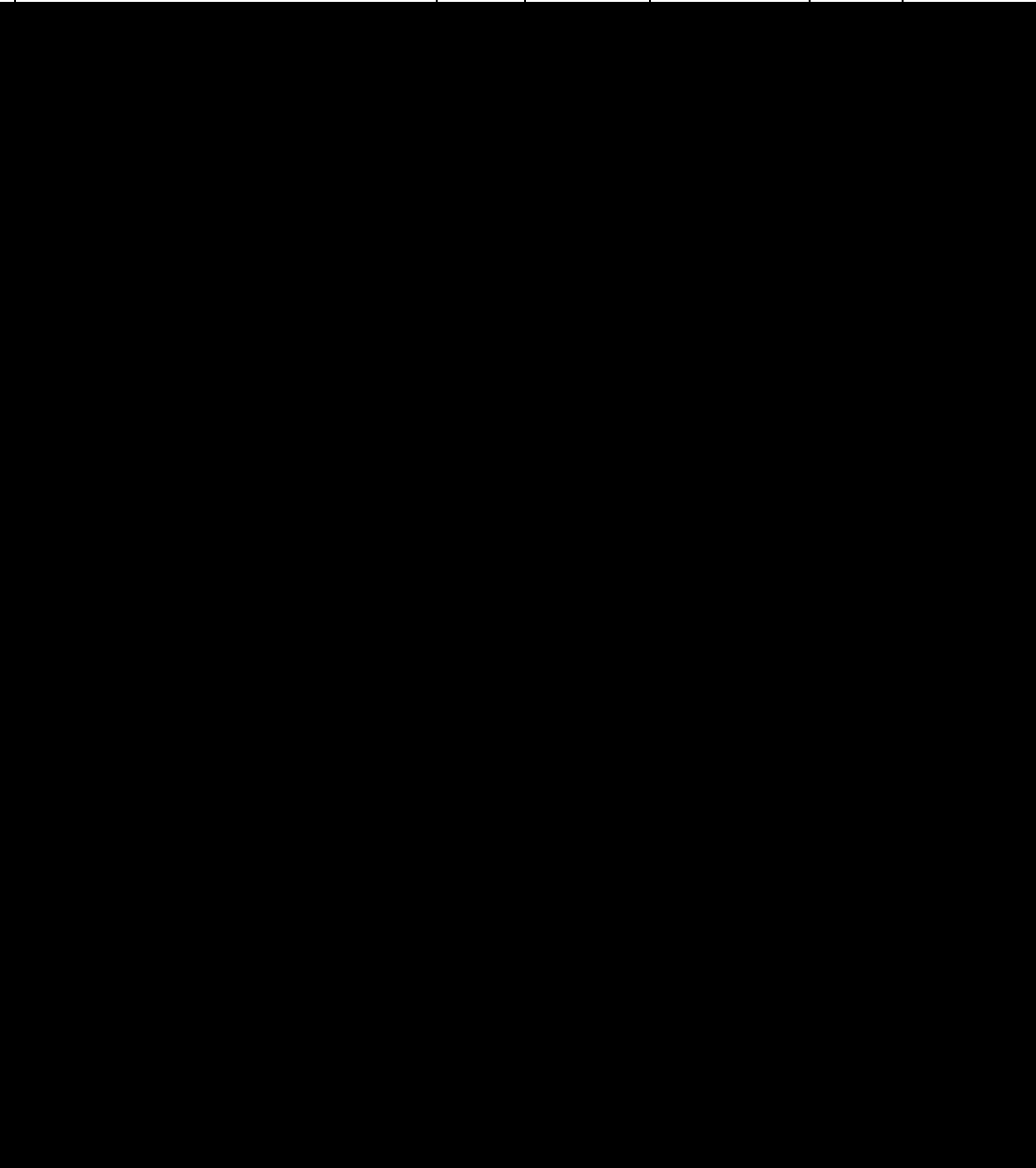
4. Propulsion



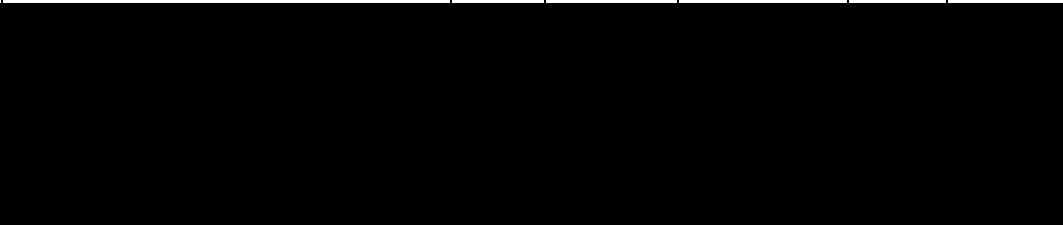
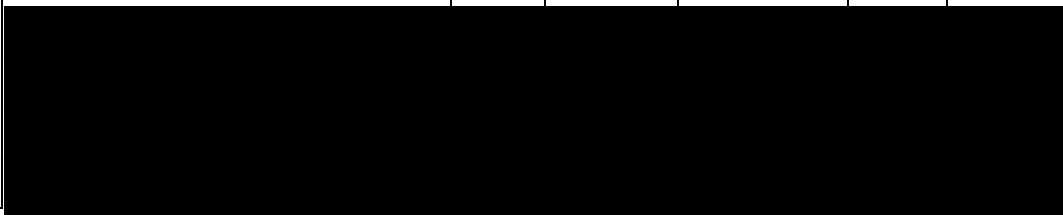
Component	Applies to		Activity	Period	
	NLR dc Unit	ELR dual voltage Unit		Time	Distance



5. Auxilliary power					
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Component	Applies to		Activity	Period	
	NLR dc Unit	ELR dual voltage Unit		Time	Distance
6. Brakes					
7. Interior Environment					
8. Control & Communication					

Component	Applies to		Activity	Period	
	NLR dc Unit	ELR dual voltage Unit		Time	Distance
			camera		
					
9. Other					
					

SCHEDULE 3

Performance Regime

1. The provisions of Part A of this Schedule 3 shall only apply during the Maintenance Period and thereafter if the Purchaser serves a Cessation Notice the provisions of Part B of this Schedule shall apply.

PART A

PART 1: GENERAL PERFORMANCE REGIME

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions:

"Actual RP Mileage" means the mileage actually run by a Fleet in the relevant Railway Period;

"Allowable Failure" means a Failure:

- (a) caused by an Event of Loss provided that such Event of Loss did not arise as a result of (i) a Maintainer Fault, (ii) any act, omission, neglect or default of the Maintainer, the Manufacturer, any Subcontractor, any member of the Maintainer's Group or the Manufacturer's Group or the employees or suppliers of any of them, or (iii) due to the Maintainer's or Manufacturer's performance or non performance of their respective obligations under this Agreement or the MSA;
- (b) which arose as a direct result of the occurrence of an Exonerating Event; or
- (c) which arose as direct result of any instruction of the Purchaser or Operator of a type not anticipated by the provisions of this Agreement including without limitation, the provisions of Schedule 2 (Maintenance and Cleaning Services); the Preparation, Presentation and Return Procedure, the Fault Notification Procedure, the In-service Support Procedure, the provisions of Schedule 9 (Maintenance Facility Obligations), the Maintenance Implementation Plan and the Joint Safe Working Plan provided such instruction did not arise as a result of (i) a Maintainer Fault, (ii) any act, omission, neglect or default of the Maintainer, the Manufacturer, any Subcontractor, or any member of the Maintainer's Group or the Manufacturer's Group or the employees or suppliers of any of them, or (iii) due to the Maintainer's or Manufacturer's performance or non performance of their respective obligations under this Agreement or the MSA; or
- (d) which arose as a result of an Operator Fault.

"Allowable Relief Period" means, subject to the provisions of Clause 25 and paragraph 5.3 of Part 1 of this Schedule 3, the period during which an Allowable Failure persists save that:

- (a) the Allowable Relief Period for an Operator Fault shall be the Remedy Period determined pursuant to paragraph 3.4 of Schedule 2 (Maintenance and Cleaning Services);
- (b) no Allowable Relief Period will arise in respect of a failure by the Operator to hand a Unit back to the Maintainer fifteen (15) minutes or less after the Exit Time; and
- (c) the Allowable Relief Period for the circumstances set out in paragraph 5.2 of Part 1 of this Schedule 3 shall be the period by which the Entry Time for the relevant Unit is deemed extended pursuant to that paragraph 5.2.

"Annual Deductions Cap" means an amount expressed in Pounds Sterling which is equivalent to the aggregate of (i) [REDACTED]) of the Annual Service Payment for the relevant Contract Year and (ii) each Deduction Cap Refresh;

"Annual Service Payment" means the aggregate of the Service Payments in the relevant Contract Year;

"Availability Deduction" means the Deduction referred to in and calculated in accordance with paragraph 5.1 of Part 1 of this Schedule;

"Average Scores" means the average cleanliness score assessed pursuant to paragraph 1 of Part 2 of this Schedule 3;

"Cancellation Deduction" means the Deduction referred to and calculated in accordance with paragraph 6 of Part 1 of this Schedule;

"Deduction" means each of the sums to be deducted from the Monthly Service Payment in accordance with this Schedule, and the provisions of Schedule 5 (Pricing and Payment);

"Deduction Cap Refresh" means any additional amount to be added to the Monthly Deductions Cap and the Annual Deductions Cap pursuant to paragraph 2 of Part 3 of this Schedule 3;

"Delay Incident" means a matter which gives rise to the occurrence of three (3) or more Impact Minutes including those referred to or known as 'TOC on TOC' and 'TOC on self';

"Eligible No Fault Found Matter" means any No Fault Found Matter to the extent that it occurs at least twice, with substantially the same symptoms in the same Unit and components, in any fourteen (14) day period;

"Eligible Operator Fault" means an Operator Fault which is an Approved Operator Fault and has not been rectified within the Allowable Relief Period;

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

"Facility Failure" means a Fault which gives rise to any Fault Deduction in accordance with paragraph 7 of Part 1 of this Schedule 3;

"Failure" means that:

- (a) a Unit is Unavailable; or
- (b) a Unit is not Fit to Remain in Service; or

- (c) a Unit is not Fit to Run; or
- (d) a Unit suffers a Facility Failure; or
- (e) Impact Minutes are recorded against a Unit.

“Fault Deduction” means a Deduction referred to in and calculated in accordance with paragraph 7 of Part 1 of this Schedule 3;

"Fit for Service" has the meaning ascribed to it in Appendix 1 to Schedule 2 (Maintenance and Cleaning Services);

"Fit to Run" has the meaning ascribed to it in Appendix 1 to Schedule 2 (Maintenance and Cleaning Services) throughout the process of being taken out of operation;

“Fit to Remain in Service” has the meaning ascribed to it in Appendix 1 to Schedule 2 (Maintenance and Cleaning Services);

"Fleet" means the ELR Fleet or the NLR Fleet as the context requires and **"Fleets"** means both the ELR Fleet and the NLR Fleet;

"Fleet Miles" means the miles equating to the Actual Mileage of the Fleet concerned;

"Impact Minutes" means in relation to a Unit any minutes of delay measured and attributed to a Unit by the Network Monitoring System;

"Impact Minute Benchmark" means the figures for the relevant Fleet calculated in accordance with paragraph 4 of Part 1 of, and Appendix 2 to, Part A of this Schedule 3;

"Impact Minute Benchmark Element" means the amount calculated in accordance with paragraph 3.5 of Part 1 of this Schedule 3 for use in calculating the Impact Minute Deduction;

"Impact Minute Bonus" means the sum referred to in, and calculated in accordance with, paragraph 3.2 or 3.6 of Part 1 of this Schedule 3, which shall be added to the Monthly Service Payment in accordance with the provisions of Schedule 5 (Pricing and Payment);

"Impact Minute Deduction" means the Deduction referred to in and calculated in accordance with paragraphs 3.2 and 3.3 of Part 1 of this Schedule 3, which shall be deducted from the Monthly Service Payment in accordance with the provisions of Schedule 5 (Pricing and Payment);

"Infrastructure Manager Matter" means any matter which is attributed to the Infrastructure Manager in accordance with the Network Monitoring System;

"Maintainer Allocated Impact Minutes" means each Impact Minute which is agreed or determined to be attributable to a Relevant Delay Incident in accordance with the provisions of paragraph 1 of Part 3 of this Schedule 3 aggregated in accordance with and subject to paragraph 2.1;

"Maintainer Fault" means a Fault which is not an Operator Fault, an Infrastructure Manager Matter or a No Fault Found Matter provided that any Eligible Operator Fault or Eligible No Fault Found Matter shall be a Maintainer Fault;

"Minimum Average Cleanliness Condition" means that a Unit scores [REDACTED] or more when assessed in accordance with paragraph 1 of Part 2 of this Schedule 3;

"Monthly Deductions Cap" means an aggregate maximum amount expressed in Pounds Sterling which is equivalent to (i) the aggregate of [REDACTED] of the Monthly Service Payment for the relevant Railway Period and (ii) each Deduction Cap Refresh;

"Monthly Service Payment" means the appropriate Service Payment for each Railway Period as determined in accordance with Schedule 5 (Pricing and Payment);

"Network Monitoring System" means TRUST or similar or equivalent system operated by the relevant Infrastructure Manager;

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

"No Fault Found Matter" means any Delay Incident which is not an Infrastructure Manager Matter or attributed to the Maintainer or its Subcontractor, agents, or employees or an Operator Fault;

"Performance Monitoring Deduction" means the Deduction referred to in and calculated in accordance with paragraph 1.8 of Part 3 of this Schedule 3;

"Performance Monitoring Report" means the report to be provided pursuant to paragraph 1.5 of Part 3 of this Schedule 3 in the form to be agreed between the Parties to meet the requirements of this Schedule 3;

"Performance Review Meeting" means the meeting referred to in paragraph 1.4 of Part 3 of this Schedule 3;

"Relevant Delay Incident" means a Delay Incident which is a Maintainer Fault;

"Relevant Delay Incident Deduction" means the sum referred to and calculated in accordance with paragraphs 3.5 and 3.6 of Part 1 of this Schedule 3;

"Relevant Delay Incident Deduction Cap" means the sum of [REDACTED]

"Reliability Growth Period" means any and all of Reliability Growth Period 1, Reliability Growth Period 2, Reliability Growth Period 3, Reliability Growth Period 4 and Reliability Growth Period 5;

"Reliability Growth Period 1" means in respect of the East London Railway the period beginning on the date of commencement of passenger operations and expiring on the date which is [REDACTED] calendar months later or if later completion of [REDACTED] ELR Fleet Miles and in respect of the North London Railway the period beginning on the date of introduction into passenger service of the first Unit to be Accepted and expiring on the date which is [REDACTED] calendar months later or if later, completion of [REDACTED] NLR Fleet Miles;

"Reliability Growth Period 2" means in respect of the East London Railway and the North London Railway respectively the [REDACTED] calendar months following the end of Reliability Growth Period 1 or if later, completion of [REDACTED] Fleet Miles;

"Reliability Growth Period 3" means in respect of East London Railway and the North London Railway respectively the [REDACTED] calendar months following the end of Reliability Growth Period 2 or if later, completion of [REDACTED] Fleet Miles;

"Reliability Growth Period 4" means in respect of East London Railway and the North London Railway respectively the [REDACTED] months following the end of Reliability Growth Period 3 or if later, [REDACTED] Fleet Miles;

"Reliability Growth Period 5" means in respect of East London Railway and the North London Railway respectively [REDACTED] calendar months from completion of Reliability Growth Period 4 or if later [REDACTED] Fleet Miles;

"Scheduled Mileage" means the Planned Mileage (as defined in Schedule 5) for a Fleet in a Contract Year divided by thirteen (13);

"Steady State" means the period commencing at the expiry of Reliability Growth Period 5 for the ELR Fleet or the NLR Fleet whichever is the earlier;

"Threshold Fleet" means [REDACTED] per cent of the Fleet concerned;

"Total Average Weighted Score" means the total of the Weighted Average Scores;

"Train Service" means each and any of the passenger services operated by the Operator on the East London Railway or the North London Railway as the context requires;

"TRUST" means an operational system owned by Network Rail for recording train running performance;

"Unavailable" means that a Unit required for any Diagrams is not Available and **"Unavailability"** shall be construed accordingly;

"Warranty Work Units" has the meaning ascribed to it in paragraph 3 of Part 3 of this Schedule 3;

"Weighted Average Score" means the Average Score, multiplied by the corresponding weighting multiplier in column D of Table 1 of Part 2 of this Schedule 3;

1.2 Any reference to minutes in this Schedule 3 shall be deemed to include a reference to parts thereof and shall be construed accordingly.

2. IMPACT MINUTES

2.1 Each Maintainer Allocated Impact Minutes in a Railway Period shall be aggregated by Fleet and shall be used for the purposes of calculating the Impact Minute Deduction and Impact Minute Bonus for each Fleet pursuant to the following provisions of paragraph 3 below. The aggregated Maintainer Allocated Impact Minutes for each Fleet in a Railway Period shall further be aggregated according to the individual Delay Incident which has been determined or agreed to have given rise to it, for the purposes of paragraph 3.4 below.

3. IMPACT MINUTE PAYMENTS/BONUS REGIME

Impact Minute Deduction and Impact Minute Bonus

- 3.1 The Impact Minute Deduction for each Fleet in a Railway Period shall be deducted from, and where applicable the Impact Minute Bonus for each Fleet in a Railway Period shall be added to, the Monthly Payment to the Maintainer, each in accordance with the provisions of this paragraph 3 and of Schedule 5 (Pricing and Payment).
- 3.2 The Impact Minute Deduction for a Fleet shall be deemed to be zero in a Railway Period where the summation of all Maintainer Allocated Impact Minutes calculated pursuant to paragraph 2.1 above is less than or equal to the Impact Minute Benchmark for that Fleet and the Impact Minute Bonus for a Fleet in a Railway Period shall be deemed to be zero where the summation of all Maintainer Allocated Impact Minutes is more than or equal to the Impact Minute Benchmark.
- 3.3 Where the summation of all Maintainer Allocated Impact Minutes for a Fleet calculated pursuant to paragraph 2.1 above is greater than the Impact Minute Benchmark for that Fleet in any Railway Period, then the Impact Minute Deduction for that Fleet shall be calculated in accordance with the following formula:

$$\text{Impact Minute Deduction} = \sum \text{RDID} - \text{IMBE}$$

where:

$\sum \text{RDID}$ is the summation of all Relevant Delay Incident Deductions for the Fleet (calculated in accordance with paragraph 3.4 below); and

IMBE is the Impact Minute Benchmark Element for the Fleet (calculated in accordance with paragraph 3.5 below).

- 3.4 The Relevant Delay Incident Deduction for each Relevant Delay Incident shall be calculated by multiplying the total number of Maintainer Allocated Impact Minutes which are agreed or determined to have arisen as result of that Relevant Delay Incident pursuant to paragraph 2.1 above by a sum of [REDACTED] [REDACTED] (Indexed), provided that, without prejudice to the calculation of any other Deduction under this Schedule, no single Relevant Delay Incident Deduction shall exceed the Relevant Delay Incident Deduction Cap.
- 3.5 The Impact Minute Benchmark Element shall be calculated by multiplying the Impact Minute Benchmark by the sum of [REDACTED] [REDACTED] [REDACTED] (Indexed);
- 3.6 Where the summation of all Maintainer Allocated Impact Minutes for a Fleet calculated pursuant to paragraph 2.1 above is less than the Impact Minute Benchmark for that Fleet in any Railway Period, then the Impact Minute Bonus shall be calculated by multiplying the difference between that summation and the Impact Minute Benchmark by a sum of [REDACTED] [REDACTED] (Indexed).

4. CALCULATION OF IMPACT MINUTE BENCHMARK

Steady State

- 4.1 During the Steady State and subject to the provisions of paragraph 4.2 below, the Impact Minute Benchmark per Railway Period for a Fleet shall be derived by multiplying the

aggregate of the number of Units in the Fleet that are scheduled to be operated each day in the relevant Railway Period for which a calculation is being made pursuant to paragraph 3 above by [REDACTED]

- 4.2 Subject to paragraph 4.2A below, if the Actual RP Mileage of a Fleet is greater than or less than the Scheduled Mileage of a Fleet for any Railway Period during Steady State the Impact Minute Benchmark for that Railway Period will be increased or reduced in accordance with the following formula:

$$\text{Impact Minute Benchmark} = \text{IMBF} \times [Y/Z]$$

where:

IMBF is the Impact Minute Benchmark for the Fleet;

Y is the Actual RP Mileage operated by the Fleet during the relevant Railway Period; and

Z is the Scheduled Mileage to be operated by the Fleet during the relevant Railway Period.

- 4.2A Where the Actual RP Mileage is less than the Scheduled Mileage and the application of the formula set out in paragraph 4.2 above would result in the reduction of the Impact Minute Benchmark by more than [REDACTED] (%) then the Impact Minute Benchmark will be reduced by [REDACTED] only.

Reliability Growth Periods

- 4.3 During a Reliability Growth Period the Impact Minute Benchmark shall be increased for each Fleet in accordance with the provisions of Part A Appendix 2, provided that the provisions of this paragraph 4.3 shall cease to be applicable on commencement of the Steady State.

5. AVAILABILITY DEDUCTIONS

Start of Service Availability

- 5.1 An Availability Deduction for each Fleet will be deducted from the Monthly Service Payment in accordance with the provisions of this paragraph 5 and Schedule 5 (Pricing and Payment) for each Unavailable Unit in the Fleet on each day on which it is Unavailable in accordance with the following provisions:

5.1.1 where more than the Threshold Fleet is Available on any day, the daily Availability Deduction for that Unit shall be [REDACTED]; and

5.1.2 where the Threshold Fleet or less than the Threshold Fleet is Available on any day, the daily Availability Deduction for that Unit shall be [REDACTED]

unless the Unit becomes Available or a replacement Unit provided by the Maintainer is Fit for Service in which case:

- 5.1.3 where the Unit or replacement Unit completes a minimum of [REDACTED] but no more than [REDACTED] per cent of the total mileage of the Diagrams scheduled to be completed by that Unit on that day, the daily Availability Deduction for that Unit shall be reduced to [REDACTED] where more than the Threshold Fleet is Available on that day and [REDACTED] where the Threshold Fleet or less than the Threshold Fleet is Available on that day; and
- 5.1.4 where the Unit or replacement Unit completes [REDACTED] per cent or more of the total mileage of the Diagrams scheduled to be completed by that Unit on that day, the daily Availability Deduction for that Unit shall be reduced to [REDACTED] where more than the Threshold Fleet is Available on that day and [REDACTED] [REDACTED] [REDACTED] where the Threshold Fleet or less than the Threshold Fleet is Available on that day.

Relief from Availability Deductions

- 5.2 Where a Unit is not Available because the Operator handed the Unit back to the Maintainer more than [REDACTED] after the Exit Time, to the extent only that the Maintainer is not reasonably able to take steps to mitigate any delay, the Entry Time for that Unit will be deemed to be extended until such time as the Maintainer could reasonably (taking into account the obligation to mitigate) be expected to make it available and the Purchaser will not be entitled to make any Availability Deduction in respect of the fact that the Unit is not Available in the period prior to the Entry Time to the extent that it is deemed to be so extended.
- 5.3 If a Unit is not Available due to an Allowable Failure the Purchaser shall not be entitled to make any Availability Deduction in respect of the fact that the Unit is not Available during the Allowable Relief Period. Without prejudice to the foregoing the Maintainer will be required to use all reasonable endeavours to mitigate the impact of the event giving rise to the Allowable Failure upon its ability to perform the Maintainer Obligations and to repair and return such Allowable Failure Units into service in a prudent, efficient and expeditious manner.

6. IN SERVICE CANCELLATION

- 6.1 If a Unit is not Fit to Remain in Service and is required to be taken out of operation, a daily Cancellation Deduction for each such Unit will be deducted from the Monthly Service Payment in accordance with the provisions of this paragraph 6 and Schedule 5 (Pricing and Payment) in accordance with the following provisions:
- 6.1.1 where the Unit is Fit to Run then the daily Cancellation Deduction for that Unit shall be [REDACTED] and
- 6.1.2 where the Unit is not Fit to Run then the daily Cancellation Deduction for that Unit shall be [REDACTED]

unless the Unit is repaired or a replacement Unit is provided which is, in each case, Fit for Service and returned to operation in accordance with the requirements of Schedule 2 (Maintenance and Cleaning Services) in which case:

- 6.1.3 where the Unit or replacement Unit completes a minimum of [redacted] but no more than [redacted] per cent of the total mileage of the relevant Diagrams scheduled to be completed by that Unit on that day, the daily Cancellation Deduction for that Unit shall be reduced to [redacted] where the Unit giving rise to the Cancellation Deduction was Fit to Run and [redacted] where it was not Fit to Run; and
- 6.1.4 where the Unit or replacement Unit completes [redacted] per cent or more of the total mileage of the Relevant Diagrams scheduled to be completed by that Unit on that day the daily Cancellation Deduction for that Unit shall be reduced to [redacted] (Indexed) where the Unit was Fit to Run and [redacted] (Indexed) where it was not Fit to Run.

7. FACILITY FAILURES

7.1 If:

- 7.1.1 a Unit is not Fit for Service on presentation at the relevant Entry Point or is not, at any time thereafter, Fit to Remain in Service; and
- 7.1.2 the Operator in its absolute discretion chooses to accept the Unit and take it into operation or continue to operate it; and
- 7.1.3 one or more of the Faults listed in the table set out at Part A Appendix 1 exists or occurs.

a daily Fault Deduction for that Unit will be calculated in accordance with the provisions of this paragraph 7 and deducted in accordance with the provisions of Schedule 5 (Pricing and Payment) for each day during which the Fault persists.

7.2 The daily Fault Deduction for the Unit shall be shall be calculated in accordance with the following formula:

$$\text{Daily Fault Deduction} = \sum \text{FD} - \text{ISD}$$

where:

- (A) FD is equal to the Fault Deduction to be deducted for a Fault calculated in accordance with the following formula

$$(1) \quad \text{FD} = [\text{F} \times \text{FF col 1}] + [\text{F} + \text{x FF col2}]$$

Where:

- (a) F is the number of instances (whether such instances are new occurrences or have been counted on previous days) up to a maximum of [redacted] of the relevant Fault in the Unit in any day;
- (b) F is the number of instances (whether such instances are new occurrences or have been counted on previous days) in addition to those measured by paragraph 7.2.1

- (A) (1) (a) above of the relevant Fault in the Unit in any day ;
- (c) FF col 1 is the appropriate sum in column 1 corresponding to the relevant Fault; and
- (d) FF col 2 is the appropriate sum in column 2 corresponding to the relevant Fault.
- (B) ISD is the In-Service Discount which shall be equal to [REDACTED] of the aggregate value of all instances of the Fault which occurred whilst the Unit was in service as calculated pursuant to the formula to determine FD above.

PART 2: CLEANING PERFORMANCE

1. MINIMUM AVERAGE CLEANLINESS

- 1.1 The Purchaser may assess the exterior of up to one hundred (100%) per cent of the Units in each Fleet in each Railway Period in accordance with paragraphs 1.1.1, 1.1.2, 1.1.3 and 1.1.4 of Schedule 2 Appendix 2 and the provisions of paragraphs 2.2 and 2.3 below, in order to determine whether the Minimum Average Cleanliness Condition has been met and the amount of the monthly Cleaning Deduction for each Fleet (if any) which shall be deducted from the Monthly Service Payment in accordance with Schedule 5 (Pricing and Payment).
- 1.2 In exercising its rights under paragraph 1.1 above the Purchaser shall be entitled to carry out its assessments once a week (but shall only assess a Unit once in any Railway Period) and shall assess each Unit after the scheduled cleaning time for the Unit and no later than one hour prior to the Entry Time for the Unit as follows:
- 1.2.1 Each Vehicle in the Unit shall be assessed and scored against the paragraphs specified in column A of table 1
- 1.2.2 The scores recorded against each paragraph specified in column A of table 1 shall be aggregated for each Vehicle in the Unit and divided by the number of Vehicles in the Unit to determine the Average Score for the Unit in respect of the relevant paragraph and inserted into the appropriate row of column C of Table 1.
- 1.2.3 The Average Score for the Unit set out in each row of table 1 shall be multiplied by the corresponding weighting multiplier in column D of table 1 to determine the Weighted Average Score which shall be inserted into the appropriate row of column E of table 1.
- 1.2.4 All Weighted Average Scores in column E of table 1 shall be aggregated to determine the Total Average Weighted Score for the Unit.

Table 1

A	B	C	D	E
Schedule 2, Appendix 2, paragraph	Description	Average Score	Weighting	Weighted Average Score (C x D)
1.1.1	External bodysides and roof			
1.1.2	External- driving end			
1.1.3	External- intermediate bodyends			
1.1.4	Underframe			
Total Average Weighted Score				

2. CLEANING DEDUCTIONS

- 2.1 In each Railway Period the Purchaser shall calculate the percentage of Units in each Fleet which it has assessed pursuant to paragraph 1 above and which achieved the Minimum Average Cleanliness Condition.
- 2.2 If all Units in a Fleet assessed pursuant to paragraph 1 above achieved the Minimum Average Cleanliness Condition in a Railway Period then the Cleaning Deduction shall be nil for that Fleet for that Railway Period.
- 2.3 If all Units in a Fleet assessed pursuant to paragraph 1 above do not achieve the Minimum Average Cleanliness Condition in a Railway Period, a Cleaning Deduction for that Fleet for that Railway Period shall be calculated in accordance with the provisions of this paragraph 2.3 and deducted from the Monthly Service Payment in accordance with the provisions of Schedule 5 (Pricing and Payment)

Cleaning Deduction [REDACTED] **(Indexed)] x A x B**

where

A is determined as follows:

- (A) if [REDACTED] per cent or fewer of the Units in the Fleet assessed in the Railway Period have not met the Minimum Average Cleanliness Condition then **A** shall be [REDACTED]
- (B) if [REDACTED] per cent or fewer of the Units in the Fleet assessed in the Railway Period have not met the Minimum Average Cleanliness Condition then **A** shall be [REDACTED] and
- (C) if more than [REDACTED] per cent of the Units in the Fleet assessed in the Railway Period have not met the Minimum Average Cleanliness Condition then **A** shall be [REDACTED]

B is the number of Units in the Fleet assessed in the Railway Period which failed to meet the Minimum Average Cleanliness Condition.

PART 3: GENERAL PROVISIONS

1. PERFORMANCE MONITORING AND ENGINEERING AUDIT

- 1.1 The Maintainer shall monitor all matters which will or may give rise to a Deduction under this Schedule and using TRUST data, data obtained from the Operator's Control Room, any information obtained from the Operator's staff (including drivers of the Units) or the Maintainer's staff or Subcontractors, and other data available and shall accurately detail them in a daily record of the matters set out below:
 - 1.1.1 any Impact Minutes;
 - 1.1.2 any Delay Incident;
 - 1.1.3 any Failure and the details of the specific reasons for that Failure (to the extent available at the time);
 - 1.1.4 the fact that a Unit is taken out of operation together with the details of such event; and
 - 1.1.5 Unit mileage; and
 - 1.1.6 any Eligible Operator Fault.
- 1.2 The daily record referred to in paragraph 1.1 above shall make an allocation of Impact Minutes per Unit in each Fleet in accordance with the categories set out below and shall include a description of each Delay Incident including date, time, location and number of Impact Minutes categorised according to the appropriate type of Delay Incident as follows:
 - 1.2.1 an Infrastructure Manager Matter;
 - 1.2.2 an Operator Fault;
 - 1.2.3 a Maintainer Fault; or
 - 1.2.4 a No Fault Found Matter.
- 1.3 Subject to paragraph 1.4, the Maintainer and the Purchaser shall work together on a daily basis to seek to establish and agree the cause of Delay Incidents and attribute responsibility for Impact Minutes by further investigation as appropriate. In the event that the Parties are not able to agree the cause of any Delay Incident:
 - 1.3.1 each of the Parties shall conduct such further investigations as it shall consider necessary and appropriate and the matter shall be further considered by the parties on the following day;
 - 1.3.2 if the Parties are still not able to agree the cause of such Delay Incident the matter shall be referred to the next Performance Review Meeting for resolution unless otherwise agreed; and
 - 1.3.3 if by the end of the Performance Review Meeting referred to above, the Parties are still not able to agree the cause of the Delay Incident the matter shall be referred to expert determination pursuant to Schedule 15A (Accelerated Expert Determination).

- 1.4 A Performance Review Meeting shall be held every twenty eight (28) days and shall be attended at least by the Maintainer's Project Manager and the Purchaser's Maintenance Manager. The standing agenda for the Performance Review Meeting shall be as follows:
 - 1.4.1 Minutes of previous meeting
 - 1.4.2 Review of Performance Monitoring Report
 - 1.4.3 Reconciliation of Deductions
 - 1.4.4 Disputed attributions
- 1.5 No later than five (5) Working Days prior to the Performance Review Meeting the Maintainer shall produce the Performance Monitoring Report for the preceding Railway Period (which shall be based upon and accompanied by the daily record for each of the days in that Railway Period and details of any further matters considered or investigated by the Parties pursuant to paragraph 1.3) and shall provide a copy to the Purchaser. The Maintainer shall also provide to the Purchaser, within a reasonable time following any request, any additional information and other reports as are reasonably required by the Purchaser.
- 1.6 Subject to the provisions of paragraph 1.3.3, 1.7 and 1.8 the content of the Performance Monitoring Report shall be agreed at the Performance Review Meeting and such agreed report shall be the source of the factual information regarding the performance of the Services for the relevant Railway Period for the purposes of calculating the relevant Monthly Service Payment and any Deductions.
- 1.7 If there shall be any error or omission from the Performance Monitoring Report for any Railway Period subsequently identified by the Maintainer or the Purchaser (pursuant to paragraph 1.9) or if the Infrastructure Manager shall subsequently determine that Impact Minutes or other TRUST data relating to the relevant Railway Period should be re-attributed or altered, then subject to the outcome of any appeal or representations made by the Operator or the Purchaser (in respect of which the Maintainer shall provide such co-operation and assistance as the Purchaser or Operator shall reasonably require) in respect of such matters, the Maintainer and the Purchaser shall agree the amendment to the Performance Monitoring Report or, failing agreement within five (5) Working Days of identification of the error or omission or final determination of the re-attribution or other alteration (provided that such identification or determination is made not more than two (2)) calendar months following the relevant Performance Monitoring Report, except in the circumstances referred to in paragraph 1.10 below) either the Maintainer or the Purchaser shall be entitled to refer the matter to be determined by dispute resolution pursuant to Clause 41 of this Agreement and amend the Performance Monitoring Report to the extent that it is so determined to be necessary.
- 1.8 Where the circumstances in paragraph 1.7 apply, the Purchaser shall, in addition:
 - 1.8.1 be entitled to make any Deductions from the Monthly Service Payment to the extent that it would have been entitled to make those Deduction; or
 - 1.8.2 be obliged to reimburse the Maintainer within thirty (30) days of the production of the Performance Monitoring Report pursuant to paragraph 1.7 to the extent that it would not have been entitled to make a Deduction which was made; or

1.8.3 be obliged to pay the Maintainer within thirty (30) days of the production of the Performance Monitoring Report pursuant to paragraph 1.7 to the extent that the Maintainer would have been entitled to a Impact Minute Bonus,

had the relevant matter been monitored and reported accurately in the relevant Performance Monitoring Report or the Infrastructure Manager attributed or allocated those matters as finally determined prior to the production of the relevant Performance Monitoring Report for the Railway Period in which the matters occurred. Any such Deductions shall be made in accordance with the provisions of Schedule 5 (Pricing and Payment) from the Monthly Service Payment payable in respect of the Railway Period in which the relevant matters were revealed by the Purchaser's investigations or, to the extent that the Purchaser is unable to make any further Deductions from the Monthly Service Payment in respect of that Railway Period by virtue of the provisions of:

1.8.4 Schedule 5 (Pricing and Payment); or

1.8.5 paragraph 1.10 below

in a case where the relevant provision would not have prevented the making of a Deduction had the matter been monitored or reported accurately in the Performance Monitoring Report for the Railway Period in which it occurred, they may be carried forward and deducted from the Monthly Service Payments due in respect of subsequent Railway Periods.

1.9 If the Purchaser identifies that the Maintainer has failed to monitor or accurately to report any matter contained in or accompanying the Performance Monitoring Report in the circumstances set out below in paragraph 1.10 then, without prejudice to the ability to make Deductions in respect of that matter in accordance with the provisions of this Schedule, a further Performance Monitoring Deduction of [REDACTED] for each failure to monitor or report that matter accurately shall be deducted from the Monthly Service Payment in accordance with the provisions of Schedule 5 (Pricing and Payment).

1.10 For the purposes of paragraphs 1.7, 1.8 and 1.9 of this Schedule the relevant circumstances are:

1.10.1 fraudulent action or inaction; or

1.10.2 deliberate misrepresentation; or

1.10.3 gross misconduct or incompetence in each case on the part of the Maintainer or any of its Subcontractors.

2. OVERALL CAP ON MAINTAINER LIABILITY

2.1 The Deductions calculated pursuant to this Schedule shall not exceed:

2.1.1 the Monthly Deductions Cap in any Railway Period; and

2.1.2 the Annual Deductions Cap in any Contract Year.

3. DEDUCTION CAP REFRESH

3.1 If in any Railway Period during the first [REDACTED] following the Commencement Date:

3.1.1 The Monthly Deductions Cap would (but for the provisions of this paragraph 3) be exceeded if all Deductions relating to that Railway Period were aggregated; and

3.1.2 [REDACTED] Units were not Available on any day during such Railway Period due to the Unit being taken out of revenue earning service so that work may be carried out to remedy a Defect (each such Unit being a "Warranty Work Unit");

then the Deduction Cap Refresh for that Railway Period shall be calculated in accordance with the following formula:

$$\text{Deduction Cap Refresh} = [\text{REDACTED}] (\text{Indexed}) \times \text{WWU} \times \text{UD}$$

where:

WWU is the number of Warranty Work Units in that Railway Period; and

UD is the number of days in respect of which claims for Availability Deductions were made for that Railway Period under this Schedule 3 on which there were also [REDACTED] Warranty Units.

3.2 Notwithstanding paragraph 3.1 above:

3.2.1 the Deduction Cap Refresh in respect of any Railway Period shall never exceed the amount which is equivalent to [REDACTED] of the Monthly Service Payment for that Railway Period; and

3.2.2 the Deduction Cap Refresh in respect of any Contract Year shall never exceed the amount which is equivalent to [REDACTED] of the Annual Service Payment for that Contract Year.

APPENDIX 1: FACILITY FAILURES

Proposed Deductions in Respect of the Fault Regime		
Type of Fault: Train Facility Failures	Deduction per Fault	
	Column 1 1 to 4 Faults	Column 2 More than 4 Faults
<p>1. HEATING VENTILATION AND AIR CONDITIONING EQUIPMENT</p> <p>In any Vehicle within a Unit any of:</p> <ol style="list-style-type: none"> 1. loss of capability to keep passenger saloon within the temperature ranges specified in the Specification contained within the MSA; or 2. loss of capability to keep driver's cab within temperature ranges specified in the Specification contained within the MSA; or 3. loss of capability to provide the saloon air flows specified in Specification contained within the MSA; or 4. loss of capability to provide the cab air flows specified in Specification contained within the MSA. 	■	■
<p>2. PUBLIC ADDRESS/COMMUNICATIONS</p> <p>In any Unit</p> <ol style="list-style-type: none"> 1. loss of broadcast facility in any Vehicle; or 2. loss of on-board inter-vehicle crew communications; or 3. loss of any passenger displays or destination indicators; or 4. partial or complete loss of saloon CCTV facility in any Vehicle. 	■	■
<p>3. EXTERIOR DOORS</p> <p>Loss of use of any exterior door or interior door on a Unit</p>	■	■
<p>4. INTERIOR LIGHTING</p>	■	■

Proposed Deductions in Respect of the Fault Regime		
Type of Fault: Train Facility Failures	Deduction per Fault	
	<u>Column 1</u> 1 to 4 Faults	<u>Column 2</u> More than 4 Faults
In any Unit of: 1. loss of 10% of lighting in 2 or more Vehicles; or 2. loss of 20% of lighting in any Vehicle.		
5. SHORT FORMATIONS Any short formation of a Unit	■	■

APPENDIX 2: IMPACT MINUTE BENCHMARK IN RELIABILITY GROWTH PERIOD

1. During the relevant period the Impact Minute Benchmark per Railway Period for a Fleet shall be derived by multiplying the number of Units scheduled to be operated daily in the relevant Railway Period by the mutipliers set out below:
 - (a) during Reliabilty Growth Period 1 the Multiplier shall be ■
 - (b) during Reliabilty Growth Period 2 the Multiplier shall be ■
 - (c) during Reliabilty Growth Period 3 the Multiplier shall be ■
 - (d) during Reliabilty Growth Period 4 the Multiplier shall be ■
 - (e) during Reliabilty Growth Period 5 until commencement of Steady State the Multiplier shall be ■

PART B

PART 1: TSSSA PERFORMANCE REGIME

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions:

"Actual RP Mileage" means the mileage actually run by a Fleet in the relevant Railway Period;

"Annual Deductions Cap" means an amount expressed in Pounds Sterling which is equivalent to the aggregate of [REDACTED] of the Annual Service Payment for the relevant Contract Year;

"Annual Service Payment" means the aggregate of the Service Payments in the relevant Contract Year;

"Available" means that a Unit required for a Diagram is available at the time and in the condition required by the Purchaser and/or the Operator regardless of whether the Operator or the Purchaser allows the Unit into service despite the Unit not being available at the time or in the condition required;

"Availability Deduction" means the Deduction referred to in and calculated in accordance with paragraph 5.1 of Part 1 of this Schedule;

"Cancellation Deduction" means the Deduction referred to and calculated in accordance with paragraph 6 of Part 1 of this Schedule;

"Deduction" means each of the sums to be deducted from the Monthly Service Payment in accordance with this Schedule, and the provisions of Schedule 5 (Pricing and Payment);

"Delay Incident" means a matter which gives rise to the occurrence of three (3) or more Impact Minutes including those referred to or known as 'TOC on TOC' and 'TOC on self';

"Eligible No Fault Found Matter" means any No Fault Found Matter to the extent that it occurs at least twice, with substantially the same symptoms in the same Unit and components, in any fourteen (14) day period;

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

"Facility Failure" means a Fault which gives rise to any Fault Deduction in accordance with paragraph 7 of Part 1 of this Schedule 3;

"Failure" means that:

- (a) a Unit is Unavailable; or
- (b) a Unit is not Fit to Remain in Service; or
- (c) a Unit is not Fit to Run; or
- (d) a Unit suffers a Facility Failure; or

(e) Impact Minutes are recorded against a Unit.

“Fault Deduction” means a Deduction referred to in and calculated in accordance with paragraph 7 of Part 1 of this Schedule 3;

"Fit for Service" has the meaning ascribed to it in Appendix 1 to Schedule 2 (Maintenance and Cleaning Services);

"Fit to Run" has the meaning ascribed to it in Appendix 1 to Schedule 2 (Maintenance and Cleaning Services) throughout the process of being taken out of operation;

“Fit to Remain in Service” has the meaning ascribed to it in Appendix 1 to Schedule 2 (Maintenance and Cleaning Services);

"Fleet" means the ELR Fleet or the NLR Fleet as the context requires and **"Fleets"** means both the ELR Fleet and the NLR Fleet;

"Fleet Miles" means the miles equating to the Actual Mileage of the Fleet concerned;

"Impact Minutes" means in relation to a Unit any minutes of delay measured and attributed to a Unit by the Network Monitoring System;

"Impact Minute Benchmark" means the figures for the relevant Fleet calculated in accordance with paragraph 4 of Part 1 of, and Appendix 2 to, Part B of this Schedule 3;

"Impact Minute Benchmark Element" means the amount calculated in accordance with paragraph 3.5 of Part 1 of this Schedule 3 for use in calculating the Impact Minute Deduction;

"Impact Minute Bonus" means the sum referred to in, and calculated in accordance with, paragraph 3.2 or 3.6 of Part 1 of this Schedule 3, which shall be added to the Monthly Service Payment in accordance with the provisions of Schedule 5 (Pricing and Payment);

"Impact Minute Deduction" means the Deduction referred to in and calculated in accordance with paragraphs 3.2 and 3.3 of Part 1 of this Schedule 3, which shall be deducted from the Monthly Service Payment in accordance with the provisions of Schedule 5 (Pricing and Payment);

"Infrastructure Manager Matter" means any matter which is attributed to the Infrastructure Manager in accordance with the Network Monitoring System;

"Maintainer Allocated Impact Minutes" means each Impact Minute which is agreed or determined to be attributable to a Relevant Delay Incident in accordance with the provisions of paragraph 1 of Part 2 of this Schedule 3 aggregated in accordance with and subject to paragraph 2.1;

"Maintainer Fault" means in relation to a Unit, Vehicle or Spare that such Unit, Vehicle or Spare does not meet the Rolling Stock Requirements – Technical by reason of faulty design, faulty materials or poor workmanship in each case attributable to the Manufacturer under the MSA or the Maintainer or its Subcontractors and for the avoidance of doubt does not include any Operator Fault, any Infrastructure Manager Matter or any No Fault Found Matter provided that any Eligible No Fault Found Matter shall be a Maintainer Fault;

"Monthly Deductions Cap" means an aggregate maximum amount expressed in Pounds Sterling which is equivalent to the aggregate of [REDACTED] of the Monthly Service Payment for the relevant Railway Period;

"Monthly Service Payment" means the appropriate Service Payment for each Railway Period as determined in accordance with Schedule 5 (Pricing and Payment);

"Network Monitoring System" means TRUST or similar or equivalent system operated by the relevant Infrastructure Manager;

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

"No Fault Found Matter" means any Delay Incident which is not an Infrastructure Manager Matter or attributed to the Maintainer or its Subcontractor, agents, or employees or an Operator Fault;

"Performance Monitoring Report" means the report to be provided pursuant to paragraph 1.5 of Part 3 of this Schedule 3 in the form agreed between the Parties to meet the requirements of this Schedule 3;

"Performance Review Meeting" means the meeting referred to in paragraph 1.4 of Part 3 of this Schedule 3;

"Relevant Delay Incident" means a Delay Incident which is a Maintainer Fault;

"Relevant Delay Incident Deduction" means the sum referred to and calculated in accordance with paragraphs 3.5 and 3.6 of Part 1 of this Schedule 3;

"Relevant Delay Incident Deduction Cap" means the sum of [REDACTED];

"Reliability Growth Period" means any and all of Reliability Growth Period 1, Reliability Growth Period 2, Reliability Growth Period 3, Reliability Growth Period 4 and Reliability Growth Period 5;

"Reliability Growth Period 1" means in respect of the East London Railway the period beginning on the date of commencement of passenger operations and expiring on the date which is [REDACTED] calendar months later or if later completion of [REDACTED] ELR Fleet Miles and in respect of the North London Railway the period beginning on the date of introduction into passenger service of the first Unit to be Accepted and expiring on the date which [REDACTED] calendar months later or if later, completion of [REDACTED] NLR Fleet Miles;

"Reliability Growth Period 2" means in respect of the East London Railway and the North London Railway respectively the [REDACTED] calendar months following the end of Reliability Growth Period 1 or if later, completion of [REDACTED] Fleet Miles;

"Reliability Growth Period 3" means in respect of East London Railway and the North London Railway respectively the [REDACTED] calendar months following the end of Reliability Growth Period 2 or if later, completion of [REDACTED] Fleet Miles;

“Reliability Growth Period 4” means in respect of East London Railway and the North London Railway respectively the [REDACTED] calendar months following the end of Reliability Growth Period 3 or if later, [REDACTED] million Fleet Miles;

“Reliability Growth Period 5” means in respect of East London Railway and the North London Railway respectively [REDACTED] calendar months from completion of Reliability Growth Period 4 or if later [REDACTED] Fleet Miles;

"Scheduled Mileage" means the Planned Mileage (as defined in Schedule 5) for a Fleet in a Contract Year divided by thirteen (13);

"Steady State" means the period commencing at the expiry of Reliability Growth Period 5 for the ELR Fleet or the NLR Fleet whichever is the earlier;

"Train Service" means each and any of the passenger services operated by the Operator on the East London Railway or the North London Railway as the context requires;

"TRUST" means an operational system owned by Network Rail for recording train running performance; and

"Unavailable" means that a Unit required for any Diagrams is not Available as a result of a Failure by the Maintainer to deliver any Spare or to rectify a Fault in or replace any Spare in accordance with its obligations under Schedule 11 (Technical Support and Spare Supply) and **"Unavailability"** shall be construed accordingly.

1.2 Any reference to minutes in this Schedule 3 shall be deemed to include a reference to parts thereof and shall be construed accordingly.

2. IMPACT MINUTES

2.1 Each Maintainer Allocated Impact Minutes in a Railway Period shall be aggregated by Fleet and shall be used for the purposes of calculating the Impact Minute Deduction and Impact Minute Bonus for each Fleet pursuant to the following provisions of paragraph 3 below. The aggregated Maintainer Allocated Impact Minutes for each Fleet in a Railway Period shall further be aggregated according to the individual Delay Incident which has been determined or agreed to have given rise to it, for the purposes of paragraph 3.4 below.

3. IMPACT MINUTE PAYMENTS/BONUS REGIME

Impact Minute Deduction and Impact Minute Bonus

3.1 The Impact Minute Deduction for each Fleet in a Railway Period shall be deducted from, and where applicable the Impact Minute Bonus for each Fleet in a Railway Period shall be added to, the Monthly Payment to the Maintainer, each in accordance with the provisions of this paragraph 3 and of Schedule 5 (Pricing and Payment).

3.2 The Impact Minute Deduction for a Fleet shall be deemed to be zero in a Railway Period where the summation of all Maintainer Allocated Impact Minutes calculated pursuant to paragraph 2.1 above is less than or equal to the Impact Minute Benchmark for that Fleet and the Impact Minute Bonus for a Fleet in a Railway Period shall be deemed to be zero

where the summation of all Maintainer Allocated Impact Minutes is more than or equal to the Impact Minute Benchmark.

- 3.3 Where the summation of all Maintainer Allocated Impact Minutes for a Fleet calculated pursuant to paragraph 2.1 above is greater than the Impact Minute Benchmark for that Fleet in any Railway Period, then the Impact Minute Deduction for that Fleet shall be calculated in accordance with the following formula:

$$\text{Impact Minute Deduction} = \sum \text{RDID} - \text{IMBE}$$

where:

$\sum \text{RDID}$ is the summation of all Relevant Delay Incident Deductions for the Fleet (calculated in accordance with paragraph 3.4 below); and

IMBE is the Impact Minute Benchmark Element for the Fleet (calculated in accordance with paragraph 3.5 below).

- 3.4 The Relevant Delay Incident Deduction for each Relevant Delay Incident shall be calculated by multiplying the total number of Maintainer Allocated Impact Minutes which are agreed or determined to have arisen as result of that Relevant Delay Incident pursuant to paragraph 2.1 above by a sum of [REDACTED] [REDACTED] (Indexed), provided that, without prejudice to the calculation of any other Deduction under this Schedule, no single Relevant Delay Incident Deduction shall exceed the Relevant Delay Incident Deduction Cap.
- 3.5 The Impact Minute Benchmark Element shall be calculated by multiplying the Impact Minute Benchmark by the sum of [REDACTED] [REDACTED] (Indexed);
- 3.6 Where the summation of all Maintainer Allocated Impact Minutes for a Fleet calculated pursuant to paragraph 2.1 above is less than the Impact Minute Benchmark for that Fleet in any Railway Period, then the Impact Minute Bonus shall be calculated by multiplying the difference between that summation and the Impact Minute Benchmark by a sum of [REDACTED] [REDACTED] (Indexed).

4. CALCULATION OF IMPACT MINUTE BENCHMARK

Steady State

- 4.1 During the Steady State and subject to the provisions of paragraph 4.2 below, the Impact Minute Benchmark per Railway Period for a Fleet shall be derived by multiplying the aggregate of the number of Units in the Fleet that are scheduled to be operated each day in the relevant Railway Period for which a calculation is being made pursuant to paragraph 3 above by [REDACTED]
- 4.2 Subject to paragraph 4.2A below, if the Actual RP Mileage of a Fleet is greater than or less than the Scheduled Mileage of a Fleet for any Railway Period during Steady State the Impact Minute Benchmark for that Railway Period will be increased or reduced in accordance with the following formula:

$$\text{Impact Minute Benchmark} = \text{IMBF} \times [\text{Y/Z}]$$

where:

IMBF is the Impact Minute Benchmark for the Fleet;

Y is the Actual RP Mileage operated by the Fleet during the relevant Railway Period; and

Z is the Scheduled Mileage to be operated by the Fleet during the relevant Railway Period.

- 4.2A Where the Actual RP Mileage is less than the Scheduled Mileage and the application of the formula set out in paragraph 4.2 above would result in the reduction of the Impact Minute Benchmark by more than [REDACTED] then the Impact Minute Benchmark will be reduced by [REDACTED] only.

Reliability Growth Periods

- 4.3 During a Reliability Growth Period the Impact Minute Benchmark shall be increased for each Fleet in accordance with the provisions of Part B Appendix 2, provided that the provisions of this paragraph 4.3 shall cease to be applicable on commencement of the Steady State.

5. AVAILABILITY DEDUCTIONS

Start of Service Availability

- 5.1 An Availability Deduction for each Fleet will be deducted from the Monthly Service Payment in accordance with the provisions of this paragraph 5 and Schedule 5 (Pricing and Payment) for each Unavailable Unit in the Fleet on each day on which it is Unavailable in accordance with the following provisions:

5.1.1 where less than [REDACTED] of the relevant Fleet are Unavailable on any day, the daily Availability Deduction for that Unit shall be [REDACTED] (Indexed); and

5.1.2 where [REDACTED] or more of the relevant Fleet are Unavailable on any day, the daily Availability Deduction for that Unit shall be [REDACTED] (Indexed);

unless the Maintainer delivers the outstanding Spares so that the Unit is no longer Unavailable in which case:

5.1.3 where the Unit completes a minimum of [REDACTED] but no more than [REDACTED] [REDACTED] per cent of the total mileage of the Diagrams scheduled to be completed by that Unit on that day, the daily Availability Deduction for that Unit shall be reduced to [REDACTED] (Indexed) where less than [REDACTED] of the Units of the relevant Fleet are Unavailable on that day and [REDACTED] (Indexed) where [REDACTED] or more of the Units of the relevant Fleet are Unavailable on that day; and

5.1.4 where the Unit completes [REDACTED] per cent or more of the total mileage of the Diagrams scheduled to be completed by that Unit on that day, the daily Availability Deduction for that Unit shall be reduced to [REDACTED] where less than [REDACTED] of the Units of the relevant Fleet are Unavailable on that day and [REDACTED] where [REDACTED] or more of the Units of the relevant Fleet are Unavailable on that day.

Relief from Availability Deductions

- 5.2 Where a Spare is not available by reason of any breach by the Purchaser or, to the extent acting on behalf of the Purchaser or pursuant to an accession in each case pursuant to Clause 2A of this Agreement, the Operator, then the Purchaser will not be entitled to make any Availability Deduction in respect of the fact that the Unit is Unavailable.
- 5.3 The Purchaser shall take all reasonable steps to mitigate the Unavailability of any Unit wherever possible to making available another Unit to operate the Diagrams scheduled to be operated by the Unavailable Unit.

6. IN SERVICE CANCELLATION

- 6.1 If a Unit is not Fit to Remain in Service by reason only of a Maintainer Fault and is required to be taken out of operation, a daily Cancellation Deduction for each such Unit will be deducted from the Monthly Service Payment in accordance with the provisions of this paragraph 6 and Schedule 5 (Pricing and Payment) in accordance with the following provisions:

6.1.1 where the Unit is Fit to Run then the daily Cancellation Deduction for that Unit shall be [REDACTED] (Indexed); and

6.1.2 where the Unit is not Fit to Run then the daily Cancellation Deduction for that Unit shall be [REDACTED] (Indexed);

unless the Unit is repaired or a replacement Unit is provided which is, in each case, Fit for Service and returned to operation in which case:

6.1.3 where the Unit or replacement Unit completes a minimum of [REDACTED] but no more than [REDACTED] per cent of the total mileage of the relevant Diagrams scheduled to be completed by that Unit on that day, the daily Cancellation Deduction for that Unit shall be reduced to [REDACTED] (Indexed) where the Unit giving rise to the Cancellation Deduction was Fit to Run and [REDACTED] where it was not Fit to Run; and

6.1.4 where the Unit or replacement Unit completes [REDACTED] per cent or more of the total mileage of the Relevant Diagrams scheduled to be completed by that Unit on that day the daily Cancellation Deduction for that Unit shall be reduced to one thousand [REDACTED] (Indexed) where the Unit was Fit to Run and two thousand [REDACTED] (Indexed) where it was not Fit to Run.

- 6.2 The Purchaser shall take all reasonable steps to mitigate the In Service Cancellation of any Unit wherever possible by making available another Unit to operate the Diagrams scheduled to be operated by the cancelled Unit and/or by repairing the Maintainer Fault which led to such In Service Cancellation as soon as reasonably practicable on that day.

7. FACILITY FAILURES

- 7.1 If:

7.1.1 a Unit is not Fit to Remain in Service by reason only of a Maintainer Fault; and

- 7.1.2 the Operator in its absolute discretion chooses to continue to operate the Unit; and
- 7.1.3 one or more of the Faults listed in the table set out at Part B Appendix 1 occurs.

a Fault Deduction for that Unit will be calculated in accordance with the provisions of this paragraph 7 and deducted in accordance with the provisions of Schedule 5 (Pricing and Payment).

- 7.2 The Fault Deduction for the Unit shall be shall be calculated in accordance with the following formula:

$$\text{Daily Fault Deduction} = \sum \text{FD}$$

where:

- (A) FD is equal to the Fault Deduction to be deducted for a Fault calculated in accordance with the following formula

$$(1) \quad \text{FD} = [F \blacksquare \times \text{FF col 1}] + [F \blacksquare + x \text{FF col2}]$$

Where:

- (a) $F \blacksquare$ is the number of instances which occur (counting only new instances which have occurred on that day and not counting any instances which occurred on previous days and which have not been remedied) up to a maximum of \blacksquare of the relevant Fault in the Unit in any day;
- (b) $F \blacksquare$ is the number of instances which occur (counting only new instances which have occurred on that day and not counting any instances which occurred on previous days and which have not been remedied) in addition to those measured by paragraph 7.2.1 (A) (1) (a) above of the relevant Fault in the Unit in any day ;
- (c) FF col 1 is the appropriate sum in column 1 corresponding to the relevant Fault; and
- (d) FF col 2 is the appropriate sum in column 2 corresponding to the relevant Fault.

PART 2: GENERAL PROVISIONS

1. PERFORMANCE MONITORING AND ENGINEERING AUDIT

- 1.1 The Purchaser shall monitor all matters which will or may give rise to a Deduction under this Schedule and using TRUST data, data obtained from the Operator's Control Room, any information obtained from the Operator's staff (including drivers of the Units) or the Maintainer's Technical Support Personnel, and other data available and shall accurately detail them in a daily record of the matters set out below:
- 1.1.1 any Impact Minutes;
 - 1.1.2 any Delay Incident;
 - 1.1.3 any Failure and the details of the specific reasons for that Failure (to the extent available at the time);
 - 1.1.4 the fact that a Unit is taken out of operation together with the details of such event; and
 - 1.1.5 Unit mileage
- 1.2 The daily record referred to in paragraph 1.1 above shall make an allocation of Impact Minutes per Unit in each Fleet in accordance with the categories set out below and shall include a description of each Delay Incident including date, time, location and number of Impact Minutes categorised according to the appropriate type of Delay Incident as follows:
- 1.2.1 an Infrastructure Manager Matter;
 - 1.2.2 an Operator Fault;
 - 1.2.3 a Maintainer Fault; or
 - 1.2.4 a No Fault Found Matter.
- 1.3 Subject to paragraph 1.4, the Maintainer and the Purchaser shall, to the extent that the Maintainer does not agree the attribution of any Delay Incident as a Maintainer Fault, work together to seek to establish and agree the cause of any such Delay Incidents and attribute responsibility for Impact Minutes by further investigation as appropriate. In the event that the Parties are not able to agree the cause of any such disputed Delay Incident:
- 1.3.1 each of the Parties shall conduct such further investigations as it shall consider necessary and appropriate and the matter shall be further considered by the parties on the following day;
 - 1.3.2 if the Parties are still not able to agree the cause of such Delay Incident the matter shall be referred to the next Performance Review Meeting for resolution unless otherwise agreed; and
 - 1.3.3 if by the end of the Performance Review Meeting referred to above, the Parties are still not able to agree the cause of the Delay Incident the matter shall be referred to expert determination pursuant to Schedule 15A (Accelerated Expert Determination).

- 1.4 A Performance Review Meeting shall be held every twenty eight (28) days and shall be attended at least by the Maintainer's Project Manager and the Purchaser's Maintenance Manager. The standing agenda for the Performance Review Meeting shall be as follows:
 - 1.4.1 Minutes of previous meeting
 - 1.4.2 Review of Performance Monitoring Report
 - 1.4.3 Reconciliation of Deductions
 - 1.4.4 Disputed attributions
- 1.5 No later than five (5) Working Days prior to the Performance Review Meeting the Purchaser shall produce the Performance Monitoring Report for the preceding Railway Period (which shall be based upon and accompanied by the daily record for each of the days in that Railway Period and details of any further matters considered or investigated by the Parties pursuant to paragraph 1.3) and shall provide a copy to the Maintainer. The Purchaser shall also provide to the Maintainer, within a reasonable time following any request, any additional information and other reports as are reasonably required by the Maintainer.
- 1.6 Subject to the provisions of paragraph 1.3.3 and 1.7 the content of the Performance Monitoring Report shall be agreed at the Performance Review Meeting and such agreed report shall be the source of the factual information regarding the performance of the Services for the relevant Railway Period for the purposes of calculating the relevant Monthly Service Payment and any Deductions.
- 1.7 If there shall be any error or omission from the Performance Monitoring Report for any Railway Period subsequently identified by the Maintainer or the Purchaser (pursuant to paragraph 1.9) or if the Infrastructure Manager shall subsequently determine that Impact Minutes or other TRUST data relating to the relevant Railway Period should be re-attributed or altered, then subject to the outcome of any appeal or representations made by the Operator or the Purchaser (in respect of which the Maintainer shall provide such co-operation and assistance as the Purchaser or Operator shall reasonably require) in respect of such matters, the Maintainer and the Purchaser shall agree the amendment to the Performance Monitoring Report or, failing agreement within five (5) Working Days of identification of the error or omission or final determination of the re-attribution or other alteration (provided that such identification or determination is made not more than two (2)) calendar months following the relevant Performance Monitoring Report) either the Maintainer or the Purchaser shall be entitled to refer the matter to be determined by dispute resolution pursuant to Clause 41 of this Agreement and amend the Performance Monitoring Report to the extent that it is so determined to be necessary.
- 1.8 Where the circumstances in paragraph 1.7 apply, the Purchaser shall, in addition:
 - 1.8.1 be entitled to make any Deductions from the Monthly Service Payment to the extent that it would have been entitled to make those Deduction; or
 - 1.8.2 be obliged to reimburse the Maintainer within thirty (30) days of the production of the Performance Monitoring Report pursuant to paragraph 1.7 to the extent that it would not have been entitled to make a Deduction which was made; or

1.8.3 be obliged to pay the Maintainer within thirty (30) days of the production of the Performance Monitoring Report pursuant to paragraph 1.7 to the extent that the Maintainer would have been entitled to a Impact Minute Bonus,

had the relevant matter been monitored and reported accurately in the relevant Performance Monitoring Report or the Infrastructure Manager attributed or allocated those matters as finally determined prior to the production of the relevant Performance Monitoring Report for the Railway Period in which the matters occurred. Any such Deductions shall be made in accordance with the provisions of Schedule 5 (Pricing and Payment) from the Monthly Service Payment payable in respect of the next following Railway Period except to the extent that the Purchaser is unable to make any further Deductions from the Monthly Service Payment in respect of that Railway Period by virtue of the provisions of:

1.8.4 Schedule 5 (Pricing and Payment); or

1.8.5 paragraph 2.1 below

in which case the Deductions shall not be further recoverable.

2. OVERALL CAP ON MAINTAINER LIABILITY

2.1 The Deductions calculated pursuant to this Schedule shall not exceed:

2.1.1 the Monthly Deductions Cap in any Railway Period; and

2.1.2 the Annual Deductions Cap in any Contract Year.

APPENDIX 1: FACILITY FAILURES

Proposed Deductions in Respect of the Fault Regime		
Type of Fault: Train Facility Failures	Deduction per Fault	
	Column 1 1 to 4 Faults	Column 2 More than 4 Faults
<p>3. HEATING VENTILATION AND AIR CONDITIONING EQUIPMENT</p> <p>In any Vehicle within a Unit any of:</p> <p>5. loss of capability to keep passenger saloon within the temperature ranges specified in the Specification contained within the MSA; or</p> <p>6. loss of capability to keep driver's cab within temperature ranges specified in the Specification contained within the MSA; or</p> <p>7. loss of capability to provide the saloon air flows specified in Specification contained within the MSA; or</p> <p>8. loss of capability to provide the cab air flows specified in Specification contained within the MSA.</p>	■	■
<p>4. PUBLIC ADDRESS/COMMUNICATIONS</p> <p>In any Unit</p> <p>5. loss of broadcast facility in any Vehicle; or</p> <p>6. loss of on-board inter-vehicle crew communications; or</p> <p>7. loss of any passenger displays or destination indicators; or</p> <p>8. partial or complete loss of saloon CCTV facility in any Vehicle.</p>	■	■
<p>5. EXTERIOR DOORS</p> <p>Loss of use of any exterior door or interior door on a Unit</p>	■	■
<p>6. INTERIOR LIGHTING</p>	■	■

Proposed Deductions in Respect of the Fault Regime		
Type of Fault: Train Facility Failures	Deduction per Fault	
	<u>Column 1</u> 1 to 4 Faults	<u>Column 2</u> More than 4 Faults
In any Unit of:		
3. loss of 10% of lighting in 2 or more Vehicles; or		
4. loss of 20% of lighting in any Vehicle.		

APPENDIX 2: IMPACT MINUTE BENCHMARK IN RELIABILITY GROWTH PERIOD

1. During the relevant period the Impact Minute Benchmark per Railway Period for a Fleet shall be derived by multiplying the number of Units scheduled to be operated daily in the relevant Railway Period by the mutipliers set out below:
 - (a) during Reliabilty Growth Period 1 the Multiplier shall be ■
 - (b) during Reliabilty Growth Period 2 the Multiplier shall be ■
 - (c) during Reliabilty Growth Period 3 the Multiplier shall be ■
 - (d) during Reliabilty Growth Period 4 the Multiplier shall be ■
 - (e) during Reliabilty Growth Period 5 until commencement of Steady State the Multiplier shall be ■

PRICING AND PAYMENT

PART 1 – PRICING, PAYMENT AND PERFORMANCE SECURITY

1. DEFINITIONS

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

"Actual Mileage" means in respect of the relevant Fleet the summation of the ELR Actual Annual Unit Mileage or the NLR Actual Annual Unit Mileage as the case may be;

"Adjusting Payment" means a payment calculated pursuant to paragraph 8.1 of Part 1;

"Adjustment Payment" means a payment calculated pursuant to paragraph 8.8 of Part 1;

"Aesthetic Condition Inspection Services" means the assessment carried out pursuant to part 2 of Schedule 2, as referred to in part A of Schedule 3;

"Assumptions" means the Assumptions set out in Appendix 3;

"Base Case Financial Model" means the financial model contained on a CD Rom entitled "ELR/NLR Train Services Agreement Schedule 5 Financial Model and Worked Variation Examples", the first 5 pages of which are reproduced to aid identification only in Appendix 6;

"Base Index" has the meaning ascribed to it in paragraph 9.1 of Part 1;

"Bonding Guarantee" means a bonding guarantee in the form set out in Part J of Schedule 20 (Agreed Form Documents);

"Compensation Sum" shall have the meaning given to it in paragraph 11.7.2 of Part 1;

"Control Room Presence Cost" means an amount of [REDACTED] per annum per control room (indexed) payable in equal instalments in each Railway Period for each complete calendar year during the TSA Payment Period (and pro-rata for part thereof);

"Day" means any day including Saturdays, Sundays and all public holidays.

"Deemed Acceptance" means Acceptance of an ELR Unit pursuant to paragraph D.7.9(A) of Appendix D to Schedule 3 (Rolling Stock Requirements – Assurance) of the MSA;

"ELR Actual Annual Unit Mileage" means the actual mileage accumulated on all Accepted ELR Units in the preceding calendar year divided by the number of Accepted ELR Units in operation provided that, for the purpose of this calculation, ELR Units Accepted prior to such calendar year shall count as one and ELR Units Accepted during such calendar year shall count as the number of Days during such calendar year for which they are Accepted divided by 365;

"ELR Adjusting Payment" means a payment calculated pursuant to paragraph 8.2 of Part 1;

"ELR Deficit Amount" has the meaning ascribed to it in paragraph 8.2.1 of Part 1;

"ELR Excess Amount" has the meaning ascribed to it in paragraph 8.2.1 of Part 1;

"ELR Final Adjusting Payment" means the payment calculated pursuant to paragraph 8.5.2 of Part 1;

"ELR Final Period" shall have the meaning given to it in paragraph 8.5.1 of Part 1 below;

"ELR Final TSSSA Adjusting Payment" means a payment calculated pursuant to paragraph 8.7.2 of Part 1;

"ELR Final TSSSA Period" has the meaning given to it in paragraph 8.7.1 of Part 1;

"ELR Floor Amount" has the meaning ascribed to it in paragraph 3.4 of Part 1

"ELR Planned Annual Unit Mileage" shall mean 84,942 miles per the Unit per calendar year, as the same may be varied pursuant to paragraph 8.4 of Part 1;

"ELR Service Payment Variance" means the percentage variance produced by expressing the ELR Adjusting Payment as a percentage of the ELR Scheduled Standard Service Payments in any calendar year;

"ELR Scheduled Standard Service Payment" means the Standard Service Payments in relation to the ELR Units that are scheduled for payment;

"ELR TSSSA Payment" means a payment calculated pursuant to paragraph 8.6.1 of Part 1;

"ELRT Deficit Amount" has the meaning given to it in paragraph 8.6.1 (A) of Part 1;

"ELRT Excess Amount" has the meaning given to it in paragraph 8.6.1 (A) of Part 1;

"Evaluation Principles" means the evaluation principles that are stated in the Financial Model whether by way of numerical inputs (in terms of underlying fixed and variable maintenance cost data (both time based and periodicity based) and the Assumptions) or the calculation formulae that are programmed into the spreadsheet and are applied with the Assumptions to the numerical inputs so as to produce:

- (a) the Scheduled Standard Service Payments referred to in paragraph 3;
- (b) the Worked Variation Examples;
- (c) any Adjusting Payments and any revision to the Scheduled Standard Service Payments as may be required pursuant to this Part 1; and
- (d) the TSSSA Service Payments referred to in paragraph 7;

"Financial Model" means the supporting spreadsheet model that has been used by the Maintainer to aggregate the Scheduled Standard Service Payments in Appendix 1 and 2 using the Assumptions below and incorporating the Evaluation Principles and to demonstrate the Worked Variation Examples;

"First Party" shall have the meaning given to it in paragraph 11.7.2 below of Part 1;

"Guaranteed Amount" has the meaning ascribed to it in the Bonding Guarantee;

"Increased Costs" means the costs incurred by the Maintainer in carrying out the Standard Services or the Train Preparation Services as a direct result of a Purchaser and/or Operator decision to: (a) stable Units at Sites other than the NXG Facility and the NLR Maintenance Facility and at a maximum of four Outstabling Sites, such increased cost being [REDACTED] indexed) per Railway Period per each additional two Outstabling Sites over and above the maximum of four Outstabling Sites and (b) increase the Operator's Diagram requirements beyond those specified in the Maintenance Window Plan to LUL Hours so as to connect out of last London Underground services which would require a pricing premium of [REDACTED] to be applied to the Rates specified in paragraph 5;

"Indemnity Sum" shall have the meaning given to it in paragraph 11.7.2 of Part 1;

"Indexation Adjustment Formula" means the formula set out in paragraph 9 of Part 1;

"Indexation Amount" means the difference between the Guaranteed Amount as adjusted by the Indexation Adjustment Formula set out in paragraph 9 of Part 1 and the unadjusted Guaranteed Amount;

"Initial Maintenance Spares Provisioning Sum" shall mean an amount of [REDACTED] payable by the Purchaser to the Maintainer on Acceptance of the first Unit;

"LUL Hours" means ELL services connect out of last tube services with the result that as compared to the Maintenance Window Plan:

- (a) early morning Unit arrivals on Monday are 30 minutes later than current;
- (b) early morning Unit arrivals on Tuesday to Friday are one hour later than current;
- (c) early morning Unit arrivals on Saturday and Sunday are 90 minutes later than current;
- (d) Unit departures on Monday to Friday same as current Monday to Saturday;
- (e) Unit departures on Saturday are one hour later than current Monday to Saturday.

"Mobilisation Fee" means an amount of [REDACTED] payable upon completion of this Agreement;

"NLR Actual Annual Unit Mileage" means the actual mileage accumulated on all Accepted NLR Units in the preceding calendar year divided by the number of Accepted NLR Units in operation provided that, for the purpose of this calculation, NLR Units Accepted prior to such calendar year shall count as one and NLR Units Accepted during such calendar year shall count as the number of Days during such calendar year for which they are Accepted divided by 365;

"NLR Adjusting Payment" means a payment calculated pursuant to paragraph 8.3 of Part 1;

"NLR Deficit Amount" has the meaning ascribed to it in paragraph 8.3.2 of Part 1;

"NLR Excess Amount" has the meaning ascribed to it in paragraph 8.3.1 of Part 1;

"NLR Final Adjusting Payment" means the payment calculated pursuant to paragraph 8.5.2 of Part 1;

"NLR Final Period" shall have the meaning given to it in paragraph 8.5.1 of Part 1;

"NCR Final TSSA Adjusting Payment" means a payment calculated pursuant to paragraph 8.7.2 of Part 1;

"NLR Final TSSSA Period" has the meaning given to it in paragraph 8.7.1 of Part 1;

"NLR Floor Amount" has the meaning ascribed to it in paragraph 3.5 of Part 1;

"NLR Planned Annual Unit Mileage" shall mean 84,000 miles per NLR Unit per calendar year, as the same may be varied pursuant to paragraph 8.4 of Part 1;

"NLR Service Payment Variance" means the figure produced by expressing the NLR Adjusting Payment as a percentage of the NLR Scheduled Standard Service Payments in any calendar year;

"NLR TSSSA Adjusting Payment" means a payment calculated pursuant to paragraph 8.6.2 of Part 1;

"NLR Scheduled Standard Service Payment" means the Standard Service Payments in relation to the NLR Units that are scheduled for payment;

"NLRT Deficit Amount" has the meaning given to it in paragraph 8.6.2 (A) of Part 1;

"NLRT Excess Amount" has the meaning given to it in paragraph 8.6.2 (A) of Part 1;

"Planned Mileage" means in respect of the relevant Fleet and each Unit within the Fleet, the summation of the ELR Planned Annual Unit Mileage or the NLR Planned Annual Unit Mileage as the case may be and, in respect of any Unit, taking into account the applicable number of Days during the applicable measurement period for which such Unit has been Accepted and generally in accordance with the applicable Train Plan;

"Project Management Fee" means the amounts payable by the Purchaser to the Maintainer as follows:

- (a) on completion and acceptance by the Purchaser of the Reference Design in accordance with Schedule 10 to the MSA, an amount of [REDACTED]
- (b) on completion and acceptance by the Purchaser of the Maintenance Facility Specification in accordance with Schedule 10 to the MSA, an amount of [REDACTED] and
- (c) a monthly project management fee of [REDACTED] payable with effect from 1st January 2007 to 31st March 2009.

"Recalculation Data" means in any calendar year the ELR Actual Annual Unit Mileage, the NLR Actual Annual Unit Mileage, any applicable Increased Costs and all Scheduled Standard Services Payments received;

"Recalculation Date" means in relation to the calculation of any ELR Adjusting Payment or NLR Adjusting Payment the earliest practical date at which all the Recalculation Data is available to the Maintainer (and no later than sixty (60) days after (a) the end of any calendar year or (b) the date of any Cessation Notice or notice of termination);

"Replacement Event" means the occurrence, at any time prior to the Step-Down Date of the Required Bonding Guarantee of one or more of the following events:

- (a) the Required Bonding Guarantee is rescinded, becomes illegal, unlawful or unenforceable or is terminated for whatsoever reason or howsoever; or
- (b) the Required Bonding Guarantee ceases for any reason to constitute the legal, valid, binding and enforceable obligation of the Bonding Guarantee Provider; or
- (c) the Required Bonding Guarantee does not constitute an on demand, irrevocable and unconditional standby guarantee; or
- (d) there has been a failure to obtain any consents necessary to permit an intended assignment of the Required Bonding Guarantee;

"Required Bonding Guarantee" has the meaning ascribed to it in paragraph 1.1 of Part 2;

"Scheduled Standard Service Payment" means a payment calculated pursuant to paragraph 3 of Part 1;

"Second Review Date" has the meaning ascribed to it in paragraph 1.5.1 of Part 2;

"Step-Down Date" has the meaning ascribed to it in paragraph 1.2 of Part 2;

"Technical Option" has the meaning ascribed to it in Schedule 9 of the Manufacture and Supply Agreement;

"Technical Option Amount" means the figure specified against the relevant Technical Option and listed in the column headed Technical Option Amount in paragraph 8.9.2 of Part 1;

"Train Cleaning Service Payment" means a payment calculated pursuant to paragraph 6 of Part 1;

"Train Plan" means the plan of the Operator for the operation of Units under the working timetables of the Operator in the relevant Recalculation Period;

"Train Preparation Services" means the services to be provided pursuant to Schedule 2 (Maintenance and Cleaning Services) in accordance with Schedule 16 (Preparation, Presentation and Return Procedure);

"Train Preparation Service Payment" means a payment calculated pursuant to paragraph 5 of Part 1;

"TSA Payment Period" means the period from the start of the first Maintenance Period to the end of the last Maintenance Period;

"TSSSA Adjusting Payment" means a payment calculated pursuant to paragraph 8.6 of Part 1;

"TSSSA Payment Period" means the period from Cessation to the end of the Duration;

"TSSSA Service Payment" means a payment calculated pursuant to paragraph 7 of Part 1;

"Worked Variation Examples" means the supporting applications of the Financial Model to demonstrate the application of paragraph 8 of Part 1 for the stated changes in Assumptions.

2. CALCULATION OF SERVICE PAYMENT

2.1 Service Payment

The Service Payment in respect of any Railway Period shall be calculated as follows:

$$SP = SSP + ASP + TPSP + TCSP + TSP + AP$$

Where:

SP is the Service Payment for that Railway Period;

SSP is the Scheduled Standard Service Payment for that Railway Period calculated in accordance with paragraph 3;

ASP is the Additional Service Payment for that Railway Period calculated in accordance with paragraph 4;

TPSP is the Train Preparation Service Payment for that Railway Period calculated in accordance with paragraph 5;

TCSP is the Train Cleaning Service Payment for that Railway Period calculated in accordance with paragraph 6;

TSP is the TSSSA Service Payment for that Railway Period calculated in accordance with paragraph 7; and

AP is the Adjustment Payment for that Railway Period calculated in accordance with paragraph 8.

3. CALCULATION OF SCHEDULED STANDARD SERVICE PAYMENTS

3.1 Subject to paragraph 3.2, the Scheduled Standard Service Payments in respect of each Railway Period (or part thereof) during the TSA Payment Period shall be calculated as follows:

$$SSP = (A + B + C + D) \text{ (indexed)}$$

Where:

SSP is the Scheduled Standard Service Payment in respect of the Railway Period for all ELR Units and all NLR Units Accepted during or prior to such Railway Period;

A is, in respect of each ELR Unit Accepted prior to such Railway Period, the figure in Column B of Appendix 1 (if such Unit was within the first 20 ELR Units Accepted) or Column C of Appendix 1 (if such Unit was not within the first 20 ELR Units Accepted) appearing against the appropriate figure in Column A in Appendix 1 (being

the number of complete Railway Periods since the Unit was Accepted), aggregated for all such ELR Units;

B is, in respect of each ELR Unit Accepted during such Railway Period, the amount expressed in the first column entry in Column B of Appendix 1 (if such Unit was within the first 20 ELR Units Accepted) or Column C of Appendix 1 (if such Unit was not within the first 20 ELR Units Accepted), but adjusted pro rata to the number of applicable Days in such Railway Period for which such Unit has been Accepted, aggregated for all such ELR Units;

C is, in respect of each NLR Unit Accepted prior to such Railway Period, the figure in Column B of Appendix 2 (if such Unit was within the first 22 NLR Units Accepted) or Column C of Appendix 2 (if such Unit was not within the first 22 NLR Units Accepted) appearing against the appropriate figure in Column A in Appendix 2 (being the number of complete Railway Periods since the Unit was Accepted), aggregated for all such NLR Units; and

D is, in respect of each NLR Unit Accepted during such Railway Period, the amount expressed in the first column entry in Column B of Appendix 2 (if such Unit was within the first 22 NLR Units Accepted) or Column C of Appendix 2 (if such Unit was not within the first 22 NLR Units Accepted), but adjusted pro rata to the number of applicable Days in such Railway Period for which such Unit has been Accepted, aggregated for all such NLR Units;

provided that for each NLR Unit which has been re-accepted into service following fitting of the additional, fourth vehicle the figures in Appendix 2 shall, from the date of such re-acceptance into service, be multiplied by [REDACTED].

- 3.2 If the number of ELR Units and NLR Units Accepted exceeds 65, the Scheduled Standard Service Payments shall, in respect of such excess, not be calculated in accordance with paragraph 3.1 but shall instead be determined pursuant to the Variation Procedure. The Scheduled Standard Service Payments in respect of each Railway Period (or part thereof) which does not fall wholly or partly within the TSA Payment Period shall be zero.
- 3.3 The tables set out in Appendix 1 and 2 may be substituted or revised in accordance with paragraph 8.4 in which case the substituted or revised table or tables shall apply to the calculation of the Scheduled Standard Service Payments from the start of the next calendar year following the date of such substitution.
- 3.4 If, at any time prior to Acceptance of the 20th ELR Unit, the Scheduled Standard Service Payments for ELR Units (prior to any deduction) in any Railway Period would be less than [REDACTED] the "ELR Floor Amount") then the Scheduled Standard Service Payments for the ELR Units for such Railway Period shall equal the ELR Floor Amount.
- 3.5 If, at any time prior to Acceptance of the 22nd NLR Unit, the Scheduled Standard Service Payments for ELR Units (prior to any deduction) in any Railway Period would be less than [REDACTED] (the "NLR Floor Amount") then the Scheduled Standard Service Payments for the ELR Units for such Railway Period shall equal the NLR Floor Amount.

4. CALCULATION OF ADDITIONAL SERVICE PAYMENTS

4.1 Additional Service Payments

The Additional Service Payments in respect of each Railway Period (or part thereof) during the TSA Payment Period shall be the aggregate of the charges calculated pursuant to paragraphs 4.2 and 4.3. The Additional Service Payments in respect of each Railway Period (or part thereof) which does not fall wholly or partly within the TSA Payment Period shall be zero.

4.2 Additional Services

Save where paragraph 4.3 applies:

4.2.1 subject to an aggregate cost free threshold of [REDACTED] hours every Railway Period (which for the avoidance of doubt cannot be accumulated and rolled forward to subsequent Railway Periods if not used), the labour rate for Additional Services performed at the NXG Facility or NLR Maintenance Facility above such threshold shall be charged at [REDACTED] hour (indexed); and

4.2.2 parts used for Additional Services shall be charged at cost plus [REDACTED]

4.3 Fixed Price Additional Services in relation to the ELR/NLR units

Additional Service Payments for each Railway Period for each Accepted NLR Unit and Accepted ELR Unit for the activities referred to in Appendix 4 shall be as specified in Appendix 4 and shall be indexed in accordance with paragraph 9.

5. CALCULATION OF TRAIN PREPARATION SERVICE PAYMENTS

5.1 Train Preparation Service Payment

The Train Preparation Service Payment in respect of each Railway Period (or part thereof) during the TSA Payment Period shall be the aggregate of the sums specified in this paragraph 5. The Train Preparation Service Payment in respect of each Railway Period (or part thereof) which does not fall wholly or partly within the TSA Payment Period shall be zero.

5.2 Train Preparation Rates

The rates per Railway Period which the Maintainer may charge to the Purchaser for Train Preparation Services in relation to each Accepted Unit will be [REDACTED] for each such Unit (indexed) (and pro-rata for parts of Railway Periods) unless varied:

5.2.1 in accordance with the Variation Procedure;

5.2.2 in the event that the hours available for train preparation can be increased by [REDACTED] from that indicated by the Maintenance Window Plan the rates specified above shall be decreased by [REDACTED] (and pro-rata for parts thereof)

5.2.3 in the event that LUL Hours are introduced the premium specified in part (b) of the Increased Costs definition would apply from the date at which such service change becomes effective.

5.3 Aesthetic condition inspection Rates

The rates per Railway Period which the Maintainer may charge to the Purchaser for the agreed daily Aesthetic Condition Inspection Services in relation to each Accepted Unit will be [REDACTED] (and pro-rata for parts of Railway Periods) unless varied:

- 5.3.1 in accordance with the Variation Procedure (which would also apply for any changes away from a daily regime);
- 5.3.2 in the event that the hours available for train preparation can be increased by [REDACTED] from that indicated by the Maintenance Window Plan the rates specified above shall be decreased by [REDACTED] (and pro-rata for parts thereof)
- 5.3.3 in the event that LUL Hours are introduced in which event the premium specified in part (b) of the Increased Costs definition would apply from the date at which such service change becomes effective.

6. CALCULATION OF TRAIN CLEANING SERVICE PAYMENTS

The Train Cleaning Service Payment in respect of each Railway Period (or part thereof) during the TSA Payment Period shall be the amount calculated as being payable pursuant to the Cleaning Option, if exercised. The Train Cleaning Service Payment in respect of each Railway Period (or part thereof) which does not fall wholly or partly within the TSA Payment Period shall be zero.

7. CALCULATION OF TSSSA SERVICE PAYMENTS

- 7.1 Subject to paragraph 7.2, the TSSSA Service Payments in respect of each Railway Period (or part thereof) during the TSSSA Payment Period shall be calculated as follows:

$$TSP = (E + F + G + H) \text{ (indexed)}$$

Where:

TSP is the TSSSA Service Payment in respect of the Railway Period for all ELR Units and all NLR Units Accepted during or prior to such Railway Period;

E is, in respect of each ELR Unit Accepted prior to such Railway Period, the figure in Column B of Table A in Appendix 5 (if such Unit was within the first 20 ELR Units Accepted) or Column C of Table A in Appendix 5 (if such Unit was not within the first 20 ELR Units Accepted) appearing against the appropriate figure in Column A of Table A in Appendix 5 (being the number of complete Railway Periods since the Unit was Accepted), aggregated for all such ELR Units;

F is, in respect of each ELR Unit Accepted during such Railway Period, the amount expressed in the first column entry in Column B of Table A in Appendix 5 (if such Unit was within the first 20 ELR Units Accepted) or Column C of Table A in Appendix 5 (if such Unit was not within the first 20 ELR Units Accepted), but adjusted pro rata to the number of applicable Days in such Railway Period for which such Unit has been Accepted, aggregated for all such ELR Units;

G is, in respect of each NLR Unit Accepted prior to such Railway Period, the figure in Column B of Table B in Appendix 5 (if such Unit was within the first 22 NLR Units Accepted) or Column C of Table B in Appendix 5 (if such Unit was not within

the first 22 NLR Units Accepted) appearing against the appropriate figure in Column A of Table B in Appendix 5 (being the number of complete Railway Periods since the Unit was Accepted), aggregated for all such NLR Units;

H is, in respect of each NLR Unit Accepted during such Railway Period, the amount expressed in the first column entry in Column B of Table B in Appendix 5 (if such Unit was within the first 22 NLR Units Accepted) or Column C of Table B in Appendix 5 (if such Unit was not within the first 22 NLR Units Accepted), but adjusted pro rata to the number of applicable Days in such Railway Period for which such Unit has been Accepted, aggregated for all such ELR Units;

provided that for each NLR Unit which has been re-accepted into service following fitting of the additional, fourth vehicle the figures in Table B in Appendix 5 shall, from the date of such re-acceptance into service, be multiplied by [REDACTED]

- 7.2 If the number of ELR Units and NLR Units Accepted exceeds 65, the Scheduled Standard Service Payments shall, in respect of such excess, not be calculated in accordance with paragraph 7.1 but shall instead be determined as if it were a Variation. The TSSSA Service Payment in respect of each Railway Period (or part thereof) which does not fall wholly or partly within the TSSSA Payment Period shall be zero.
- 7.3 The tables set out in Appendix 5 may be substituted or revised in accordance with paragraph 8.4 in which case the substituted or revised table or tables shall apply to the calculation of the TSSSA Service Payments from the start of the next calendar year following the date of such substitution.

8. CALCULATION OF ADJUSTING PAYMENTS

8.1 Adjusting Payment

The Adjusting Payment shall be the sum of the ELR Adjusting Payment (calculated in accordance with paragraph 8.2) and the NLR Adjusting Payment (calculated in accordance with paragraph 8.3), as adjusted pursuant to this paragraph 8, and the other Adjustment Payments referred to in this paragraph 8.

8.2 ELR Adjusting Payments

For each calendar year (or part thereof) during the TSA Payment Period the Maintainer shall on the Recalculation Date calculate the ELR Adjusting Payments as follows:

- 8.2.1 The Maintainer shall calculate the Actual Mileage of the ELR Fleet during that calendar year (or part thereof) minus the Planned Mileage of the ELR Fleet for that year (or part thereof). A positive result shall be the "**ELR Excess Amount**" and a negative result shall be the "**ELR Deficit Amount**".
- 8.2.2 If the result is positive, subject to the ELR Excess Amount being greater than [REDACTED] but no more than [REDACTED] of the Planned Mileage for the ELR Fleet, then the ELR Excess Amount shall be multiplied by [REDACTED] (indexed) and the resulting amount shall be payable by the Purchaser to the Maintainer by way of an Adjusting Payment.
- 8.2.3 If the result is negative, subject always to the proviso in paragraph 3.4 and subject to such ELR Deficit Amount being greater than [REDACTED] of the Planned Mileage for the ELR Fleet, such ELR Deficit Amount shall be multiplied by

█ (indexed) and the resulting amount shall be payable by the Maintainer to the Purchaser by way of an Adjusting Payment.

- 8.2.4 If such ELR Excess Amount is greater than █ of the Planned Mileage of the ELR Fleet the Variation Procedure shall apply to determine the amounts payable in respect of such excess over █ of the Planned Mileage of the ELR Fleet.

8.3 **NLR Adjustment Amounts**

For each calendar year (or part thereof) during the TSA Payment Period the Maintainer shall on the Recalculation Date calculate the NLR Adjusting Payments as follows:

- 8.3.1 The Maintainer shall calculate the Actual Mileage of the NLR Fleet during the calendar year (or part thereof) minus the Planned Mileage of the NLR Fleet for that year (or part thereof). A positive amount shall be the "**NLR Excess Amount**" and a negative amount shall be the "**NLR Deficit Amount**".

- 8.3.2 If the result is positive, subject to the NLR Excess Amount being greater than █ but no more than █ of the Planned Mileage for the NLR Fleet, then the NLR Excess Amount shall be multiplied by █ (indexed) and the resulting amount shall be payable by the Purchaser to the Maintainer by way of an Adjusting Payment.

- 8.3.3 If the result is negative, subject always to the proviso in paragraph 3.5 below and subject to such NLR Deficit Amount being greater than █ of the Planned Mileage for the NLR Fleet, such NLR Deficit Amount shall be multiplied by █ (indexed) and the resulting amount shall be payable by the Maintainer to the Purchaser by way of an Adjusting Payment.

- 8.3.4 If such NLR Excess Amount is greater than █ of the Planned Mileage of the NLR Fleet the Variation Procedure shall apply to determine the amounts payable in respect of such excess over █ of the Planned Mileage of the NLR ELR Fleet.

8.4 **Revision of Standard Service Payments**

- 8.4.1 In the event that any such calculation of an ELR Adjusting Payment and/or NLR Adjusting Payment in any calendar year produces an ELR Service Payment Variance or NLR Service Payment Variance as the case may be of greater than █ then either the Maintainer or the Purchaser may elect to rebase the ELR Planned Annual Unit Mileage and/or NLR Planned Annual Unit Mileage using the ELR Actual Annual Unit Mileage or as applicable the NLR Actual Annual Unit Mileage in the immediately preceding calendar year (unless the Purchaser can reasonably demonstrate that such calculation should more accurately be based on the Train Plan the Purchaser reasonably anticipates will be operated during the next calendar year in which case this mileage data will be used).

- 8.4.2 Any such revision to Scheduled Standard Service payments pursuant to paragraph 8.4.1 shall at all times be supported by an updated version of the Financial Model demonstrating the Evaluation Principles and a substitute Appendix 1 or 2 shall be certified by the Maintainer to the Purchaser or

determined pursuant to the Disputes Resolution Procedure as being in accordance with this Agreement following which such substitute Appendix shall be deemed to take effect for the purposes of future calculations (unless and until a further substitute Appendix is produced).

8.5 Reconciliation on Termination or Expiry

8.5.1 Upon termination or expiry of this Agreement in respect of ELR Units and the NLR Units, the Maintainer shall advise the Purchaser of the Actual Mileage performed by the ELR Fleet and the NLR Fleet during the period from 1 January in the calendar year during which such termination or expiry occurs up to the date upon which this Agreement is terminated or expires in respect of the ELR Units ("**ELR Final Period**") and the NLR Units ("**NLR Final Period**").

8.5.2 The Maintainer shall on the Recalculation Date calculate the ELR Final Adjusting Payment and the NLR Final Adjusting Payment due in relation to the ELR Units and the NLR Units by applying the calculation principles set out in paragraphs 8.2 and 8.3 but with the calculation of applicable ELR Excess Amounts, ELR Deficit Amounts, NLR Excess Amounts or NLR Deficit Amounts being made on a pro-rata basis supported in each case with a revised version of the Financial Model demonstrating input of the Recalculation Data and application of the Evaluation Principles.

8.6 TSSSA Adjusting Payment

8.6.1 For each calendar year (or part thereof) during the TSSSA Payment Period the Maintainer shall on the Recalculation Date calculate the ELR TSSSA Adjusting Payments as follows:

(A) The Maintainer shall calculate the Actual Mileage of the ELR Fleet during that calendar year (or part thereof) minus the Planned Mileage of the ELR Fleet for that year (or part thereof). A positive result shall be the "**ELRT Excess Amount**" and a negative result shall be the "**ELRT Deficit Amount**".

(B) If the result is positive, subject to such ELRT Excess Amount being greater than ■■■ but no more than ■■■ of the Planned Mileage for the ELR Fleet, then such ELRT Excess Amount shall be multiplied by ■■■ (indexed) and the resulting amount shall be payable by the Purchaser to the Maintainer by way of an Adjusting Payment.

(C) If the result is negative, subject always to such ELRT Deficit Amount being greater than ■■■ of the Planned Mileage for the ELR Fleet, such ELRT Deficit Amount shall be multiplied by ■■■ (indexed) and the resulting amount shall be payable by the Maintainer to the Purchaser by way of an Adjusting Payment.

(D) If such ELRT Excess Amount is greater than ■■■ of the Planned Mileage of the ELR Fleet the Variation Procedure shall apply to determine the amounts payable.

8.6.2 For each calendar year (or part thereof) for the Maintenance Period the Maintainer shall on the Recalculation Date calculate the NLR TSSSA Adjusting Payments as follows:

- (A) The Maintainer shall calculate the Actual Mileage of the NLR Fleet during that calendar year (or part thereof) minus the Planned Mileage of the NLR Fleet for that year (or part thereof). A positive result shall be the "**NLRT Excess Amount**" and a negative result shall be the "**NLRT Deficit Amount**".
- (B) If the result is positive, subject to such NLRT Excess Amount being greater than ■■■ but no more than ■■■ of the Planned Mileage for the NLR Fleet, then such NLRT Excess Amount shall be multiplied by ■■■ (indexed) and the resulting amount shall be payable by the Purchaser to the Maintainer by way of an Adjusting Payment.
- (C) If the result is negative, subject always to such NLRT Deficit Amount being greater than ■■■ of the Planned Mileage for the NLR Fleet, such NLRT Deficit Amount shall be multiplied by ■■■ (indexed) and the resulting amount shall be payable by the Maintainer to the Purchaser by way of an Adjusting Payment.
- (D) If such NLRT Excess Amount is greater than ■■■ of the Planned Mileage of the NLR Fleet the Variation Procedure shall apply to determine the amounts payable in respect of such excess over ■■■ of the Planned Mileage of the ELR Fleet.

8.7 Reconciliation on Termination or Expiry

- 8.7.1 Upon termination or expiry of the TSSSA Agreement pursuant to Schedule 11 in respect of ELR Units and the NLR Units, the Maintainer shall advise the Purchaser of the Actual Mileage performed by the ELR Fleet and the NLR Fleet during the period from 1 January in the calendar year during which such termination or expiry occurs up to the date upon which the TSSSA Agreement is terminated or expires in respect of the ELR Units ("**ELR Final TSSSA Period**") and the NLR Units ("**NLR Final TSSSA Period**").
- 8.7.2 The Maintainer shall on the Recalculation Date calculate the ELR Final TSSSA Adjusting Payment and the NLR Final TSSSA Adjusting Payment due in relation to the ELR Units and the NLR Units by applying the calculation principles set out in paragraphs 8.2 and 8.3 but with the calculation of applicable ELRT Excess Amounts, ELRT Deficit Amounts, NLRT Excess Amounts or NLRT Deficit Amounts being made on a pro-rata basis supported in each case with a revised version of the Financial Model demonstrating input of the Recalculation Data and application of the Evaluation Principles.

8.8 Other Adjustments

The Maintainer shall be entitled to the following Adjustment Payments. Each such Adjustment Payments shall be invoiced by the Maintainer in the Railway Period following the Railway Period to which it relates:

- 8.8.1 Increased Costs;
- 8.8.2 Initial Maintenance Spares Provisioning Sum;
- 8.8.3 Mobilisation Fees;

- 8.8.4 Project Management Fees;
- 8.8.5 Any applicable Impact Minute Deduction and/or Fault Deduction (which shall be expressed as a negative amount); and
- 8.8.6 any applicable Impact Minute Bonus.

8.9 Technical Options

- 8.9.1 If the Purchaser exercises a Technical Option, the tables set out in Appendices 1 and 2 shall be restated by increasing the figures in columns B and C by a factor equal to the Technical Option Amount.
- 8.9.2 For the purposes of this paragraph 8.9, the Technical Options and the corresponding Technical Option Amount shall be:

Technical Option	Technical Option Amount
Conversation of ELL to dual voltage	
Emergency lighting	
Fitting tripcock to NLR Units	
Conventional gangway design	
Door open push button	

8.10 Events of Loss

If one or more Units suffer an Event of Loss, the payments calculated under this Part 1 shall be calculated as if such Unit had not been Accepted.

8.11 Extension

If this Agreement continues for more than 390 Railway Periods, for the purpose of the calculations to be undertaken pursuant to this paragraph 8, the tables in Appendix 1, 2 and 5 shall be applied on the basis that, for Railway Periods beyond the 390th, the number of Railway Periods shall be reduced by 390.

9. INDEXATION ADJUSTMENT FORMULA

9.1 Indexation Adjustment of Service Payments

Where figures in this Schedule 5 are followed by the expression "(indexed)" they shall be multiplied by I where I is calculated on each anniversary of the Commencement Date in accordance with the following formula:

$$I = 1 + (L - B) / B$$

Where

B is the Base Index which will be the latest available monthly Retail Price Index excluding mortgage interest payments (RPIX) published on or immediately before 30th June 2005

L is the latest available RPIX Index published before the date of the relevant annual adjustment

9.2 **Changes to the Indices**

If the indices referred to in paragraph 1 above cease to be published, then such other appropriate index as may be published in place thereof shall apply or, in the absence of an appropriate replacement index, such index shall apply as the Parties may agree.

9.3 **Base Date of Indices**

If any index specified above is superseded by an index with a base date which is later than the base date of the index detailed above, the superseding index shall be used or an index with a later base date, as the case may require.

9.4 **Provisional Indices**

Where an index is published as "provisional" and is subsequently amended, then:

- 9.4.1 the calculation of any applicable adjustment may be undertaken using the published provisional index and invoices may be rendered accordingly;
- 9.4.2 any published amendment to the provisional index shall result in recalculation of any applicable adjustment; and
- 9.4.3 such recalculation shall be retrospective for the relevant period, and the Party disadvantaged by the amendment to the provisional index shall be entitled to recover the difference in the value of any invoice calculated on the basis of an amended provisional index.

9.5 **Decimal Places and Rounding**

All calculations pursuant to this schedule shall be to two decimal places rounding up at 0.xx5 or above and rounding down otherwise (for example, 10.375 = 10.38 and 10.374 = 10.37).

10. **PAYMENT REQUESTS**

10.1 **Reports**

The Maintainer shall, in respect of each Railway Period and within five (5) Working Days following the last day of each Railway Period, deliver to the Purchaser a report setting out how the payments payable in respect of such Railway Period have been calculated. The report shall show, without double counting:

- 10.1.1 details of the calculation of each component of the Service Payment due in respect of the Railway Period;
- 10.1.2 any other amount due and payable by one Party to the other under this Agreement in respect of the Railway Period;
- 10.1.3 details of any VAT payable in connection with any payment required pursuant to this paragraph 10; and
- 10.1.4 the net amount owing by the Purchaser to the Maintainer or by the Maintainer to the Purchaser in respect of the Railway Period.

10.2 **Payment Requests and Refund Notices**

If the report delivered pursuant to paragraph 10.1 shows a net amount owing by the Purchaser to the Maintainer, it shall be accompanied by a payment request from the Maintainer to the Purchaser in respect of such amount (which payment request shall separately identify any additional VAT payable by the Purchaser). If the report shows a net amount owing by the Maintainer to the Purchaser, the Maintainer shall remit with the report a refund notice of the net amount owing.

10.3 **Supporting Documentation**

The report delivered pursuant to paragraph 10.1 shall be accompanied by documentation clearly setting forth the derivation of the matters referred to therein for the relevant Railway Period, additional evidence reasonably requested by the Purchaser and such records as may be necessary to enable the Purchaser to audit the report.

10.4 **Purchaser's Right to Report**

If the Maintainer fails to issue any report, payment request or refund notice within the time periods required pursuant to this paragraph 10, the Purchaser may prepare such report, payment request or refund notice and the report, payment request or refund notice so prepared shall be deemed to have been issued by the Maintainer (without prejudice to the right of the Maintainer to dispute the content of such report, payment request or refund notice).

10.5 **Disputes**

Any Dispute regarding the content of a payment request or required notice shall be resolved in accordance with the Disputes Resolution Procedure.

11. **PAYMENT**

11.1 **Due Date for Payments**

11.1.1 Subject to paragraph 11.3, the Purchaser shall pay to the Maintainer the net amount due by the Purchaser to the Maintainer in respect of any payment request issued by the Maintainer pursuant to paragraph 10.2 not later than twenty (20) Working Days following receipt by the Purchaser of the payment request and the monthly report referred to in paragraph 10.2 and any information requested pursuant to paragraph 10.3.

11.1.2 Subject to paragraph 11.3, the Maintainer shall pay to the Purchaser the amount specified in any refund notice issued by the Maintainer pursuant to paragraph 10.2 not later than twenty (20) Working Days following receipt by the Purchaser of such refund notice.

11.1.3 Should the original due date for any payment pursuant to this Agreement not be a Working Day, then the due date shall be the next Working Day following the original due date.

11.2 **Payments**

11.2.1 All payments under this Agreement shall be made in pounds sterling for value on the due date to the bank account of the recipient (located in the United Kingdom) notified by the payee to the payer from time to time,

quoting the payment request or refund request number against which payment is made.

- 11.2.2 All payments by the Maintainer under this Agreement shall be made free and clear of any counterclaim or any condition or deduction whatsoever and shall be made in accordance with, and subject to, paragraph 11.2.

11.3 **Disputed Amounts**

- 11.3.1 Either Party shall have the right to dispute any amount specified in a payment request, refund notice or refund request referred to in this Agreement. The Party disputing any such amount shall pay such amount of the payment request, refund notice or refund request in question as is not in dispute and shall be entitled to withhold the balance pending resolution of the Dispute.

- 11.3.2 The Parties shall use all reasonable endeavours to resolve the Dispute in question within twenty (20) Working Days of the Dispute arising. If they fail so to resolve it, either Party may refer the matter to the Disputes Resolution Procedure.

- 11.3.3 Following resolution of the Dispute, any amount agreed or adjudged to be due shall promptly on demand be paid, together with interest thereon at a rate per annum which is one percent above the base lending rate from time to time of HSBC plc from the day after the date on which payment was originally due (but for the Dispute) to (and including) the date for payment under this paragraph 11.3.3 (such interest to accrue daily on the basis of a year of 365 days and to be compounded at six monthly intervals).

11.4 **Set-Off**

Whenever any amount shall be recoverable from or payable by either Party under this Agreement, such amount may be deducted from or reduced by the amount then due to the other Party under this Agreement.

11.5 **Default Interest**

- 11.5.1 If any Party fails to pay any amount payable under this Agreement on or before the date when it is due, Default Interest will accrue (both before and after judgment) on such unpaid amount from day to day (compounding on a monthly basis) during the period commencing on the due date and ending on the date of payment in full. All such Default Interest will be calculated on the basis of the actual number of days elapsed and a 365 day year and will be payable on demand of the non-defaulting party.

- 11.5.2 The Late Payment of Commercial Debts (Interest) Act 1998 and related regulations (as from time to time amended, extended or re-enacted) shall not apply to the late payment of any sums due under this Agreement.

11.6 **Payments Inclusive**

Save as expressly provided otherwise in this Agreement, the Service Payments payable by the Purchaser (or by the Operator on behalf of the Purchaser) are inclusive of all costs, expenses and disbursements incurred by the Maintainer in connection with this Agreement.

11.7 Taxes on indemnity payments

- 11.7.1 If and to the extent that any sums payable by one party to another party under this Agreement by way of indemnity prove to be insufficient, by reason of any Taxation suffered thereon, for the receiving party to discharge its corresponding Loss, the paying party shall on the receiving party's demand pay to the receiving party such additional sum as (after taking into account any Taxation suffered by the receiving party on the additional sum and the time that the same is suffered) shall be required to make up the relevant deficit. In calculating any amounts due under this paragraph 11.7, the receiving party shall take into account any benefit to which it becomes entitled as a result of the liability which gives rise to the indemnity.
- 11.7.2 If and to the extent that any sum (the "**Indemnity Sum**") constituting an indemnity to an Indemnitee (the "**First Party**") but paid by another party under this Agreement to any person other than the First Party, shall be treated as taxable in the hands of the First Party, the paying party shall on demand by the First Party pay to the First Party such sum (the "**Compensation Sum**") as (after taking into account any Taxation suffered by the First Party and the time when such Taxation is payable on the Compensation Sum) shall reimburse the First Party for any Taxation suffered by it in respect of the Indemnity Sum. In calculating any amounts due under this paragraph 11.7, the First Party shall take into account any benefit to which it becomes entitled as a result of the liability which gives rise to the indemnity.
- 11.7.3 The provisions of this paragraph 11.7 shall survive the expiry and termination of this Agreement.

11.8 Periodicity of Payments

Where a sum relates to a calendar year or month (as the case may be), it shall be invoiced in whole during the first complete Railway Period following the end of that calendar year or month (as appropriate).

PART 2 - BONDING

1. BONDING GUARANTEE

1.1 Initial Bonding Guarantee

The Maintainer shall, at its own cost, prior to Acceptance of the first Unit or Deemed Acceptance of the first ELR Unit if earlier, procure the issue of a Bonding Guarantee from a Qualifying Issuer (a "**Required Bonding Guarantee**") in favour of the Purchaser for an initial Guaranteed Amount of [REDACTED] which amount is based on the number of Units comprising the Initial Order being 44 Units (represented by 24 NLR Units and 20 ELR Units). If the number of Units to be supplied (excluding Additional NLR Units and/or Additional ELR Units) under the MSA is fewer than 44, the initial Guaranteed Amount shall be calculated as follows:

$$[REDACTED] \times \frac{X}{Y}$$

where:

X is the number of Units to be supplied (excluding Additional NLR Units and/or Additional ELR Units) under the MSA; and

Y is 44.

1.2 Maintenance of Bonding Guarantee

The Maintainer shall procure the continuing validity and effectiveness of any Required Bonding Guarantee until the date on which the Guaranteed Amount under the relevant Required Bonding Guarantee has been reduced to zero in accordance with this Schedule 5 (the "**Step-Down Date**"). Where at any time a Required Bonding Guarantee (which has not reached its Step-Down Date) will expire before the termination or expiry of this Agreement or, if earlier, the issue of a Cessation Notice, or a Replacement Event occurs, whichever of the Purchaser or the Maintainer becomes aware of the same shall promptly notify the other of the occurrence.

1.3 Replacement of Bonding Guarantee

Where a Replacement Event occurs or where a Required Bonding Guarantee will expire as contemplated in paragraph 1.2, the Maintainer shall:

1.3.1 where a Replacement Event occurs, deliver to the Purchaser another Required Bonding Guarantee for the Guaranteed Amount in replacement for the then current Required Bonding Guarantee which complies with the requirements of this Agreement; or

1.3.2 where a Required Bonding Guarantee will expire as contemplated in paragraph 1.2, extend the term of the then current Required Bonding Guarantee so that it expires no earlier than the date of the next occurring anniversary of the Commencement Date and is thereafter renewed annually on each subsequent anniversary of the Commencement Date until the Step-Down Date; or

1.3.3 procure that alternative cash collateral or other security acceptable to the Purchaser in an amount equal to the Guaranteed Amount from time to time under the affected Required Bonding Guarantee is made available to the

Purchaser on such terms and conditions as the Purchaser shall, in its absolute discretion, consider appropriate,

and, if the Maintainer fails to deliver such replacement or extended Required Bonding Guarantee or replacement security by no later than:

- 1.3.4 in the case of the occurrence of a Replacement Event, five (5) Working Days following the occurrence of the Replacement Event; and
- 1.3.5 in the case where a Required Bonding Guarantee will expire as contemplated in paragraph 1.2, fifteen (15) Working Days prior to the expiry of the then current Required Bonding Guarantee,

it shall constitute a breach by the Maintainer of the terms of this Agreement and the Purchaser shall be entitled to make demand under that Required Bonding Guarantee for the Guaranteed Amount which amount shall be paid into an interest bearing account with a clearing bank of first class standing in London and held on trust for the Purchaser and Maintainer for application in or towards amounts in respect of which the Purchaser would have been entitled to make any other demand under the Required Bonding Guarantee but for the operation of this paragraph 1.3. Any interest accruing in such account and any balance remaining at the Step-Down Date or earlier termination of this Agreement or such other date as the Purchaser shall determine following application by the Purchaser in accordance with this paragraph 1.3 shall belong to the Maintainer. If the Maintainer subsequently delivers a replacement or extended Required Bonding Guarantee complying with the provisions of this Agreement, the balance standing to the credit of the account (including any amount in respect of interest accrued) shall belong to the Maintainer and the Purchaser shall promptly take such steps as are reasonably requested by the Maintainer to ensure release of such balance to the Maintainer.

1.3A Substitution of Bonding Guarantee

Following the provision of any Required Bonding Guarantee, the Maintainer may request that the Purchaser accept a replacement Bonding Guarantee in substitution for such Required Bonding Guarantee. The Purchaser shall not unreasonably refuse such request if the replacement Bonding Guarantee complies with all the requirements of this Agreement, (including that it is issued by a Qualifying Issuer).

1.4 Increases in Guaranteed Amount

1.4.1 The Maintainer shall be obliged:

- (A) on each anniversary of the Commencement Date, to increase the amount of the Guaranteed Amount by the Indexation Amount as evidenced by the receipt by the Purchaser of a certificate in the form set out in Appendix 1 to the Bonding Guarantee; and
- (B) prior to Acceptance by the Purchaser of the first Additional ELR Unit or first Additional NLR Unit (as applicable) comprised in each order for Additional ELR Units and/or Additional NLR Units pursuant to the exercise by the Purchaser of an Additional Unit Option in accordance with the MSA, to increase the Guaranteed Amount by an amount equal to:

NoU x [REDACTED] (indexed)

where:

NoU is the number of Additional ELR Units and Additional NLR Units comprised in the relevant Additional Unit Option,

such increase to be evidenced by the receipt by the Purchaser of a certificate in the form set out in Appendix 1 to the Bonding Guarantee save that the Maintainer shall only be obliged to comply with this paragraph 1.4.1(B) in respect of the first 21 such Additional ELR Units and/or Additional NLR Units Accepted by the Purchaser.

- 1.4.2 If the Purchaser has not received a certificate evidencing the requisite increase in the Guaranteed Amount in accordance with this paragraph 1.4, the Purchaser shall be entitled to retain from any Service Payments which would otherwise be due and payable, such amounts as the Purchaser considers appropriate up to the amount of the requisite increase in the Guaranteed Amount. The Purchaser shall pay such retained amounts (without any interest on such amounts) to the Maintainer following receipt of the required certificate evidencing the requisite increase in the Guaranteed Amount.

1.5 Adjustment to Guaranteed Amount

- 1.5.1 No later than 10 Working Days after 31 December 2012 and no later than 10 Working Days after each anniversary of that date until the Review Date specified in paragraph (B) of Clause 28.1.3 (as may be amended by the Purchaser from time to time) (the "**Second Review Date**"), the Purchaser shall issue a certificate in the form set out in Appendix 2 to the Bonding Guarantee and the Guaranteed Amount under the relevant Required Bonding Guarantee will be reduced by an amount equal to:

GAIA (indexed)

15

where:

GAIA is the Guaranteed Amount (indexed),

save that on the Second Review Date, the Guaranteed Amount under the Required Bonding Guarantee shall be reduced to zero.

- 1.5.2 Where there is a partial cessation of this Agreement following the service of a Cessation Notice, the Purchaser shall issue a certificate in the form set out in Appendix 3 to the Bonding Guarantee and the Guaranteed Amount under the relevant Required Bonding Guarantee will reduce to an amount equal to ██████ of the Guaranteed Amount.

1.6 Demands

- 1.6.1 Where this Agreement is terminated due to the occurrence of a Maintainer Event of Default the Purchaser shall be entitled to make a demand under any Required Bonding Guarantee for the Guaranteed Amount which amount shall be paid into an interest bearing account with a clearing bank of first class standing in London and held on trust for the Purchaser and Maintainer for application in or towards amounts due to the Purchaser following

termination for Maintainer Event of Default as provided for in this Agreement. Following such application or where there are no further amounts due to the Purchaser, the balance standing to the credit of the account shall belong to the Maintainer.

- 1.6.2 Where this Agreement terminates other than as contemplated by paragraph 1.6.1 (save where it terminates due to Purchaser Event of Default) or expires the Purchaser shall be entitled to make a demand under any Required Bonding Guarantee in respect of any amounts which the Maintainer is liable to pay to the Purchaser (whether by way of indemnity or otherwise) and has failed to pay to the Purchaser provided that the maximum amount that may be claimed by the Purchaser pursuant to this paragraph 1.6.2 shall be an amount equal to five-sixths of the Guaranteed Amount.
- 1.6.3 Where the Maintainer is liable to pay to the Purchaser (whether by way of indemnity or otherwise) and has failed to pay to the Purchaser any amounts due and payable pursuant to this Agreement (other than as provided for in paragraphs 1.6.1 and 1.6.2), the Purchaser shall be entitled to make demand under any Required Bonding Guarantee in respect of such amounts provided that the maximum amount that may be claimed by the Purchaser pursuant to this paragraph 1.6.3 shall be an amount equal to one-sixth of the Guaranteed Amount.

2. TRIGGER EVENTS

- 2.1 Upon the occurrence of a Trigger Event, the Maintainer shall serve written notice to the Purchaser of such Trigger Event, together with all relevant details of such Trigger Event.
- 2.2 Upon receipt of a notice served by the Maintainer pursuant to paragraph 2.1 or upon otherwise becoming aware of the occurrence of a Trigger Event in respect of any Required Bonding Guarantee, the Purchaser shall be entitled to serve a Loss of Qualifying Status Notice.
- 2.3 Within twenty (20) Working Days of the service of a Loss of Qualifying Status Notice, the Maintainer shall:
 - 2.3.1 provide another Required Bonding Guarantee in replacement for the affected Required Bonding Guarantee, which complies with the requirements of this Agreement; or
 - 2.3.2 procure that alternative cash collateral or other security acceptable to the Purchaser in an amount equal to the then current Guaranteed Amount under the affected Required Bonding Guarantee is made available to the Purchaser on such terms and conditions as the Purchaser shall, in its absolute discretion, consider appropriate,

and if the Maintainer fails to do so it shall constitute a breach by the Maintainer of the terms of this Agreement and the Purchaser shall be entitled to make demand under the Required Bonding Guarantee in question for the Guaranteed Amount which amount shall be paid into an interest bearing account with a clearing bank of first class standing in London and held on trust for the Purchaser and Maintainer for application in or towards amounts in respect of which the Purchaser would have been entitled to make any other demand under the Required Bonding Guarantee but for the operation of this paragraph 2.3. Any interest accruing in such account and any balance

remaining at the Step-Down Date or earlier termination of this Agreement or such other date as the Purchaser shall determine following application by the Purchaser in accordance with this paragraph 2.3 shall belong to the Maintainer. If the Maintainer subsequently delivers a replacement Required Bonding Guarantee complying with the provisions of this Agreement, the balance standing to the credit of the account (including any amount in respect of interest accrued) shall belong to the Maintainer and the Purchaser shall promptly take such steps as are reasonably requested by the Maintainer to ensure release of such balance to the Maintainer.

APPENDIX 1

SCHEDULED STANDARD SERVICE PAYMENTS FOR ELR SERVICES

	ELR TSA Scheduled Standard Services cost for each 4-car Unit	
	per Railway Period (expressed in June 2005 prices)	
Column A	Column B	Column C
Railway Periods from Acceptance of relevant Unit	First Units Accepted	All Subsequent Units
Applied to first 5 periods		
6-18		
19-31		
32-44		
45-57		
58-70		
71-83		
84-96		
97-109		
110-122		
123-135		
136-148		
149-161		
162-174		
175-187		
188-200		
201-213		
214-226		
227-239		
240-252		
253-265		
266-278		
279-291		
292-304		
305-317		
318-330		
331-343		
344-356		
357-369		
370-382		
383-390		

APPENDIX 2

SCHEDULED STANDARD SERVICE PAYMENTS FOR NLR

	NLR TSA Scheduled Standard Services cost for each 3-car Unit	
	per Railway Period (expressed in June 2005 prices)	
Column A	Column B	Column C
Railway Periods from Acceptance of relevant Unit	First Units Accepted	All Subsequent Units
Applied to first 5 periods		
6-18		
19-31		
32-44		
45-57		
58-70		
71-83		
84-96		
97-109		
110-122		
123-135		
136-148		
149-161		
162-174		
175-187		
188-200		
201-213		
214-226		
227-239		
240-252		
253-265		
266-278		
279-291		
292-304		
305-317		
318-330		
331-343		
344-356		
357-369		
370-382		
383-390		

APPENDIX 3

THE ASSUMPTIONS USED TO CALCULATE SCHEDULED STANDARD SERVICE PAYMENTS IN THE BASE CASE FINANCIAL MODEL

	ELR	NLR
Acceptance of Units/Phasing and Timing	The agreed pricing methodology caters for any Unit Acceptance scenario as demonstrated by the Base Case Financial Model and the Worked Variation Examples	The agreed pricing methodology caters for any Unit Acceptance scenario as demonstrated by the Base Case Financial Model and the Worked Variation Examples
Formation Additional Cars /Phasing and Timing	4 Cars	3 Cars No Additional Cars
Maintenance Window	As per Maintenance Window Plan	As per Maintenance Window Plan
Out Stabling	No more than 4 Sites in aggregate across the ELR and NLR Fleets	No more than 4 Sites in aggregate across the ELR and NLR Fleets
TSA Pricing validity	Aggregate ELR Fleet and NLR Fleet not to exceed 65 Units	Aggregate ELR Fleet and NLR Fleet not to exceed 65 Units

APPENDIX 4

ELR AND NLR ADDITIONAL SERVICE PAYMENTS

Items of Work	Labour	Material
(A) External Damage to ELR Unit		
Removal of graffiti from bodyside per sq. mtr.		
Repaint bodyside per sq. mtr.		
Windscreen - Drivers Side (LH)		
Windscreen - Non-Drivers Side (RH)		
Large Hopper Window - Lower Glass		
Medium Hopper Window - Lower Glass		
Large Hopper Window - Vent Glass (A/R)		
Medium Hopper Window - Vent Glass (A/R)		
Fixed Window Glass (A/R)		
Hopper Vent - Large (A/R)		
Hopper vent - Medium (A/R)		
Vestibule Window Complete - Left		
Vestibule Window Complete - Right		
Replace destination unit		
Post fatality test requirements	Highly dependent on individual incident	
Replace obstacle defector		
(B) Internal Damage to ELR Unit		
Replace damaged seat cover		
Replace emergency hammer and glass		
Replace damaged arm rest		
Replace damaged bodyside panel	Need to specify type of panel due to variations	
Removal of graffiti per sq. mtr. (assumes 1 panel affected)		

APPENDIX 5

TSSSA SERVICE PAYMENTS

TABLE A: ELR

	TSSSA Scheduled Standard Services cost for each 4-car ELR Unit	
	per Railway Period (expressed in June 2005 prices)	
Column A	Column B	Column C
Railway Periods from Acceptance of relevant Unit	First 20 Units Accepted	All Subsequent Units
Applied to first 5 periods		
6-18		
19-31		
32-44		
45-57		
58-70		
71-83		
84-96		
97-109		
110-122		
123-135		
136-148		
149-161		
162-174		
175-187		
188-200		
201-213		
214-226		
227-239		
240-252		
253-265		
266-278		
279-291		
292-304		
305-317		
318-330		
331-343		
344-356		
357-369		
370-382		
383-390		

TABLE B: NLR

	TSSSA Scheduled Standard Services cost for each 3-car NLR Unit	
	per Railway Period (expressed in June 2005 prices)	
Column A	Column B	Column C
Railway Periods from Acceptance of relevant Unit	First 22 Units Accepted	All Subsequent Units
Applied to first 5 periods		
6-18		
19-31		
32-44		
45-57		
58-70		
71-83		
84-96		
97-109		
110-122		
123-135		
136-148		
149-161		
162-174		
175-187		
188-200		
201-213		
214-226		
227-239		
240-252		
253-265		
266-278		
279-291		
292-304		
305-317		
318-330		
331-343		
344-356		
357-369		
370-382		
383-390		

APPENDIX 6
BASE CASE FINANCIAL MODEL

Time Period	NLR TSSSA £ per year (total cost for each 4-car Unit)	NLR TSSSA £ per year (total cost for each 4-car Unit)
	22 Units	34 Units
	3 Cars Per Unit	3 Cars Per Unit
	Total Cost	Total Cost
<p>Prior to full fleet operation Mobilisation Payment to be Invoiced at Notice to Proceed (Anticipated July 2006)</p>		
2009 Year 1 from August 2009		
2010 Year 2		
2011 Year 3		
2012 Year 4		
2013 Year 5		
2014 Year 6		
2015 Year 7		
2016 Year 8		
2017 Year 9		
2018 Year 10		
2019 Year 11		
2020 Year 12		
2021 Year 13		
2022 Year 14		
2023 Year 15		
2024 Year 16		
2025 Year 17		
2026 Year 18		
2027 Year 19		
2028 Year 20		
2029 Year 21		
2030 Year 22		
2031 Year 23		
2032 Year 24		
2033 Year 25		
2034 Year 26		
2035 Year 27		
2036 Year 28		
2037 Year 29		
2038 Year 30		
2039 Year 31 up to August 2039		
Assumed Annual Train Mileage		
Total Rate Per Train Mile		
<p>Total adjustment to the maintenance price (plus or minus), per Train Mile, for each additional Train Mile above or below the base line, which is the Assumed Annual Train Mileage plus or minus the [redacted] cost free tolerance. Subject to the limitation that mileages greater than [redacted] % from the base line shall be dealt with separately by variation order.</p>		

Time Period	ELL TSA with MFS at New Cross Gate £ per year (total cost for each 4-car Unit)	NLL TSA with existing Maintenance Facility £ per year (total cost for each 3-car Unit)	ELL TSSSA £ per year (total cost for each 4-car Unit)		
	20 Units 4 Cars Per Unit Total Cost	22 Units 3 Cars Per Unit Total Cost	Material Cost	Labour Cost	Other Cost
					Total Cost
Prior to full fleet operation					
Mobilisation Payment to be Invoiced at Notice to Proceed (Anticipated July 2006)					
2009 Year 1 from August 2009					
2010 Year 2					
2011 Year 3					
2012 Year 4					
2013 Year 5					
2014 Year 6					
2015 Year 7					
2016 Year 8					
2017 Year 9					
2018 Year 10					
2019 Year 11					
2020 Year 12					
2021 Year 13					
2022 Year 14					
2023 Year 15					
2024 Year 16					
2025 Year 17					
2026 Year 18					
2027 Year 19					
2028 Year 20					
2029 Year 21					
2030 Year 22					
2031 Year 23					
2032 Year 24					
2033 Year 25					
2034 Year 26					
2035 Year 27					
2036 Year 28					
2037 Year 29					
2038 Year 30					
2039 Year 31 up to August 2039					
Assumed Annual Train Mileage					
Total Rate Per Train Mile					
Total adjustment to the maintenance price (plus or minus), per Train Mile, for each additional Train Mile above or below the base line, which is the Assumed Annual Train Mileage plus or minus the 1% cost free tolerance. Subject to the limitation that mileages greater than 10% from the base line shall be dealt with separately by variation order.					

Time Period	ELL TSA with MFS at New Cross Gate £ per year (total cost for each 4-car Unit)	NLL TSA with existing Maintenance Facility £ per year (total cost for each 3-car Unit)	ELL TSSSA £ per year (total cost for each 4-car Unit)	Total Cost
	31 Units 4 Cars Per Unit Total Cost	34 Units 3 Cars Per Unit Total Cost	31 Units 4 Cars Per Unit Labour Cost Material Cost Other Cost Total Cost	
Prior to full fleet operation Mobilisation Payment to be Involved at Notice to Proceed (Anticipated July 2008)				
2009 Year 1 from August 2009				
2010 Year 2				
2011 Year 3				
2012 Year 4				
2013 Year 5				
2014 Year 6				
2015 Year 7				
2016 Year 8				
2017 Year 9				
2018 Year 10				
2019 Year 11				
2020 Year 12				
2021 Year 13				
2022 Year 14				
2023 Year 15				
2024 Year 16				
2025 Year 17				
2026 Year 18				
2027 Year 19				
2028 Year 20				
2029 Year 21				
2030 Year 22				
2031 Year 23				
2032 Year 24				
2033 Year 25				
2034 Year 26				
2035 Year 27				
2036 Year 28				
2037 Year 29				
2038 Year 30				
2039 Year 31 up to August 2039				
Assumed Annual Train Mileage				
Total Rate Per Train Mile				
Total adjustment to the maintenance price (plus or minus), per Train Mile, for each additional Train Mile above or below the base line, which is the Assumed Annual Train Mileage plus or minus the % cost free tolerance. Subject to the limitation that mileage greater than % from the base line shall be dealt with separately by variation order.				

East London Line TSA Invoice Calculation Parameters

BAFO Average Annual Unit Diagrammed Mileage
 Full Fleet Mileage Per Period, Phase 1
 Full Fleet Mileage Per Period, Phase 2

Cost free mileage tolerance
 Limit for increases in mileage, where a Variation Order applies

Rate Per Period for Train Preparation Services
 Rate Per Period for Aesthetic Condition Inspection Services

Phase 1
 Phase 2
 Diagrams
 Fleet Size

Impact on Price of Items New Part of the BASE Train Specification

Floor Fee

Train No.	Acceptance Date	Average Annual Fleet Mileage	Period
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
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26			
27			
28			
29			
30			
31			

Contract End
 First Acceptance

SCHEDULE 6

Contract Management

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

"**Assurance Acceptance**" means the approval given by the Purchaser pursuant to paragraph 4 of this Schedule 6;

"**Category A Comments**" has the meaning ascribed to it in paragraph 4.7.12;

"**Category B Comments**" has the meaning ascribed to it in paragraph 4.7.12;

"**Category C Comments**" has the meaning ascribed to it in paragraph 4.7.12;

"**Configuration Management Plan**" has the meaning ascribed to it in paragraph 4.5.6;

"**SQE Plan**" means the plan developed in accordance with paragraphs 4.5.9 to 4.5.11;

"**SQEMS**" has the meaning ascribed to it in paragraph 4.4.1; and

"**Train Services Assurance Plan**" means the plan developed in accordance with paragraphs 4.5.1 to 4.5.8.

1 CONTRACT MANAGEMENT

1.1. Purchaser's Project Team

1.1.1. The Purchaser's project team in respect of this Agreement shall consist of the employees, contractors and/or agents of the Purchaser who are engaged in duties principally concerning the provision of maintenance of the Units and related services for the East London Railway and the North London Railway (the "**Purchaser's Project Team**").

1.1.2. The main objectives of the Purchaser's Project Team shall include, without limitation:

- (A) monitoring the Maintainer's provision of the Services in accordance with the requirements of this Agreement, including all applicable quality, safety and performance requirements specified by the Purchaser under this Agreement and/or by the relevant Competent Authorities; and
- (B) managing and co-ordinating the Purchaser's interaction with the Maintainer;

1.1.3. The principal roles and responsibilities of the Purchaser's Project Team shall be to:

- (A) monitor the performance of the Maintainer in providing the Services;
- (B) ensure that the provision of the Services occurs in an orderly and structured manner;
- (C) monitor the compliance of the Maintainer with its obligations under this Agreement, including compliance with each of the requirements specified by the Purchaser; and
- (D) ensure that the Purchaser and the Operator (to the extent that the Operator has been nominated by the Purchaser to carry out a function pursuant to Clause 2A of this Agreement) perform their respective obligations under and in accordance with this Agreement.

1.1.4. Within 20 Working Days of the date of this Agreement the Purchaser shall appoint a project manager to manage and co-ordinate the Purchaser's Project Team in undertaking the activities described in paragraph 1.1.3 (the "**Purchaser's Maintenance Manager**"),

and shall provide written details of the Purchaser's Maintenance Manager to the Maintainer.

- 1.1.5. The Purchaser undertakes to promptly notify the Maintainer if there is any change to the Purchaser's Maintenance Manager and in any event no later than three (3) Working Days from the date of such change.
- 1.1.6. The Maintainer acknowledges that the management and performance of this Agreement by the Purchaser may be supported and/or undertaken by various stakeholders and/or a number of employees, agents and contractors of the TfL Group and/or the Operator.

1.2. Maintainer's Project Team

- 1.2.1. The Maintainer shall appoint a contract manager who shall have been granted by the Maintainer all authority and responsibility necessary to ensure that the Maintainer performs each of its obligations under this Agreement in the required timescales and complies with all of the requirements under this Agreement (the "**Maintainer's Project Manager**").
- 1.2.2. The Maintainer shall also appoint a project team who shall be responsible for supporting the Maintainer's Project Manager in ensuring the Maintainer performs each of its obligations under this Agreement in the required timescales and complies with all of the requirements under this Agreement (the "**Maintainer's Project Team**").
- 1.2.3. The Maintainer shall inform the Purchaser of:
 - (A) each of the individual roles within the Maintainer's Project Team;
 - (B) the responsibilities of each of the roles identified in paragraph 1.2.3(A) above;
 - (C) a detailed organisation chart of the Maintainer's organisation that shows the names, titles, accountabilities and responsibilities, and reporting lines of the Maintainer's Project Team and to the extent not forming part of the Maintainer's Project Team and the employees responsible for the provision of the Services and the commercial, safety, quality and environmental management aspects; and
 - (D) the identity of each of the employees of the Maintainer that the Maintainer proposes to perform the roles identified in paragraph 1.2.3(A) above, including details of their qualification and experiences for the role.
- 1.2.4. The Maintainer shall provide a description of how the Maintainer's Project Team manages the functional/line areas of the organisation and a curriculum vitae for each of the key employees in the Maintainer's Project Team.
- 1.2.5. The Maintainer undertakes to promptly notify the Purchaser if there is any change to the Maintainer's Project Manager and in any event no later than three (3) Working Days from the date of such change.
- 1.2.6. The Maintainer shall ensure that the Maintainer's Project Team is adequately resourced throughout the life of the Agreement.

2 PROJECT PLANNING, MONITORING AND CONTROL

2.1. Maintenance Implementation Plan

- 2.1.1. The Maintainer represents and warrants to the Purchaser that the Maintenance Implementation Plan complies with the requirements described in paragraphs 2.1.2 and 2.1.3.

- 2.1.2. The Maintenance Implementation Plan shall set out, as a minimum, start and finish dates and dependencies for each of the following:
- (A) the Maintainer's activities relating to the Maintenance Facilities and the Stabling Facilities, including implementation of arrangements for facility and equipment maintenance;
 - (B) activities in respect of staffing – recruiting, training, competence assessment;
 - (C) activities in connection with materials – setting up re-supply, repair, storage and logistics arrangements;
 - (D) technical support and performance monitoring arrangements;
 - (E) finalising operational arrangements and procedures;
 - (F) approvals;
 - (G) the Maintainer's activities under this Agreement; and
 - (H) interface activities with the Purchaser and/or the Operator, including information, approvals, and/or other inputs required by the Maintainer from the Purchaser, Competent Authorities and/or other third parties.
- 2.1.3. The Maintenance Implementation Plan shall be constructed so as to mitigate any identified risks. The Maintainer shall ensure that any assumptions within the Maintenance Implementation Plan are explicitly stated in the Maintenance Implementation Plan.
- 2.1.4. The Maintainer shall implement and comply with the Maintenance Implementation Plan.

2.2. Contract Progress Reports

- 2.2.1. Every four weeks from the start of the Agreement the Maintainer shall issue the Contract Progress Report (as described in Schedule 2 (Maintenance and Cleaning Services)) to the Purchaser. The Maintainer shall issue the Contract Progress Report no later than 3 Working Days prior to each Contract Review Meeting held pursuant to paragraph 2.4.

2.3. Risk Management

- 2.3.1. The Purchaser intends to notify the Maintainer within twenty (20) weeks from the start of the Agreement of the proposed project risk management process which shall be based on best industry practice and shall include an issues register for existing and emerging risks. The Purchaser will meet with the Maintainer prior to such notification to discuss the approach to management of risks. The Maintainer acting reasonably shall notify the Purchaser in writing within six (6) weeks following receipt of the proposed process whether it agrees to comply with the process. Where the Maintainer declines to comply with the process it shall propose amendment to the process that has been proposed by the Purchaser
- 2.3.2. Where the Purchaser and the Maintainer are within eight weeks of the Maintainer's notification pursuant to paragraph 2.3.1 unable to agree upon a risk management process to be adopted, the matter in dispute shall be referred for expert determination pursuant to the provisions of Schedule 15A (Fast Track Dispute Resolution Procedure).
- 2.3.3. The Maintainer and the Purchaser shall comply with the project risk management process which is agreed or determined pursuant to this paragraph 2.3 for the duration of the Maintenance Period.

2.4. Contract Review Meeting

- 2.4.1. The Purchaser and the Maintainer shall hold a review meeting (the "**Contract Review Meeting**") every four weeks from the Commencement Date or more frequently upon the request of either Party.
- 2.4.2. The Purchaser shall circulate an agenda prior to each Contract Review Meeting, and the Maintainer shall be entitled to call for the addition of agenda items before or at the commencement of the meeting.
- 2.4.3. The Purchaser's Maintenance Manager and the Maintainer's Project Manager shall both attend the Contract Review Meeting unless otherwise agreed by the Parties. Other employees, agents and/or contractors of each Party including Subcontractors in respect of the Maintainer, Operator and other employees, agents and/or contractors of the TfL Group in respect of the Purchaser may attend a Contract Review Meeting with the agreement of the Purchaser's Maintenance Manager and the Maintainer's Project Manager.
- 2.4.4. The primary purpose of the Contract Review Meeting shall be to:
 - (A) monitor the Maintainer's performance against the requirements of this Agreement;
 - (B) monitor the activities at the interface between the Maintainer and the Purchaser; and
 - (C) provide a focal point for the resolution of any problems or issues.
- 2.4.5. The Contract Review Meeting shall achieve the purposes specified in paragraph 2.4.4 by:
 - (A) reviewing the Contract Progress Report (described in Schedule 2 (Maintenance and Cleaning Services)) and the Performance Monitoring Report (described in Schedule 3 (Performance Regime)) in order to:
 - (1) compare the Maintainer's performance against the Maintenance Implementation Plan and discuss any variances;
 - (2) determine whether any further remedial or mitigation actions are needed to correct variances; and
 - (3) ensure that appropriate responsibility for actions is agreed;
 - (B) reviewing quality, safety, technical and performance matters to ensure that the Maintainer's performance of its obligations complies with this Agreement;
 - (C) reviewing the status of any approvals and consents required;
 - (D) reviewing the Maintainer's 3-monthly report on Assurance Acceptance matters (pursuant to paragraph 4.3.2);
 - (E) examining actual expenditure and commitments in respect of Additional Services;
 - (F) identifying matters which could potentially affect the Maintainer's performance of its obligations under the Agreement; and
 - (G) identifying any major concerns regardless of source and ensuring that appropriate actions are agreed to facilitate resolution of such concerns. Both Parties shall endeavour to maintain an open and co-operative relationship, in order to promote the success of the overall project.
- 2.4.6. The Purchaser shall chair the Contract Review Meeting and shall produce and promptly circulate the minutes after the completion of each Contract Review Meeting.

2.5. Quarterly Meetings

- 2.5.1. Every three months from the Commencement Date the Purchaser and Maintainer shall hold a meeting (the "**Quarterly Meeting**") to review the progress of the project and the Maintainer's performance of its obligations under this Agreement. The Purchaser shall be entitled to call a Quarterly Meeting more frequently if required.
- 2.5.2. The Purchaser and the Maintainer shall each provide a senior representative to attend the Quarterly Meeting. The Purchaser shall circulate an agenda prior to each Quarterly Meeting, and the Maintainer shall be entitled to call for the addition of agenda items before or at the commencement of the meeting.
- 2.5.3. The relevant representatives of the Maintainer's Project Team and the Purchaser's Project Team shall attend the Quarterly Meeting and shall present the following as appropriate:
 - (A) progress on the project to date;
 - (B) actions in place to mitigate any risks identified;
 - (C) summary of the Maintainer's current Contract Progress Report and the Performance Monitoring Report, and any actions in place;
 - (D) resource position for the Maintainer and Purchaser, and actions taken to resolve any issues;
 - (E) current position on stakeholder interface with the project;
 - (F) progress towards obtaining and/or renewing any Relevant Consents and/or Relevant Approvals; and
 - (G) any other matters appropriate to this Agreement.
- 2.5.4. Without prejudice to Clause 41 if and when required, the attendees of the Quarterly Meeting will act in the resolution of any matters that have not been resolved by the Maintainer's Project Team and the Purchaser's Project Team.

2.6. (Not Used)

(not used).

2.7. Start-up Meeting

As soon as possible after the Commencement Date the Purchaser shall convene a start-up meeting with the Maintainer. The meeting will be used to confirm systems for the control, administration, reporting and management of this Agreement and to confirm lines of communication, information flows, change control and procedures.

2.8. Meetings with Competent Authorities

The Maintainer shall advise the Purchaser of any relevant meetings between itself and any Competent Authority concerning the subject matter of this Agreement. The Purchaser may request the right to attend any such meeting, subject to the agreement of the Maintainer and the Competent Authority to the extent reasonably necessary to achieve the purposes set out in paragraph 1.1.2.

2.9. Annual Improvement Plan

2.9.1. The Maintainer shall submit to the Purchaser prior to the end of the first Railway Period following each anniversary of the Commencement Date a plan (an "**Annual Improvement Plan**") that:

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

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

2.9.3. The Maintainer shall implement and comply with the Annual Improvement Plan submitted to the Purchaser pursuant to paragraph 2.9.2.

2.9.4. The Maintainer acknowledges and agrees that the preparation of an Annual Improvement Plan:

- (A) shall not constitute a Variation;
- (B) shall not entitle it to any relief from any Deductions and/or the application of any part of the Performance Regime; and
- (C) shall not entitle it to any increase in or additional Service Payments and/or any other compensation.

3 GENERAL

3.1. Audits

3.1.1. The Maintainer shall undertake internal audits and audits of Service Subcontractors. All such audits shall be formally recorded and the records retained for a minimum of 6 years. The Maintainer shall make the results of such audits and/or any related records or documents available to the Purchaser upon request. The Maintainer shall conduct the audits at least every six months and in accordance with a programme that has been Assurance Accepted, as provided for in section 4.7 of this schedule.

3.1.2. The Maintainer shall submit an initial programme for conducting the required audits and a detailed description of the audit procedures to be followed to the Purchaser for Assurance Acceptance, as provided for in section 4.7 of this schedule, no later than twelve (12) weeks prior to Acceptance of the first Unit.

- 3.1.3. The Maintainer acknowledges that audit reports and details of close-out of Corrective Actions pursuant to the audit arrangements described in Clause 17 of this Agreement or pursuant to 3.1.1 above may be passed by the Purchaser to the Operator in connection with the Operator's monitoring of activities covered by his safety case.

3.2. Communications

- 3.2.1. The Purchaser and the Maintainer shall agree a documented communications procedure between the Parties. All communications, including electronic communications, shall include the following:

- (A) Agreement name and identifying number;
- (B) subject;
- (C) unique reference number;
- (D) date; and
- (E) the name of the author (a representative holding delegated powers compatible with the subject matter).

- 3.2.2. All communications of a formal nature with the exception of those communications pursuant to the Assurance Acceptance procedure in section 4.7 of this agreement:

- (A) being sent from the Purchaser to the Maintainer shall be sent by the Purchaser's Maintenance Manager to the Maintainer in accordance with Clause 45;
- (B) being sent from the Maintainer to the Purchaser shall be sent by the Maintainer's Project Manager to the Purchaser in accordance with Clause 45.

- 3.2.3. All correspondence between the Maintainer and other parties appointed or under the control of the Purchaser or any member of the TfL Group shall be made through the Purchaser, except to the extent that an Operator has been appointed when all correspondence between the Maintainer and the Operator shall, where contemplated by this Agreement, be made directly between those parties and not made through the Purchaser.

- 3.2.4. Unless otherwise agreed with the Purchaser, each communication shall cover one subject only, and shall bear an individual sequential number in accordance with a system agreed between the Purchaser and the Maintainer.

3.3. Statutory notices

- 3.3.1. If any statutory notice relating to the subject matter of the Agreement or naming the Purchaser or LUL as a party is served on the Maintainer or any of its Subcontractors or suppliers, the Maintainer shall immediately (or in the case of a statutory notice served on a Subcontractor or supplier, immediately it comes into the Maintainer's possession) inform the Purchaser and provide the Purchaser with a copy of such statutory notice.

- 3.3.2. Where the Maintainer receives any "letters of claim", writs and/or summons naming the Purchaser or LUL as a party it shall provide the same or a copy immediately to the Purchaser.

- 3.3.3. Where the Maintainer receives any letters, faxes or other communication from any person holding the Purchaser, any member of the TfL Group and/or any of their respective employees, agents or contractors responsible for any incident the Maintainer shall provide the letter, fax or communication to the Purchaser immediately and shall not give any response to such unless appropriate in order for the Maintainer to protect its own position (for example in relation to letters of claim letters, faxes or other communications naming the Contractor as a party jointly with the Purchaser). In such a case the Maintainer shall where reasonably practicable consult with the Purchaser prior to responding.

4 ASSURANCE

4.1. Configuration management

- 4.1.1. The Maintainer shall establish and implement for the duration of the Services a configuration management system that to the extent applicable to the Services complies with the requirements of ISO 10007:2003 "Quality management systems. Guidelines for configuration management", and, to the extent applicable, the requirements of "The Yellow Book: Engineering Safety Management".

4.2. Competence Management

- 4.2.1. The Maintainer shall establish and operate a formal competence management system to ensure that any employee, agent and/or Subcontractor performing tasks for it or on its behalf are fully competent to fulfil their intended roles. The Maintainer shall ensure that any work on Network Rail or LUL controlled Railway Infrastructure shall only be carried out by employees, agents and/or Subcontractors who satisfy the relevant competence requirements of Network Rail or LUL, as appropriate.

4.3. Maintainer's Review of Assurance Requirements, Reports and Meetings

- 4.3.1. The Maintainer shall regularly review its performance in meeting the Assurance Acceptance requirements of this section 4 of this Schedule and shall provide a report to the Purchaser every three months describing:
- (A) the Maintainer's progress in implementing the provisions of this Schedule 6, including in relation to assurance milestones; and
 - (B) any issues that the Maintainer perceives may impact on the requirements of this Schedule, and/or opportunities for improvement.
- 4.3.2. The Maintainer and Purchaser shall review the contents of the three-monthly report at the monthly Contract Review Meeting (held pursuant to paragraph 2.4 above) following issue of the report.
- 4.3.3. Notwithstanding the arrangements for Contract Review Meetings as provided for in this Agreement, the Maintainer shall attend:
- (A) meetings if reasonably required by the Purchaser to discuss with the Purchaser any specific issues relevant to the safety, quality or environmental aspects of the Services provided under this Agreement. The Purchaser shall provide the Maintainer in advance with a written agenda, and the Maintainer shall have the opportunity to add to the agenda. To the extent that a third party has an interest in the matter under discussion, the third party may attend this meeting subject to the Purchaser providing the Maintainer in advance with notification

of the attendance of the third party and subject further to the Parties being satisfied that (i) the third party's presence is appropriate and (ii) that the Parties' respective confidentiality interests will not be compromised through such discussion; and

- (B) meetings as may be required by the Purchaser, as part of a process of reassuring the Purchaser that the obligations of the Maintainer under this Agreement are being achieved.

4.4. SQE Management

- 4.4.1. The Maintainer shall establish, implement and maintain a SQE management system ("SQEMS") that complies with the latest versions of BS EN ISO 14001, OHSAS 18001, BS 8800 and ISO 9001. The Maintainer shall obtain certification of the SQEMS' compliance with the requirements of ISO 9001 from an accredited body approved by the Purchaser within 16 weeks prior to Acceptance of the first Unit save to the extent that the SQEMS has been certificated by an appropriate accreditation body as complying with the requirements of ISO9001 prior to the Commencement Date and such certificate is valid on the Commencement Date. The Maintainer shall maintain certification of the SQEMS' compliance with ISO9001 for the duration of the Services.
- 4.4.2. The SQEMS shall be structured so as to enable the Maintainer to demonstrate by self-certification that all the SQE requirements and all relevant Standards, Applicable Laws and Relevant Consents are being satisfied.
- 4.4.3. The Maintainer shall include SQE criteria in any pre-contractual assessment of Subcontractors and suppliers and as part of any contractual performance regime. The Maintainer shall ensure that all Service Subcontractors comply with the Maintainer's SQE Plan.

4.5. Plans

Train Services Assurance Plan

- 4.5.1. The Maintainer shall develop a Train Services Assurance Plan and submit the Train Services Assurance Plan for Assurance Acceptance within 16 weeks of the Commencement Date.
- 4.5.2. Notwithstanding the requirements of paragraphs 4.5.3 to 4.5.7, the Train Services Assurance Plan shall describe the Maintainer's processes for meeting the requirements of section 4 of this Schedule.
- 4.5.3. The Train Services Assurance Plan shall contain an organisation chart showing the employees of the Maintainer that will be responsible for Assurance Acceptance and the manner in which those employees will be independent from the other employees of the Maintainer undertaking the Services. The Train Services Assurance Plan shall to the extent that names and CVs of individuals are not known at the time of first submitting the Train Services Assurance Plan, be resubmitted for Assurance Acceptance containing details of the individual's qualifications and experience no later than twelve (12) weeks prior to Acceptance of the first Unit.
- 4.5.4. The Train Services Assurance Plan shall describe the Maintainer's competence management system and its application to the Services.
- 4.5.5. The Train Services Assurance Plan shall describe the Maintainer's process for management of any non-compliances, such as components or systems being non-

compliant or not fit for purpose, and for managing any regulatory notices such as Improvement or prohibition notices.

- 4.5.6. The Train Services Assurance Plan shall describe the configuration management system proposed by the Maintainer ("Configuration Management Plan").
- 4.5.7. The Train Services Assurance Plan shall describe the Maintainer's processes for monitoring compliance with the Train Services Assurance Plan, and shall describe assurance milestones in the performance of the Agreement.
- 4.5.8. The Maintainer shall review the Train Services Assurance Plan regularly (no less frequently than annually) and/or when a significant change to the Services or managements systems / processes has taken place, and if required update the Train Services Assurance Plan. Where the Maintainer has updated or amended the Train Services Assurance Plan it shall submit the modified Assurance Plan for Assurance Acceptance.

Train Services SQE Plan

- 4.5.9. Within 16 weeks of the Commencement Date the Maintainer shall further develop the TSA SQE Plans in Schedule 18 to provide full details of the SQE activities to be carried out during the Agreement and submit them for Assurance Acceptance.
- 4.5.10. The Maintainer shall comply with the provisions of the SQE Plans in the performance of this Agreement.
- 4.5.11. If the SQE Plan(s) are amended at any time, the Maintainer shall submit the revised SQE Plan(s) to the Purchaser for Assurance Acceptance.

4.6. Drugs and Alcohol

- 4.6.1. Without prejudice to paragraph 1.6 of Schedule 7, the Maintainer shall establish a drugs and alcohol policy at least as rigorous as the LUL drugs and alcohol policy (set out in Appendix 1) to operate in respect of its employees, agents and/or Subcontractors engaged in the performance of this Agreement.
- 4.6.2. The Maintainer shall submit its drugs and alcohol policy to the Purchaser for Assurance Acceptance by no later than 16 weeks prior to Acceptance of the first Unit.

4.7. Assurance Acceptance Process

- 4.7.1. Where the Maintainer is required to submit information and/or documents to the Purchaser for Assurance Acceptance under this Agreement, the Maintainer shall comply with the requirements described in this section 4.7.
- 4.7.2. All submissions to the Purchaser for Assurance Acceptance shall be in the English language.
- 4.7.3. The Maintainer shall ensure that each document and/or other information submitted to the Maintainer for Assurance Acceptance:
 - (A) is complete in writing, and of good readable quality;
 - (B) is in triplicate if being submitted as a hard copy document;
 - (C) in the case of documents, is titled, numbered and dated in a manner approved by the Purchaser or its nominee and where applicable shall incorporate a graphic scale, definitions and/or any other appropriate guide for interpretation;

- (D) in the case of revised or re-submitted documents, clearly shows the revisions;
- (E) is in accordance with any other requirements specified in this Agreement in respect of such document and/or information;
- (F) is:
 - (i) left at the address of the Purchaser;
 - (ii) sent by pre-paid first class post or by airmail if posted to or from a place outside the United Kingdom to the address of the Purchaser;
 - (iii) sent by facsimile to the facsimile number of the Purchaser; or
 - (iv) sent by email or other form of electronic communication to the email address of the Purchaser,in each case as specified in paragraph 4.7.5 and marked "For the attention of: ELLP Document Controller"; and
- (J) is accompanied by a Request for Approval.

4.7.4. The Maintainer shall ensure that each Request for Approval contains, to the extent applicable, the following information:

- (A) the submission number (which shall be independent of any drawing number as referred to in paragraph 4.7.3);
- (B) the document number, including where relevant the revision letter or number;
- (C) the title of the document;
- (D) the date of submission;
- (E) details of approval sought; and
- (F) any supplementary information which is necessary to enable the Purchaser to make a decision in accordance with paragraph 4.7.12 (including, where relevant, a description of the latest revision).

4.7.5. For the purposes of paragraph 4.7.3, the relevant details as at the date of this Agreement are:

Transport Trading Limited

Address: Transport for London, 15 Bonhill Street, London EC2A 4DN

Facsimile: 0845 458 0957

Email: [REDACTED]

4.7.6. The Purchaser shall promptly notify the Maintainer in writing by notice served in accordance with Clause 45 if any of the details specified in paragraph 4.7.5 cease to be correct.

4.7.7. Where the Purchaser has received documents and/or information that have been submitted for Assurance Acceptance in accordance with the requirements of paragraph 4.7.5, the Purchaser shall promptly and in any event within 2 Working Days acknowledge receipt of

such submission by signing, dating and returning the Request for Approval for that submission to the Maintainer:

- (A) by leaving it at the address of the Maintainer;
- (B) by sending it by pre-paid first class post or by airmail if posted to or from a place outside the United Kingdom to the address of the Maintainer;
- (C) by sending it by facsimile to the facsimile number of the Maintainer; or
- (D) by sending it by email or other form of electronic communication to the email address of the Maintainer,

in each case as specified in paragraph 4.7.8 and marked "For the attention of: the Company Secretary".

4.7.8. For the purposes of paragraph 4.7.7, the relevant details of the Maintainer as at the date of this Agreement are:

Bombardier Transportation UK Limited
Address: Bombardier Transportation UK Limited
Litchurch Lane
Derby
Derbyshire
DE24 8AD

Facsimile:



Attention: Company Secretary

- 4.7.9. The Maintainer shall promptly notify the Purchaser in writing by notice served in accordance with Clause 45 if any of the details specified in paragraph 4.7.8 cease to be correct.
- 4.7.10. The Purchaser and the Maintainer agree that save to the extent expressly provided for in this paragraph 4.7, Clause 45 shall not apply to any documents and information submitted by the Maintainer for Assurance Acceptance by the Purchaser.
- 4.7.11. The Maintainer shall be responsible for ensuring that the Purchaser receives each submission made by the Maintainer for Assurance Acceptance (as evidenced by the Maintainer receiving the Request for Approval) and the date on which the Purchaser signs the Request for Approval shall be the date on which, for the purposes of this paragraph 4.7, the Purchaser shall be deemed to have received the submission for Assurance Acceptance.
- 4.7.12. Where the Maintainer has submitted information, drawings and/or documents for Assurance Acceptance, the Purchaser shall review and consider such information, drawing and/or document, and shall categorise any comments it has on such submission as:

"**Category A Comments**" where there are concerns, errors, omissions or questions that have a direct bearing on the acceptability of the information, drawing and/or document (as the case may be) which it is necessary to resolve immediately;

"Category B Comments" where there are concerns, errors, omissions or questions that require satisfactory resolution within a defined time period (not to exceed 20 Working Days);

"Category C Comments" where there are minor errors, syntax, spelling and/or minor technical errors which have no direct significant implications. For clarity, the Maintainer shall correct such error and retain the corrected of the document and, if requested by the Purchaser, provide the Purchaser with a copy of the same.

4.7.13. Where the Purchaser, acting reasonably, considers that the complexity, detail, scope and/or nature of the drawings, documents and/or information submitted by the Maintainer for Assurance Acceptance means that it may not be able to respond to the Maintainer within 20 Working Days of receipt by it of such submission, the Purchaser shall be entitled to an additional period of time of no more than 15 Working Days to consider the submission provided that the Purchaser notifies the Maintainer in writing (in accordance with Clause 45) within 7 Working Days of the date the Purchaser received the submission that the Purchaser is exercising its rights under this paragraph 4.7.13. Each notice served by the Purchaser pursuant to this paragraph 4.7.13 shall specify:

- (A) the details of the relevant submission;
- (B) the additional period of time required by the Purchaser (not to exceed 15 Working Days); and
- (C) a description in reasonable detail, as to the reasons why the additional time is required.

4.7.14. Within 20 Working Days of the date the Purchaser received a submission from the Maintainer for Assurance Acceptance (or such later date as notified to the Maintainer in accordance with paragraph 4.7.13) the Purchaser shall review the information, drawing and/or document that has been submitted or re-submitted by the Maintainer and return one copy of the same stamped or marked:

“Category I – No Assurance Acceptance”;

“Category II – Assurance Acceptance Granted with comments”; or

“Category III – Assurance Acceptance Granted”.

4.7.15. The Maintainer shall undertake the following actions in relation to the submission that has been returned to it by the Purchaser in accordance with paragraph 4.7.14:

- (A) if such information has been stamped “Category I – No Assurance Acceptance”, the Maintainer shall immediately review and revise the relevant drawing, documents and/or information taking into account the comments made by the Purchaser pursuant to paragraph 4.7.12 and shall resubmit such information for Assurance Acceptance by the Purchaser in accordance with this paragraph 4.7;
- (B) if such information has been stamped “Category II – Assurance Acceptance Granted with comments”, the Maintainer shall be entitled to proceed on the basis of the drawing, documents and/or information as amended to incorporate the comments made by the Purchaser and re-submitted for Assurance Acceptance by the Purchaser pursuant to paragraph 4.7.14; and
- (C) if such information has been stamped “Category III – Assurance Acceptance Granted”, the Maintainer shall be entitled to proceed on the basis of drawing, documents and/or information submitted to the Purchaser.

- 4.7.16. If the Purchaser does not respond within the timeframes set out in paragraph 4.7.14, the Maintainer shall be entitled to treat the information submitted to the Purchaser as "Category III –Assurance Acceptance Granted" provided that the Purchaser has signed and returned the Request for Approval in respect of that submission of that information for Assurance Acceptance.
- 4.7.17. In considering which category to stamp or mark a document, drawing or item of information that has been submitted for Assurance Acceptance, the Purchaser shall be entitled to take into account the number of "Category A Comments", "Category B Comments" and/or "Category C Comments" it has on such item and where there is a significant number of "Category B Comments" and/or "Category C Comments" consider whether in totality such comments represent sufficient residual risk that they are equivalent to a "Category A Comment" and/or "Category B Comment".
- 4.7.18. The Purchaser shall be entitled, at any time and on reasonable notice (and in any event not less than 2 Working Days) to:
- (A) request the Maintainer to submit any further document or information, reasonably necessary to clarify, support and/or justify any submission for Assurance Acceptance; and
 - (B) notwithstanding the other requirements for meetings in this Schedule 6, require the Maintainer and/or any of its Service Subcontractors to attend a meeting to discuss any aspect of the documents and/or information submitted for Assurance Acceptance.

4.8. Change Control and Retention of Design Information

- 4.8.1. No later than 6 months prior to the scheduled Acceptance of the first Unit the Maintainer and Purchaser shall meet and co-operate to develop and agree a change control process that is efficient and consistent with best industry practice and sets out a process for changes to (i) the design and/or configuration of the Units, (ii) the Manuals; and/or (iii) to the Maintenance Plan.
- 4.8.2. The change control process shall be developed taking into account: (i) the design authority of the Manufacturer; (ii) the asset ownership interests of the Purchaser; (iii) the obligations of the Maintainer under the TSA; and (iv) the Operator's Maintenance Policy (as required by Railway Group Standard GM/RT 2004) and Safety Management System.
- 4.8.3. If the Parties are unable to agree any of the matters set out in this paragraph 4.8 within 20 Working Days of first meeting, either Party may refer the matter or matters in dispute for expert determination pursuant to Schedule 15A (Fast Track Dispute Resolution Procedure).
- 4.8.4. Where the Purchaser and the Maintainer have agreed the terms of the change control process or such terms are otherwise determined, those terms shall be recorded in writing within five (5) Working Days of such agreement or determination. The record produced pursuant to this paragraph 4.8.4 shall be deemed to be a complete Variation Order which shall be deemed to have been confirmed immediately. The provisions of paragraph 7.4.1(A), (B) and (C) but not 7.4.1 (D), (E), (F) or (G) of Schedule 10 (Variation Procedure) shall apply..
- 4.8.5. No changes shall be made to the design or configuration of the Units, or to the Manuals or the Maintenance Plan following Delivery of the first Unit, unless that change has first been approved pursuant to the change control process.

- 4.8.6. Not used.
- 4.8.7. The Maintainer and Purchaser each agree that they will comply with the provisions of the agreed change control process agreed or determined pursuant to this paragraph 4.8 and the Variation Procedure set out in Schedule 10 (if applicable)..
- 4.8.8. The Maintainer shall:
- (A) maintain for the Duration the competences 1 and 3 described in Railway Group Guidance Note GE/GN8565 Issue 1 "Guidance on the Retention of Design Information for the Validation of Technical Change and Configuration Management " ("GE/GN 8565"); and
 - (B) retain the design, drawings, design data and background information used in the design of the Units in its original format, for the Duration, in order to support the process of validation of technical change described in competence 2 in GE/GN8565; and
 - (C) notwithstanding the requirements for configuration management in this Agreement, keep records of the configuration levels of the Units as described as "Competence 4" in GE/GN 8565, for the purposes described in that Guidance Note until the expiry of the Maintenance Period.
- 4.8.9. On expiry of the Maintenance Period the Maintainer shall provide the Purchaser, at no additional cost to the Purchaser, with the record of the configuration of the Units at the date of expiry of the Maintenance Period.

Appendix 1

Standard



Category: 1
Number: 2-02201-000
Issue no: A1
Issue date: 28 October 2002

London Underground Limited
Human Resources

Alcohol and Work

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A Standard is defined as:

A mandatory document which sets out minimum requirements expressed as outputs; or a mandatory document which defines an interaction or commonality which meets a defined LUL requirement.

Authorised by: [REDACTED] Director of Human Resources	Date: August 2002
Approved by: [REDACTED] HR Planning, Policy and Reward Manager	Date: August 2002
Custodian: [REDACTED] HR Policy Manager	Date: August 2002

1.0 Purpose

- 1.0.1 The purpose of this Standard is to support the London Underground Limited (LUL) policy that employees shall be required to ensure that their work performance is not affected in any way by consumption of alcohol. Breaches of this Standard may lead to disciplinary action. Where such breaches are deemed to be gross misconduct, disciplinary action may result in dismissal.

2.0 Scope

- 2.0.1 This Standard applies to all employees of LUL and subsidiary companies. LUL also requires any Contractors, Consultancies and Agencies to ensure that their employees who are engaged on work for LUL comply with its provisions.
- 2.0.2 This Standard shall be enforceable from 28/10/02.

3.0 Requirements

- 3.0.1 All Employees must be aware that:
- The consumption of alcohol, even in very small quantities, may adversely affect their safety, performance, conduct or efficiency as well as the safety and wellbeing of other employees and customers.
 - Carrying out work for LUL whilst they may be under the influence of alcohol, or behaviour connected with alcohol consumption which may reflect adversely on the reputation of LUL, are contrary to company standards.
- 3.0.2 To achieve the aims of the LUL policy the following requirements shall apply:
- All Employees are required:
 - not to consume alcohol whilst on duty, during breaks in the working day, including meal breaks spent away from company premises, or when rostered on call and thus liable to be required to work for the company at short notice;
 - neither to buy alcohol whilst on duty nor bring alcohol on to company operational premises;
 - to limit their consumption of alcohol whilst off duty to ensure that they are not under the influence of alcohol in any way when reporting for duty or carrying out work for the company;
 - to avoid buying or consuming alcohol when off duty whilst wearing a company uniform, name badge or other form of company identification;
 - to co-operate fully with the company's alcohol screening arrangements if they are involved in a dangerous incident¹ at work or where there is reasonable suspicion that alcohol has been consumed.
 - In order to exercise the duty of due diligence placed on LUL by the provisions of the Transport and Works Act 1992, employees who are required to perform safety critical activities as part of their job are classified as safety critical. In

¹ A dangerous incident is defined as "An incident causing or having the potential to cause death or major injury or substantial damage to property".

addition to the requirements outlined above, safety critical employees are required to co-operate fully with unannounced alcohol screening arrangements.

- In the event of any breach of this Standard, the normal disciplinary procedures shall apply to LUL employees, which may result in charges of gross misconduct and dismissal. (NB: Safety critical employees who test positive for alcohol will be disciplined and are likely to be dismissed.)
- LUL shall endeavour to assist a LUL employee who, prior to breaches of this Standard, admits to an alcohol dependency problem to address the issue. However, such an admission shall not give immunity from disciplinary action once a breach of this Standard has occurred.

4.0 Responsibilities

4.1 All Employees

- Shall understand and accept their responsibility to comply with the requirements outlined in this standard and the supporting guidelines.
- Shall seek help immediately if they believe they have or are developing an alcohol dependency problem.
- Shall avoid covering up or colluding with colleagues whose behaviour and performance is affected by alcohol.
- Shall urge colleagues to seek help if they have problems arising from the use of alcohol and alert a supervisor or manager if safety could be compromised.

4.2 All LUL Managers

- Shall be familiar with and enforce this standard by ensuring the requirements outlined above are met in their areas of control. This includes initiating disciplinary action where breaches of the Standard occur.
- Shall undertake investigations where an employee's performance appears to be affected by alcohol, and take appropriate action, including making arrangements for employees to undergo alcohol screening tests where they are involved in a dangerous incident at work or where there is reasonable suspicion that alcohol has been consumed.
- Shall co-operate with the local Human Resources (HR) Office in carrying out unannounced alcohol tests and with LUL Occupational Health in arranging alcohol screening to monitor employees who have undergone rehabilitation for alcohol abuse.
- Shall assist employees on a confidential basis who seek help with an alcohol-related problem.
- Shall monitor the application of unannounced and for cause testing for ethnic and gender bias, taking corrective action if appropriate.

4.2 Private Finance Initiatives, Infracos and Individual Contractors and Sub-contractors of these parties and of LU

- Shall be familiar with and enforce this standard by ensuring the requirements outlined above are met. This includes removing employees from Underground work who test positive for alcohol.
- Shall ensure appropriate arrangements are made for unannounced alcohol testing to take place of a minimum of [REDACTED] of safety critical employees per annum.

4.4 General Manager HR

- Shall review the effectiveness of this Standard and audit compliance with the requirements stated therein.

5.0 Appendix – Supporting information

5.1 Supporting and other Relevant Documents

Company Employment Policy
Drugs and Work Standard
Code of Conduct Standard
Alcohol and Drugs Guidelines
Alcohol and Drugs Guidelines for Managers
Alcohol and Drugs Guidance for Contractors

6.0 Appendix – Informative references

6.1 Definitions

For the purposes of this Standard, Employees shall be taken as being those in the direct employ of London Underground Limited (and any subsidiary companies), Private Finance Initiatives, Infracos and any individual contractors and sub-contractors of any of these parties.

6.2 Document history

Reference & revision no.	Date	Changes	Author
HRP/AW1	24.01.02	Draft 1	[REDACTED]
HRP/AW1	01.02.02	Draft 2 - Revisions from consultation	[REDACTED]
HRP/AW1	14.02.02	Draft 3 - Revisions from consultation	[REDACTED]
HRP/AW1	07.03.02	Draft 4 - Revisions from consultation	[REDACTED]
HRP/AW1	18.03.02	Draft 5 - Revision from consultation	[REDACTED]
HRP/AW1	02.05.02	Draft 6 – Revision from PSC Consultation	[REDACTED]
HRP/AW1	21.08.02	Final version	[REDACTED]
2-02201-000 A1	28.10.02	Document re-numbered	[REDACTED]

6.3 Document index data / properties

Date created:	24.01.02
Reference number:	2-02201-000
Revision number:	A1
Title:	Alcohol and Work
Custodian:	HR Policy and Reward Manager
Location of document:	HR Policy Section
Digital file reference:	Alcohol Standard
LUL functional unit name:	Human Resources

Standard



Category: 1
Number: 2-02207-000
Issue no: A1
Issue date: 28/10/02

London Underground Limited
Human Resources

Drugs and Work

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A Standard is defined as:

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Authorised by: [REDACTED]	Date: August 2002
Director of Human Resources	
Approved by: [REDACTED]	Date: August 2002
HR Planning, Policy and Reward Manager	
Custodian: [REDACTED]	Date: August 2002
HR Policy Manager	

1.0 Purpose

- 1.0.1 The purpose of this Standard is to support the London Underground Limited (LUL) policy that employees shall be required to ensure that their work performance is not affected in any way by use of drugs. Breaches of this Standard may lead to disciplinary action. Where such breaches are deemed to be gross misconduct, disciplinary action may result in dismissal.

2.0 Scope

- 2.0.1 This Standard applies to all employees of LUL and subsidiary companies. LUL also requires any Contractors, Consultancies and Agencies to ensure that their employees who are engaged on work for LUL comply with its provisions.
- 2.0.2 The term 'drugs' used in this Standard shall be deemed to include illegal substances, drugs and medication taken for reasons other than medically prescribed purposes, and other substances of abuse such as solvents. Where indicated, it also covers drugs and medications, whether prescribed or available without prescription, which have the potential to affect work performance.
- 2.0.3 This Standard shall be enforceable from 28/10/02.

3.0 Requirements

- 3.0.1 All Employees must be aware that:
- The consumption or use of any drugs or other medication may adversely affect their safety, performance, conduct or efficiency as well as the safety and wellbeing of other employees and customers.
 - Carrying out work for LUL whilst they may be under the influence of drugs, or behaviour connected with the use of drugs which may reflect adversely on the reputation of LUL, are contrary to company standards.
- 3.0.2 To achieve the aims of the LUL policy the following requirements shall apply:
- All Employees are required:
 - not to consume or use illegal drugs at any time, whether on duty or not, so as to ensure they are not under their influence when reporting for duty, carrying out work for the company or when on company premises;
 - not to possess, store or sell illegal drugs on company premises or bring the company into disrepute by being involved in such activities outside of work;
 - when requiring medication, to find out if there may be side effects likely to impair their work performance and safety from the drug or other medication concerned, whether prescribed or available without prescription, and, where this is the case, to seek advice regarding alternatives; additionally to advise their manager when reporting for work;
 - to co-operate fully with the company's drugs screening arrangements if they are involved in a dangerous incident¹ at work or where there is reasonable suspicion that drugs have been consumed or used.

¹ A dangerous incident is defined as "An incident causing or having the potential to cause death or major injury or substantial damage to property".

- In order to exercise the duty of due diligence placed on LUL by the provisions of the Transport and Works Act 1992, employees who are required to perform safety critical activities as part of their job are classified as safety critical. In addition to the requirements outlined above:
 - Employees are required to undergo screening for drugs prior to appointment, transfer or promotion to a post in which they will be classified as safety critical.
 - Safety critical employees are required to co-operate fully with unannounced drugs screening arrangements.
 - Contractors who are classified as safety critical are additionally required to carry a current certificate whilst engaged on work for LUL, issued by a LUL approved laboratory, certifying that they have undergone screening for drugs which proved negative within the previous twelve months.
- In the event of any breach of this Standard, the normal disciplinary procedures shall apply to LUL employees, which may result in charges of gross misconduct and dismissal. (NB: Safety critical employees who test positive for drugs will be disciplined and are likely to be dismissed.)
- LUL shall endeavour to assist a LUL employee who, prior to breaches of this Standard, admits to a drugs dependency problem to address the issue. However, such an admission shall not give immunity from disciplinary action once a breach of this Standard has occurred.

4.0 Responsibilities

4.1 All Employees

- Shall understand and accept their responsibility to comply with the requirements outlined in this standard and the supporting guidelines.
- Shall seek help immediately if they believe they have or are developing a drugs dependency problem.
- Shall avoid covering up or colluding with colleagues whose behaviour and performance is affected by drugs.
- Shall urge colleagues to seek help if they have problems arising from the use of drugs and alert a supervisor or manager if safety could be compromised.

4.2 All LUL Managers

- Shall be familiar with and enforce this standard by ensuring the requirements outlined above are met in their areas of control. This includes initiating disciplinary action where breaches of the Standard occur.
- Shall undertake investigations where an employee's performance appears to be affected by drugs, and take appropriate action, including making arrangements for employees to undergo drugs screening tests where they are involved in a dangerous incident at work or where there is reasonable suspicion that drugs have been consumed or used.
- Shall ensure drugs screening takes place as appropriate for employees prior to their undertaking posts in which they will be classified as safety critical.

- Shall co-operate with the local Human Resources (HR) Office in carrying out unannounced drugs tests and with LUL Occupational Health in arranging drugs screening to monitor employees who have undergone rehabilitation for drug abuse.
- Shall assist employees on a confidential basis who seek help to overcome a drugs-related problem.
- Shall monitor the application of unannounced and for cause testing for ethnic and gender bias, taking corrective action if appropriate.

4.3 Private Finance Initiatives, Infracos and Individual Contractors and Sub-contractors of these parties and of LU

- Shall be familiar with and enforce this standard by ensuring the requirements outlined above are met. This includes removing employees from Underground work who test positive for drugs.
- Shall ensure drugs screening takes place as appropriate for employees prior to their undertaking posts in which they will be classified as safety critical and on an annual basis.
- Shall ensure appropriate arrangements are made for unannounced drugs testing to take place of a minimum of [REDACTED] of safety critical employees per annum.

4.4 General Manager HR

- Shall review the effectiveness of this Standard and audit compliance with the requirements stated therein.

5.0 Appendix – Supporting information

5.1 Supporting and other Relevant Documents

Company Employment Policy

Alcohol and Work Standard

Code of Conduct Standard

Alcohol and Drugs Guidelines for Employees

Alcohol and Drugs Guidelines for Managers

Alcohol and Drugs Guidance for Contractors

6.0 Appendix – Informative references

6.1 Definitions

For the purposes of this Standard, unless otherwise stated, Employees shall be taken as being those in the direct employ of London Underground Limited (and any subsidiary companies), Private Finance Initiatives, Infracos and any individual contractors and sub-contractors of any of these parties.

6.2 Document history

Reference & revision no.	Date	Changes	Author
HRP/DW1	24.01.02	Draft 1	
HRP/DW1	01.02.02	Draft 2 - Revisions from Consultation	
HRP/DW1	14.02.02	Draft 3 - Revisions from Consultation	
HRP/DW1	07.03.02	Draft 4 - Revisions from Consultation	
HRP/DW1	18.03.02	Draft 5 - Revisions from Consultation	
HRP/DW1	02.05.02	Draft 6 – Revised from PSC Consultation	
HRP/DW1	18.06.02	Draft 7 – Correction to 4.3	
HRP/DW1	27.08.02	Final version	
2-02207-000 A1	28.10.02	Document re-numbered	

6.3 Document index data / properties

Date created:	24.01.02
Reference number:	2-02207-000
Revision number:	A1
Title:	Drugs Standard
Custodian:	HR Policy and Reward Manager
Location of document:	HR Policy Section
Digital file reference:	Drugs Standard
LUL functional unit name:	Human Resources

SCHEDULE 7

Equality and Inclusion Requirements

1. EQUALITY AND INCLUSION REQUIREMENTS

1.1 General Obligation

Without limiting the generality of any other provision of this Agreement, the Maintainer:

1.1.1 shall not unlawfully discriminate;

1.1.2 shall procure that its personnel do not unlawfully discriminate; and

1.1.3 shall use reasonable endeavours to procure that its direct and indirect Subcontractors do not unlawfully discriminate in the performance of this Agreement,

within the meaning and scope of the Sex Discrimination Act 1975, the Race Relations Act 1976, the Disability Discrimination Act 1995, the Employment Equality (Sexual Orientation) Regulations 2003, the Employment Equality (Religion or Belief) Regulations 2003 and any other relevant Applicable Laws in force from time to time relating to discrimination in employment.

1.2 Duty under Race Relations Act

The Maintainer acknowledges that the Purchaser 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 performing this Agreement, the Maintainer shall and shall use reasonable endeavours to ensure that its direct and indirect Subcontractors assist and co-operate with the Purchaser where possible in satisfying this duty.

1.3 Direction under Greater London Authority Act

The Maintainer acknowledges that the Purchaser is under a duty by virtue of a direction by the Mayor of London under section 155 of the Greater London Authority Act 1999 (in respect of the Greater London Authority's duty under section 404(2) of the Greater London Authority Act 1999) to have due regard to the need to:

1.3.1 promote equality of opportunity for all persons irrespective of their race, gender, disability, age, sexual orientation or religion;

1.3.2 eliminate unlawful discrimination; and

1.3.3 promote good relations between persons of different racial groups, religious beliefs and sexual orientation,

and in performing this Agreement, the Maintainer shall and shall use reasonable endeavours to ensure that its direct and indirect Subcontractors shall assist and co-operate with the Purchaser where possible to enable the Purchaser to satisfy this duty.

1.4 Harassment Policy

The Maintainer acknowledges that the Purchaser's workplace harassment policy as updated from time to time requires the Purchaser's employees to comply fully with the Purchaser's workplace harassment policy to eradicate harassment in the workplace. Subject to the Purchaser providing an updated copy of its workplace harassment policy from time to time such that the Maintainer has always been provided with a fully up to date copy of such policy, the Maintainer shall, in relation to its employees, agents and/or direct and indirect Subcontractors who are engaged in the

performance of this Agreement and who are under the control or supervision of the Purchaser or its nominees and/or located at any premises that are owned or controlled by the Purchaser or any other member of the TfL Group (whether temporarily or permanently):

- 1.4.1 ensure that such employees, agents and/or direct and indirect Subcontractors are fully conversant with the requirements of the Purchaser's workplace harassment policy;
- 1.4.2 fully investigate allegations of workplace harassment in accordance with the Purchaser's workplace harassment policy; and
- 1.4.3 ensure that appropriate and effective action is taken where harassment is found to have occurred.

1.5 **Health and Safety Policy**

Without prejudice to Clause 8 (General Undertakings) the Maintainer acknowledges that the Purchaser's health and safety policy as updated from time to time requires the Purchaser's employees to comply fully with the Purchaser's health and safety policy. Subject to the Purchaser providing an updated copy of its health and safety policy from time to time such that the Maintainer has always been provided with a fully up to date copy of such policy, the Maintainer shall, in relation to its employees, agents and/or direct and indirect Subcontractors who are engaged in the performance of this Agreement and who are under the control or supervision of the Purchaser or its nominees and/or located at any premises that are owned or controlled by the Purchaser or any other member of the TfL Group (whether temporarily or permanently):

- 1.5.1 ensure that such employees agents and/or direct and indirect Subcontractors are fully conversant with the requirements of the Purchaser's health and safety policy;
- 1.5.2 fully investigate any breaches of the Purchaser's health and safety policy arising in the workplace in accordance with the Purchaser's health and safety policy; and
- 1.5.3 ensure that appropriate and effective action is taken where a breach of the Purchaser's health and safety policy occurs.

1.6 **Drug and Alcohol Policy**

The Maintainer acknowledges that the drugs and alcohol policy of London Underground Limited ("**LU Drugs & Alcohol Policy**") as updated from time to time requires the employees of London Underground Limited to comply fully with LU Drugs & Alcohol Policy. A copy of the LU Drugs & Alcohol Policy as at the Commencement Date is attached as Appendix D. Subject to the Purchaser providing an updated copy of the LU Drugs & Alcohol Policy from time to time such that the Maintainer has always been provided with a fully up to date copy of such policy, the Maintainer shall, in relation to its employees, agents and/or direct or indirect Subcontractors who are engaged in the performance of this Agreement and who are under the control or supervision of the Purchaser or its nominees and/or located at any premises that are owned or controlled by the Purchaser or any other member of the TfL Group (whether temporarily or permanently):

- 1.6.1 ensure that such employees, agents and/or direct and indirect Subcontractors are fully conversant with the requirements of the LU Drugs & Alcohol Policy;
- 1.6.2 fully investigate any breaches of the LU Drugs & Alcohol Policy arising in the workplace in accordance with the LU Drugs & Alcohol Policy; and
- 1.6.3 ensure that appropriate and effective action is taken where a breach of the LU Drugs & Alcohol Policy occurs.

1.7 Equality Policy

- 1.7.1 For the Duration the Maintainer shall comply with the Agreed Equality Policy.
- 1.7.2 For the Duration the Maintainer shall use reasonable endeavours (which for the avoidance of doubt means that such a request shall be included within any invitation to tender which is issued by the Maintainer during the Duration) to procure that each of its direct Subcontractors (other than Service Subcontractors):
- (A) adopts and implements; and
 - (B) in respect of other tiers of Subcontractors beneath the Maintainer's direct Subcontractors uses reasonable endeavours to procure that those indirect Subcontractors adopt and implement,
- an equality and diversity policy in respect of their respective employees engaged in the performance of the Agreement which is at least as extensive in scope as the Agreed Equality Policy.
- 1.7.3 For the Duration the Maintainer shall procure that each of its direct Service Subcontractors:
- (A) adopts and implements; and
 - (B) in respect of other tiers of Service Subcontractors beneath the Maintainer's direct Service Subcontractors uses reasonable endeavours to procure that those indirect Service Subcontractors adopt and implement,
- an equality and diversity policy in respect of their respective employees engaged in the performance of the Agreement which is at least as extensive in scope as the Agreed Equality Policy
- 1.7.4 Where a Service Subcontractor has, pursuant to paragraph 1.7.3 or otherwise, adopted an equality and diversity policy, the Maintainer shall procure that such Service Subcontractor:
- (A) provides; and
 - (B) in respect of other tiers of Service Subcontractors beneath the Maintainer's direct Service Subcontractors, uses reasonable endeavours to procure that those indirect Service Subcontractors provide,
- a copy of its equality and diversity policy (and any amendments thereto) to the Purchaser or its nominee as soon as reasonably practicable.

1.8 Diversity Training

- 1.8.1 For the Duration the Maintainer shall comply with the Agreed Diversity Training Plan in relation to all of its employees engaged in the performance of the Agreement.
- 1.8.2 For the Duration the Maintainer shall use reasonable endeavours (which for the avoidance of doubt means that such a request shall be included within any invitation to tender which is issued by the Maintainer during the Duration) to procure that each of its direct Subcontractors (other than Service Subcontractors):
- (A) adopts and implements; and

- (B) in respect of other tiers of Subcontractors beneath the Maintainer's direct Subcontractors uses reasonable endeavours to procure that those indirect Subcontractors adopt and implement,

a diversity training plan in respect of their respective employees engaged in the performance of the Agreement which is at least as extensive in scope as the Agreed Training Plan.

- 1.8.3 For the Duration the Maintainer shall procure that each of its direct Service Subcontractors:

- (A) adopts and implements; and

- (B) in respect of other tiers of Service Subcontractors beneath the Maintainer's direct Service Subcontractors uses reasonable endeavours to procure that those indirect Service Subcontractors adopt and implement,

a diversity training plan in respect of their respective employees engaged in the performance of the Agreement which is at least as extensive in scope as the Agreed Training Plan.

- 1.8.4 Where a Service Subcontractor has, pursuant to paragraph 1.8.3 or otherwise, adopted a diversity training plan, the Maintainer shall procure that such Service Subcontractor:

- (A) provides; and

- (B) in respect of other tiers of Service Subcontractors beneath the Maintainer's direct Service Subcontractors, uses reasonable endeavours to procure that those indirect Service Subcontractors provide,

a copy of its diversity training plan (and any amendments thereto) to the Purchaser or its nominee as soon as reasonably practicable.

1.9 **Supplier Diversity**

- 1.9.1 For the Duration the Maintainer shall at all times comply with the Agreed Supplier Diversity Plan.

- 1.9.2 For the Duration the Maintainer shall use reasonable endeavours (which for the avoidance of doubt means that such a request shall be included within any invitation to tender which is issued by the Maintainer during the Duration) to procure that each of its direct Subcontractors (other than Service Subcontractors):

- (A) adopts and implements; and

- (B) in respect of other tiers of Subcontractors beneath the Maintainer's direct Subcontractors uses reasonable endeavours to procure that those indirect Subcontractors adopt and implement,

a supplier diversity plan in relation to the performance of the Agreement which is at least as extensive as the Agreed Supplier Diversity Plan.

- 1.9.3 For the Duration the Maintainer shall procure that each of its direct Service Subcontractors:

- (A) adopts and implements; and

- (B) in respect of other tiers of Service Subcontractors beneath the Maintainer's direct Service Subcontractors uses reasonable endeavours to procure that those indirect Service Subcontractors adopt and implement,

a supplier diversity plan in relation to the performance of the Agreement which is at least as extensive as the Agreed Supplier Diversity Plan.

1.9.4 Where a Service Subcontractor has, pursuant to paragraph 1.9.3 or otherwise, adopted a supplier diversity plan, the Maintainer shall procure that such Service Subcontractor:

- (A) provides; and

- (B) in respect of other tiers of Service Subcontractors beneath the Maintainer's direct Service Subcontractors, uses reasonable endeavours to procure that those indirect Service Subcontractors provide,

a copy of its supplier diversity policy (and any amendments thereto) to the Purchaser or its nominee as soon as reasonably practicable.

1.10 **Local Community Relations**

1.10.1 For the Duration and in all dealings with the Local Community, the Maintainer shall comply with the Agreed Communications Plan. For the purposes of this Agreement the expression "**Agreed Communications Plan**" means the communications plan to be agreed between the Parties no later than six (6) months prior to the commencement of the Duration and the expression "**Local Community**" means those areas of London within 5 miles radius of a Carriage Servicing Depot.

1.11 **Monitoring and Reporting**

Subject to paragraph 1.12, the Maintainer shall use reasonable endeavours to provide the Purchaser on the date of this Agreement and subsequently every 6 months from the date of this Agreement (or at such lesser or greater intervals as agreed between the Parties), with the following information:

1.11.1 the proportion of its employees engaged in the performance of the Agreement and, to the extent reasonably possible, the employees of its direct or indirect Subcontractors engaged pursuant to the terms of the relevant Subcontracts in the performance of the Agreement who are:

- (A) female;
- (B) of non 'White British' origin or who classify themselves as being non 'White British';
- (C) from the Local Community; or
- (D) disabled; and

1.11.2 the proportion of its direct or indirect Subcontractors that are SMEs and/or BMEs or other Diverse Suppliers as defined in Appendix 1.

1.12 **Data Protection Act**

The Maintainer shall ensure at all times that it complies with the requirements of the Data Protection Act 1998 (as may be amended) and any other applicable data protection legislation in England or any equivalent legislation and/or regulations applicable in the Maintainer's own

jurisdiction in the collection and reporting of the information to the Purchaser pursuant to paragraph 1.11.

1.13 **Diversity Infractions**

1.13.1 If the Maintainer or any of its direct Service Subcontractors commits a Diversity Infraction, the Purchaser shall be entitled (but not obliged) to:

- (A) if the Diversity Infraction is committed by the Maintainer, serve written notice upon the Maintainer identifying in reasonable detail the nature of the Diversity Infraction; or
- (B) if the Diversity Infraction is committed by a direct Service Subcontractor of the Maintainer, serve written notice upon the Maintainer identifying in reasonable detail the nature of the Diversity Infraction.

1.13.2 Where notice of a Diversity Infraction has been served pursuant to paragraph 1.13.1(A) above the Maintainer shall cease committing and remedy at its own cost the Diversity Infraction within 30 days of receipt of such notice (or such longer period as may be specified in the notice).

1.13.3 Where notice of a Diversity Infraction has been served pursuant to paragraph 1.13.1(B) above:

- (A) the Maintainer shall procure that the direct Service Subcontractor ceases committing and remedies at the direct Service Subcontractor's own cost the Diversity Infraction within 37 days of receipt by the Maintainer of such notice (or such longer period as may be specified in the notice); and
- (B) if the Maintainer fails to procure the remedy of the Diversity Infraction by the direct Service Subcontractor within 37 days of receipt of such notice the Purchaser may serve a further written notice upon the Maintainer and within 30 days of receipt of such further notice (or such longer period as may be specified in the notice) the Maintainer shall terminate at its own cost the relevant contract with its direct Service Subcontractor and procure performance of the affected works or services by another person which also complies with the obligations specified in paragraphs 1.1 to 1.12 above.

1.13.4 Where the Maintainer fails to remedy a Diversity Infraction in accordance with paragraph 1.13.2 above, or the Maintainer fails to terminate the engagement of the direct Service Subcontractor which is currently committing a Diversity Infraction in accordance with paragraph 1.13.3 (B) above, the Maintainer will be in breach of the Agreement and the Purchaser shall be entitled (but not obliged) to terminate the engagement of the Maintainer under the Agreement in accordance with Clause 33.

1.13.5 For the purposes of this paragraph 1.13 "**Diversity Infraction**" means any breach by the Maintainer of its obligations specified in paragraphs 1.1 to 1.12 above and/or any failure by a direct Service Subcontractor to adopt and implement an equality and diversity policy, a diversity training plan and/or a supplier diversity plan as described in paragraphs 1.7 to 1.9 above.

1.14 **Equality and Diversity Audit**

1.14.1 The Purchaser may from time to time upon giving reasonable notice and during normal working hours undertake any audit or check of any and all information regarding the Maintainer's compliance with paragraphs 1.1 to 1.12. The Purchaser's rights pursuant to

this paragraph shall include any and all documents and records of the Maintainer and its direct Service Subcontractors reasonably necessary to enable the Purchaser to carry out such audit or check and shall include the Minimum Records.

- 1.14.2 The Maintainer shall, and shall use its reasonable endeavours to procure that each of its direct and (where applicable pursuant to the provisions of paragraphs 1.7 to 1.9 above) indirect Service 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 1.1 to 1.12. The Maintainer shall use its reasonable endeavours to procure that each Service Subcontract between it and its direct Service Subcontractors and (where applicable subject to the provisions of paragraphs 1.7 to 1.9 above) each Service Subcontract between its direct Service Subcontractor and any indirect Service Subcontractor (together with each Service Subcontract between the Maintainer's indirect Service Subcontractors) shall contain rights of audit in favour of and enforceable by the Purchaser substantially equivalent to those granted by the Maintainer pursuant to this paragraph 1.14.
- 1.14.3 The Purchaser 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 Maintainer and each direct Service Subcontractor is not, without due cause, disrupted or delayed in the performance of its obligations under the Agreement and/or relevant Subcontract.
- 1.14.4 The Maintainer shall promptly provide and shall use reasonable endeavours to procure that its direct Service Subcontractors and (where applicable subject to the provisions of paragraphs 1.7 to 1.9) indirect Service 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 Maintainer's performance of the Agreement or the relevant Service Subcontractor's performance of its Subcontract whether the Maintainer'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 Maintainer's obligations or the relevant Service Subcontractor's obligations specified in paragraphs 1.1 to 1.12, wherever situated and whether the Maintainer's own equipment or otherwise; and
 - (C) complying with the Purchaser's reasonable requests for access to senior personnel engaged in the Maintainer's performance of the Agreement, or the relevant Service Subcontractor's performance of its Subcontract.
- 1.14.5 For the purposes of this paragraph 1.14 the expression "**Minimum Records**" means:
- (A) all information relating to the Maintainer's performance of its obligations pursuant to paragraphs 1.1 to 1.12; and
 - (B) all information relating to the adoption and implementation of an equality and diversity policy, a diversity training plan and a supplier diversity plan by each direct and (where applicable pursuant to the provisions of paragraphs 1.7 to 1.9) indirect Service Subcontractor of the Maintainer.

Appendix 1

In this Schedule;

"SMEs" or **"Small Medium Enterprise"** means either:

- (a) a business which meets at least two of the following criteria;
 - (i) the annual turnover of the business is £5.6 million or less;
 - (ii) the balance sheet total is £2.8 million pounds or less;
 - (iii) the business has 50 employees or fewer; or
- (b) a business which meets at least two of the following criteria;
 - (i) the annual turnover of the business is £22.8 million or less;
 - (ii) the balance sheet total is £11.4 million or less;
 - (iii) the business has 250 employees or fewer,

and in the case of paragraphs (a)(i) and (a)(ii) and (b)(i) and (b)(ii) the applicable criteria shall apply to group accounts, provided that the turnover for the group does not exceed the figure stated in paragraph (a)(i) in respect of paragraphs (a)(i) and (a)(ii) and paragraph (b)(i) in respect of paragraphs (b)(i) and (b)(ii).

"BMEs" or **"Black and Minority Ethnic Business"** means a business which is 51% or more owned by people who, in the case where a Subcontractor performs its obligations in England, classify themselves as being members of an ethnic group other than 'White British' or in the case where the Subcontractor performs its obligations in a jurisdiction other than in England, an equivalent ethnic minority group agreed by the Purchaser.

"Diverse Supplier" means a business which is;

- (a) an SME or a BME;
- (b) is 51% or more owned by members of one or more of the following groups:
 - (i) women;
 - (ii) people with physical and sensory impairments, learning difficulties and mental health requirements;
 - (iii) lesbian, gay, bisexual and transgender people;
 - (iv) people aged sixty (60) or older or people aged twenty four (24) or younger; and/or
 - (v) members of a group for which protection is provided by anti-discriminatory legislation and which is not already mentioned in paragraphs (i) to (iv); and/or
- (c) has a workforce composed of 51% or more of people from one or more ethnic groups other than 'White British' (or an equivalent ethnic minority group agreed by the Purchaser in the jurisdiction in which a Subcontractor's obligations are being performed) and/or any of the groups listed under paragraph (b).

APPENDIX A

Agreed Equality Policy

Schedule 7

Equality and Inclusion Requirements

Annex A

Agreed Equality Policy

APPENDIX B

Agreed Diversity Training Plan

Schedule 7
Equality and Inclusion Requirements
Appendix B
Agreed Diversity Training Plan

Schedule 7 – Equality and Inclusion Requirements
Appendix B – Agreed Diversity Training Plan

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APPENDIX C

Agreed Supplier Diversity Plan

Schedule 7

Equality and Inclusion Requirements

Appendix C

Agreed Supplier Diversity Training Plan

APPENDIX D

London Underground Limited Drugs and Alcohol Policy

Standard



Category: 1
Number: 2-02207-000
Issue no: A1
Issue date: 28/10/02

London Underground Limited
Human Resources

Drugs and Work

Contents

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A Standard is defined as:

A mandatory document which sets out minimum requirements expressed as outputs; or a mandatory document which defines an interaction or commonality which meets a defined LUL requirement.

Authorised by: [REDACTED]	Date: August 2002
Director of Human Resources	
Approved by: [REDACTED]	Date: August 2002
HR Planning, Policy and Reward Manager	
Custodian: [REDACTED]	Date: August 2002
HR Policy Manager	

1.0 Purpose

- 1.0.1 The purpose of this Standard is to support the London Underground Limited (LUL) policy that employees shall be required to ensure that their work performance is not affected in any way by use of drugs. Breaches of this Standard may lead to disciplinary action. Where such breaches are deemed to be gross misconduct, disciplinary action may result in dismissal.

2.0 Scope

- 2.0.1 This Standard applies to all employees of LUL and subsidiary companies. LUL also requires any Contractors, Consultancies and Agencies to ensure that their employees who are engaged on work for LUL comply with its provisions.
- 2.0.2 The term 'drugs' used in this Standard shall be deemed to include illegal substances, drugs and medication taken for reasons other than medically prescribed purposes, and other substances of abuse such as solvents. Where indicated, it also covers drugs and medications, whether prescribed or available without prescription, which have the potential to affect work performance.
- 2.0.3 This Standard shall be enforceable from 28/10/02.

3.0 Requirements

- 3.0.1 All Employees must be aware that:
- The consumption or use of any drugs or other medication may adversely affect their safety, performance, conduct or efficiency as well as the safety and wellbeing of other employees and customers.
 - Carrying out work for LUL whilst they may be under the influence of drugs, or behaviour connected with the use of drugs which may reflect adversely on the reputation of LUL, are contrary to company standards.
- 3.0.2 To achieve the aims of the LUL policy the following requirements shall apply:
- All Employees are required:
 - not to consume or use illegal drugs at any time, whether on duty or not, so as to ensure they are not under their influence when reporting for duty, carrying out work for the company or when on company premises;
 - not to possess, store or sell illegal drugs on company premises or bring the company into disrepute by being involved in such activities outside of work;
 - when requiring medication, to find out if there may be side effects likely to impair their work performance and safety from the drug or other medication concerned, whether prescribed or available without prescription, and, where this is the case, to seek advice regarding alternatives; additionally to advise their manager when reporting for work;
 - to co-operate fully with the company's drugs screening arrangements if they are involved in a dangerous incident¹ at work or where there is reasonable suspicion that drugs have been consumed or used.

¹ A dangerous incident is defined as "An incident causing or having the potential to cause death or major injury or substantial damage to property".

- In order to exercise the duty of due diligence placed on LUL by the provisions of the Transport and Works Act 1992, employees who are required to perform safety critical activities as part of their job are classified as safety critical. In addition to the requirements outlined above:
 - Employees are required to undergo screening for drugs prior to appointment, transfer or promotion to a post in which they will be classified as safety critical.
 - Safety critical employees are required to co-operate fully with unannounced drugs screening arrangements.
 - Contractors who are classified as safety critical are additionally required to carry a current certificate whilst engaged on work for LUL, issued by a LUL approved laboratory, certifying that they have undergone screening for drugs which proved negative within the previous twelve months.
- In the event of any breach of this Standard, the normal disciplinary procedures shall apply to LUL employees, which may result in charges of gross misconduct and dismissal. (NB: Safety critical employees who test positive for drugs will be disciplined and are likely to be dismissed.)
- LUL shall endeavour to assist a LUL employee who, prior to breaches of this Standard, admits to a drugs dependency problem to address the issue. However, such an admission shall not give immunity from disciplinary action once a breach of this Standard has occurred.

4.0 Responsibilities

4.1 All Employees

- Shall understand and accept their responsibility to comply with the requirements outlined in this standard and the supporting guidelines.
- Shall seek help immediately if they believe they have or are developing a drugs dependency problem.
- Shall avoid covering up or colluding with colleagues whose behaviour and performance is affected by drugs.
- Shall urge colleagues to seek help if they have problems arising from the use of drugs and alert a supervisor or manager if safety could be compromised.

4.2 All LUL Managers

- Shall be familiar with and enforce this standard by ensuring the requirements outlined above are met in their areas of control. This includes initiating disciplinary action where breaches of the Standard occur.
- Shall undertake investigations where an employee's performance appears to be affected by drugs, and take appropriate action, including making arrangements for employees to undergo drugs screening tests where they are involved in a dangerous incident at work or where there is reasonable suspicion that drugs have been consumed or used.
- Shall ensure drugs screening takes place as appropriate for employees prior to their undertaking posts in which they will be classified as safety critical.

- Shall co-operate with the local Human Resources (HR) Office in carrying out unannounced drugs tests and with LUL Occupational Health in arranging drugs screening to monitor employees who have undergone rehabilitation for drug abuse.
- Shall assist employees on a confidential basis who seek help to overcome a drugs-related problem.
- Shall monitor the application of unannounced and for cause testing for ethnic and gender bias, taking corrective action if appropriate.

4.3 Private Finance Initiatives, Infracos and Individual Contractors and Sub-contractors of these parties and of LU

- Shall be familiar with and enforce this standard by ensuring the requirements outlined above are met. This includes removing employees from Underground work who test positive for drugs.
- Shall ensure drugs screening takes place as appropriate for employees prior to their undertaking posts in which they will be classified as safety critical and on an annual basis.
- Shall ensure appropriate arrangements are made for unannounced drugs testing to take place of a minimum of [REDACTED] of safety critical employees per annum.

4.4 General Manager HR

- Shall review the effectiveness of this Standard and audit compliance with the requirements stated therein.

5.0 Appendix – Supporting information

5.1 Supporting and other Relevant Documents

Company Employment Policy

Alcohol and Work Standard

Code of Conduct Standard

Alcohol and Drugs Guidelines for Employees

Alcohol and Drugs Guidelines for Managers

Alcohol and Drugs Guidance for Contractors

6.0 Appendix – Informative references

6.1 Definitions

For the purposes of this Standard, unless otherwise stated, Employees shall be taken as being those in the direct employ of London Underground Limited (and any subsidiary companies), Private Finance Initiatives, Infracos and any individual contractors and sub-contractors of any of these parties.

6.2 Document history

Reference & revision no.	Date	Changes	Author
HRP/DW1	24.01.02	Draft 1	
HRP/DW1	01.02.02	Draft 2 - Revisions from Consultation	
HRP/DW1	14.02.02	Draft 3 - Revisions from Consultation	
HRP/DW1	07.03.02	Draft 4 - Revisions from Consultation	
HRP/DW1	18.03.02	Draft 5 - Revisions from Consultation	
HRP/DW1	02.05.02	Draft 6 – Revised from PSC Consultation	
HRP/DW1	18.06.02	Draft 7 – Correction to 4.3	
HRP/DW1	27.08.02	Final version	
2-02207-000 A1	28.10.02	Document re-numbered	

6.3 Document index data / properties

Date created:	24.01.02
Reference number:	2-02207-000
Revision number:	A1
Title:	Drugs Standard
Custodian:	HR Policy and Reward Manager
Location of document:	HR Policy Section
Digital file reference:	Drugs Standard
LUL functional unit name:	Human Resources

Standard



Category: 1
Number: 2-02201-000
Issue no: A1
Issue date: 28 October 2002

London Underground Limited
Human Resources

Alcohol and Work

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HR Planning, Policy and Reward Manager	
Custodian: [REDACTED]	Date: August 2002
HR Policy Manager	

1.0 Purpose

- 1.0.1 The purpose of this Standard is to support the London Underground Limited (LUL) policy that employees shall be required to ensure that their work performance is not affected in any way by consumption of alcohol. Breaches of this Standard may lead to disciplinary action. Where such breaches are deemed to be gross misconduct, disciplinary action may result in dismissal.

2.0 Scope

- 2.0.1 This Standard applies to all employees of LUL and subsidiary companies. LUL also requires any Contractors, Consultancies and Agencies to ensure that their employees who are engaged on work for LUL comply with its provisions.
- 2.0.2 This Standard shall be enforceable from 28/10/02.

3.0 Requirements

- 3.0.1 All Employees must be aware that:
- The consumption of alcohol, even in very small quantities, may adversely affect their safety, performance, conduct or efficiency as well as the safety and wellbeing of other employees and customers.
 - Carrying out work for LUL whilst they may be under the influence of alcohol, or behaviour connected with alcohol consumption which may reflect adversely on the reputation of LUL, are contrary to company standards.
- 3.0.2 To achieve the aims of the LUL policy the following requirements shall apply:
- All Employees are required:
 - not to consume alcohol whilst on duty, during breaks in the working day, including meal breaks spent away from company premises, or when rostered on call and thus liable to be required to work for the company at short notice;
 - neither to buy alcohol whilst on duty nor bring alcohol on to company operational premises;
 - to limit their consumption of alcohol whilst off duty to ensure that they are not under the influence of alcohol in any way when reporting for duty or carrying out work for the company;
 - to avoid buying or consuming alcohol when off duty whilst wearing a company uniform, name badge or other form of company identification;
 - to co-operate fully with the company's alcohol screening arrangements if they are involved in a dangerous incident¹ at work or where there is reasonable suspicion that alcohol has been consumed.
 - In order to exercise the duty of due diligence placed on LUL by the provisions of the Transport and Works Act 1992, employees who are required to perform safety critical activities as part of their job are classified as safety critical. In

¹ A dangerous incident is defined as "An incident causing or having the potential to cause death or major injury or substantial damage to property".

addition to the requirements outlined above, safety critical employees are required to co-operate fully with unannounced alcohol screening arrangements.

- In the event of any breach of this Standard, the normal disciplinary procedures shall apply to LUL employees, which may result in charges of gross misconduct and dismissal. (NB: Safety critical employees who test positive for alcohol will be disciplined and are likely to be dismissed.)
- LUL shall endeavour to assist a LUL employee who, prior to breaches of this Standard, admits to an alcohol dependency problem to address the issue. However, such an admission shall not give immunity from disciplinary action once a breach of this Standard has occurred.

4.0 Responsibilities

4.1 All Employees

- Shall understand and accept their responsibility to comply with the requirements outlined in this standard and the supporting guidelines.
- Shall seek help immediately if they believe they have or are developing an alcohol dependency problem.
- Shall avoid covering up or colluding with colleagues whose behaviour and performance is affected by alcohol.
- Shall urge colleagues to seek help if they have problems arising from the use of alcohol and alert a supervisor or manager if safety could be compromised.

4.2 All LUL Managers

- Shall be familiar with and enforce this standard by ensuring the requirements outlined above are met in their areas of control. This includes initiating disciplinary action where breaches of the Standard occur.
- Shall undertake investigations where an employee's performance appears to be affected by alcohol, and take appropriate action, including making arrangements for employees to undergo alcohol screening tests where they are involved in a dangerous incident at work or where there is reasonable suspicion that alcohol has been consumed.
- Shall co-operate with the local Human Resources (HR) Office in carrying out unannounced alcohol tests and with LUL Occupational Health in arranging alcohol screening to monitor employees who have undergone rehabilitation for alcohol abuse.
- Shall assist employees on a confidential basis who seek help with an alcohol-related problem.
- Shall monitor the application of unannounced and for cause testing for ethnic and gender bias, taking corrective action if appropriate.

4.2 Private Finance Initiatives, Infracos and Individual Contractors and Sub-contractors of these parties and of LU

- Shall be familiar with and enforce this standard by ensuring the requirements outlined above are met. This includes removing employees from Underground work who test positive for alcohol.
- Shall ensure appropriate arrangements are made for unannounced alcohol testing to take place of a minimum of ■ of safety critical employees per annum.

4.4 General Manager HR

- Shall review the effectiveness of this Standard and audit compliance with the requirements stated therein.

5.0 Appendix – Supporting information

5.1 Supporting and other Relevant Documents

Company Employment Policy
Drugs and Work Standard
Code of Conduct Standard
Alcohol and Drugs Guidelines
Alcohol and Drugs Guidelines for Managers
Alcohol and Drugs Guidance for Contractors

6.0 Appendix – Informative references

6.1 Definitions

For the purposes of this Standard, Employees shall be taken as being those in the direct employ of London Underground Limited (and any subsidiary companies), Private Finance Initiatives, Infracos and any individual contractors and sub-contractors of any of these parties.

6.2 Document history

Reference & revision no.	Date	Changes	Author
HRP/AW1	24.01.02	Draft 1	■
HRP/AW1	01.02.02	Draft 2 - Revisions from consultation	■
HRP/AW1	14.02.02	Draft 3 - Revisions from consultation	■
HRP/AW1	07.03.02	Draft 4 - Revisions from consultation	■
HRP/AW1	18.03.02	Draft 5 - Revision from consultation	■
HRP/AW1	02.05.02	Draft 6 – Revision from PSC Consultation	■
HRP/AW1	21.08.02	Final version	■
2-02201-000 A1	28.10.02	Document re-numbered	■

6.3 Document index data / properties

Date created:	24.01.02
Reference number:	2-02201-000
Revision number:	A1
Title:	Alcohol and Work
Custodian:	HR Policy and Reward Manager
Location of document:	HR Policy Section
Digital file reference:	Alcohol Standard
LUL functional unit name:	Human Resources

SCHEDULE 9

Maintenance Facility Obligations

1. DEFINITIONS

In this Schedule the following words and expressions shall have the following meanings save where the context requires otherwise:

"**PWENVS**" means the Permanent Works Environmental Noise and Vibration Specification ELM-MW-515-0004 Issue 8;

"**Completion**" means the scheduled completion date of the relevant Carriage Servicing Depot, being 31 March 2009 for the ELR Carriage Servicing Depot;

"**Iford Facility**" means the maintenance facility at Ley Street Ilford known as Ilford Works and identified by depot allocation code ZI; and

"**Utilities**" means all utilities including the supply or removal (as the case may be) of electricity, gas, water, waste water, heating, ventilation and air-conditioning, telecommunications and data communications.

2. ACCESS

2.1.1 The Purchaser shall procure that:

- (A) the Maintainer is granted such non-exclusive access to the ELR Carriage Servicing Depot and the NLR Carriage Servicing Depot as is necessary for the Maintainer to perform its obligations under this Agreement during the Maintenance Period;
- (B) the Maintainer is granted such non-exclusive access to the Contingent Maintenance Facility as is necessary for the Maintainer to perform its obligations under this Agreement during the Maintenance Period;
- (C) the relevant Facility Owners of the East London Railway and North London Railway grant such access to the Outstations as is necessary for the Maintainer to perform its obligations under this Agreement for the duration of the Maintenance Period and that such Outstations are maintained in such a manner as not to present any undue or unreasonable risk to the health or safety of the Maintainer's employees in the performance of their duties; and
- (D) all routes and paths required in order to move Units to and from the Carriage Servicing Depot and/or the Contingent Maintenance Facility and/or the Ilford Facility are provided.

2.1.2 The Maintainer acknowledges and agrees that:

- (A) for the Duration, the Purchaser or another member of the TfL Group shall be the Facility Owner of the ELR Carriage Servicing Depot at New Cross Gate;
- (B) for the Duration, the Purchaser or another member of the TfL Group shall be the Facility Owner of the NLR Carriage Servicing Depot where the Purchaser

or the other member of the TfL Group holds the freehold interest in the land where such NLR Carriage Servicing Depot is situated;

- (C) the Facility Owner of each Carriage Servicing Depot may allow other persons access to such facilities to enable compliance with the Facility Owner's obligations or otherwise in accordance with the terms of this Agreement;
- (D) subject to paragraph 2.1.1(D), for the duration of the use of the Ilford Facility it shall procure all necessary access to the Ilford Facility for itself, the Purchaser and the Operator in order to implement such contingent maintenance arrangements as specified in this Schedule 9; and
- (E) it shall have no grounds to raise objections in relation to those aspects of a Carriage Servicing Depot for which the Manufacturer has given any relevant consent and/or approval, including accepting, or being deemed to have accepted, the ELR Carriage Servicing Depot at New Cross Gate as having successfully completed all relevant tests pursuant to Schedule 10 of the MSA.

3. MAINTENANCE FACILITIES

The Maintainer undertakes to maintain the Units at the Carriage Servicing Depot and/or the Contingent Maintenance Facility and/or the Ilford Facility, as the case may be, in accordance with the requirements of this Agreement.

4. MAINTENANCE AND SECURITY OBLIGATIONS

4.1 Baseline Assessment

- 4.1.1 The Parties shall commence negotiations to jointly agree and appoint an independent and suitably qualified Environmental Consultant no later than twelve (12) months before the commencement of the Maintenance Period at New Cross Gate (and, where relevant, the commencement of the Services at any NLR Carriage Servicing Depot). In the absence of agreement between the Parties within twenty (20) Working Days of the Parties commencing discussions on the appointment of an Environmental Consultant, either Party may refer the matter for determination in accordance with Schedule 15A (Fast Track Dispute Resolution Procedure).
- 4.1.2 The Parties shall jointly instruct the Environmental Consultant to carry out the Baseline Assessment, immediately following the date on which any Historic Remediation Works in respect of the relevant Carriage Servicing Depot are completed or, where there are no Historic Remediation Works, within ten (10) Working Days of the appointment of the Environmental Consultant.
- 4.1.3 The Parties agree that the cost of appointing the Environmental Consultant and undertaking the relevant Baseline Assessment shall be shared equally between the Parties.
- 4.1.4 The Parties shall jointly instruct the Environmental Consultant to determine the scope of work for the relevant Baseline Assessment, taking into account any Historic Remediation Works undertaken by the Contractor.
- 4.1.5 The Parties agree that the relevant Baseline Assessment shall provide an evaluation of any Historic Pollution in the soil and groundwater at the relevant Carriage

Servicing Depot and it shall be deemed to be the benchmark level in relation to New Pollution from and including the commencement of the Maintenance Period.

4.2 Maintenance and Security Obligations

- 4.2.1 Subject to the subsequent provisions of this Schedule 9, during the Maintenance Period, the Maintainer shall ensure that each Carriage Servicing Depot is operated and managed in accordance with all Applicable Laws, applicable Standards and the terms of all Relevant Consents and Relevant Approvals.
- 4.2.2 Subject to paragraph 4.2.3 and the subsequent provisions of this Schedule 9, during the Maintenance Period in respect of each Carriage Servicing Depot, the Maintainer agrees to provide or procure the provision of each of the obligations ascribed to the Maintainer in the table set out in Appendix 1 to this Schedule 9, which comprise:
- (A) obligations to undertake certain activities (the "**Maintenance Obligations**"); and
 - (B) obligations to monitor activities undertaken or procured by other persons to the extent that the Purchaser has notified the Maintainer of what those activities entail and who is responsible for them (the "**Monitoring Obligations**").
- 4.2.3 The Parties acknowledge that Appendix 1 to this Schedule 9 sets out the preliminary views of each of the Parties in respect of the allocation of the Maintenance Obligations and the Monitoring Obligations between the Maintainer and other persons as at the Commencement Date. The Parties shall meet no later than six (6) months before Completion of each Carriage Servicing Depot to seek to agree:
- (A) the Maintenance Obligations and the Monitoring Obligations to be undertaken or procured by the Maintainer at that Carriage Servicing Depot; and
 - (B) the standards to which the Maintainer shall perform, or procure the performance of, such Monitoring Obligations and Maintenance Obligations.
- 4.2.4 If the Maintenance Obligations and the Monitoring Obligations to be undertaken or procured by the Maintainer at a Carriage Servicing Depot and/or the relevant standards have not been agreed forty (40) Working Days before anticipated Completion of the relevant Carriage Servicing Depot, either Party may refer the matter to Schedule 15A (Fast Track Dispute Resolution Procedure) for the Expert to decide.
- 4.2.5 To the extent that the Maintenance Obligations and the Monitoring Obligations are not to be undertaken by the Maintainer, the Purchaser shall ensure that at all times each Carriage Servicing Depot is maintained to such a standard so as not to present any undue or unreasonable threat to the health and safety of any person, including without limitation the Maintainer's employees, in the performance of their duties.
- 4.2.6 In determining which Maintenance Obligations and Monitoring Obligations should be undertaken or procured by the Maintainer at a Carriage Servicing Depot and/or the standards to which such obligations shall be performed, the Parties shall take into account:

- (A) the skills and competences of the relevant Maintainer, the Operator and the Infrastructure Manager and the person best placed to undertake the activities and/or risks in accordance with best industry practice;
- (B) any specific operational requirements and/or procedures at the relevant Carriage Servicing Depot;
- (C) whether the obligations to be undertaken or procured by the Maintainer reflects best value (based on the assessment of costs in relation to the allocation of responsibilities in accordance with paragraph 4.6 of this Schedule 9);
- (D) any specific requirements of the relevant Infrastructure Manager and/or the Operator;
- (E) any standards imposed by the relevant Facility Owner; and
- (F) the physical characteristics, layout and design of the Carriage Servicing Depot.

4.2.7 The Purchaser shall document:

- (A) the terms of the agreed or determined Maintenance Obligations and Monitoring Obligations to be undertaken or procured by the Maintainer at a Carriage Servicing Depot;
- (B) the standards to which such obligations shall be performed; and
- (C) those obligations in paragraph 4.2.13 (if any) which the Maintainer shall not be obliged to perform, or procure the performance of, in relation to the Carriage Servicing Depot,

within five (5) Working Days of agreement or determination. The record produced pursuant to this paragraph 4.2.7 shall be deemed to be a complete Variation Order which shall be deemed confirmed immediately and the provisions of paragraph 7.4.1 (A), (B) and (C) but not (D), (E), (F) and (G) of Schedule 10 (Variation Procedure) shall apply accordingly.

4.2.8 The Maintainer shall perform or procure the performance of the Maintenance Obligations and the Monitoring Obligations agreed or determined pursuant to paragraph 4.2.3 or 4.2.4.

4.2.9 No later than six (6) months before Completion of a Carriage Servicing Depot, the Purchaser shall prepare draft "**Local Working Procedures**" in accordance with good industry practice for each Carriage Servicing Depot, which shall include actions that the Maintainer is required to take, or refrain from taking, in order to comply with the Purchaser's operational requirements and/or the PWENVS and which shall not hinder or prevent the Maintainer in performing the Maintainer Obligations.

4.2.10 The Parties shall meet to agree the Local Working Procedures no later than fifteen (15) Working Days following the Maintainer's receipt of the draft Local Working Procedures. If the Parties do not meet and/or fail to agree that the draft Local Working Procedures:

- (A) are in accordance with good industry practice; and/or

- (B) meet any specific operational requirements of the relevant Carriage Servicing Depot; and/or
- (C) are appropriate for a site of similar size and complexity to the Carriage Servicing Depot; and/or
- (D) hinder or prevent the Maintainer in performing the Maintainer Obligations,

three (3) months before Completion of a Carriage Servicing Depot, either Party may refer the matter to Schedule 15 (Dispute Resolution Procedure) for the Expert to determine those procedures which would satisfy all of the criteria set out in this paragraph 4.2.10.

4.2.11 The Purchaser may propose an update to the Local Working Procedures from time to time. In order to update the Local Working Procedures, the Purchaser will prepare and provide to the Maintainer a draft of the updated Local Working Procedures. Paragraph 4.2.10 will apply mutatis mutandis in order to finalise the updated Local Working Procedures, with references in that paragraph to the "draft Working Procedures" being construed to mean the draft updated Local Working Procedures prepared in accordance with this paragraph.

4.2.12 No later than ten (10) Working Days following Completion of a Carriage Servicing Depot the Purchaser shall undertake a survey of the Carriage Servicing Depot and complete a Schedule of Condition in respect of that Carriage Servicing Depot setting out its state and condition. The Purchaser shall give the Maintainer at least two (2) Working Days notice of its intention to undertake the survey and the Maintainer shall be entitled to accompany the Purchaser when it undertakes the survey. For the purposes of this Schedule, "**Schedule of Condition**" means the relevant document to be completed by the Purchaser for the facilities comprising the ELR Carriage Servicing Depot or the NLR Carriage Servicing Depot (as the case may be), in a form to be agreed.

4.2.13 Unless excluded in accordance with paragraph 4.2.7 in relation to a particular Carriage Servicing Depot, the Maintainer shall, and shall procure that any Subcontractor shall, in relation to each Carriage Servicing Depot:

- (A) keep any areas of each Carriage Servicing Depot not covered by buildings clear of all rubbish and free from weeds;
- (B) undertake forthwith New Remediation Works in relation to any New Pollution identified by a Periodic Audit to the extent that the New Pollution is due to the act or omission of the Maintainer;
- (C) use each Carriage Servicing Depot solely in the performance of the Maintainer Obligations pursuant to this Agreement and in such a way which is:
 - (1) strictly in accordance with any Relevant Consents and Relevant Approvals and the Local Working Procedures; and
 - (2) in accordance with the operating or maintenance instructions of the manufacturer of a piece of equipment made available to it by the Purchaser;
- (D) not assign, sub-license, charge or part with possession other than by way of grant of such sub-licences as may be reasonably necessary in relation to the

performance of the Maintainer's Obligations pursuant to this Agreement, provided that no tenancy is thereby created and that any such sub-licences shall determine on the same date as any termination or expiry of this Agreement or, if earlier, the date of any Cessation Notice;

- (E) not knowingly permit any easements or encroachments and take such reasonable steps required by the Purchaser to prevent the same;
- (F) not make any alterations or additions to or planning applications without the prior written consent of the Purchaser;
- (G) comply with any insurance obligations that may be notified in writing to the Maintainer by the Purchaser and immediately notify the Purchaser in writing of any destruction or damage to the ELR Carriage Servicing Depot and/or the NLR Carriage Servicing Depot and the extent to which the same resulted directly or indirectly from any insured risks of which it has been made aware;
- (H) obtain (to the extent that (i) the Purchaser has notified the Maintainer that it is required to obtain the same and (ii) the same is a Relevant Consent that is able to be obtained by the Maintainer) and comply with all Relevant Consents, Relevant Approvals and the Local Working Procedures and promptly notify (to the extent the Purchaser has notified the Maintainer in writing that it wishes the Maintainer to do so) the Purchaser of any action required by a Relevant Consent, Relevant Approval, Applicable Law, applicable Standard or Competent Authority, providing copies of all relevant notices or correspondence to the Purchaser;
- (I) unless otherwise agreed in accordance with paragraph 4.6 below, provide the Purchaser with any assessments, demands for payment and charges received by the Maintainer in respect of any taxes, rates or other costs and to confirm to the relevant person in a timely manner that the Purchaser is responsible for settling all such payments;
- (J) join the Purchaser, if requested to do so, in the making of appeals, objections or representations to any Competent Authority as the Purchaser may reasonably require;
- (K) perform each of its Maintenance Obligations and Monitoring Obligations in a timely and proficient manner and so as to comply with paragraph 4.8 of this Schedule 9;
- (L) act reasonably in co-operating with the Purchaser and the Infrastructure Manager for the Maintenance Period to enable the Infrastructure Manager to remedy, repair and make good all wants of repair and of decoration and defects in accordance with its responsibilities notified in writing from time to time by the Purchaser and, to the extent that such Infrastructure Manager fails to do so in an safe, efficient and economic manner, the Maintainer shall notify the Purchaser of the same providing all relevant details of such default or defective repairs;
- (M) unless otherwise agreed in accordance with paragraph 4.6 below, and as applicable, renew, replace and improve all plant and machinery as required by the Maintenance Obligations;

- (N) unless otherwise agreed in accordance with paragraph 4.6 below, perform cleaning and waste management services as required by the Maintenance Obligations;
- (O) unless otherwise agreed in accordance with paragraph 4.6 below, and as applicable, repair, replace and renew furnishings and carpeting as appropriate;
- (P) carry out all works required by the Maintenance Obligations or in the case of Monitoring Obligations notify the Purchaser in writing of any such works as may from time to time be necessary for the purpose of compliance with all agreements relating to rail connections, Utilities and the supply of power for traction;
- (Q) provide adequate security and protection for the ELR Carriage Servicing Depot and the NLR Carriage Servicing Depot and for any Units whilst at either of these facilities;
- (R) if instructed by the Purchaser and subject to paragraph 4.6 below, negotiate and manage all agreements relating to the provision of Utilities and traction power;
- (S) perform the safety induction and monitoring of the personnel of contractors engaged by the Purchaser or otherwise authorised by the Purchaser to have access to the ELR Carriage Servicing Depot and/or the NLR Carriage Servicing Depot for so long as the Purchaser or a member of the TfL Group is the Facility Owner;
- (T) perform such other incidental or ancillary services as the Purchaser may request in relation to the ELR Carriage Servicing Depot and/or the NLR Carriage Servicing Depot; and
- (U) not exceed the load bearing capacity of any structures notified to the Maintainer (including the Fixed Assets, Moveable Assets and/or Maintainer Moveable Assets) comprising, or located in, a Carriage Servicing Depot.

4.2.14 Without prejudice to paragraphs 4.2.13 (L), (M) and (O), the Maintainer agrees that, from Completion of each Carriage Servicing Depot, to the extent that the same is a Maintenance Obligation, it shall remedy, repair and make good (or shall procure the remedying, repairing and making good of) all wants of repair and of decoration and defects in relation to that Carriage Servicing Depot so that the Carriage Servicing Depot is in no worse a state or condition than such Carriage Servicing Depot was in as at its Completion as evidenced by the Schedule of Condition for that Carriage Servicing Depot. The costs incurred by the Maintainer in remedying, repairing or making good shall be borne by the Purchaser, unless and to the extent that the obligation to remedy, repair or make good arose due to a breach of the Maintainer's Obligations under this Agreement and/or the Maintainer's (or its Subcontractor's) negligence or wilful default, in which case the costs incurred by the Maintainer in remedying, repairing or making good shall be at its own expense.

4.2.15 If the Maintainer fails to comply with its obligation in paragraph 4.2.14 above and/or fails to perform any of the Maintenance Obligations in accordance with this Agreement the Purchaser may issue a remedial notice requiring remedy of all such wants, defects and/or failure. If the Maintainer fails to carry out all the matters prescribed in such remedial notice within a reasonable time then the Purchaser shall,

save to the extent the Maintainer fulfils its obligations within such further period as the Purchaser may agree (in its absolute discretion), be entitled to carry out or procure the carrying out of such remedial works.

- 4.2.16 The Maintainer shall operate the ELR Carriage Servicing Depot and the NLR Carriage Servicing Depot in a safe, efficient and economic manner on a day to day basis and maintain legally compliant safety precautions and, to the extent that the same is a Maintenance Obligation, effective site security and surveillance at all times in respect of such areas. The Maintainer shall be responsible for protecting the safety of any visitor and any trespasser to the ELR Carriage Servicing Depot and/or the NLR Carriage Servicing Depot (excluding the Operator's Control Room). The Maintainer shall be responsible for repairing at its cost any damage to the Units incurred whilst at the ELR Carriage Servicing Depot and/or the NLR Carriage Servicing Depot as a result of a breach of its Maintenance Obligations and/or the negligence or wilful default of the Maintainer (and/or its Subcontractor).
- 4.2.17 Subject to the following provisions of this paragraph 4.2.17, the Maintainer shall not cause or permit to be caused any annoyance, nuisance, damage or disturbance at or on the ELR Carriage Servicing Depot and/or the NLR Carriage Servicing Depot or to any adjoining or neighbouring property. The Maintainer shall indemnify and keep the Purchaser indemnified from and against all actions, proceedings, damages, losses, costs, expenses, claims, liabilities and demands of whatsoever nature caused by or arising from the use of or access to the ELR Carriage Servicing Depot and/or the NLR Carriage Servicing Depot by the Maintainer (or its servants, agents or invitees) and from and against any breach of the terms of this Schedule. The Maintainer's obligations in this paragraph 4.2.17 shall not apply if the Maintainer can demonstrate, to the satisfaction of the Purchaser, that at all times it has complied with the Local Working Procedures, all applicable Relevant Consents, Relevant Approvals and all relevant Environmental Laws.
- 4.2.18 The Maintainer shall liaise with the Infrastructure Manager of the ELR Carriage Servicing Depot and, if different, the Infrastructure Manager of the NLR Carriage Servicing Depot and shall not obstruct or prevent the Infrastructure Manager from accessing the relevant Carriage Servicing Depot to enable the Infrastructure Manager(s) to carry out all of its obligations in a safe, efficient and economic manner. The Maintainer acknowledges that the relevant Infrastructure Manager will require immediate access to a Carriage Servicing Depot in an emergency (as the same may be reasonably determined by the Infrastructure Manager).
- 4.2.19 The Maintainer shall appoint a dedicated site manager at each Carriage Servicing Depot (each a "**Site Manager**") who shall be based at the relevant Carriage Servicing Depot and who shall, on behalf of the Maintainer, be responsible for ensuring that the Maintenance Obligations and the Monitoring Obligations are undertaken by the Maintainer at that Carriage Servicing Depot in accordance with this Agreement. The Maintainer shall obtain the prior written consent of the Purchaser (not to be unreasonably withheld or delayed) prior to appointing a person as a Site Manager. It shall be reasonable for the Purchaser to withhold its consent to a proposed Site Manager if that person is not suitably qualified and/or does not possess sufficient experience to act as a Site Manager as contemplated by this Agreement.
- 4.2.20 The Maintainer shall procure that each Site Manager (in performing its obligations hereunder) shall:

- (A) exercise all due care and skill as may be expected of a site manager at a site of a similar size and complexity to the Carriage Servicing Depot;
- (B) comply with all lawful and reasonable instructions of the Purchaser relating to the performance (or procured performance) of the relevant Maintenance Obligations and/or Monitoring Obligations by the Maintainer;
- (C) keep detailed records of, and accounts for, all matters concerning the provision and carrying out of the relevant Maintenance Obligations and/or Monitoring Obligations including all relevant Facility Costs that are to be reimbursed by the Purchaser and shall provide copies of such records and accounts to the Purchaser upon request; and
- (D) not undertake any services or works over and above those required to be performed under this Agreement without the prior written consent of the Purchaser.

4.2.21 If the Maintainer reasonably believes that any person who has been given access to a Carriage Servicing Depot is acting in a manner which is not consistent with good industry practice, it shall notify the Purchaser who shall remove or procure the removal of the relevant person from that Carriage Servicing Depot.

4.3 **Exit Assessment**

4.3.1 The Parties shall jointly agree and appoint an independent and suitably qualified Environmental Consultant to conduct an Exit Assessment no later than twenty (20) Working Days after the earlier of:

- (A) the date on which a notice of termination is served under Clause 28 of this Agreement;
- (B) the date on which a Purchaser Termination Notice is served;
- (C) the date on which a Purchaser Default Notice is served; or
- (D) ninety (90) Working Days prior to the expiration of the Duration,

to establish the level of New Pollution at the relevant Carriage Servicing Depot at the date of such Exit Assessment.

4.3.2 If the parties fail to agree the appointment of an Environmental Consultant within the period referred to in paragraph 4.3.1 above, the Purchaser shall appoint an Environmental Consultant at its complete discretion provided that:

- (A) such Environmental Consultant has at least ten (10) years' experience in the relevant disciplines required to undertake an Exit Assessment; and
- (B) neither the individual consultant nor the firm or company with which he or she is associated has previously been retained or instructed by the Purchaser within the last five (5) years.

4.3.3 The Parties agree that the cost of appointing the Environmental Consultant and undertaking the Exit Assessment shall be shared equally between the Parties.

4.3.4 The Parties shall jointly appoint the Environmental Consultant to:

- (A) determine the scope of work for the Exit Assessment, taking into account the scope of work for and the results of the Baseline Assessment, to identify any New Pollution caused by the Maintainer since the Baseline Assessment Date; and
 - (B) prescribe New Remediation Works to be undertaken by the Maintainer to ensure the level of pollution at the relevant Carriage Servicing Depot at handback is not above the level of Historic Pollution at the date of the relevant Baseline Assessment, provided that the Parties shall instruct the Environmental Consultant not to prescribe New Remediation Works to be undertaken by the Maintainer if and to the extent that the Maintainer can demonstrate that it did not cause the relevant New Pollution.
- 4.3.5 The Parties shall procure that the Environmental Consultant shall undertake the Exit Assessment within ten (10) Working Days of being appointed.
- 4.3.6 The Maintainer shall provide (free of charge) any assistance reasonably requested by the Environmental Consultant during the Exit Assessment.
- 4.3.7 The Maintainer shall provide or procure access for any duly authorised representative of the Environmental Consultant to any information reasonably required for the purposes of preparing for or conducting the Exit Assessment within five (5) Working Days of being requested to do so. The Maintainer shall permit the Environmental Consultant to take copies of all such information.
- 4.3.8 The Maintainer shall carry out any New Remediation Works specified by the Environmental Consultant pursuant to paragraph 4.3.4 to the Environmental Consultant's reasonable satisfaction and shall complete any such works no earlier than fifteen (15) Working Days before the earlier of:
- (A) where a Cessation Notice has been served, the Cessation Date;
 - (B) the date of termination of this Agreement; or
 - (C) the date of expiry of this Agreement.
- 4.3.9 The costs incurred by the Maintainer in carrying out such New Remediation Works as are specified by the Environmental Consultant pursuant to paragraph 4.3.8 of this Schedule 9 shall be at its own expense.
- 4.3.10 If and to the extent that the Maintainer has failed to carry out such remedial works as are specified by the Environmental Consultant pursuant to paragraph 4.3.8 of this Schedule 9 to the Environmental Consultant's reasonable satisfaction within a reasonable time, the Purchaser shall, save to the extent the Maintainer fulfils its obligations within such period as the Purchaser may agree (in its absolute discretion), be entitled to carry out itself, or procure the carrying out of, such remedial works at the Maintainer's expense.
- 4.4 Handback of the ELR Carriage Servicing Depot and the NLR Carriage Servicing Depot**
- 4.4.1 No later than sixty (60) days prior to the earlier of:
- (A) where a Cessation Notice has been served, the Cessation Date;
 - (B) the date of termination of this Agreement; or

(C) the date of expiry of this Agreement,

the Purchaser shall have the right to procure that a survey (an "**Exit Survey**") is carried out to assess whether the Maintainer has complied with its Maintenance Obligations. In undertaking the Exit Survey, the Independent Surveyors (as defined below) shall assess the asset condition of each Carriage Servicing Depot using the criteria set out in the Schedule of Condition for the relevant Carriage Servicing Depot.

- 4.4.2 The Exit Survey shall be carried out by an independent, reputable firm of experts (the "**Independent Surveyors**") which has the appropriate technical skills and knowledge to fulfil the requirements specified in paragraph 4.4.1 of this Schedule 9. The Independent Surveyors shall be selected by agreement between the Parties taking into account any representation made by the relevant Infrastructure Manager. Where the Parties fail to agree the identity of the Independent Surveyors which satisfy the requirements of this paragraph 4.4.2 of this Schedule 9 within twenty (20) Working Days from the notice from the Purchaser in accordance with paragraph 4.4.3 below that it intends to exercise its right to procure an Exit Survey, either Party may refer the matter to be determined in accordance with Schedule 15A (Fast Track Dispute Resolution Procedure).
- 4.4.3 The Purchaser shall give at least twenty (20) Working Days notice to the Maintainer before the commencement of the Exit Survey. The Purchaser shall consider any reasonable request by the Maintainer for the Exit Survey to be carried out on different dates if such request is made at least ten (10) Working Days prior to the notified date and the Maintainer (acting reasonably) is able to demonstrate that carrying out the Exit Survey on the notified dates would materially prejudice the Maintainer's ability to provide the Services.
- 4.4.4 When carrying out the Exit Survey, the Purchaser shall procure that the Independent Surveyors use all reasonable endeavours to minimise any disruption to the provision of the Services by the Maintainer.
- 4.4.5 The Maintainer shall provide (free of charge) any assistance reasonably requested by the Purchaser or the Independent Surveyors during the Exit Survey.
- 4.4.6 The Maintainer shall as soon as reasonably practicable upon the reasonable request of the Independent Surveyors provide or procure access for any duly authorised representative of the Independent Surveyors to any information reasonably required for the purposes of preparing for or conducting the Exit Survey. The Maintainer shall permit the Independent Surveyors to take copies of all such information.
- 4.4.7 The Maintainer shall carry out or procure any remedial works specified by the Independent Surveyors as a result of the Exit Survey to the Independent Surveyors' reasonable satisfaction where such remedial works are required due to the Maintainer's failure to perform the Maintenance Obligations and/or the Maintainer's negligence (and/or its Subcontractor's negligence) or wilful default and shall complete any such works within a reasonable period and, where reasonably practicable, not later than thirty (30) days before the end of the earlier of:
- (A) where a Cessation Notice has been served, the Cessation Date;
 - (B) the date of termination of this Agreement; or

(C) the date of expiry of this Agreement.

- 4.4.8 The costs incurred by the Maintainer in carrying out such remedial works as are specified by the Independent Surveyors pursuant to paragraph 4.4.7 of this Schedule 9 shall be at its own expense.
- 4.4.9 Subject to paragraph 4.4.10 of this Schedule 9, if and to the extent that the Maintainer has failed to carry out or procure such remedial works as are specified by the Independent Surveyors pursuant to paragraph 4.4.7 of this Schedule 9 to the Independent Surveyors' reasonable satisfaction by the relevant date in paragraph 4.4.7 of this Schedule 9, the Purchaser shall, save to the extent the Maintainer fulfils its obligations within such further period as the Purchaser may agree (in its absolute discretion), be entitled to carry out itself, or procure the carrying out of, such remedial works at the Maintainer's expense and the Maintainer shall reimburse the Purchaser within five (5) Working Days of receipt of written demand from the Purchaser all reasonably and properly incurred costs and expenses of the Purchaser.
- 4.4.10 The Maintainer shall remedy, at its own cost, matters which are certified by the Independent Surveyor as snagging matters. The Maintainer shall be deemed not to have failed to carry out any of the matters referred to in paragraph 4.4.9 of this Schedule 9 by reason of such snagging matters provided that such matters are remedied within twenty (20) Working Days of the relevant date in paragraph 4.4.7 of this Schedule 9.
- 4.4.11 The costs of the Exit Survey shall be borne and paid for (or reimbursed, as applicable) by the Maintainer where the Exit Survey specifies that the Maintainer is required to carry out the remedial works specified pursuant to paragraph 4.4.7, but otherwise by the Purchaser.

4.5 **Purchaser's Undertakings**

The Purchaser undertakes to the Maintainer for the Maintenance Period:

- 4.5.1 to reimburse promptly all reasonable Facility Costs properly incurred by the Maintainer in accordance with paragraph 4.6 below;
- 4.5.2 subject to the Maintenance Obligations agreed or determined in accordance with this Schedule 9, to secure the provision and ongoing maintenance of sufficient services and Utilities to enable the Maintainer to perform all of its obligations pursuant to this Agreement in a safe, efficient and economic manner; and
- 4.5.3 to insure or procure the insurance of (unless such insurance shall be prevented or vitiated by the act or default of the Maintainer) the ELR Carriage Servicing Depot and the NLR Carriage Servicing Depot for the full reinstatement amount (including reasonable provision for professional fees, demolition and site clearance work and other reasonable and necessary required work) and to provide the Maintainer with confirmation that such insurance is in full force and effect.

4.6 **Costs**

Save as expressly provided for in this Agreement (including as set out in this paragraph 4.6), all costs of running and maintaining the ELR Carriage Servicing Depot and the NLR Carriage Servicing Depot shall be borne and paid by the Purchaser.

4.6.1 Definitions

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

"Facility Costs" means the aggregate of all outgoings relating to the proper use of the ELR Carriage Servicing Depot and the NLR Carriage Servicing Depot, including but not limited to rates, taxes, costs of Utilities, rail connection charges and traction power costs, and the reasonable and necessary costs incurred by the Maintainer in the proper provision of the Facility Services and to the extent necessarily incurred in the performance of the Maintainer's obligations under this Schedule, including but not limited to those costs relating to (in relation to each Carriage Servicing Depot):

- (A) employing staff or engaging Subcontractors including Security Costs;
- (B) consumables;
- (C) maintaining the Carriage Servicing Depot and/or relevant assets to the necessary to satisfy the Handback Condition;
- (D) Running Costs for tools, shunters, forklifts, IT hardware, plant hire and floor cleaning equipment; and
- (E) surveyors and other professional costs properly incurred;

"Facility Cost Balance" means the difference (if any) between the Facility Cost Estimate and the Facility Costs;

"Facility Cost Estimate" means the amount which the Maintainer or its accountant, reasonably estimates will be the Facility Costs in any Facility Service Charge Year;

"Facility Management Fee" means, in each Facility Service Charge Year, a sum equivalent to [REDACTED] of the Facility Costs;

"Facility Service Charge Year" means, in relation to each Carriage Servicing Depot, the period from Completion of that Carriage Servicing Depot to the end of that calendar year and thereafter each subsequent calendar year falling within the Maintenance Period;

"Facility Services" means in relation to a Carriage Servicing Depot the undertaking or procuring by the Maintainer of the Maintenance Obligations and Monitoring Obligations in relation to a Carriage Servicing Depot;

"Running Costs" means the actual costs incurred in relation to tools, shunters, forklifts, IT hardware, plant hire and floor cleaning equipment required for the performance of the Maintainer's obligations pursuant to this Agreement (estimated at the date of this Agreement to be [REDACTED] per month per Carriage Servicing Depot expressed in mid-2005 price levels and subject to the Indexation Adjustment Formula); and

"Security Costs" means as of the date of this Agreement the Maintainer's estimate for the provision of 24 hour security protection on a full time basis at a Carriage Servicing Depot equivalent to [REDACTED] per annum.

4.6.2 **Payment of Facility Management Fee**

- (A) The Purchaser shall pay the Facility Management Fee by adding to each instalment of the Facility Cost Estimate a sum equivalent to eighteen percent of such instalment.
- (B) To the extent that the Facility Costs agreed or determined for any Facility Service Charge Year are greater than the Facility Cost Estimate for that year, the Purchaser shall add to any payment made pursuant to paragraph 4.6.3(L) or 4.6.3(M) a sum equivalent to [REDACTED] of such payment.
- (C) To the extent that the Facility Costs agreed or determined for any Facility Service Charge Year are less than the Facility Cost Estimate for that year, the Purchaser shall be entitled to add to the credit received pursuant to paragraph 4.6.3(L) a sum equivalent to [REDACTED] of such credit or the Maintainer shall add to any payment made pursuant to paragraph 4.6.3(M) a sum equivalent to [REDACTED] of such payment.

4.6.3 **Calculation and Payment of Facility Costs**

- (A) No less than forty (40) Working Days prior to each Facility Service Charge Year the Maintainer shall produce to the Purchaser for approval by the Purchaser (such approval not to be unreasonably withheld or delayed) a Facility Cost Estimate in respect of each Carriage Servicing Depot for that Facility Service Charge Year.
- (B) Every Facility Cost Estimate shall be supported by such documentation as is reasonable to assist the Purchaser in considering the Facility Cost Estimate and shall demonstrate that the Maintainer is being safe, efficient and economic in the operation and use of the relevant Carriage Servicing Depot and the performance of the Maintenance Obligations and the Monitoring Obligations pursuant to this Agreement and that, where applicable, the Maintainer has taken satisfactory steps to mitigate such costs.
- (C) The Maintainer shall allow the Purchaser to inspect the accounts and documents and all other records in the control of the Maintainer and relating to the provision of the Facility Services, prior year Facility Costs, the preparation of the Facility Cost Estimate, and shall use reasonable endeavours to procure access for the Purchaser to other relevant records not in its control, and will have due regard to any representations made by the Purchaser in relation thereto.
- (D) If the Purchaser does not raise any objections to a Facility Cost Estimate within fifteen (15) Working Days of receipt from the Maintainer, the Facility Cost Estimate shall be deemed to be approved.
- (E) The Purchaser may object to a Facility Cost Estimate within fifteen (15) Working Days of receipt from the Maintainer if it reasonably considers that the Facility Cost Estimate includes an error, includes costs which do not fall within the definition of "Facility Cost" and/or includes costs which are of a type or an amount that a reasonably prudent maintainer would not have incurred. If the Purchaser does so object, the Parties will meet to discuss the Purchaser's objections and seek to agree any amendments to the Facility Cost Estimate. If the Parties do not meet and/or are unable to agree any amendments to the Facility Cost Estimate within five (5) Working Days of

the notice of objection, the matter shall be referred to in Part B Schedule 15 (Fast Track Expert Determination) to determine any amendments to the Facility Cost Estimate to take account of any objection by the Purchaser.

- (F) The Purchaser shall pay each approved or determined Facility Cost Estimate in thirteen equal instalments (or pro-rata in the event that a Facility Service Charge Year does not cover a full twelve (12) month period) at the end of each Railway Period.
- (G) In the event that a Facility Cost Estimate for a Facility Service Charge Year has not been approved or determined by the commencement of the relevant Facility Service Charge Year, the Facility Cost Estimate shall be payable at the rate of the Facility Cost Estimate for the previous Facility Service Charge Year (or if no precedent exists no payments will be made) until approval has been given or a determination made. Once the Facility Cost Estimate has been approved or otherwise determined the remaining instalments of the Facility Cost Estimate for that Facility Service Charge Year shall be adjusted so as to provide for payment of the whole Facility Cost Estimate for that Facility Service Charge Year to be paid during that year.
- (H) As soon as practicable after the end of each Facility Service Charge Year the Maintainer shall provide to the Purchaser for its review all reasonable accounts and supporting information for the Facility Costs actually incurred by the Maintainer.
- (I) Where any costs which the Maintainer has estimated will be incurred and which have subsequently been avoided in whole or in part by the Maintainer or paid directly by the Purchaser, including any costs incurred by the Purchaser in the circumstances described in paragraph 4.2.15, the Maintainer shall inform the Purchaser in writing of such avoidance (and/or the Purchaser may notify the Maintainer in writing of any costs which it has paid directly) and provide a reconciliation of the same in its final calculation of the Facility Costs.
- (J) If the Purchaser does not raise any objections to the determination by the Maintainer of the Facility Costs and/or any information provided pursuant to sub-paragraph (H) above within fifteen (15) Working Days of receipt from the Maintainer, the Facility Costs shall be deemed to be approved.
- (K) The Purchaser may object to the determination by the Maintainer of the Facility Costs and/or any information provided pursuant to sub-paragraph (H) above within fifteen (15) Working Days of receipt from the Maintainer if it reasonably considers that the Facility Costs include an error, include costs which do not fall within the definition of "Facility Costs" and/or include costs which are of a type or an amount that a reasonably prudent maintainer would not have incurred. If the Purchaser does so object, the Parties will meet to discuss the Purchaser's objections and seek to agree any amendments to the Facility Costs. If the Parties do not meet and/or are unable to agree any amendments to the Facility Costs within five (5) Working Days of the notice of objection, the matter shall be referred to Schedule 15A (Fast Track Dispute Resolution Procedure) to determine any amendments to the Facility Costs to take account of any objection by the Purchaser.
- (L) If the Facility Costs agreed or determined for any Facility Service Charge Year are less than the Facility Cost Estimate the balance (plus Default

Interest calculated, in relation to each instalment of the relevant Facility Cost Estimate, from the date such instalment was paid to the end of the relevant Facility Service Charge Year) will be credited against the instalments of the Facility Cost Estimate due from the Purchaser in the following Facility Service Charge Year. If the Facility Costs are greater than the Facility Cost Estimate for that year the balance (plus Default Interest calculated, in relation to each instalment of the relevant Facility Cost Estimate, from the date such instalment was paid to the end of the relevant Facility Service Charge Year) will be due from the Purchaser within thirty (30) days of written demand.

- (M) The Parties agree that the termination of this Agreement (for whatever reason) shall not prejudice the liability of either Party (as appropriate) to pay the Facility Cost Balance for the relevant Facility Service Charge Year as calculated at the date of termination or as soon as reasonably practical thereafter.

4.7 Cost Saving Proposals

4.7.1 Either Party may submit proposals (each a “**Proposal**”) to the other Party identifying potential opportunities for making savings in the Facility Costs including details of how such savings may be realised, any consequential cost effects and, to the extent practicable, details of the projected cost savings, together with details of the effect on the Maintainer's costs. If such Proposal is accepted by the other Party the Purchaser shall document the terms of the Proposal in writing within five (5) Working Days of such agreement. The record produced pursuant to this paragraph 4.7.1 shall be deemed to be a complete Variation Order which shall be deemed confirmed immediately, the provisions of Schedule 10 (Variation Procedure) shall apply accordingly and the Maintainer shall implement the Proposal. If the Parties are unable to agree the terms of a Proposal, such Proposal shall have no other effect.

4.7.2 Following implementation of a Proposal the Purchaser shall pay to the Maintainer:

- (A) an amount equal to any increased costs (if any) suffered by the Maintainer as a direct consequence of the implementation of such Proposal;
- (B) in the first Facility Service Charge Year an amount equal to [REDACTED] of the Purchaser's net cost savings arising from the Proposal after taking the amounts payable under sub-paragraph (A) above into account; and
- (C) for five (5) subsequent Facility Service Charge Years an amount equal to [REDACTED] of the Purchaser's net cost savings arising from the Proposal after taking the amounts payable under sub-paragraph (A) above into account (if arising on a recurring basis).

4.8 Mitigation

4.8.1 The Maintainer shall mitigate to the greatest extent possible any costs constituting the Facility Costs and any increases thereto, including where applicable demonstrating that the Maintainer is adopting safe, economic and efficient work practices, obtaining the best possible value for money when entering into any incremental labour and/or materials supply and/or maintenance contract, or any subcontracts or hire agreements, and with the minimum impact on the Availability (as defined in Schedule 3 (Performance Regime)) of the Units, the Diagrams and the Maintainer's obligations under this Agreement.

4.8.2 It shall be the responsibility of the Maintainer to demonstrate to the satisfaction of the Purchaser that its practices in respect of the use of energy at, or in connection with, the ELR Carriage Servicing Depot and the NLR Carriage Servicing Depot are in accordance with Standard BS14001 regarding the conservation of energy.

4.9 **General Co-operation**

The Parties shall co-operate with one another and the relevant Infrastructure Manager and at all times act reasonably in the performance of their respective obligations under this Schedule 9, taking all steps reasonably available to them with the objective of reaching agreement in respect of developing further the information set out in Appendix 1.

5. **ASSETS**

5.1 **Provision of Assets**

The Purchaser shall procure that:

- 5.1.1 the Moveable Assets;
- 5.1.2 the Maintainer Moveable Assets; and
- 5.1.3 the Fixed Assets,

that are situated at the ELR Carriage Servicing Depot and the NLR Carriage Servicing Depot are made available to the Maintainer and its Subcontractors for the duration of the Maintenance Period and the Maintainer and its Subcontractors shall be entitled to use any of the assets described in paragraphs 5.1.1 to 5.1.3 above in performing the Maintainer Obligations subject to and in accordance with the provisions of this Agreement.

5.2 **Maintainer Asset Obligations**

- 5.2.1 The Maintainer shall ensure that each of the assets described in paragraphs 5.1.1 to 5.1.3 above is used in accordance with all Applicable Laws, applicable Standards and the terms of all Relevant Consents and Relevant Approvals.
- 5.2.2 Where it is a Maintenance Obligation pursuant to paragraph 4.2 of this Schedule 9, the Maintainer agrees to keep each of the assets described in paragraphs 5.1.1 and 5.1.3 above in no worse a state of repair and condition than required by paragraph 4.2 and as otherwise notified in writing in order for the Moveable Assets to be in the Handback Condition set out in Schedule 13 (Handback) and the Fixed Assets to be in a condition to be agreed between the Parties, such requirement to be determined by reference to the state and condition of those assets at Completion for the relevant Carriage Servicing Depot as evidenced by the Schedule of Condition for that Carriage Servicing Depot.

5.3 **Handback of Assets**

- 5.3.1 On the expiry of the Maintenance Period the Maintainer shall return the Moveable Assets, the Fixed Assets and the Maintainer Moveable Assets that are situated at the ELR Carriage Servicing Depot and the NLR Carriage Servicing Depot in accordance with Schedule 13 (Handback).

Appendix 1

Maintenance Obligations and Monitoring Obligations

Schedule 9 Appendix 1

Key

Rolling Stock Maintainer/Supplier	RSM
TfL/TfL affiliate/contractor	TfL

INFRASTRUCTURE - CSD STABLING

Asset/Activity/Function	Specify	Procure	Install	Inspect	Maintain	Repair/ Renew	Monitor	Operate	Safety Inspections	Fault Report
Track and rails	TfL	TfL	TfL	TfL	TfL	TfL	RSM	TfL	RSM	RSM
Switches and crossings	TfL	TfL	TfL	TfL	TfL	TfL	RSM	TfL	RSM	RSM
Signals/signage	TfL	TfL	TfL	TfL	TfL	TfL	RSM	TfL	RSM	RSM
Depot Protection System	TfL	TfL	TfL	TfL	TfL	TfL	RSM	RSM	RSM	RSM
Traction power supply including local control	TfL	TfL	TfL	TfL	TfL	TfL	RSM	TfL	RSM	RSM
Lighting Power Supply	TfL	TfL	TfL	TfL	TfL	TfL	RSM	TfL	RSM	RSM
Lighting Structures	TfL	TfL	TfL	TfL	TfL	TfL	RSM	TfL	RSM	RSM
Lighting Consumables	TfL	TfL	TfL	TfL	TfL	TfL	RSM	RSM	RSM	RSM
Facility drainage	TfL	TfL	TfL	TfL	TfL	TfL	TfL	TfL	TfL	RSM
Facility filtration and cleaning	TfL	TfL	TfL	TfL	TfL	TfL	TfL	TfL	TfL	RSM
Carriage Wash	RSM	TfL	TfL	TfL	TfL	TfL	RSM	TfL	RSM	RSM
Facility Car Park and access road	TfL	TfL	TfL	TfL	TfL	TfL	TfL	TfL	TfL	RSM
Site soft landscaping	TfL	TfL	TfL	TfL	TfL	TfL	TfL	TfL	TfL	TfL
Security fencing	RSM	TfL	TfL	RSM	RSM	RSM	RSM	RSM	RSM	RSM
Security gates and barriers	RSM	TfL	TfL	RSM	RSM	RSM	RSM	RSM	RSM	RSM
CCTV and alarms	RSM	TfL	TfL	RSM	RSM	RSM	RSM	RSM	RSM	RSM
Facility Security	RSM	TfL	TfL	RSM	RSM	RSM	RSM	RSM	RSM	RSM
Manage Planned Asset Maintenance Programme and Call-Out Contracts	Note: Responsibility to be defined post contract award									
Building fabric and M&E equipment and Call-Out Contracts	Note: Responsibility to be defined post contract award									
M&E equipment and Call-Out Contracts	Note: Responsibility to be defined post contract award									
Facility cleaning			TfL	TfL	TfL	TfL	TfL	TfL	TfL	RSM
Poster/advert replacement		TfL	TfL							

Schedule 9 Appendix 1

Key

Rolling Stock Maintainer/Supplier	RSM
TfL/TfL affiliate/contractor	TfL

INFRASTRUCTURE NXG MAINTENANCE SHED, PLANT & EQUIPMENT, TRACK, OFFICE ACCOMMODATION.

Asset/Activity/Function	Specify	Procure	Install	Inspect	Maintain	Repair/ Renew	Monitor	Operate	Safety Inspections	Fault Report
Track and rails	TfL	TfL	TfL	TfL	TfL	TfL	RSM	TfL	RSM	RSM
Switches and crossings	TfL	TfL	TfL	TfL	TfL	TfL	RSM	TfL	RSM	RSM
Signals/signage	TfL	TfL	TfL	TfL	TfL	TfL	RSM	TfL	RSM	RSM
Depot Protection System	TfL	TfL	TfL	TfL	TfL	TfL	RSM	RSM	RSM	RSM
Traction Power Supply	RSM	TfL	TfL	TfL	TfL	TfL	RSM	TfL	RSM	RSM
25k.V. Traction Power Supply	RSM	TfL	TfL	TfL	TfL	TfL	RSM	TfL	RSM	RSM
Domestic power supply	RSM	TfL	TfL	TfL	TfL	TfL	RSM	RSM	RSM	RSM
Office equipment	RSM	RSM	RSM	RSM	RSM	RSM	RSM	RSM	RSM	RSM
Vehicle maintenance equipment within Maintenance Facility	RSM	TfL	RSM	RSM	RSM	RSM	RSM	RSM	RSM	RSM
Lighting Power Supply	TfL	TfL	TfL	TfL	TfL	TfL	RSM	TfL	RSM	RSM
Lighting Structures	TfL	TfL	TfL	TfL	TfL	TfL	RSM	TfL	RSM	RSM
Lighting Consumables (exc OBC)	TfL	TfL	TfL	TfL	TfL	TfL	RSM	RSM	RSM	RSM
Maintenance Facility drainage	TfL	TfL	TfL	TfL	TfL	TfL	TfL	TfL	TfL	RSM
Maintenance Facility filtration and cleaning	TfL	TfL	TfL	TfL	TfL	TfL	TfL	TfL	TfL	RSM
Maintenance Facility buildings	RSM	TfL	TfL	TfL	TfL	TfL	TfL	RSM	RSM	RSM
Maintenance Facility car park and access road	TfL	TfL	TfL	TfL	TfL	TfL	TfL	TfL	TfL	RSM
Maintenance Facility fencing	RSM	TfL	TfL	RSM	RSM	RSM	RSM	RSM	RSM	RSM
Office accommodation	RSM	RSM	RSM	RSM	RSM	RSM	RSM	RSM	RSM	RSM
Messing Facility	RSM	RSM	RSM	RSM	RSM	RSM	RSM	RSM	RSM	RSM
Office consumables	RSM	RSM	RSM	RSM	RSM	RSM	RSM	RSM	RSM	RSM
Office utilities	RSM	RSM	RSM	RSM	RSM	RSM	RSM	RSM	RSM	RSM
External storage areas	RSM	TfL	TfL	RSM	RSM	RSM	RSM	RSM	RSM	RSM
Security Gates and Barriers	RSM	TfL	TfL	RSM	RSM	RSM	RSM	RSM	RSM	RSM
CCTV and alarms	RSM	TfL	TfL	RSM	RSM	RSM	RSM	RSM	RSM	RSM
Fire alarms and detection	RSM	TfL	TfL	RSM	RSM	RSM	RSM	RSM	RSM	RSM
Maintenance Facility Security	RSM	TfL	TfL	RSM	RSM	RSM	RSM	RSM	RSM	RSM
Manage Planned Asset Maintenance Programme										
Building fabric and M&E equipment	Note: Responsibility to be defined post contract award									
M&E equipment.	Note: Responsibility to be defined post contract award									
Facility cleaning		RSM		RSM	RSM			RSM		

Schedule 9 Appendix 1

Key

Rolling Stock Maintainer/Supplier	RSM
TfL/TfL affiliate/contractor	TfL

OUTSTATION STABLING

Asset/Activity/Function	Specify	Procure	Install	Inspect	Maintain	Repair/ Renew	Monitor	Operate	Safety Inspections	Fault Report
Track and rails	TfL	TfL	TfL	TfL	TfL	TfL	TfL	TfL	TfL	TfL
Switches and crossings	TfL	TfL	TfL	TfL	TfL	TfL	TfL	TfL	TfL	TfL
Signals/signage	TfL	TfL	TfL	TfL	TfL	TfL	TfL	TfL	TfL	TfL
Traction power supply	TfL	TfL	TfL	TfL	TfL	TfL	TfL	TfL	TfL	TfL
Lighting Power Supply	TfL	TfL	TfL	TfL	TfL	TfL	TfL	TfL	TfL	TfL
Lighting Structures	TfL	TfL	TfL	TfL	TfL	TfL	TfL	TfL	TfL	TfL
Lighting Consumables	TfL	TfL	TfL	TfL	TfL	TfL	TfL	TfL	TfL	TfL
Perimeter fencing	TfL	TfL	TfL	TfL	TfL	TfL	TfL	TfL	TfL	TfL
CCTV and alarms	TfL	TfL	TfL	TfL	TfL	TfL	TfL	TfL	TfL	TfL
Facility Security	TfL	TfL	TfL	TfL	TfL	TfL	TfL	TfL	TfL	TfL

Schedule 9 Appendix 1

Key

Rolling Stock Maintainer/Supplier	RSM
TfL/TfL affiliate/contractor	TfL

INFRASTRUCTURE NLR MAINTENANCE FACILITY (= Acton Long Term Facility), PLANT & EQUIPMENT, TRACK, OFFICE ACCOMMODATION.

Asset/Activity/Function	Specify	Procure	Install	Inspect	Maintain	Repair/ Renew	Monitor	Operate	Safety Inspections	Fault Report
Track and rails	TfL	TfL	TfL	TfL	TfL	TfL	RSM	TfL	RSM	RSM
Switches and crossings	TfL	TfL	TfL	TfL	TfL	TfL	RSM	TfL	RSM	RSM
Signals/signage	TfL	TfL	TfL	TfL	TfL	TfL	RSM	TfL	RSM	RSM
Depot Protection System	TfL	TfL	TfL	TfL	TfL	TfL	RSM	RSM	RSM	RSM
Traction Power Supply	RSM	TfL	TfL	TfL	TfL	TfL	RSM	TfL	RSM	RSM
25k.V. Traction Power Supply	RSM	TfL	TfL	TfL	TfL	TfL	RSM	TfL	RSM	RSM
Domestic power supply	RSM	TfL	TfL	TfL	TfL	TfL	RSM	RSM	RSM	RSM
Office equipment	RSM	RSM	RSM	RSM	RSM	RSM	RSM	RSM	RSM	RSM
Vehicle maintenance equipment within Maintenance Facility	RSM	TfL	RSM	RSM	RSM	RSM	RSM	RSM	RSM	RSM
Lighting Power Supply	TfL	TfL	TfL	TfL	TfL	TfL	RSM	TfL	RSM	RSM
Lighting Structures	TfL	TfL	TfL	TfL	TfL	TfL	RSM	TfL	RSM	RSM
Lighting Consumables (exc OBC)	TfL	TfL	TfL	TfL	TfL	TfL	RSM	RSM	RSM	RSM
Maintenance Facility drainage	TfL	TfL	TfL	TfL	TfL	TfL	TfL	TfL	TfL	RSM
Maintenance Facility filtration and cleaning	TfL	TfL	TfL	TfL	TfL	TfL	TfL	TfL	TfL	RSM
Maintenance Facility buildings	RSM	TfL	TfL	TfL	TfL	TfL	TfL	RSM	RSM	RSM
Maintenance Facility car park and access road	TfL	TfL	TfL	TfL	TfL	TfL	TfL	TfL	TfL	RSM
Maintenance Facility fencing	RSM	TfL	TfL	RSM	RSM	RSM	RSM	RSM	RSM	RSM
Office accommodation	RSM	RSM	RSM	RSM	RSM	RSM	RSM	RSM	RSM	RSM
Messing Facility	RSM	RSM	RSM	RSM	RSM	RSM	RSM	RSM	RSM	RSM
Office consumables	RSM	RSM	RSM	RSM	RSM	RSM	RSM	RSM	RSM	RSM
Office utilities	RSM	RSM	RSM	RSM	RSM	RSM	RSM	RSM	RSM	RSM
External storage areas	RSM	TfL	TfL	RSM	RSM	RSM	RSM	RSM	RSM	RSM
Security Gates and Barriers	RSM	TfL	TfL	RSM	RSM	RSM	RSM	RSM	RSM	RSM
CCTV and alarms	RSM	TfL	TfL	RSM	RSM	RSM	RSM	RSM	RSM	RSM
Fire alarms and detection	RSM	TfL	TfL	RSM	RSM	RSM	RSM	RSM	RSM	RSM
Maintenance Facility Security	RSM	TfL	TfL	RSM	RSM	RSM	RSM	RSM	RSM	RSM
Manage Planned Asset Maintenance Programme										
Building fabric and M&E equipment	Note: Responsibility to be defined post contract award									
M&E equipment	Note: Responsibility to be defined post contract award									
Facility cleaning		RSM		RSM	RSM			RSM		

SCHEDULE 10

Variation Procedure

1. DEFINITIONS

1.1 In this Agreement, the following expressions shall have the following meanings:

"Additional Capital Investment Requirement" means, in relation to a Variation, any capital investment required minus any capital investment saved arising from the Variation and shall exclude any Change in Service Payments;

"Adjustment Date" means the first date for payment of the Services Payment pursuant to Schedule 5 falling after the date of confirmation of a Variation Order pursuant to paragraph 7.1.1;

"Change in Service Payments" means the change in the Service Payments arising from a Variation;

"Emergency Variation" has the meaning given to it in paragraph 11;

"Proposed Variation" means a variation proposed by the Purchaser or the Maintainer (as applicable);

"Required Variation" means a Variation required in order to comply with a Change in Law or a Variation which is required pursuant to the terms of this Agreement;

"Variation" means a change to the Manufacturer's obligations under this Agreement, the Specification and/or the Services.

2. SCOPE

2.1 The Parties acknowledge and agree that Variations shall be made by Variation Order and in accordance with the procedure set out in this Schedule 10 (Variation Procedure).

3. VARIATIONS PROPOSED BY THE PURCHASER

3.1 Request

3.1.1 The Purchaser may at any time during the Duration request a Variation for any reason whatsoever and shall do so in the case of a Required Variation.

3.1.2 If the Purchaser wishes to request a Variation (or is required to do so), the Purchaser shall send a notice ("**Purchaser Notice of Proposed Variation**") to the Maintainer. Such notice shall contain (but not be limited to) the following information:

(A) The date of the notice and the variation number (with each Proposed Variation being sequentially numbered);

(B) A statement as to whether the Proposed Variation is a Required Variation together with sufficient information regarding the nature of the Proposed Variation for the Maintainer to assess this statement and whether any of

the grounds on which the Maintainer may object to a Proposed Variation under paragraph 3.2.2 apply; and

- (C) sufficient information regarding the nature of the Proposed Variation for the Maintainer to estimate the Change in Service Payments and/or any Additional Capital Investment Requirement as fully and accurately as is reasonably possible,

and shall be signed by the Purchaser. In requesting Variations pursuant to this paragraph 3 the Purchaser shall use reasonable endeavours to act in such a manner so as to simplify and minimise the administrative time and costs incurred in dealing with any Proposed Variation.

3.2 **Objections**

3.2.1 Subject to paragraph 3.2.2 the Maintainer shall be entitled within ten (10) Working Days following receipt of a Purchaser Notice of Proposed Variation to object to the Proposed Variation (other than an Emergency Variation) by serving on the Purchaser a notice ('**Maintainer's Notice of Objection**') specifying the grounds on which the Maintainer objects to such Proposed Variation.

3.2.2 The grounds on which the Maintainer may object to a Proposed Variation under paragraph 3.1.2 above shall be limited to the following (and any objection based on a ground other than one or more of the following shall be invalid):

- (A) any Relevant Approval or Relevant Consent required to implement the Variation will not be obtainable;
- (B) the Variation would, if implemented, require the Services to be performed in a manner that infringes an Applicable Law or Standard;
- (C) the Variation would, if implemented, require the Services to be performed in a manner that is inconsistent with good industry practice;
- (D) the Variation would, if implemented, cause the terms of a Relevant Approval or Relevant Consent to be breached, or cause a Relevant Approval or Relevant Consent to be revoked;
- (E) the Variation would, if implemented, materially and adversely affect the health and safety of any person;
- (F) the Variation would, if implemented, materially and adversely change the basic nature of the Services such that the Services thereafter included activities which could not, at the time of signature of this Agreement, have been reasonably contemplated by a competent person equivalent to the Maintainer as constituting part of the Services at some time during the Duration;
- (G) the Variation would, if implemented, require the Maintainer to implement the Variation in an unreasonable period of time;
- (H) the Purchaser does not have the legal power or capacity to require the implementation of the Variation;

- (I) the Variation would, if implemented, place the Maintainer or any member of the Maintainer's Group in breach of any of its obligations under any Applicable Law, any Standard, this Agreement, the Manufacture and Supply Agreement or any other legally binding agreement to which the Maintainer is party and which has been entered into on arm's length terms and in the ordinary course of business,

save that the Maintainer shall not be entitled to object to a Proposed Variation on the grounds mentioned in paragraphs (C), (F) or (G) where such Proposed Variation is a Required Variation.

3.2.3 If the Purchaser disagrees with any objection raised by the Maintainer it shall meet with the Maintainer with a view to agreeing whether any such objection is based on the grounds mentioned in paragraph 3.2.2 and if within five (5) Working Days following receipt of the Maintainer's Notice of Objection the Parties have not agreed on the validity of any such objection the Purchaser may refer the matter for resolution in accordance with Clause 41.

3.2.4 If the Purchaser agrees with any objection raised by the Maintainer, or any objection is held in accordance with Clause 41 to be valid, the Proposed Variation shall proceed no further and the Purchaser Notice of Proposed Variation shall be deemed to be withdrawn.

3.2.5 If the Purchaser Notice of Proposed Variation is not withdrawn or deemed to have been withdrawn and either:

- (A) within ten (10) Working Days following the Maintainer receiving a Purchaser Notice of Proposed Variation the Maintainer has not served a Maintainer Notice of Objection; or

- (B) it is agreed between the Parties or determined in accordance with Clause 41 that each of the objections raised by the Maintainer in a Maintainer Notice of Objection is not valid,

then within ten (10) Working Days (or other such period as the Parties shall agree (acting reasonably)) following either paragraph (A) or (B) being satisfied, the Maintainer shall issue to the Purchaser a Variation Report in accordance with paragraph 5.

3.2.6 To the extent required by the Purchaser, the Maintainer shall produce, to the extent it is reasonably able to do so, any information or any other supporting documentation in relation to any consequences of a Proposed Variation specified in a Variation Report.

4. VARIATIONS PROPOSED BY THE MAINTAINER

4.1 Request

4.1.1 The Maintainer may at any time during the Duration request a Variation for one of the following reasons:

- (A) to reduce the Purchaser's overall costs and/or improve the effectiveness and/or efficiency with which the Services can be delivered;

- (B) where the requested Variation is a Required Variation; or
- (C) for any reason not specified in paragraph 4.1.1(A) or (B).

4.1.2 If the Maintainer wishes to request a Variation, the Maintainer shall send a notice ("**Maintainer Notice of Proposed Variation**") to the Purchaser. Such notice shall contain (but not be limited to) the following information:

- (A) the date of the notice and the variation number (with each Proposed Variation being sequentially numbered);
- (B) the reasons why the Maintainer Notice of Proposed Variation has been issued;
- (C) an indication as to whether the Variation, if implemented would give rise to a Change in Service Payment or to an Additional Capital Investment Requirement;
- (D) an indication of any implications of the Variation, in particular on the provision of the Services by the Maintainer;
- (E) a statement of whether the Proposed Variation is a Required Variation together with sufficient information regarding the nature of the Proposed Variation for the Purchaser to assess this statement and whether any of the grounds on which the Purchaser may object to a Proposed Variation under paragraph 4.2.3 apply;
- (F) such information as would be required to be provided in a Variation Report pursuant to paragraph 5 as is at that time available to the Maintainer,

and shall be signed by the Maintainer. In requesting Variations pursuant to this paragraph 4 the Maintainer shall use reasonable endeavours to act in such a manner so as to simplify and minimise the administrative time and costs incurred in dealing with any Proposed Variation.

4.2 Rejection of Variations and Objections

4.2.1 Where a Variation proposed by the Maintainer is not a Required Variation, the Purchaser may reject it on any grounds acting in its absolute discretion by serving a notice of rejection on the Maintainer (a "**Purchaser's Notice of Rejection**") within ten (10) Working Days following receipt of a Maintainer Notice of Proposed Variation and thereafter the Proposed Variation shall proceed no further and the Maintainer Notice of Proposed Variation shall be deemed withdrawn.

4.2.2 Where the Proposed Variation is a Required Variation the Purchaser shall be entitled within ten (10) Working Days following receipt of a Maintainer Notice of Proposed Variation to object to the proposed Variation by serving on the Maintainer a Notice of Objection (the "**Purchaser's Notice of Objection**") specifying the grounds upon which the Purchaser objects to such Proposed Variation.

4.2.3 The grounds on which the Purchaser may object to a Proposed Variation in respect of a Required Variation shall be limited to the following (and any

objection based on a ground other than one or more of the following shall be invalid):

- (A) any Relevant Approval or Relevant Consent required to implement the Variation will not be obtainable;
- (B) the Variation would, if implemented, require the Services to be performed in a manner that would infringe an Applicable Law or Standard;
- (C) the Variation would, if implemented, cause the terms of a Relevant Approval or Relevant Consent to be breached, or cause a Relevant Approval or Relevant Consent to be revoked;
- (D) the Variation would, if implemented, materially and adversely affect the health and safety of any person;
- (E) the Maintainer does not have the legal power or capacity to require the implementation of the Variation; and
- (F) the Variation would, if implemented, place the Purchaser or any member of the Purchaser's group in breach of any of its obligations under any Applicable Law, any Standard, this Agreement, the Manufacture and Supply Agreement or any other legally binding agreement to which the Purchaser is party and which has been entered into on arm's length terms and in the ordinary course of business.

4.2.4 If the Maintainer disagrees with any objection raised by the Purchaser in relation to a Required Variation it shall meet with the Purchaser with a view to agreeing whether any such objection is based on the grounds mentioned in paragraph 4.2.3 above, and if within five (5) Working Days following receipt of the Purchaser's Notice of Objection the Parties have not agreed on the validity of any such objection the Maintainer and/or the Purchaser may refer the matter for resolution in accordance with Clause 41.

4.2.5 If the Maintainer agrees with any objection raised by the Purchaser, or any objection is held in accordance with Clause 41 to be valid, the Proposed Variation shall proceed no further and the Maintainer Notice of Proposed Variation shall be deemed to be withdrawn.

4.2.6 If the Maintainer Notice of Proposed Variation is not withdrawn or deemed to have been withdrawn and either:

- (A) within ten (10) Working Days following the Purchaser receiving a Maintainer Notice of Proposed Variation, the Purchaser has not served a Purchaser Notice of Objection or a Purchaser Notice of Rejection; or
- (B) it is agreed between the Parties or determined in accordance with Clause 41 that each of the objections raised by the Purchaser in a Purchaser Notice of Objection is not valid,

then within ten (10) Working Days (or such other period as shall be reasonable for the Parties to agree between them) following either paragraph (A) or (B) being satisfied, the Maintainer shall serve on the Purchaser a report in accordance

with paragraph 5 (the "**Variation Report**") to the extent that the information has not already been provided pursuant to paragraph 4.1.2(F) or was incomplete or is no longer accurate.

5. VARIATION REPORT

5.1 Form and Content

5.1.1 Subject to paragraph 6.2.1, the Variation Report shall state the effect (if any) of the Proposed Variation on:

- (A) this Agreement;
- (B) the Services;
- (C) subject to and in accordance with paragraph 6 below, the Service Payment;
- (D) the Performance Regime;
- (E) the Maintenance Plan;
- (F) the Specification;
- (G) the Maintenance Window Plan;
- (H) the Diagrams;
- (I) the Preparation, Presentation and Return Procedure;
- (J) the Units;
- (K) the warranties provided by the Manufacturer under Clause 5 of the Manufacture and Supply Agreement; and
- (L) any other consequences of the Proposed Variation.

5.1.2 The Variation Report shall in addition contain the following information:

- (A) the Maintainer's opinion as to whether relief from compliance with any of the Maintainer Obligations is required as a result of the Proposed Variation;
- (B) any amendment required to this Agreement as a result of the Proposed Variation;
- (C) any effect on the provision of the Services consequent on the Proposed Variation;
- (D) an estimate of any adjustment to the Maintainer's costs in performing the Services together with an estimate of the Change in Service Payments and/or the Additional Capital Investment Requirement prepared in accordance with paragraph 6 below together with proposed payment terms of any such Additional Capital Investment Requirement;

- (E) any loss of revenue that will result from the Variation;
- (F) any Relevant Approvals or Relevant Consents that may need to be acquired as a result of the Proposed Variation;
- (G) a clear statement of the steps the Maintainer proposes to take in order to implement the Proposed Variation; and
- (H) any dates which the Purchaser should take into account in its decision-making including dates by which a decision on any issues relating to the Proposed Variation is critical.

6. COST OF IMPLEMENTING VARIATIONS

6.1 Change in Service Payments

- 6.1.1 The Maintainer shall set out in the Variation Report the Change in Service Payments and/or Additional Capital Investment Requirement resulting from a Proposed Variation in a way that clearly identifies each of the different items of cost comprised within the price of the Proposed Variation.
- 6.1.2 The Change in Service Payments and/or Additional Capital Investment Requirement shall be provided in a comprehensive and accurate manner.

6.2 Principles of Pricing

- 6.2.1 The Maintainer shall at all times, act reasonably in assessing the Change in Service Payments and the Additional Capital Investment Requirement arising from a Variation and shall price each Proposed Variation with total transparency and:
 - (A) to the extent not relating to a Required Variation, using prices which are demonstrably fair and reasonable having regard to prevailing market rates for the requisite labour and materials and, subject always to 6.4 below, shall only be entitled to seek to claim for the actual costs estimated to be incurred plus an agreed profit margin of [REDACTED]
 - (B) to the extent relating to a Required Variation, subject always to 6.4 below at the estimated cost (labour and materials) of carrying out that Required Variation together with an agreed profit margin of [REDACTED]
 - (C) in a way which makes clear the method of calculation of the costs, and any assumptions on which the calculations are based;
 - (D) in a way which makes clear any necessary changes to working practices which have generated increased costs;
 - (E) in a way which takes into account resulting changes in the Maintainer's workforce including costs and provisions associated with the Transfer Regulations;
 - (F) in a way which takes into account the changes in the Specification and any other Variations to this Agreement;

- (G) in a way which takes into account any changes in risk transfer;
 - (H) in a way which highlights any Additional Capital Investment Requirement and sets out a proposed programme for payment;
 - (I) in a way which makes clear any redundancy payments which the Purchaser may be required to meet as a result of the implementation of the Variation;
 - (J) on the assumption that the Change in Service Payments will take effect from the Adjustment Date; and
 - (K) on the basis that capital costs or savings (together with, in the case of costs, the agreed margin) arising from the Variation will be compensated by way of the Additional Capital Investment Requirement and that operating costs or savings (together with, in the case of costs, the agreed margin) will be compensated by way of the Change in Service Payments calculated, to the extent reasonable and practicable, in a manner consistent with the calculation of the Scheduled Standard Service Payments.
- 6.2.2 In the event that the implementation of a Variation leads to a reduction in the Maintainer's estimated costs in carrying out the Services, the Maintainer shall reflect this estimated reduction in the Change in Service Payments arising from the Variation and in all other respects shall calculate the Change in Service Payments in accordance with this paragraph 6.
- 6.2.3 At the time of providing financial information pursuant to this paragraph 6.2 the Maintainer shall also provide:
- (A) such relevant data and supporting information as is necessary to allow the Purchaser to review and/or verify the amount of the estimates and/or other information provided;
 - (B) analyses demonstrating the method by which the Maintainer has built up the Change in Service Payments and/or Additional Capital Investment Requirement; and
 - (C) any other information which the Purchaser may from time to time reasonably request to enable it to review and verify any estimates and other information which the Maintainer is required to provide pursuant to this Schedule 10 (Variation Procedure).
- 6.3 Where any costs which the Maintainer has estimated will arise as a result of the implementation of a Variation have subsequently been avoided by the Maintainer, the Maintainer shall inform the Purchaser in writing of such avoidance within five (5) Working Days of such avoidance, and any liability of the Purchaser to meet such costs which may have arisen under the terms of a Variation Order or as a result of any other provision of this Schedule 10 (Variation Procedure) shall be cancelled.
- 6.4 The Maintainer shall use reasonable endeavours to mitigate any increase in the Service Payments and/or Additional Capital Investment Requirement, including where applicable obtaining the best possible value for money when entering into any Subcontract in order to

implement a Variation, and with the minimum impact on Unit Availability, the Diagrams and the Maintainer's obligations under this Agreement.

7. VARIATION ORDERS

7.1 Issue of Variation Orders or Withdrawal of Proposed Variations

7.1.1 The Purchaser shall within twenty (20) Working Days (or such longer period as may be reasonable having regard to the complexity of the proposed Variation) following receipt of the last Variation Report requested by it:

- (A) if satisfied with the Variation Report, order the Variation by confirming to the Maintainer in writing the content of the Variation Report ("**Variation Order**");
- (B) refer any disputes regarding the accuracy or completeness or consequences or effect of the matters set out in the Variation Report for resolution in accordance with Clause 41 and may, when such resolution has been achieved, issue a Variation Order which reflects that resolution; or
- (C) inform the Maintainer in writing that the Purchaser does not wish the proposed Variation to be carried out and that the Proposed Variation has been withdrawn provided that this paragraph (C) shall not apply in the case of a Variation Report regarding a Required Variation.

7.1.2 A Variation Order issued in accordance with paragraphs 7.1.1(A) or 7.1.1(B) above shall include (but not be limited to) the following information:

- (A) the date on which implementation of the Variation shall begin;
- (B) the date on which implementation of the Variation shall be completed;
- (C) an acknowledgement that on the Adjustment Date, the adjustment to the Service Payment will be calculated in accordance with paragraph 6 and that the Purchaser will pay the adjusted Service Payment as calculated in accordance with paragraph 6 to the Maintainer from the Adjustment Date;
- (D) the agreed Additional Capital Investment Requirement payable by the Purchaser from the Adjustment Date in accordance with the programme agreed or determined pursuant to paragraph 7.1.1(A) or 7.1.1(B) within thirty (30) days of presentation of the appropriate invoices and supporting evidence demonstrating that the expenditure concerned has been properly incurred;
- (E) confirmation of whether the Maintainer will need to obtain any Relevant Approval or Relevant Consent in order to implement the Variation;
- (F) acknowledgement that in the case where the implementation of the Variation will require the Maintainer to obtain any Relevant Approval or Relevant Consent and such Relevant Approval or Relevant Consent cannot be obtained, the Purchaser shall withdraw the Variation Order in accordance with paragraph 8 below; and

- (G) where the Adjustment Date anticipated in the Variation Report is different from the actual Adjustment Date, the changes necessary to the Change in Service Payment and/or the Additional Capital Investment Requirement to reflect such difference.

7.2 Confirmation and Implementation of Variation Orders

7.2.1 Where a Variation Order has been issued under paragraph 7.1.1(A) or 7.1.1(B):

- (A) in the case where no Relevant Approval or Relevant Consent is required in order to implement the Variation the Variation Order shall be deemed to be confirmed and the Maintainer shall proceed to implement the Variation in accordance with the terms of the relevant Variation Order as expeditiously and cost-effectively as possible; and
- (B) in the case where a Relevant Approval or Relevant Consent is required to implement the Variation:
 - (1) the Maintainer shall proceed to obtain such Relevant Approvals or Relevant Consents and paragraphs 7.2.1(B)(2), 7.2.1(B)(3) and 7.2.2 below shall apply in any of the circumstances contemplated by this paragraph (B);
 - (2) where the Maintainer is seeking a Relevant Approval or a Relevant Consent in accordance with paragraph 7.2.1(B)(1) the Maintainer shall not in any other respect begin implementing the Variation Order for which such Relevant Approval or Relevant Consent is necessary until either:
 - (a) such Relevant Approval or Relevant Consent is obtained; or
 - (b) the Purchaser expressly requests the Maintainer to begin implementing the relevant Variation prior to the obtaining of any such Relevant Approval or Relevant Consent.
 - (3) subject to paragraph 7.2.1(B)(5), where each required Relevant Approval or Relevant Consent has been obtained by the Maintainer, the Maintainer shall proceed to implement the Variation in accordance with the terms of the relevant Variation Order as expeditiously and cost-effectively as possible;
 - (4) if it is determined by the Purchaser that any Relevant Approval or Relevant Consent necessary for the implementation of a Variation cannot be obtained then the Purchaser shall withdraw the relevant Variation Order in accordance with paragraph 8 below; and
 - (5) where any Relevant Consent and/or Relevant Approval necessitates a change to the Variation Order, then the Maintainer shall produce a further Variation Report (the "**Second Variation Report**") to which the provisions of paragraph 5 shall apply and

any resulting Variation Order shall operate to make such amendments as shall be necessary.

- 7.2.2 The risk of a failure or delay in any application for any Relevant Approval or Relevant Consent, or in any appeal, review, enquiry, agreement or revocation in relation to the same, shall be borne by the Purchaser in respect of all Variations.

7.3 Date of Confirmation of Variation Orders

- 7.3.1 Where no Relevant Approval or Relevant Consent is required in order to implement a Variation, the Variation Order shall be deemed to be confirmed upon the date specified in such Variation Order or where no such date is specified in the Variation Order, upon the date of issue of the Variation Order.

- 7.3.2 Where any Relevant Approval or Relevant Consent is required to implement any Variation Order, such Variation Order shall be deemed to be confirmed:

- (A) where no Second Variation Report is required in accordance with paragraph 7.2.1(B) upon the date upon which the last such Relevant Approval or the last such Relevant Consent required has been obtained by the Maintainer; or
- (B) where a Second Variation Report is required in accordance with paragraph 7.2.1(B) the date upon which the resulting Variation Order is confirmed.

7.4 Effect of Confirmation of Variation Orders

- 7.4.1 Upon the relevant Variation Order being deemed to be confirmed:

- (A) The parties shall comply with the Variation Order;
- (B) Schedule 2 (Maintenance and Cleaning Services) shall be deemed to have been amended to incorporate the terms of the Variation Order;
- (C) any amendment to this Agreement as referred to in paragraph 5.1.2(B) above shall be deemed to be incorporated into this Agreement;
- (D) it shall be finally agreed that the Maintainer will incur or benefit from a change in its costs as a result of the relevant Variation;
- (E) the Purchaser shall not make any Deductions in accordance with Schedule 3 (Performance Regime) in respect of any failure by the Maintainer to perform the Services which is attributable solely to the proper implementation of a Variation, and which would otherwise have led to the making of one or more Deductions in accordance with Schedule 3 (Performance Regime);
- (F) any failure to perform the Services which would trigger a delay or reduction in the Service Payments, and which is attributable solely to the proper implementation of a Variation Order, shall not be deemed to trigger any such delay or reduction, and the Service Payment shall be made in accordance with Schedule 5 (Pricing and Payment) as if such failure to perform the Services had not occurred; and

- (G) any other relief or adjustments required by the Variation Order shall be deemed to have been made.

8. WITHDRAWAL OF VARIATIONS

- 8.1 Subject to paragraph 8.2, where either Party wishes to withdraw a Variation which it has proposed it may do so at any time prior to the confirmation of a Variation Order relating to such Variation.
- 8.2 Subject to paragraph 3.2.4 and 4.2.5 neither Party may withdraw a Variation where such Variation is a Required Variation, save where any Relevant Consent or Relevant Approval is required in order to implement it and despite the Maintainer using all reasonable endeavours is not obtained.
- 8.3 If the Purchaser withdraws a Variation Order in accordance with paragraph 7.1.2(F) and/or paragraph 7.2.1(B)4 and the Variation was proposed by the Purchaser then the Purchaser shall reimburse to the Maintainer all the costs of the Maintainer reasonably incurred in seeking to obtain any Relevant Consent or Relevant Approval.

9. REQUIRED VARIATIONS

- 9.1 Each Party acknowledges and agrees that the Parties shall use their best endeavours to implement each Required Variation within any time limits set out in the relevant Applicable Law or relevant Standard and/or Relevant Consents.
- 9.2 If a Required Variation is in respect of a Change in Law other than a Qualifying Change in Law the Maintainer shall not be entitled to any relief or increase to the Service Payment, such Required Variation shall be carried out by the Maintainer at its own cost and such Required Variation shall not affect the performance of (or limit or restrict) the Maintainer Obligations and shall not prejudice or limit the Purchaser's rights or increase its obligations or risk under this Agreement.

10. RETROSPECTIVE CLAIMS

- 10.1 The Purchaser shall be entitled to reject any claims by the Maintainer arising in connection with a Variation, including claims for an increase to the Service Payment or relief from the Maintainer Obligations, after a Variation Order has been served in respect of that Variation.
- 10.2 The Purchaser shall not accept, and the Maintainer shall not be entitled to, any retrospective claims including claims for an increase in the Service Payments or relief from the Maintainer Obligations, arising from work which is being or has already been carried out by the Maintainer and which was not the subject of a Variation Order prior to such work being commenced.

11. EMERGENCY VARIATION PROCEDURE

- 11.1 If the Purchaser considers, acting reasonably, that there is a need to implement a Variation as a matter of urgency to address a safety critical issue (an "**Emergency Variation**"), the Purchaser may require the Maintainer to implement the proposed Variation immediately upon receipt of the Purchaser Notice of Proposed Variation by the Maintainer. In such circumstances the Purchaser shall endorse the Purchaser Notice of Proposed Variation with the wording "**EMERGENCY VARIATION – TO BE IMPLEMENTED IMMEDIATELY**". The Maintainer shall acknowledge receipt in writing of such notice

within two (2) Working Days. If the Maintainer believes that it is illegal to implement the proposed Variation immediately, it shall inform the Purchaser within two (2) Working Days of receipt of the Purchaser Notice of Proposed Variation otherwise it shall commence implementation of such proposed Variation immediately and the parties shall agree an Variation Report in respect of such Emergency Variation in accordance with the procedure set out in paragraphs 5, 6 and 7.

12. COSTS OF PREPARING VARIATIONS

- 12.1 Each party shall be liable for the costs and expenses suffered or incurred by it in evaluating and preparing a proposed Variation. Each party agrees to act reasonably and not to require any other party to undertake unnecessary work in relation to the Proposed Variation.

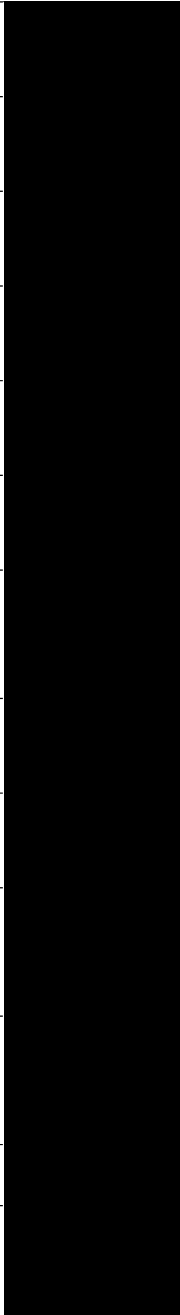
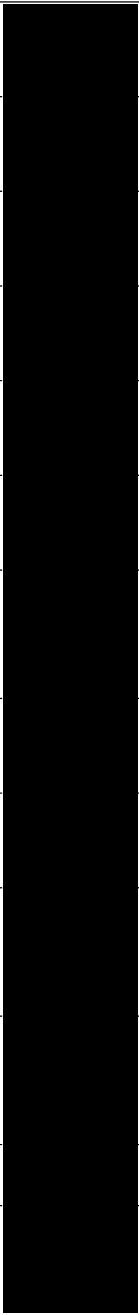
SCHEDULE 11

Technical Support and Spare Supply

Part 1

1. From the Cessation Date the Purchaser and Maintainer shall perform the services, work and activities as indicated in the relevant columns of the responsibility table below and in Parts 2 and 3 of this Schedule 11 (or, as applicable, shall procure the performance and carrying out of the services, work and activities).
2. Where any service, work or activity is listed in the responsibility table below and also described in Part 2 and/or 3 of this Schedule, and there is any conflict between the entry in the responsibility table (including any footnote) below and the applicable other provision(s) in Part 2 and/or 3, the applicable other provision(s) shall have precedence.
3. The Purchaser may request (in writing) the Maintainer to perform or carry out additional services, work and/or activities, or may require the Maintainer to perform or carry out a reduced scope of services, work and/or activities, on terms to be agreed in accordance with the Variation Procedure.
4. The Maintainer shall use the Dedicated Store solely in performance of the obligations set out in this Schedule and any related obligations elsewhere in this Agreement, and in doing so the Maintainer shall comply with:
 - 4.1 all reasonable instructions of the Purchaser;
 - 4.2 all relevant policies, guidelines and procedures relating to the Carriage Servicing Depot in place from time to time; and
 - 4.3 all Applicable Laws and relevant Standards.
5. The Maintainer shall not cause any damage, destruction or loss to any part of the Carriage Servicing Depot.
6. The Purchaser shall procure that the Maintainer is granted such non-exclusive access to the ELR Carriage Servicing Depot and the NLR Carriage Servicing Depot as is necessary for the Maintainer to perform its obligations under this Agreement from the Cessation Date.

Responsibility Table

ITEM NO.	SERVICES, WORK AND ACTIVITIES	RESPONSIBILITY	
		Maintainer	Purchaser
	Management		
1.	Management of maintenance staff at the Maintenance Facility		
2.	Management of Outstation staff		
3.	Management of indirect staff at the Maintenance Facility		
4.	Management of maintenance at the Maintenance Facility		
5.	Management of maintenance of Units at servicing locations		
6.	Management of all warranty issues (including pursuing warranty claims)		
7.	Management of the supply of Spares and other materials in support of the maintenance operation		
8.	Management of Maintenance Facility safety for maintenance operations		
9.	Management of Maintenance Facility quality system for maintenance operations		
10.	Management of Maintenance Facility drivers		
11.	Management of Maintainer staff		
	Direct Labour		
12.	Servicing of Units – labour		

ITEM NO.	SERVICES, WORK AND ACTIVITIES	RESPONSIBILITY	
		Maintainer	Purchaser
13.	Scheduled maintenance labour		
14.	Warranty labour not otherwise covered in the MSA		
15.	Non-scheduled maintenance labour (after warranty)		
16.	Overhaul of Units labour (component exchange)		
17.	Level 1 Fault-Finding		
18.	Level 2 Fault-Finding		
19.	Level 3 Fault-Finding		
20.	Mid-life refurbishment - labour		
21.	Repainting - Faults in paint quality whilst under extended warranty under MSA		
22.	Repainting - minor damage		
23.	Repainting - total		

ITEM NO.	SERVICES, WORK AND ACTIVITIES	RESPONSIBILITY	
		Maintainer	Purchaser
24.	Tyre turning		
25.	Outstation staff		
26.	Line of route cover		
27.	Interior cleaning - daily		
28.	Interior cleaning - periodic heavy clean		
29.	Exterior Unit cleaning (automatic train wash plant)		
30.	Turn-around (Outstation) cleaning		
31.	Train preparation (drivers preparation)		
32.	Crash/accident/misuse of repairs while under control of Operator		
33.	Vandalism repairs		
34.	Crash recovery		

ITEM NO.	SERVICES, WORK AND ACTIVITIES	RESPONSIBILITY	
		Maintainer	Purchaser
35.	Failure recovery labour		
36.	Accident/incidents cover labour		
	Indirect Labour		
37.	Stores manager		
38.	Stores issuer labour		
39.	Materials controllers		
40.	Stores delivery loading/unloading at Maintenance Facility		
	Technical Support Services¹		
41.	Technical assistance on Unit Failures		
42.	Technical support for changes to Manuals		
43.	Update and validation of Manuals and drawings after any proposed modification has been agreed		
44.	Liaison with vehicle acceptance body on changes to the Manuals, as applicable		

¹ The services listed under Technical Support Services are those which the Purchaser can instruct the Technical Support Personnel (as defined in Part 3 of this Schedule) to perform.

ITEM NO.	SERVICES, WORK AND ACTIVITIES	RESPONSIBILITY	
		Maintainer	Purchaser
45.	Performance analysis including trend analysis etc.		
46.	Technical support undertaken by technical engineers		
47.	Train system and software technical support services		
48.	Performance/solutions engineering		
49.	Engineering support to modification process		
50.	Modification to reduce maintenance costs and improve reliability		
51.	Initial training of the replacement contractor's maintenance instructors and key operating staff		
52.	On going and further training of replacement contractor staff (up to 50 man days)		
53.	Access to MITRAC data from Unit		
54.	Provision of analysis to Purchaser of MITRAC data		
	Spares		

ITEM NO.	SERVICES, WORK AND ACTIVITIES	RESPONSIBILITY	
		Maintainer	Purchaser
55.	TSSSA Initial Spares (supply of float)		
56.	Supply of Consumable Spares		
57.	Warranty Spares		
58.	Spares procurement – HQ support		
59.	Spares required for scheduled maintenance		
60.	Spares required for non-scheduled maintenance (after warranty period)		
61.	Overhaul Spares required for scheduled maintenance		
62.	Mid-life refurbishment – materials		
63.	Cleaning materials – materials required for the internal daily cleans and heavy cleans, as well as the chemicals for the automatic train wash plant		
	General		
64.	Technical support by telephone to operations staff at Outstations		
65.	Maintenance and repair of Special Tools		

ITEM NO.	SERVICES, WORK AND ACTIVITIES	RESPONSIBILITY	
		Maintainer	Purchaser
66.	Maintenance planning		
67.	Vehicle movement planning (liaison with Operator)		
68.	Cascaded training of maintenance and operating staff		
69.	On going training of operational staff		
70.	Movements of Units at the Maintenance Facility		
71.	Test running		
	Maintenance Facility Buildings		
72.	Maintenance Facility improvements		
73.	Storage facilities at principal Maintenance Facility/Maintenance Facilities and Outstations		
74.	Office accommodation for Maintainer staff		
75.	Utilities – gas, electricity, water		
76.	Waste disposal		

ITEM NO.	SERVICES, WORK AND ACTIVITIES	RESPONSIBILITY	
		Maintainer	Purchaser
77.	Cleaning		
78.	Rent and rates		
79.	Maintenance – structural		
80.	Maintenance – general (including sidings and out buildings)		
81.	Security		
82.	Insurance		
83.	Depreciation		
	Maintenance Facility Equipment		
84.	Provision of plant and machinery at Maintenance Facility		
85.	Additional plant and machinery for new Units		
86.	Maintenance and replacement of plant and machinery		
87.	Maintenance and replacement of Special Tools and test equipment		

ITEM NO.	SERVICES, WORK AND ACTIVITIES	RESPONSIBILITY	
		Maintainer	Purchaser
88.	Calibration of Special Tools and test equipment for replacement contractor staff		
89.	Maintenance Facility hand tools for replacement contractor staff		
90.	Maintenance Facility hand tools for Maintainer's staff		
91.	Test equipment for Maintainer staff		
92.	Calibration of Maintainer owned Special Tools and test equipment		
	Motor Vehicles (For Maintainer personnel)		
93.	Lease charge		
94.	Insurance		
95.	Operating costs		
	Office Equipment (For Maintainer personnel in the Maintenance Facility/Facilities)		

ITEM NO.	SERVICES, WORK AND ACTIVITIES	RESPONSIBILITY	
		Maintainer	Purchaser
96.	Supply of desks, tables and chairs		
97.	Supply of other equipment		
98.	Maintenance of office equipment supplied by the Maintainer		
99.	Insurance of office equipment supplied by the Maintainer		
100.	Replacement of office equipment supplied by the Maintainer		
101.	Office consumables (such as paper and pens etc.)		
102.	Provision of ISDN lines		
	Miscellaneous		
103.	Maintenance Facility telephone lines (installation)		

Part 2
Spares Supply Services

1. SPARES

1.1 General Obligations

- 1.1.1 The Maintainer shall at its own risk and expense be responsible for all necessary safety approvals required under any Applicable Laws and/or applicable Standards to be obtained by a supplier of rolling stock spares.
- 1.1.2 The Maintainer shall not use any Purchaser Owned Spare for any purpose other than performing its obligations under this Agreement.
- 1.1.3 The Purchaser shall make available to the Maintainer a dedicated area of sufficient dimensions fit for the purpose of storing and supplying Spares at the Maintenance Facility or such other location as may be agreed from time to time by the Parties (the "**Dedicated Store**"). The Maintainer acknowledges that the Purchaser will have satisfied this obligation if it makes available the storage facility at the Maintenance Facility which the Maintainer has been using as such during the Maintenance Period subject to any additional segregation of the storage facility reasonably requested by the Maintainer.
- 1.1.4 The Maintainer shall protect Spares which are stored at the Dedicated Store from theft, injury, breakage or damage by exposure to the weather and take every reasonable precaution against theft, accident, injury or breakage or damage from any cause.
- 1.1.5 The Maintainer shall not, without the prior written consent of the Purchaser store any Purchaser Owned Spare (other than those Spares which are temporarily being overhauled and/or repaired) on any land or premises the freehold of which is not owned by the Maintainer, the Purchaser, TfL or any member of the TfL Group.
- 1.1.6 The Purchaser shall ensure that a member of its staff is present at the Dedicated Store at all times (24 hours a day, 7 days a week) for the supply of Spares and acceptance of Overhaul Spares for repair and/or overhaul.
- 1.1.7 The Maintainer will operate the Dedicated Store and, in particular, shall:
 - (A) inspect Spares at the point of delivery to the Dedicated Store and determine whether they may be faulty or damaged and whether they should therefore be accepted or rejected;
 - (B) monitor Spares consumption and/or predicting future Spares consumption; and
 - (C) prepare and check all documentation necessary for the return of Spares to the Maintainer for work to be performed on the same, whether for purposes of repair, overhaul, refurbishment or otherwise.

1.2 **Provision of TSSSA Initial Spares**

Immediately following the Cessation Date, the Spares handed back in accordance with Schedule 13 following a Cessation Notice shall be made available to the Maintainer for use in the provision of the Services under this Schedule (the "**TSSSA Initial Spares**").

1.3 **Overhaul Spares**

- 1.3.1 Subject to the Purchaser complying with its obligations pursuant to paragraphs 1.2, 1.8.3 and 1.10 of this Schedule the Maintainer shall make available to the Purchaser at the Maintenance Facility such Overhaul Spares as may be necessary for the proper maintenance, repair and overhaul of the Units by a competent maintainer in accordance with the Maintenance Plan and the Manuals in accordance with consumption of such Overhaul Spares during the preceding Maintenance Period and on the assumption that such maintenance, repair and overhaul has been planned in a competent manner provided that and to the extent that the requirement for the Overhaul Spare arises from the occurrence of an Operator Fault, an Exonerating Event or a No Fault Found Matter (other than an Eligible No Fault Found Matter) the Maintainer shall not be in breach of its obligations under this paragraph 1.3.1 and shall not suffer any Deductions under the Performance Regime contained in Part B of Schedule 3 (Performance Regime) to the extent that the Overhaul Spare is unavailable.
- 1.3.2 Where the Purchaser uses an Overhaul Spare by installing such Overhaul Spare on a Unit, the Maintainer shall procure that the Part which has been replaced by such Overhaul Spare shall be overhauled in accordance with the Manuals within the lead time set out in the spares list (such list and lead times to be agreed between the parties, acting reasonably, prior to the Cessation Date, the "**Lead Time**" and "**Spares List**" respectively) or where such Part is life expired or damaged beyond economic repair that such Part is replaced and such replacement may be a brand new Overhaul Spare or an Overhaul Spare that has been removed from an ELR Unit or a NLR Unit and repaired and/or overhauled. Title to such replacement Overhaul Spare shall vest in the Purchaser immediately following delivery of such Overhaul Spare to the Purchaser and title to the Part which has been replaced shall vest in the Purchaser if it is a TSSSA Initial Spare or vest in the Maintainer if it is a Supplemental Overhaul Spare.
- 1.3.3 The Maintainer shall not be entitled to any additional payment (other than the Service Payment) in consideration for the replacement, repair and/or overhaul of Overhaul Spares pursuant to paragraph 1.3.2 except where any such Part (or any component thereof) is missing or has suffered an Operator Fault, an Exonerating Event or a No Fault Found Matter (other than an Eligible No Fault Found Matter)

1.4 **Supplemental Overhaul Spares**

- 1.4.1 Title to the Supplemental Overhaul Spares shall remain with the Maintainer until the circumstances contemplated by paragraph 1.6.2 and 1.6.4 apply, save where any Supplemental Overhaul Spares have been fitted in or on a Unit, Vehicle or (as the case may be) Part in which case title to such Supplemental

Overhaul Spare shall vest in the Purchaser (with full title guarantee and free from all Security Interests other than those created by or attributable to the Purchaser or the Operator).

- 1.4.2 Title to any Part which is replaced by a Supplemental Overhaul Spare shall pass to the Maintainer at the same time title to such Supplemental Overhaul Spare vests in the Purchaser in accordance with this paragraph 1.4.2 free of all Security Interests other than those created by or attributable to the Maintainer.

1.5 Consumable Spares – General Obligations

- 1.5.1 The Maintainer shall supply to the Purchaser all such Consumable Spares as may be necessary for the proper maintenance, repair and overhaul of the Units in accordance with the maintenance and repair instructions contained within the Manuals and the maintenance plan provided by the Purchaser pursuant to paragraph 1.10.2 of this Part 2 of Schedule 11 (Technical Support and Spare Supply). The cost of supply of Consumable Spares shall be borne by the Maintainer, and the Maintainer's sole remuneration therefore shall be the Service Payment except to the extent that Consumable Spares are required for the purposes of replacing any Damage & Vandalism Spare, Incident Spare or Spare which has been the subject of an Operator Fault or an Exonerating Event, in which case any necessary Consumable Spares shall be separately chargeable to the Purchaser at the relevant price set out in Part 4 or, if no such price is set out in Part 4, at the price specified on the Spares List.
- 1.5.2 The Maintainer shall at all times ensure that in its reasonable opinion the Purchaser's stock of Consumable Spares is sufficient to perform all currently contemplated planned maintenance set out in the Maintenance Plan and the Manuals together with any unplanned maintenance.

1.6 Maintainer Owned Spares

- 1.6.1 Immediately following the Cessation Date the Maintainer shall make the Maintainer Owned Spares existing just prior to the Cessation Date available to the Purchaser pursuant to the Maintainer's obligations under paragraph 1.3.1 and paragraph 1.5 as the case may be.
- 1.6.2 Upon the earlier of the expiry of this Agreement or the termination of this Agreement arising from a Maintainer Event of Default or the occurrence of a Force Majeure Event the Maintainer hereby agrees that the Purchaser shall have the option to purchase some or all of the Maintainer Owned Spares from the Maintainer at a price equivalent to the fair book value of such Maintainer Owned Spares.
- 1.6.3 The Purchaser shall be entitled to exercise the option granted by the Maintainer pursuant to paragraph 1.6.2 by giving written notice to the Maintainer at least thirty-five (35) Working Days prior to the expiry or termination of this Agreement as contemplated by paragraph 1.6.2 identifying the type, quantity and fair book value of each Maintainer Owned Spare the Purchaser wishes to acquire. No later than five (5) Working Days after receipt by the Maintainer of the notice served by the Purchaser pursuant to this paragraph 1.6.3 the Parties

shall meet and seek to agree the type, quantity and fair book value of each of the Maintainer Owned Spares to be acquired by the Purchaser. If the Parties are unable to reach agreement within five (5) Working Days of first meeting either Party may refer the matter or matters in dispute to Schedule 15A (Fast Track Expert Determination).

- 1.6.4 Upon termination of this Agreement pursuant to Clause 28 (Voluntary Termination and Cessation, Purchaser Contract Review and Maintainer Price Review) or pursuant to Clause 33.2 (Purchaser Event of Default) the Purchaser shall purchase from the Maintainer at a price equivalent to its fair book value the stock of Maintainer Owned Spares which exists as at the date the Purchaser served on the Maintainer notice of termination. No later than thirty-five (35) Working Days prior to termination of this Agreement in the circumstances contemplated by this paragraph 1.6.4 the Maintainer shall give written notice to the Purchaser identifying the type, quantity and fair book value of each Maintainer Owned Spare. No later than five (5) Working Days after receipt by the Purchaser of the notice served by the Purchaser pursuant to this paragraph 1.6.4 the Parties shall meet and seek to agree the type, quantity and fair book value of each of the Maintainer Owned Spares to be acquired by the Purchaser. If the Parties are unable to reach agreement within five (5) Working Days of first meeting either Party may refer the matter or matters in dispute to Schedule 15A (Fast Track Expert Determination).

1.7 Purchaser Owned Spares – General Obligations

From the Cessation Date the Maintainer undertakes to the Purchaser that it shall:

- 1.7.1 not attempt to hold itself out as having any power to sell, charge, lease or otherwise encumber or dispose of the Purchaser Owned Spares, nor create any Security Interest over any of the Purchaser Owned Spares;
- 1.7.2 not do any act or thing which might jeopardise the title, rights and interest of the Purchaser in any of the Purchaser Owned Spares;
- 1.7.3 store all Purchaser Owned Spares in a safe and orderly manner and at a safe location, identified as Purchaser Owned Spares and capable of being differentiated from any other Spares. The Maintainer shall not, except to the extent permitted by this Agreement or as otherwise agreed by the Purchaser and the Operator, remove or permit the removal of any of the Purchaser Owned Spares from such location.

1.8 Overhaul Spares

- 1.8.1 The Maintainer shall, at its own cost (subject always to payment of the Service Payments) in addition to the overhaul activities referred to in paragraph 1.3.2 above repair on demand any repairable Overhaul Spare which has been subject to a Fault other than where such Fault was an Operator Fault or an Exonerating Event, such that any Fault affecting the relevant Overhaul Spare is rectified within the Lead Time for the supply of a new spare equivalent to the Overhaul Spare being repaired.

- 1.8.2 If the Purchaser requires the Maintainer to repair or replace any Overhaul Spare which has been subject to an Operator Fault or an Exonerating Event the Maintainer shall provide such Services as an additional service and shall either be separately chargeable to the Purchaser at the relevant price set out in Part 4 or, if no such price is set out in Part 4, at the price specified on the Spares List.
- 1.8.3 Where, as a result of any maintenance activity, it is necessary to utilise any of the Overhaul Spares in order to replace a defective part or parts on a Unit:
- (A) The defective Part or Parts replaced shall be made available by the Purchaser to the Maintainer at the Dedicated Store within twenty-four (24) hours of such replacement, and the Maintainer shall be required to collect it or them from the Purchaser and:
- (1) carry out, or procure the carrying out within the Lead Time of any overhaul required pursuant to the Manuals; and/or
- (2) carry out or procure the carrying out, within the Lead Time for the supply of a new Spare equivalent to the Overhaul Spare which is being repaired, any necessary repair of the relevant Overhaul Spare such that it is fit for use on the Units.
- (B) To the extent the defective Overhaul Spare is not made available by the Purchaser for collection in accordance with paragraph 1.8.3(A) above within the specified time period, the Maintainer shall remain under an obligation to collect and carry out or procure the carrying out of overhaul or repair of the relevant Overhaul Spare, but the Lead Times set out in the Spares List for the carrying out of such overhaul or repair shall be extended by the number of days by which the time period set out in paragraph 1.8.3(A) has been exceeded (the "**Lead Time Extension**") and the Maintainer shall not be liable under the Performance Regime in respect of a Unit not being Available where the principal cause thereof is that necessary Spares are unavailable at the Maintenance Facility if such unavailability of Spares results from the Lead Time Extension.
- (C) To the extent the defective Overhaul Spare is made available by the Purchaser for collection in accordance with paragraph 1.8.3(A) above, but such Overhaul Spare is incomplete, or the Maintainer can demonstrate, as at the point of despatch from the Maintenance Facility it was damaged by the Purchaser on removal from the relevant Unit on which it is installed, the Maintainer and the Purchaser shall jointly agree a reasonable extension to the relevant agreed Lead Time(s) (the "**Extension**") referenced in paragraph 1.8.3(A) above, for the carrying out of the relevant overhaul or repair, which such Overhaul Spare requires (and the Maintainer shall not be liable under the Performance Regime in respect of a Unit not being Available where the principal cause thereof is that necessary Spares are unavailable at the Maintenance Facility if such unavailability of Spares results from the Extension), together with such additional cost as may be reasonable

taking into account the relevant missing components or relevant damage to the Overhaul Spare(s).

- (D) To the extent a defective Overhaul Spare is not made available by the Purchaser for collection in accordance with paragraph 1.8.3(A) above at all, the Maintainer shall not be liable under the Performance Regime to the extent that a Unit is not Available as a result of necessary Spares being unavailable at the Maintenance Facility where the principal cause of such necessary Spares being unavailable is the non-return of such Overhaul Spare to the Maintainer, except where the Purchaser purchases replacements for such missing defective Overhaul Spare, in which case such exemption from liability shall only apply for the period for which such Overhaul Spare are missing, together with the period of the Lead Time for procurement of the replacement for the relevant Overhaul Spare in accordance with the Spares List.

1.8.4 Where this Agreement expires or is terminated pursuant to Clause 28 or 33, whichever is earlier, the Maintainer shall deliver possession of the Overhaul Spares forming part of the TSSSA Initial Spares (or any replacement of the same pursuant to paragraph 1.3.1) and any unused Incident Spares and Damage & Vandalism Spares to the Purchaser at an agreed location, at no additional cost to the Purchaser and in accordance with paragraphs 1.11 and 1.12.

1.9 Purchaser Supplemental Spares

- 1.9.1 The Purchaser shall have the right to order and purchase additional Spares from the Spares List on the following basis:
- (A) the Purchaser shall place any such order by giving written notice to the Maintainer that it wishes to do so, specifying the type and quantity of the relevant Spares it wishes to order and, upon receipt of any such order, the Maintainer shall sell the relevant Spares to the Purchaser in accordance with the terms of this paragraph 1.9;
 - (B) the relevant Spares shall be sold at the relevant price set out in Part 4 or, if no such price is set out in Part 4, at the net selling prices set out in the Spares List for such Spares applicable during the year in which they are ordered. Net selling prices are inclusive of all necessary postage, packaging, carriage, insurance and freight costs incurred in accordance with paragraph (D);
 - (C) within five (5) Working Days of receipt of the order described at paragraph (A) above, the Maintainer shall confirm the expected delivery date or dates for each of the relevant Spares, upon which the Maintainer expects to be able to supply the relevant Spares to the Dedicated Store or other agreed location. The Maintainer shall in any event supply the relevant Spares within a period which corresponds to the delivery Lead Time specified in the Spares List or, if no such delivery Lead Time is specified, within a reasonable period;

- (D) supply of Spares ordered pursuant to this paragraph 1.9 shall be made by the Maintainer to the Purchaser to the Dedicated Store and the Maintainer shall be responsible, at its expense, for arranging suitable transport of relevant Spares to the Dedicated Store;
- (E) upon arrival of the relevant Spares at the Dedicated Store, the Maintainer shall present the same to the Purchaser for inspection of conformity of the type and quantities of Spares delivered with the type and quantities of Spares ordered and the condition of the Spares delivered. To the extent the Purchaser is satisfied, acting reasonably, that the relevant Spares constituting the order are in conformity with the order and are in satisfactory condition, as set out above, the Purchaser shall sign a delivery note evidencing such satisfaction. Thereafter, in the case of Spares whose aggregate value exceeds [REDACTED] only (or, where the aggregate value of all Spares currently on order (excluding any Spares the cost of which is included in any Service Payments) exceeds [REDACTED] upon payment therefore, the Maintainer or his agent shall physically deliver the relevant Spares to the Purchaser and thereupon title to the relevant Spares shall pass to the Purchaser by delivery with full title guarantee free and clear of Security Interest. In respect of Spares whose aggregate value is less than or equal to [REDACTED]0 (or, where the aggregate value of all Spares currently on order (excluding any Spares the cost of which is included in any Service Payments) is less than or equal to [REDACTED] and, in respect of which, accordingly, payment has not been made prior to physical delivery as above, the Maintainer shall thereupon be entitled to invoice the Purchaser for the relevant Spares, such invoice to be settled within 30 days; and
- (F) to the extent the Purchaser, acting reasonably, is not satisfied that the relevant Spares constituting the order and delivered to the Dedicated Store are in conformity with the order and are in satisfactory condition, as set out in paragraph (E) above, the Maintainer shall rectify any deficiencies as soon as reasonably practicable and re-present the order for acceptance in accordance with paragraph (E) above.

1.10 Purchaser's Obligations

1.10.1 The Purchaser shall comply with the following obligations:

- (A) The Purchaser shall only use Spares procured by the Maintainer in maintaining the Units, except in an emergency (including where a Unit is Unavailable due to the Maintainer being unable to provide a relevant Spare) when the Purchaser will be entitled to use spares not so procured, subject to substituting those spares with Spares procured from the Maintainer as soon as reasonably practicable and subject to the relevant spares having the same manufacturer part number as the Spare the Maintainer is unable to provide;
- (B) The Purchaser shall only use staff to maintain the Units who have received training which is appropriate to the level of maintenance which

is being carried out and have, in relation to such training either (a) passed competency tests through assessment by trainers that have been accredited by the Maintainer or (b) themselves been accredited by the Maintainer;

- (C) The Purchaser shall perform all maintenance and cleaning of the Units in accordance with the Manuals;
- (D) All Spares supplied by the Maintainer shall be used exclusively by the Purchaser in relation to the maintenance and repair of the Units; and
- (E) All Units will be operated in accordance with the Permitted Use.

1.10.2 In order to enable the Maintainer to comply with its obligations pursuant to this Schedule the Purchaser shall submit to the Maintainer no later than five (5) Working Days before the start of each Railway Period a copy of the Purchaser's maintenance plan for such Railway Period.

1.11 Standard of Spares on Handback

1.11.1 On the termination or expiry of this Agreement the Maintainer shall deliver possession to the Purchaser of the Purchaser Owned Spares and the Maintainer Owned Spares to be acquired and/or received (as the case may be) by the Purchaser in accordance with paragraphs 1.6.2 to 1.6.4 (if any) in the Handback Condition. Without prejudice to the above, all such Spares shall be in a condition consistent with their having been maintained in accordance with the Maintenance Plan, the Manuals and this Agreement (so far as applicable after the Cessation Date). To the extent that the Purchaser Owned Spares and the Maintainer Owned Spares to be acquired by the Purchaser do not satisfy the above requirements due to the act, omission, neglect or default of the Maintainer, the Maintainer shall promptly repair or replace such Spares at its own cost.

1.11.2 Where, in accordance with paragraphs 1.6.2 or 1.6.4 the Purchaser is to acquire any Maintainer Owned Spares on the termination or expiry of this Agreement, title to such Maintainer Owned Spares shall vest in the Purchaser, free of all Security Interests other than those created by or attributable to the Purchaser or the Operator on delivery of the Maintainer Owned Spares.

1.12 Assignment of Warranties on Termination

1.12.1 Upon termination or expiry of this Agreement the Maintainer agrees in so far as it is reasonably able to without incurring any material cost or expense:

- (A) assign to the Purchaser the benefit of any contracts which it has in place solely in relation to the supply, storage, maintenance and/or disposal of Spares;
- (B) to the extent not covered by paragraph 1.12.1(A), assign to the Purchaser the benefit of any warranties related to the Spares and/or any other rights it may have against any third party in respect of the Spares; and

- (C) provided that following any assignment pursuant to paragraph 1.12.1(A) the Maintainer shall be relieved of its obligations and liabilities under this Agreement in so far as they relate to the supply, storage, maintenance and/or disposal of Spares to which the assigned contracts relate from the date of such assignment or the date of termination or expiry of this Agreement whichever is the earlier.

Part 3

Technical Support Services

A. General Technical Support

1. TECHNICAL SUPPORT PERSONNEL

- 1.1 The Maintainer shall second to the Purchaser at the Maintenance Facility on an exclusive and full-time basis two (2) persons (the "**Technical Support Personnel**") (the "**Technical Support Secondment**"). The identity of the Technical Support Personnel shall be agreed between the Maintainer and the Purchaser prior to the commencement of the Technical Support Secondment. The Technical Support Secondment shall commence on the Cessation Date and shall continue until expiry or earlier termination of this Agreement.
- 1.2 The Maintainer shall procure that during the continuance of the Technical Support Secondment, the Technical Support Personnel shall provide with reasonable skill and care some or all of the specific activities set out in paragraph 2 below as the Purchaser may direct, together with any other activities identified as the responsibility of the Maintainer in the "Technical Support Services" section of the responsibility table in Part 1 (together the "**Technical Support Services**").
- 1.3 The Maintainer will procure that the Technical Support Personnel will provide the Technical Support Services for forty (40) hours a week each spread over five equal shifts on Monday through to Friday, or such other shifts as may be agreed pursuant to rosters to be agreed between the Parties subject to unavailability of the Technical Support Personnel as a result of statutory and/or contractual entitlement to leave (including annual leave).
- 1.4 The Technical Support Personnel shall remain subject to the Maintainer's approval and notification procedures in relation to any leave and/or absence entitlements. The Maintainer shall consult with the Purchaser before approving any holiday or other leave request made by the Technical Support Personnel.
- 1.5 The Technical Support Personnel shall be and shall remain employed by the Maintainer throughout the Technical Support Secondment. The Technical Support Personnel shall at all times during the provision of the Technical Support Services remain the responsibility of the Maintainer, including in relation to the payment of all wages, salaries, the provision of benefits, insurances, all contractual and statutory obligations and duties to the Technical Support Personnel (including in relation to management, appraisals and, if necessary, disciplining of and dealing with any grievances brought by Technical Support Personnel) and in relation to any corresponding obligations to third parties, and the Parties agree that the Technical Support Personnel will not become the responsibility or employee(s) of the Purchaser.
- 1.6 The Maintainer acknowledges and agrees that any information of a confidential nature which the Purchaser provides to the Technical Support Personnel in connection with the provision of the Technical Support Services or which they otherwise obtain during the Technical Support Secondment shall be covered by the definition of Confidential Information in this Agreement and the Maintainer shall procure that the Technical

Support Personnel treat such information in accordance with the obligations of confidentiality set out in this Agreement.

- 1.7 The Maintainer shall ensure that in each case, the employment contracts between the Maintainer and the Technical Support Personnel shall remain in force during the Technical Support Secondment.
- 1.8 The Maintainer shall indemnify and hold harmless the Purchaser against all Losses which the Purchaser may incur in respect of the Technical Support Personnel arising from the provision of the Technical Support Services (including any third party claims), out of their employment with the Maintainer or in relation to the termination of such employment. For the avoidance of doubt, the indemnity given by the Maintainer herein shall cover Losses which the Purchaser may incur arising out of any claims by the Technical Support Personnel in connection with the Technical Support Secondment or the termination of such secondment.
- 1.9 In the event that the Purchaser requires that either of the Technical Support Personnel be removed from the Technical Support Secondment in accordance with the provisions of Clause 19.1 of this Agreement, should the Purchaser require, the Maintainer shall second a suitable alternative replacement (subject to agreement between the Maintainer and the Purchaser) to the Purchaser to carry out the Technical Support Services.
- 1.10 The Maintainer shall ensure that the Technical Support Personnel shall meet the "Mandatory Qualifications and Certification of Staff" requirements set out in Schedule 14 (Fault Notification Procedure) of this Agreement.

2. SERVICES

1. Provision of Fault-finding at the Carriage Servicing Depot, and, as requested, at other sites within the East London Railway and the North London Railway.
2. Provision of hands-on training to individuals including training on Fault-finding.
3. Provision of general technical advice on the Units.
4. Provision of local [REDACTED] support (including interpretation of [REDACTED] data and operating assistance).
5. Review of any replacement contractor's maintenance regime for potential improvements.
6. Provision of assistance in providing feedback on the Fleet's performance.
7. Provision of updates of Technical Documentation.
8. Daily involvement in the allocation of responsibility for Faults as part of the Performance Regime.
9. Making recommendations for improvements to the Fleet in the light of the Maintainer's experience of other fleets which it has supplied.

10. Attendance and assistance at major incidents and/or accidents across all routes on the East London Railway and the North London Railway and assistance with any resulting investigation.
11. Identification of design improvements to Spares and Units to reduce repair, maintenance and/or overhaul costs.
12. Analysis of data downloaded from [REDACTED] by the Purchaser and supplied to the Maintainer to establish any preventative or corrective action required in relation to the Units. Liaising with the Purchaser's Maintenance Facility staff in a timely manner in connection with any such actions identified and producing a monthly report for the Purchaser of all outputs from this data analysis.
13. Managing the Technical Library established by the Maintainer on the Purchaser's premises and ensuring that the information contained in the Technical Library is updated as and when the Manuals or other relevant source documents are amended from time to time.
14. Providing operational support as reasonably required by the Purchaser to assist the Purchaser in diagnosing and rectifying reported problems with the Units to include:
 15. attendance on site at an affected Unit (wherever that Unit may be).
16. Providing monthly reports to the Purchaser as reasonably required by the Purchaser to include:
 - 16.1 analysis of warranty failures in relation to the Manufacturer's warranty obligations under the Manufacture and Supply Agreement;
 - 16.2 status of warranty claims (to include details of Parts away for repair and return dates in relation to the Manufacturer's warranty obligations under the Manufacture and Supply Agreement);
 - 16.3 material supply performance (including unsatisfied demand against firstpick; failure analysis reports from original equipment; the Maintainer's statistical analysis of materials failure and recommendations for long term material stock levels);
 - 16.4 modification reports; and
 - 16.5 monitoring against any "key performance indicators" for the Units agreed by the Parties from time to time.
17. Supporting the Purchaser with the continued development of the Manuals to include:
 - 17.1 liaising with the Purchaser to understand any concerns or problems the Purchaser has with the Manuals and progressing these to ensure that they are adequately addressed in the Manuals;

- 17.2 developing the Manuals in the light of experience gained by the Purchaser (and the Maintainer) in maintaining the Units when in revenue-earning service to optimise their usability;
- 17.3 assisting the Purchaser with amending and/or updating and validating the Manuals to accommodate any changes to the working practices and procedures described therein which are adopted by the Purchaser in the performance of maintenance and/or overhaul of the Units; and
- 17.4 assisting the Purchaser with amending and/or updating and validating the Manuals (and any relevant drawings where applicable) to accommodate any changes to the working practices and procedures described in the Manuals (or the Vehicles as depicted in the relevant drawings) which result from any modification to the Vehicles.
18. Fault-finding in relation to Purchaser Owned Spares or Parts, being either:
 - 18.1 on-Unit fault-finding ("**Level 1 Fault-Finding**");
 - 18.2 fault-finding with the relevant Part/Spare removed from the Unit ("**Level 2 Fault-Finding**"); and/or
 - 18.3 diagnosis of which element of the relevant Part/Spare actually failed ("**Level 3 Fault-Finding**").
19. The Maintainer shall, following the performance by it of any Services hereunder, update the Purchaser's records showing the location, history of usage, present condition, modification status and maintenance history of each Spare or Part which is capable of identification by a serial number and in doing so provide a satisfactory level of detail sufficient to understand the nature of the work which has been performed by the Maintainer.
20. Without prejudice to the Maintainer's specific obligations, the Maintainer shall:
 - 20.1 advise the Purchaser if it becomes aware that any Units do not comply with the Rolling Stock Requirements – Technical (as the same may be amended from time to time with the agreement of the Purchaser, pursuant to the Manufacture and Supply Agreement and otherwise);
 - 20.2 advise the Purchaser if it becomes aware that any actions proposed in changing the Rolling Stock Requirements – Technical, maintenance procedures or supply of materials, will affect the delivery of the performance of the Units; and
 - 20.3 advise the Purchaser to the extent that it believes that the Units are not being maintained in a safe and efficient manner, free from any unreasonable risk to the health and well being of persons maintaining the Units and from any avoidable risk of pollution, nuisance, interference or hazard.

For the avoidance of doubt activities which are identified in the responsibility table set out in Part 1 as the exclusive responsibility of the Purchaser are excluded from the Services set out above.

B. Handback

Schedule 13 will apply upon termination of the TSSSA Period.

C. Performance Regime

The Parties will comply with the provisions of Schedule 3 Part B during the TSSSA Period.

Part 4

Price of Additional Spares

The costs stated in the table below are subject to indexation in accordance with paragraph 9 of Schedule 5.

Items of Work	Material
(A) External Damage to ELR Unit	
Windscreen - Drivers Side (LH)	
Windscreen - Non-Drivers Side (RH)	
Large Hopper Window - Lower Glass	
Medium Hopper Window - Lower Glass	
Large Hopper Window - Vent Glass (A/R)	
Medium Hopper Window - Vent Glass (A/R)	
Fixed Window Glass (A/R)	
Hopper Vent - Large (A/R)	
Hopper vent - Medium (A/R)	
Vestibule Window Complete - Left	
Vestibule Window Complete - Right	
Replace obstacle defector	
(B) Internal Damage to ELR Unit	
Replace damaged seat cover	
Replace emergency hammer and glass	
Replace damaged arm rest	
Replace damaged bodyside panel	TBA

SCHEDULE 12

Insurance

1. INSURANCE REQUIREMENTS

1.1 The Maintainer shall take out and maintain, and shall, in relation to paragraph 1.1.1 only, insure the interests of its Subcontractors in the relevant property to the extent that such property is in the care, custody and control of the Maintainer, in each case under the following policies or contracts of insurance:

1.1.1 all risks insurance for full replacement cost as new against any loss or damage (however and wherever it arises including in transit) to each Spare, Special Tool , and Maintainer Moveable Asset; and

1.1.2 public and product liability insurance against injury (including, without limitation, disease and death) or damage to persons, natural or otherwise, loss or damage to property and liability at law for damages and costs in each case arising from or caused by the performance by the Maintainer of its obligations under this Agreement, in an amount of [REDACTED] in respect of any one occurrence or series of occurrences consequent on one event or original source, without limitation in the period of insurance (or subject to such limitation as expressly approved in writing from time to time by the Office of Rail Regulation (or its successor body), the Maintainer to provide to the satisfaction of the Purchaser evidence of such approval) and which is on terms approved by the Office of Rail Regulation (or its successor body) for the purposes of the requirements of any condition under any licence which the Maintainer is required to hold by the Office of Rail Regulation (or its successor body) for the purposes of the performance of any of its obligations under this Agreement (the Maintainer to provide to the satisfaction of the Purchaser evidence of such approval).

1.2 The Maintainer shall ensure that:

1.2.1 the insurance referred to in paragraph 1.1.1 is maintained from the Commencement Date until:

1.2.1.1 in respect of each Spare, the termination or expiry of this Agreement;

1.2.1.2 in respect of each Special Tool, for the Maintenance Period; and

1.2.1.3 in respect of each Maintainer Moveable Asset, title in that Maintainer Moveable Asset has transferred to the Purchaser, or the Owner (where it is not the Purchaser), in accordance with Clause 5.4.1 of this Agreement; and

1.2.2 the insurance referred to in paragraph 1.1.2 is maintained from the Commencement Date until 2 years following the termination or expiry of this Agreement.

1.3 Without prejudice to paragraph 1.1 the Maintainer shall maintain (and shall procure that each Subcontractor maintains) such insurance as is required by any Applicable Law including insurance to be effected against legal liability for injury to its employees or to other persons under a contract of service or apprenticeship to them.

2. ADDITIONAL INSURED

- 2.1 The Maintainer shall ensure that each policy or contract of insurance taken out in accordance with paragraphs 1.1.1 and 1.1.2 names the Purchaser, the Owner (where it is not the Purchaser and if notified to the Maintainer) LUL (and, in respect of paragraph, 1.1.2 names, in addition, the Operator, Transport for London and such subsidiary of Transport for London (if any) that appoints the Operator or operates the Units to provide the passenger services on the East London Railway and/or North London Railway) as an additional insured party.
- 2.2 The Maintainer shall ensure that each policy or contract of insurance taken out in accordance with paragraphs 1.1.1 and 1.1.2:
- 2.2.1 contains a provision that no claim of any of the insured shall be defeated, prejudiced or otherwise affected by any act, omission, neglect, breach or violation of any warranty, declaration or condition on the part of any other insured and shall insure the interests of each insured regardless of any misrepresentation, non-disclosure, want of due diligence, act or omission on the part of any other insured; and
- 2.2.2 save for limits of liability and/or amount and to the extent required in accordance with this Schedule 12, shall operate in a manner as if there were a separate policy with and covering each insured.

3. PAYMENT OF PREMIUM

The Maintainer shall promptly pay (or procure the payment of) all premiums due and payable in respect of each policy or contract of insurance taken out in accordance with paragraph 1.

4. APPROVAL REQUIREMENTS

The Maintainer shall ensure that each policy or contract of insurance required pursuant to paragraph 1 is effected and maintained with insurers of good standing and repute and, subject to the provisions of paragraph 5.2 below, with a rating of at least Standard & Poor's Corporation A- rating (or an equivalent rating from another rating agency of equal repute) and in such form as the Purchaser has approved. No later than 15 Working Days prior to effecting any such policy or contract of insurance the Maintainer shall submit to the Purchaser for its approval:

- 4.1 the identity of the proposed insurer(s); and
- 4.2 the principal terms, conditions and warranties of the proposed insurance (including extensions, exclusions and levels of deductibles) or any revision to such insurance.

5. UNAVAILABILITY OF INSURANCE AND CHANGE IN CREDIT RATING

- 5.1 If and to the extent that the Maintainer is unable to obtain (or procure the obtaining of) any of the insurances specified in paragraph 1 on normal commercial terms, the Maintainer shall promptly notify the Purchaser and the parties will consult with each other in order to agree alternative insurance arrangements and/or alternative Security to be provided or procured by the Maintainer.

- 5.2 The Maintainer shall promptly notify the Purchaser on becoming aware that any existing insurer providing insurances to the Maintainer has ceased to have a Standard & Poor's Corporation rating of A- or above (or an equivalent rating from another rating agency of equal repute). Upon such notification or upon the Purchaser becoming so aware and notifying the Maintainer, the Purchaser and the Maintainer shall consult with each other as to whether any replacement of the insurer which has suffered the credit rating downgrade is required in order to ensure that the insurances continue to be maintained with an insurer of good standing and repute.

6. ADDITIONAL INSURANCE TERMS

The Maintainer shall procure that each policy or contract of insurance effected pursuant to paragraph 1:

- 6.1 which insures the interests of more than one insured, shall contain a waiver of subrogation against the Purchaser, the Owner (where it is not the Purchaser and if notified to the Maintainer), LUL, the Operator, Transport for London and such subsidiary of Transport for London (if any) that appoints the Operator or operates the Units to provide the passenger services on the East London Railway and/or North London Railway as applicable; and
- 6.2 shall contain a provision requiring 30 days prior written notice of cancellation or non-renewal to be given to the Purchaser and the Owner (where it is not the Purchaser).

7. EVIDENCE

Promptly following any request from the Purchaser, the Maintainer shall provide the Purchaser with evidence that it has taken out and is maintaining (or has so procured) each of the policies or contracts of insurance in accordance with paragraph 1 together with evidence that the premiums payable in respect of such insurances have been paid and that such insurances are in full force and effect.

8. CERTIFICATES OF RENEWAL

The Maintainer shall promptly provide the Purchaser with copies of all notices and certificates of renewal for each of the policies or contracts of insurance taken out in accordance with paragraph 1.

9. COMPLIANCE WITH TERMS OF INSURANCE

- 9.1 The Maintainer shall (and shall procure that its Subcontractors shall) comply with the terms of all policies or contracts of insurance taken out in accordance with paragraph 1 and shall not act or omit to act in any manner which might render void or voidable any policy or contract of insurance effected in accordance with paragraph 1 or as a result of which an insurer would be entitled to refuse to pay any claim, or to reduce the amount payable in respect of any claim.
- 9.2 Where any contract of insurance is subject to a deductible, the Maintainer, or the Subcontractor as applicable, shall be responsible for bearing and shall meet the cost of any uninsured liability represented by such deductible.

10. LIMITATION ON MAINTAINER'S OBLIGATIONS

Neither failure to comply or full compliance by the Maintainer with its obligations under paragraph 1 nor the terms of any policy or contract of insurance shall limit or relieve the Maintainer of its obligations or liabilities under this Agreement.

11. LOSS MITIGATION

The Maintainer is responsible for ensuring that, in the event of an incident, all reasonable steps are taken to mitigate further loss. This will include any necessary emergency repairs to property damaged in order to mitigate further damage or for reasons of safety. These repairs must be reasonable in relation to the loss or damage that has been suffered.

12. THE PURCHASER'S RIGHT TO INSURE

If the Maintainer fails to take out and/or maintain policies any of the insurances in accordance with the requirements of paragraph 1, the Purchaser may take out the relevant policies or contracts of insurance and the costs of such insurance shall be a debt due to the Purchaser from the Maintainer, payable on demand, together with Default Interest on the amount so paid by the Purchaser from the date so paid until the date the Maintainer reimburses the Purchaser in full.

13. BROKER

13.1 The insurances required under paragraph 1 should be placed through an insurance broker of international repute.

13.2 The Maintainer shall procure the issue of a letter of undertaking to the Purchaser and, in addition, the Owner (where it is not the Purchaser), from its insurance brokers in the form set out in Appendix 1 to this Schedule 12.

APPENDIX 1

Form of Brokers Letter of Undertaking

1. To [●]

Dear Sirs,

We confirm in our capacity as insurance brokers to the Maintainer that the insurances required to be provided pursuant to paragraph 1 of Schedule 12 (the "**Insurances**") of a train services agreement dated [] between the Maintainer and the Purchaser (the "**Train Services Agreement**") are, as at today's date, in effect on the terms and in respect of the risks as agreed to under contract by the Maintainer and set out in Schedule 12 of the Train Services Agreement and, that any premiums due as at the date of this letter, in respect of the Insurances, have been paid in full.

We also confirm that, as at the date of this letter, the relevant endorsements are in full force and effect in respect of the Insurances. Terms defined in the Train Services Agreement shall have the same meaning in this letter.

Pursuant to instructions received from the Maintainer and in our capacity as brokers for the Maintainer, we hereby undertake the following:

1. to have endorsed, on each and every policy evidencing the Insurances when the same is issued, endorsements including loss payable clause set out in Appendix 2 to Schedule 12 of the Train Services Agreement;
2. to hold to the order of the Maintainer, any policies, cover notes, placing slips, certificates, renewal receipts and confirmation of renewal and payment of premiums issued and to be issued and any endorsements, in respect of your respective interests in the Insurances. The Purchaser will be provided with the applicable detailed summaries of Insurances;
3. to notify you at least 90 days prior to any change to the terms of, lapse, non-renewal, cancellation and/or suspension of the policies which are material to the terms of the Insurances as they may relate to the contract(s) which are the subject of this Letter of Undertaking;
4. to advise each of you promptly of any default in the payment of any premium for any of the Insurances;
5. to advise each of you promptly of any act or omission or of any event of which we have actual knowledge which would be reasonably likely to invalidate or render unenforceable, in whole or in part, the Insurances;
6. to advise each of you if any insurer cancels or gives notice of cancellation or suspension of the Insurances or any material modification which might adversely affect the interests of the insured or of any lapse which is not immediately followed by renewal on the same terms with the same insurer of any of the Insurances at least 90 days before such cancellation, suspension, modification or lapse is to be effective as against the insured;
7. promptly upon written request, to make available to you detailed summaries of Insurances evidencing that the Maintainer has taken out and is maintaining (or has so procured) each of the Insurances, including copies of the original certificates of insurance and confirmations of renewal and payment of premiums;

8. to treat as confidential all information marked as or otherwise stated to be confidential and supplied to us by any person for the purposes of disclosure to the insurers under the Insurances and not to disclose, without the prior written consent of that person, such information to any third party other than the insurers under the Insurances as may be required by law or regulation;
9. to notify each of you at least 30 days prior to ceasing to act as brokers in relation to the Insurances;
10. to pay without any set-off or deduction of any kind for any reason any and all proceeds from the Insurances received by us from the insurers in accordance with the loss payable clause endorsed on the policy as set out in Appendix 2 to Schedule 12 of the Train Services Agreement;
11. to disclose to the insurers any fact, change of circumstance or occurrence which we know to be material to the risks insured against under the Insurances promptly after we become aware of such fact; and
12. to notify you promptly on becoming aware that any insurer has ceased to have a Standard & Poor's Corporation rating of A- or above (or an equivalent rating from another agency of equal repute).

The above undertakings are given:

- (a) subject to our lien, if any, on the policies referred to above for premiums due under such policies and subject to any insurer's right of cancellation, if any, following default in excess of 30 days in payment of such premium, but we undertake to advise each of you immediately if any such premiums are not paid to us by the date and to give each of you a reasonable opportunity of paying such amounts of premiums outstanding, before notification of non-payment of premiums to the insurers or notification of cancellation on behalf of the insurers; and
- (b) subject to our continuing appointment for the time being as insurance brokers to the Maintainer.

This letter is given by us on the instructions of the Maintainer and with the Maintainer's full knowledge and consent as to its terms as evidenced by the Maintainer's signature below.

This letter shall be governed by and construed in accordance with the laws of England and Wales.

Yours faithfully,

For and on behalf of [insurance broker]

For and on behalf of the Maintainer

APPENDIX 2

Loss Payable Clause

- [X] The insurers undertake that, unless and until the insurers receive written notice from the Maintainer and the Purchaser (as each is defined in the Train Services Agreement dated [] 2006 between Transport Trading Limited and Bombardier Transportation UK Limited (the "**Train Services Agreement**") directing otherwise, recoveries shall be paid without any deduction from the agreed claim figure as follows:
- [X.1] all recoveries of insurance proceeds in respect of the "all risks" insurances as set out in paragraph 1.1.1 of Schedule 12 of the Train Services Agreement shall be applied in reinstatement of the insured asset in question; and
- [X.2] all recoveries of insurance proceeds in respect of claims by third parties under the public and product liability insurances as set out in paragraph 1.1.2 of Schedule 12 of the Train Services Agreement shall be paid to the person to whom the liability covered by such insurances was incurred or, where that liability has been met by an insured party pursuant to an indemnity or express contractual obligation under the Train Services Agreement, shall be paid to the indemnifier or the person liable for such obligations.

SCHEDULE 13

Handback

1. HANDBACK OF UNIT AND TSA EQUIPMENT

- 1.1 Upon Cessation or upon the expiry or earlier termination of this Agreement, the Maintainer shall hand back (subject to paragraph 1.3) the relevant Handback Assets to the Purchaser or, if directed by the Purchaser, to the Operator at a location or locations to be agreed between the Parties (the "**Handback Location**") in the condition specified in paragraph 4 (other than for Fixed Assets which shall be in the condition to be agreed pursuant to Schedule 9) (the "**Handback Condition**").
- 1.2 For the purposes of this Agreement, "**Handback Assets**" means:
- 1.2.1 Upon the expiry or earlier termination of this Agreement where there has been no prior Cessation, the relevant Units, TSA Equipment, Moveable Assets and Fixed Assets situated at a Carriage Servicing Depot and all related Service Records and Manuals;
 - 1.2.2 Upon Cessation, the relevant Units, TSA Equipment (excluding Spares), Moveable Assets and Fixed Assets situated at a Carriage Servicing Depot and all related Service Records and Manuals;
 - 1.2.3 Upon the expiry or earlier termination of this Agreement where there has been a prior Cessation, the Spares.
- 1.3 If an Event of Loss has occurred in relation to a Unit and/or any TSA Equipment, the Maintainer shall deliver on the Handback Date the Service Records and Manuals for that Unit and/or TSA Equipment to the Purchaser or, if directed by the Purchaser, to the Operator in the Handback Condition.
- 1.4 For the purposes of this Agreement, "**Handback Date**" means on expiry, Cessation and/or earlier termination, as applicable.

2. FINAL INSPECTION

2.1 Final Inspection

- 2.1.1 The Purchaser shall notify the Maintainer prior to:
- (A) the expiry or earlier termination of this Agreement; and/or
 - (B) Cessation,

of the date upon which it and/or any person designated by it shall undertake the Final Inspection of the Handback Assets. The "**Final Inspection**" shall involve a detailed examination (as applicable) of the interior, exterior and underside of the relevant Unit and a full inspection of the TSA Equipment, Moveable Assets and Fixed Assets situated at a Carriage Servicing Depot, all related Service Records and Manuals and, in the case of a Unit, any Purchaser Owned Spares, in order to verify the Handback Condition.

- 2.1.2 The Maintainer shall make gauges and other relevant equipment available, if required by the Purchaser, to enable full examination of such items such as wheelsets, couplers and any other critical component during the Final Inspection.
- 2.1.3 The Maintainer shall be entitled to have a representative present at the Final Inspection.
- 2.1.4 Provided no notice to terminate this Agreement has been served in accordance with Clause 28, 31 or 33.3 of this Agreement and is outstanding, the Final Inspection shall not unreasonably disrupt the commercial operations of the Maintainer.

2.2 Facilities for the Final Inspection

- 2.2.1 The Maintainer shall make available such facilities as it is reasonably able to provide for the Final Inspection. Such facilities shall be made available at the Purchaser's expense, unless the handback is by reason of a termination of this Agreement pursuant to Clause 33.1 in which case such facilities will be made available at the Maintainer's expense.
- 2.2.2 Safe access to the facilities for the Final Inspection shall be provided by the Maintainer provided that the Purchaser shall ensure that its representatives attending the Final Inspection are appropriately qualified and aware of and adequately trained in all appropriate safety procedures applicable to the facilities.

2.3 Walk around

The Purchaser may carry out a more limited inspection of the relevant Handback Assets on or immediately before the Handback Date to identify any visible deterioration occurring subsequent to the Final Inspection and may review any changes to the Service Records and Manuals (where applicable).

3. NON-COMPLIANCE

- 3.1 If, at the time of a Final Inspection or upon the Handback Date the condition of the Handback Assets or any of them does not meet the Handback Condition, the Purchaser shall provide to the Maintainer details of such non-compliance and the Maintainer shall, unless otherwise expressly agreed in writing, at the Purchaser's option:
 - 3.1.1 rectify the non-compliance as soon as possible. To the extent necessary, this Agreement shall remain in force until the non-compliance has been rectified. Following rectification by the Maintainer of such non-compliance, the Purchaser shall be entitled to carry out a further inspection of the formerly non-compliant Handback Asset in order to verify that such Handback Asset meets the Handback Condition. If the Maintainer fails to carry out such rectification within a reasonable period of time and/or such Handback Asset fails to meet the Handback Condition following such further inspection by the Purchaser, the Purchaser shall be entitled to exercise the option set out in paragraph 3.1.2 below; or
 - 3.1.2 redeliver the non-compliant Handback Asset to the Purchaser on the Handback Date and indemnify the Purchaser on terms satisfactory to the Purchaser in its reasonable discretion against any Loss incurred in rectifying such non-

compliance with the Handback Condition. The indemnity in this paragraph 3.1.2 shall survive the expiry, cessation or earlier termination of this Agreement.

4. HANDBACK CONDITION

4.1 Units

- 4.1.1 Each Unit shall be returned Fault Free and free from Defects and in a condition consistent with its position in the Maintenance Plan and any overhaul programme. Each Unit shall be returned in the same formation as it was at the date of its Acceptance (unless the formation has been changed pursuant to a Variation) and, in each case, with all Parts fitted unless otherwise agreed.
- 4.1.2 Each Unit shall have the same design configuration as it had at the date of its Acceptance, save for any permitted Variations which are not required pursuant to the Variation Procedure to have been removed under the terms of this Agreement.
- 4.1.3 Each Unit shall be clean and shall reflect its position in the cleaning cycle and each Unit shall be Fit for Service.
- 4.1.4 The Units shall be free and clear of any Security Interest created by the Maintainer, any member of the Maintainer Group or any Subcontractor.

4.2 TSA Equipment and Moveable Assets

- 4.2.1 Subject to paragraph 4.2.5 and 4.2.6, the TSA Equipment and Moveable Assets shall be (as applicable) Fault Free and free from Defects and in a condition consistent with its position in the Maintenance Plan and any overhaul programme. The Spares shall be capable of being fitted to a Unit such that the Unit shall be Fit for Service.
- 4.2.2 The Maintainer shall provide a statement with the TSA Equipment listing such TSA Equipment, crossed referred to the identification (serial number etc.) carried by each. Any relevant service and overhaul records shall also be provided by the Maintainer.
- 4.2.3 The TSA Equipment and Moveable Assets shall be free and clear of any Security Interest created by the Maintainer, any member of the Maintainer Group or any Subcontractor.
- 4.2.4 All Purchaser Owned Spares and Special Tools shall have the same design configuration as they had at the date of its Acceptance, save for any permitted Variations which are not required pursuant to the Variation Procedure to have been removed under the terms of this Agreement.
- 4.2.5 In the event of handback on expiry or earlier termination of this Agreement where there has been a prior Cessation, the Spares shall have no Faults other than Operator Faults and Faults caused by Exonerating Events and shall be free from Defects and, where relevant, in a condition consistent with their respective position in the Maintenance Plan and any overhaul programme;
- 4.2.6 To the extent that the repair and maintenance of any of the TSA Equipment or Moveable Assets is not a Maintenance Obligation pursuant to Schedule 9, such

TSA Equipment and Moveable Assets shall be excluded from the Maintainer's obligations pursuant to paragraph 3.1 of this Schedule 13.

4.3 Service Records and Manuals

The Service Records and Manuals shall be complete and up-to-date and otherwise comply with the terms of this Agreement at the Handback Date.

5. HANDBACK PLAN

5.1 The Maintainer shall prepare a detailed plan (in a form reasonably satisfactory to the Purchaser):

5.1.1 at least 12 months before expiry of the Agreement, which describes the process and the timeframes by which the Maintainer will transfer responsibility for the provision of some or all of the Services to the Purchaser or its nominee; and

5.1.2 as soon as practicable following a Cessation Notice, which describes the transition to the provision of Services in accordance with Schedule 11 (Technical Support and Spare Supply),

(the "**Handback Plan**").

5.2 The Maintainer shall provide a copy of the Handback Plan to the Purchaser who shall be entitled to provide comments on it to the Maintainer. The Maintainer shall incorporate all reasonable comments of the Purchaser.

6. DISPUTES

If the Parties cannot agree on whether the Handback Assets meet the Handback Condition, either party may refer the matter to be determined in accordance with Schedule 15A (Fast Track Expert Determination).

Schedule 14

Fault Notification Procedure

SCHEDULE 15

Dispute Resolution Procedure

Part A – Escalation Procedure

1. ESCALATION PROCEDURE

- 1.1 This Part A of Schedule 15 is the Escalation Procedure.
- 1.2 In order to initiate the Escalation Procedure, either Party shall notify the other Party by serving a written notice to that effect (the "**Escalation Notice**").
- 1.3 The Escalation Notice shall:
 - 1.3.1 contain a concise statement of the Dispute in respect of which the Escalation Procedure is being initiated and a statement of the remedy or remedies which are sought;
 - 1.3.2 enclose copies of all correspondence and documentation relevant to the Dispute raised in paragraph 1.3.1; and
 - 1.3.3 state that it is a notice given under this Escalation Procedure.
- 1.4 A management representative of each Party, in each case of appropriate seniority and experience and with appropriate decision-making authority, shall meet within 5 Working Days after the receipt of the Escalation Notice to discuss the matters set out in the Escalation Notice and attempt to resolve the Dispute described therein. If the management representatives of the Parties are unable to resolve the Dispute described in the Escalation Notice within 10 Working Days, either Party may serve an Expert Notice in accordance with the provisions of paragraphs 2.2 and 2.3 below.

Part B – Expert Procedure

2. REFERRAL TO AN EXPERT

- 2.1 This Part B of Schedule 15 is the Expert Procedure.
- 2.2 In order to initiate the Expert Procedure, either Party shall notify the other Party by serving a written notice to that effect (the "**Expert Notice**").
- 2.3 The Expert Notice shall:

- 2.3.1 contain a concise statement of the Dispute in respect of which the Expert Procedure is being initiated and a statement of the remedy or remedies which are sought;
 - 2.3.2 enclose copies of all correspondence and documentation relevant to the matter raised in paragraph 2.3.1; and
 - 2.3.3 state that it is a notice given under this Expert Procedure.
- 2.4 The Parties agree that a Dispute in respect of which the Expert Procedure is being initiated shall be referred to the determination of a single natural person as expert ("**Expert**").

Qualifications of the Expert

- 2.5 The Expert shall be of not less than ten years qualification having experience in matters similar to the matters in respect of which the Expert Procedure is being initiated. The Expert shall be a reputable person in good standing.

Appointment of Expert

- 2.6 The Parties shall attempt to appoint the Expert by discussion and agreement. If the Parties do not agree on the identity of such expert within 10 Working Days of service of the Expert Notice or have not appointed such Expert within 20 Working Days of service of the Expert Notice, then the Expert shall be appointed by or on behalf of the President for the time being of the Law Society of England and Wales on such terms as such person shall direct, provided that those terms are consistent with paragraphs 2.9 and 2.10 of this Schedule 15. Any fees and/or expenses incurred by the President for the time being of the Law Society of England and Wales in appointing an Expert shall be shared equally between the Parties.
- 2.7 The Dispute in respect of which the Expert Procedure is being initiated shall be deemed to be referred to the Expert upon his appointment.
- 2.8 In the event that the Expert refuses and/or is unable to act further in connection with the Dispute referred to him, or does not provide his determination to the Parties within 42 days of his appointment, the Parties shall co-operate to appoint a replacement Expert in accordance with the provisions of paragraphs 2.6 to 2.8. Such replacement Expert shall commence proceedings afresh without reference to any documents, submissions or information provided to the previous Expert.

Procedure for Determination

- 2.9 Within 5 Working Days of his appointment, the Expert will establish the procedural rules to be applied to the determination which must accord with the following:
- 2.9.1 Each Party will be entitled to make submissions to the Expert and supply the Expert with relevant data and information.
 - 2.9.2 Communications from a Party to the Expert or from the Expert to a Party shall be copied to the other Party at the same time and by the same method.

- 2.9.3 The Expert will keep all information and documents provided to him by the Parties confidential save as otherwise required by law.
- 2.9.4 The Expert will be entitled to make site visits or inspections as he considers is necessary or appropriate and to request samples or tests as he shall think fit.
- 2.9.5 The Expert shall be entitled to retain the services of other persons to provide legal or expert advice in relation to any matter which he shall think fit.
- 2.9.6 If a Party sends a document to the Expert but does not provide a copy to the other Party, the Expert shall send such document to the other Party and shall allow it a reasonable opportunity to comment on the same.
- 2.9.7 The Expert shall not take into consideration any document or statement which has not been made available to the other Party for comment unless the Expert has sent the document to the other Party pursuant to paragraph 2.10.6 and given it a reasonable opportunity to comment on the same.
- 2.9.8 The Expert shall be entitled to use his own knowledge and experience in arriving at his determination.
- 2.9.9 Any failure by a Party to participate in the proceedings and/or to respond to any request or direction by the Expert shall not invalidate the Expert's determination.
- 2.9.10 The Expert must give his determination in writing with reasons within 42 days of his appointment.
- 2.9.11 The Expert shall be entitled by notice in writing to both Parties:
- (A) to correct any matter in his determination if both Parties agree; and/or
 - (B) to correct any minor slip or manifest error in his determination within 3 Working Days of communicating his determination to the Parties.
- 2.10 The Expert shall determine the matters referred to him acting impartially and in good faith. The Expert shall have the power to open up, review and revise any certificate, decision, direction, instruction, notice, requirement or valuation made under the Agreement, except where the Agreement expressly prohibits this.
- 2.11 The Expert's determination shall determine the Dispute referred to him, and shall be binding on the Parties (save in the case of fraud) unless or until the Parties agree otherwise, or the Dispute is finally determined by the High Court of England & Wales as provided by paragraph 3. The Parties shall act to give immediate effect to the Expert's determination.
- 2.12 The Expert shall not be liable for anything done or omitted in the discharge or purported discharge of his functions as Expert unless the act or omission is in bad faith, and any

employee or agent of the Expert (including any expert or legal advisor) shall be similarly protected from liability.

- 2.13 The Parties agree that unless a court of competent jurisdiction so orders, the Expert may not be called as a witness in any subsequent proceedings concerning the matters referred to him
- 2.14 The Expert shall not be entitled to act as an adviser to either Party in any subsequent proceedings arising out of or in connection with this Agreement without the other Party's prior written consent.
- 2.15 The Expert is not an arbitrator within the provisions of the Arbitration Act 1996 and the law relating to the arbitration shall not apply to the Expert, the determination or the procedure by which the Expert reaches the determination.
- 2.16 The fees and expenses of the Expert (including the fees and expenses arising from any legal or expert advice taken by the Expert) will be shared equally between the Parties unless the Expert determines otherwise in his determination. If one Party shall have paid all of the Expert's fees and expenses then that Party shall be entitled to recover from the other Party the proportion of the Expert's fees and expenses that such other Party would otherwise have had to pay under this paragraph 2.16 as a debt.
- 2.17 The Parties shall each bear their own legal, advisory and other costs of any reference to the Expert.
- 2.19 Either Party may apply to any appropriate court for enforcement of an Expert's determination.

Part C – Litigation in the High Court of England & Wales

3. REFERRAL TO THE HIGH COURT OF ENGLAND & WALES

3.1 If:

3.1.1 at any time the Parties agree to proceed to litigation of any Dispute; or

3.1.2 49 calendar days have elapsed after the appointment of an Expert in respect of any Dispute notwithstanding any determination of the Expert pursuant to paragraph 2;

then either Party may issue and prosecute proceedings in relation to any such Dispute in the High Court of England & Wales (the "Court") which shall have exclusive jurisdiction finally to determine the Dispute (provided that nothing in this Schedule 15 shall prevent either Party from enforcing a judgment of the Court in any other jurisdiction).

4. SAVING FOR INJUNCTIVE RELIEF

- 4.1 Nothing in this Schedule 15 shall remove or diminish or in any way affect any right of either Party to seek injunctive or interim relief from any court of competent jurisdiction in relation to any matter.

5. POWERS OF THE HIGH COURT OF ENGLAND & WALES

- 5.1 The Court shall have the power to open up, review and revise any certificate, decision, direction, instruction, notice, requirement or valuation made under the Agreement, including any determination of the Expert.

SCHEDULE 15A

Fast Track Dispute Resolution Procedure

Part A – Fast Track Dispute Escalation Procedure

1. ESCALATION PROCEDURE

- 1.1 This Part A of Schedule 15A is the Fast Track Dispute Escalation Procedure.
- 1.2 In order to initiate the Fast Track Dispute Escalation Procedure, either Party shall notify the other Party by serving a written notice to that effect (the "**Fast Track Dispute Escalation Notice**").
- 1.3 The Fast Track Dispute Escalation Notice shall:
- 1.3.1 contain a concise statement of the Dispute in respect of which the Fast Track Dispute Escalation Procedure is being initiated and a statement of the remedy or remedies which are sought;
 - 1.3.2 enclose copies of all correspondence and documentation relevant to the Dispute raised in paragraph 1.3.1; and
 - 1.3.3 state that it is a notice given under this Fast Track Dispute Escalation Procedure.
- 1.4 A management representative of each Party, in each case of appropriate seniority and experience and with appropriate decision-making authority, shall meet within 5 Working Days after the receipt of the Fast Track Dispute Escalation Notice to discuss the matters set out in the Fast Track Dispute Escalation Notice and attempt to resolve the Dispute described therein. If the management representatives of the Parties are unable to resolve the Dispute described in the Fast Track Dispute Escalation Notice within 10 Working Days, either Party may serve an Fast Track Dispute Expert Notice in accordance with the provisions of paragraphs 2.2 and 2.3 below.

Part B – Fast Track Dispute Expert Procedure

2. REFERRAL TO AN FTD EXPERT

- 2.1 This Part B of Schedule 15A is the Fast Track Dispute Expert Procedure.
- 2.2 In order to initiate the Fast Track Dispute Expert Procedure, either Party shall notify the other Party by serving a written notice to that effect (the "**Fast Track Dispute Expert Notice**").

- 2.3 The Fast Track Dispute Expert Notice shall:
- 2.3.1 contain a concise statement of the Dispute in respect of which the Fast Track Dispute Expert Procedure is being initiated and a statement of the remedy or remedies which are sought;
 - 2.3.2 enclose copies of all correspondence and documentation relevant to the matter raised in paragraph 2.3.1; and
 - 2.3.3 state that it is a notice given under this Fast Track Dispute Expert Procedure.
- 2.4 The Parties agree that an Dispute in respect of which the Fast Track Dispute Expert Procedure is being initiated shall be referred to the determination of a single natural person as expert ("**FTD Expert**").

Qualifications of the FTD Expert

- 2.5 The FTD Expert shall be of not less than ten years qualification having experience in matters similar to the matters in respect of which the Fast Track Dispute Expert Procedure is being initiated. The FTD Expert shall be a reputable person in good standing.

Appointment of FTD Expert

- 2.6 The Parties shall attempt to appoint the FTD Expert by discussion and agreement. If the Parties do not agree on the identity of such FTD Expert within 10 Working Days of service of the Fast Track Dispute Expert Notice or have not appointed such FTD Expert within 20 Working Days of service of the Fast Track Dispute Expert Notice, then the FTD Expert shall be appointed by or on behalf of the President for the time being of the Law Society of England and Wales on such terms as such person shall direct, provided that those terms are consistent with paragraphs 2.9 and 2.10 of this Schedule 15A. Any fees and/or expenses incurred by the President for the time being of the Law Society of England and Wales in appointing an FTD Expert shall be shared equally between the Parties.
- 2.7 The Dispute in respect of which the Fast Track Dispute Expert Procedure is being initiated shall be deemed to be referred to the FTD Expert upon his appointment.
- 2.8 In the event that the FTD Expert refuses and/or is unable to act further in connection with the Dispute referred to him, or does not provide his determination to the Parties within 42 days of his appointment, the Parties shall co-operate to appoint a replacement FTD Expert in accordance with the provisions of paragraphs 2.6 to 2.8. Such replacement FTD Expert shall commence proceedings afresh without reference to any documents, submissions or information provided to the previous FTD Expert.

Procedure for Determination

- 2.9 Within 5 Working Days of his appointment, the FTD Expert will establish the procedural rules to be applied to the determination which must accord with the following:

- 2.9.1 Each Party will be entitled to make submissions to the FTD Expert and supply the FTD Expert with relevant data and information.
- 2.9.2 Communications from a Party to the FTD Expert or from the FTD Expert to a Party shall be copied to the other Party at the same time and by the same method.
- 2.9.3 The FTD Expert will keep all information and documents provided to him by the Parties confidential save as otherwise required by law.
- 2.9.4 The FTD Expert will be entitled to make site visits or inspections as he considers is necessary or appropriate and to request samples or tests as he shall think fit.
- 2.9.5 The FTD Expert shall be entitled to retain the services of other persons to provide legal or expert advice in relation to any matter which he shall think fit.
- 2.9.6 If a Party sends a document to the FTD Expert but does not provide a copy to the other Party, the FTD Expert shall send such document to the other Party and shall allow it a reasonable opportunity to comment on the same.
- 2.9.7 The FTD Expert shall not take into consideration any document or statement which has not been made available to the other Party for comment unless the FTD Expert has sent the document to the other Party pursuant to paragraph 2.9.6 and given it a reasonable opportunity to comment on the same.
- 2.9.8 The FTD Expert shall be entitled to use his own knowledge and experience in arriving at his determination.
- 2.9.9 Any failure by a Party to participate in the proceedings and/or to respond to any request or direction by the FTD Expert shall not invalidate the FTD Expert's determination.
- 2.9.10 The FTD Expert must give his determination in writing with reasons within 42 days of his appointment.
- 2.9.11 The FTD Expert shall be entitled by notice in writing to both Parties:
- (A) to correct any matter in his determination if both Parties agree; and/or
 - (B) to correct any minor slip or manifest error in his determination within 3 Working Days of communicating his determination to the Parties.
- 2.10 The FTD Expert shall determine the matters referred to him acting impartially and in good faith. The FTD Expert shall have the power to open up, review and revise any certificate, decision, direction, instruction, notice, requirement or valuation made under the Agreement, except where the Agreement expressly prohibits this.

- 2.11 The FTD Expert's determination shall determine the Dispute referred to him, and shall be final and binding on the Parties (save in the case of fraud) unless or until the Parties agree otherwise. The Parties shall act to give immediate effect to the FTD Expert's determination.
- 2.12 The FTD Expert shall not be liable for anything done or omitted in the discharge or purported discharge of his functions as FTD Expert unless the act or omission is in bad faith, and any employee or agent of the FTD Expert (including any expert or legal advisor) shall be similarly protected from liability.
- 2.13 The FTD Expert shall not be entitled to act as an adviser to either Party in any subsequent proceedings arising out of or in connection with this Agreement without the other Party's prior written consent.
- 2.14 The FTD Expert is not an arbitrator within the provisions of the Arbitration Act 1996 and the law relating to the arbitration shall not apply to the FTD Expert, the determination or the procedure by which the FTD Expert reaches the determination.
- 2.15 The fees and expenses of the FTD Expert (including the fees and expenses arising from any legal or expert advice taken by the FTD Expert) will be shared equally between the Parties unless the FTD Expert determines otherwise in his determination. If one Party shall have paid all of the FTD Expert's fees and expenses then that Party shall be entitled to recover from the other Party the proportion of the FTD Expert's fees and expenses that such other Party would otherwise have had to pay under this paragraph 2.15 as a debt.
- 2.16 The Parties shall each bear their own legal, advisory and other costs of any reference to the FTD Expert.
- 2.18 Either Party may apply to any appropriate court for enforcement of an FTD Expert's determination.

3. SAVING FOR INJUNCTIVE RELIEF

- 3.1 Nothing in this Schedule 15A shall remove or diminish or in any way affect any right of either Party to seek injunctive or interim relief from any court of competent jurisdiction in relation to any matter.

Schedule 16

**Preparation Presentation and Return
Procedure**



Schedule 17

In-service Support Procedure



Title:

Project Quality, Health, Safety and Environmental Management Plan

TfL East London line, London Underground Services

Purpose:


The purpose of this document is to give a Health, Safety and Environmental related overview to the particular project and references for detailed information. The detailed information will not be handed out but may be accessed on request.

Scope:


All functions and sites involved in the TfL – East London Line project – TfL/01438/014 within the division.

Responsible unit: Services	Process owner: HSE	Document type: Plan	Confidentiality status : Internal	Document state : Draft
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Prepared :

_____ 
Author


Verified :

_____ 
Sponsor

Approved :

_____ 
Quality / HSE / Six Sigma

Released :

_____ 
process owner

Name / Function

Signature

Date

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Organization and BT process structure prefix :

Doc D-number :

Effective date:
2006- 07 -24

Revision :
00

Original Language :
en

Transport for London Acceptance.

Translation approved by:

Translation languages:

-
Name / Function

-
Name / Function

-

Doc-ID: GRP-40-10-05-000003 rev01

Revision log

Revision	Date	Description of changes
00	2006-07-24	1 st Issue



Appendix A

Depot Business Processes

Title:			
<h2 style="margin: 0;">QHSE & Assurance Plan – ELL/NLR</h2>			
Purpose: This document defines the process which Bombardier Services will adopt to ensure that project QHSE requirements are adequately captured and managed.			
Scope: The document applies to the ELL/NLR contract			
Responsible unit:	Process owner: PM	Document type: BOMBARDIER Plan	Confidentiality status : Ext Document state : Issue A
Prepared :			
 author		2006-06-05	
Verified :			
 sponsor		2006-06-05	
Approved :			
 BOMBARDIER		2006-06-05	
Released :			
 process owner		2006-06-05	
Name / Function		Signature	Date
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		Effective date: 2006-06-05	Revision : A
Translated by:		Translation approved by:	
Name / Function		Name / Function	

Doc ID-number: 000003 rev04

Schedule 19

Maintenance Implementation Plan

Appendix 1

SCHEDULE 20
Agreed Form Documents

Part A

FORM OF CERTIFICATE OF COMPLIANCE

[to be issued to Transport Trading Limited on Bombardier Transportation UK Limited's headed notepaper]

Train Services Agreement dated [] and made between Transport Trading Limited and Bombardier Transportation UK Limited (the "Train Services Agreement").

1. Words and expressions defined in the Train Services Agreement shall have the same meanings when used in this Certificate of Compliance and the provisions of the Train Services Agreement (including Clause 56 "Governing Law and Jurisdiction") shall, as applicable, apply to this Certificate of Compliance.
2. This certificate constitutes a Certificate of Compliance under the Train Services Agreement.
3. I, as a director of Bombardier Transportation UK Limited, hereby declare, confirm and warrant that:
 - 3.1 no Maintainer Event of Default has occurred or is continuing; and
 - 3.2 there have been and are no current or likely circumstances, occurrence(s) or event(s) which may give rise to a Maintainer Event of Default.

Signed for and on behalf of Bombardier Transportation UK Limited

Signature

Name.....

Position.....

Date.....

Part B

FORM OF CERTIFICATE OF COMMENCEMENT

[to be issued to Bombardier Transportation UK Limited on Transport Trading Limited's headed notepaper]

Train Services Agreement dated [] and made between Transport Trading Limited and Bombardier Transportation UK (the "Train Services Agreement").

1. Words and expressions defined in the Train Services Agreement shall have the same meanings when used in this Certificate of Commencement and the provisions of the Train Services Agreement (including Clause 56 "Governing Law and Jurisdiction") shall, as applicable, apply to this Certificate of Commencement.
2. This certificate constitutes a Certificate of Commencement under the Train Services Agreement.
3. We, Transport Trading Limited, hereby:
 - 3.1 acknowledge and agree that the conditions precedent set out in Clause 2.1 of the Train Services Agreement have been satisfied (or agree to their waiver or deferral, as applicable); and
 - 3.2 notify you Bombardier Transportation UK Limited that the Commencement Date shall be *[insert date]*.

Signed for and on behalf of Transport Trading Limited

Signature.....

Name.....

Position.....

Date.....

- (d) the Guaranteed Amount will decrease to an amount equal to [REDACTED] of the Guaranteed Amount on the occasion that a certificate in the form set out in Appendix 3 is delivered to us by you.
4. This Bonding Guarantee shall be valid for Demands received in accordance with this Bonding Guarantee until 30 November 2023 (the "**Expiry Date**") whereupon you shall return this Bonding Guarantee to the Maintainer. After the Expiry Date, our undertaking will become automatically null and void if no claim has been received by us on or before that date, whether or not this Bonding Guarantee is returned to us.
5. We shall make payment to you immediately upon service of your Demand:
- (a) without regard to any information or instructions which we may then have received or may thereafter receive from any other source and we shall not be entitled to inquire into or require proof of the facts stated in the Demand which, as between ourselves and you, shall be conclusive; and
- (b) notwithstanding any dispute between the Maintainer and you; it being the intention of the parties hereto that the event upon which payment must be made hereunder is the service of your Demand without any rights on our part to raise any objections, irrespective of the validity of the effectiveness of the Train Services Agreement and the obligations arising thereunder and irrespective of the underlying facts or their significance under the Train Services Agreement.
6. All sums payable under this Bonding Guarantee shall be paid in pounds sterling to such bank account as may be specified in your Demand in immediately available funds, free of any restriction or condition and free and clear of and without any deduction or withholding whether for or on account of tax, by way of set-off, or otherwise, except to the extent required by law. If we are required by law to make any deduction or withholding, the amount payable by us hereunder shall be increased to such amount as shall ensure that you receive a net amount equal to the amount which would have been received in absence of such deduction or withholding.
7. This Bonding Guarantee shall not be affected by:
- (i) any change in the constitution of the Maintainer and/or you and/or ourselves;
- (ii) any assignment or transfer of the Train Services Agreement to any member of the Maintainer's Group in accordance with Clause 43 of the Train Services Agreement;
- (iii) the granting of any time by you to the Maintainer and/or any forbearance or indulgence on any account shown by you to the Maintainer; and/or
- (iv) any change in the terms and conditions of the Train Services Agreement; and/or
- (v) any other circumstances which might operate to release a guarantor at law or in equity.
8. This Bonding Guarantee may be assigned or charged to any party that you are entitled to assign the Train Services Agreement in accordance with Clause 44 of the Train Services Agreement.

9. This Bonding Guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 458 (the "**Rules**") save that Article 20 of the Rules shall be varied to enable the Purchaser to claim under this Bonding Guarantee in all circumstances set out in proviso (b) to paragraph (3) above.
10. Words and phrases defined in the Train Services Agreement shall have the same meanings in this Bonding Guarantee unless inconsistent with the context.
11. This Bonding Guarantee shall be governed and construed in accordance with the laws of England and Wales and the English Courts shall have exclusive jurisdiction in relation to any claim, dispute or difference concerning this Bonding Guarantee and any matter arising from it.

Executed as a Deed this ● day of ● ●.

APPENDIX 3

Certificate of Decrease in Guaranteed Amount following service of Cessation Notice

To: [Bonding Guarantor]

Date: []

Bonding Guarantee No. [] issued in favour of Transport Trading Limited (the "Bonding Guarantee")

Dear Sirs,

We refer to the Bonding Guarantee. Terms defined in the Bonding Guarantee have the same meaning in this Certificate.

We notify you that the Guaranteed Amount will be reduced from £[] to £[*this is the amount equal to ■■■■ of the Guaranteed Amount where there is a partial cessation of the Train Services Agreement in accordance with paragraph 1.5.2 of Part 2 of Schedule 5 of the Train Services Agreement*] with immediate effect.

Yours faithfully

Authorised Signatory

PART K

FORM OF LOSS OF QUALIFYING STATUS NOTICE

[To be issued to Bombardier Transportation UK Limited on Transport Trading Limited's headed notepaper]

Train Services Agreement dated [] and made between Transport Trading Limited and Bombardier Transportation UK Limited (the "Train Services Agreement").

1. Words and expressions defined in the Train Services Agreement shall have the same meanings when used in this Loss of Qualifying Status Notice and the provisions of the Train Services Agreement (including Clause 57 "Governing Law and Jurisdiction") shall, as applicable, apply to this Loss of Qualifying Status Notice.
2. This notice constitutes a Loss of Qualifying Status Notice under the Train Services Agreement.
3. We, Transport Trading Limited, hereby advise you that [*name of bank/financial institution*] is no longer a Qualifying Issuer and remind you, Bombardier Transportation UK Limited, of your obligations pursuant to paragraph 2 of Part 2 of Schedule 5 of the Train Services Agreement.

Signed for and on behalf of Transport Trading Limited

Signature

Name.....

Position.....

Date

SCHEDULE 21

Routes

Notes

CSD = Carriage Servicing Depot

ECS = Empty Coaching Stock

Table 1: Core ELL Infrastructure

	From	To	Eng. Ref.	Line	Lines	Electrification	Notes 1	Notes 2
	Canal Junction.	New Cross.	ELL2			DC		
	Dalston Junction Station	New Cross Gate Down Junction.	ELL1			DC		
	New Cross Gate Up Junction.	Canal Junction.	ELL1			DC		
	Dalston Junction Station	A connection with the North London Line near Canonbury.	To be advised			To be advised		Route not built at August 2006
<i>Sidings, depots, platforms and loops:</i>								
	New Cross Gate CSD		ELL4			DC	(ELR Carriage Servicing Depot) ECS only	

Table 2 : ELR Network

	From	To	Eng. Ref.	Line	Lines	Electrification	Notes 1	Notes 2
	Balham Junction.	Pouparts Junction.	VTB1		Fast	DC		
	Bromley Down Junction.	Norwood Junction.	BJN2			DC		
	Crystal Palace Tunnel Junction.	Sydenham Up Junction.	SCP			DC		
	Factory Junction.	Longhedge Junction.	FLL1			DC		
	Factory Junction.	Battersea Park platform 2	ATL			DC		
	Falcon Junction.	Pouparts Junction.	VTB1		Slow	DC		
	Gloucester Road Junction.	Selhurst Junction.	WCS			DC		
	Lavender Hill Junction.	Ludgate GW Junction.	FLL3			DC		
	Longhedge Junction.	Pouparts Junction.	BSP2			DC		
	Longhedge Junction.	Lavender Hill Junction.	FLL2			DC		
	New Cross Gate 2½ m.p.	Norwood Junction. (West Croydon Junction.)	LBW		Fast/Slow	DC	Access to No.1 Carriage Road	
	Norwood Junction.	Bromley Up Junction.	BJN1			DC		
	Norwood Junction.	Selhurst Junction.	NYD			DC	ECS only	
	Norwood Junction. (West Croydon Junction.)	West Croydon Station	NFE			DC		
	West Croydon Station	West Croydon Reversing Siding	NFE			DC		West Croydon Reversing Siding not yet built at August 2006
	Peckham Rye Junction.	Shepherds Lane Junction.	ATL		Atlantics	DC		
	Shepherds Lane Junction.	Factory Junction.	ATL		Atlantics	DC		

	From	To	Eng. Ref.	Line	Lines	Electrification	Notes 1	Notes 2
	Sydenham Down Junction.	Crystal Palace Tunnel Junction.	SCP			DC		
	Tulse Hill North Junction.	Old Kent Road Junction.	BTH1			DC		
	West Croydon Station	Norwood Fork Junction	NFE			DC		
	West Croydon Reversing Siding	West Croydon Station	NFE			DC		West Croydon Reversing Siding not yet built at August 2006
<i>Sidings, depots, platforms and loops:</i>								
	No.1 Carriage Road (New Cross Gate)		LBW			DC	ECS only	
	West Croydon platform 1		NFE			DC		

Table 3 : North London Railway

	From	To	Eng. Ref.	Line	Lines	Electrification	Notes 1	Notes 2
	Acton Central	Acton Wells Junction.	BOK5			AC		
	Acton Wells Junction.	Willesden High Level Junction.	BOK4			AC		
	Balham Junction.	Falcon Junction.	VTB1		Slow	DC		
	Bromley Jns.	Balham Junction.	BBJ			DC		
	Camden Junction.	Watford Junction.	CWJ		DC Lines	DC	4 th rail Kilburn - Harrow	
	Camden Road East Junction.	Dalston Western Junction.	BOK1		No.1 Lines	AC		
	Camden Road East Junction.	Dalston Western Junction.	BOK1		No.2 Lines	DC		
	Camden Road Junction.	Camden Road East Junction.	BOK1			AC/DC		
	Camden Road Junction.	Change of ELR (5m 23ch)	CRC1			AC/DC		
	Change of ELR (5m 23ch)	Primrose Hill Junction.	CRC2			AC/DC		
	Channelsea North Junction.	High Meads Junction.	CHM			AC	ECS only	
	Channelsea South Junction.	Stratford Central Junction.	CST			AC		
	Clapham Junction.	Richmond station platform 3	RDG1			DC	ECS only	
	Clapham Junction. platform 2	Latchmere No. 2 Junction.	CJL		Fast/Slow	DC		
	Dalston Western Junction.	Victoria Park Junction.	DWW1			AC/DC		
	Euston	Camden Junction.	LEC1		DC lines	AC/DC	Euston platforms 9/10	
	Euston	Watford Junction.	LEC1		Fast/Slow	AC	ECS only	
	Factory Junction.	Herne Hill South Junction.	VIR		Chathams	DC	ECS only	
	Falcon Junction.	North Pole Junction.	WLL			DC		
	Gunnersbury Junction.	South Acton Junction.	SAR1			DC		

	From	To	Eng. Ref.	Line	Lines	Electrification	Notes 1	Notes 2
	Harlesden Junction.	Sudbury Junction.	WTS		U&D Goods 1/2	AC	ECS only	
	Herne Hill South Junction.	Tulse Hill North Junction.	HHT			DC	ECS only	
	High Meads Junction.	Temple Mills East Junction.	LLS2			AC	ECS only	
	Kensal Green HL Junction.	Willesden Junction Low Level	KGW		New Lines	AC/DC	AC/DC changeover midway	
	Kensal Green HL Junction.	Harlesden Junction.	KGC		City Lines	AC	ECS only	
	Kensal Green Junction.	Camden Road Junction.	BOK2			AC		
	Lea Junction.	High Meads Junction.	LLS1			AC	ECS only	
	Leigham Junction.	Tulse Hill South Junction.	LTH			DC	ECS only	
	Longhedge Junction.	Latchmere No. 1 Junction.	CKL			DC		
	Mitre Bridge Junction.	Willesden High Level Junction.	WMB			AC		
	Mitre Bridge Junction.	West London Junction.	WLL			AC	ECS only	
	North Pole Junction.	Mitre Bridge Junction.	WLL			AC		
	Primrose Hill Junction.	Camden Junction.	CRC2		DC Electric	DC		
	Primrose Hill Junction.	Camden Junction.	CRC2		Slow Line	AC	ECS only	
	Richmond station	Gunnersbury Junction.	SAR2			DC	4 th rail	
	Selhurst Junction.	Balham Junction.	VTB1		Fast/Slow	DC		
	South Acton Junction.	Acton Central	BOK5			DC		
	Stratford Central Junction.	Temple Mills East Junction. 5 m.p.	SDC			AC	Access to Lea Interchange CSD. Section from Stratford Central Jn to Stratford platforms 11&12 and	

	From	To	Eng. Ref.	Line	Lines	Electrification	Notes 1	Notes 2
							(new) platforms 13&14 is for passenger service. Remainder to Lea Interchange CSD is ECS only.	
	Stratford Central Junction.	Ilford Depot London End Junction.	LTN1		Main/Electric	AC	ECS only	
	Streatham Common Junction.	Streatham Junction.	SSC			DC	ECS only	
	Streatham Junction.	Tulse Hill North Junction.	BTH1			DC	ECS only	
	Victoria Park Junction.	Channelsea South Junction.	DWW2			AC/DC		
	West London Junction.	Sudbury Junction.	LLG		Relief Lines	AC	ECS only	
	West Norwood Junction.	Tulse Hill South Junction.	WTH			DC	ECS only	
	Willesden High Level Junction.	Kensal Green Junction.	BOK3			AC		
<i>Sidings, depots, platforms and loops:</i>								
	Camden Carriage Sidings		LEC1			AC	ECS only	
	Harrow & Wealdstone Centre Siding		CWJ			DC 4th rail	ECS only	
	Ilford EMU Depot		ICS			AC	ECS only	
	Kensal Green Reversing Siding		BOK2			AC	ECS only	
	Kilburn Up and Down Goods Loop		LEC1			AC	ECS only	
	Lea Interchange CSD		SDC			AC	ECS only	Lea Interchange CSD not yet built at August 2006

	From	To	Eng. Ref.	Line	Lines	Electrification	Notes 1	Notes 2
	Stratford platforms 13 and 14 (new NLL platforms)		SDC			AC		Stratford platforms 13 &14 not yet built at August 2006
	Watford Tip Sidings		LEC1			DC	ECS only	
	Watford Yard		WSA			AC	ECS only	
	Willesden TMD		LEC1			AC/DC	ECS only	
	Willesden TMD Loop		LEC1			AC	ECS only	