

**12 April 2016**

**RAIL FOR LONDON LIMITED**

**and**

**ARRIVA RAIL LONDON LIMITED**

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**LONDON OVERGROUND  
CONCESSION AGREEMENT**

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**Freshfields Bruckhaus Deringer**

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**THIS AGREEMENT** is dated 12 April 2016

**BETWEEN**

- (1) **RAIL FOR LONDON LIMITED**, whose registered office is at Windsor House, 42-50 Victoria Street, London, SW1H 0TL and registered number is 05965930 (*RfL*); and
- (2) **ARRIVA RAIL LONDON LIMITED**, whose registered office is at 1 Admiral Way, Doxford International Business Park, Sunderland, Tyne & Wear, SR3 3XP and registered number is 04165861 (the *Operator*).

**WHEREAS**

- (A) RfL wishes to appoint an operator, and the Operator wishes to be appointed, to provide railway passenger services on the London Overground Network and RfL expects its operator and the Operator is willing, on the terms of this Agreement, actively to seek, in all reasonable business ways, greatly improved performance over the Concession Term from its employees, its Train Fleet and other assets, and from the Infrastructure Managers and its other suppliers and the resources that are available to it.
- (B) The following provisions of this Agreement are intended to reflect and give effect to the matters referred to in Recital (A).

**1. INTERPRETATION**

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

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

- (a) words and expressions defined in Part I of the Act have the same meanings when used therein provided that, except to the extent expressly stated, 'railway' shall not have the wider meaning attributed to it by Section 81(2) of the Act;
- (b) words and expressions defined in the Interpretation Act 1978 have the same meanings when used in this Agreement;
- (c) the words 'include', 'including' and 'in particular' are to be construed without limitation;
- (d) references to any person include its successors, transferees or assignees;
- (e) the words 'subsidiary', 'wholly owned subsidiary' and 'parent undertaking' have the same meaning in this Agreement as in Sections 1159 and 1162 of the Companies Act 2006;
- (f) references to documents 'in the agreed terms' are references to documents initialled by or on behalf of RfL and the Operator;
- (g) references in any of the agreements comprising this Agreement to Recitals, clauses, Schedules, Parts, paragraphs and Appendices are to Recitals, clauses, Schedules,

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

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



- (f) references to stations at which any train calls include stations at which such train commences or terminates its journey;
- (s) references to ‘railway passenger services’ are to be construed subject to Section 40 of the Railways Act 2005;
- (t) references to the provision of railway passenger services include the organisation of the relevant train movements and making the necessary arrangements with the relevant Infrastructure Manager or any other relevant Facility Owner;
- (u) references in lower case letters to terms defined in clause 2 (*Definitions*) shall be construed, where relevant, as being references to the terms defined as such in the franchise agreement or relevant agreement made under Section 30 of the Act or Section 6 of the Railways Act 2005 with any other Train Operator;
- (v) amendments to or variations of contracts or arrangements include assignments, novations or other transfers of rights and/or obligations (in whole or in part) under such contracts or arrangements;
- (w) references to sums of money being expended by the Operator shall be to such sums exclusive of Value Added Tax;
- (x) unless otherwise stated in this Agreement, the costs of performing an obligation under this Agreement shall be borne by the party required to perform such obligation;
- (y) wherever provision is made for the Operator to ‘procure’ or ‘ensure’ the delivery of an obligation under this Agreement, unless otherwise specified, that provision shall be construed as a primary obligation on the Operator to deliver that obligation;
- (z) the words ‘shall not be liable’ are to be construed as meaning that no contravention of this Agreement and no Event of Default shall arise as a result of the occurrence of the matter to which such words relate;
- (aa) references to a ‘contravention of this Agreement’ (and cognate expressions) are to be construed as meaning a breach of this Agreement; and
- (bb) any dates relating to any Concession Years specified in any table in this Agreement that occur after the Initial Expiry Date are illustrative only.

## 2. DEFINITIONS

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

**1954 Act** means the Landlord and Tenant 1954 Act;

**1954 Act Notice** has the meaning given to it in paragraph 3.4(a) of Schedule 4.1 (*Property Leasing and Access*);

**AC Only Unit** means a type of Class 710 Unit and has the meaning given to it in the Class 710 MSA;

**Acceptable Bank** means a Bank located in London or an international Bank with a branch located in London and which in each case RfL has given its prior written consent to;

**Acceptance** has the meaning given to it in the Class 710 MSA;

**Accepted** has the meaning given to it in the Class 710 MSA;

**Access Agreement** has the meaning given to the term ‘access agreement’ in Section 83(1) of the Act;

**Access Charge Adjustment** means the adjustment to any Concession Payment to be made as a component of any Pass Through Adjustment in accordance with paragraph 3.4 of Schedule 11.1 (*Concession Payments*);

**Accessibility Mystery Traveller Survey** means an accessibility mystery traveller survey in respect of the experience of passengers with reduced mobility on the Passenger Services and at stations, which may be carried out by RfL or its nominee in accordance with the Standards Regime (AMTS) and the AMTS Methodology;

**Account Charge** means a charge over the funds held in the Revenue Account from time to time, created by the Operator over the Revenue Account in favour of RfL as security for the Operator’s obligations under Schedule 3.3 (*Ticket and Non-Ticket Revenue*);

**Act** means the Railways Act 1993;

**Actual Passenger Demand** means information relating to the number of passengers travelling:

- (a) on each Passenger Service;
- (b) on each Service Group; and/or
- (c) at any London Overground Station or between any London Overground Stations,

in each case by reference to particular times of the day, week or year;

**Actual Profit** means:

$$AP = EBIT + MC + IA$$

where:

AP is the Actual Profit in relation to any Concession Year;

EBIT is the Operator’s earnings before interest and tax as identified in the Annual Audited Accounts for that Concession Year and before any adjustment in recognition of profit share under Schedule 11.4 (*Profit Share*);

MC is the charge, if any, paid by the Operator to any Parent or any Affiliate of the Operator in that Concession Year for the supervision of the Operator’s performance of its obligations under this Agreement; and

IA is the inter-group company adjustment, if any in relation to that Concession Year, which is the sum of the amounts by which the price of relevant contracts or arrangements with the Parent or any Affiliate exceeds the price of those contracts or arrangements, had they been concluded on arm’s length terms in accordance with

paragraph 10.1 of Schedule 20 (*Other Provisions*) where it has been determined that those contracts are not on such terms, plus 10 per cent.;

**Additional Services** means as the context requires, the Class 378 Additional Services or the Class 710 Additional Services;

**Additional Services Adjustment** means, in relation to any Payment Date, the aggregate of any Class 378 Additional Services Adjustment and any Class 710 Additional Services Adjustment that is payable on that Payment Date;

**Advertising Area** means any area within an Operator Station the subject of an agreement entitling a third party to place advertisements within the area, or such other area as may be nominated by the Advertising Concessionaire pursuant to paragraph 13.3 of Schedule 2.2 (*List of Concession Services*);

**Advertising Concession Agreement** means an advertising concession agreement granted in favour of RfL in the agreed form marked *ACA* in respect of all Advertising Areas;

**Advertising Concessionaire** has the meaning given to it in paragraph 13.2 of Schedule 2.2 (*List of Concession Services*);

**Aggregate T3** means, in relation to any Thirteen Period Measurement Period:

$$AT3 = \frac{T3AR}{PS} \times 100$$

AT3 means Aggregate T3 for that Thirteen Period Measurement Period;

T3AR means T3 across all Routes in that Thirteen Period Measurement Period; and

PS means the aggregate number of Passenger Services scheduled to be operated across all Routes in that Thirteen Period Measurement Period;

**Affiliate** means, in respect of any person, any person by which that person is Controlled or which is Controlled by that person, or any person which is Controlled by any other Affiliate of that person, including in the case of the Operator, the Parent;

**Alliance Agreement** has the meaning given to it in Committed Obligation 33 in the table in Schedule 10.1 (*List of Committed Obligations and Committed Obligation Payments*);

**Alliance Manager** has the meaning given to it in Committed Obligation 36 in the table in Schedule 10.1 (*List of Committed Obligations and Committed Obligation Payments*);

**Alternative Timetable Adjustment** means any adjustment to be made to any Concession Payment pursuant to paragraph 1.1 of Schedule 11.1 (*Concession Payments*), calculated in accordance with paragraph 9.1 of Schedule 1.3 (*Managing Changes to the Passenger Services*);

**Alternative Timetable Guidance** means the guidance in relation to the preparation and implementation of alternative timetables in the agreed terms marked *ATG*;

**Alternative Timetable Shortfall Payment** has the meaning given to it in paragraph 6.7 of Schedule 1.3 (*Managing Changes to the Passenger Services*);

**Alternative Scheme** has the meaning given to it in paragraph 17.1(a) of Schedule 15.3 (*Responsible Procurement*);

**AMTS Methodology** means, as at the date of this Agreement, the Accessibility Mystery Traveller Survey methodology in the agreed terms marked **AMTSM**;

**AMTS Questionnaire** means, as at the date of this Agreement, the Accessibility Mystery Traveller Survey questionnaire in the agreed terms **AMTSQ**;

**AMTS Report** has the meaning given to it in paragraph 2.2 of Schedule 8.3 (*Standards Regime (AMTS)*);

**Angel Trains** means Angel Trains Limited, whose registered office is at 123 Victoria Street, London, SW1E 6DE and whose registered number is 02912655;

**Annual Audited Accounts** means the accounts of the Operator which:

- (a) comply with paragraph 5.8 of Schedule 16.1 (*Records, plans and reports*); and
- (b) are delivered to RfL by the Operator in accordance with paragraph 5.6 of Schedule 16.1 and certified by the Operator's auditors as true and fair;

**Annual Concession Payment** means, in relation to any Concession Year, or where an extension is required pursuant to paragraph 1.1 or 1.4 of Schedule 19 (*Continuation of London Overground Concession*), the amount determined in accordance with Schedule 11.2 (*Annual Concession Payments and Indexation*);

**Annual Employee Survey** has the meaning given to it in Committed Obligation 10 in the table in Schedule 10.1 (*List of Committed Obligations and Committed Obligation Payments*);

**Annual Environmental Improvement Plan** has the meaning given to it in paragraph 5.1 of Schedule 15.4 (*Environment*);

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

- (a) comply with paragraph 5.7 of Schedule 16.1 (*Records, plans and reports*); and
- (b) are delivered to RfL by the Operator in accordance with paragraph 5.5 of Schedule 16.1;

**Applicable Requirements** means, depending on the context, all or any Laws and standards at any time or from time to time in force in the United Kingdom and which are or may become applicable to this Agreement, the other Transaction Documents, any agreement or document referred to in this Agreement or the other Transaction Documents or the carrying out of the Concession Services, including Railway Industry Standards, the requirements of the ORR, Health and Safety at Work etc. Act 1974 and the Safety Regulations;

**Approved Code of Practice** means the document titled 'Approved Code of Practice: Contingency Planning for Train Service Recovery – Service Recovery 2007' as issued by ATOC and amended from time to time;

**Approved Driver Training** means the 'Safe Urban Driving' course as accredited by the Joint Approvals Unit for Periodic Training, details of which can be found at: [www.fors-online.org.uk](http://www.fors-online.org.uk);

**Assumed High Speed 2 Impact** has the meaning given to it in paragraph 3.2 of Schedule 6.4 (*High Speed 2*);

**ATOC** means the Association of Train Operating Companies;

**ATOC Staff Travel Scheme** means the staff travel scheme dated 23 July 1995 between the participants named therein;

**ATOS MCAC TVM** means a model MCAC TVM, manufactured by ATOS;

**ATOS SCAC3 TVM** means a model SCAC3 TVM, manufactured by ATOS;

**ATOS SCAC4 TVM** means a model SCAC4 TVM, manufactured by ATOS;

**Available** has the meaning given to it in, as the context requires, the Class 378 TSA in respect of a Class 378 Unit or the Class 710 TSA in respect of a Class 710 Unit;

**BAME** means a black, Asian and minority ethnic owned business which is 51 per cent. or more owned by members of one or more black, Asian or minority ethnic groups;

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

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

**Bond Provider** means any person or persons who may provide or be an obligor under a Performance Bond from time to time who shall be an Acceptable Bank that has the Required Rating;

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

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

**Bronze Accreditation** means the minimum level of accreditation within the FORS Standard, the requirements of which are more particularly described at: [www.fors-online.org.uk](http://www.fors-online.org.uk);

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

**Bus Framework Agreement** means an agreement between a member of the TfL Group and the Operator or an Affiliate of the Operator (including where that Affiliate is Controlled by only one member of the Parent) are a party, under which that member of the TfL Group grants the Operator or that Affiliate the right under a separate route-specific agreement to provide, among other things, bus services over that route for a specified period of time;

**Business Action Plan** means an action plan produced by the Operator in relation to the delivery of any outcome anticipated by its Business Plan, in accordance with paragraph 3.8 of Schedule 16.1 (*Records, plans and reports*);

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

**Business Improvement Portal Fund** has the meaning given to it in Committed Obligation 26 in the table in Schedule 10.1 (*List of Committed Obligations and Committed Obligation Payments*);

**Business Plan** means the Initial Business Plan or any Updated Business Plan, as the context requires, to be delivered in accordance with paragraphs 3.1 to 3.5 (inclusive) of Schedule 16.1 (*Records, plans and reports*);

**Camden Road Refurbishment** has the meaning given to it in Committed Obligation 14 in the table in Schedule 10.1 (*List of Committed Obligations and Committed Obligation Payments*);

**Camden Road Refurbishment Plan** has the meaning given to it in Committed Obligation 14 in the table in Schedule 10.1 (*List of Committed Obligations and Committed Obligation Payments*);

**Camden Sidings** means the light maintenance depot including carriage washer located near Camden;

**Cancellation** means a Passenger Service which is scheduled to be provided under the Plan of the Day and which:

- (a) is cancelled at origin;
- (b) commences any Diagram Leg beyond its first scheduled departure point in the Plan of the Day; or
- (c) the Unit operating that Passenger Service Misses One or More Station Stops that it is scheduled to provide under that Plan of the Day,

and **Cancelled** shall be construed accordingly;

**Capital Expenditure** has the meaning given to it in paragraph 2.4 of Schedule 13.4 (*Variations*);

**Capped Performance Adjustments** means the following adjustments to Concession Payments:

- (a) Operating Performance Adjustments;
- (b) Satisfaction Regime Adjustments;
- (c) SIS Adjustments; and
- (d) Revenue Protection Incentive Adjustments;

**Car Park Area** means that part of an Operator Station which:

- (a) at the date of grant of the relevant Station Lease is used for car parking; or
- (b) is otherwise allocated for use as a car park by the Subleases Tenant in accordance with paragraph 3.3 of Schedule 4.1 (*Property Leasing and Access*);

**Carbon Reduction Commitment** means a mandatory scheme for public and private sector organisations using more than 6,000 megawatt-hours (MWh) per year of non-transport electricity for the purpose of improving energy efficiency and cutting emissions;

**Car-derived van** means a vehicle based on a car, but with an interior that has been altered for the purpose of carrying larger amounts of goods and/or equipment;

**Carriage of Bicycles Policy** has the meaning given to it in paragraph 15.1 of Schedule 2.2 (*List of Concession Services*);

**Cascades Project Manager** has the meaning given to it in Committed Obligation 53 in the table in Schedule 10.1 (*List of Committed Obligations and Committed Obligation Payments*);

**CBTC** means communication based train control;

**CEDR** has the meaning given to it in paragraph 2.4 of Schedule 20 (*Other Provisions*);

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


**Change** means if and whenever any of the following occurs:

- (a) a Change of Law (excluding any Change of Law to the extent that it results in an adjustment to the Concession Payments pursuant to Schedule 11.3 (*Pass Through Access Charge Adjustments*));
- (b) a Charge Variation;
- (c) a change to the Service Level Commitment previously in force by the issue of a new Service Level Commitment in accordance with paragraph 9 (*Service Level Commitment*) of Schedule 1.1 (*Timetable and Service Development*), but excluding the issue of SLC1a, SLC1b, SLC2a, SLC2b and any other Service Level Commitment that is the subject of a Service Increment;
- (d) the Network Rail TAA is granted on terms which are substantially different from the terms of track access agreements entered into on model terms published by the ORR;
- (e) the Operator is required to take any action pursuant to paragraph 14.1(a) and/or (b) of Schedule 1.1;
- (f) the Operator operates less distance (measured in miles) than the distance (measured in miles) specified in the Train Plan as a consequence of a Restriction of Use that lasts 60 consecutive hours or more;
- (g) a change effected pursuant to paragraph 4 (*RfL Proposal to Change the Plan of the Day*) of Schedule 1.3 (*Managing Changes to the Passenger Services*) that requires the Operator to run additional distance (measured in miles) that is in excess of either of the thresholds specified in that paragraph;
- (h) RfL changes the Alternative Timetable Guidance (including any standards therein) which requires the Operator to take action pursuant to paragraph 5.2 of Schedule 1.3 that would not have been required by the form of Alternative Timetable Guidance

published at the date of this Agreement with the effect that the Operator incurs additional costs;

- (i) unless and until there is a Charge Variation in relation to the amount the Operator is to be charged for access to the relevant part of the London Overground Network under the terms of the Network Rail TAA, the amount that the Operator is so charged is different from the relevant amount assumed in the Record of Assumptions, and where this is the case, the parties shall, as part of a Run of the Model Suite, agree, or failing agreement RfL shall reasonably determine, the Revised Inputs in relation to the mileage adjustment rates specified in the Appendix (*Mileage Adjustment Rates*) of Schedule 1.3 (*Managing Changes to the Passenger Services*);
- (j) TfL approves an amendment or proposed amendment to an Inter-Operator Scheme, to the extent (and only to the extent) that the Operator makes a saving as a consequence of such amendment or proposed amendment;
- (k) New Bermondsey Station is not constructed in time for Passenger Services to call there by the Passenger Change Date occurring in December 2017 or it is constructed by that date, but it does not have all of the following facilities:
  - (i) two platforms;
  - (ii) two station entrances;
  - (iii) two lifts;
  - (iv) one TVM per station entrance;
  - (v) one ticket gateline; and
  - (vi) other facilities commensurate with London Overground Stations of similar size;
- (l) RfL agrees with Network Rail to enter into long-term leases as contemplated by paragraph 9.1 of Schedule 4.1 (*Property Leasing and Access*) and this has a material impact on the Operator's rights and obligations under any Station Lease and/or the Operator is no longer obliged under the terms of any replacement Station Lease to pay any Long Term Charge (as defined in any such Station Lease);
- (m) RfL levies charges for station maintenance, renewal and repair and station management expenditure, known collectively as long term charge, or a charge equivalent thereto, that are more than £1 per annum, in each case under the Station Lease for any Operator Station on the Devolved Route Group and/or New Bermondsey Station;
- (n) the imposition, subject to paragraph 2.5 of Schedule 4.2 (*Station Environment*), of any increased access charges in respect of Equality Act Requirements at Operator Access Stations;
- (o) RfL changes its Disabled Persons' Policy which requires the Operator to take action pursuant to paragraph 4.2 of Schedule 4.2 that would not have been required by the form of Disabled Person's Policy published at the date of this Agreement with the effect that the Operator incurs additional costs;



- (p) RfL and the Operator agree that the Operator is to procure any station enhancement works or make any investment pursuant to paragraph 4.2 of Schedule 4.3 (*Station and Depot Condition Enhancements*);
- (q) the Operator is required to pay increased rental under the terms of the Depot Lease relating to Chingford Depot to reflect the enhanced facilities at that depot following the completion of the enhancement works specified in schedule 9 (*Maintenance Facilities and Chingford Stabling Site*) of the Class 710 MSA;
- (r) the charge for stabling rolling stock vehicles at Willesden Depot is more or less than £25 per rolling stock vehicle as a result of either:
  - (i) an amendment to the Class 710 TSA; or
  - (ii) the completion of the enhancement works specified in schedule 9 of the Class 710 MSA;
- (s) the completed enhancement works at Willesden Depot and/or Chingford Depot described in schedule 9 of the Class 710 MSA are not completed in accordance with that description and that inconsistency:
  - (i) causes the Operator to incur additional costs in operating the Passenger Services; and/or
  - (ii) has a material adverse effect on the Operator’s ability to deliver any Passenger Services;
- (t) 
- (u) any Class 315 Unit or Class 317 Unit is not in the redelivery condition (as specified in the Class 315 Lease and the Class 317 Lease respectively) in each case at the Start Date;
- (v) if, as a result of the late Acceptance of any Class 710 Unit (including where RfL agrees to extend the Contractual Provisional Acceptance Date (as defined in the Class 710 MSA) of any Class 710 Unit, but excluding late Acceptance resulting from any act or omission of the Operator or the Operator failing to perform its obligations under Schedule 5.3 (*Introduction of the Class 710 Fleet and related equipment*)), the Operator is required, in order to deliver the Timetable, to lease in substitution for such Class 710 Unit:

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<sup>1</sup> This text has been redacted by Rail for London in accordance with the provisions of the Freedom of Information Act 2000.

- (i) any Class 172 Unit, Class 315 Unit or Class 317 Unit in the Train Fleet beyond the relevant lease expiry date specified in the Appendix (*Trains comprising the Train Fleet*) to Schedule 5.1 (*The Train Fleet*); or
  - (ii) any other rolling stock;
- (w) RfL elects under the terms of the Class 710 MSA to Accept:
- (i) a Class 710 Unit with Acceptance qualifications or waive any Provisional Acceptance Criteria (as defined in the Class 710 MSA), which in each case has a material adverse effect on the ability of such Unit to operate in passenger revenue earning service;
  - (ii) a Class 710 Unit with an Actual Mass that exceeds the Contracted Design Mass (in each case as defined in the Class 710 MSA) which has a material adverse effect on the ability of such Class 710 Unit to operate in passenger revenue earning service, provided that any adjustments to Concession Payments in relation to that Acceptance shall be not exceed the lesser of:
    - (A) the liquidated damages that are payable by the Class 710 Manufacturer to RfL under the terms of the Class 710 MSA in relation to that excess mass; and
    - (B) the aggregate of those costs in the Record of Assumptions which are variable according to the weight of Class 710 Units; or
  - (iii) the Class 710 Simulator with Acceptance qualifications or waive any Equipment Acceptance Criteria (as defined in the Class 710 MSA) which in each case have a material adverse effect on the ability of the Class 710 Simulator to perform as contemplated under the Class 710 MSA;
- (x) the Operator is prevented from operating any Dual Voltage Unit that has been Accepted in passenger revenue earning service due to:
- (i) the GOB Infrastructure (as defined in the Class 710 MSA) being Unavailable Infrastructure (as defined in the Class 710 MSA) at the time of the Acceptance of that Dual Voltage Unit; and/or
  - (ii) the subsequent Acceptance testing of that Dual Voltage Unit on to the GOB Infrastructure when it is Available Infrastructure (as defined in the Class 710 MSA),
- and in each case, this causes the Operator to incur additional costs and/or has a material adverse effect on the Operator's ability to deliver any Passenger Services;
- (y) a Variation (as defined therein) is made to either the Class 378 Leases or the Class 710 Lease;
  - (z) RfL agrees to the implementation of a Modification that has a material adverse or material beneficial effect on the cost to the Operator of operating, as the case may be, the Class 172 Units, the Class 378 Units or the Class 710 Units;
  - (aa) the Class 378 TSA is terminated;

- (bb) the Class 710 MSA or Class 710 TSA is terminated;
- (cc) there is a change in the scope of the agency that RfL determines or RfL and the Operator agree, in each case under the terms of either the Class 378 TSA Agency Agreement or the Class 710 TSA Agency Agreement, that either increases or decreases the costs that the Operator will incur in exercising the rights and performing the obligations under, as appropriate, the Class 378 TSA or the Class 710 TSA that RfL has appointed the Operator to act as agent in respect of;
- (dd) the completion of the GOB Blockade is delayed and the Operator cannot operate the Passenger Services on the GOB specified in the Timetable from the Passenger Change Date in December 2016, or after the completion of the GOB Blockade, there is insufficient power supply in order to operate the Passenger Services on the GOB in accordance with the Timetable from May 2018 onwards;
- (ee) RfL and the Operator agree or RfL serves written notice on the Operator, exercising RfL's right to call any Service Increment on different terms from those specified in respect of that Service Increment in the Appendix (*List of Anticipated Service Increments*) to Schedule 6.1 (*Anticipated Service Increments*), only to the extent specified in paragraph 1.2(b) of Schedule 6.1;
- (ff) where Service Increment 4e or 5 is called pursuant to paragraph 1 (*Calling a Service Increment*) of Schedule 6.1 (*Anticipated Service Increments*), RfL levies charges for station maintenance, renewal and repair and station management expenditure, known collectively as long term charge, or a charge equivalent thereto, that are more than £1 per annum, in each case under the Station Lease for, as appropriate, Barking Riverside Station, Angel Road Station, Lea Bridge Station and/or Northumberland Park Station,;
- (gg) a performance benchmark is subsequently calibrated and included within the Network Rail TAA which recognises the potential impact of RfL (I)'s performance under the RfL (I) TAA;
- (hh) RfL notifies the Operator pursuant to paragraph 9.1 of Schedule 8.1 (*Standards Regime (KPIs)*) of its intention to amend the requirements of any Key Performance Indicator;
- (ii) RfL changes any of:
  - (i) the MSS Methodology and/or MSS Questionnaire;
  - (ii) the AMTS Methodology and/or AMTS Questionnaire;
  - (iii) the CSS Methodology and/or CSS Questionnaire; and/or
  - (iv) the SIS Methodology and/or SIS Questionnaire,
 such that in any such case, that change has a material adverse impact on the Operator's ability to comply with the terms of (as appropriate) the Standards Regime (MSS), the Satisfaction Regime (CSS), or the Staff Regime (SIS);

- (jj) RfL changes the Ticketless Travel Survey Methodology which has a material adverse impact on the Operator's ability to comply with the Revenue Protection Incentive Regime;
- (kk) RfL and the Operator agree or RfL serves written notice on the Operator, exercising RfL's right to call the Priced Option:
- (i) on different terms from those specified in respect of that Priced Option in Schedule 12.1 (*List of Priced Options*); and/or
  - (ii) at any time after the last date for exercise of such Priced Option,
- in each case, only to the extent specified in paragraph 1.1(b) of Schedule 12.2 (*Calling and implementing Priced Options*);
- (ll) a Variation to the terms of this Agreement pursuant to paragraph 1 (*Variations to this Agreement*) of Schedule 13.4 (*Variations*);
- (mm) either:
- (i) RfL, in its absolute discretion, elects at any time within two months of the occurrence of a Force Majeure Event that such event shall be treated as a Change; or
  - (ii) a Force Majeure Event that continues with the effect of preventing the Operator from delivering, wholly or mainly, the Passenger Services for more than two consecutive months;
- (nn) the Operator is required to pay a levy or other Tax in order to fund a nationwide apprenticeship scheme, provided that:
- (i) any adjustment to Concession Payments shall be made on one occasion only when the levy is first payable by the Operator; and
  - (ii) any such adjustment shall be the lower of :
    - (A) the aggregate of ████████<sup>2</sup> per annum over the Concession Period, indexed in accordance with paragraph 3 (*Indexation by Reference to RPI*) of Schedule 11.2 (*Annual Concession Payments and Indexation*); and
    - (B) the estimated amount to be levied on the Operator over the Concession Period, based on an assumed levy of 0.5 per cent. of the Operator's payroll at the time the levy is first payable by the Operator and the full-time employee establishment level at the time the levy is first payable by the Operator, as specified in the Record of Assumptions,
- in each case net of any contributions anticipated to be made under the scheme to the Operator to meet the costs of any apprenticeships the Operator itself offers; and

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<sup>2</sup> This text has been redacted by Rail for London in accordance with the provisions of the Freedom of Information Act 2000.

- (iii) it shall be a further Change if, having become subject to the levy, it is subsequently no longer a requirement for the Operator to pay such levy, the levy is charged at a materially different rate or the levy is not charged as a proportion of a business' payroll;
- (oo) any two or more of the foregoing that RfL groups together in accordance with any procedures issued by it pursuant to paragraph 1.5 of Schedule 13.4;
- (pp) the Class 378 Leases are not substantially on the same terms as the form of Class 378 Leases in the agreed terms marked **CL378L** and this difference results in the Operator incurring additional costs over the Concession Period, or which could reasonably be said to represent a material transfer of risk to the Operator or to make it materially more difficult for the Operator to comply with any of its obligations under the Transaction Documents;
- (qq) the Class 710 Lease is not substantially on the same terms as the form of Class 378 Leases in the agreed terms marked **CL378L** and this difference results in the Operator incurring additional costs over the Concession Period, or which could reasonably be said to represent a material transfer of risk to the Operator or to make it materially more difficult for the Operator to comply with any of its obligations under the Transaction Documents; or
- (rr) nothing in the terms of the WeFOC Facilities Access Contract, the WeFOC Connection Agreement, or the forms of Unregulated Station Lease, Station Underlease, Station Usage Agreement or Depot Usage Agreement will prevent the Operator from complying, or which reasonably could be said to make it materially more difficult for the Operator to comply, with its obligations under the Transaction Documents;

**Change of Law** means the coming into effect after the date of this Agreement of Legislation or any applicable judgment of a court of Law which changes a binding precedent, in each case the terms of which apply only to the railway industry, a particular section of the railway industry or the provision of services to the railway industry (including such Legislation made under the Health and Safety at Work etc. Act 1974) and not to other transport modes or to industries other than the railway industry, and without limitation excluding:

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

to the extent that the same is subsequently enacted in substantially the same form as the form in which it was previously so published; and

- (c) any Legislation which is made with the intention or effect of specifically applying to (or disapplying in relation to) the railway industry any other Legislation which does not apply only to the railway industry;

**Charge Variation** means a variation:

- (a) to a Relevant Agreement; and
- (b) which is effected either:
  - (i) as a result of a Charging Review (including any variation effected in connection with an Incremental Output Statement Charge); or
  - (ii) as a result of the remapping of service groups and recalibration of performance regime benchmarks and payment rates, amongst other things, due to the transfer of responsibility for railway passenger service operation from any Train Operator to the Operator;

**Charging Review** means:

- (a) the exercise by the ORR of its powers under:
  - (i) Part 7 of Schedule 7 of the Network Rail TAA on the Start Date or any Replacement Agreement which is or is deemed to be a Relevant Agreement in accordance with the definition of that term; or
  - (ii) Condition F11.4 of the Station Access Conditions and Condition 42.4 of the Independent Station Access Conditions;
- (b) the following by the ORR of the procedure in Schedule 4A of the Act;
- (c) the exercise by the ORR of any of its powers or the following of any other procedure, which, in RfL's reasonable opinion has an equivalent effect to, or is intended to fulfil the same function as, any of the powers referred to in paragraphs (a) or (b) in relation to any Relevant Agreement. For this purpose, Relevant Agreement includes any Relevant Agreement which is not the subject of any previous Charging Review; or
- (d) any amendment to a Relevant Agreement, or entry into of a new Relevant Agreement which is approved by the ORR to the extent that that amendment or new Relevant Agreement relates to an Incremental Output Statement Charge or a scheme to which that charge relates;

**Chiltern Railways** means Chiltern Railways Company Limited;

**Chingford Depot** means the site located adjacent to Chingford station comprising existent sidings and carriage washing machine and to be supplemented by the Class 710 Maintainer with heavy external cleaning, light servicing and automatic vehicle inspection facilities;

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

**Class 172 Fleet** means the rolling stock units identified by reference to that class in Table 1 of the Appendix (*Trains comprising the Train Fleet*) to Schedule 5.1 (*The Train Fleet*);

**Class 172 Sublease** means the rolling stock sublease between Angel Trains as lessor and the Operator as lessee in respect of the Class 172 Fleet;

**Class 172 Unit** means a rolling stock unit comprising part of the Class 172 Fleet;

**Class 17x Users' Group** has the meaning given to it in Committed Obligation 65 in the table in Schedule 10.1 (*List of Committed Obligations and Committed Obligation Payments*);

**Class 315 Fleet** means the rolling stock units identified by reference to that class in Table 2 of the Appendix (*Trains comprising the Train Fleet*) to Schedule 5.1 (*The Train Fleet*);

**Class 315 Lease** means the rolling stock lease between European Rail as lessor and the Incumbent Operator as lessee dated 29 May 2015 and pursuant to the Class 315 Novation Agreement, between European Rail and the Operator, in each case in respect of the Class 315 Fleet;

**Class 315 Novation Agreement** means the novation agreement between European Rail, the Incumbent Operator and the Operator to be entered into on or before the Start Date pursuant to which the rights and obligations of the Incumbent Operator under the Class 315 Lease are to be novated to the Operator;

**Class 315 Unit** means a rolling stock unit comprising part of the Class 315 Fleet;

**Class 317 Fleet** means the rolling stock units identified by reference to that class in Table 2 of the Appendix (*Trains comprising the Train Fleet*) to Schedule 5.1 (*The Train Fleet*);

**Class 317 Lease** means the rolling stock lease between Angel Trains as lessor and the Incumbent Operator as lessee dated 29 May 2015 and pursuant to the Class 317 Novation Agreement, Angel Trains and the Operator, in each case in respect of the Class 317 Fleet;

**Class 317 Novation Agreement** means the novation agreement between Angel Trains, the Incumbent Operator and the Operator to be entered into on or before the Start Date pursuant to which the rights and obligations of the Incumbent Operator under the Class 317 Lease are to be novated to the Operator;

**Class 317 Unit** means a rolling stock unit comprising part of the Class 317 Fleet;

**Class 378 Additional Services** has the meaning given to Additional Services in the Class 378 TSA and includes the Class 378 Maintainer carrying out rectification work under the Class 378 TSA in relation to damage to the exterior of a Class 378 Unit caused by overhanging vegetation or to grab poles caused by passenger usage;

**Class 378 Additional Services Adjustment** has the meaning given to it in paragraph 5.4 of Schedule 5.2 (*Operation, Maintenance and Refresh*);

**Class 378 Fleet** means the rolling stock units identified by reference to that class in Table 3 of the Appendix (*Trains comprising the Train Fleet*) to Schedule 5.1 (*The Train Fleet*);

**Class 378 Leases** means the rolling stock leases between RfL as lessor and the Operator as lessee to be entered into prior to the Start Date pursuant to which RfL leases:

- (a) the Class 378 Fleet as 4-car units to the Operator; and
- (b) additional vehicles to the Operator in order that each Class 378 Unit can be operated as a 5-car unit;

**Class 378 Maintainer** means Bombardier Transportation UK Limited, whose registered office is at Litchurch Lane, Derby, Derbyshire DE24 8AD and whose registered number is 02235994;

**Class 378 Performance Regime Adjustment** means, in relation to any Reporting Period, the aggregate of Deductions paid to RfL in that Reporting Period pursuant to the performance regime in the Class 378 TSA in respect of the Class 378 Maintainer's performance;

**Class 378 Simulator** has the meaning given to Cab Simulator Unit in the Class 378 TSA;

**Class 378 Train Plan Parameters** has the meaning given to Train Plan Parameters in the Class 378 TSA;

**Class 378 TSA** means the Train Services Agreement dated 31 August 2006 between the Class 378 Maintainer and RfL (following the novation of TTL's rights and obligations thereunder to RfL pursuant to a novation agreement between them dated 20 December 2007) relating to the maintenance and repair of the Class 378 Fleet;

**Class 378 TSA Agency Agreement** means the agreement dated on or about the date of this Agreement between the Operator, the Class 378 Maintainer and RfL, pursuant to which RfL appoints the Operator as its agent for the purpose of performing certain of RfL's obligations, and exercising certain of RfL's rights, under the Class 378 TSA;

**Class 378 Unit** means a rolling stock unit comprising part of the Class 378 Fleet;

**Class 710 Additional Services** means the Additional Services and the EF Additional Services (in each case as defined in the Class 710 TSA) and includes the Class 710 Maintainer carrying out rectification work under the Class 710 TSA in relation to damage to the exterior of a Class 710 Unit or a Class 172 Unit, in each case caused by overhanging vegetation or to grab poles caused by passenger usage;

**Class 710 Additional Services Adjustment** has the meaning given to it in paragraph 8.4 of Schedule 5.2 (*Operation, Maintenance and Refresh*);

**Class 710 Fleet** means the rolling stock units identified by reference to that class in Table 4 of the Appendix (*Trains comprising the Train Fleet*) to Schedule 5.1 (*The Train Fleet*);

**Class 710 Initial Unit** means a rolling stock unit comprising part of the Class 710 Fleet listed in Table 4 in the Appendix (*Trains Comprising the Train Fleet*) to Schedule 5.1 (*The Train Fleet*);

**Class 710 Lease** means the rolling stock lease between RfL as lessor and the Operator as lessee to be entered into prior to the Start Date pursuant to which RfL leases the Class 710 Fleet to the Operator;

**Class 710 Maintainer** means Bombardier Transportation UK Limited, whose registered office is at Litchurch Lane, Derby, Derbyshire DE24 8AD and whose registered number is 02235994;



**Class 710 Manufacturer** means Bombardier Transportation UK Limited, whose registered office is at Litchurch Lane, Derby, Derbyshire DE24 8AD and whose registered number is 02235994;

**Class 710 MSA** means the Manufacture and Supply Agreement dated 1 July 2015 between RfL and the Class 710 Manufacturer for the design, construction, testing, acceptance and supply of the Class 710 Fleet and related equipment;

**Class 710 Operating Date** means the date a Class 710 Unit is first operated to deliver a Passenger Service;

**Class 710 Optional Unit** means any Option Unit (as defined in the Class 710 MSA);

**Class 710 Performance Regime Adjustment** means, in relation to any Reporting Period, the aggregate of:

- (a) Deductions and Availability Adjustments (as defined in the Class 710 TSA) paid to RfL in that Reporting Period pursuant to the performance regime in the Class 710 TSA; and
  - (b) adjustment payments pursuant to schedule 23 (*Existing Fleet*) of the Class 710 TSA,
- in each case in respect of the Class 710 Maintainer's performance;

**Class 710 Project Manager** has the meaning given to it in paragraph 2.1(h) of Schedule 15.1 (*Personnel Communication and Access*);

**Class 710 Simulator** has the meaning given to 'Simulator' in the Class 710 MSA;

**Class 710 Simulator Location** has the meaning given to it in paragraph 6.2 of Schedule 5.3 (*Introduction of the Class 710 Fleet and related equipment*);

**Class 710 Train Plan Parameters** means the Train Plan Parameters and the EF Train Plan Parameters, in each case as defined in the Class 710 TSA;

**Class 710 TSA** means the Train Services Agreement dated 1 July 2015 between RfL and the Class 710 Maintainer relating to the maintenance and repair of the Class 710 Fleet;

**Class 710 TSA Agency Agreement** means the agreement entered or (as the context may require) to be entered between the Operator, the Class 710 Maintainer and RfL pursuant to which RfL appoints the Operator as its agent for the purpose of performing certain of RfL's obligations, and exercising certain of RfL's rights, under the Class 710 TSA;

**Class 710 Unit** means either a Class 710 Initial Unit or a Class 710 Optional Unit;

**Clearance Agreement** means the agreement between RSP and TTL dated 16 October 2009 and amended on 30 July 2014, as informed by two side letters between RSP and TTL dated 19 May 2015, together governing the settlement of PAYG and CPAY revenue and other money due to the participants under the PAYG Agreement and the CPAY Agreement;

**Close Proximity Sensor** means a device consisting of a sensor system that detects objects in a vehicle's blind spot and alerts the driver via in-cab visual and/or audio stimuli and which alerts other road users to the planned movement of the vehicle when the vehicle's indicators are engaged;

**Closed Scheme Employees** has the meaning given to it in paragraph 3(a) of Schedule 15.5 (*Pensions*);

**Closed Schemes** has the meaning given to it in paragraph 3(b) of Schedule 15.5 (*Pensions*);

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

**CMS** has the meaning given to it in Committed Obligation 29 in the table in Schedule 10.1 (*List of Committed Obligations and Committed Obligation Payments*);

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

**Collision Report** means a report detailing all collisions during the previous 12 months involving injuries to persons or fatalities, or where less than 12 months of the Concession Period has elapsed, during the period from the Start Date until the day before the day upon which the Operator is required to submit such Collision Report pursuant to paragraph 21 (*Collision Reporting*) of Schedule 15.3 (*Responsible Procurement*);

**Committed Obligation** means any of the Operator's obligations listed in Schedule 10.1 (*List of Committed Obligations and Committed Obligation Payments*);

**Committed Obligation Payment** means a payment to be made by the Operator to RfL pursuant to Schedule 10.1 (*List of Committed Obligations and Committed Obligation Payments*);

**Committed Obligation Payment Adjustment** means the adjustment to any Concession Payment to be made as part of a Performance Adjustment and calculated in accordance with paragraph 9 (*Committed Obligation Payment Adjustments*) of Schedule 10.2 (*Miscellaneous Provisions*);

**Common Station Amenities** has the meaning given to it in, as appropriate, the Station Access Conditions or the Independent Station Access Conditions;

**Common Station Services** has the meaning given to it in, as appropriate, the Station Access Conditions or the Independent Station Access Conditions;

**Communications Project** has the meaning given to it in Committed Obligation 58 in the table in Schedule 10.1 (*List of Committed Obligations and Committed Obligation Payments*);

**Communications Report** has the meaning given to it in Committed Obligation 58 in the table in Schedule 10.1 (*List of Committed Obligations and Committed Obligation Payments*);

**Competency Programme** has the meaning given to it in Committed Obligation 50 in the table in Schedule 10.1 (*List of Committed Obligations and Committed Obligation Payments*);

**Competent Authority** has the meaning given to it in the Class 710 MSA;

**Component A** has the meaning given to it in paragraph 3.2(a) of Schedule 6.4 (*High Speed 2*);

**Component B** has the meaning given to it in paragraph 3.2(b) of Schedule 6.4 (*High Speed 2*);

**Component C** has the meaning given to it in paragraph 3.2(c) of Schedule 6.4 (*High Speed 2*);

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

**Concession Agreement Information** means:

- (a) this Agreement in its entirety (including from time to time agreed changes to this Agreement);
- (b) the results, on a Service Group, London Overground Station or other comparable basis, of any calculation of passenger numbers under paragraph 6 (*Passenger Numbers Information*) of Schedule 1.1 (*Passenger Service Obligations*);
- (c) such information as RfL may consider reasonably necessary to publish in connection with the performance of its functions in relation to any Closure or proposed Closure;
- (d) the results of any Customer Satisfaction Survey or National Passenger Survey;
- (e) the amount of any Concession Payments payable under this Agreement and the aggregate amount of Concession Payments paid in each year under this Agreement;
- (f) data extracted from the invoices submitted pursuant to paragraph 5.6 of Schedule 11.1 (*Concession Payments*) which shall consist of the Operator's name, the expenditure account code, the expenditure account code description, the SAP document number, the clearing date and the invoice amount;
- (g) such information as RfL may reasonably require to publish in connection with the Priced Option;
- (h) the results of any assessment or inspection under Schedule 15 (*Concession Management Provisions*);
- (i) the results of any monitoring or measurement of the performance of the Operator in the provision of the Concession Services (including any environmental, sustainability, responsible procurement or other information provided under Schedule 15);
- (j) details of the Operator's plans and performance in respect of safety;
- (k) any reports and accounts delivered to it under Schedule 16.1 (*Records, plans and reports*);
- (l) such information as RfL may reasonably require to include in its annual report in respect of the Operator, provided that, in preparing that report, RfL shall have regard to the need for excluding, so far as is practicable, the matters specified in paragraphs (a) and (b) of Section 71(2) of the Act for this purpose, taking references in those paragraphs to the ORR as references to RfL;
- (m) such information as RfL may reasonably require to publish at or around the expiry or possible termination of the Concession Period in order to secure continuity of the provision and operation of the Concession Services; and

- (n) such information as may reasonably be required in connection with the retendering or re-letting of London Overground train operating concession or any part thereof or the retendering or re-letting of any other railway passenger services, provided that such information may only be published during the period of, or during the period leading up to, such retendering or re-letting;

**Concession Assets** means the property, rights and liabilities designated as such pursuant to paragraph 1 (*Concession Assets*) of Schedule 18.2 (*Restrictions on dealings*) but excluding such property, rights or liabilities as shall, in accordance with the terms of this Agreement, cease to be so designated;

**Concession Employee** means:

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

**Concession Manager** means a person appointed by RfL to undertake the responsibilities of such person set out in paragraph 4.1 of Schedule 15.1 (*Personnel, Communication and Access*);

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

**Concession Performance Meeting** means a meeting between RfL and the Operator to be held in each Reporting Period in accordance with paragraph 6 (*Concession Performance Meetings*) of Schedule 15.1 (*Personnel, Communication and Access*);

**Concession Period** means the period commencing on the Start Date and ending on the Expiry Date or, if earlier, the date of termination of this Agreement pursuant to the Conditions Precedent Agreement or Schedule 17 (*Remedies, Termination and Expiry*);

**Concession Section** has the meaning given to it in paragraph 1.1 of Schedule 15.5 (*Pensions*);

**Concession Services** means the services listed in Schedule 2.2 (*List of Concession Services*) as the Operator may provide or operate from time to time, including any of such services as the Operator may delegate or subcontract or otherwise secure through any other person from time to time in accordance with this Agreement;

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

**Concession Transformation Directorate** has the meaning given to it in Committed Obligation 4 in the table in Schedule 10.1 (*List of Committed Obligations and Committed Obligation Payments*);

**Concession Year** means any period of 12 months during the Concession Period, beginning on 1 April and ending on 31 March, except that:

- (a) the first Concession Year during the Concession Period shall begin on the Start Date and may be for a period of less than 12 months; and
- (b) the last Concession Year (whether the Last Concession Year of the Initial Term, the Last Concession Year of the Extended Term or the last Concession Year pursuant to paragraph 1.4 of Schedule 19 (*Continuation of London Overground Concession*)) shall end on the last day of the Concession Period and may be for a period of less than 12 months, provided that:
  - (i) where RfL does extend the Concession Period by up to 26 Reporting Periods pursuant to paragraph 1.1 of Schedule 19 and prior to that extension, the Last Concession Year of the Initial Term is for a period of less than 12 months, then:
    - (A) the Last Concession Year of the Initial Term shall be extended until the next 31 March to occur after the Initial Expiry Date, or if the period of extension is for a lesser period, by a period that is equal to that period of extension; and
    - (B) any further Concession Year of any such period of extension may, as appropriate, be a period of 12 months, beginning on 1 April and ending on 31 March, or a period of less than 12 months ending on the last day of that period of extension; and
  - (ii) where RfL does extend the Concession Period by up to seven Reporting Periods pursuant to paragraph 1.4 of Schedule 19 and:
    - (A) the Last Concession Year of the Initial Term is less than 12 months in duration, then the Last Concession Year of the Initial Term shall be extended until the next 31 March to occur after the Initial Expiry Date and any further period of such extension to occur after that 31 March shall comprise part of the next Concession Year, or, if the period of extension pursuant to paragraph 1.4 of Schedule 19 is for a lesser period, by a period that is equal to that period of extension; and
    - (B) the Last Concession Year of the Extended Term is less than 12 months in duration, then the Last Concession Year of the Extended Term shall be extended until the next 31 March to occur after the last day of the extended Concession Period pursuant to paragraph 1.1 of Schedule 19 and any further period of such extension to occur after that 31 March shall comprise part of the next Concession Year, or, if the period of extension pursuant to paragraph 1.4 of Schedule 19 is for a lesser period, by a period that is equal to that period of extension;

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

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

**Contingency Plan** has the meaning given to it in paragraph 1(a)(iv) of Schedule 17.6 (*Force Majeure*);

**Contract Manager** means a person appointed by the Operator to undertake the responsibilities of such person set out in paragraph 1.1 of Schedule 15.1 (*Personnel, Communication and Access*);

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

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

**Controller Training** has the meaning given to it in Committed Obligation 43 in the table in Schedule 10.1 (*List of Committed Obligations and Committed Obligation Payments*);

**Corrective Action Notice** means a notice issued by RfL to the Operator pursuant to Schedule 17.3 (*Other RfL Remedies*), specifying:

- (a) which circumstance, set out in paragraph 1.1 of Schedule 17.3, the notice has been issued in response to;
- (b) the steps RfL requires the Operator to take to secure or facilitate compliance with the Relevant Term; and

(c) the time period within which RfL requires the Operator to implement those steps;

**CPAY** means contactless payment technology to allow passengers to pay directly for the journeys they make, including on the Passenger Services;

**CPAY Agreement** means the agreement dated 30 July 2014 between TTL and certain Train Operators governing the use of CPAY;

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

**CSS Factor** means in relation to any CSS Score:

- (a) 0.5 in respect of the proportion of that CSS Score that falls into either:
  - (i) the Upper CSS Band; or
  - (ii) the Remedial Plan CSS Band; and
- (b) 1.0 in respect of the proportion of that CSS Score that falls into either:
  - (i) the Middle CSS Band; or
  - (ii) the Lower CSS Band;

**CSS Headline Measure** means the level of overall customer satisfaction with the Passenger Services, as measured during the carrying out of any Customer Satisfaction Survey;

**CSS Information Measure** means the level of customer satisfaction with the Operator's provision of service information, as measured during the carrying out of any Customer Satisfaction Survey;

**CSS Measure** means any of the CSS Headline Measure, the CSS Information Measure or the CSS Security Measure;

**CSS Measure Payment** means a payment in respect of the level of customer satisfaction achieved in relation to a CSS Measure in a Survey Period, calculated in accordance with, as appropriate, paragraph 3.4, 3.5, 3.6 or 3.7 of Schedule 8.4 (*Satisfaction Regime (CSS)*)

**CSS Methodology** means, as at the date of this Agreement, the Customer Satisfaction Survey methodology in the agreed terms marked **CSSM**;

**CSS Questionnaire** means, as at the date of this Agreement, the Customer Satisfaction Survey questionnaire in the agreed terms marked **CSSQ**;

**CSS Rate** means:

- (a) [REDACTED]<sup>3</sup> in relation to any CSS Score in respect of the CSS Headline Measure;
- (b) [REDACTED]<sup>4</sup> in relation to any CSS Score in respect of the CSS Information Measure; and

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<sup>3</sup> This text has been redacted by Rail for London in accordance with the provisions of the Freedom of Information Act 2000.

<sup>4</sup> This text has been redacted by Rail for London in accordance with the provisions of the Freedom of Information Act 2000.

(c) [REDACTED]<sup>5</sup> in relation to any CSS Score in respect of the CSS Security Measure;

**CSS Score** has the meaning given to it in paragraph 2.4 of Schedule 8.4 (*Satisfaction Regime (CSS)*);

**CSS Security Measure** means the level of customer satisfaction with personal safety at stations at which the Passenger Services call and on trains providing the Passenger Services, as measured during the carrying out of any Customer Satisfaction Survey;

**CSS Threshold** means, in relation to any CSS Measure and Survey Period, the lowest percentage specified in the Middle CSS Band that relates to that CSS Measure and Survey Period;

**Cumulative Profit Share Amount** has the meaning given to it in paragraph 3 (*Cumulative Profit Share Amount Calculation*) of Schedule 11.4 (*Profit Share*);

**Current Assets** means the current assets of the Operator, calculated in accordance with international accounting standards;

**Current Liabilities** means the current liabilities of the Operator, calculated in accordance with international accounting standards;

**Customer Experience Directorate** has the meaning given to it in Committed Obligation 2 in the table in Schedule 10.1 (*List of Committed Obligations and Committed Obligation Payments*);

**Customer Guardians** has the meaning given to it in Committed Obligation 83 in the table in Schedule 10.1 (*List of Committed Obligations and Committed Obligation Payments*);

**Customer Satisfaction Survey** means a passenger satisfaction survey in respect of the Concession Services, which may be carried out by RfL or its nominee in accordance with the Standards Regime (CSS), the CSS Methodology and the CSS Questionnaire;

**Customer Service Course** has the meaning given to it in Committed Obligation 60 in the table in Schedule 10.1 (*List of Committed Obligations and Committed Obligation Payments*);

**Customer Service Manager** has the meaning given to it in paragraph 2.1(f) of Schedule 15.1 (*Personnel, Communication and Access*);

**Customer Support Controllers** has the meaning given to it in Committed Obligation 75 in the table in Schedule 10.1 (*List of Committed Obligations and Committed Obligation Payments*);

**DBS** means DB Schenker Rail UK Limited;

**Decision Support System** has the meaning given to it in Committed Obligation 44 in the table in Schedule 10.1 (*List of Committed Obligations and Committed Obligation Payments*);

**Deduction** has the meaning given to it, as the context requires, in the Class 378 TSA or the Class 710 TSA, provided that, in the case of the Class 710 TSA, it shall not include any

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<sup>5</sup> This text has been redacted by Rail for London in accordance with the provisions of the Freedom of Information Act 2000.



Performance Monitoring Deduction or Major Incident Deduction (in each case as defined in the Class 710 TSA);

**Deed of Subleases** means a deed of subleases in favour of the Subleases Tenant in respect of the Station Areas and in the agreed terms marked *DoS*;

**Default CSS Threshold** means, in relation to any CSS Measure and Concession Year, the percentage specified as such in the Remedial Plan CSS Band that relates to that CSS Measure and Concession Year in the table in the Appendix (*CSS Bands*) to Schedule 8.4 (*Satisfaction Regime (CSS)*);

**Default KPI Threshold** has the meaning given to it in paragraph 7 (*Performance against Default KPI Thresholds*) of Schedule 8.1 (*Standards Regime (KPIs)*);

**Default Punctuality Threshold** means, in relation to any Thirteen Period Measurement Period, an Aggregate T3 of 85.3 per cent. across all Routes in that Thirteen Period Measurement Period;

**Default SIS Threshold** means, in relation to any Concession Year, the percentage specified as such in the Remedial Plan SIS Band that relates to that Concession Year in the table in Appendix (*SIS Bands*) to Schedule 8.5 (*Staff Regime (SIS)*);

**Delay Incident** means a planned or unplanned incident that has given rise to Minutes Lateness;

**Delivery and Servicing Vehicle** means, a Lorry, a Van or a Car-derived Van;

**Depot Access Agreement** means, in relation to any depot, an Access Agreement between the Facility Owner and an access beneficiary, incorporating by reference the Depot Access Conditions, which permits that access beneficiary to use the maintenance and/or cleaning facilities at that depot;

**Depot Access Charges** means the payments and fees payable to the Facility Owner under any Depot Access Agreement;

**Depot Access Conditions** means the document known as the National Depot Access Conditions and the depot annexes as each is modified in respect of the relevant train depot from time to time with the approval of the ORR;

**Depot Lease** means:

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

**Depot Usage Agreement** means an agreement in the agreed terms *DUA* between a Facility Owner and an access beneficiary in relation to a train depot that is outside the scope of the Act and which permits that access beneficiary to use the maintenance, stabling and/or cleaning facilities at that depot;

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

**Destination Recording Point** means the Recording Point which is located at or most proximate to the terminating point or station (including any early termination point or station where a Unit is taken out of service early or the Diagram Leg is terminated early) for the relevant Diagram Leg;

**Devolved Route Group** means the LCFL, the LECL and the RUL;

**Devolved Route Group TVMs** has the meaning given to it in paragraph 1.1(b) of Schedule 3.6 (*Ticket Equipment*);

**Diagram** means the description of each railway service to be operated by the Operator, as specified in the Train Plan;

**Diagram Leg** means that element of a Diagram that relates to a single journey between an originating point and a terminating point as identified in the Train Plan;

**Direct Agreement** means any agreement made, or to be made, from time to time between RfL and the counterparty of a Key Contract in relation to such Key Contract, including any agreement entered into by RfL under Schedule 18.1 (*Continuity of Services*);

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

**Disabled Person** is a reference to a person who has a disability in the Equality Act;

**Disabled Person's Policy** means TfL's policy in relation to Disabled Persons entitled 'Assistance for Disabled Customers on London Overground' as such policy is published from time to time;

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

**Discount Fare Scheme** means:

- (a) the ATOC Disabled Person's Railcard Scheme dated 23 July 1995 between the participants named therein;
- (b) the ATOC Young Person's Railcard Scheme dated 23 July 1995 between the participants named therein;
- (c) the ATOC Senior Railcard Scheme dated 23 July 1995 between the participants named therein;
- (d) the Network Railcard Scheme dated 23 July 1995 between the participants named therein;
- (e) the Family Railcard Scheme dated 23 July 1995 between the participants named therein;
- (f) the Armed Forces Scheme dated 23 July 1995 between the participants named therein; and
- (g) any other discount fare scheme designated as such by RfL in accordance with paragraph 4.2 of Schedule 3.5 (*Transport, Travel and Other Fares Related Schemes*),

in each case until such time as RfL may de-designate any such scheme in accordance with paragraph 4.3 of Schedule 3.5;

**DISI** has the meaning given to it in Committed Obligation 64 in the table in Schedule 10.1 (*List of Committed Obligations and Committed Obligation Payments*);

**DISI Report** has the meaning given to it in Committed Obligation 64 in the table in Schedule 10.1 (*List of Committed Obligations and Committed Obligation Payments*);

**Dispute** has the meaning given to it in paragraph 2.1 of Schedule 20 (*Other Provisions*);

**Dispute Notice** has the meaning given to it in paragraph 2.3 of Schedule 20 (*Other Provisions*);

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

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

**Diversity Infraction** means any breach by the Operator of its obligations specified in paragraphs 4 (*Equality and diversity statutory duties*) to 6 (*Monitoring and Reporting*) (inclusive) of Schedule 15.3 (*Responsible Procurement*) and/or any failure by a Direct Subcontractor to adopt and implement a Strategic Equality and Diversity Plan, an Equality and Diversity Training Plan and/or a Supplier Diversity Plan as described in paragraphs 4 to 6 (inclusive) of Schedule 15.3;

**Door Data** has the meaning given to it in Committed Obligation 59 in the table in Schedule 10.1 (*List of Committed Obligations and Committed Obligation Payments*);

**Door Data Analyst** has the meaning given to it in Committed Obligation 59 in the table in Schedule 10.1 (*List of Committed Obligations and Committed Obligation Payments*);

**Door Resilience Certificate of Completion** has the meaning given to it in Committed Obligation 55 in the table in Schedule 10.1 (*List of Committed Obligations and Committed Obligation Payments*);

**Door Resilience Project** has the meaning given to it in Committed Obligation 55 in the table in Schedule 10.1 (*List of Committed Obligations and Committed Obligation Payments*);

**Driver** means any employee of the Operator and its Direct Subcontractors (including an agency driver), who operates Delivery and Servicing Vehicles on behalf of the Operator;

**Driver Delay App** has the meaning given to it in Committed Obligation 30 in the table in Schedule 10.1 (*List of Committed Obligations and Committed Obligation Payments*);

**Dual Voltage Unit** means a type of Class 710 Unit and has the meaning given to it in the Class 710 MSA;

**DVLA** means the Driver and Vehicle Licensing Agency;

**Dwell Time Course** has the meaning given to it in Committed Obligation 49 in the table in Schedule 10.1 (*List of Committed Obligations and Committed Obligation Payments*);

**E&E Manager** has the meaning given to it in Committed Obligation 20 in the table in Schedule 10.1 (*List of Committed Obligations and Committed Obligation Payments*);

**East Anglia Franchisee** means:

- (a) until 15 October 2016, Greater Anglia; and
- (b) thereafter, the Train Operator appointed by the Secretary of State under the Act to operate the railway passenger services previously operated by Greater Anglia;

**East Ham Depot** means the regulated light maintenance depot at Stevenage Road, East Ham, London;

**Education Fund** has the meaning given to it in Committed Obligation 40 in the table in Schedule 10.1 (*List of Committed Obligations and Committed Obligation Payments*);

**EF Additional Services** has the meaning given to it in the Class 710 TSA;

**Electronic Library** has the meaning given to it in paragraph 10.4 of Schedule 16.1 (*Records, plans and reports*);

**ELL** means the Route between Dalston Junction station, Crystal Palace station and West Croydon station, via New Cross Gate station, including New Cross station, and Silwood Junction and Clapham Junction station;

**ELL Core Route** means the section of the ELL between Dalston Western Junction in the north and New Cross Gate Junction and New Cross in the south;

**ELL Sidings** means the stabling sidings facility at Silwood for which RfL shall be the Facility Owner;

**ELL Stations** means those London Overground Stations listed in the table in the Appendix (*London Overground Stations*) to Schedule 4.1 (*Property Leasing and Access*) against which a cross is marked in the column labelled 'ELL';

**Environmental Management System** has the meaning given to it in paragraph 3 (*Environmental Management System*) of Schedule 15.4 (*Environment*);

**Environmental Report** has the meaning given to it in paragraph 6 (*Annual Environmental Reporting*) of Schedule 15.4 (*Environment*);

**EPUBs** has the meaning given to it in Committed Obligation 77 in the table in Schedule 10.1 (*List of Committed Obligations and Committed Obligation Payments*);

**Equality Act** means the Equality Act 2010;

**Equality Act Claim** has the meaning given to it in paragraph 3.1 of Schedule 4.2 (*Station Environment*);

**Equality Act Requirements** means the duties of a provider of services under sections 20(3), 20(5) and sections 20(9)(a) and (b) in relation to section 20(4), in each case of the Equality Act;

**Equality and Diversity Framework** means the framework in the agreed terms marked **EDF**;

**Equality and Diversity Training Plan** means the diversity training plan to be settled in accordance with paragraph 5.4(b) of Schedule 15.3 (*Responsible Procurement*);

**Escrow Documents** has the meaning given to it in paragraph 1.1 of Schedule 13.2 (*Identity of the Suite of Models*);

**Estimated Revisions** has the meaning given to it in paragraph 2.1 of Schedule 13.1 (*Financial Consequences of Change*);

**ESUB** means an electronic service update board that provides information in relation to the Passenger Services and other information;

**Ethical Sourcing Action Plan** has the meaning given to it in paragraph 16.3 of Schedule 15.3 (*Responsible Procurement*);

**Ethical Sourcing Principles** has the meaning given to it in paragraph 16.1 of Schedule 15.3 (*Responsible Procurement*);

**ETI Base Code** means the code of labour practice specified by the Ethical Trading Initiative and as at the date of this Agreement, as set out in the agreed terms marked **ETIBC**;

**European Rail** means European Rail Finance (GB) Limited, whose registered office is at 210 Pentonville Road, London, N1 9JY and whose registered number is 02720809;

**Evening Peak** means, in relation to any Passenger Service, the period between 1530 and 1929 during a Weekday or such other continuous evening four hour period as RfL may specify from time to time;

**Event of Default** means any of the events set out in paragraph 2 (*Events of Default*) of Schedule 17.5 (*Events of Default, Termination Event and Voluntary Termination*);

**Event of Default Step-in Date** means the date specified in any Event of Default Step-in Notice on which RfL or its nominee will step-in and assume the Operator's role in performing the Concession Services and/or the Operator's obligations under this Agreement;

**Event of Default Step-in Notice** means a notice issued by RfL pursuant to paragraph 4.1 of Schedule 17.3 (*Other RfL Remedies*) in relation to the occurrence of an Event of Default in the form set out in Appendix 1 (*Form of Event of Default Step-in Notice*) to Schedule 17.3;

**Event of Default Step-in Period** means the period between the Event of Default Step-in Date and the related Event of Default Step-out Date;

**Event of Default Step-out Date** means the date specified in any Event of Default Step-out Notice on which RfL or its nominee will step-out and no longer assume the Operator's role in performing the Concession Services and/or the Operator's obligations under this Agreement;

**Event of Default Step-out Notice** means a notice issued by RfL pursuant to paragraph 4.10 of Schedule 17.3 (*Other RfL Remedies*) in the form set out in Appendix 2 (*Form of Event of Default Step-out Notice*) to Schedule 17.3;

**Every Train Programme** has the meaning given to it in Committed Obligation 39 in the table in Schedule 10.1 (*List of Committed Obligations and Committed Obligation Payments*);

**Exclusive Station Services** has the meaning given to it, as appropriate, in the Station Access Conditions or the Independent Station Access Conditions;

**Expiry Date** means the later of:

- (a) the Initial Expiry Date;
- (b) any date occurring up to 26 Reporting Periods after the Initial Expiry Date if RfL exercises its discretion to continue this Agreement pursuant to paragraph 1.1 of Schedule 19 (*Continuation of London Overground Concession*); or
- (c) the date to which this Agreement is continued in accordance with paragraph 1.4 of Schedule 19;

**Exterior Cleaning Standard** means the machine and periodic heavy cleaning to such standard of cleanliness as will satisfy the relevant Key Performance Indicator standards set out in Table 6 in Appendix 1 (*Key Performance Indicators*) to Schedule 8.1 (*Standards Regime (KPIs)*) and achieve a mean score of 80 under the MSS Questionnaire;

**Facility Owner** means, in relation to a facility:

- (a) regulated under the Act, has the meaning given to that term in Section 17(6) of the Act; and
- (b) not regulated under the Act:
  - (i) any person who has an interest in, or right over, that railway facility; and
  - (ii) whose permission to use that railway facility is needed by another person before that other person may use it;

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

**Fares Document** means the document issued by RfL to the Operator from time to time, setting out all TSA Fares that the Operator is required to Create and all Fares that the Operator is required to sell, together with the terms under which those obligations must be fulfilled, as the same may be amended from time to time in accordance with paragraph 2 (*Monitoring*) of Schedule 3.4 (*Fares Information and Monitoring*);

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

**Fault Management System** means a fault management system that allows for the electronic and manual reporting of faults in respect of certain facilities that are the subject of the Standards Regime (KPIs) and that has, as a minimum, the characteristics set out in paragraph 19.2 of Schedule 2.2 (*List of Concession Services*);

**Fault Reporting App** has the meaning given to it in Committed Obligation 82 in the table in Schedule 10.1 (*List of Committed Obligations and Committed Obligation Payments*);

**Fault Tracking Database** has the meaning given to it in paragraph 19.4 of Schedule 2.2 (*List of Concession Services*);

**Finance Manager** has the meaning given to it in paragraph 2.1(d) of Schedule 15.1 (*Personnel, Communication and Access*);

**Financial Action Plan** means any action plan produced by the Operator pursuant to paragraph 5.3(d) of Schedule 16.1 (*Records, plans and reports*), where the level of its financial performance specified in the Management Accounts is worse than forecast by the Operator in its current Business Plan;

**Financial Conduct Authority** means the independent, non-governmental body given statutory powers by the Financial Services Act 2012;

**Financial Model** means the Operator's financial model deposited with RfL on the date of this Agreement in the agreed terms marked **FM** and as subsequently revised in each case in accordance with Schedule 13.2 (*Identity of the Suite of Models*);

**Financial Performance Measurement Period** has the meaning given to it in paragraph 3.2(b) of Schedule 14 (*Financial Obligations and Credit Support*);

**Financier** a financier of the Class 378 Fleet and related equipment or the Class 710 Fleet and related equipment;

**Fleet IT Analyst / Developer** has the meaning given to it in Committed Obligation 54 in the table in Schedule 10.1 (*List of Committed Obligations and Committed Obligation Payments*);

**Fleet Manager** has the meaning given to it in paragraph 2.1(g) of Schedule 15.1 (*Personnel, Communication and Access*);

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

**FOI Legislation** means:

- (a) the Freedom of Information Act 2000 and the Environmental Information Regulations 2004; and
- (b) any guidance issued by the Information Commissioner's Office (including its successors and assigns) in relation to such legislation;

**Force Majeure Event** means any of the events described as such in paragraph 1 (*Force Majeure Event*) of Schedule 17.6 (*Force Majeure*) where the conditions specified in paragraph 2 (*Conditions to Force Majeure Events*) of Schedule 17.6 are satisfied;

**FORS** means the Fleet Operator Recognition Scheme, which is an accredited scheme for businesses operating van and lorry fleets, which offers impartial, independent advice and guidance to motivate companies to improve their compliance with relevant laws and their environmental, social and economic performance;

**FORS Standard** means the standard setting out the accreditation requirements for the FORS, a copy of which can be found at: [www.fors-online.org.uk](http://www.fors-online.org.uk);

**Freedom Pass Scheme** means the scheme that is the subject of the Freedom Pass Agreement, the terms of which offer free travel on Weekdays to elderly and disabled residents of the GLA Area (as defined in GLA Act) on the Passenger Services, amongst other transport services;

**Gateline Fund** has the meaning given to it in Committed Obligation 104 in the table in Schedule 10.1 (*List of Committed Obligations and Committed Obligation Payments*);

**GLA Act** means the Greater London Authority Act 1999;

**GOB** means the Route between Gospel Oak Station and Barking Station;

**GOB Blockade** means the blockade by Network Rail of the GOB for the purpose of electrifying the Route which is scheduled to end on 10 December 2016;

**GOB Stations** means those London Overground Stations listed in the table in the Appendix (*London Overground Stations*) to Schedule 4.1 (*Property Leasing and Access*) against which a cross is marked in the column labelled 'GOB';

**Gold Accreditation** means the highest level of accreditation within the FORS Standard, the requirements of which are more particularly described at [www.fors-online.org.uk](http://www.fors-online.org.uk);

**Good Industry Practice** means the exercise of that degree of skill, diligence, prudence, foresight and practice which would reasonably and ordinarily be expected from a skilled and experienced person engaged in the railway industry;

**Greater Anglia** means Abellio Greater Anglia Limited whose registered address is at 5 Fleet Place, London. EC4M 7RD and whose registered number is 06428369;

**Greater London Area** has the meaning given to it in the GLA Act;

**Greater London Authority** means the Greater London Authority, a body corporate established under the GLA Act;

**GRIP** means Governance for Railway Investment Projects, the Network Rail process for managing projects for enhancing or renewing the national rail network;

**Guarantee** means the guarantee to be provided to RfL in the form set out in Appendix 2 (*Form of Guarantee*) to Schedule 14 (*Financial Obligations and Credit Support*);

**Guarantor** means any person who may provide or be an obligor under the Guarantee from time to time;

**Guardian Stakeholder Relationship Manager** has the meaning given to it in Committed Obligation 86 in the table in Schedule 10.1 (*List of Committed Obligations and Committed Obligation Payments*);

**Handover Package** means a package containing the information and objects specified in Appendix 1 (*Form of Handover Package*) to Schedule 18.1 (*Continuity of Services*) and such other information and objects as RfL may reasonably specify from time to time;

**Head Office Refurbishment** has the meaning given to it in Committed Obligation 13 in the table in Schedule 10.1 (*List of Committed Obligations and Committed Obligation Payments*);



**Head Office Refurbishment Plan** has the meaning given to it in Committed Obligation 13 in the table in Schedule 10.1 (*List of Committed Obligations and Committed Obligation Payments*);

**Help Point** means a two-way audio communication device positioned in highly visible locations at railway stations that allows customers to speak to another person to obtain real-time information about all passenger rail services and/or to notify that person of an emergency;

**High Speed 2** means the high-speed rail service between London Euston Station and Birmingham, Manchester, Sheffield and Leeds that, subject to parliamentary approval, is scheduled to be constructed from 2017 onwards and is scheduled to start operations in 2026;

**HS2 Priced Change Example** has the meaning given to it in paragraph 3.1 of Schedule 6.4 (*High Speed 2*);

**HS2 Priced Change Example Price** has the meaning given to it in paragraph 3.4 of Schedule 6.4 (*High Speed 2*);

**HS2 Affected WEL Services** has the meaning given to it in paragraph 3.2(a) of Schedule 6.4 (*High Speed 2*);

**IABs** has the meaning given to it in Committed Obligation 78 in the table in Schedule 10.1 (*List of Committed Obligations and Committed Obligation Payments*);

**Iford Access Novation Agreement** means the novation agreement between the East Anglia Franchisee, the Incumbent Operator and the Operator to be entered into on or prior to the Start Date pursuant to which the rights and obligations of the Incumbent Operator under the Depot Access Agreement between the East Anglia Franchisee and the Incumbent Operator are novated to the Operator;

**Iford Depot** means the regulated light maintenance depot known as Ilford Seven Kings Depot;

**IM (Schedule 4) Payment** has the meaning given to it in paragraph 8 (*Restriction of Use Payments to and from Infrastructure Managers*) of Schedule 1.3 (*Managing Changes to the Passenger Services*);

**Incremental Output Statement Charge** means the charge to which that description is commonly given in Relevant Agreements;

**Incremental Timetable Robustness Verification** has the meaning given to it in Committed Obligation 52 in the table in Schedule 10.1 (*List of Committed Obligations and Committed Obligation Payments*);

**Incumbent Operator** means London Overground Rail Operations Limited whose registered office is at Allington House, 150 Victoria Street, London SW1E 5LB and whose registered number is 05668786;

**Indefeasible Rights Employee** means a Concession Employee who has a right to continue to participate in the Railways Pension Scheme pursuant to the Protection Order;

**Indemnified Parties** means RfL, TfL, members of the TfL Group, and any Financier, and, in each case, all or any of their Affiliates, servants, agents, officers, employees, contractors and sub-contractors;

**Independent Station Access Conditions** means the document known as the Independent Station Access Conditions and the station annexes as each is modified in respect of the relevant London Overground Station from time to time with the approval of the ORR;

**Indexation Base Month** means March 2016;

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

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

**Industrial Action** means any strike or other concerted action, taken in connection with the employment of any relevant employees (whether or not that action is official or unofficial or involves any breach of such employees' conditions of employment, and including any action taken in furtherance of a dispute, or with a view to improving the terms of employment of the relevant employees or by way of support for any other person) subject always, in the case of any unofficial industrial action, to the Operator being able to demonstrate the occurrence of such unofficial industrial action to the reasonable satisfaction of RfL;

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

**Information Control Managers** has the meaning given to it in Committed Obligation 71 in the table in Schedule 10.1 (*List of Committed Obligations and Committed Obligation Payments*);

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

**Infrastructure Manager** means, as the context requires, Network Rail or RfL (I);

**Initial Business Plan** means the business plan in a form acceptable to RfL, including any adjusted version of such plan resubmitted to RfL in accordance with paragraph 3 (*Business Plans*) of Schedule 16.1 (*Records, plans and reports*);

**Initial Expiry Date** means 0159 on 28 April 2024;

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

**Integrated Transport Schemes** means any schemes relating to the integration of any other form of transport with the Concession Services designated as such in accordance with paragraph 1.1 of Schedule 3.5 (*Transport, Travel and Other Fares Related Schemes*);

**Interchange Station** means any of the following London Overground Stations:

Route	London Overground Station	Station Weighted Value
ELL	Canada Water Station	2
	Clapham Junction Station	1
	Highbury & Islington Station	2
	New Cross Gate Station	1
	Norwood Junction Station	1
	Shadwell Station	2
	West Croydon Station	1
	Whitechapel Station	2
GOB	Barking Station	2
	Blackhorse Road Station	2
	Gospel Oak Station	2
	Walthamstow Queen's Road Station	1
	Wanstead Park Station	1
LCFL	Hackney Downs Station	1
	London Liverpool Street Station	2
	Walthamstow Central Station	2
LECL	Hackney Downs Station	1
	London Liverpool Street Station	2
	Seven Sisters Station	2
NLL	Clapham Junction Station	1
	Gospel Oak Station	2
	Hackney Central Station	1
	Highbury & Islington Station	2
	Richmond Station	1
	Shepherd's Bush Station	2
	Stratford Station	2
	West Hampstead Station	2
	Willesden Junction Station	2

Route	London Overground Station	Station Weighted Value
WEL	Harrow & Wealdstone Station	2
	London Euston Station	2
	Watford Junction Station	1
	Willesden Junction Station	2

**Inter-company Loan Facility** means the revolving loan facility of no less than [REDACTED]<sup>6</sup> which, via DB Mobility Logistics, the Parent makes available to the Operator in accordance with the terms of the Support Letter;

**Interest Rate** means a rate equivalent to one per cent. per annum above the base lending rate published by the Bank of England (or such other bank as RfL may, after consultation with the Operator, determine from time to time) during any period in which an amount payable under this Agreement remains unpaid;

**Interim Performance Bond Expiry Date** has the meaning given to it in paragraph 2.3(b) of Schedule 14 (*Financial Obligations and Credit Support*);

**Interior Cleaning Standard** means such standard of cleanliness as will satisfy the relevant Key Performance Indicator standards set out in Table 6 (*Train Cleaning and Condition Standards*) in Appendix 1 (*Key Performance Indicators*) to Schedule 8.1 (*Standards Regime (KPIs)*) and achieve a mean score of 80 under the MSS Questionnaire;

**Inter-Operator Schemes** means:

- (a) the ATOC Staff Travel Scheme dated 23 July 1995 between the participants named therein;
- (b) the Ticketing and Settlement Agreement;
- (c) the ATOC LRT Scheme dated 23 July 1995 between the participants named therein;
- (d) the Travelcard Agreement dated 15 October 1995 between London Regional Transport and the parties named therein;
- (e) the Amended and Restated (Sundry Travelcards) Agreement dated 31 October 2005 between the participants named therein;
- (f) the Through Ticketing (Non-Travelcard) Agreement dated 15 October 1995 between London Regional Transport and the parties named therein as amended by a letter agreement dated 1 December 2000;
- (g) the National Rail Enquiry Scheme dated 11 June 1996 between the participants named therein;

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<sup>6</sup> This text has been redacted by Rail for London in accordance with the provisions of the Freedom of Information Act 2000.

- (h) the Passenger Demand Forecasting Handbook Scheme dated 21 June 1999 between the participants named therein;
- (i) the Train Information Services Scheme between the participants named therein;
- (j) the Retail Agents Scheme dated between the participants named therein;
- (k) the Two Together Railcard Scheme dated 1 February 2014 between the participants named therein;
- (l) the Commercial Scheme dated 18 January 2016 between the participants named therein;
- (m) the International Products Scheme dated 23 July 1995 between the participants named therein;
- (n) the Engineering Scheme dated 24 April 1996 between the participants named therein;
- (o) the Operations Scheme dated 24 April 1996 between the participants named therein;
- (p) any other scheme, agreement and/or contract of a similar or equivalent nature as may from time to time during the Concession Period amend, replace or substitute, in whole or in part, any of such schemes, agreements and/or contracts; and
- (q) any Discount Fare Scheme;

**Investigation Managers** has the meaning given to it in Committed Obligation 80 in the table in Schedule 10.1 (*List of Committed Obligations and Committed Obligation Payments*);

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

**Journey Time Metric** has the meaning given to it in paragraph 1.1 of Schedule 8.6 (*Monitoring Trends*);

**Key Contract** means any agreement, contract, licence or other arrangement to which the Operator is a party or under which the Operator is the beneficiary from time to time which is designated as such pursuant to Schedule 18.1 (*Continuity of Services*) but excluding any such agreement, contract, licence or other arrangement which ceases, in accordance with the terms of this Agreement, to be designated as a Key Contract;

**Key Performance Indicator** means, as the context requires, a qualitative or compliance measure of the Operator's service quality performance against standards specified in the Appendix 1 (*Key Performance Indicators*) to Schedule 8.1 (*Standards Regime (KPIs)*);

**Key Personnel** has the meaning given to it in paragraph 2.1 of Schedule 15.1 (*Personnel, Communication and Access*);

**KPI Adjustment** means, for any Reporting Period, any adjustment so named and calculated in accordance with paragraph 5.1 of Schedule 8.1 (*Standards Regime (KPIs)*);

**KPI Audit Programme** has the meaning given to it in paragraph 2.1 of Schedule 8.1 (*Standards Regime (KPIs)*);

**KPI Contingency Plan** means a contingency plan agreed between the Operator and RfL pursuant to paragraph 4.2 of Schedule 8.1 (*Standards Regime (KPIs)*);

**KPI Incentive Payment** means, for any Reporting Period, any payment so named and calculated in accordance with paragraph 4.4 of Schedule 8.1 (*Standards Regime (KPIs)*);

**KPI Measured Station** means an Operator Station to which the Standards Regime (KPIs) applies from the date that the Operator becomes Facility Owner;

**Last Concession Year of the Initial Term** means the last Concession Year of the Concession Period beginning on 1 April and ending on the Initial Expiry Date;

**Last Concession Year of the Extended Term** means the last Concession Year of the Concession Period beginning on 1 April and ending on the last day of the Concession Period as extended by up to 26 Reporting Periods pursuant to paragraph 1.1 of Schedule 19 (*Continuation of London Overground Concession*);

**Last Train** means for each destination London Overground Station, the last scheduled Passenger Service to depart from any London Overground Station on any day to that destination London Overground Station;

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

**LCFL** means the Route between Liverpool Street (Mainline) station and Chingford station via Clapton station;

**LCFL Stations** means those London Overground Stations listed in the table in the Appendix (*London Overground Stations*) to Schedule 4.1 (*Property Leasing and Access*) against which a cross is marked in the column labelled 'LCFL';

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

**Leadership Conference** has the meaning given to it in Committed Obligation 7 in the table in Schedule 10.1 (*List of Committed Obligations and Committed Obligation Payments*);

**Leadership Programme** has the meaning given to it in Committed Obligation 6 in the table in Schedule 10.1 (*List of Committed Obligations and Committed Obligation Payments*);

**LECL** means the Route between Liverpool Street (Mainline) station and Enfield Town station and Cheshunt station via Southbury Station;

**LECL Stations** means those London Overground Stations listed in the table in the Appendix (*London Overground Stations*) to Schedule 4.1 (*Property Leasing and Access*) against which a cross is marked in the column labelled 'LECL';

**Legacy Rolling Stock Units** has the meaning given to it in Committed Obligation 53 in the table in Schedule 10.1 (*List of Committed Obligations and Committed Obligation Payments*);

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

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

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

**Lighting Replacement Fund** has the meaning given to it in Committed Obligation 15 in the table in Schedule 10.1 (*List of Committed Obligations and Committed Obligation Payments*);

**LOC Ticket Revenue** means, in relation to any Survey Period, the amount of Ticket Revenue generated in that Survey Period on Passenger Services on the London Overground Classic Route Group;

**Local Authority** means:

- (a) in England, a county council, a district council, a unitary authority, a passenger transport executive, a London borough council, the common council of the City of London, or a council which is established under the Local Government Act 1992 and which is either an authority responsible for expenditure on public passenger transport services within the meaning of Section 88 of the Transport Act 1985 or a local authority for the purposes of Section 93 of the Transport Act 1985;
- (b) in Wales, a county council, a district council or a council which is established under the Local Government Act 1972 or the Local Government (Wales) Act 1994;
- (c) in Scotland, the Strathclyde Passenger Transport Executive, or a district council or a unitary authority which is established under the Local Government (Scotland) Act 1973 or the Local Government, etc. (Scotland) Act 1994;
- (d) any other body or council replacing any of the above from time to time; and
- (e) any other body or instrument of local or regional government specified by RfL from time to time;

**Local Community** means those areas of London affected by London Overground from time to time;

**Lock-up Period** means the relevant period referred to in paragraph 3.2 of Schedule 14 (*Financial Obligations and Credit Support*) during which the restrictions referred to in paragraph 3.1 of Schedule 14 apply;

**London Borough** means any of administrative areas of Greater London (plus the City of London), comprising one of 33 boroughs;

**London Boroughs Concessionary Travel Scheme** means the agreements (Annual and Framework) dated 22 December 2004 between TfL and the Association of London Government Transport and Environment Committee relating to the provision of

concessionary travel for elderly and disabled London residents, including any modifications, renewals or replacements thereto from time to time;

**London Living Wage** means the basic hourly wage determined by the Greater London Authority for employees working full time in connection with London Overground within one of the London Boroughs;

**London Overground Classic Route Group** means the ELL, the GOB, the NLL and the WEL;

**London Overground Depots** means the Operator Depots and the Operator Access Depots;

**London Overground Network** means the ELL, the GOB, the LCFL, the LECL, the NLL the RUL and the WEL;

**London Overground Operating Brand** means the London Overground branding requirements set out in the following documents:

- (a) London Overground Train Graphics standard, issue 2;
- (b) London Overground Basic Elements standard, issue 2;
- (c) London Overground Signs standard, issue 3;
- (d) London Overground station colour standard for the built environment, issue 4; and
- (e) London Overground Stationery standard, issue 2;

**London Overground Passenger Contact Centre** has the meaning given to it in paragraph 17.1 of Schedule 2.2 (*List of Concession Services*);

**London Overground Stations** means the ELL Stations, the GOB Stations, the LCFL Stations, the LECL Stations, the NLL Stations, the RUL Stations and the WEL Stations;

**London Overground Webpage** means the webpage that comprises part of the TfL website to be operated by RfL to provide passengers with an electronic means of obtaining information relating to London Overground and the Passenger Services, amongst other things;

**Lorry** means a vehicle with an MAM exceeding 3,500 kilograms;

**Loss** means any claims, demands, damages, proceedings, losses, liabilities, suits, judgments, actions, costs, charges, expenses, taxes, penalties or fines howsoever arising (including arising under statute, contract or at common law);

**Low Punctuality Band** means, in relation to a Route and Concession Year, the percentage punctuality band labelled as such between the Lower Punctuality Threshold (inclusive) and the Punctuality Threshold (inclusive) that relates to that Route and Concession Year, specified in Appendix 2 (*Service Punctuality Bands Table*) to Schedule 7.1 (*Operating Performance Regime*);

**Low Reliability Band** means, in relation to a Route and Concession Year, the percentage reliability band labelled as such between the Lower Reliability Threshold (inclusive) and the Reliability Threshold (inclusive) that relates to that Route and Concession Year, specified in Appendix 1 (*Service Reliability Bands Table*) to Schedule 7.1 (*Operating Performance Regime*);



**Lower CSS Band** means in relation to any CSS Measure, the percentage band labelled as such between the Remedial Plan CSS Threshold (inclusive) and the CSS Threshold (inclusive) that relates to that CSS Measure, specified in the Appendix (*CSS Bands*) to Schedule 8.4 (*Satisfaction Regime (CSS)*);

**Lower Punctuality Band** means, in relation to a Route and Concession Year, the percentage punctuality band labelled as such between the Remedial Plan Punctuality Threshold (inclusive) and the Lower Punctuality Threshold (inclusive) that relates to that Route and Concession Year, specified in Appendix 2 (*Service Punctuality Bands Table*) to Schedule 7.1 (*Operating Performance Regime*);

**Lower Punctuality Threshold** means, in relation to a Route and Concession Year, the lowest percentage specified in the Low Punctuality Band for that Route and Concession Year;

**Lower Reliability Band** means, in relation to a Route and Concession Year, the percentage reliability band labelled as such between zero per cent. (inclusive) and the Lower Reliability Threshold (inclusive) that relates to that Route and Concession Year, specified in Appendix 1 (*Service Reliability Bands Table*) to Schedule 7.1 (*Operating Performance Regime*);

**Lower Reliability Threshold** means, in relation to a Route and Concession Year, the highest percentage specified in the Lower Reliability Band for that Route and Concession Year;

**Lower SIS Band** means the percentage band labelled as such between the Remedial Plan SIS Threshold (inclusive) and between the SIS Threshold (inclusive), specified in the Appendix (*SIS Bands*) to Schedule 8.5 (*Staff Regime (SIS)*);

**LUL** means London Underground Limited;

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

**Maintenance Plan** has the meaning given to it in, as the context requires, the Class 378 TSA or the Class 710 MSA;

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

**MAM** means the maximum authorised mass of a vehicle or trailer including the maximum load that can be carried safely while used on the road;

**Managed Station** means Euston station, Liverpool Street (Mainline) station or any other station used in connection with the provision of the Concession Services where Network Rail becomes the Facility Owner during the Concession Period;

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

**Management Accounts** has the meaning given to it in paragraph 5.1 of Schedule 16.1 (*Records, plans and reports*);

**Managing Director** means a person appointed by the Operator with executive powers to manage the day-to-day operations of the Operator's business and the Operator's performance of its obligations under the Transaction Documents;

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

**Marketing Plan** means a marketing plan delivered by RfL to the Operator prior to the start of each Concession Year in accordance with paragraph 4 (*Marketing Plan*) of Schedule 16.1 (*Records, plans and reports*) setting out the marketing requirements of RfL for that Concession Year;

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

**Metropolitan and City Police Agreement** means the agreement between ATOC and the Metropolitan Police and the City of London Police in relation to free travel (for any purpose) by the officers of those constabularies on, amongst others, the Passenger Services;

**Middle CSS Band** means in relation to any CSS Measure, the percentage band labelled as such between the CSS Threshold (inclusive) and the Upper CSS Threshold (inclusive) that relates to that CSS Measure, specified in the Appendix (*CSS Bands*) to Schedule 8.4 (*Satisfaction Regime (CSS)*);

**Middle Punctuality Band** means, in relation to a Route and Concession Year, the percentage punctuality band labelled as such between the Punctuality Threshold (inclusive) and the Upper Punctuality Threshold (inclusive) that relates to that Route and Concession Year, specified in Appendix 2 (*Service Punctuality Bands Table*) to Schedule 7.1 (*Operating Performance Regime*);

**Middle SIS Band** means the percentage band labelled as such between the SIS Threshold (inclusive) and the Upper SIS Threshold (inclusive), specified in the Appendix (*SIS Bands*) to Schedule 8.5 (*Staff Regime (SIS)*);

**Mileage Reduction Amount** means the amount calculated in accordance with factor  $MRA_{(c)}$  in the definition of **ROUP** in paragraph 9.1 of Schedule 1.3 (*Managing Changes to the Passenger Services*), in relation to a decrease in the distance (measured in miles) operated by the Operator from that specified in the relevant Train Plan;

**Minimum Records** means all information relating to the Operator's performance of and compliance with paragraphs 4 (*Equality and diversity statutory duties*) and 5 (*Equality and Diversity Plans*) of Schedule 15.3 (*Responsible Procurement*) and the adoption and implementation of an equality and diversity plan, a strategic equality and diversity plan, an equality and diversity training plan and a supplier diversity plan by each Direct Subcontractor and, where applicable, Indirect Subcontractor of the Operator;

**Minimum Share Capital** has the meaning given to Share Capital in the Support Letter;

**Minutes Delay** means, in relation to a Passenger Service and a Recording Point, the minutes and seconds delay at that Recording Point, calculated in accordance with the Network Rail TAA;

**Minutes Lateness** means, in relation to a Unit that is operating a Diagram Leg, the number of minutes and seconds that that Unit is recorded at a Destination Recording Point for that Unit on that Diagram Leg, later than its scheduled time for that Destination Recording Point in the Timetable (adjusted with the relevant timing offset where the Destination Recording Point is not exactly located at the relevant terminating point) as a result of a planned or unplanned incident and which are reported by the Network Monitoring System;

**Missed Station Stop** means:

- (a) a Station Stop which a Unit is scheduled to make on a Diagram Leg which is not made by that Unit; and
- (b) a Unit departs more than 30 seconds before its scheduled departure time (as specified in the Train Plan),

and **Missed a Station Stop**, and **Misses One or More Station Stops** shall be construed accordingly;

**Mobilisation Start Date** means 21 August 2016;

**Model Changes** has the meaning given to it in paragraph 2.2 of Schedule 13.3 (*Runs of the Model Suite*);

**Model Suite Run Auditor** means an independent auditor appointed by RfL pursuant to paragraph 1.3(b) of Schedule 13.3 (*Runs of the Model Suite*) with the approval (not to be unreasonably withheld) of the Operator for the purpose of auditing any Run of the Model Suite and its results;

**Modification** has the meaning given to it in, as the context requires, the Class 378 TSA or the Class 710 TSA;

**Morning Peak** means, in relation to any Passenger Service, the period between 0630 and 0959 during a Weekday or such other continuous morning four hour period as RfL may specify from time to time;

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

**MSS MAA Score** has the meaning given to it in paragraph 3.2 of Schedule 8.2 (*Standards Regime (MSS)*);

**MSS Methodology** means, as at the date of this Agreement, the Mystery Shopper Survey methodology in the agreed terms marked **MSSM**;

**MSS Questionnaire** means, as at the date of this Agreement, the Mystery Shopper Survey questionnaire in the agreed terms marked **MSSQ**;

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

***MSS Threshold*** means, in respect of the relevant Concession Year, the threshold set out in the table in the Appendix (*MSS Thresholds*) to Schedule 8.2 (*Standards Regime (MSS)*) in the column corresponding to that Concession Year;

***Mystery Shopper Survey*** means a mystery shopper survey in respect of the passenger experience of the Concession Services, which may be carried out by RfL or its nominee in accordance with the Standards Regime (MSS), the MSS Methodology and the MSS Questionnaire;

***National Passenger Survey*** means a passenger satisfaction survey in respect of the Concession Services which may be carried out by the Rail Passengers' Council as described in paragraph 1.2 (*National Passenger Surveys*) of Schedule 8.6 (*Monitoring Trends*);

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

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

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

***Network Change*** has the meaning given to it in the Network Code in relation to any Network Rail TAA and the meaning given to that definition in the equivalent of the Network Code in relation to any other Track Access Agreement;

***Network Code*** means the document known as the Network Code (as subsequently replaced or amended from time to time) or any equivalent code or agreement;

***Network Monitoring System*** means TRUST in relation to the London Overground Network;

***Network Rail*** means in respect of:

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

***Network Rail (Schedule 8) Payment*** means any payment made pursuant to the Network Rail TAA:

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

**Network Rail TAA** means any Track Access Agreement between the Operator as train operator and Network Rail as infrastructure manager in respect of the Operator's access to the London Overground Network (other than the ELL Core Route);

**New Insurance Arrangements** shall have the meaning given to it in paragraph 6.2(b) of Schedule 18.1 (*Continuity of Services*);

**New Results** means, following a Run of the Model Suite in relation to any Change, the restated values of FXD, VCRPI and PRPI to be specified for each Concession Year in the Appendix 1 (*Annual Concession Payment Figures*) to Schedule 11.2 (*Annual Concession Payments and Indexation*) and the assumed traction electricity price per kWh for each Concession Year specified in Appendix 2 (*Assumed Electricity Prices*) to Schedule 11.2;

**New Station Areas** has the meaning given to it in paragraph 3.3 of Schedule 4.1 (*Property Leasing and Access*);

**NLL** means the Route between Richmond Station and Clapham Junction Station and Stratford Station and known as the 'North London Line';

**NLL Stations** means those London Overground Stations listed in the table in the Appendix (*London Overground Stations*) to Schedule 4.1 (*Property Leasing and Access*) against which a cross is marked in the column labelled 'NLL';

**Non-Operational Area** means an area at an Operator Station not required by the Operator for the safe provision of the Passenger Services including a retail area, unused ticket office, core facility area, any area proximate to any vending machine or automated teller machine or any other area identified by the Subleases Tenant in accordance with paragraph 3.3 of Schedule 4.1 (*Property Leasing and Access*);

**Non-Protected Employee** means any Operator Employee who is not a Protected Employee;

**Non-Ticket Revenue** means any non-Ticket Revenue derived from services or activities associated with London Overground, including revenue derived from the operation of any car park or revenue payable from access beneficiaries due to the presence of any ticket gate, in each case at any Operator Station that in each case accrues to the Operator, toilet facilities and marketing, letting and other commercial revenue generated at Operator Stations, but excluding revenue received by the Operator from other Train Operators in respect of access granted to Operator Stations;

**Notifiable Disruption** means planned or unplanned disruption to the Passenger Services operated on the London Overground Network, or railway passenger services on other parts of the network which are reasonably local to the London Overground Network that would prejudice the Operator's ability to deliver the Timetable Requirements where the Operator has:

- (a) has 10 or more days' advance notice thereof; or
- (b) has less than 10 days' advance notice thereof, but that disruption:
  - (i) lasts for a period in excess of three consecutive hours;

- (ii) to the extent not already provided for under paragraph (b)(i), lasts for a period that begins during one Plan of the Day and continues into the next Plan of the Day; or
- (iii) involves the cancellation of the Last Train resulting in any passenger affected by that cancellation having no reasonable expectation of the availability of reasonable alternative transportation to take him to his intended destination London Overground Station served by that Last Train or as near as reasonably practicable thereto;

***NRTAA Performance Regime*** has the meaning given to it in paragraph 1.2 of Schedule 7.2 (*Performance Payments under Track Access Agreements*);

***NXG Facility*** has the meaning given to it in the Class 378 TSA;

***Occupational Agreement*** means a licence to occupy, concession agreement or other temporary use agreement to be made between the Operator and a third party nominated by the Subleases Tenant pursuant to paragraph 3.3(b) of Schedule 4.1 (*Property Leasing and Access*) which:

- (a) does not purport to create any relationship of landlord and tenant between the parties to it;
- (b) is personal to the nominated third party and its group companies;
- (c) entitles the Operator or its agent to relocate or otherwise alter the area of occupation allowed to the nominated third party pursuant to the Occupational Agreement; and
- (d) entitles the nominated third party to such rights of access and egress over and through the relevant Operator Station together with such rights to services and facilities as may be reasonably required by the nominated third party in order to properly use the area of occupation allowed to it by the Occupational Agreement;

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

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

***Old Results*** means the following:

- (a) as produced by a Run of the Model Suite in respect of the immediately preceding Change; or
- (b) as at the date of this Agreement in respect of the first Change only,

the values of FXD, VCRPI and PRPI to be specified for each Concession Year in the Appendix 1 (*Annual Concession Payment Figures*) to Schedule 11.2 (*Annual Concession Payments and Indexation*) and the assumed traction electricity price per kWh for each Concession Year specified in Appendix 2 (*Assumed Electricity Prices*) to Schedule 11.2;

***Operating Assets*** has the meaning given to it in paragraph 4.1 of Schedule 2.1 (*Obligations in relation to Concession Services*);

**Operating Performance Adjustment** means the adjustment to any Concession Payment to be made pursuant to paragraph 1.1 of Schedule 11.1 (*Concession Payments*) and in accordance with paragraph 2.1 of Schedule 11.1;

**Operating Performance Threshold** means any:

- (a) Reliability Threshold, Low Reliability Threshold or Lower Reliability Threshold in each case in relation to any Route and Concession Year;
- (b) Punctuality Ceiling, Upper Punctuality Threshold, Punctuality Threshold, Lower Punctuality Threshold, Remedial Plan Punctuality Threshold in each case in relation to any Route and Concession Year; or
- (c) Default Punctuality Threshold in relation to all Routes and any Thirteen Period Measurement Period;

**Operating Year** has the meaning given to it in paragraph 4.3 of Schedule 6.1 (*Anticipated Service Increments*);

**Operational Model** means the operational model of any of:

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

in the agreed terms marked **OM**;

**Operational Spare Unit** means a Unit specified in the Train Plan which:

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

**Operator Access Depots** means Camden Sidings, ELL Sidings, Ilford Depot, the NXG Facility and Willesden Depot;

**Operator Access Stations** means those London Overground Stations in the table in the Appendix (*London Overground Stations*) to Schedule 4.1 (*Property Leasing and Access*) against which 'B' is marked in the column labelled 'Operator';

**Operator Control Room** means the primary location staffed by Concession Employees and RfL from where service delivery decisions for the Passenger Services are made and communicated;

**Operator Daily Performance Record** means a daily report detailing the Operator's performance in delivering the Passenger Services, including all Performance Failures, the reason for each such Performance Failure and an allocation of responsibility for each Performance Failure in the form prescribed by RfL from time to time;

**Operator Depots** means Chingford Depot and the WeFOC;

**Operator Employee** means:

- (a) any employee of the Operator from time to time including any person whose contract of employment may be transferred to the Operator prior to the commencement of the Concession Period or during its term by virtue of the operation of Law (including TUPE) or in respect of whom liabilities arising from a contract of employment or employment relationship may be so transferred; and
- (b) any other person engaged by the Operator (for a period of at least six months) in connection with the provision of Concession Services but employed by an agency or self-employed to fulfil an executive, managerial or customer-facing role in the Operator's organisation;

**Operator Stations** means those London Overground Stations in the table in the Appendix (*London Overground Stations*) to Schedule 4.1 (*Property Leasing and Access*) against which 'FO' is marked in the column labelled 'Operator';

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

**Operator-LUL Relationship Manager** has the meaning given to it in Committed Obligation 22 in the table in Schedule 10.1 (*List of Committed Obligations and Committed Obligation Payments*);

**Operator's Executive** means the senior executive team of the Operator from time to time, which at the date of this Agreement comprises the Managing Director, the Finance Manager, the Operations Director, the Safety Manager and those other employees of the Operator who report directly to the Managing Director;

**Operator's Ticketing and Scheme Liabilities** has the meaning given to it in paragraph 4.1 of Schedule 3.3 (*Ticket and Non-Ticket Revenue*);

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

**Other Adjustment** means, in relation to any Reporting Period, an adjustment to the Concession Payment that is to be made on the Payment Date for that Reporting Period by one party to the other that is equal to the net of payments that are expressly contemplated to be made between the parties in that Reporting Period under the terms of this Agreement and which is not the subject of any other adjustment to that Concession Payment specified in paragraph 1.1 of Schedule 11.1 (*Concession Payments*);

**Outline Station Deep Clean Programme** means the GOB station deep clean programme to be developed by the Operator in accordance with paragraph 1.1 of Schedule 4.3 (*Station and Depot Condition Programme*);



**Overall Liability Cap** means [REDACTED]<sup>7</sup>;

**Overall Performance Cap** means, in relation to any Thirteen Period Measurement Period, an amount calculated in accordance with the following:

$$\text{OPC} = \text{[REDACTED]}^8 + \text{CPAR} - \text{CPAO}$$

OPC means the Overall Performance Cap;

CPAR means, in relation to that Thirteen Period Measurement Period, the level of Capped Performance Adjustments payable by RfL to the Operator assumed in the Financial Model for that Thirteen Period Measurement Period; and

CPAO means, in relation to that Thirteen Period Measurement Period, the level of Capped Performance Adjustments payable by the Operator to RfL assumed in the Financial Model for that Thirteen Period Measurement Period;

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

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

**Parent** means Deutsche Bahn AG, whose registered office is at Potsdamer Platz 2, 10785 Berlin, Berlin, Germany and company number is HRB 50000 B;

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

**Pass Through Adjustment** means in relation to any Reporting Period, an adjustment to the Concession Payment that is calculated in accordance with paragraph 3.1 of Schedule 11.1 (*Concession Payments*) to be made on the Payment Date for that Reporting Period and payable by one party to the other;

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

**Passenger Count Methodology** means the methodology in the agreed terms marked **PCM**;

**Passenger Flow Equipment** has the meaning given to it in Committed Obligation 87 in the table in Schedule 10.1 (*List of Committed Obligations and Committed Obligation Payments*);

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

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<sup>7</sup> This text has been redacted by Rail for London in accordance with the provisions of the Freedom of Information Act 2000.

<sup>8</sup> This text has been redacted by Rail for London in accordance with the provisions of the Freedom of Information Act 2000.

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

**PAYG** means ‘pay as you go’, a means by which passengers can store value on Oystercards for future journeys on the Passenger Services and other railway passenger services;

**PAYG Agreement** means the agreement between TTL and certain Train Operators, among others, dated 16 October 2009 which governs all aspects of the way PAYG is accepted on railway passenger services, as well as revenue accounting and apportionment;

**Payment Date** means the date for the payment of Concession Payments in accordance with paragraph 5.3 of Schedule 11.1 (*Concession Payments*);

**PCI DSS** means the payment card industry data security standard as stipulated by the PCI Security Standards Council from time to time;

**PCI Security Standards Council** means the forum responsible for the development, management, education and awareness of the certain payment card industry security standards;

**Peak** means the Morning Peak and the Evening Peak;

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

**Peer Trainers** has the meaning given to it in Committed Obligation 70 in the table in Schedule 10.1 (*List of Committed Obligations and Committed Obligation Payments*);

**Penalty Fares Provisions** has the meaning given to it in paragraph 7.2 of Schedule 3.3 (*Ticket and Non-Ticket Revenue*);

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

**Pensionable Service** has the meaning given to it in clause 1 of the pensions trust which governs the Railways Pension Scheme and which is set out in the schedule to the Protection Order;

**Percentage Allocation** has the meaning given to it in the Ticketing and Settlement Agreement;

**Performance Adjustment** means in relation to any Reporting Period, an adjustment to the Concession Payment that is calculated in accordance with paragraph 2.1 of Schedule 11.1 (*Concession Payments*) to be made on the Payment Date for that Reporting Period and payable by one party to the other;

**Performance Bond** means the on-demand bond issued by a Bond Provider with the Required Rating in the form set out in Appendix 1 (*Form of Performance Bond*) to Schedule 14 (*Financial Obligations and Credit Support*),

**Performance Bond Longstop Date** has the meaning given to it in paragraph 2.2(b) of Schedule 14 (*Financial Obligations and Credit Support*);

**Performance Directorate** has the meaning given to it in Committed Obligation 3 in the table in Schedule 10.1 (*List of Committed Obligations and Committed Obligation Payments*);

**Performance Failure** means a Unit incurs Relevant Minutes Lateness or a Reliability Event occurs;

**Performance Monitoring System** has the meaning given to it in paragraph 1.1 of Schedule 7.4 (*General Operating Performance Provisions*);

**Performance Team** has the meaning given to it in Committed Obligation 37 in the table in Schedule 10.1 (*List of Committed Obligations and Committed Obligation Payments*);

**Performance Threshold** means any threshold or standard against which the Operator's performance is measured and which is specified in any of Schedule 7 (*Operating Performance*) to Schedule 9 (*Revenue Protection Incentive Regime*) inclusive;

**Periodic Concession Report** means the report produced by the Operator each Reporting Period pursuant to paragraph 2.2 of Schedule 16.1 (*Records, plans and reports*) in relation to the Operator's operating and financial performance in the form of report specified by RfL from time to time;

**Periodic SLNT Report** means the report in the agreed terms marked **SLNTR**;

**Placed in Escrow** means:

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

each in accordance with Schedule 13.2 (*Identity of the Suite of Models*);

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

**Possessions Strategy Notice** means a notice issued by any Infrastructure Manager which details that Infrastructure Manager's strategy in relation to a programme of Restrictions of Use extending over:

- (a) a period of more than one calendar year; or
- (b) a period which contains two or more Passenger Change Dates;

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

**PPM** means the public performance measure of the number of Passenger Services (expressed as a percentage of the number of Passenger Services) which are scheduled to be provided under the Plan of the Day which arrive punctually at their final scheduled destination in the Plan of the Day, as measured in accordance with paragraph 1 (*Measuring punctuality*) of Schedule 7.3 (*PPM Regime*);

**PPM Failure** has the meaning given to it in paragraph 3.1 of Schedule 7.3 (*PPM Regime*);

**PPM MAA** has the meaning given to it in paragraph 2.1(b) of Schedule 7.3 (*PPM Regime*);

**PPM Threshold** means 92 per cent. PPM;

**Previous Concession Agreement** means the concession agreement between RfL and the Incumbent Operator dated 2 July 2007 pursuant to which the Incumbent Operator provides certain of the Passenger Services;

**Previous Franchise Agreement** means the franchise agreement between the Secretary of State and Greater Anglia dated 16 April 2014 pursuant to which Greater Anglia provided certain of the Passenger Services;

**Priced Option** means the option set out in Schedule 12.1 (*Priced Option*);

**Primary Concession Assets** means any property, rights and liabilities of the Operator listed in the Schedule 18.2 (*Restrictions on dealings*) but excluding such property, rights or liabilities as may, in accordance with the terms of this Agreement, cease to be so designated;

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

**PRM Fund** has the meaning given to it in Committed Obligation 81 in the table in Schedule 10.1 (*List of Committed Obligations and Committed Obligation Payments*);

**Profit Share Payment** means an annual payment calculated in accordance with paragraph 4.2 of Schedule 11.4 (*Profit Share*) and made by the Operator to RfL or vice versa in accordance with paragraph 4.3 of that schedule;

**Project Management Office** has the meaning given to it in Committed Obligation 5 in the table in Schedule 10.1 (*List of Committed Obligations and Committed Obligation Payments*);

**promise to vary** has the meaning given to it in paragraph 3.6 of Schedule 18.3 (*Transfer*);

**Property Lease** means any Depot Lease, Managed Station Area Lease, any lease in respect of Shared Facilities or Station Lease and any agreement or lease of a similar or equivalent nature (whether in respect of any such facility or otherwise) which the Operator may enter into with

a person who has an interest in a network or a railway facility which is to be used for or in connection with the provision or operation of the Concession Services;

**Property Lease Confirmation** means confirmation provided by the Operator to RfL in a form satisfactory to RfL that the Operator has entered into Property Leases with Network Rail in respect of the Operator Stations (other than the Operator Stations on the Devolved Route Group), Operator Depots and any leases in relation to Shared Facilities and Managed Station Areas, which will, in each case, be used for or in connection with the provision of the Concession Services and which will be contracted out of Part II of the Landlord and Tenant Act 1954;

**Proposal for Change** has the meaning given to it, as the context admits, in the Station Access Conditions, the Independent Station Access Conditions or Depot Access Conditions;

**Protected Employee** means any Concession Employee, other than a person employed by an Affiliate or by any subcontractor or delegate of any of the Concession Services who is designated as an Indefeasible Rights Employee and/or Protected Person under the Protection Order but only for so long as he continues to be a Protected Employee;

**Protected Pension Rights** in respect of a Protected Person, has the meaning given to ‘relevant pension rights’ in Part 1 (*General*) of the Protection Order and in respect of an Indefeasible Rights Employee means the pension rights he has under the Railways Pension Scheme but only for so long as he continues to be an Indefeasible Rights Employee;

**Protected Person** means a Concession Employee who is a ‘protected employee’ as defined in the Protection Order where that protection has not ceased to have effect under Article 8 of the Protection Order and where such Concession Employee has not elected to waive that protection under Article 12 of the Protection Order;

**Protected Proposal** has the meaning given to it in paragraph 1.10 of Schedule 13.4 (*Variations*);

**Protection Order** means the Railway Pensions (Protection and Designation of Schemes) Order 1994 (SI No. 1433), as amended from time to time;

**Prudential Regulation Authority** means the independent, non-governmental body given statutory powers by the Financial Services Act 2012;

**PTS Manager Events** has the meaning given to it in Committed Obligation 9 in the table in Schedule 10.1 (*List of Committed Obligations and Committed Obligation Payments*);

**PTS Staff Events** has the meaning given to it in Committed Obligation 8 in the table in Schedule 10.1 (*List of Committed Obligations and Committed Obligation Payments*);

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

**Punctuality Adjustment** means, in relation to a Reporting Period, an adjustment that comprises part of an Operating Performance Adjustment for that Reporting Period, calculated in accordance with paragraph 2.1 of Schedule 7.1 (*Operating Performance Regime*);

**Punctuality Ceiling** means in relation to a Route and Concession Year, the percentage specified in the row labelled ‘Above Punctuality Ceiling’ for that Route and Concession Year in the table in Appendix 2 (*Service Punctuality Bands Table*) to Schedule 7.1 (*Operating Performance Regime*);

**Punctuality Factor** in relation to any Reporting Period and any Route shall be:

- (a) 1.5 in respect of the proportion of Passenger Services on that Route in that Reporting Period that falls into either:
  - (i) the Upper Punctuality Band; or
  - (ii) the Lower Punctuality Band; and
- (b) 0.5 in respect of the proportion of Passenger Services on that Route in that Reporting Period that falls into any of:
  - (i) the Middle Punctuality Band;
  - (ii) the Low Punctuality Band or
  - (iii) the Remedial Plan Punctuality Band;

**Punctuality Payment** means, in relation to a Route, a payment in respect of the level of punctuality achieved in the provision of the Passenger Services on that Route in a Reporting Period, calculated in accordance with, as appropriate, paragraph 2.3, 2.4, 2.5, 2.6 or 2.7 of Schedule 7.1 (*Operating Performance Regime*);

**Punctuality Rate** means [REDACTED]<sup>9</sup>;

**Punctuality Threshold** means, in relation to a Route and Concession Year, the lowest percentage specified in the Middle Punctuality Band that relates to that Route and Concession Year;

**Qualifying Change** means:

- (a) any Change specified in any of the following paragraphs of that definition:
  - (i) paragraph (b) (*Charge Variation*);
  - (ii) paragraph (f) (*extended Restrictions of Use*) to (h) (*RfL changes to Alternative Timetable Guidance*) inclusive;
  - (iii) paragraph (j) (*TfL approval of amendment to any Inter-Operator Scheme*);
  - (iv) paragraph (k) (*New Bermondsey Station*);
  - (v) paragraph (l) (*long-term Station Leases*);

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<sup>9</sup> This text has been redacted by Rail for London in accordance with the provisions of the Freedom of Information Act 2000.

- (vi) paragraph (m) (*Station charges*);
  - (vii) paragraph (o) (*RfL change to Disabled Persons' Policy*) to (x) (*Unavailable infrastructure*) inclusive;
  - (viii) paragraph (y) (*Variation of the Class 378 Leases or the Class 710 Lease*) where a Variation (as defined under the relevant lease) has the effect of changing the amount of rental that is payable thereunder;
  - (ix) paragraph (z) (*Modification to Class 172 Units, Class 378 Units or Class 710 Units*) to (kk) (*Priced Option*) inclusive;
  - (x) paragraph (mm) (*Force Majeure Event*);
  - (xi) paragraph (nn) (*Apprenticeship Levy*); and
  - (xii) paragraphs (pp) (*Agreements different from assumptions*) and (rr) (*Agreements prevent performance*); and
- (b) any other Change or, subject to paragraph 3.3 of Schedule 13.1 (*Financial Consequences of Change*), two or more Sub-Threshold Changes, which would (if it or they were subject to a Run of the Model Suite in accordance with Schedule 13 (*Changes and Variations*)) result in adjustments in Concession Payments over the remaining life of this Agreement that have a net present value as at the date of, as appropriate, that Change or the last in time of those Sub-Threshold Changes, in each case in excess of the Threshold Amount, and for the purposes of ascertaining a net present value of the amount of any adjustment in any Concession Payment, it shall be discounted at the prevailing discount rate per annum (in real terms) stated in HM Treasury's 'Green Book Appraisal Guidelines' (such rate as at the date of this Agreement being 3.5 per cent. per annum (in real terms)) from the date of receipt of that adjusted Concession Payment to the date of, as appropriate, that Change or last in time of those Sub-Threshold Changes;

**Quality Performance Adjustment** means the adjustment to any Concession Payment for any Reporting Period calculated in accordance with paragraph 2.5 of Schedule 11.1 (*Concession Payments*);

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

**Railtrack Change Proposal** has the meaning given to it in, as appropriate, the Station Access Conditions or the Independent Station Access Conditions;

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

**Railway Industry Standards** has the meaning given to it in paragraph 6.1 of Schedule 15.1 (*Personnel, Communication and Access*);

**Railways Pension Scheme** means the Railways Pension Scheme established by the Protection Order;

**Reconciliation Amount** has the meaning given to it in paragraph 7.3 of Schedule 13.3 (*Runs of the Model Suite*);

**Record of Assumptions** means a document prepared by the Operator in the agreed terms marked **ROA**, or as may be revised in accordance with Schedule 13 (*Changes and Variations*) and Placed in Escrow providing:

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

**Recording Point** means a point which monitors the timing of trains located on the Route for the relevant Diagram Leg;

**Recurrent Performance Failure** means a number of Performance Failures which occur for reasons attributable to the Operator and which, having regard to the nature of those Performance Failures and the period of time between their occurrence, could reasonably be said to be recurrent and include Performance Failures:

- (a) that occur at the same time of day or on the same day of the week;
- (b) that occur on the same (or reasonably proximate) part of the London Overground Network;
- (c) that occur in relation to the same Passenger Service or a similar group of Passenger Services; or
- (d) that are of the same kind that occur for the same reason;

**Reference Operating Year** has the meaning given to it in paragraph 4.2 of Schedule 6.1 (*Anticipated Service Increments*);

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

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

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

**Relevant Approvals** has the meaning given to it in the Class 710 MSA;



**Relevant Class 315 Units** has the meaning given to it in Committed Obligation 55 in the table in Schedule 10.1 (*List of Committed Obligations and Committed Obligation Payments*);

**Relevant Class 317 Units** has the meaning given to it in Committed Obligation 55 in the table in Schedule 10.1 (*List of Committed Obligations and Committed Obligation Payments*);

**Relevant Day** has the meaning given to it in paragraph 5.1 of Schedule 3.3 (*Ticket and Non-Ticket Revenue*);

**Relevant Delay Recording Point** means the recording point (as defined in the relevant Track Access Agreement) which monitors the timing of trains, located at or most proximate to the terminating point or station (including any early termination point or station where a Unit is taken out of service early or the Diagram Leg is terminated early) for the relevant Diagram Leg;

**Relevant Minutes Delay** means, in relation to a Passenger Service and a Recording Point, three or more Minutes Delay at that Recording Point;

**Relevant Minutes Lateness** means in relation to a Unit delivering a Passenger Service, three or more Minutes Lateness at the Relevant Delay Recording Point;

**Relevant Mystery Shopper Survey** has the meaning given to it in paragraph 3.2 of Schedule 8.2 (*Standards Regime (MSS)*);

**Relevant Network Code** means, in the case of:

- (a) the Network Rail TAA, the Network Code; and
- (b) the RfL (I) TAA, the set of rules incorporated by reference into the RfL (I) TAA which govern the procedures for managing changes to the working timetable, establishes a performance monitoring system and procedures in the event of operational disruption, in each case insofar as it relates to the ELL Core Route;

**Relevant Protected Characteristic** has the meaning given to it in paragraph 4.2(a) of Schedule 15.3 (*Responsible Procurement*);

**Relevant Term** has the meaning given to it in paragraph 1.2(a) of Schedule 17.1 (*Remedial Plans and Remedial Agreements*);

**Relevant Ticket Revenue** means, as appropriate, the LOC Ticket Revenue or the WAI Ticket Revenue;

**Relevant Ticketless Travel Survey** has the meaning given to it in paragraph 3 (*Performance against the Ticketless Travel Route Group Targets*) of Schedule 9 (*Revenue Protection Incentive Regime*);

**Relevant Ticketless Travel Target** means, as appropriate, the Ticketless Travel LOC Threshold or the Ticketless Travel Devolved Threshold;

**Relevant Train Plan Parameters** means in relation to Class 378 Units, the Class 378 Train Plan Parameters and in relation to the Class 710 Units and the Class 172 Units, the Class 710 Train Plan Parameters;

**Reliability Adjustment** means, in relation to a Reporting Period, an adjustment that comprises part of an Operating Performance Adjustment for that Reporting Period, calculated in accordance with paragraph 1.1 of Schedule 7.1 (*Operating Performance Regime*);

**Reliability Event** means a Cancellation, Significant Lateness or a Short Formation;

**Reliability Factor** in relation to any Reporting Period and Route shall be:

- (a) 1.0 in respect of the proportion of the Reliability Metric for that Route in that Reporting Period that falls into the Low Reliability Band; and
- (b) 0.5 in respect of the proportion of Reliability Metric for that Route in that Reporting Period that falls into the Lower Reliability Band;

**Reliability Index** means in relation to a Passenger Service operated or to be operated on a Route, the index of that Passenger Service's reliability, calculated in accordance with the following:

$$RI = \text{Min} \left[ \frac{ASWS}{MSWS}, SMLP \right] \times SFP$$

where:

RI means the Reliability Index for a Passenger Service for a Route;

ASWS means the aggregate Station Weighted Stops that that Passenger Service achieves;

MSWS means the maximum Station Weighted Stops that that Passenger Service can achieve, assuming it calls at all Station Stops scheduled to be made on that Route;

SMLP means the Significant Minutes Lateness Parameter; and

SFP means the Short Formation Parameter;

**Reliability Metric** means in relation to a Route, the metric of reliability achieved by the Passenger Services operated or to be operated on that Route in a Reporting Period, as calculated in accordance with the following:

$$RM = [\sum(RI)]/PS$$

where:

RM means the Reliability Metric for the Passenger Services operated or to be operated on a Route in a Reporting Period;

RI means the Reliability Index for a Passenger Service operated or to be operated on that Route in that Reporting Period; and

PS means the number of Passenger Services planned to be operated in that Reporting Period on that Route;

**Reliability Payment** means a payment in respect of the level of reliability achieved in the provision of the Passenger Services in a Reporting Period, calculated in accordance with, as appropriate, paragraph 1.3, 1.4 or 1.5 of Schedule 7.1 (*Operating Performance Regime*);

**Reliability Rate** means [REDACTED]<sup>10</sup>;

**Reliability Threshold** means, in relation to any Route and Concession Year, the highest percentage specified in the Low Reliability Band that relates to that Route and Concession Year;

**Remedial Agreement** has the meaning given to it in paragraph 2.1 of Schedule 17.1 (*Remedial Plans and Remedial Agreements*);

**Remedial Plan** has the meaning given to it in paragraph 1.2(b) of Schedule 17.1 (*Remedial Plans and Remedial Agreements*);

**Remedial Plan CSS Band** means in relation to any CSS Measure, the percentage band labelled as such between zero per cent. (inclusive) and the Remedial Plan CSS Threshold (inclusive) that relates to that CSS Measure, specified in the Appendix (*CSS Bands*) to Schedule 8.4 (*Satisfaction Regime (CSS)*);

**Remedial Plan CSS Threshold** means, in relation to any CSS Measure and Concession Year, the lowest percentage specified in the Lower CSS Band that relates to that CSS Measure and Concession Year;

**Remedial Plan KPI Threshold** has the meaning given to it in paragraph 6.1(a) of Schedule 8.1 (*Standards Regime (KPIs)*);

**Remedial Plan MSS Threshold** means, in respect of the relevant Concession Year, the threshold set out in the table in the Appendix (*MSS Thresholds*) to Schedule 8.2 (*Standards Regime (MSS)*) in the column corresponding to that Concession Year;

**Remedial Plan Notice** has the meaning given to it in paragraph 1.1 of Schedule 17.1 (*Remedial Plans and Remedial Agreements*);

**Remedial Plan Punctuality Band** means, in relation to a Route and Concession Year, the percentage punctuality band labelled as such between zero per cent. (inclusive) and the Remedial Plan Punctuality Threshold (inclusive) that relates to that Route and Concession Year, specified in Appendix 2 (*Service Punctuality Bands Table*) to Schedule 7.1 (*Operating Performance Regime*);

**Remedial Plan Punctuality Threshold** means, in relation to a Route and Concession Year, the highest percentage specified in the Remedial Plan Punctuality Band that relates to that Route and Concession Year;

**Remedial Plan Quality Threshold** means any of the Remedial Plan KPI Threshold, any Remedial Plan MSS Threshold, any Remedial Plan CSS Threshold, or any Remedial Plan SIS Threshold;

**Remedial Plan SIS Band** means the percentage band labelled as such between zero per cent. (inclusive) and the Remedial Plan SIS Threshold (inclusive), specified in the Appendix (*SIS Bands*) to Schedule 8.5 (*Staff Regime (SIS)*);

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<sup>10</sup> This text has been redacted by Rail for London in accordance with the provisions of the Freedom of Information Act 2000.

**Remedial Plan SIS Threshold** means, in relation to any Concession Year, the highest percentage specified in the Lower SIS Band row that relates to that Concession Year in the table in the Appendix (*SIS Bands*) to Schedule 8.5 (*Staff Regime (SIS)*);

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

**Replacement Copy** has the meaning given to it in paragraph 2.2(b) of Schedule 13.2 (*Identity of the Suite of Models*);

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

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

**Required Rating** means a long-term credit rating of:

- (a) in relation to the Performance Bond as at the date of this Agreement and upon the replacement of any Performance Bond (including where any Performance Bond is replaced pursuant to paragraph 2.3 of Schedule 14 (*Financial Obligations and Credit Support*), A+ or better from Standard & Poor's or A1 or better from Moody's; and
- (b) no less than A or better from Standard & Poor's or A2 or better from Moody's during the term of any Performance Bond;

**Responsibility Factor** means:

- (a) 1.0 in the case of a Performance Failure caused by the Operator or a Rolling Stock Maintainer;
- (b) 0.1 in the case of a Performance Failure caused by Network Rail or which Network Rail is accountable to the Operator for under the Network Rail TAA, including those Performance Failures that are caused by other Train Operators or any operators of services for the carriage of goods by rail; and
- (c) 0 in the case of a Performance Failure caused by RfL (I);

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

**Restriction of Use Payment** means any payment relating to any Restriction of Use imposed in any Reporting Period that comprises part of an Alternative Timetable Adjustment, calculated in accordance with paragraph 9.1 of Schedule 1.3 (*Managing Changes to the Passenger Services*);

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

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

in each case, pursuant to paragraph 1 (*Acknowledgement*) of Schedule 3.3 (*Ticket and Non-Ticket Revenue*);

**Revenue Inspection Device** means a mobile ticket inspection device, together with associated equipment;

**Revenue Protection and Gateline Analysts** has the meaning given to it in Committed Obligation 89 in the table in Schedule 10.1 (*List of Committed Obligations and Committed Obligation Payments*);

**Revenue Protection Incentive Adjustment** means in respect of any Survey Period, any payment to be made to the Operator, or vice versa, pursuant to paragraph 4.2 of Schedule 9 (*Revenue Protection Incentive Regime*);

**Revenue Protection Policy** has the meaning given to it in paragraph 6.1 of Schedule 3.3 (*Ticket and Non-Ticket Revenue*);

**Revenue Sweep** has the meaning given to it in paragraph 5.2 of Schedule 3.3 (*Ticket and Non-Ticket Revenue*);

**Review Date** means:

- (a) as the context requires, 12 August 2016 or 13 October; or
- (b) such later date as may be notified to the Operator by RfL pursuant to clause 4.2 or 4.3 of the Conditions Precedent Agreement;

**Revised Inputs** has the meaning given to it in paragraph 2.1 of Schedule 13.3 (*Runs of the Model Suite*);

**RfL Accommodation** has the meaning given to it in paragraph 1.1 of Schedule 15.2 (*Co-location*);

**RfL Agreed Recovery Plan** has the meaning given to it in paragraph 6.4(a) of Schedule 7.4 (*General Operating Performance Provisions*);

**RfL Failure** means a Performance Failure that is caused solely by:

- (a) a Purchaser Fault or EF Purchaser Fault (in each case as defined in the Class 710 TSA) or damage to a Class 710 Unit, but in each case, only to the extent it is not caused by the Operator;
- (b) wilful misconduct of RfL in relation to, as the case may be, the Class 710 TSA or the Class 378 TSA;

- (c) the breach by RfL of clauses 7.2, 10.7(c) or paragraph 1.1 of schedule 9 (*Maintenance Facilities – Willesden Depot*) in each case of the Class 710 TSA, but in each case, only to the extent that breach is not caused by the Operator;
- (d) RfL’s failure to comply with its obligations under the relevant WeFOC Agreements, but only to the extent that breach is not caused by the Operator; or
- (e) the allocation of responsibility for an incident to RfL (I) in accordance with schedule 8 (*Performance Regime*) of the RfL (I) TAA;

**RfL (I)** means RfL Infrastructure, a wholly-owned subsidiary of TfL;

**RfL (I) NR TOC-on-TOC Payment** has the meaning given to it in paragraph 3.1 of Schedule 7.2 (*Performance Payments under Track Access Agreements*);

**RfL (I) (Schedule 8) Payment** means any payment made pursuant to any Track Access Agreement between the Operator and RfL (I):

- (a) by RfL (I) to the Operator to compensate the Operator for RfL (I)’s performance of its rights and/or obligations under any such agreement; or
- (b) by the Operator to RfL (I) to reward RfL (I) for RfL(I)’s performance of its rights and/or obligations under any such agreement;

**RfL (I) TAA** means the Track Access Agreement between the Operator as train operator and RfL (I) as infrastructure manager in respect of the Operator’s access to the ELL Core Route;

**RIDDOR** means the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995;

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

**Rolling Stock Maintainer** means, in relation to the Class 378 Fleet, the Class 378 Maintainer, in relation to the Class 710 Fleet, the Class 710 Maintainer, and in relation to any other Units comprising the Train Fleet, the organisation appointed by the Operator to maintain those Units;

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

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

**Root Cause Training** has the meaning given to it in Committed Obligation 38 in the table in Schedule 10.1 (*List of Committed Obligations and Committed Obligation Payments*);

**Rostering Systems** has the meaning given to it in Committed Obligation 28 in the table in Schedule 10.1 (*List of Committed Obligations and Committed Obligation Payments*);

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

**Route Group** means either:

- (a) the London Overground Classic Route Group; or
- (b) the Devolved Route Group;

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

**RPI Index** means:

- (a) the RPO2 Retail Prices Index (RPI All Items) published by the Office for National Statistics; or
- (b) on modification, cessation of or failure to publish the index referred to in paragraph (a), an appropriate equivalent index agreed by the parties at the time, or failing agreement, determined in accordance with paragraph 2 (*Disputes under this Agreement*) of Schedule 20 (*Other Provisions*), which in each case, puts the parties in no better or worse position than they would have been in had the index not been modified, ceased or unpublished;

**RSP** means Rail Settlement Plan Ltd;

**RUL** means the Route between Romford station and Upminster station;

**RUL Stations** means those London Overground Stations listed in the table in the Appendix (*London Overground Stations*) to Schedule 4.1 (*Property Leasing and Access*) against which a cross is marked in the column labelled 'RUL';

**Rules** means the timetable planning rules and rules governing the location, number and timing of Restrictions of Use and alternative train routes in the Relevant Network Code;

**Run of the Model Suite** means an operation of the Suite of Models with the Revised Inputs and which complies with the requirements of Schedule 13.3 (*Runs of the Model Suite*);

**S&B TVM** means a TVM manufactured by Scheidt & Bachman;

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

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

**Safety Culture Investment** has the meaning given to it in Committed Obligation 21 in the table in Schedule 10.1 (*List of Committed Obligations and Committed Obligation Payments*);

**Safety Manager** has the meaning given to it in paragraph 2.1(c) of Schedule 15.1 (*Personnel, Communication and Access*);

**Safety Management System** has the meaning given to it in the Safety Regulations;

**Safety Regulations** means The Railways and Other Guided Transport Systems (Safety) Regulations 2006 as amended by the Railways and Other Guided Transport Systems (Safety) (Amendment) Regulations 2006 and the Railways and Other Guided Transport Systems (Safety) (Amendment) Regulations 2011;

**Satisfaction Regime Adjustment** means the adjustment to the Concession Payment for any Reporting Period calculated in accordance with paragraph 3.1 of Schedule 8.4 (*Satisfaction Regime (CSS)*) and made in accordance with paragraph 2.5 of Schedule 11.1 (*Concession Payments*);

**Satisfaction Regime (CSS)** means the regime set out in Schedule 8.4 (*Satisfaction Regime (CSS)*) pursuant to which customer perception of the services provided by the Operator is monitored and incentivised;

**Schedule of Contributions** has the meaning given to it in Part 3 of the Pensions Act 2004;

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

**Secretary of State** means the Secretary of State for Transport;

**Section Pay** has the meaning given to it in the rules of the Concession Section;

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

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

**Senior Personnel** has the meaning given to it in paragraph 2.2 of Schedule 20 (*Other Provisions*);

**Sentiment System** has the meaning given to it in Committed Obligation 79 in the table in Schedule 10.1 (*List of Committed Obligations and Committed Obligation Payments*);

**Sentinel** means the Network Rail-sponsored scheme to manage and maintain individual rail workers' competence, medical records and authority to work;

**Service Group** has the meaning given to it in any Track Access Agreement, or as specified by RfL from time to time;

**Service Increment** means an increment to the Passenger Services as set out in the Appendix (*List of Anticipated Service Increments*) to Schedule 6.1 (*Anticipated Service Increments*);



**Service Level Commitment** means the service level commitment more particularly described in paragraph 1 (*Service Level Commitment – Purpose and Responsibility*) of Schedule 1.1 (*Timetable and Service Development*), including the following service level commitments:

- (a) the Service Level Commitment to apply as at the Start Date, in the agreed terms marked *SLC1a, SLC1b, SLC2a, SLC2b* and the Service Level Commitments that are the subject of Service Increments; and
- (b) any other service level commitment developed in accordance with Schedule 1.1 or issued pursuant to Schedule 6.1 (*Service Increments*);

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

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

and prevention or restriction of access to the track or a section of the track shall have the meaning given to that term in paragraph 1(a)(i) of Schedule 17.6 (*Force Majeure*);

**Settlement Proposal** has the meaning given to it in paragraph 3.4 of Schedule 4.2 (*Station Environment*);

**Shared Costs Arrangement** has the meaning given to it in the Protection Order;

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

**Shared Toilet Facility** means the last four Toilet Facilities listed in row 10 and column 2 of Table 6 in Appendix 1 (*Key Performance Indicators*) of Schedule 8.1 (*Standards Regime (KPIs)*);

**Short Formation** means any Unit operates when delivering a Diagram Leg with less rolling stock vehicles than the number of rolling stock vehicles specified to be deployed in delivering that Diagram Leg in the Train Plan and **Short Formed** shall be construed accordingly;

**Short Formation Parameter** means in relation to a Passenger Service:

- (a) 1.0 if that Passenger Service is not Short Formed when operated; and
- (b) 0.6 if that Passenger Service is Short Formed when operated;

**Side Guards** means guards that are fitted between the front and rear axles of a Lorry and that comply with EC Directive 89/297/EEC and the Road Vehicles (Construction and Use) Regulations 1986;

**Sidings Fund** has the meaning given to it in Committed Obligation 103 in the table in Schedule 10.1 (*List of Committed Obligations and Committed Obligation Payments*);

**Significant Minutes Lateness** means a Unit arrives at its final destination having incurred 10 or more Minutes Lateness;

**Significant Minutes Lateness Parameter** means in relation to a Passenger Service:

- (a) 1.0 if that Passenger Service does not incur Significant Minutes Lateness when operated; and
- (b) 0.75 if that Passenger Service does incur Significant Minutes Lateness when operated;

**Silver Accreditation** means the intermediate level of accreditation within the FORS Standard, the requirements of which are more particularly described at [www.fors-online.org.uk](http://www.fors-online.org.uk);

**SIS Adjustment** means the adjustment to the Concession Payment for any Reporting Period calculated in accordance with paragraph 3.1 of Schedule 8.5 (*Staff Regime (SIS)*);

**SIS Factor** means in relation to any SIS Score:

- (a) 0.5 in respect of the proportion of that SIS Score that falls into either:
  - (i) the Upper SIS Band; or
  - (ii) the Remedial Plan SIS Band; and
- (b) 1.0 in respect of the proportion of that SIS Score that falls into either:
  - (i) the Middle SIS Band; or
  - (ii) the Lower SIS Band;

**SIS Methodology** means, as at the date of this Agreement, the methodology in the agreed terms marked **SISM**;

**SIS Payment** means a payment in respect of the level of customer service achieved in a Survey Period, calculated in accordance with, as appropriate, paragraph 3.3, 3.4, 3.5 or 3.6 of Schedule 8.5 (*Staff Regime (SIS)*);

**SIS Questionnaire** means a survey in respect of the passenger experience at London Overground Stations, on trains and on replacement bus services, which may be carried out by RfL or its nominee pursuant to the Staff Regime (SIS) and in accordance with the SIS Methodology in the agreed terms marked **SISQ**;

**SIS Rate** means [REDACTED]<sup>11</sup>;

**SIS Score** has the meaning given to it in paragraph 2.4 of Schedule 8.5 (*Staff Regime (SIS)*);

**SIS Survey** means a staff and information survey in respect of the Concession Services, which may be carried out by RfL or its nominee in accordance with the SIS Methodology and SIS Questionnaire;

**SIS Threshold** means, in relation to any Survey Period, the lowest percentage specified in the Middle SIS Band that relates to that Survey Period;

**SLC2 Implementation Plan** has the meaning given to it in paragraph 17.3 of Schedule 1.1 (*Timetable and Service Development*)

**SLC2 Milestones** has the meaning given to it in paragraph 17.1(a) of Schedule 1.1 (*Timetable and Service Development*);

**SME** means any individual micro, small or medium sized enterprise meeting the requirements set out in EU Recommendation 2003/36 and broadly falling into one of three categories, based on a combination of:

- (a) the number of employees; and
- (b) either its turnover or its balance sheet total,

those three categories being:

Company size	Employees	Turnover	Balance sheet
Micro	Less than 10	Less than or equal to €2m	Less than or equal to €2m
Small	Less than 50	Less than or equal to €10m	Less than or equal to €10
Medium	Less than 250	Less than or equal to €50m	Less than or equal to €43m

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

<sup>11</sup> This text has been redacted by Rail for London in accordance with the provisions of the Freedom of Information Act 2000.

**Special Event** means an event that occurs once, in a specified period or on an irregular basis in a calendar year in respect of which altered or additional Passenger Services and Station Services are in each case to be provided in accordance with either paragraph 9 (*Service Level Commitment*) of Schedule 1.1 (*Timetable and Service Development*) or paragraph 4 (*RfL Proposals to Change the Plan of the Day*) of Schedule 1.3 (*Managing Changes to the Passenger Services*);

**Special Event Amount** means the amount calculated in accordance with factor *SEA* in the definition of *SEP* in paragraph 9.1 of Schedule 1.3 (*Managing Changes to the Passenger Services*) in relation to the provision by the Operator of Passenger Services and Station Services in respect of a Special Event pursuant to paragraph 4 (*RfL Proposals to Change the Plan of the Day*) of Schedule 1.3 that:

- (a) requires the Operator to run additional distance (measured in miles) from that specified in the relevant Train Plan; but
- (b) does not require the Operator to run additional distance (measured in miles) that is in excess of the thresholds specified in paragraph 4 of Schedule 1.3;

**Special Event Payment** means any payment that comprises part of an Alternative Timetable Adjustment, calculated in accordance with paragraph 9.1 of Schedule 1.3 (*Managing Changes to the Passenger Services*);

**Split Diagram Unit** means any rolling stock unit that the Operator spot hires for the purpose of delivering Diagram Legs between London Liverpool Street and London Overground Stations on the Devolved Route Group that comprise part of the Split Diagrams;

**Split Diagrams** means the three Diagrams between London Liverpool Street Station and longer-distance destinations served by the East Anglia Franchisee that the Operator operates in conjunction with the East Anglia Franchisee;

**Stakeholder** means the Rail Passenger's Council, London Travel Watch and any relevant Local Authority;

**Stakeholder Communities Database** has the meaning given to it in Committed Obligation 25 in the table in Schedule 10.1 (*List of Committed Obligations and Committed Obligation Payments*);

**Standards Regime (KPIs)** means the regime set out in Schedule 8.1 (*Standards Regime (KPIs)*) pursuant to which the Operator's performance against certain Key Performance Indicators is monitored and incentivised;

**Standards Regime (MSS)** means the regime set out in Schedule 8.2 (*Standards Regime (MSS)*) pursuant to which the Operator's performance in relation to the customer environment at Operator Stations and on Passenger Services is monitored and incentivised;

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

- (a) 0200 on 13 November 2016; or

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

**Station Access Agreement** means in relation to any London Overground Station, an Access Agreement between the Facility Owner and that access beneficiary, incorporating by reference, as appropriate, the Station Access Conditions or the Independent Station Access Conditions, which permits that access beneficiary to use that London Overground Station and specified amenities and receive certain services;

**Station Access Conditions** means, in relation to:

- (a) a Station Access Agreement, the document known as the National Station Access Conditions and the station annexes as each is modified in respect of the relevant London Overground Station from time to time with the approval of the ORR; and
- (b) a Station Usage Agreement, the document known as the RfL Standard Station Access Conditions 2015;

**Station Areas** means those Car Park Areas and Non-Operational Areas specified in the Deed of Subleases, including any such areas following its re-statement pursuant to paragraph 3.4(b) of Schedule 4.1 (*Property Leasing and Access*);

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

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

**Station Deep Clean Programme** has the meaning given to it in paragraph 1.3 of Schedule 4.3 (*Station and Depot Condition and Enhancements*);

**Station Lease** means:

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

in each case in the agreed terms marked **RSL**, **USL** or **SUL**;

**Station Operating Day** means, in relation to any London Overground Station on any day, the period between 15 minutes prior to the first Station Call at that London Overground Station and 15 minutes after the last Station Call at that London Overground Station;

**Station Service** means any service specified in paragraph 2 (*Station Services*) of Schedule 2.2 (*List of Concession Services*) which may be provided by the Operator at the Operator Stations;

**Station Sublease** means a lease or sublease of premises comprising part or parts of an Operator Station exclusively occupied by another Train Operator;

**Station Usage Agreement** means an agreement in the agreed terms **SUA** between a Facility Owner and an access beneficiary in relation to a London Overground Station that is outside

the scope of the Act and which permits that access beneficiary to use that London Overground Station and specified amenities and receive certain services;

**Station Weighted Stop** means, in relation to a Passenger Service:

- (a) the value for each Station Stop at an Interchange Station on that Passenger Service set out in the definition of Interchange Station;
- (b) 1 for each Station Stop at any other London Overground Station on that Passenger Service; and
- (c) 0 for each Missed Station Stop on that Passenger Service;

**Strategic Equality and Diversity Plan** means the strategic equality and diversity plan to be settled in accordance with paragraph 5.4(a) of Schedule 15.3 (*Responsible Procurement*);

**Strategic Labour Needs and Training Co-ordinator** has the meaning given to it in paragraph 10.1 of Schedule 15.3 (*Responsible Procurement*);

**Strategic Labour Needs and Training Plan** means the strategic labour needs plan to be approved by RfL in accordance with paragraph 9.3 of Schedule 15.3 (*Responsible Procurement*);

**Subcontractor** means a Direct Subcontractor or Indirect Subcontractor;

**Subleases Tenant** has the meaning given to it in paragraph 3.2 of Schedule 4.1 (*Property Leasing and Access*);

**Subsidiary Change Date** has the meaning given to it in the Relevant Network Code;

**Sub-Threshold Change** has the meaning given to it in paragraph 3.1 of Schedule 13.1 (*Financial Consequences of Change*);

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

**Successor Operator Timetable** has the meaning given to it in paragraph 1.2(a) of Schedule 18.1 (*Continuity of Services*);

**Suite of Models** means the Financial Model and the Operational Models;

**Supplemental Agreement** means a supplemental agreement between the Operator and a Successor Operator to be entered into pursuant to a Transfer Notice, being substantially in the form of Appendix 2 (*Form of Supplemental Agreement*) to Schedule 18.3 (*Transfer*), but subject to such amendments as RfL may reasonably make thereto as a result of any change of circumstances (including any Change of Law) affecting such supplemental agreement between the date of this Agreement and the date on which the relevant Transfer Notice is given and subject further to paragraph 6.2 of Schedule 18.3;

**Supplier Diversity Plan** means the supplier diversity plan to be approved by RfL in accordance with paragraph 5.4(c) of Schedule 15.3 (*Responsible Procurement*);

**Support Letter** means the letter from the Parent to the Operator and RfL dated on or about the date of this Agreement under which the Parent undertakes to:

- (a) procure that the Operator has the Minimum Share Capital; and
- (b) make available to the Operator, the Inter-company Loan Facility,

in each case on the terms set out in the Support Letter within 30 days of the date of this Agreement and for the duration of the Concession Term;

**Survey Period** means any of the following periods:

- (a) the first to the third Reporting Period (inclusive) of any Concession Year, where the first Reporting Period shall commence on the first day of that Concession Year;
- (b) the fourth to the sixth Reporting Period (inclusive) of any Concession Year;
- (c) the seventh to the tenth Reporting Period (inclusive) of any Concession Year; and
- (d) the eleventh to the thirteenth Reporting Period (inclusive) of any Concession Year, where the thirteenth Reporting Period shall end on the last day of that Concession Year;

**System Interface Committee** means any committee of representatives of the railway industry (or elements thereof) established to consider system interface issues across the railway industry or the London Overground Project and which is designated as such by RfL;

**T3** means, in relation to a Route, the aggregate percentage of Passenger Services that are operated on that Route in a Reporting Period that do not incur Relevant Minutes Lateness;

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

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

**Termination Event** has the meaning given to it in paragraph 3 (*Termination Event*) of Schedule 17.5 (*Events of Default, Termination Event and Voluntary Termination*);

**Termination Notice** means a notice from RfL to the Operator terminating this Agreement following an Event of Default or a Termination Event in accordance with Schedule 17.4 (*Termination and Expiry*);

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

**TfL Direct Investment** means any replacement with new or overhaul of infrastructure and/or equipment carried out in relation to the London Overground Network by or on behalf of any member of the TfL Group and any other capital investment made in the London Overground Network by or on behalf of any member of the TfL Group;

**TfL Group** means TfL and all its subsidiaries from time to time;

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

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

**TfL Staff Travel Scheme** means the scheme, the terms of which are notified to the Operator by TfL from time to time, operated by TfL for the purpose of offering free or concessionary travel on various transport services, including the Passenger Services, to employees of TfL, other nominated persons and the employees and other nominated persons of organisations nominated by TfL;

**TfL Uniform Specification** means the uniform specification for Concession Employees engaged in the provision of passenger-facing activities in the agreed form marked **TUS**;

**Thirteen Period Measurement Period** means any period of thirteen consecutive Reporting Periods, ending with the Reporting Period in which the Operator's performance is measured against any of the Performance Thresholds;

**Threshold Amount** means, in relation to a Change, an amount, whether positive or negative, which is determined in accordance with the following formula:

$$TA = T \times RPI$$

where:

TA is the Threshold Amount;

T is [REDACTED]<sup>12</sup>; and

RPI is ascertained in accordance with paragraph 3 (*Indexation by reference to RPI*) of Schedule 11.2 (*Annual Concession Payments and Indexation*);

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

**Ticket Equipment** means ticket gatelines, passenger validators, remote ticketing devices, CIDs, Revenue Inspection Devices, TOMs, TVMs, contactless payment devices and all associated electrical equipment, telephone and data communication lines and equipment;

**Ticket Revenue** means any revenue:

- (a) owed to the Operator under the terms of the Ticketing and Settlement Agreement, excluding commission owed in respect of sales of TSA Fares for travel on railway passenger services other than the Passenger Services; and
- (b) owed to RfL in respect of journeys made by the passengers travelling on the Passenger Services, including revenue derived from use of Oyster, PAYG and CPAY

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<sup>12</sup> This text has been redacted by Rail for London in accordance with the provisions of the Freedom of Information Act 2000.



products (in each case to the extent not already forming part of the revenue referred to in paragraph (a));

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

***Ticketing and Account Liabilities Adjustment*** has the meaning given to it in paragraph 5.4 of Schedule 3.3 (*Ticket and Non-Ticket Revenue*);

***Ticketless Travel Devolved Default Threshold*** means, as a consequence of passengers travelling without a valid ticket on Passenger Services on the Devolved Route Group, a Ticketless Travel Route Group Rate of eight per cent. until 31 March 2017, seven per cent. from 1 April 2017 until 31 March 2018 and six per cent. from 1 April 2018 and for the remainder of the Concession Period, measured in each case by any Ticketless Travel Surveys carried out during any Thirteen Period Measurement Period (measured as a moving annual average across all such surveys);

***Ticketless Travel Devolved Rate*** means the proportion (expressed as a percentage) of passenger journeys on Passenger Services on the Devolved Route Group that are undertaken without the correct ticket, determined following the carrying out of a Ticketless Travel Survey;

***Ticketless Travel Devolved Threshold*** means, as a consequence of passengers travelling without the correct ticket on Passenger Services on the Devolved Route Group, a Ticketless Travel Route Group Rate of four per cent. until 31 March 2017, three per cent. from 1 April 2017 until 31 March 2018 and two per cent. from 1 April 2018 and for the remainder of the Concession Period, measured in each case by any Ticketless Travel Surveys carried out during any Thirteen Period Measurement Period (measured as a moving annual average across all such surveys);

***Ticketless Travel LOC Default Threshold*** means, as a consequence of passengers travelling without a valid ticket on Passenger Services on the London Overground Classic Route Group, a Ticketless Travel Route Group Rate of six per cent., measured in each case by any Ticketless Travel Surveys carried out during any Thirteen Period Measurement Period (measured as a moving annual average across all such surveys);

***Ticketless Travel LOC Rate*** means the proportion (expressed as a percentage) of passenger journeys on Passenger Services on the London Overground Classic Route Group that are undertaken without the correct ticket, determined following the carrying out of a Ticketless Travel Survey;

***Ticketless Travel LOC Threshold*** means, as a consequence of passengers travelling without the correct ticket on Passenger Services on the London Overground Classic Route Group, a Ticketless Travel Route Group Rate of 2.00 per cent., measured by any Ticketless Travel Surveys carried out during any Thirteen Period Measurement Period (measured as a moving annual average across all such surveys);

***Ticketless Travel MAA Rate*** has the meaning given to it in paragraph 3 (*Performance against the Ticketless Travel Route Group Targets*) of Schedule 9 (*Revenue Protection Incentive Regime*);

***Ticketless Travel Remedial Plan Threshold*** means, as a consequence of passengers travelling without a valid ticket on Passenger Services on any Route:

- (a) on the London Overground Classic Route Group, a Ticketless Travel LOC Rate of four per cent., measured by any Ticketless Travel Survey; and
- (b) on the Devolved Route Group, a Ticketless Travel Devolved Rate of six per cent. until 31 March 2017, five per cent. from 1 April 2017 until 31 March 2018 and four per cent. from 1 April 2018 and for the remainder of the Concession Period, measured in each case by any Ticketless Travel Survey;

***Ticketless Travel Route Group Rate*** means, as appropriate, the Ticketless Travel LOC Rate or the Ticketless Travel Devolved Rate;

***Ticketless Travel Route Rate*** means, in relation to a Route, the proportion (expressed as a percentage) of passenger journeys on Passenger Services on that Route that are undertaken without the correct ticket, determined following the carrying out of a Ticketless Travel Survey;

***Ticketless Travel Survey*** means the survey carried out by RfL or its nominee in accordance with the Ticketless Travel Survey Methodology in any Survey Period to determine the proportion of passengers travelling without a correct ticket and so both the Ticketless Travel Route Rate and the Ticketless Travel Route Group Rate for such period;

***Ticketless Travel Survey Methodology*** means, as at the date of this Agreement, the agreed methodology for carrying out Ticketless Travel Surveys and calculating both the Ticketless Travel Route Rate and the Ticketless Travel Route Group Rate in the agreed terms marked ***TTSM***;

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

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

***Timetable Change*** means:

- (a) any change to the Timetable which come into effect on a Passenger Change Date; or
- (b) any significant alteration to the Passenger Services between any two Passenger Change Dates, including weekend engineering works;

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

- (a) operate Passenger Services and ancillary movements by virtue of that Track Access Agreement;
- (b) deliver any required notification and/or declaration to any Infrastructure Manager in respect of its intention to exercise any rights;

- (c) make or refrain from making any bids for Train Slots, in each case before any relevant priority dates provided for in, and in accordance with, the Relevant Network Code where relevant;
- (d) surrender any Train Slots allocated to the Operator by any Infrastructure Manager in accordance with that Track Access Agreement;
- (e) object to, make representations, appeal or withhold consent in respect of any actual or proposed act or omission by any Infrastructure Manager; and
- (f) seek from any Infrastructure Manager additional benefits as a condition to granting any consent to any actual or proposed act or omission by that Infrastructure Manager;

***Timetable Planning Period*** means the bi-annual period prescribed in the Relevant Network Code, during which the relevant Infrastructure Manager establishes that part of the working timetable which specifies the Passenger Services that are to operate on the part of the London Overground Network that that Infrastructure Manager operates or procures the operation of;

***Timetable Requirements*** means the requirements to deliver the Timetable with the passenger carrying capacity stipulated in the relevant Train Plan which satisfies the requirements of paragraph 5.4 of Schedule 1.1 (*Timetable and Service Development*);

***Timetable Robustness Verification*** has the meaning given to it in Committed Obligation 51 in the table in Schedule 10.1 (*List of Committed Obligations and Committed Obligation Payments*);

***Toilet Facility*** has the meaning given to it in row 10 and column 2 of Table 6 in Appendix 1 (*Key Performance Indicators*) of Schedule 8.1 (*Standards Regime (KPIs)*);

***TOM*** means a ticket office ticket vending machine;

***tph*** means trains per hour;

***Track Access Adjustment*** means any adjustment to Concession Payments to reflect any adjustment to payments under a Track Access Agreement, determined in accordance with paragraph 1 (*Track Access Adjustments*) of Schedule 11.3 (*Pass Through Access Charge Adjustments*);

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

***Track Access Agreement Performance Adjustment*** means the adjustment to any Concession Payment to be made as part of a Pass Through Adjustment pursuant to paragraph 3.1 of Schedule 11.1 (*Concession Payments*) and calculated in accordance with paragraph 3.3 of Schedule 11.1;

***Traction Electricity Adjustment*** means the adjustment to any Concession Payment for any Reporting Period in relation to the assumed traction electricity price per kWh for the provision of the Passenger Services on the London Overground Network (except the ELL Core Route), to be calculated in accordance with paragraph 3.5 of Schedule 11.1 (*Concession Payments*) and made in accordance with paragraph 3.1 of Schedule 11.1;

**Train Fleet** means the rolling stock vehicles specified in or required by the Appendix (*Trains comprising the Train Fleet*) to Schedule 5.1 (*The Train Fleet*) and any other rolling stock vehicles RfL consents to in accordance with paragraph 2 (*Changes to the Train Fleet*) of Schedule 5.1 from time to time;

**Train Operator** means any of:

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

**Train Plan** means the plan of the Operator for the operation of trains and train formations under the Timetable developed in accordance with Schedule 1.1 (*Timetable and Service Development*) and in a form approved by RfL, except that when used in Schedule 7.1 (*Operating Performance Regime*), it shall have the meaning given to it in paragraph 5.2 of Schedule 7.4 (*General Operating Performance Provisions*);

**Train Service Delivery Manager** has the meaning given to it in paragraph 2.1(e) of Schedule 15.1 (*Personnel, Communications and Access*);

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

**Train Technical Requirements** has the meaning given to it in the Class 710 MSA;

**Transaction Documents** means this Agreement, the Conditions Precedent Agreement, the Class 378 TSA Agency Agreement, the Class 378 Leases, the Class 710 TSA Agency Agreement, the Class 710 Lease and the Support Letter;

**Transfer Notice** means a transfer notice given by RfL pursuant to paragraph 6 (*Transfer of Primary Concession Assets*) of Schedule 18.3 (*Transfer*) requiring the Operator to transfer to a Successor Operator the Primary Concession Assets specified in such Transfer Notice on the expiry of the Concession Period, such notice being substantially in the form of Appendix 1 (*Form of Transfer Notice*) to Schedule 18.3, but subject to such amendments as RfL may make thereto as a result of any change of circumstances between the date of this Agreement and the date on which such notice is given;

**Transparency Commitment** means the transparency commitment stipulated by the UK government in May 2010 (including any subsequent legislation) in accordance with which TfL is committed to publishing its contracts, tender documents and data from invoices received;

**Transport Act** means the Transport Act 2000;

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

**TRUST** means the operating system owned by Network Rail for recording train running performance;

**Trustee** means the trustee of the Railways Pension Scheme from time to time.

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

**TSA Performance Regime Adjustment** means, in relation to any Payment Date, the aggregate of any Class 378 Performance Regime Adjustment and any Class 710 Performance Regime Adjustment that is payable on that Payment Date;

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

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

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

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

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

**TVM** means ticket vending machine;

**Unavailable** means, in respect of a Class 378 Unit or a Class 710 Unit is not Available and in each case, **Unavailability** shall be construed accordingly;

**Unit** means, as the context requires, a Class 172 Unit, Class 315 Unit, Class 317 Unit, Class 378 Unit or a Class 710 Unit;

**Updated Business Plan** means the revised business plan to be provided prior to the start of each Concession Year (other than the first Concession Year) in accordance with paragraph 3.4 of Schedule 16.1 (*Records, plans and reports*);

**Upper CSS Band** means in relation to any CSS Measure, the percentage band labelled as such between 100 per cent. (inclusive and the Upper CSS Threshold (inclusive) that relates to that CSS Measure, specified in the Appendix (*CSS Bands*) to Schedule 8.4 (*Satisfaction Regime (CSS)*);

**Upper CSS Threshold** means, in relation to any CSS Measure and Survey Period, the lowest percentage specified in the Upper CSS Band that relates to that CSS Measure and Survey Period;

**Upper Punctuality Band** means, in relation to a Route and Concession Year, the percentage punctuality band labelled as such between the Upper Punctuality Threshold (inclusive) and the Punctuality Ceiling (inclusive) that relates to that Route and Concession Year, in each case specified in Appendix 2 (*Service Punctuality Bands Table*) to Schedule 7.1 (*Operating Performance Regime*);

**Upper Punctuality Threshold** means, in relation to a Route and Concession Year, the lowest percentage specified in the Upper Punctuality Band that relates to that Route and Concession Year;

**Upper SIS Band** means the percentage band labelled as such between 100 per cent. (inclusive and the Upper SIS Threshold (inclusive), specified in the Appendix (*SIS Bands*) to Schedule 8.5 (*Staff Regime (SIS)*);

**Upper SIS Threshold** means, in relation to any Survey Period, the lowest percentage specified in the Upper SIS Band that relates to that Survey Period;

**Usage Agreement** means a Depot Usage Agreement or a Station Usage Agreement;

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

**Van** means a vehicle with a MAM not exceeding 3,500 kilograms;

**Variation** means a variation to the terms of this Agreement pursuant to paragraph 1 (*Variations to this Agreement*) of Schedule 13.4 (*Variations*);

**WAI Ticket Revenue** means, in relation to any Survey Period, the amount of Ticket Revenue generated in that Survey Period on Passenger Services on the Devolved Route Group;

**Walthamstow Central Novation Agreement** means the draft novation agreement between Network Rail, RfL, Solum Regeneration (Epsom) Limited Partnership, the Incumbent Operator and the Operator in the agreed terms marked **WCN**;

**Walthamstow Central Supplemental Deed** means the supplemental deed between Network Rail, RfL, Solum Regeneration (Epsom) Limited Partnership and the Incumbent Operator in relation to, among other things, the granting of access to Walthamstow Central Station or parts thereof in order to carry out a residential and retail development and to prescribe the Incumbent Operator's obligations in managing that access and the impact, if any, on the ongoing operations of the station, which as at the date of this Agreement is in the agreed terms marked **WCSD**;

**WEE Equipment** means any equipment which falls within the scope of the WEEE Regulations;

**WEEE Regulations** means Waste Electrical and Electronic Equipment Regulations 2006 (as amended by the Waste Electrical and Electronic Equipment (Amendment) Regulations 2007);

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

**WeFOC** means the C-Sidings at Wembley Freight Operating Centre;

**WeFOC Agreements** means:

- (a) the WeFOC Headlease;
- (b) the WeFOC Underlease;
- (c) the WeFOC Facilities Access Contract;
- (d) the WeFOC Connection Agreement;

- (e) the WeFOC Office Building Headlease; and
- (f) the WeFOC Office Building Underlease;

**WeFOC Connection Agreement** means the agreement between DBS and RfL under which DBS and RfL or its nominee will perform certain obligations in relation to the connections between the WeFOC and DBS's adjoining sidings facility;

**WeFOC Facilities Access Contract** means the facilities access contract between DBS and RfL, granting RfL or its nominee rights of access to move trains over the track leading from the boundary of the WeFOC to the network and over the secondary exit to the north of the WeFOC;

**WeFOC Headlease** means the occupational headlease between Network Rail and RfL under which Network Rail leases the WeFOC to RfL;

**WeFOC Office Building Headlease** means the headlease between DBS and RfL in respect of the first floor of the office building on Pendolino Way adjacent to the WeFOC;

**WeFOC Office Building Underlease** the underlease between RfL and the Operator in respect of the first floor of the office building on Pendolino Way adjacent to the WeFOC;

**WeFOC Underlease** means occupational underlease between RfL and the Operator under which RfL leases the WeFOC to the Operator;

**WEL** means the Route between Watford Junction station and London Euston station;

**WEL Stations** means those London Overground Stations listed in the table in the Appendix (*London Overground Stations*) to Schedule 4.1 (*Property Leasing and Access*) against which a cross is marked in the column labelled 'WEL';

**Welcome Host** has the meaning given to it in Committed Obligation 66 in the table in Schedule 10.1 (*List of Committed Obligations and Committed Obligation Payments*);

**Wellbeing Campaign** has the meaning given to it in Committed Obligation 11 in the table in Schedule 10.1 (*List of Committed Obligations and Committed Obligation Payments*);

**Willesden Depot** has the meaning given to it in the Class 710 TSA;

**Working Timetable** has the meaning given to it in the Relevant Network Code;

**WRRR Self-certification Report** has the meaning given to it in paragraph 22.1 of Schedule 15.3 (*Responsible Procurement*);

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

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

### 3. COMMENCEMENT

3.1 The provisions listed in clauses 3.1(a) to (o) inclusive, together with such provisions of this Agreement as may be required to give effect to the same, shall take effect and be

binding upon the parties immediately upon signature of this Agreement (or as otherwise indicated):

- (a) clauses 1 (*Interpretation*) to 10 (*Governing Law*) inclusive;
- (b) Schedule 1.1 (*Timetable and Service Development*);
- (c) paragraph 13.1 of Schedule 2.2 (*List of Concession Services*);
- (d) in Schedule 3.1 (*Specification and Creation of Fares*):
  - (i) paragraph 1 (*RfL Specification of Fares*) provided that the relevant aspects of paragraph 1 shall only be operative from the date the Operator accedes to the Ticketing and Settlement in accordance with the terms; and
  - (ii) paragraph 3 (*Changes to Fares Documents*);
- (e) in Schedule 3.3 (*Ticket and Non-Ticket Revenue*):
  - (i) paragraph 2 (*Revenue Account*);
  - (ii) paragraph 6 (*Revenue Protection Enforcement*) in relation to the development of the Revenue Protection Policy and co-operation referred to therein;
  - (iii) paragraph 7.2; and
  - (iv) paragraph 9 (*Indemnity*);
- (f) paragraph 1 (*Integrated Transport Schemes*) of Schedule 3.5 (*Transport, Travel and Other Fares Related Schemes*);
- (g) Schedule 4.1 (*Property Leasing and Access*);
- (h) in Schedule 5.2 (*Operation, Maintenance and Refresh*):
  - (i) paragraph 1.1;
  - (ii) paragraph 2.1;
  - (iii) paragraph 4 (*Leasing of the Class 378 Fleet, Simulator and related equipment*);
  - (iv) paragraphs 5.1, 5.2 and 5.5;
  - (v) paragraph 7 (*Leasing of the Class 710 Fleet, Simulator and related equipment*);
  - (vi) paragraphs 8.1, 8.2 and 8.5;
- (i) Schedule 5.3 (*Introduction of Class 710 Fleet and related equipment*);
- (j) Schedule 6 (*Anticipated Service Changes*);
- (k) paragraph 9 (*Changing the Key Performance Indicators*) of Schedule 8.1 (*KPI Regime*);



- (l) those Committed Obligations listed in Schedule 10.1 (*List of Committed Obligations and Committed Obligation Payments*);
- (m) Schedule 10.2 (*Miscellaneous Provisions*) insofar as that Schedule relates to the delivery of those Committed Obligations referred to in clause 3.1(l);
- (n) paragraph 7.2(b) of Schedule 11.1 (*Concession Payments*); and
- (o) Schedule 12 (*Priced Option*) to Schedule 21 (*List of Documents in the Agreed Terms*) inclusive.

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

#### **4. TERM**

This Agreement shall terminate on the Expiry Date or on the date of any earlier termination pursuant to clause 4.2(a) or 4.3(a) of the Conditions Precedent Agreement or pursuant to Schedule 17 (*Remedies, Termination and Expiry*).

#### **5. GENERAL OBLIGATIONS**

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

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

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

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

#### **6. COMPLIANCE WITH LAWS**

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

#### **7. SCHEDULES**

The provisions of Schedule 1 (*Passenger Service Obligations*) to Schedule 20 (*Other Provisions*) inclusive shall apply.

#### **8. DOCUMENTS IN THE AGREED TERMS**

The parties hereby acknowledge that the list of documents in the agreed terms is set out in Schedule 21 (*List of Documents in the Agreed Terms*).

## **9. ENTIRE AGREEMENT**

9.1 This Agreement and the other Transaction Documents contain the entire agreement between the parties in relation to the subject matter of this Agreement and supersede all prior agreements and arrangements between the parties other than any confidentiality agreements or undertakings which the Operator may have entered into with TfL in connection with its proposal to secure the provision of the Passenger Services under this Agreement.

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

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

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

## **10. GOVERNING LAW AND JURISDICTION**

10.1 This Agreement and any non-contractual obligations arising out of or in relation to this Agreement are governed by English Law.

10.2 Save as expressly provided otherwise in this Agreement, the English courts shall have exclusive jurisdiction in relation to all disputes arising out of or in connection with this Agreement, including disputes arising out of or in connection with:

- (a) the creation, validity, effect, interpretation, performance or non-performance of, or legal relationships established by, this Agreement; and
- (b) any non-contractual obligations arising out of or in connection with this Agreement,

and each party irrevocably submits to the jurisdiction of the English courts and waives any objection to the exercise of such jurisdiction.

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

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

DIRECTOR:



GARETH POWELL.....

IN THE PRESENCE OF:

SIGNATURE OF WITNESS:

CHARLES RITCHIE.....

NAME OF WITNESS:

CHARLES RITCHIE.....

ADDRESS OF WITNESS:



TRANSPORT FOR LONDON,.....  
VICTORIA STREET,.....  
LONDON SW1H 0TL.....

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

DIRECTOR:



CHRIS BURCHELL.....

DIRECTOR:

RICHARD HARRISON.....



**SCHEDULE 1**

**PASSENGER SERVICE OBLIGATIONS**

**Schedule 1.1: Timetable and Service Development**

**Appendix: Passenger Service Development Additional Factors**

**Schedule 1.2: Passenger Service Operating Obligations**

**Schedule 1.3: Managing Changes to the Passenger Services**

**Appendix: Mileage Adjustment Rates**



## SCHEDULE 1.1

### Timetable and Service Development

#### 1. SERVICE LEVEL COMMITMENT – PURPOSE AND RESPONSIBILITY

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

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

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

1.3 The Service Level Commitment as at:

- (a) the date of this Agreement is in the agreed terms marked SLC1a, attached to this Agreement; and
- (b) the Passenger Change Date in December 2017 is in the agreed terms marked SLC1b, SLC2a and SLC2b, which shall be considered a single Service Level Commitment and shall be deemed issued for the purpose of securing Timetable Development Rights pursuant to this Schedule 1.1 and operating the Passenger Services pursuant to Schedule 1.2 (*Passenger Service Operating Obligations*).

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

#### 2. TRAIN PLAN – PURPOSE AND RESPONSIBILITY

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

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

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

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

2.4 The Train Plan for the Timetable as at the Start Date shall be submitted by the Operator to RfL no less than three months before the Start Date in a form acceptable to RfL.

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

- (a) its start point and departure time;
- (b) its terminating point and arrival time;
- (c) the class of rolling stock vehicles that the allocated train is to have;
- (d) the Unit and Split Diagram Unit configuration that the allocated train is to have; and
- (e) its Actual Passenger Demand most recently determined and notified pursuant to paragraph 6.4.

2.6 A Train Plan shall be in any format that RfL may reasonably specify for this purpose.

### **3. SERVICE LEVEL DEVELOPMENT**

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

### **4. PROCEDURE**

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

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

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

4.4 Any stipulation by RfL pursuant to paragraph 4.2:

- (a) shall be at the reasonable discretion of RfL;
- (b) may contain procedural arrangements and timescales to be followed by the Operator in relation to other changes to the Concession Services (pursuant to paragraph 1 (*Variations to this Agreement*) of Schedule 13.4 (*Variations*)) in conjunction with a Service Level Commitment; and
- (c) may provide for iterations of drafts of any Service Level Commitment, Train Plan or Timetable and for indicative Runs of the Model Suite in relation thereto.



## 5. OPERATOR'S PASSENGER SERVICE DEVELOPMENT OPINIONS

### Requirements of opinion

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

- (a) its informed opinion as to any changes to the current Service Level Commitment which:
  - (i) should be made in order to deliver an optimal range of railway passenger service patterns relative to Actual Passenger Demand; and
  - (ii) could be implemented and operated without additional resources or an adjustment to the Concession Payments;
- (b) its informed opinion as to any changes to the current Service Level Commitment which:
  - (i) would deliver an optimal range of railway passenger service patterns in accordance with paragraph 5.1(a)(i); and
  - (ii) could only be implemented and operated with additional resources and/or an adjustment to the Concession Payments, together with an explanation as to:
    - (A) what additional resources and/or adjustments are necessary to make such changes; and
    - (B) why such additional resources and/or adjustments are necessary;
- (c) its informed opinion as to any changes that RfL ought to make to the Operating Performance Thresholds in order to hold constant the Operator's ability to perform in respect of the Operating Performance Thresholds, provided that no such opinion shall be required in relation to SLC1b, SLC2a, SLC2b or the issue of any Service Level Commitment that is the subject of a Service Increment; and
- (d) a draft of the Train Plan that it considers that each set of proposed changes would require.

### Considerations

5.2 The Operator shall:

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

each with due regard to:

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

### **Planning to Operate the Train Plan in the Peak**

5.3 The Operator shall prepare its Train Plan so as to operate, subject to paragraph 1.5 of the Appendix (*Trains comprising the Train Fleet*) to Schedule 5.1 (*The Train Fleet*), the entire Train Fleet and all Split Diagram Units in delivering Passenger Services during each Peak, save for any reasonable planning requirements for:

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

### **Allocation of rolling stock if unable to meet capacity requirements**

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

- (a) minimising, so far as is possible, the amount by which Actual Passenger Demand exceeds the provision of passenger carrying capacity on the affected Passenger Services; and
- (b) ensuring, so far as is possible, that such excess is not unduly concentrated on any particular part of the London Overground Network or Passenger Service.

### **Proposals to address shortfalls in capacity**

5.5 Where paragraph 5.4 applies, the Operator shall propose to RfL:

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

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

## **6. PASSENGER NUMBERS INFORMATION**

6.1 The Operator shall, as and when reasonably requested by RfL, assist RfL to determine Actual Passenger Demand by

- (a) carrying out manual passenger counts in accordance with the passenger count methodology in the agreed terms marked *PCM*; and
- (b) cooperating with RfL and the relevant Rolling Stock Maintainer in the carrying out of automatic passenger counts using the Loadweigh system (as referred to in the passenger count methodology) in relation to the Class 172 Units, Class 378 Units and the Class 710 Units by making those Units accessible to RfL and the relevant Rolling Stock Maintainer on reasonable notice in order that those automatic passenger counts may be carried out and assisting them in the collation of data as required by the passenger count methodology.

6.2 The information specified in paragraph 6.1(a) shall be provided by the Operator as required by the passenger count methodology within 14 days of the completion of any manual passenger count.

6.3 The Operator shall be responsible for ensuring the data provided by the Loadweigh system meets the conditions described in the passenger count methodology.

6.4 RfL shall promptly notify the Operator of Actual Passenger Demand following its most recent determination.

## **7. RfL'S PASSENGER SERVICE DEVELOPMENT OPINIONS**

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

- (a) its draft Service Level Commitment;
- (b) its requirements for the operation of any Passenger Services in relation to Special Events;
- (c) its opinion on any changes that it reasonably considers are required to the Train Plan to optimise the deployment of the Train Fleet and Split Diagram Units to best meet Actual Passenger Demand; and
- (d) its opinion of any changes that are required to the Operating Performance Thresholds in order to hold constant the Operator's ability to perform in respect of the Operating Performance Thresholds, provided that in relation to the issue of SLC1b, SLC2a, SLC2b or any Service Level Commitment that is the subject of a Service Increment, as the Operating Performance Thresholds shall not change, there shall be no requirement to provide such an opinion.

## **8. TIMETABLE, TRAIN PLAN AND PERFORMANCE THRESHOLDS CONSULTATION**

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

8.2 The Operator shall, as and when required pursuant to paragraph 4.2, provide RfL with:

- (a) a summary (in such form as RfL may specify) of any material changes that it would expect there to be to the Passenger Services from the current Timetable if RfL's draft Service Level Commitment and proposed Train Plan were implemented; and
- (b) its opinion of any changes that are required to the Operating Performance Thresholds in order to hold constant the Operator's ability to perform in respect of the Operating Performance Thresholds.

8.3 The Operator shall provide all reasonable assistance to RfL in consulting Stakeholders in relation to any draft Service Level Commitment issued by RfL pursuant to paragraph 7(a), including:

- (a) as and when required by RfL, attending any consultation meetings with Stakeholders;

- (b) promptly forwarding any correspondence the Operator has received from those Stakeholders in relation to that draft;
- (c) as and when required by RfL, assisting RfL in relation to any enquiries made by Stakeholders in relation to that draft by providing information in order that RfL may respond to those enquiries; and
- (d) as and when required by RfL, informing RfL of any material changes that the Operator would expect to make to such draft if the views of those Stakeholders were accommodated.

## **9. SERVICE LEVEL COMMITMENT**

RfL shall, in accordance with paragraph 4.2, issue to the Operator the Service Level Commitment that it requires the Operator to operate and inform the Operator of the changes (if any) to the Operating Performance Thresholds that are to be made in order to hold constant the Operator's ability to perform in respect of the Operating Performance Thresholds, in which case:

- (a) a Change shall occur; and
- (b) the parties shall make those changes to the Operating Performance Thresholds,

provided that no such Change shall occur or changes be made in relation to the Operating Performance Thresholds, in each case in relation to the issue of SLC1b, SLC2a SLC2b or any Service Level Commitment that is the subject of a Service Increment on consistent terms with that Service Level Commitment in the agreed terms.

## **10. TIMETABLE DEVELOPMENT RIGHTS DURING A TIMETABLE PLANNING PERIOD**

### **Securing Timetable Development Rights**

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

### **Exercising Timetable Development Rights**

10.2 The Operator shall exercise its Timetable Development Rights during any Timetable Planning Period so as to secure a Timetable that enables it to operate railway passenger services that comply with the Service Level Commitment in accordance with its obligations under paragraph 12 (*Obligations in relation to Other Train Operators*).

### **Notice of Infrastructure Manager proposals**

10.3 The Operator shall notify RfL soon as reasonably practicable after receiving any notification from any Infrastructure Manager (including pursuant to Part D or Part G of the Network Code or their equivalents in any other Relevant Network Code) during any Timetable Planning Period of any proposal to implement works during the term of the next Timetable which would require a Restriction of Use, or a programme of co-ordinated Restrictions of Use (including as a result of a Network Change and an extended programme

of Restrictions of Use that is the subject of a Possessions Strategy Notice) or to change the Rules which would, in each case:

- (a) prevent any Passenger Service specified in the Service Level Commitment to be included in that Timetable; or
- (b) require the rescheduling of any Passenger Service specified in the Service Level Commitment to be included in that Timetable.

10.4 The Operator shall explain in any notification it provides pursuant to paragraph 10.3, the way in which, in its opinion, any omission or rescheduling of any Passenger Service or change in the Rules will impact its ability to deliver the Timetable Requirements.

10.5 The Operator agrees to promptly supply to RfL upon request:

- (a) such details as RfL may reasonably require in the format required by RfL, of any proposed omission or rescheduling of Passenger Services or any change in the Rules, in each case made by any Infrastructure Manager; and
- (b) copies of any notices, correspondence or other information exchanged between the relevant Infrastructure Manager and the Operator in respect of those matters.

### **Consultation**

10.6 As soon as reasonably practicable after notifying RfL of any proposal to impose any Restriction of Use, a programme of co-ordinated Restrictions of Use or any change to the Rules, the Operator shall consult RfL for a reasonable period of time, providing RfL with its opinion of:

- (a) the likely impacts on the Passenger Services; and
- (b) the basis on which a submission or counter-proposal could be made to the relevant Infrastructure Manager which would, as appropriate, avoid the omission or rescheduling of any Passenger Services that are specified in the Service Level Commitment or otherwise minimise the impacts on the Passenger Services of that Restriction of Use, programme or change in the Rules.

### **Counter proposals**

10.7 At any time during the consultation period referred to in paragraph 10.6, RfL may direct the Operator to exercise its Timetable Development Rights to make a submission or counter-proposal to the relevant Infrastructure Manager with the purpose of seeking to:

- (a) avoid the omission or rescheduling of any Passenger Services that are specified in the Service Level Commitment; or
- (b) where those Timetable Development Rights do not allow for this, minimise the impacts of the relevant Restriction of Use, co-ordinated programme of Restrictions of Use or change in Rules notified pursuant to paragraph 10.3 and securing the optimum level, frequency, maximum journey times and stopping patterns of Passenger Services in the Timetable.

10.8 Where RfL directs the Operator to exercise its Timetable Development Rights to make a submission or counter-proposal pursuant to paragraph 10.7, the Operator shall exercise those Timetable Development Rights to make that submission or counter-proposal to the relevant Infrastructure Manager as soon as reasonably practicable thereafter.

10.9 Where any Infrastructure Manager makes a decision to vary the working timetable, or issue a Possessions Strategy Notice, in each case which requires any Restriction of Use, or to change the Rules, that in each case is inconsistent with any submission or counter-proposal made by the Operator pursuant to paragraph 10.8, then the Operator shall notify RfL, including providing RfL with any written reasons for that rejection received from that Infrastructure Manager, as soon as reasonably practicable after such rejection.

### **Appeals**

10.10 Where an Infrastructure Manager's decision to vary the working timetable including by issuing a Possessions Strategy Notice or to change the Rules would, in each case cause the omission or rescheduling of Passenger Services that are included in the Service Level Commitment:

- (a) RfL may, within the timescales permitted under the Relevant Network Code, require the Operator to appeal that variation or change in the Rules in accordance with the terms of the Relevant Network Code (including submitting its objection to any relevant dispute resolution arrangements or procedures and appealing against any award or determination under such arrangements or procedures, including to the ORR where relevant); and
- (b) the Operator shall duly appeal that variation in accordance with any such direction and the terms of the Relevant Network Code.

### **No liability**

10.11 Subject to the Operator complying with its obligations under this paragraph 10, it shall not be liable for any failure to secure a Timetable that enables the Operator to operate railway passenger services that comply with the Service Level Commitment, to the extent that such failure is caused by:

- (a) the Operator's Timetable Development Rights being inadequate to enable it to secure the requisite Train Slots, provided that the Operator has exercised all reasonable endeavours to obtain the requisite timetable development rights in accordance with paragraph 10.1;
- (b) any Infrastructure Manager exercising its flexing rights from time to time under the relevant Track Access Agreement including under the Relevant Network Code in respect of such Train Slots;
- (c) any Infrastructure Manager exercising its other rights from time to time under the relevant Track Access Agreement including under the Relevant Network Code; or
- (d) the exercise by the ORR of its powers pursuant to Section 22C of the Act.

10.12 RfL shall, to the extent reasonably practicable, allow the Operator a reasonable opportunity to make representations to it concerning the exercise by the Operator of any of its

rights referred to in this paragraph 10 before requiring the Operator to take any action referred to in this paragraph 10.

### **Issuing a revised Service Level Commitment**

10.13 If and to the extent that the Operator is not able to secure a Timetable enabling it to operate railway passenger services that comply with the Service Level Commitment as a result of it not being able to obtain the timetable development rights that it requires for that purpose, RfL shall issue to the Operator a Service Level Commitment in the form required by paragraph 10.13(a), which shall operate between the parties only for the purpose referred to in paragraph 10.13(b):

- (a) the Service Level Commitment issued pursuant to this paragraph 10.13 shall be in a form that:
  - (i) would enable the Operator to secure a Timetable in compliance with it by exercise of the Timetable Development Rights that the Operator does have or would have had the Operator properly performed its obligations under this Agreement; and
  - (ii) in all other respects, is the same as the immediately preceding Service Level Commitment issued to the Operator by RfL; and
- (b) any Service Level Commitment issued pursuant to this paragraph 10.13 shall, for the purpose of Schedule 13 (*Changes and Variations*) only, stand in place of the immediately preceding Service Level Commitment issued to the Operator by RfL.

### **Proposals made by third parties**

10.14 The provisions of this paragraph 10 shall apply to any omission or rescheduling of Passenger Services that originates from any person other than any Infrastructure Manager, as those provisions apply to that person.

## **11. CERTIFICATION AND NOTIFICATION BY OPERATOR OF TIMETABLE BIDS**

11.1 Before exercising any Timetable Development Right to bid for Train Slots, the Operator shall provide a certificate addressed to RfL confirming that its proposed exercise of that Timetable Development Right will be compliant with its obligation specified in paragraph 10.2.

11.2 If requested by RfL, the Operator agrees to demonstrate to the reasonable satisfaction of RfL that the Operator's certificate referred to in paragraph 11.1 is a true and accurate confirmation of compliance with its obligation specified in paragraph 10.2. RfL agrees that the certificate will be acceptable if:

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

## **12. OBLIGATIONS IN RELATION TO OTHER TRAIN OPERATORS**

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

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

## **13. FINALISING THE TRAIN PLAN**

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

13.2 RfL may notify the Operator of:

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

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

13.3 If the Operator considers that any of the revisions that RfL requires pursuant to paragraph 13.2(b) are not required for the Train Plan to comply with this Schedule 1.1, then:

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



#### **14. PROVISIONS RELATING TO ACCESS AGREEMENTS AND PROPERTY LEASES**

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

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

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

- (a) where the approval of the ORR is required under the Act, not less than 10 Business Days before the submission to the ORR; and
- (b) where no such approval is required, not less than 10 Business Days prior to entering into such amendment or Access Agreement.

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

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

14.4 If and to the extent that:

- (a) RfL exercises its rights pursuant to paragraph 14.1;
- (b) the Operator's compliance with RfL's requirements pursuant to paragraph 14.1 would lead to the unavoidable consequence of the Operator contravening any other terms of this Agreement or the occurrence of an Event of Default; and
- (c) the Operator duly complies with such requirements,

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

#### **15. RfL'S STATEMENT OF SERVICE LEVEL COMMITMENT CHANGES**

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

## 16. THE TIMETABLE AND THE WORKING TIMETABLE

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

16.2 Accordingly, the Operator's obligations specified in paragraph 10.2 shall be construed as an obligation to secure the requisite Train Slots in the working timetable to be issued by the relevant Infrastructure Manager at the conclusion of its timetable development process that will permit the Operator to operate railway passenger services that comply with the Service Level Commitment provided for in the relevant Timetable.

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

## 17. NEW YEAR'S EVE, BOXING DAY AND NIGHT OVERGROUND MOBILISATION

17.1 The Operator shall develop a plan for implementing SLC2a and SLC2b which will describe what steps the Operator will take and when they will be taken in order to operate SLC2a and SLC2b by the Passenger Change Date occurring in [REDACTED]<sup>13</sup> and for the remainder of the Concession Period. The Operator shall submit a detailed draft of that detailed plan to RfL no later than the Start Date. The draft implementation plan shall set out in sufficient detail:

- (a) the measurable delivery milestones (including where appropriate, trajectories demonstrating progress over time), which shall include milestones to, as appropriate, procure or facilitate the timely:
  - (i) development of a consultation plan with unions and staff representatives associated with the implementation of proposed changes to staff terms and conditions;
  - (ii) agreement with unions on proposed changes to terms and conditions for all relevant staff; and
  - (iii) availability of Timetable Development Rights in order to operate the Passenger Services that comprise SLC2a and SLC2b,

and in each case, the dates by which those milestones will be achieved as well as the means by which they will be achieved (*SLC2 Milestones*);

- (b) such other activities as a skilled and experienced Train Operator employed in the operation and facilitation of significant passenger service changes would include in such a plan in order to facilitate the timely operation of those services and the means by which the Operator will carry out those activities; and

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<sup>13</sup> This text has been redacted by Rail for London in accordance with the provisions of the Freedom of Information Act 2000.

- (c) the Operator's approach to the management of the delivery of the plan and the steps it will take to monitor its compliance.

17.2 RfL shall within one month of receipt of the Operator's draft SLC2 implementation plan, inform the Operator whether, in RfL's opinion:

- (a) the plan meets the requirements of paragraph 17.1; and
- (b) if duly implemented, the Operator will be able to operate SLC2a and SLC2b by the Passenger Change Date occurring in [REDACTED]<sup>14</sup> and for the remainder of the Concession Period.

17.3 The Operator shall within 14 days of RfL providing its opinion pursuant to paragraph 17.2, amend its draft SLC2 implementation plan in accordance with that opinion and reissue that amended plan to RfL. Such amended plan shall be the ***SLC2 Implementation Plan***.

17.4 The Operator shall implement its SLC2 Implementation Plan in accordance with its terms.

17.5 The Operator shall:

- (a) report to RfL in each Periodic Concession Report that is to be issued prior to the Passenger Change Date in [REDACTED]<sup>15</sup> in accordance with paragraph 2.2 of Schedule 16.1 (*Records, plans and reporting*), its progress in delivering the SLC2 Implementation Plan and the SLC2 Milestones and other milestones specified therein in each Periodic Concession Report to such level of detail as RfL may require; and
- (b) promptly provide to RfL, such further information in relation to the Operator's progress in delivering the SLC2 Implementation Plan as RfL reasonably requests.

17.6 The Operator shall procure that a director of the Operator signs a statement and issues it to RfL no later than two months before the Passenger Change Date in [REDACTED]<sup>16</sup> which confirms the Operator's readiness to operate the Passenger Services specified in SLC2a and SLC2b by the Passenger Change Date occurring in [REDACTED]<sup>17</sup> and for the remainder of the Concession Period.

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<sup>14</sup> This text has been redacted by Rail for London in accordance with the provisions of the Freedom of Information Act 2000.

<sup>15</sup> This text has been redacted by Rail for London in accordance with the provisions of the Freedom of Information Act 2000.

<sup>16</sup> This text has been redacted by Rail for London in accordance with the provisions of the Freedom of Information Act 2000.

<sup>17</sup> This text has been redacted by Rail for London in accordance with the provisions of the Freedom of Information Act 2000.



**APPENDIX TO SCHEDULE 1.1****PASSENGER SERVICE DEVELOPMENT ADDITIONAL FACTORS**

1. The Operator, in formulating its service development opinion pursuant to paragraph 5.1 of Schedule 1.1 (*Timetable and Service Development*), in addition to having regard to the London Mayor's transport strategy, any Route Utilisation Strategy and the opinions of any Stakeholder or other relevant person and any other constraints or considerations notified to it pursuant to paragraph 5.2(iii) of Schedule 1.1, shall also have regard to:

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



## SCHEDULE 1.2

### Passenger Service Operating Obligations

#### 1. DAILY OPERATING OBLIGATION

##### Obligation to operate the Plan of the Day

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

##### Obligation to deploy the Train Fleet

1.2 The Operator agrees to use all reasonable endeavours to operate during the Peak, subject to paragraph 1.5 of the Appendix (*Trains comprising the Train Fleet*) to Schedule 5.1 (*The Train Fleet*), the entire Train Fleet and all Split Diagram Units in delivering the Peak Passenger Services save where appropriate, for:

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

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

#### 2. MEETING PASSENGER DEMAND

##### The applicable Train Plan

2.1 References in this Schedule 1.2 to the Train Plan are to the Train Plan as issued by the Operator to RfL pursuant to paragraph 2.2 of Schedule 1.1 (*Timetable and Service Development*), and as amended:

- (a) to comply with any requirements of RfL pursuant to paragraph 13.2 of Schedule 1.1; or
- (b) pursuant to the remainder of this paragraph 2.

##### Amendments to the Train Plan

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

- (a) any foreseeable differences that there may be between the Timetable and any Plan of the Day;

- (b) any material alteration in Actual Passenger Demand, subsequent to the issue of the Train Plan, that is:
  - (i) observable from the most recent determination of Actual Passenger Demand in accordance with paragraph 6 (*Passenger Numbers Information*) of Schedule 1.1 (*Timetable and Service Development*); and/or
  - (ii) attributable to seasonal or exceptional factors; and
- (c) the Relevant Train Plan Parameters.

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

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

2.5 The obligation to use all reasonable endeavours to propose amendments to the Train Plan to better match the passenger carrying capacity of the Train Fleet and Split Diagram Units to Actual Passenger Demand is an obligation to use all reasonable endeavours to propose amendments which would either:

- (a) provide for passenger carrying capacity on each Passenger Service that is at least equal to the Actual Passenger Demand for that Passenger Service; or
- (b) provide the best allocation of rolling stock vehicles to Passenger Services that is reasonably practicable so as to:
  - (i) minimise the amount by which Actual Passenger Demand exceeds the provision of passenger carrying capacity on the affected Passenger Services; and
  - (ii) ensure, so far as is possible, that the excess of Actual Passenger Demand is not unduly concentrated on any particular part of the London Overground Network or Passenger Service.

2.6 If RfL does not consider that the Operator has exercised all reasonable endeavours to make proposals as required by paragraph 2.2, RfL may require the Operator to amend the Train Plan in accordance with its requirements.

### **3. OBLIGATION TO USE ALL REASONABLE ENDEAVOURS**

#### **All Reasonable Endeavours**

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

- (a) ensure the provision of the Passenger Services as set out in the Plan of the Day in ordinary operating conditions;



- (b) take reasonable measures to avoid and/or reduce the impact of any disruption to the Concession Services having regard to all the circumstances and the requirements of Schedule 1.3 (*Managing Changes to the Passenger Services*), including the reasonably foreseeable risks arising from the matters referred to in paragraph 3.2; and
- (c) actively manage the performance by the Infrastructure Managers of their respective contractual relationships with the Operator (and provide appropriate management resources for this purpose) so as to secure the best performance reasonably obtainable from the Infrastructure Managers by these means (including taking the steps referred to in paragraph 3.4), having regard to all the circumstances, and where requested by RfL, the Operator shall promptly provide RfL with its expert opinion of Network Rail's management of the relevant parts of the London Overground Network, including Network Rail's asset management plan, its possessions strategy and specific possessions of the London Overground Network, any temporary speed restrictions and remote condition monitoring.

**Considerations in the management of disruption**

3.2 The matters to which the Operator is to have regard pursuant to paragraph 3.1(b) shall include:

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

3.3 For the purpose of taking measures in respect of any disruption to the Concession Services in accordance with paragraph 3.1(b) and assessing the extent of any risk referred to in paragraph 3.1(b) and any such risk's reasonable foreseeability, regard shall be had both:

- (a) to the historical levels of incidence of disruption in the operation of:
  - (i) the Concession Services;
  - (ii) similar services both by the Operator and/or its predecessors; and

- (iii) other services of a type similar to the Concession Services; and
- (b) to potential changes in circumstances which may affect those levels.

**Active management of Infrastructure Managers**

3.4 The steps to which paragraph 3.1(c) refers include:

- (a) co-operating with Infrastructure Managers in the development, agreement and implementation of:
  - (i) Joint Performance Improvement Plans; and
  - (ii) recovery plans in response to failures to achieve the performance levels specified in any Joint Performance Improvement Plans;
- (b) co-operating with any Infrastructure Manager in adopting the principles set out in any Service Recovery Plans agreed between that Infrastructure Manager and the Operator from time to time;
- (c) undertaking a weekly review of:
  - (i) the 10 most common causes of Delay Incidents and other disruption to the Passenger Services; and
  - (ii) the 10 causes of delay to the Passenger Services with the longest duration (to the extent not already reviewed in accordance with paragraph 3.4(c)(i)),  
 which have occurred during that week and which have been caused by the Operator, any other Train Operator or the relevant Infrastructure Manager;
- (d) undertaking with each Infrastructure Manager a review of the time taken to recover the Passenger Services following the occurrence of any of the events specified in paragraphs 3.4(c)(i) and (c)(ii) and seeking to identify and implement actions that reduce the delay effect of such events;
- (e) setting up and holding regular and effective performance review meetings with each Infrastructure Manager, evidenced by meeting minutes and the closure of actions agreed between the parties;
- (f) regularly monitoring (at least every Reporting Period) the delivery of local output commitments made by Infrastructure Managers and using reasonable endeavours to specify and develop such local output commitments;
- (g) as and when required by each Infrastructure Manager, co-operating with that Infrastructure Manager in improving the accuracy of future timetables by providing access to trains, other facilities and/or information;
- (h) regularly reviewing (at least every Reporting Period) the imposition and clearance of temporary speed restrictions;
- (i) regularly reviewing (at least every Reporting Period) the timely and efficient handover and hand-back of possessions; and

- (j) where appropriate and where any Infrastructure Manager fails to perform its obligations under the relevant Track Access Agreement, enforcing the Operator's rights under such Track Access Agreement.

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

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

3.7 When and to the extent reasonably requested by RfL, the Operator shall provide to RfL evidence of the steps taken by it in order to comply with its obligations under this paragraph 3.

#### **4. ADDITIONAL RAILWAY PASSENGER SERVICES**

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

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

#### **5. OTHER OPERATORS**

5.1 If:

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

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

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

5.2 The benefit of any arrangements of the type referred to in paragraph 5.1(ii) shall be provided on substantially the same terms as previously obtained by the relevant Train

Operator, subject to clause 5 (*General Obligations*) and paragraph 5.3, provided that RfL may exclude or modify any terms agreed or amended by such Train Operator in the 12 months preceding the date on which such Train Operator's franchise agreement or concession agreement was terminated or the date on which the relevant railway administration order was made which were, in RfL's reasonable opinion, to the material detriment of such Train Operator's business. The benefit of such arrangements shall be provided for such period as RfL may reasonably require to allow the relevant Train Operator or railway administrator to renegotiate such arrangements or make alternative arrangements.

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

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

## **6. ROYAL TRAIN**

6.1 The Operator shall, if and to the extent requested by any person (including the operator of the royal train from time to time) and subject to the payment by such person of any reasonable costs of the Operator, co-operate in the provision by such person of railway passenger services for Her Majesty Queen Elizabeth II or any successor head of state or members of the family or representatives of either of them.

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

- (a) running a 'sweeper' train in front of the royal train;
- (b) having spare locomotives on standby as rescue traction; and/or

carrying out security requirements or co-operating with other persons in ensuring that security requirements are carried out prior to calling at any station on the London Overground Network.

## SCHEDULE 1.3

### Managing Changes to the Passenger Services

#### 1. INFRASTRUCTURE MANAGER PROPOSALS TO CHANGE THE PLAN OF THE DAY

##### Notice of Infrastructure Manager proposals

1.1 The Operator shall notify RfL as soon as reasonably practicable after receiving any notification from any Infrastructure Manager (including pursuant to Part D or Part G of the Network Code or their equivalents in any other Relevant Network Code) outside any Timetable Planning Period of any proposal to implement works during the term of the current Timetable which require a Restriction of Use, or a programme of co-ordinated Restrictions of Use or to change the Rules which would, in each case cause:

- (a) the omission from the Plan of the Day, of Passenger Services that are included in the Plan of the Day; or
- (b) the rescheduling in the Plan of the Day, of Passenger Services from their scheduling in the Plan of the Day.

1.2 The Operator shall explain in any notification it provides pursuant to paragraph 1.1, the way in which, in its opinion, any omission, rescheduling of any Passenger Service or change in the Rules will impact its ability to deliver the Timetable Requirements.

1.3 The Operator agrees to promptly supply to RfL upon request:

- (a) such details as RfL may reasonably require in the format required by RfL, of any actual or proposed omission or rescheduling of Passenger Services or any change in the Rules in each case made by any Infrastructure Manager; and
- (b) copies of any notices, correspondence or other information exchanged between the relevant Infrastructure Manager and the Operator in respect of those matters.

##### Consultation

1.4 As soon as reasonably practicable after notifying RfL of any proposal to impose any Restriction of Use, a programme of co-ordinated Restrictions of Use or any change to the Rules, the Operator shall consult RfL for a reasonable period of time, providing RfL with its opinion of:

- (a) the likely impacts on the Passenger Services; and
- (b) the basis on which a submission or counter-proposal could be made to the relevant Infrastructure Manager which would, as appropriate, avoid the omission or rescheduling of any Passenger Services that are specified in the Plan of the Day or otherwise minimise the impacts on the Passenger Services of that Restriction of Use, programme or change in the Rules.

### **Counter proposals**

1.5 At any time during the consultation period referred to in paragraph 1.4, RfL may, direct the Operator to exercise its Timetable Development Rights to make a submission or counter-proposal to the relevant Infrastructure Manager with the purpose of seeking to:

- (a) avoid the omission or rescheduling of any Passenger Services that are specified in the Plan of the Day; or
- (b) where those Timetable Development Rights do not allow for this, minimise the impacts of the relevant Restriction of Use, co-ordinated programme of Restrictions of Use or change in the Rules notified pursuant to paragraph 1.1 and securing the optimum number, frequency and service pattern of Passenger Services in the Plan of the Day.

1.6 Where RfL directs the Operator to exercise its Timetable Development Rights to make a submission or counter-proposal pursuant to paragraph 1.5, the Operator shall exercise those Timetable Development Rights to make that submission or counter-proposal to the relevant Infrastructure Manager as soon as reasonably practicable thereafter.

1.7 Where any Infrastructure Manager makes a decision to vary the Plan of the Day which requires any Restriction of Use, or to change the Rules that, in each case, is inconsistent with any submission or counter-proposal made by the Operator pursuant to paragraph 1.5, then the Operator shall notify RfL, including providing RfL with any written reasons for that rejection received from that Infrastructure Manager, as soon as reasonably practicable after such rejection.

### **Appeals**

1.8 Where an Infrastructure Manager's decision to vary the Plan of the Day or to change the Rules would, in each case, cause the omission or rescheduling of Passenger Services that are included in the Plan of the Day:

- (a) RfL may, within the timescales permitted under the Relevant Network Code, require the Operator to appeal that aspect of that variation or change in the Rules in accordance with the terms of the Relevant Network Code (including submitting its objection to any relevant dispute resolution arrangements or procedures and appealing against any award or determination under such arrangements or procedures, including to the ORR where relevant); and
- (b) the Operator shall duly appeal that variation in accordance with any such direction and the terms of the Relevant Network Code.

### **Proposals made by third parties**

1.9 The provisions of this paragraph 1 shall apply to any actual or proposed omission or rescheduling of Passenger Services that originates from any person other than any Infrastructure Manager, as those provisions apply to that person.

## **Extended Restrictions of Use**

1.10 It shall be a Qualifying Change where the Operator operates less distance (measured in miles) than the distance (measured in miles) specified in the Train Plan as a consequence of a Restriction of Use that lasts 60 consecutive hours or more.

## **2. COOPERATION WITH RESTRICTIONS OF USE**

2.1 The Operator shall co-operate with the relevant Infrastructure Manager, RfL and any other relevant party in connection with any Restriction of Use that is not the subject of an appeal by the Operator pursuant to paragraph 1.8 or has been appealed by the Operator pursuant to paragraph 1.8 and that appeal has been unsuccessful.

2.2 The Operator shall co-operate with the relevant Infrastructure Manager in its endeavours to obtain all consents required for the carrying out of each Restriction of Use referred to in paragraph 2.1, including any required consent under the timetable planning section of the Relevant Network Code and under the network change section of the Relevant Network Code in respect of any related Network Change.

2.3 The Operator's obligations under paragraphs 2.1 and 2.2 shall not require it to take or omit to take, nor excuse it from taking or omitting to take, any action that would be prejudicial to:

- (a) proper performance of its obligations under this Agreement; or
- (b) the pursuit of reasonable profit from the proper performance of its obligations under this Agreement.

## **3. OPERATOR PROPOSALS TO CHANGE THE PLAN OF THE DAY**

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

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

3.2 The Operator shall not propose a Network Change to any Infrastructure Manager or any other third party without RfL's prior written consent.

## **4. RfL PROPOSALS TO CHANGE THE PLAN OF THE DAY**

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

- (a) the addition to the Plan of the Day of any railway passenger services that are not included in the Timetable, including in relation to railway passenger services that may be required to support any Special Event;

- (b) the omission from the Plan of the Day of any Passenger Services that are included in the Timetable; and/or
- (c) the rescheduling in the Plan of the Day of any Passenger Services from their scheduling in the Timetable, including in relation to railway passenger services that may be required to support any Special Event,

and where the Plan of the Day is amended as a result the Operator shall, in each case operate that amended Plan of the Day provided that, in addition, it shall be a Qualifying Change where RfL requests that the Operator seeks to obtain an addition to the Plan of the Day which would have the effect of requiring the Operator to run an additional 10 per cent. or more miles per day in any Reporting Period or an additional three per cent. or more miles per Reporting Period than, as appropriate, the total miles per day or total miles per Reporting Period specified in the relevant Train Plan.

## **5. RESPONSE TO DISRUPTION**

5.1 The Operator shall promptly notify RfL where any Notifiable Disruption occurs, informing RfL of:

- (a) its opinion of the impact of that Notifiable Disruption on the Timetable;
- (b) how it plans to manage that Notifiable Disruption, including what alternative transport arrangements it plans to provide or procure the provision of pursuant to paragraph 5.4 and how it plans to satisfy its other obligations in this paragraph 5.

5.2 The Operator shall use all reasonable endeavours to act in accordance with the Alternative Timetable Guidance in relation to disruption to railway passenger services as it may subsequently be amended by RfL from time to time.

5.3 The Operator shall co-operate with each Infrastructure Manager and other Train Operators to act in the overall interests of passengers using the railway passenger services referred to in paragraph 5.1, including using all reasonable endeavours to ensure that any disruption notified pursuant to paragraph 5.1 is not concentrated on a particular part of the network, except where such concentration either:

- (a) would be in the overall interests of passengers using such Passenger Services or railway passenger services and would not result in disproportionate inconvenience to any group of passengers; or
- (b) is reasonably necessary as a result of the cause or the location of the Notifiable Disruption.

5.4 The Operator shall make the alternative transport arrangements specified in paragraph 7 (*Alternative Transport Arrangements*) in response to any planned or unplanned disruption which prevents the Operator from meeting the Timetable Requirements.

## **6. ALTERNATIVE TIMETABLE ARRANGEMENTS**

### **Operator's proposed alternative timetable proposals**

6.1 Where the Operator has 10 or more days' advance notice of any Notifiable Disruption, the Operator shall (and where that disruption is caused by Industrial Action by



any of the employees, agents or subcontractors of the Operator (including any person with whom the Operator has a contract or arrangement for the lending, seconding hiring, contracting out or supervision by that person of train drivers, conductors, other train crew or station or depot staff used by the Operator in the provision of the Concession Services) may only at the request of RfL) as soon as reasonably practicable after that notice, submit to RfL:

- (a) a statement confirming the Operator's opinion of the impact of that disruption on the Timetable;
- (b) an alternative timetable that:
  - (i) takes account of reasonable alternative routes;
  - (ii) maximises the aggregate of Station Weighted Stops;
  - (iii) does not prioritise one part of the London Overground Network over another; and
  - (iv) subject to paragraph 5.2, ensures the relevant minimum alternative service levels specified in the Alternative Timetable Guidance are met; and
  - (v) where RfL requires in accordance with paragraph 7 (*Alternative Transport Arrangements*), provides for the alternative transport arrangements required pursuant to that paragraph; and
- (c) a statement confirming whether or not the minimum alternative service levels specified in the Alternative Timetable Guidance have been met, and:
  - (i) where those levels have been exceeded, the extent to which that is the case; and
  - (ii) where those levels have not been exceeded, the extent to which this is the case and the reasons why.

#### **RfL's right to produce its own alternative timetable proposal**

6.2 Where the Operator has submitted an alternative timetable pursuant to paragraph 6.1 and RfL is not satisfied that that alternative timetable meets the requirements of paragraph 6.1(b), then RfL may, whether before or after the implementation of the alternative timetable, elect to prepare its own alternative timetable that meets the requirements of paragraph 6.1(b).

#### **Before implementation of Operator's alternative timetable**

6.3 As soon as reasonably practicable after receipt of any submission pursuant to paragraph 6.1, but in any event, no less than five days before the date that any alternative timetable proposed by the Operator pursuant to paragraph 6.1 is to be first implemented, RfL shall confirm whether it has or has prepared its own timetable pursuant to paragraph 6.2, and if it has, provide the Operator with a copy of that alternative timetable.

6.4 Where RfL:

- (a) confirms by the date specified in paragraph 6.3:

- (i) that it is satisfied that an alternative timetable submitted by the Operator pursuant to paragraph 6.1 meets the requirements of paragraph 6.1(b) and so RfL will not prepare its own alternative timetable pursuant to paragraph 6.2; or
  - (ii) that it will not prepare its own alternative timetable pursuant to paragraph 6.2 before the implementation of that alternative timetable submitted by the Operator; or
- (b) fails to confirm by the date specified in paragraph 6.3 either of the scenarios specified in paragraph 6.4(a),

then, in each case, the Operator shall implement its alternative timetable in accordance with its terms.

6.5 Where RfL confirms by the date specified in paragraph 6.3 that it is not satisfied that an alternative timetable proposed by the Operator meets the requirements of paragraph 6.1(b) and it has prepared its own alternative timetable pursuant to paragraph 6.2, then:

- (a) RfL may direct the Operator to implement RfL’s alternative timetable;
- (b) where RfL directs the Operator pursuant to paragraph 6.5(a), the Operator shall implement RfL’s alternative timetable in accordance with its terms; and
- (c) paragraph 6.7 shall apply.

**After implementation of the Operator’s alternative timetable**

6.6 Where RfL does not elect to prepare its own alternative timetable pursuant to paragraph 6.2 before the implementation of the relevant alternative timetable proposed by the Operator pursuant to paragraph 6.1, but instead elects pursuant to paragraph 6.2 to do so after that implementation and notifies the Operator of that fact, then paragraph 6.7 shall apply.

6.7 Where this paragraph 6.7 applies, if the aggregate of Station Weighted Stops provided for in the Operator’s alternative timetable submitted pursuant to paragraph 6.1 is less than the aggregate of Station Weighted Stops provided for in the related alternative timetable prepared by RfL pursuant to paragraph 6.2, then the Operator shall pay RfL by way of an Alternative Timetable Adjustment in accordance with paragraph 9 (*Alternative Timetable Adjustments*) an amount (an *Alternative Timetable Shortfall Payment*) equal to the aggregate of:

$$ATSP = C + [(RSWS - OSWS) \times R]$$

where:

ATSP means the Alternative Timetable Shortfall Payment for any Reporting Period;

C means RfL’s reasonable and proper costs incurred pursuant to paragraph 6.2;

RSWS means the aggregate of Station Weighted Stops included in the alternative timetable prepared by RfL pursuant to paragraph 6.2; and

OSWS means the aggregate of Station Weighted Stops included in the alternative timetable prepared by the Operator pursuant to paragraph 6.2.

R means the alternative timetable rate of [REDACTED]<sup>18</sup>, indexed in accordance with paragraph 3 (*Indexation by reference to RPI*) of Schedule 11.2 (*Annual Concession Payments and Indexation*).

## 7. ALTERNATIVE TRANSPORT ARRANGEMENTS

### Objectives in providing alternative transport

7.1 Any alternative transport arrangements to be provided or procured by the Operator pursuant to this paragraph 7 which prevents the Operator from meeting the Timetable Requirements shall, unless otherwise agreed by RfL:

- (a) enable passengers affected by any disruption to complete their intended journeys by transporting those passengers to, or as near as reasonably practicable to, the end of their intended journeys on the relevant Passenger Services;
- (b) have particular regard to the needs of any disabled persons and, where appropriate, making additional arrangements for such disabled persons to complete their intended journey;
- (c) be:
  - (i) of reasonable quality;
  - (ii) of a reasonably similar frequency to the disrupted Passenger Services; and
  - (iii) reasonably fit for the purpose of the journey to be undertaken;
- (d) subject to paragraph 5.2, comply with any standards in the Alternative Timetable Guidance issued by TfL from time to time in respect of such alternative transport arrangements;
- (e) include the provision in advance of adequate and prominent publicity of such alternative transport arrangements;
- (f) provide sufficient alternative transport capacity for the reasonably foreseeable demand for the disrupted Passenger Services;
- (g) take account of the wider TfL transport network and any restrictions in operation on that network that have been notified to the Operator by RfL; and
- (h) ensure, if any planned disruption overruns, that there is a reasonable contingency arrangement for such alternative transport arrangements to continue for the duration of such overrun.

### Requirement to provide alternative transport

7.2 Where Notifiable Disruption occurs in respect of which:

- (a) the Operator has 10 or more days' advance notice of that Notifiable Disruption, as soon as reasonably practicable after RfL issues a notice to the Operator requiring the procurement of alternative bus services:

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<sup>18</sup> The text has been redacted by Rail for London in accordance with the provisions of the Freedom of Information Act 2000.

- (i) the Operator shall procure such alternative bus services that meet the requirements of paragraph 7.1 via RfL's nominated bus procurement agent (notified by RfL to the Operator from time to time); and
  - (ii) RfL shall pay the relevant supplier the costs of procuring those alternative bus services; and
- (b) the Operator has less than 10 days' advance notice of that Notifiable Disruption, as soon as reasonably practicable after RfL issues a notice to the Operator requiring the procurement of alternative bus services:
- (i) the Operator shall procure such alternative bus services at its own cost that meet the requirements of paragraph 7.1 via RfL's nominated bus procurement agent (notified by RfL to the Operator from time to time) where that agent has in place agreements to procure alternative bus services that meet the requirements of paragraph 7.1 on short notice of the kind that is likely to be required as a consequence of the lack of notice of that disruption, or via an alternative supplier where such agreements are not in place that do meet those requirements on such short notice; and
  - (ii) RfL shall reimburse the Operator for the reasonable costs it has incurred in procuring those alternative bus services by way of an Alternative Timetable Adjustment in accordance with paragraph 9 (*Alternative Timetable Adjustments*),

provided that in each case, where that Notifiable Disruption is caused in whole or in part by the Operator, RfL shall not be liable for any of the costs of those alternative bus services, and where caused by Industrial Action by any of the employees, agents or subcontractors of the Operator (including any person with whom the Operator has a contract or arrangement for the lending, seconding hiring, contracting out or supervision by that person of train drivers, conductors, other train crew or station or depot staff used by the Operator in the provision of the Concession Services), RfL shall only be liable for half of the costs of those alternative bus services and the Operator shall be liable for the other half.

## **8. RESTRICTION OF USE PAYMENTS TO AND FROM INFRASTRUCTURE MANAGERS**

8.1 The Operator shall in each Reporting Period pay to RfL by way of an Alternative Timetable Adjustment for that Reporting Period in accordance with paragraph 9 (*Alternative Timetable Adjustments*):

- (a) any Network Rail (Schedule 4) Payment paid to the Operator under any Network Rail TAA, for any Restriction of Use caused by Network Rail (including any extended Restriction of Use required as part of a Network Change); and
- (b) any RfL (I) (Schedule 4) Payment paid to the Operator under the RfL (I) TAA, for any Restriction of Use caused by RfL (I) (including any extended Restriction of Use required as part of a Network Change),

(each an *IM (Schedule 4) Payment*) and, in each case, the Operator shall if RfL so directs, exercise its rights under the relevant Track Access Agreement to ensure that that IM (Schedule 4) Payment will, when paid to RfL pursuant to this paragraph 8.1, compensate RfL

to the fullest extent possible for any adverse impacts on Ticket Revenue and Non-Ticket Revenue or additional costs incurred by RfL as a consequence of such Restriction of Use, including, where appropriate, seeking compensation for RfL's actual costs incurred.

8.2 Where the Operator operates less distance (measured in miles) than the distance (measured in miles) specified in the Train Plan as a consequence of a Restriction of Use that lasts 60 consecutive hours or more such that a Change occurs, then any reasonable and proper costs incurred by the Operator in response to that Restriction of Use of the kind compensated for under the relevant Track Access Agreement and paid to RfL pursuant to paragraph 8.1 as part of any IM (Schedule 4) Payment shall be paid by RfL to the Operator under the financial adjustment relating to that Change.

**9. ALTERNATIVE TIMETABLE ADJUSTMENTS**

9.1 RfL shall calculate the Alternative Timetable Adjustment for any Reporting Period in accordance with the following:

$$ATA = SEP - ATSP + ATC - ROUP$$

where:

ATA means the Alternative Timetable Adjustment for that Reporting Period;

SEP means the Special Event Payment for that Reporting Period payable in relation to any Special Events in that Reporting Period in respect of which the Operator provides required Passenger Services and Station Services, calculated in accordance with the following:

$$SEP = \sum_{i=1}^n SEA_i$$

where:

SEP means the Special Event Payment for that Reporting Period;

SEA means a Special Event Amount, calculated in accordance with the following:

$$SEA = \left( \sum_{\delta=\alpha}^f M_{(+)\delta} \times MR_{(+)\delta} \right) + OC$$

where:

SEA means the Special Event Amount;

$M_{(+)}$  means the additional train distance (measured in miles) operated by the Operator as a result of operating the Passenger Services in respect of the related Special Event;

$MR_{(+)}$  means the train distance rate (measured in pound Sterling per mile), which where that additional train distance (measured in miles) is operated by:

- (a) a Class 172 Unit, is specified in column 3 of the table set out in the Appendix;
- (b) an 8-car Class 315 Unit or Class 317 Unit, is specified in the column 5 of that table;
- (c) a 4-car Class 315 Unit or Class 317 Unit, is specified in the column 7 of that table;
- (d) a Class 378 Unit, is specified in column 9 of that table;
- (e) an 8-car Class 710 Unit, is specified in column 11 of that table; and
- (f) a 4-car Class 710 Unit, is specified in column 13 of that table; and

OC means other additional costs agreed by RfL that are incurred by the Operator in relation to the provision of all such additional Passenger Services and Station Services, calculated by reference to the relevant unit rates specified in the Record of Assumptions;

ATSP means the Alternative Timetable Shortfall Payment for that Reporting Period;

ATC means, where the Operator provides or procures the provision of alternative transport in that Reporting Period pursuant to paragraph 7.2, the reasonable alternative transport costs incurred by the Operator in relation to the provision of that alternative transport;

ROUP means the Restriction of Use Payment for that Reporting Period payable in relation to any Restrictions of Use in that Reporting Period in respect of which the Operator does not provide anticipated Passenger Services and Station Services, calculated in accordance with the following:

$$ROUP = \sum_{i=1}^n IMPSch4P + MRA_{(-)i}$$

where:

ROUP means the Restriction of Use Payment for that Reporting Period;

IMSch4P means the IM (Schedule 4) Payment to be paid by the Operator to RfL in that Reporting Period pursuant to paragraph 8 (*Restriction of Use Payments to and from Infrastructure Managers*); and

MRA<sub>(-)</sub> means a Mileage Reduction Amount to be paid to RfL in relation to any Restriction of Use in that Reporting Period that lasts less than 60 consecutive hours, calculated in accordance with the following:

$$MRA_{(-)} = \sum_{\partial=\alpha}^f M_{(-)\partial} \times MR_{(-)\partial}$$

where:

$MRA_{(-)}$  means the Mileage Reduction Amount in relation to that Reporting Period;

$M_{(-)}$  means the distance (measured in miles) not operated by the Operator as a result of the imposition of the relevant Restriction of Use; and

$MR_{(-)}$  means the distance rate (measured in pounds Sterling per mile), which where that distance (measured in miles) was originally intended to be operated by:

- (a) a Class 172 Unit, is specified in column 2 of the table set out in the Appendix;
- (b) an 8-car Class 315 Unit or Class 317 Unit, is specified in the column 4 of that table;
- (c) a 4-car Class 315 Unit or Class 317 Unit, is specified in the column 6 of that table;
- (d) a Class 378 Unit, is specified in column 8 of that table;
- (e) an 8-car Class 710 Unit, is specified in column 10 of that table; and
- (f) a 4-car Class 710 Unit, is specified in column 12 of that table.

9.2 The references to Mileage Reduction Amounts and Special Event Amounts, are references to amounts as at the Indexation Base Month and shall be indexed in accordance with paragraph 3 (*Indexation by reference to RPI*) of Schedule 11.2 (*Annual Concession Payments and Indexation*).

9.3 Any Alternative Timetable Adjustment shall be made as part of a Pass Through Adjustment in accordance with paragraph 3.1 of Schedule 11.1 (*Concession Payments*).

## **10. CLOSURES OF RAILWAY PASSENGER SERVICES OR RAILWAY FACILITIES**

10.1 Except to the extent that RfL agrees otherwise, the Operator shall not:

- (a) cease to operate;
- (b) cease to secure the operation of; or
- (c) propose to terminate the use of,

any Operator Station (or part of an Operator Station) or any railway passenger service over a Route where such cessation or proposal might result in a Closure.

10.2 If any procedures are commenced under Part 4 of the Railways Act 2005 in relation to a Closure, the Operator shall and to the extent so requested by RfL, take such action as RfL

may require in order to enable RfL to comply with any duty imposed on it under Part 4 of the Railways Act 2005 in relation to such Closure.



**APPENDIX TO SCHEDULE 1.3**

**MILEAGE ADJUSTMENT RATES**

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13
Concession Year	Class 172 Units		Class 315 and Class 317 Units				Class 378 Units		Class 710 Units			
	2-car MR(-)	2-car MR(+)	8-car MR(-)	8-car MR(+)	4-car MR(-)	4-car MR(+)	5-car MR(-)	5-car MR(+)	8-car MR(-)	8-car MR(+)	4-car MR(-)	4-car MR(+)
	(£ per m)	(£ per m)	(£ per m)	(£ per m)	(£ per m)	(£ per m)	(£ per m)	(£ per m)	(£ per m)	(£ per m)	(£ per m)	(£ per m)
<b>Year 1</b> (13 November 2016 to 31 March 2017)	■ <sup>19</sup>	■	■	■	■	■	■	■	■	■	■	■
<b>Year 2</b> (1 April 2017 to 31 March 2018)	■	■	■	■	■	■	■	■	■	■	■	■
<b>Year 3</b> (1 April 2018 to 31 March 2019)	■	■	■	■	■	■	■	■	■	■	■	■
<b>Year 4</b> (1 April 2019 to 31 March 2020)	■	■	■	■	■	■	■	■	■	■	■	■
<b>Year 5</b> (1 April 2020 to 31 March 2021)	■	■	■	■	■	■	■	■	■	■	■	■

<sup>19</sup> The text in this table has been redacted by Rail for London in accordance with the provisions of the Freedom of Information Act 2000.

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13
Concession Year	Class 172 Units		Class 315 and Class 317 Units				Class 378 Units		Class 710 Units			
	2-car MR(-)	2-car MR(+)	4-car MR(-)	8-car MR(-)	4-car MR(+)	8-car MR(+)	5-car MR(-)	5-car MR(+)	4-car MR(-)	8-car MR(-)	4-car MR(+)	8-car MR(+)
	(£ per m)	(£ per m)	(£ per m)	(£ per m)	(£ per m)	(£ per m)	(£ per m)	(£ per m)	(£ per m)	(£ per m)	(£ per m)	(£ per m)
<b>Year 6</b> (1 April 2021 to 31 March 2022)	■	■	■	■	■	■	■	■	■	■	■	■
<b>Year 7</b> (1 April 2022 to 31 March 2023)	■	■	■	■	■	■	■	■	■	■	■	■
<b>Year 8</b> (1 April 2023 to 31 March 2024)	■	■	■	■	■	■	■	■	■	■	■	■
<b>Year 9</b> (1 April 2024 to 27 April 2024)	■	■	■	■	■	■	■	■	■	■	■	■
<b>Year 9 continued if</b> (up to) 7 Reporting Period extension (Potentially 28 April 2024 to 9 Nov 2024)	■	■	■	■	■	■	■	■	■	■	■	■

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13
Concession Year	Class 172 Units		Class 315 and Class 317 Units				Class 378 Units		Class 710 Units			
	2-car MR(-)	2-car MR(+)	8-car MR(-)	8-car MR(+)	4-car MR(-)	4-car MR(+)	5-car MR(-)	5-car MR(+)	8-car MR(-)	8-car MR(+)	4-car MR(-)	4-car MR(+)
	(£ per m)	(£ per m)	(£ per m)	(£ per m)	(£ per m)	(£ per m)	(£ per m)	(£ per m)	(£ per m)	(£ per m)	(£ per m)	(£ per m)
Year 9 continued if (up to) 26 Reporting Period continuation (Potentially 28 April 2024 to 31 March 2025)	■	■	■	■	■	■	■	■	■	■	■	■
Year 10 if (up to) 26 Reporting Period continuation (Potentially 1 April 2025 to 31 March 2026)	■	■	■	■	■	■	■	■	■	■	■	■
Year 11 if (up to) 26 Reporting Period continuation (Potentially 1 April 2026 to 2 May 2026)	■	■	■	■	■	■	■	■	■	■	■	■

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13
Concession Year	Class 172 Units		Class 315 and Class 317 Units				Class 378 Units		Class 710 Units			
	2-car MR(-)	2-car MR(+)	8-car MR(-)	8-car MR(+)	4-car MR(-)	4-car MR(+)	5-car MR(-)	5-car MR(+)	8-car MR(-)	8-car MR(+)	4-car MR(-)	4-car MR(+)
	(£ per m)	(£ per m)	(£ per m)	(£ per m)	(£ per m)	(£ per m)	(£ per m)	(£ per m)	(£ per m)	(£ per m)	(£ per m)	(£ per m)
<p><b>Year 11 continued if (up to) 7 Reporting Period extension (Potentially 3 May 2026 to 14 Nov 2026)</b></p>	■	■	■	■	■	■	■	■	■	■	■	■

**SCHEDULE 2**

**CONCESSION SERVICES**

**Schedule 2.1: Obligations in relation to Concession Services**

**Schedule 2.2: List of Concession Services**



## SCHEDULE 2.1

### Obligations in relation to Concession Services

#### 1. RESTRICTIONS RELATING TO CONCESSION SERVICES

1.1 The Operator may, and where specified in this Agreement shall, at all times during the Concession Period provide and operate the Concession Services specified in this Schedule 2, save that in providing and operating the Concession Services, the Operator shall not take any action which:

- (a) is detrimental to RfL's or TfL's reputation or the value of London Overground to Successor Operators;
- (b) prejudices the continuity of the provision of the Concession Services by a Successor Operator at the end of the Concession Period; or
- (c) results in additional liabilities and obligations being assumed by a Successor Operator.

1.2 The Operator shall at all times during the Concession Period:

- (a) operate any Concession Services it provides or operates in a safe manner and in accordance with Good Industry Practice; and
- (b) maintain appropriate and up-to-date safety management systems.

#### 2. PROVIDING ONLY THE CONCESSION SERVICES

2.1 The Operator shall carry out the Concession Services directly and not through an Affiliate, unless RfL otherwise agrees.

2.2 The Operator shall not directly or indirectly, without the prior written consent of RfL, carry out any business or activity other than the provision and operation of the Concession Services.

2.3 RfL may impose such conditions to its consent as it considers appropriate for the purpose of securing the continuity of the provision of the Concession Services at the end of the Concession Period.

2.4 The Operator shall not during the Concession Period, without the consent of RfL:

- (a) provide or operate any railway passenger services other than the Passenger Services;
- (b) operate any stations other than the Operator Stations;
- (c) operate any Operator Depot, or carry out any light maintenance services other than as permitted by this Agreement; or
- (d) hold shares, participations or any other interest in any other company or body corporate unless such company or body corporate is:
  - (i) Network Rail; or

- (ii) owned directly or indirectly by another participant in the railway industry and the holding is incidental to the Operator's participation in an Inter-Operator Scheme or any other arrangement designed to ensure or facilitate co-operation between such participants or between any such participants and any other person.

2.5 The Operator shall not engage any Concession Employee in any activity or business which it may not conduct or engage in under this paragraph 2.

### **3. MAINTENANCE AS GOING CONCERN**

3.1 The Operator shall maintain and manage the business of providing the Concession Services so that, to the greatest extent possible and practicable:

- (a) the Operator is able to perform its obligations under this Agreement; and
- (b) a Successor Operator would be able to take over the business of providing the Concession Services immediately at any time.

3.2 The Operator shall use all reasonable endeavours to ensure that such Successor Operator would have immediate access to all Concession Employees and Primary Concession Assets for the purpose of paragraph 3.1.

3.3 The Operator shall maintain and manage the business of providing the Concession Services on the basis that such business will be transferred, in the manner contemplated under this Agreement, as a going concern at the end of the Concession Period to, and continued immediately thereafter by, a Successor Operator.

3.4 The Operator shall use all reasonable endeavours to ensure that an appropriate number of employees (having sufficient skills, qualifications and experience) will transfer by operation of Law to any Successor Operator following the expiry of the Concession Period.

3.5 The Operator shall comply with all reasonable requirements of RfL to obtain or maintain the property and rights that a Successor Operator would require, or that it would be convenient for it to have, on the basis that the same will transfer in the manner contemplated in this Agreement to any Successor Operator following the expiry of the Concession Period.

### **4. OPERATING ASSETS**

4.1 The Operator shall:

- (a) maintain, protect and preserve the Concession Assets (including any intellectual property or intangible assets); and
- (b) unless otherwise specified in this Agreement, procure the maintenance, protection and preservation of other assets,

in each case employed in the performance of its obligations under this Agreement (together, *Operating Assets*), in good standing or good working order, subject to fair wear and tear.

4.2 The Operator shall carry out its obligations under paragraph 4.1 so that those Operating Assets that are Concession Assets may be transferred at the end of the Concession



Period to a Successor Operator and used by such Successor Operator in the provision or operation of similar services to the Concession Services.

4.3 RfL and the Operator shall, as and when required by RfL, meet to discuss the extent to which and the manner in which those Operating Assets that are not Concession Assets may be transferred at the end of the Concession Period to a Successor Operator and used by a Successor Operator in the continued provision or operation of the Concession Services.

4.4 Where any Operating Asset that is a Concession Asset is lost, destroyed or otherwise damaged beyond repair, the Operator shall replace or procure the replacement of the Operating Asset with property, rights or liabilities in modern equivalent form to the Operating Asset to be replaced. The Operator shall at all times maintain an appropriate level of access to Spares or access to appropriate maintenance arrangements pursuant to which an appropriate level of access to Spares is maintained, in each case from a third party, to enable it to perform its obligations under this Agreement.

4.5 RfL may at any time require the Operator to provide to RfL a schedule specifying the condition of any asset or class of assets that it specifies for this purpose. Such schedule shall cover such aspects of asset condition as RfL may reasonably require. If the parties are unable to agree the content of such schedule of condition, either party may refer the dispute for resolution in accordance with the Dispute Resolution Rules. Until such dispute is resolved, the Operator shall comply with RfL's requirements in respect of such schedule of condition.

4.6 The Operator shall keep vested in it at all times during the Concession Period all Concession Assets designated as such pursuant to Schedule 18.2 (*Restrictions on dealings with Concession Assets*) as it may require in order to comply with:

- (a) the Licences;
- (b) any contracts of employment with Concession Employees;
- (c) any relevant Fares;
- (d) any Key Contracts; and
- (e) any applicable safety legislation regulations or safety standards and the Safety Certificate,

in order to ensure that RfL may designate any such assets as Primary Concession Assets.

## **5. NO RIGHT TO APPLY MARKS**

Other than is provided for in paragraph 22 (*Brand Licences*) of Schedule 2.2 (*List of Concession Services*), the Operator may not apply registered or unregistered trade marks (including company names, livery and other distinctive get-up) to any assets owned or used by it in the operation and provision of the Concession Services without RfL's prior written consent.



## SCHEDULE 2.2

### List of Concession Services

#### 1. PASSENGER SERVICES

1.1 The Operator is obliged to provide the Passenger Services in accordance with the requirements of Schedule 1 (*Passenger Service Obligations*).

1.2 The Operator shall at all times during the Concession Period provide appropriate staffing on trains so as to ensure that:

- (a) it can efficiently comply with any of its safety, customer service and operating obligations under this Agreement, any Licences and any applicable Law;
- (b) it can provide high levels of passenger reassurance; and
- (c) it meets passenger requirements and customer expectations.

#### 2. STATION SERVICES

The Station Services shall comprise:

- (a) the provision of any services to persons at the Operator Stations or, pursuant to paragraph 2(b), to Train Operators whose trains call at such Operator Stations, provided that such services:
  - (i) are made available only or principally to passengers alighting from or joining trains calling at such Operator Stations and to such Train Operators;
  - (ii) are provided in connection with the calling of trains at such Operator Stations and are not designed to encourage passengers or other persons to use such Station Services other than in connection with a journey on a train calling at such Operator Stations, unless RfL otherwise agrees; and
  - (iii) exclude the sale or issue (for a charge) of any items included in the price of a Fare;
- (b) the provision of access or services to any person under:
  - (i) any Station Access Agreement contemplated by this Agreement or as lawfully directed by the ORR from time to time; and
  - (ii) any Station Usage Agreement contemplated by this Agreement;
- (c) the staffing of Operator Stations including platforms, gatelines and ticket offices under paragraphs 3 (*Staffing of Stations*) to 5 (*Staffing of ticket offices and gatelines*) (inclusive);
- (d) the publication of Timetables and the timetables of other Train Operators under paragraph 6 (*Publishing the Timetable*);
- (e) the provision of information and services under paragraph 7 (*The London Overground Webpage*);

- (f) the publication of information and notices under paragraph 8 (*Provision of Information at London Overground Stations*);
- (g) the provision of customer service and information in relation to Operator Station car parks under paragraph 9 (*Car Parks at Operator Stations*);
- (h) co-operating with RfL in the identification and provision of Station Areas and commercial opportunities at Operator Stations under paragraph 10 (*Operator's role in relation to Station Areas*);
- (i) supporting the installation and operation of mobile telephone and data services at Operator Stations under paragraph 11 (*Mobile Telephone and Data Services at Operator Stations*);
- (j) supporting newspaper and magazine distribution under paragraph 12 (*Distribution of Media Material at Operator Stations*);
- (k) supporting the provision of advertising at Operator Stations by RfL under paragraph 13 (*Advertising*);
- (l) ensuring that relevant Concession Employees at London Overground Stations are suitably trained in handling lost property and comply with RfL's lost property requirements under paragraph 14 (*Lost Property*);
- (m) providing facilities for bicycles at Operator Stations under paragraph 15.5; and
- (n) providing a safe, secure and attractive customer environment under paragraph 1 (*Safe, secure and attractive customer environment*) of Schedule 4.2 (*Station Environment*).

### **3. STAFFING OF LONDON OVERGROUND STATIONS**

#### **Standard**

3.1 The Operator shall at all times during the Concession Period provide appropriate staffing at London Overground Stations so as to ensure that:

- (a) it can efficiently comply with any of its safety, customer service and operating obligations under this Agreement, any Licences and any applicable Law;
- (b) it can provide high levels of passenger reassurance; and
- (c) it meets passenger requirements and customer expectations.

#### **Period and requirements of staffing**

3.2 The Operator shall procure that during the Station Operating Day relating to the relevant London Overground Station:

- (a) that, in the case of each Operator Station, any such Operator Station is open for passenger access and egress; and
- (b) there is:
  - (i) in the case of each Operator Station, at least one suitable Concession Employee on duty at any such Operator Station; and

- (ii) in the case of each Operator Access Station, at least one suitable Concession Employee or a suitable employee of the relevant Facility Owner on duty at any such Operator Access Station,

in each case to provide a regular and effective staff presence to meet the objectives set out in paragraph 3.1, and that (or where there is more than one, at least one) Concession Employee, or as appropriate, employee of a Facility Owner shall be:

- (A) continuously available and visible to passengers at any such London Overground Station to provide customer services, including, where, in the case of Operator Stations, not engaged in ticket selling duties as required by this Agreement, present on the station concourse and not in the ticket office; and
- (B) capable of advising customers about the Concession Services, the relevant information specified in paragraph 8 (*Provision of Information at London Overground Stations*) that customers at any such London Overground Station are reasonably likely to make.

#### **4. STAFF PRESENTATION**

The Operator shall procure that its Concession Employees engaged in the provision of passenger-facing activities:

- (a) wear uniforms prescribed by TfL in accordance with the TfL Uniform Specification within one Reporting Period of the Start Date and at all times thereafter during the carrying out of those activities; and
- (b) maintain high standards of presentation throughout the Concession Period.

#### **5. STAFFING OF TICKET OFFICES AND GATELINES**

##### **Ticket office opening and closing hours**

5.1 The Operator shall, subject to paragraph 5.2, ensure on each day of the Concession Period, that at least:

- (a) one ticket office at each Operator Station is open in accordance with the opening times specified in schedule 17 and other terms of the Ticketing and Settlement Agreement; and
- (b) where available, any excess fares window is open at the same times.

5.2 The Operator may seek to obtain consent from the Secretary of State to amend the Ticketing and Settlement Agreement to provide for alternative ticket office opening and closing hours at each Operator Station from those set out in schedule 17 of the Ticketing and Settlement Agreement, provided that the Operator shall:

- (a) obtain the prior written approval of RfL to any alternative opening and closing hours that it wishes to propose to the Secretary of State; and
- (b) keep RfL advised of the progress of any such application for the Secretary of State's consent and shall provide RfL with such information concerning the application as

RfL may reasonably request. The Operator shall not agree any changes to the ticket office opening and closing hours set out in schedule 17 of the Ticketing and Settlement Agreement without RfL's prior consent.

5.3 If the Secretary of State grants consent for any changes to the ticket office opening and closing hours proposed by the Operator pursuant to and agreed by RfL, in each case pursuant to paragraph 5.2, the Operator shall ensure that, during the period commencing on the date when such changes become effective until the end of the Concession Period, the retailing facility at each Operator Station is staffed for no less than the hours specified in accordance with such consent or as otherwise agreed by RfL.

5.4 If the Secretary of State refuses to grant consent for any changes to the ticket office opening and closing hours proposed by the Operator pursuant to and agreed by RfL, in each case pursuant to paragraph 5.2, then the Operator shall ensure that from the date of that refusal until the end of the Concession Period, the ticket office at each Operator Station is staffed for no less than the hours specified in schedule 17 of the Ticketing and Settlement Agreement. Any such refusal shall not prevent the Operator from seeking to make an alternative proposal to the Secretary of State in which case, the provisions of this paragraph 5.2 shall apply.

#### **Staffing of ticket gatelines**

5.5 The Operator shall operate and supervise all ticket gatelines installed at all London Overground Stations in accordance with the Safety Certificate.

5.6 The Operator shall appropriately manage all ticket gatelines it is responsible for, having regard to the flow of passengers, occurrence of incidents, and other relevant circumstances, in each case in order to ensure the unimpeded flow of passengers through each ticket gate when in operation.

5.7 The Operator shall put in place day-to-day operating arrangements with RfL's nominated maintainer of ticket gates and shall promptly notify that maintainer of any defects that the Operator is aware of to any ticket gate and/or related equipment.

## **6. PUBLISHING THE TIMETABLE**

### **Publication of the Timetable at London Overground Stations**

6.1 The Operator shall publish at each London Overground Station in accordance with paragraph 6.2:

- (a) the Timetable on the Start Date; and
- (b) updates and replacements to the Timetable to the extent necessary to reflect any Timetable Change that comes into effect on any Passenger Change Date or between any Passenger Change Date, including in relation to any Timetable Change that occurs between any Passenger Change Dates, details that explain to passengers:
  - (i) the extent to which that Timetable Change will prevent the Operator from operating the Passenger Services in accordance with the Timetable; and

- (ii) any related alternative services that will operate during the period of that Timetable Change.

6.2 When publishing the Timetable and updates or revisions to the Timetable pursuant to paragraph 6.1, the Operator shall publish:

- (a) at each Operator Station no later than two weeks before the change comes into effect (or where the Operator becomes aware of that change less than four weeks in advance of the effective date of that change, as a soon as reasonably practicable after it becomes aware) by:
  - (i) making the relevant information available upon request and free of charge in the electronic form specified by RfL from time to time; and
  - (ii) clearly and prominently displaying the relevant information on information displays,

in each case, in accordance with, as appropriate, the relevant requirements of the London Overground Operating Brand; and

- (b) at each Operator Access Station in sufficient time for such information to be published by the Facility Owner of each such station within the time limit provided for in paragraph 6.2(a), by providing to those entities the Timetable or any update or revision, including any Timetable Change insofar as each relates to the Passenger Services that call at each such station and the principal Connections to any other transport services relevant to each such station in the same forms and consistent with the same branding requirements as are specified in paragraph 6.2(a).

#### **Awareness of the Timetable at London Overground Stations**

6.3 The Operator shall:

- (a) ensure that the Concession Employees based at London Overground Stations are aware of any Timetable Change in order that those employees are capable of advising passengers about how the Timetable will be affected and where they can obtain further information; and
- (b) make regular public address system announcements at each Operator Station and on Passenger Services, informing passengers in the two weeks prior to any Timetable Change, about how the Timetable will be affected and where they can obtain further information.

#### **Publication of the Timetable on the London Overground Webpage**

6.4 RfL will publish the first Timetable on the Start Date on the London Overground Webpage. The Operator shall supply the data that comprises the Timetable to RfL for this purpose in a form specified by RfL a reasonable period in advance of the date occurring 12 weeks prior to the Start Date in order that RfL is able to incorporate that data for publication on the London Overground Webpage no later than 12 weeks prior to the Start Date.

6.5 The Operator shall, in order that RfL may update the London Overground Webpage, supply to RfL the data relating to any Timetable Change a reasonable period in advance of the

date occurring 12 weeks prior to that Timetable Change coming into effect in order that RfL is able to incorporate that data for publication on the London Overground Webpage no later than 12 weeks prior that Timetable Change and where this is not practicable due to the short notice given to the Operator of that Timetable Change, as soon as reasonably practicable after the Operator becomes aware of that Timetable Change.

### **Other Train Operators' timetables**

6.6 The Operator shall throughout the Concession Period make available booklets and display information in information displays in respect of any other Train Operator's timetable at each Operator Station where the railway passenger services of such other Train Operator are scheduled to call:

- (a) within the time limits specified in paragraph 6.2 where and to the extent that such other Train Operator delivers to the Operator the relevant information and materials in sufficient time for the Operator to so publish; and
- (b) as soon as reasonably practicable thereafter where and to the extent that such other Train Operator delivers the relevant information and materials late to the Operator.

### **National Rail Timetable and National Rail Enquiry Scheme**

6.7 The Operator shall use all reasonable endeavours to procure (including by virtue of any arrangements made from time to time between Network Rail and RSP) that the National Rail Timetable (or any replacement), which Network Rail is responsible for publishing from time to time, incorporates or is consistent with its Timetable from time to time.

6.8 The Operator shall use all reasonable endeavours to procure that information in relation to the Timetable and any Timetable Change is, in each case, available to passengers through the National Rail Enquiry Scheme (or any replacement) not less than four weeks prior to coming into effect, or in the case of a Timetable Change where the Operator becomes aware of that change less than four weeks in advance of its effective date, as a soon as reasonably practicable after it becomes aware.

## **7. THE LONDON OVERGROUND WEBPAGE**

7.1 RfL has established the London Overground Webpage on TfL's website and will maintain it throughout the Concession Period.

7.2 The Operator shall notify RfL promptly upon becoming aware of a Restriction of Use or other occurrence that prevents the Operator from operating the Passenger Services in accordance with the Timetable, in order that RfL can ensure that the content of the London Overground Webpage is accurate.

7.3 Where requested by RfL from time to time, the Operator shall promptly assist RfL in validating the accuracy of the content of the London Overground Webpage that describes the Timetable and the status of the Operator's provision of the Passenger Services.

7.4 The Operator shall procure that any website it operates in relation to London Overground maintains an active link to the London Overground Webpage.



## 8. PROVISION OF INFORMATION AT LONDON OVERGROUND STATIONS

### Provision of information

8.1 The Operator shall provide timely, accurate and clear information to passengers at Operator Stations, which obligation shall include:

- (a) making public address system announcements at least every 15 minutes during the Station Operating Day, informing passengers about the performance of the Passenger Services and the performance of transport services sponsored or funded by the TfL Group;
- (b) ensuring that all clocks located at any Operator Station are working and accurate throughout the Station Operating Day relating to that Operator Station;
- (c) displaying in prominent locations at Operator Stations, accessibility information in order that disabled passengers are able to make use of the facilities at each such Operator Station and the Passenger Services that call there;
- (d) maintaining adequate stocks of maps of TfL and south east regional rail services, provided that in the case of:
  - (i) maps of TfL rail services supplied by RfL, the Operator shall inform RfL in a timely manner when it is necessary to replenish those stocks; and
  - (ii) maps of south east regional rail services, the Operator shall be responsible for sourcing adequate stocks;
- (e) publishing information supplied by RfL in information displays, including the information referred to in paragraph 8.4; and
- (f) procuring that its Concession Employees based at Operator Stations are informed about the surrounding area in order that passengers may plan their onward journeys.

### Publishing information in respect of other transport operating businesses

8.2 The Operator shall, subject to paragraph 8.3, promptly publish at Operator Stations and procure the publication of at Operator Access Stations, such timetable or other information relating to other transport operating businesses sponsored or funded by the TfL Group as RfL may require from time to time.

8.3 As and when RfL requires the Operator to publish the information specified in paragraph 8.2, it will provide the Operator with the required publication material.

### RfL notices at London Overground Stations

8.4 If requested by RfL, the Operator shall promptly publish and display at the Operator Stations (and shall use all reasonable endeavours to procure the publication and display at Operator Access Stations of) such notices not otherwise specified in paragraph 6 (*Publishing the Timetable*) or this paragraph 8 as RfL may wish to publish from time to time.

### **Other notices at London Overground Stations**

8.5 The Operator shall not publish any notices at London Overground Stations other than those required by RfL under this Schedule 2, provided that the Operator may publish ad hoc, specific notices in accordance with the relevant requirements of the London Overground Operating Brand and any guidance issued by RfL from time to time which inform passengers of the unavailability of facilities at any London Overground Station and where any ESUB at an Operator Station is unavailable, the status of the Passenger Services, provided that any such notice shall be clearly and professionally written.

### **Removal of notices**

8.6 The Operator shall procure the timely removal of posters at London Overground Stations in order that no posters continue to be published when they become out-of-date.

## **9. CAR PARKS AT OPERATOR STATIONS**

### **Management of car parks at Operator Stations**

9.1 The Operator shall procure throughout the Concession Period that the Concession Employees based at Operator Stations that have car parks are capable of managing all enquiries from customers in relation to those car parks.

9.2 The Operator shall from the Start Date put in place arrangements and maintain those arrangements throughout the Concession Period with the car park operator appointed by RfL that support RfL's collection of car parking revenue, including:

- (a) notifying that car park operator of any defects that the Operator is aware of to any such car park and/or its equipment; and
- (b) referring any issues arising from the operation and use of any such car park to such car park operator and/or RfL (as RfL directs from time to time) and, where appropriate, the emergency services.

## **10. OPERATOR'S ROLE IN RELATION TO STATION AREAS**

10.1 The Operator shall, having regard to the Station Areas and other space available at Operator Stations:

- (a) be proactive in identifying and at RfL's request assist in the identification of potential Station Areas and other commercial opportunities that may be available to RfL or, if different, the Subleases Tenant at those stations and provide to RfL or, if different, the Subleases Tenant on request its opinion of how those opportunities may be realised, including assisting RfL or, if different, the Subleases Tenant with assessing the practical arrangements required to facilitate the exploitation of such commercial opportunities;
- (b) if requested by RfL or, if different, the Subleases Tenant (but not otherwise) actively market any such Station Areas or other commercial opportunities;
- (c) accept any disruption or works in connection with the Station Areas provided that the disruption is and/or works are carried out outside the Station Operating Day or at any other time by agreement between the Operator, RfL and, if different, the Subleases

Tenant (subject to the proviso that, at all times, priority will be given to the safety of the public and the train services which run through the relevant Operator Station);

- (d) use all reasonable endeavours to assist RfL or, if different, the Subleases Tenant with any discussions and/or negotiations with Network Rail or any third party that may be required to obtain Network Rail or any third party consent in relation to the Station Areas and act without delay when seeking to obtain such consent from Network Rail or any third party which is required to run the Station Areas;
- (e) allow RfL, or if different, the Subleases Tenant and any third party tenants or occupiers such rights of access, survey, monitoring and inspection to the relevant Operator Station and any other right as may be reasonably required in order for RfL, or if different the Subleases Tenant or any third party tenants or occupiers to assess and manage any commercial opportunities that may be present at the relevant Operator Station; and
- (f) not take any action which results in the Operator advertising or the Operator allowing any third party advertising in the Advertising Areas of any Operator Station.

10.2 The Operator authorises and appoints RfL or if different, the Subleases Tenant to act as its agent in respect of the marketing and letting of the Non-Operational Areas and shall when requested by RfL, or if different, the Subleases Tenant co-operate with and provide all reasonable assistance to RfL in negotiating or liaising with third parties and/or Network Rail in connection with the terms of or arrangements relating to any Non-Operational Areas Subleases or Occupational Agreements, the Operator acknowledging that RfL, or if different the Subleases Tenant, shall be entitled to have sole conduct of such negotiations or liaison.

## **11. MOBILE TELEPHONE AND DATA SERVICES AT OPERATOR STATIONS**

11.1 The Operator shall support RfL or another member of the TfL Group in the provision of mobile telephone and data services at Operator Stations by:

- (a) providing access at Operator Stations to the telecommunications supplier appointed by RfL in order to install and from time to time maintain telecommunications and wireless equipment;
- (b) providing power at market rates in order that that installation and maintenance can be carried out and those mobile telephone and data services can be provided on an on-going basis; and
- (c) notifying that supplier promptly upon becoming aware of the occurrence of any failures in the provision of those mobile telephone and data services.

11.2 The Operator shall inform customers of the telephone and data services that will be available at the Operator Stations as reasonably directed by RfL from time to time.

## **12. DISTRIBUTION OF MEDIA MATERIAL AT OPERATOR STATIONS**

12.1 The Operator shall throughout the Concession Period permit the newspaper and magazine distributors appointed by RfL to operate from the Operator Stations, including providing the employees of those distributors with access to storage facilities at the Operator

Stations and making space available for distribution hoppers to hold copies of related newspapers and magazines.

12.2 The Operator shall throughout the Concession Period permit any other distributors of material notified by RfL from time to time to operate from the Operator Stations.

12.3 The Operator shall be prohibited from distributing or permitting the distribution of any media material whatsoever (including newspapers, magazines, leaflets, coupons and flyers) at any of the London Overground Stations or on any rolling stock vehicle forming part of the Train Fleet without the prior consent of RfL.

### **13. ADVERTISING**

13.1 No less than three months before the Start Date, RfL shall notify to the Operator those Advertising Areas in respect of which RfL requires an Advertising Concession Agreement.

13.2 On or before the Start Date, the Operator shall grant the Advertising Concession Agreement to RfL (or, at RfL's request, to another member of the TfL Group) (the *Advertising Concessionaire*) in respect of the Advertising Areas within the Operator Stations previously notified by RfL to the Operator.

13.3 If, during the term of any Station Lease, the Advertising Concessionaire acting reasonably identifies any additional areas demised by a Station Lease (not being part of the Station Areas or Advertising Areas) which may be suitable for advertising and are not required in order to secure the safe operation of the Passenger Services, the Advertising Concessionaire shall, or if different, RfL shall procure that the Advertising Concessionaire shall notify the Operator of such fact and shall be entitled to request that the Operator enter into such agreement as the Advertising Concessionaire may reasonably require to ensure that the relevant area falls within the scope of the Advertising Concession Agreement, in which event:

- (a) the Advertising Concessionaire, or if different, RfL shall procure that the Advertising Concessionaire shall provide to the Operator an execution copy (in duplicate) of the required agreement; and
- (b) the Operator shall within 10 Business Days of receipt of the execution copies of that agreement, execute the same and provide the duplicate copies to the Advertising Concessionaire with irrevocable authority to complete the same.

### **14. LOST PROPERTY**

14.1 The Operator shall procure at all times during the Concession Period, that Concession Employees engaged in the handling of lost property at London Overground Stations and on trains comprising the Train Fleet:

- (a) are suitably trained in RfL's requirements for handing lost property specified in any procedures issued by RfL from time to time; and
- (b) comply with those procedures.

14.2 The Operator shall put in place and maintain throughout the Concession Period, day-to-day operating arrangements for the transportation and storage of lost property found at

London Overground Stations and on trains comprising the Train Fleet with the TfL Group employees (or the employees of TfL's sub-contractor) based at the office designated by RfL from time to time as the lost property office for London Overground.

## **15. BICYCLES**

### **Bicycles on trains**

15.1 Throughout the Concession Period, the Operator shall comply with the requirements for the carriage of bicycles by rail comprised in any policy document issued by RfL from time to time (the *Carriage of Bicycles Policy*).

15.2 The Operator shall not, except to the extent RfL otherwise agrees, impose any restrictions on the carriage of bicycles on any Passenger Services other than those set out in the Carriage of Bicycles Policy.

15.3 Except to the extent that RfL otherwise agrees, having regard to, amongst other things, the likely use of such facilities (such agreement not to be unreasonably withheld), any new rolling stock vehicles which are procured directly or indirectly by the Operator shall include reasonable facilities for the carriage and storage of bicycles.

15.4 Notwithstanding any of the above, the Operator shall not be in contravention of any of its obligations under this paragraph 15 if the reason for its failure to comply with any such obligation is the use by it on any particular occasion of some or all space otherwise available to cyclists and/or bicycles for the carriage and/or accommodation of wheelchairs and/or wheelchair users and/or those passengers travelling with such wheelchair users.

### **Bicycles at Operator Stations**

15.5 The Operator shall:

- (a) so far as is reasonably practical and subject to the availability of appropriate space at Operator Stations:
  - (i) ensure that reasonable facilities to enable the secure storage of bicycles at Operator Stations are made available, free of charge to passengers using the Passenger Services; and
  - (ii) maintain or procure the maintenance of those facilities; and
- (b) maintain or procure the maintenance of any existing facilities to enable the storage of bicycles which, due to their proximity to any Operator Station, may reasonably be considered to be facilities:
  - (i) that form part of that Operator Station; or
  - (ii) that are for the specific use by passengers of that Operator Station.

## **16. PROVISION OF INFORMATION ON TRAINS**

16.1 The Operator shall procure that each of its train drivers announces:

- (a) within 30 seconds of any train that stops during a journey (other than at a London Overground Station):

- (i) the reason for the stop, including where the train has stopped because of a red signal, that this is the reason for the stop, and that he is endeavouring to establish the cause (and the Operator shall procure that each such train driver duly endeavours to establish the cause for the stop); and
  - (ii) where known, the anticipated length of delay;
- (b) if the train has yet to re-start its journey, every 120 seconds after any announcement made pursuant to paragraph 16.1(a) up to the time period referred to in paragraph 16.1(c), an update of the situation, including any further information relating to the cause of the stop and the anticipated delay; and
- (c) upon any delay lasting for five minutes, a further update of the kind anticipated by paragraph 16.1(b) and further updates of that kind upon each further five minutes of delay.

16.2 The Operator shall procure that each of its train drivers announces the information referred to in paragraph 16.1(a):

- (a) after 90 seconds where a train has stopped at a London Overground Station but cannot re-commence its journey;
- (b) if the train has yet to re-start its journey, every 180 seconds after any announcement made pursuant to paragraph 16.2(a) up to the time period referred to in paragraph 16.2(c), an update of the situation, including any further information relating to the cause of the stop and the anticipated delay; and
- (c) upon a delay lasting six minutes, further updates of the kind anticipated by paragraph 16.2(b) at reasonable periods thereafter.

## **17. COMPLAINTS, CUSTOMER FEEDBACK AND QUERIES**

### **Passenger Contact Centre**

17.1 RfL will establish and resource on or prior to the Start Date and maintain throughout the Concession Period, a centre for passengers to telephone and correspond (including electronically) with RfL in relation to the any aspect of the operation of London Overground (the *Passenger Contact Centre*). The Passenger Contact Centre shall be responsible for responding to all communication from passengers in relation to the operation of London Overground.

### **Assisting RfL in responding to communication**

17.2 The Operator shall assist RfL and its customer service employees based at the Passenger Contact Centre in responding to correspondence from passengers and investigating customer feedback and complaints by providing the following information within the following timescales:

- (a) acknowledging receipt to RfL of any request for information from RfL within one Business Day of receipt of such request;

- (b) providing to RfL an interim response and commentary (where a fully detailed response is not yet possible due to the need to collate further information) to any such request for information within five Business Days from receipt of such request; and
- (c) providing to RfL a fully detailed response and commentary to any such request for information within 10 Business Days from receipt of such request.

17.3 The Operator shall promptly redirect to the Passenger Contact Centre, any correspondence or other communication that it receives directly from passengers in relation to the operation of London Overground.

17.4 The Operator shall procure that its Concession Employees based at London Overground Stations are capable of informing passengers who request details of how to contact the Passenger Contact Centre.

## **18. MARKETING AND PUBLICITY**

18.1 The Operator shall, subject to paragraph 18.2, comply with its obligations under the Marketing and Publicity Guidance.

18.2 In the event of any conflict between any obligation on the Operator under this Agreement and any obligation on the Operator under the Marketing and Publicity Guidance, the obligation under this Agreement shall prevail.

18.3 Where the Operator does not, in the reasonable opinion of RfL, comply with its obligations under the Marketing and Publicity Guidance, the parties shall discuss that perceived non-compliance at the next Concession Performance Meeting.

## **19. FAULT REPORTING**

### **Fault Management System requirements**

19.1 The Operator shall establish on or prior to the Start Date, and throughout the Concession Period implement, a Fault Management System to cover all faults associated with the Standards Regime (KPIs).

19.2 The Fault Management System shall as a minimum:

- (a) manage automatically and manually reported faults, in each case, in a timely manner;
- (b) provide:
  - (i) where the technology is commercially available, for devices to which Key Performance Indicators relate, to automatically report faults to the system's central monitoring system; and
  - (ii) for manual reporting of faults to which Key Performance Indicators relate, irrespective of the availability of automatic reporting described in paragraph 19.2(b)(i);
- (c) make provision to report faults that may occur on a repeated basis or occur in a number of assets or processes;
- (d) make provision for the inclusion of any faults reported by RfL;

- (e) permit RfL to extract fault resolution reports to such level of disaggregation as is necessary to verify the Operator's performance in respect of the Standards Regime (KPIs);
- (f) incorporate the Fault Tracking Database;
- (g) incorporate the functionalities specified in paragraph 19.3;
- (h) provide details of the resources allocated by the Operator, including any contractual arrangements in place, to ensure the provision by it of a level of service quality across the London Overground Network that is consistent with the standards specified in the Standards Regime (KPIs);
- (i) measure the Operator's compliance with the standards set out in the Standards Regime (KPIs) and calculate KPI Adjustments; and
- (j) set out procedures, including in respect of the auditing requirements specified in paragraph 3 (*Reporting Requirements of the Operator*) of Schedule 8.1 (*Standards Regime (KPIs)*), for identifying and rectifying failures against the Key Performance Indicators.

#### **Fault Management System functionality**

19.3 The Operator shall ensure that the Fault Management System:

- (a) has the capabilities to:
  - (i) capture any information relating to faults remotely and on a real-time basis and make available such information from the Fault Tracking Database simultaneously;
  - (ii) capture any information relating to faults from internet-protocol-enabled devices that are or may be available to the Operator and to maximise such capability, the Operator shall maintain and upgrade the Fault Management System to the prevailing technology at the time;
  - (iii) identify any device malfunctions or failures by way of automatic reporting; and
  - (iv) reconcile the data it holds and update its system (including the Fault Tracking Database) automatically and promptly upon receipt of any manual fault report; and
- (b) will conduct system checks to ensure the effective running of the Fault Management System and the devices to which the Key Performance Indicators relate. The system check shall:
  - (i) be conducted on a daily basis;
  - (ii) be an automated process with minimal manual input or monitoring;
  - (iii) be designed to verify the effective performance of the Fault Management System and the relevant devices;



- (iv) have failure diagnosis, troubleshooting and fault rectification functionalities; and
- (v) to the extent that manual input or monitoring is required, be designed with the intention that any input or monitoring task is capable of being conducted remotely.

### **Fault Tracking Database**

19.4 The Operator shall implement a real-time facilities management fault tracking database to enable RfL and the Operator to monitor fault resolution (the ***Fault Tracking Database***). The Fault Tracking Database shall have the functionality to be able to specify, as a minimum, information in respect of the following categorisations:

- (a) fault number;
- (b) train, station or other location;
- (c) device reference;
- (d) description of fault;
- (e) time of fault report;
- (f) current status of repair/response;
- (g) name of individual/organisation responsible for the repair;
- (h) estimated repair duration;
- (i) actual duration to repair each fault;
- (j) comments/issues; and
- (k) a programme of any future maintenance activities planned.

19.5 The Fault Tracking Database shall also:

- (a) contain a record of all maintenance activities carried out over time; and
- (b) have the functionality for RfL to:
  - (i) generate reports from that record in order to carry out separate statistical analysis; and
  - (ii) export that record or those reports into separate software packages to be notified by RfL to the Operator from time to time for such purpose.

19.6 The Operator shall ensure that RfL has real-time access to the Fault Tracking Database from a website.

### **Regular review of Fault Management System and Fault Tracking Database**

19.7 For the purpose of ensuring that the Fault Management System continues to meet the requirements of the preceding provisions of this paragraph 18, the Operator shall review the effectiveness of the Fault Management System and, within that, the Fault Tracking Database,

at reasonable intervals throughout the Concession Period (each such interval being no more than 12 months) in order that the Operator may identify and propose changes to RfL (and the Operator shall duly make such proposals) to, amongst other things:

- (a) ensure the level of service quality provided across the London Overground Network is consistent with the level specified in the Standards Regime (KPIs);
- (b) ensure more effective identification of faults; and
- (c) optimise the manner in which the Operator seeks to meet the standards of the Key Performance Indicators in order to avoid non-compliance with those standards.

19.8 The Operator shall not make any changes to the Fault Management System or the Fault Tracking Database without the prior written consent of RfL.

### **Service Quality at Operator Access Stations**

19.9 The Operator shall:

- (a) use all reasonable endeavours to procure, including by:
  - (i) entering into new agreements with relevant third parties; and/or
  - (ii) varying existing agreements with relevant third parties; and
- (b) enforce any rights it may have under any Access Agreement in respect of any Operator Access Station,

in order that any services equivalent to the Concession Services that are provided by the Facility Owner at any Operator Access Station are provided at a level of service quality that is consistent with the level specified under this Standards Regime (KPIs).

## **20. CARRYING OUT FAULT REPAIRS**

The Operator shall carry out or procure the carrying out of all fault rectification work identified by the Fault Management System in a timely manner and with that degree of skill and care as would be exercised by a skilled and experienced Train Operator that is incentivised to maximise Ticket Revenue and Non-Ticket Revenue because it is entitled to retain all of that revenue.

## **21. LIGHT MAINTENANCE SERVICES**

The Operator may in relation to the Train Fleet (subject to the terms of the Class 378 TSA Agency Agreement in relation to the Class 378 Fleet and the Class 710 TSA Agency Agreement in relation to the Class 710 Fleet and the Class 172 Fleet) carry out the following services:

- (a) the carrying out of inspections of rolling stock vehicles;
- (b) the carrying out of maintenance work on rolling stock vehicles of a kind which is normally carried out at regular intervals of 12 months or less;
- (c) the replacement of failed components and consumables on rolling stock vehicles;

- (d) the preparation of rolling stock vehicles for service;
- (e) the stabling or other temporary holding of rolling stock vehicles; and
- (f) the cleaning of the exterior or the interior of rolling stock vehicles,

in each case for itself at any Operator Station, Operator Depot or Operator Access Depot (in respect of cleaning in any Turnaround Time only).

## **22. BRAND LICENCES**

The Operator shall comply with its obligations under each of the Brand Licences.



### **SCHEDULE 3**

#### **FARES, TICKETING AND REVENUE**

- Schedule 3.1:**                    **Specification and Creation of Fares**
- Schedule 3.2:**                    **Fares Selling**
- Schedule 3.3:**                    **Ticket and Non-Ticket Revenue**
- Schedule 3.4:**                    **Fares Information and Monitoring**
- Schedule 3.5:**                    **Transport, Travel and Other Fares Related Schemes**
- Schedule 3.6:**                    **Ticket Equipment**
- Appendix:**                    **TVM Return Programme**



## SCHEDULE 3.1

### Specification and Creation of Fares

#### 1. RfL SPECIFICATION OF FARES

##### RfL Specification of Fares

1.1 RfL shall make the initial Fares Document available to the Operator at least eight weeks prior to the Fares Setting Round in January 2017.

1.2 RfL shall provide to the Operator by no later than week 12 of each Fares Setting Round, to the extent not already specified in the current Fares Document, a list of the TSA Fares it requires the Operator to Create under the terms of the Ticketing and Settlement Agreement and then sell pursuant to Schedule 3.2 (*Fares Selling*), including details of any price or increases in price and terms and conditions or changes thereto in each case in relation to any TSA Fare.

1.3 RfL shall provide to the Operator from time to time, to the extent not already specified in the current Fares Document, a list of non-TSA Fares it requires the Operator to sell pursuant to Schedule 3.2, including details of any price or increases in price and terms and conditions or changes thereto in each case in relation to any non-TSA Fare.

##### TSA Fares

1.4 The Operator shall ensure that each TSA Fare notified to it pursuant to paragraph 1.1 or 1.2 has been Created in accordance with RfL's requirements pursuant to paragraph 1.1, or 1.2 (as the case may be) to the extent the Operator is entitled to do so under the terms of the Ticketing and Settlement Agreement.

1.5 The Operator shall not Create or agree to Create any TSA Fare or Discount Card except in accordance with RfL's requirements pursuant to this paragraph 1.

##### Creation of Flows

1.6 The Operator shall ensure that each Flow notified to it by RfL from time to time shall be Created to the extent the Operator is entitled to do so under the terms of the Ticketing and Settlement Agreement.

##### Price and Other Terms and Conditions of Fares

1.7 The Operator shall not vary the terms and conditions, including the price, of any Fare notified to it by RfL pursuant to paragraph 1 without RfL's prior written consent.

#### 2. CHANGE OF LEAD OPERATOR / MAJOR FLOW OPERATOR

2.1 The Operator shall as and when required by RfL, promptly under the terms of the Ticketing and Settlement Agreement:

- (a) make a request to become the Lead Operator of those Flows in respect of which the Incumbent Operators are Lead Operators;

- (b) seek to reach agreement with all relevant Train Operators that the Operator becomes the Lead Operator in respect of those Flows;
- (c) if necessary, seek to resolve any dispute with any relevant Train Operator with a view to the Operator becoming the Lead Operator in respect of the relevant Flow;
- (d) duly inform the RSP where the Operator has become the Lead Operator in respect of any of those Flows; and
- (e) take such other steps as are reasonably necessary to ensure that the Operator becomes the Lead Operator of those Flows.

2.2 The Operator shall not without RfL's prior approval, agree to any request under the Ticketing and Settlement Agreement that it cease to be Lead Operator in respect of any Flow.

2.3 The Operator shall inform RfL if it becomes the Lead Operator in respect of any Flow. Upon the Operator becoming the Lead Operator in respect of any Flow, RfL may update the Fares Document in accordance with paragraph 3 (*Change to the Fares Documents*).

2.4 The Operator shall inform RfL if it ceases to be a Major Flow Operator in respect of any Flow.

### **3. CHANGES TO THE FARES DOCUMENT**

3.1 In specifying to the Operator the price or terms and conditions of any Fare pursuant to this Schedule 3.1, RfL shall, subject to paragraph 3.3, issue to the Operator a revised Fares Document.

3.2 Where RfL decides to issue a revised Fares Document pursuant to paragraph 3.1, RfL shall set out in that document all Fares, including their prices and other terms and conditions and, as soon as reasonably practicable thereafter, RfL shall issue that document to the Operator which, in any event, shall be no less than eight weeks prior to the Fares Setting Round to which the changes in that revised Fares Document relate.

3.3 Where the specification referred to in paragraph 3.1 does not, in RfL's reasonable opinion, constitute a material change to any previous specification by it, it shall not be obliged to issue a revised Fares Document, but instead shall provide the Operator with a summary (to such level of detail or generality as RfL may reasonably determine) of the changes to the specification previously in force.



## SCHEDULE 3.2

### Fares Selling

#### 1. FARES SELLING

##### Lead Retailer

1.1 The Operator shall as and when required by RfL, promptly under the terms of the Ticketing and Settlement Agreement become the Lead Retailer in respect of the Operator Stations.

##### Obligation to sell

1.2 The Operator shall sell to any person wishing to travel on the Passenger Services, on any other railway passenger services, or both, the Fare he requires and which the Operator:

- (a) is entitled or obliged to sell under the Ticketing and Settlement Agreement; or
- (b) is otherwise directed to sell by RfL from time to time.

##### Restrictions on sales

1.3 The Operator shall ensure that the purchaser of any Fare:

- (a) shall be entitled, without further charge, to such rights of access and egress and other similar rights at the commencement and end of the relevant intended journey or journeys as may be reasonably necessary for such purchaser to travel on the Passenger Services;
- (b) shall not be required to incur any cost or take any action beyond the payment of an amount equal to the price specified by RfL pursuant to paragraph 1 (*RfL Specification of Fares*) of Schedule 3.1 (*Specification and Creation of Fares*) and, in relation to the issue of a Season Ticket Fare, the completion of such identity card as RfL may specify from time to time; and
- (c) shall not be required to pay an amount in respect of a seat reservation or other similar right which it may be compulsory for such purchaser to have in order to make a journey with such Fare on a Passenger Service where such Fare is one which RfL specifies the price of under this Agreement.

1.4 The Operator shall not set a limit on the number of Fares that may be used on any particular train.

1.5 The Operator shall not sell or offer to sell:

- (a) any Fare in respect of which the price has been specified by RfL at an amount that is greater or less than that price; and
- (b) any Fare or Discount Card which has a validity of 13 or more months, except to the extent required to do so under the terms of the Ticketing and Settlement Agreement.

### **Agents of the Operator**

1.6 The Operator shall procure that all persons selling or offering to sell Fares on its behalf (whether under the terms of the Ticketing and Settlement Agreement, as its agents or otherwise) comply with the requirements of paragraphs 1.2 to 1.5 inclusive.

### **Additional ancillary services**

1.7 The Operator shall not without RfL's prior consent charge a purchaser of any Fare for any additional services:

- (a) which are ancillary to the railway passenger service for which such Fare was purchased (including, charges in respect of car parking or catering services); and
- (b) which such purchaser is not obliged to purchase.

1.8 RfL shall notify the Operator from time to time of the amount of any charge or the determination of other terms for car parking arrangements that RfL wishes to introduce at any Operator Station.

## **2. FARES**

### **Reduction in Prices of Fares**

2.1 Paragraph 1.5 shall not prevent the Operator from giving any discount or reduction to which the purchaser of a Fare may be entitled by virtue of:

- (a) presenting a Discount Card (or any equivalent replacement thereof) issued by the Operator before the commencement of any 13 month validity period and to which the purchaser would have been entitled before the commencement of such period;
- (b) presenting a Discount Card issued by another Train Operator;
- (c) the passenger's charter of any other Train Operator; or
- (d) any relevant conditions of carriage.

### **Percentage Allocations**

2.2 The Operator shall co-operate with RfL to develop Percentage Allocations in respect of any Rail Product and shall exercise its rights under the Ticketing and Settlement Agreement to act in accordance with RfL's instructions to both establish and protect those Percentage Allocations.

2.3 Except to the extent that RfL may consent from time to time, the Operator shall not take any action or step which may result in its Percentage Allocation in respect of any Rail Product being reduced.

2.4 The Operator shall notify RfL upon becoming aware of any other person proposing to take any action or step which may have the same effect referred to in paragraph 2.2. The Operator shall take such action as RfL may reasonably request in order to prevent any such reduction, including submitting any dispute to any relevant dispute resolution procedures.

**PAYG and CPAY**

2.5 The Operator shall throughout the Concession Period retail and accept Oyster travel products, including PAYG and CPAY as valid methods of payment for journeys on the Passenger Services.

**3. INCORRECT SELLING OF FARES**

3.1 If the Operator has overcharged any Fare, it shall reduce that price of that Fare at the next available opportunity and, in any event in the case of a TSA Fare, at the next Fares Setting Round, so as to comply with the requirements of paragraph 1.5 from such date.

3.2 RfL may adjust Concession Payments by way of making an Other Adjustment by an amount equivalent in its opinion to the sum of:

- (a) any additional gross revenue accruing to any person selling Fares on its behalf as a result of the sale of Fares at prices in excess of the relevant amounts required under this Schedule 3.2; and
- (b) any costs incurred by RfL in determining the amount of such gross revenue.

3.3 If the Operator has undercharged any Fare, it shall increase the price of that Fare at the next available opportunity and, in any event in the case of a TSA Fare, at the next Fares Setting Round, so as to comply with the requirements of paragraph 1.5 from such date.

3.4 RfL may adjust Concession Payments by way of making an Other Adjustment by an amount equivalent in its opinion to the sum of:

- (a) the gross revenue that RfL failed to earn as a result of the sale of Fares at prices for less than the relevant amounts required under this Schedule 3.2; and
- (b) any costs incurred by RfL in determining the amount of such gross revenue.

3.5 Any adjustment to Concession Payments by RfL pursuant to paragraphs 3.2 and 3.4:

- (a) shall not be a Change; and
- (b) shall be without prejudice to any other rights or remedies of RfL under this Agreement in respect of such contravention.



## SCHEDULE 3.3

### Ticket and Non-Ticket Revenue

#### 1. ACKNOWLEDGEMENT

1.1 The Operator hereby acknowledges that:

- (a) RfL remains on risk for the amount of Ticket Revenue that accrues in respect of passenger journeys made on the Passenger Services and that it therefore has an interest in both maximising Ticket Revenue and ensuring its timely collection; and
- (b) the Operator does not share this risk and it has no commercial incentive to protect Ticket Revenue through the carrying out of regular and effective revenue protection measures.

1.2 The Operator therefore agrees to:

- (a) undertake its obligations set out in the remainder of this Schedule 3.3; and
- (b) co-operate with RfL or its nominee in the carrying out of Ticketless Travel Surveys pursuant to Schedule 9 (*Revenue Protection Incentive Regime*) by granting RfL or its nominee (as the case may be) such access to London Overground Stations or trains as either reasonably require for that purpose.

#### 2. REVENUE ACCOUNT

The Operator shall on or prior to the Start Date:

- (a) establish the Revenue Account in its name with an Acceptable Bank, which shall, amongst other things, entitle RfL to withdraw from the Revenue Account the Revenue Sweep in accordance with paragraph 5.2; and
- (b) procure that the Account Charge is executed in favour of RfL in form and substance satisfactory to RfL in respect of the sums in the Revenue Account owing to RfL.

#### 3. REVENUE COLLECTION AND PAYMENTS INTO THE REVENUE ACCOUNT

##### Collecting Revenue

3.1 The Operator shall, in a timely manner, collect or procure the collection of:

- (a) all Ticket Revenue on behalf of RfL and all other revenue from the sale of tickets the Operator is required to collect pursuant to the Ticketing and Settlement Agreement;
- (b) all payments due to the Operator from RSP, including all commission earned in respect of the value of sales by the Operator of the Fares and all PAYG and CPAY revenue allocated to the Operator by RSP pursuant to the Clearance Agreement;
- (c) all Non-Ticket Revenue on behalf of RfL;
- (d) the value of penalty fares that is owed to RfL pursuant to paragraph 7.3(a); and
- (e) all amounts payable to the Operator:

- (i) under the London Boroughs Concessionary Travel Scheme until such time as such amounts are received by RfL or another member of the TfL Group directly and RSP is no longer required to pay such amounts into the Revenue Account;
- (ii) under the British Transport Police Agreement;
- (iii) under the ATOC Staff Travel Scheme, specified in paragraph (a) of the definition of Inter-Operator Scheme; and
- (iv) under the Metropolitan and City Police Agreement.

3.2 The Operator shall pay or procure the payment of each of the amounts specified in paragraph 3.1 into the Revenue Account as soon as reasonably practicable after each such amount becomes due.

#### **Disputes as to amounts owing to the Operator**

3.3 If there is a dispute between the Operator and RSP, any other Train Operator or any counterparty to the London Boroughs Concessionary Travel Scheme, the British Transport Police Agreement, the ATOC Staff Travel Scheme and the Metropolitan and City Police Agreement, in each case concerning the amount due to the Operator, then for so long as the Operator is, acting in good faith, taking appropriate steps to contest or resolve such dispute, the amount due from the Operator pursuant to paragraph 3.2 shall be regarded as the portion (if any) which is not in dispute.

3.4 The Operator shall keep RfL fully informed as to the progress of any such dispute and of its settlement or adjudication, and shall comply with any reasonable directions (including any directions to the Operator to enforce its respective rights under any such agreement or scheme, which directions may include a direction to challenge any allocation or apportionment under any such agreement or scheme in accordance with that agreement or scheme's respective terms where the Operator has not already done so) from RfL as to the conduct of such dispute and any settlement. When such dispute is settled or adjudicated, the amount due shall be the amount determined as due pursuant to such settlement or adjudication.

#### **4. PAYMENTS FROM THE REVENUE ACCOUNT TO THIRD PARTIES**

4.1 The Operator shall procure that the following persons shall receive automatic electronic funds transfers in pounds sterling of the following amounts to such bank account in the United Kingdom as the relevant person has previously specified to the Operator in writing in accordance with the terms of the relevant agreement or scheme:

- (a) RSP, in respect of all ticket revenue accrued during the relevant Reporting Period or Reporting Periods, but owed via RSP to third parties or RfL in accordance with the terms of the Ticketing and Settlement Agreement; and
- (b) ATOC, in respect of the Operator's contribution for the relevant Reporting Period under the terms of any relevant Inter-Operator Scheme for the upkeep of that scheme and/or towards that scheme's administrative costs,

(together, the *Operator's Ticketing and Scheme Liabilities*).

- 4.2 The Operator shall:
- (a) be entitled to make withdrawals from the Revenue Account to meet the Operator's Ticketing and Scheme Liabilities that duly accrue from time to time;
  - (b) not otherwise make withdrawals from the Revenue Account without RfL's prior approval; and
  - (c) be liable to RfL for any shortfall in an amount that should have been credited to the Revenue Account and which is owed to RfL, but which is not duly credited (other than any such shortfall caused by RfL).

## 5. PAYMENTS FROM THE REVENUE ACCOUNT TO RFL

### Revenue Sweep

5.1 On each day of the Concession Term (the *Relevant Day*), all monies in the Revenue Account on the Relevant Day relating to:

- (a) all Ticket Revenue that is standing to the credit of the Revenue Account on that date;
- (b) to the extent not covered in paragraph 5.1(a) all cleared payments made to the Operator from RSP, and paid into the Revenue Account, including commission referred to in paragraph 3.1(b) and any amounts under:
  - (i) the London Boroughs Concessionary Travel Scheme;
  - (ii) the British Transport Police Agreement;
  - (iii) the ATOC Staff Travel Scheme, specified in paragraph (a) of the definition of Inter-Operator Scheme; and
  - (iv) the Metropolitan and City Police Agreement;
- (c) an amount equal to the value of any refund vouchers issued by the Operator on behalf of RfL to any passenger as a result of the Operator's performance of the Passenger Services causing that passenger to miss a Connection;
- (d) all Non-Ticket Revenue that is standing to the credit of the Revenue Account on that date;
- (e) the value of penalty fares that is owed to RfL pursuant to paragraph 7.3(a); and
- (f) the amount of interest that has accrued in the Revenue Account on the amounts paid in pursuant to paragraph 3.2,

(together, the *Revenue Sweep*) shall, subject to paragraph 5.3, be due and payable to RfL from the Revenue Account.

5.2 RfL shall have the right, subject to paragraph 5.3, to withdraw the Revenue Sweep from the Revenue Account and the Operator shall procure that RfL is able to duly withdraw each such Revenue Sweep.

5.3 In calculating the Revenue Sweep in respect of the Relevant Day, RfL shall do so having regard to:

- (a) the amount held in the Revenue Account on the Relevant Day the Revenue Sweep is made;
- (b) the amounts paid or that should have been paid into the Revenue Account by the Operator or third parties on the Relevant Day pursuant to this Schedule 3.3, including any commission;
- (c) the payments made on the Relevant Day and to be made in the next week, in either case from the Revenue Account by the Operator to meet the Operator's Ticketing and Scheme Liabilities, provided that, in taking account of such payments in that calculation, RfL shall ensure that the Revenue Sweep on any Relevant Day will not reduce the balance standing to the credit of the Revenue Account on that day below £50,000 (or such higher amount as RfL agrees) in order that the Operator may meet any such liabilities; and
- (d) the amount of interest that should have been earned in the Revenue Account on the Relevant Day on the amounts that should have been paid in pursuant to paragraph 3.2.

### **Ticketing and Account Liabilities Adjustment**

5.4 For each Reporting Period during the Concession Period and within the timescales specified in Schedule 11.1 (*Concession Payments*), RfL shall reasonably determine the adjustment that should be made to the Concession Payment by way of making a Pass Through Adjustment for that Reporting Period in order to make provision:

- (a) to RfL in respect of the Operator's Ticketing and Scheme Liabilities paid in that Reporting Period to the extent those liabilities have not been reimbursed by inclusion in any Revenue Sweep;
- (b) to the Operator in respect of the Revenue Account charges duly levied on it by the Acceptable Bank with whom the account is held;
- (c) to RfL in respect of an amount equal to the amount of any compensation that has been paid to passengers by way of vouchers including for delays to the Passenger Services which cause passengers to miss Connections to the railway passenger services of other Train Operators, which RfL has met in the relevant or any previous Reporting Period; and
- (d) to RfL in respect of any interest that should have accrued in the Revenue Account in that Reporting Period had all amounts owing to RfL pursuant to paragraph 5.1 been duly paid into the Revenue Account,

(together, the *Ticketing and Account Liabilities Adjustment*).

5.5 In reasonably determining the Ticketing and Account Liabilities Adjustment, RfL shall do so having regard to the latest information of the kind described in paragraph 5.2 and any other information available to it at the date that adjustment is to be made.

5.6 In accordance with Schedule 11.1, the Ticketing and Account Liabilities Adjustment for any Reporting Period shall be paid to the party in whose favour RfL determines the adjustment.



## Information and Statements

- 5.7 The Operator shall:
- (a) procure that RfL has the same access to the information that the Operator has relating to the Revenue Account, including procuring regular periodic bank statements, in order that RfL can separately verify at any time the payments and settlements into and out of that account;
  - (b) provide or procure the provision of to RfL a regular periodic report to such frequency as RfL may reasonably specify that reconciles to the bank statements and confirms the type of payments that have been made into and out of the Revenue Account;
  - (c) separately keep RfL informed at all material times of the Operator's Ticketing and Scheme Liabilities; and
  - (d) provide such assistance as RfL may require from time to time to reconcile the Revenue Account receipts to its earnings recorded in LENNON.

## 6. REVENUE PROTECTION ENFORCEMENT

6.1 The Operator shall develop and operate a revenue protection policy for use by its revenue protection staff that meets the objectives specified in paragraph 6.3 (the *Revenue Protection Policy*).

6.2 The Revenue Protection Policy shall be developed in accordance with the following:

- (a) the Operator shall submit the initial Revenue Protection Policy to RfL no less than two months prior to the Start Date;
- (b) thereafter the Operator shall submit an update of the Revenue Protection Policy to RfL on or before each anniversary of the Start Date (but no earlier than 28 days prior to each such anniversary) containing such changes as its considers are necessary to reflect the Operator's performance in implementing the Revenue Protection Policy in the preceding year;
- (c) RfL shall within 28 days of receipt of the initial or any updated Revenue Protection Policy, notify the Operator of any changes it reasonably requires to be made thereto; and
- (d) as soon as reasonably practicable after such notification, the Operator shall make those changes to the initial or any updated Revenue Protection Policy (as the case may be).

6.3 The Revenue Protection Policy is designed to ensure:

- (a) there is awareness of the need to purchase a valid ticket before travel;
- (b) that minimal Ticketless Travel Route Rates and Ticketless Travel Route Group Rates are achieved and maintained in the most cost-effective and efficient manner in order to protect the interests of RfL, the fare-paying passengers and the commercial viability of London Overground;

- (c) an adequate provision of facilities and staff to enable passengers to purchase tickets easily and swiftly, and to check tickets on trains and at stations;
- (d) that relevant staff act in accordance with a detailed code of conduct that mandates a consistent approach to revenue protection activities and encourages discretion and sensitivity in seeking efficiently and effectively to protect Ticket Revenue;
- (e) the relevant staff record Penalty Fares in a manner that enables RfL to manage the Penalty Fares Provisions' appeal procedure including by the use of appropriate equipment that may be provided by RfL from time to time; and
- (f) the enforcement of a zero tolerance approach to fare evasion with offenders being issued with penalty fares.

6.4 The Revenue Protection Policy shall take account of and be consistent with the TfL Revenue Enforcement and Prosecutions Policy notified to the Operator by RfL from time to time.

6.5 The Operator shall, having regard to its experience in implementing the Revenue Protection Policy during the course of any year, keep the Revenue Protection Policy under review and make recommendations for changes pursuant to paragraph 6.2(b) to ensure that:

- (a) its staff continue to be aware and its new staff are made aware of the Revenue Protection Policy; and
- (b) the relevant staff continue to act at all times with discretion and sensitivity in seeking efficiently and effectively to protect Ticket Revenue.

6.6 The Operator shall implement the Revenue Protection Policy in accordance with its terms.

6.7 The Operator shall co-operate with:

- (a) RfL, members of TfL's Group and TfL's businesses; and
- (b) other operators engaged by RfL in connection with the provision to RfL of revenue protection and enforcement services on railway passenger services and other transport modes,

for the purpose of developing a common approach across such organisations to the enforcement of revenue protection measures and implementing best practice principles in carrying out such activity.

6.8 The Operator shall co-operate pursuant to paragraph 6.7 by:

- (a) making appropriately skilled and qualified Concession Employees reasonably available, free of charge to:
  - (i) attend meetings with RfL, members of TfL's Group and/or such other operators to discuss and review such a common approach and best practice principles;
  - (ii) provide the Operator's opinion in the development of such a common approach and best practice principles; and

- (iii) make recommendations for modifications to any agreed approach or principles from time to time; and
- (b) providing to RfL such information relating to the carrying out of its Revenue Protection Policy as RfL may reasonably require from time to time for the purpose referred to in that paragraph.

## **7. PENALTY FARES**

7.1 The TfL Penalty Fares Scheme shall apply to the Passenger Services from the Start Date.

7.2 RfL hereby appoints the Operator as an 'authorised person' pursuant to the provisions of Schedule 17 of the GLA Act (the *Penalty Fares Provisions*).

7.3 The Operator shall from the Start Date and for the remainder of the Concession Period:

- (a) collect on behalf of RfL any penalty fare payable to RfL by any passenger pursuant to the terms of the Penalty Fares Provisions in accordance with the Revenue Protection Policy; and
- (b) provide such assistance as RfL may reasonably require in the administration of appeals in respect of the Penalty Fares Provisions.

7.4 The Operator shall, in addition to the collection of penalty fares, carry out all duties and responsibilities in relation to such collection as may ordinarily and properly be carried out by a penalty fare collector acting in the best interests of RfL and TfL.

7.5 The aggregate of any penalty fares collected by the Operator pursuant to paragraph 7.3(a) shall be paid by the Operator into the Revenue Account in accordance with the timescale specified in paragraph 3.2.

7.6 As and when required by RfL, the Operator shall publish, or procure the publication of, at London Overground Stations, such information and make such announcements relating to the TfL Penalty Fares Scheme as, in either case, RfL may request from time to time. Without limiting the foregoing, the Operator shall comply with the requirements of this paragraph 7.6 upon:

- (a) the Operator becoming Facility Owner of any London Overground Station that it is not the Facility Owner of upon the Start Date; and
- (b) the commencement of each Stage in relation to any London Overground Station at which the Passenger Services are thereafter to call at.

## **8. PROSECUTIONS**

RfL intends to seek the prosecution of (or otherwise settle out of court with) deliberate or persistent fare evaders or those attempting to defraud RfL of Ticket Revenue. The Operator shall provide RfL and/or its nominee with all reasonable support in such prosecutions or settlements, including:

- (a) making available revenue protection officers for the purpose of preparing cases against perceived fare evaders and defrauders and attending hearings; and
- (b) assisting RfL in the identification of persistent fare evaders and defrauders.

**9. INDEMNITY**

The Operator shall be responsible for, and shall indemnify RfL, its servants, agents, officers and employees from and against all Losses suffered or incurred by such persons arising from any acts or omissions of the Operator acting as agent for RfL pursuant to paragraph 7 (*Penalty Fares*).

## SCHEDULE 3.4

### Fares Information and Monitoring

#### 1. INFORMATION

1.1 The Operator shall make available, or procure that RSP makes available, to RfL, for any Fares Setting Round during the Concession Period, such details (including the proposed prices) of the Initial Permanent Fare of any TSA Fare for each such Fares Setting Round as RfL may request from time to time.

1.2 The Operator shall provide to RfL or procure that RfL is provided with or otherwise has access to:

- (a) such information as the Operator is entitled to under LENNON; and
- (b) ad-hoc passenger counts and passenger loading systems,

and, in either case, RfL shall be entitled to share such information with another member of the TfL Group.

#### 2. MONITORING

2.1 The Operator shall provide to RfL such access as RfL may require to information pertaining to the prices and other terms and conditions of Fares in respect of journeys on the Passenger Services from time to time.

2.2 By no later than week 17 of each Fares Setting Round, the Operator will provide to RfL written confirmation from a statutory director of the Operator of whether the Operator has complied with its obligations under this Schedule 3 in respect of TSA Fares during each such Fares Setting Round.

2.3 The Operator shall take such action as RfL may require following receipt of any details from the Operator pursuant to paragraph 1 (*Information*) in order to ensure that the Operator will comply with the provisions of this Schedule 3.4.



## SCHEDULE 3.5

### Transport, Travel and Other Fares Related Schemes

#### 1. INTEGRATED TRANSPORT SCHEMES

1.1 RfL may designate any scheme proposed by any third party (including any Local Authority) which relates to the integration of any other form of transport with the Concession Services as an Integrated Transport Scheme by notifying the Operator of such designation, the terms of such scheme and the date by which it requires the Operator's participation.

1.2 If and to the extent that RfL designates any further integrated transport scheme or proposed scheme as an Integrated Transport Scheme in accordance with paragraph 1.1, then the Operator shall, as required by RfL, participate in and comply with its obligations under such scheme and take such other steps as RfL may reasonably require.

1.3 RfL shall consult the Operator a reasonable period in advance of designating any scheme an Integrated Transport Scheme under paragraph 1.1 and shall allow the Operator a reasonable opportunity to make representations to it with respect to any such designation.

#### 2. CONCESSIONARY TRAVEL SCHEMES

2.1 The Operator shall subject to paragraph 2.2:

- (a) participate in and comply with its obligations under:
  - (i) the following concessionary travel schemes
    - (A) the London Boroughs Concessionary Travel Scheme;
    - (B) the Freedom Pass Scheme;
    - (C) the Metropolitan and City Police Agreement; and
    - (D) the TfL Staff Travel Scheme; and
  - (ii) any other concessionary travel scheme which the Operator is required to participate in during the Concession Period pursuant to paragraph 2.1(b); and
- (b) if so requested by RfL, participate in and comply with its prospective obligations under:
  - (i) any concessionary travel scheme listed in this Agreement the terms of which have been amended since the date of this Agreement; and
  - (ii) such other concessionary travel schemes as RfL may specify from time to time.

2.2 RfL shall consult the Operator a reasonable period in advance of making any request of the Operator to participate in any amended or new concessionary travel scheme pursuant to paragraph 2.1 and shall allow the Operator a reasonable opportunity to make representations to it with respect to any such participation.

2.3 The Operator shall supply to RfL, in respect of any concessionary travel schemes referred to in paragraph 2.1, such information within such period as RfL may reasonably require for the purposes of RfL determining whether or not to require the Operator to participate in any such scheme, and/or the obligations assumed by such Local Authority in connection therewith.

### **3. MULTI-MODAL FARES SCHEMES**

3.1 The Operator shall, subject to paragraph 3.2, if so requested by RfL, participate in and comply with its prospective obligations under:

- (a) such multi-modal fares schemes as any relevant Local Authority or funder may require or request it to participate in; and
- (b) such multi-modal fares scheme whose terms have been amended since the requirements to participate.

3.2 Subject to the terms of the relevant multi-modal fares scheme, the Operator shall be entitled to cease to participate in any scheme referred to in paragraph 3.1 where, in the reasonable opinion of RfL:

- (a) the Operator's continuing participation in such scheme; and/or
- (b) the obligations assumed by the relevant Local Authority in connection therewith,

would fail to leave the Operator financially no worse off.

3.3 RfL shall consult the Operator a reasonable period in advance of making any request of the Operator to participate in any amended or new multi-modal fares scheme pursuant to paragraph 3.1 and shall allow the Operator a reasonable opportunity to make representations to it with respect to any such participation.

3.4 The Operator shall supply to RfL, in respect of any multi-modal fares schemes referred to in paragraph 3.1, such information within such period as RfL may reasonably require for the purposes of RfL determining whether or not to require the Operator to participate in any such scheme and/or the obligations to be assumed by the relevant Local Authority in connection therewith.

### **4. DISCOUNT FARE SCHEMES**

4.1 The Operator shall participate in and comply with its obligations under the terms of each Discount Fare Scheme listed in this Agreement or any other scheme designated as such pursuant to paragraph 4.2.

4.2 RfL may designate any other discount fares scheme as a Discount Fare Scheme by notifying the Operator of such designation and informing the Operator of the terms of such scheme and the date by which it requires the Operator's participation.

4.3 RfL may de-designate any Discount Fare Scheme as such by notifying the Operator of such de-designation. Upon such de-designation, the Operator shall be entitled to cease to participate in that Discount Fare Scheme in accordance with its terms.



## **5. INTER-OPERATOR SCHEMES**

5.1 To the extent not already required under paragraph 4.1, the Operator shall participate in and comply with its obligations under the terms of each Inter-Operator Scheme.

5.2 The Operator agrees to be bound by Parts IV and V of Chapter 4 of the Ticketing and Settlement Agreement and shall not amend, or agree or propose to amend, the Ticketing and Settlement Agreement without the prior written consent of RfL.

5.3 Without limiting any other provision of this Agreement, the Operator shall act in accordance with RfL's reasonable requirements when exercising its rights or performing its obligations under the Ticketing and Settlement Agreement.

5.4 The Operator shall not amend, or agree or propose to amend, any other Inter-Operator Scheme without the prior written consent of RfL.

5.5 The Operator shall provide reasonable notice to RfL of any proposal to amend any Inter-Operator Scheme which it receives notification of and which is reasonably likely materially to affect the provision of the Concession Services.

5.6 If an amendment is effected or proposed to be effected to an Inter-Operator Scheme which requires the consent or approval of RfL in accordance with the terms thereof, such amendment shall be treated as a Change to the extent and only to the extent that the Operator makes a saving as a consequence of such amendment or proposed amendment.

## **6. PAYMENT CARD DATA SECURITY STANDARDS**

6.1 If and to the extent that PCI DSS is relevant and applies to any of the Concession Services undertaken by the Operator, the Operator shall:

- (a) comply with the requirements of the PCI DSS;
- (b) provide to RfL on request in a secure manner a report on the progress towards PCI DSS compliant status; and
- (c) share with RfL the reports of the regular scans (including periodic vulnerability scans) that are required to maintain PCI DSS compliance.

6.2 The Operator shall provide such co-operation and assistance as may reasonably be required by RfL to support TfL in its obligations in respect of PCI DSS and to achieve PCI DSS compliance, including making personnel available to provide support and assistance and to attend meetings with TfL.

## **7. VOTING ON INTER-OPERATOR SCHEME COUNCILS**

7.1 The Operator shall to the extent permitted under the terms of the relevant Inter-Operator Scheme give RfL reasonable notice of:

- (a) any meeting of:
  - (i) a scheme council of an Inter-Operator Scheme on which the Operator is represented; or
  - (ii) a scheme management group of any Inter-Operator Scheme:

- (A) in which the Operator has a permanent position; or
  - (B) where the Operator employs a member of such group;
- (b) the resolutions to be voted upon at any such meeting; and
  - (c) the Operator's voting recommendations.

7.2 The Operator shall to the extent permitted under the terms of the relevant Inter-Operator Scheme:

- (a) attend such meetings referred to in paragraph 7.1(a)(i) as RfL notifies to it;
- (b) vote at any such meeting in the manner required by RfL; and
- (c) provide to RfL, copies of the minutes of any such meeting as soon as reasonably practicable after receipt.

7.3 Notwithstanding any other provision of this Agreement, any obligation that the Operator has under this Agreement to provide RfL with information or documentation pursuant to an Inter-Operator Scheme shall only be to the extent permitted under the terms of that Inter-Operator Scheme.

## SCHEDULE 3.6

### Ticket Equipment

#### 1. SUPPLY OF TICKET EQUIPMENT

1.1 RfL shall:

- (a) by the Start Date and, subject to paragraph 4.1, for the remainder of the Concession Period, at no cost to the Operator, make available to the Operator:
  - (i) 125 TVMs at Operator Stations that are not based on the Devolved Route Group;
  - (ii) 101 Revenue Inspection Devices;
  - (iii) 138 MOVie Devices;
  - (iv) 158 Oyster validators;
  - (v) 460 smart phones and 160 printers; and
  - (vi) the ticket gatelines installed at each Operator Station on the Start Date,
- (b) by 31 December 2017, and, subject to paragraph 4.1, for the remainder of the Concession Period, at no cost to the Operator, make available to the Operator 42 TVMs at the Operator Stations that are based on the Devolved Route Group (the *Devolved Route Group TVMs*),

in the case of the Devolved Route Group TVMs, other TVMs and the ticket gatelines, for use at those stations throughout the Concession Period.

1.2 RfL shall by 31 December 2018 supply to the Operator:

- (a) 129 TVMs in order that the Operator may replace existing TVMs at the Operator Stations that are based on the Classic Route Group in accordance with the return programme specified in the Appendix; and
- (b) 22 TVMs (or such lesser number of TVMs as the parties agree, acting reasonably, is necessary for the Operator to continue to comply with its obligations under this Agreement) to be deployed at Operator Stations in addition to those TVMs supplied pursuant to paragraph 1.1 and 1.2(a),

in order that the Operator can, at no cost to it, make available those TVMs at those Operator Stations in accordance with paragraph 1.3, subject to paragraph 4.1(b), for the remainder of the Concession Period.

1.3 Promptly after RfL supplies the TVMs pursuant to paragraph 1.2, the Operator shall procure their installation at the relevant Operator Stations specified in paragraph 1.2, in order that they may be used by passengers calling at those stations throughout the remainder of the Concession Period, by, without limitation:

- (a) conducting all necessary site inspections and surveys;

- (b) securing all necessary consents;
- (c) carrying out all necessary enabling works, including all data management, power cabling and fixture preparation; and
- (d) delivering those TVMs from a location notified by RfL to the Operator to the relevant Operator Stations and installing them at the enabled locations.

1.4 The Operator acknowledges that the Ticket Equipment referred to in paragraph 1.1 has been procured from a third party or parties and that it is intended that they will remain the property of RfL or another member of the TfL Group throughout the Concession Period. At no time shall that Ticket Equipment become the property of the Operator.

1.5 Without prejudice to RfL's obligations under paragraph 3.2, RfL gives no warranty or assurance as to the quality of that Ticket Equipment referred to in paragraphs 1.1 and 1.2.

1.6 Any other Ticket Equipment that RfL supplies or otherwise makes available to the Operator from time to time shall also be at no cost to the Operator.

## **2. OPERATOR'S RIGHTS AND OBLIGATIONS**

### **Operator responsible for all Ticket Equipment**

2.1 All Ticket Equipment in the Operator's ownership or possession, including any Ticket Equipment supplied by RfL pursuant to paragraph 1 (*Supply of Ticket Equipment*), shall be the responsibility of the Operator for the duration of the Concession Period (or until the date (which shall be no later than the last day of the Concession Period) RfL acknowledges by way of signature of an authorised representative, its condition as being in compliance with paragraph 4.4) and RfL shall not be liable to the Operator for:

- (a) any loss, theft, damage or destruction of or to any such Ticket Equipment or any part thereof; or
- (b) any loss, damage or destruction of any other property caused by such Ticket Equipment,

in either case whenever it occurs and whether such loss is caused by negligence, the strict liability of RfL or otherwise.

2.2 The Operator shall not cause any damage to, make any alteration to, or interfere with the Ticket Equipment it employs in the performance of its obligations under this Agreement in any way, other than in order to comply with its obligations relating to cleaning as set out in this Agreement. The Operator shall not place advertising anywhere on that Ticket Equipment.

2.3 The Operator shall not cause or permit any Ticket Equipment (other than ticket gatelines), whether or not supplied by RfL, to be affixed to the Operator's property or any third party's property so as to become a fixture.

### **Possession, use and condition of Ticket Equipment**

2.4 The Operator shall ensure that the Ticket Equipment it employs in the performance of its obligations under this Agreement:

- (a) remains in its possession or, in the case of mobile Ticket Equipment devices, the possession of its employees, in each case, at all times unless and until any such Ticket Equipment is returned to RfL or its nominee in accordance with this Schedule 3.6; and
- (b) is used in accordance with its purpose and shall protect and preserve such Ticket Equipment in good working order, subject to fair wear and tear.

### **Loss, theft, and vandalism**

2.5 The Operator shall ensure that the Ticket Equipment it employs in the performance of its obligations is kept within a secure environment and shall be responsible for costs arising from any loss, theft or damage of such Ticket Equipment. The Operator shall take all reasonable measures to protect such Ticket Equipment from loss, theft or damage, including damage caused by vandalism. The Operator shall indemnify RfL for all Loss incurred by RfL or its nominee in repairing such Ticket Equipment damaged by the Operator or by third parties, including any costs incurred in cleaning graffiti or repairing damage caused by vandalism.

### **Maintenance of certain Ticket Equipment**

2.6 The Operator shall procure the maintenance of all Ticket Equipment it owns or is otherwise in its possession for the duration of the Concession Period in the condition specified in paragraph 2.4(b), provided that the Operator shall not be responsible for maintaining the Devolved Route Group TVMs or any ticket gatelines supplied by RfL pursuant to paragraph 1.1, for which paragraph 3.2 shall apply.

2.7 The Operator shall:

- (a) where requested, act as RfL's agent in relation to any ticket gateline maintenance contract between RfL and its nominated maintainer of those gatelines in accordance with RfL's reasonable instructions from time to time; and
- (b) indemnify RfL and each member of the TfL Group (and each of their respective employees, directors and officers) on demand against any Losses arising from any action pursuant to the agency referred to in paragraph 2.7(a) that places RfL in breach of that ticket gateline maintenance contract.

2.8 If any Devolved Route Group TVMs are delivered earlier than 31 December 2017, and as a result the Operator is no longer responsible for procuring the maintenance of any other TVMs before that date, then the Operator shall promptly pay to RfL by way of Other Adjustment the maintenance costs that the Operator assumed it would incur in relation to TVMs before that date, but will no longer incur.

### **Oyster and Oystercards**

2.9 The Operator shall ensure that passengers 'touch in' and 'touch out' when using Oystercards, in accordance with instructions provided to the Operator by RfL from time to time.

2.10 The Operator shall make available to passengers information, including leaflets, provided to the Operator by RfL and make announcements as directed by RfL relating to Oyster services including fares revisions.

2.11 The Operator shall ensure that sufficient space is available for signage relevant to Oyster products and Oystercards.

2.12 The Operator shall take appropriate action in respect of failed or fraudulently used Oystercards in accordance with training provided by RfL from time to time. The Operator shall request that Oystercards be hot listed in the circumstances advised to the Operator by RfL and in accordance with directions provided by RfL.

### **Access, Power, Facilities**

2.13 The Operator shall grant the right on reasonable notice for RfL, any member of the TfL Group and any of their respective subcontractors to have access to the Ticket Equipment that RfL is responsible for procuring the maintenance, repair or upgrade of and the locations where that Ticket Equipment is located for the purposes of maintaining, repairing and upgrading that Ticket Equipment in accordance with this Agreement.

2.14 The Operator shall in relation to the locations and Ticket Equipment referred to in paragraph 2.13, also provide the following, as required by RfL from time to time, in order for RfL, any member of the TfL Group or the relevant supplier of any such item of Ticket Equipment and its subcontractors to carry out any maintenance, repair or upgrade of that Ticket Equipment:

- (a) a continuous supply of electricity, and shall allow any such supplier and its subcontractors to connect into any electrical point and make available facilities for connection to sources of supply of electricity;
- (b) storage for any such supplier and its subcontractor's equipment and spare parts;
- (c) parking for any such supplier and its subcontractors' vehicles;
- (d) toilet and washroom facilities for any such supplier and its subcontractors; and
- (e) free travel permits for any such supplier and its subcontractors for use on the Passenger Services.

### **Cleaning**

2.15 The Operator shall ensure that the casing surrounding the Ticket Equipment in its ownership or otherwise in its possession (excluding any cables) is kept clean at all times, and shall ensure that:

- (a) all such Ticket Equipment is only wiped clean with a clean cloth or sponge which has been immersed in a solution of clean water and detergent and thoroughly wrung out;
- (b) once cleaned, that Ticket Equipment is wiped dry so as to be free from all cleaning residues whatsoever;
- (c) that Ticket Equipment is not cleaned using an abrasive cleaning agent or applicator; and

- (d) if any cleaning by high-pressure water jet is carried out at any station, no contact is made between the water jet and that Ticket Equipment.

### **Storage of consumables**

2.16 The Operator shall ensure that consumables (tickets, wallets, hand held devices, device keys for gates and passenger validators, device instruction labels for gates and passenger validators, gate permits) are kept within a secure environment. The Operator shall be responsible for any costs arising from loss, theft or damage of such consumables.

### **Fault Reporting**

2.17 In the event that any Devolved Route Group TVM, ticket gateline or Oyster validator supplied by RfL pursuant to this Schedule 3.6 does not function properly or has been damaged (including by vandalism or graffiti), the Operator shall notify the helpdesk of the relevant supplier of that Ticket Equipment within such period as is directed by RfL.

### **Intellectual Property**

2.18 The Operator shall indemnify RfL and each member of the TfL Group on demand against any Losses arising from any breach by the Operator of the licence granted pursuant to paragraph 3.1.

### **Crisis Management**

2.19 The Operator shall act in accordance with directions of RfL in respect of managing Ticket Equipment for the purposes of crisis management or business recovery.

### **Service Disruptions**

2.20 In relation to service disruptions and special events, the Operator shall act as directed by RfL or another member of the TfL Group, and in particular shall allow adjustments to be made to central settings, make adjustments to local settings and advise RfL or that member of instructions that have been given to customers, in each case in accordance with training provided by RfL from time to time.

### **Additional TVMs and the location of TVMs**

2.21 The Operator shall have the right at its cost:

- (a) subject to RfL's consent (not to be unreasonably withheld) to procure additional TVMs over and above any TVMs that are made available pursuant to paragraph 1.1; and
- (b) to locate any additional TVMs it procures and relocate any of the TVMs referred to in paragraph 2.21(a), in each case for the purpose of meeting any of its obligations under this Agreement, provided that in doing so:
  - (i) in relation to the Devolved Route Group TVMs, the Operator may only relocate the Devolved Route Group TVMs at Operator Stations on the Devolved Route Group; and
  - (ii) no Operator Station entrance is left without a TVM.

### **3. RfL'S OBLIGATIONS**

#### **Intellectual Property**

3.1 RfL shall procure that the relevant member of the TfL Group grants to the Operator a licence of certain intellectual property (which has been licensed to that member of the TfL Group by any third party) for the purpose of the Operator complying with its obligations relating to the Ticket Equipment supplied by RfL pursuant to paragraph 1.1.

#### **Maintenance of certain Ticket Equipment**

3.2 RfL shall, at no cost to the Operator:

- (a) procure the maintenance, repair, other work and software upgrades of all Devolved Route Group TVMs and ticket gatelines supplied by RfL pursuant to paragraph 1.1, in each case, other than Ticket Equipment comprising telephone lines and data links that are necessary to maintain the functionality of such TVMs and gatelines; and
- (b) enforce its rights under any contract for the maintenance of such Ticket Equipment,

in each case provided that the Operator complies with the provisions of this Schedule 3.6, including the Operator promptly granting RfL or its nominee access to that Ticket Equipment under paragraph 2.13 in order that (as the case may be) such repairs, maintenance, other work and/or upgrades may be carried out.

### **4. RETURN OF TICKET EQUIPMENT, RETURN CONDITION AND AUDITS**

#### **Return of Ticket Equipment for reasons other than for maintenance**

4.1 The Operator shall promptly return to RfL or its nominee at no cost to RfL or its nominee:

- (a) the TVMs supplied by RfL pursuant to paragraph 1.1, including the Devolved Route Group TVMs, in accordance with the return programme set out in the Appendix; and
- (b) all other Ticket Equipment supplied by RfL pursuant to paragraph 1.1, at the end of the Concession Period, or on any earlier date notified to it by RfL.

#### **Audits of Ticket Equipment**

4.2 Upon:

- (a) inspection by RfL, any member of the TfL Group or any of their sub-contractors prior to the carrying out of any maintenance, repair or upgrade, RfL may; and
- (b) the return of any Ticket Equipment pursuant to paragraph 4.1, RfL shall,

promptly carry out an audit of that Ticket Equipment to ascertain its condition and the Operator shall co-operate with RfL in the carrying out of any such audit.

4.3 As soon as reasonably practicable after the completion of any such audit, RfL shall inform the Operator of its findings as to the condition of the returned Ticket Equipment.



**Ticket Equipment in the return condition**

4.4 If the Operator returns to RfL or its nominee all Ticket Equipment supplied by RfL pursuant to paragraph 1.1 that is in RfL's reasonable opinion, in good working order and in the condition in which it was provided, other than due to fair wear and tear, then no further action shall arise.

**Ticket Equipment not in the return condition**

4.5 If the Operator returns to RfL or its nominee, any Ticket Equipment supplied by RfL pursuant to paragraph 1.1 that is, in RfL's reasonable opinion, not in good working order and/or in the condition in which it was provided, other than due to fair wear and tear, then the Operator shall pay to RfL by way of Other Adjustment, the costs reasonably incurred by RfL for repair or replacement (as required) of that equipment.



## APPENDIX TO SCHEDULE 3.6

### TVM RETURN PROGRAMME

#### 1. TVM RETURN PROGRAMME

The Operator shall return TVMs for the purpose of paragraph 4.1(a) of Schedule 3.6 (*Ticket Equipment*) at the Operator Stations specified herein:

- (a) on or before [REDACTED]<sup>20</sup>:
- (i) one S&B TVM at each of Bethnal Green, Bruce Grove, Bush Hill Park, Cambridge Heath, Chingford, Clapton, Edmonton Green, Enfield Town, Hackney Downs, Highams Park, London Fields, Rectory Road, Seven Sisters, Silver Street, Southbury, St James Street, Stamford Hill, Stoke Newington, Theobalds Grove, Turkey Street, White Hart Lane, Wood Street; and
  - (ii) five S&B TVMs at Walthamstow Central;
- (b) on or before [REDACTED]<sup>21</sup>:
- (i) two S&B TVMs at Bushey;
  - (ii) one ATOS SCAC3 TVM at each of Brondesbury Park, Caledonian Road & Barnsbury, Kentish Town West and West Croydon;
  - (iii) two ATOS SCAC3 TVMs at each of Crystal Palace and Kensal Rise;
  - (iv) three ATOS SCAC3 TVMs at each of Brockley, Dalston Kingsland, Forest Hill and Willesden Junction;
  - (v) three ATOS SCAC4 TVMs at each of New Cross Gate, Norwood Junction, Sydenham and West Croydon; and
- (c) on or before [REDACTED]<sup>22</sup>:
- (i) two S&B TVMs at each of Carpenders Park, Hatch End, Headstone Lane, Imperial Wharf, Kilburn High Road, South Hampstead and Watford High Street;
  - (ii) three S&B TVMs at each of Kensington Olympia and Shepherds Bush;
  - (iii) one ATOS SCAC3 TVM at each of Harringay Green Lanes and Surrey Quays;
  - (iv) two ATOS SCAC3 TVMs at each of Anerley, Camden Road, Canonbury, Crouch Hill, Finchley Road & Frognal, Gospel Oak, Hackney Wick,

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<sup>20</sup> This text has been redacted by Rail for London in accordance with the provisions of the Freedom of Information Act 2000.

<sup>21</sup> This text has been redacted by Rail for London in accordance with the provisions of the Freedom of Information Act 2000.

<sup>22</sup> This text has been redacted by Rail for London in accordance with the provisions of the Freedom of Information Act 2000.

Hampstead Heath, Homerton, Shepherds Bush, South Acton, South Tottenham, Upper Holloway, Walthamstow Queens Road, West Hampstead and Woodgrange Park;

- (v) three ATOS SCAC3 TVMs at Acton Central;
- (vi) one ATOS SCAC4 TVM at each of Harringay Green Lanes, Honor Oak Park, Penge West and Wapping;
- (vii) two ATOS SCAC4 TVMs at each of Hoxton, Leytonstone High Road, Rotherhithe, Shadwell, Surrey Quays and Wanstead Park;
- (viii) three ATOS SCAC4 TVMs at each of Dalston Junction, Haggerston and Shoreditch High Street;
- (ix) two ATOS MCAC TVMs at each of Brondesbury, Clapham High Street, Honor Oak Park, Leyton Midland Road and Wandsworth Road; and
- (x) three ATOS MCAC TVMs at Hackney Central.

**SCHEDULE 4**

**STATIONS, DEPOTS AND OTHER PROPERTY**

- Schedule 4.1: Property Leasing and Access**  
**Appendix: London Overground Stations**
- Schedule 4.2: Station Environment**
- Schedule 4.3: Station and Depot Condition and Enhancements**



## SCHEDULE 4.1

### Property Leasing and Access

#### 1. OPERATOR STATIONS

##### Entry into Station Leases to become Facility Owner

1.1 The Operator shall enter into and remain a party to a Station Lease and thereby become the Facility Owner in respect of each of the Operator Stations in accordance with paragraph 6 (*General Property Lease Provisions*) with effect from the Start Date and for the duration of the Concession Period.

##### Granting access at Operator Stations

1.2 The Operator shall in accordance with paragraph 7 (*General Access Agreement and Usage Agreement Provisions*) with effect from the Start Date grant access to:

- (a) each beneficiary (other than LUL) whose railway passenger services will call at the relevant Operator Station, as shown by a 'B' in the column and row that relates to that beneficiary and that Operator Station in the table in the Appendix, by entering into a Station Access Agreement for a term that is coterminous with the earlier of the relevant beneficiary's interest and the Expiry Date; and
- (b) LUL at the relevant Operator Station as shown by a 'B' in the column and row that relates to LUL and that Operator Station in the table in the Appendix, by entering into a Station Usage Agreement for a term that is coterminous with the Expiry Date.

##### Walthamstow Central Station

1.3 The Operator shall upon reasonable notice from RfL, assume the rights and obligations of the Incumbent Operator under the Walthamstow Central Supplemental Deed by entering into a novation of the Walthamstow Central Supplemental Deed on substantially the same terms as the Walthamstow Central Novation Agreement.

#### 2. OPERATOR ACCESS STATIONS

The Operator shall obtain access from:

- (a) each Facility Owner (other than LUL) of the relevant Operator Access Station at which the Passenger Services will call, as shown by a 'FO' in the column and row that relates to that Facility Owner and that Operator Access Station in the table in the Appendix, by entering into a Station Access Agreement for a term that is coterminous with the earlier of the end of the relevant Facility Owner's interest and the Expiry Date, and where that Facility Owner's interest ends before the Expiry Date, the Operator shall enter into a such further Station Access Agreements with relevant Facility Owners as are necessary in order to obtain access at that Operator Access Station until the Expiry Date; and
- (b) LUL at the relevant Operator Access Station at which the Passenger Services will call, as shown by a 'FO' in the column and row that relates to LUL and that Operator

Access Station in the table in the Appendix, by entering into a Station Usage Agreement for a term that is coterminous with the Expiry Date.

### 3. OPERATOR TO SUBLEASE STATION AREAS

#### Notification of Car Park Areas and Non-Operational Areas

3.1 No less than three months before the Start Date, RfL shall notify to the Operator those Car Park Areas and Non-Operational Areas within the Operator Stations in respect of which RfL (or another member of the TfL Group) requires a Deed of Subleases.

3.2 If RfL notifies the Operator that it (or another member of the TfL Group) requires a Deed of Subleases pursuant to paragraph 3.1, then on or before the Start Date, the Operator shall grant a Deed of Subleases to RfL (or, at RfL's request, to another member of the TfL Group) (in either case, the *Subleases Tenant*) in respect of the Station Areas within the relevant Operator Stations and the following will apply:

- (a) the annual rent reserved by the Deed of Subleases in respect of the Car Park Areas shall be a peppercorn;
- (b) within 10 Business Days of receipt of a notification from RfL in accordance with paragraph 3.1, the Operator shall properly serve on the Subleases Tenant a notice in the prescribed form to validly exclude the application of sections 24 to 28 inclusive of the 1954 Act in respect of the Deed of Subleases (a *1954 Act Notice*);
- (c) if the Subleases Tenant serves on the Operator a declaration in the prescribed form in respect of the Deed of Subleases in response to a 1954 Act Notice, a binding obligation on the Operator and the Subleases Tenant to enter into the Deed of Subleases shall immediately be created and the Deed of Subleases shall be entered into on or before the Start Date;
- (d) the annual rent reserved by the Deed of Subleases in respect of the Non-Operational Areas shall be a peppercorn;
- (e) the Subleases Tenant shall be entitled to require such amendments to the agreed form Deed of Subleases as may be required to reflect the nature, location and services required by the relevant Station Area;
- (f) if and to the extent occupational leases in respect of the Station Areas have been granted as at the date of grant of the Deed of Subleases, the Deed of Subleases will be granted subject to but with the benefit of such occupational interests; and
- (g) the Operator and the Subleases Tenant shall co-operate to procure the necessary consent required for the Deed of Subleases from the Operator's landlord before the start of the term of the Deed of Subleases and before entering into the Deed of Subleases.

#### Notification of New Station Areas

3.3 If at any time during the term of any Station Lease, the Subleases Tenant acting reasonably identifies any area demised by a Station Lease (not being part of the Station Areas) which are not required in order to secure the safe operation of the Passenger Services



(the *New Station Areas*), the Subleases Tenant shall notify the Operator of such fact and the Subleases Tenant shall be entitled to request that either:

- (a) the Operator and the Subleases Tenant by way of record (but not by way of variation to the Deed of Subleases) re-state the Deed of Subleases so that the lease of the relevant New Station Area is incorporated into the Deed of Subleases, in which case the provisions of paragraph 3.2(c) to (g) inclusive shall apply in relation to that New Station Area; or
- (b) the Operator grants an Occupational Agreement in relation to the New Stations Area to a third party nominated by the Subleases Tenant.

#### **Re-Statement of the Deed of Subleases**

3.4 If the Subleases Tenant requests that the Deed of Subleases is re-stated to incorporate a New Station Area pursuant to paragraph 3.3(a), then the following will apply:

- (a) within 10 Business Days of receipt of a notification and request from the Subleases Tenant in accordance with paragraph 3.3, the Operator shall properly serve on the Subleases Tenant a 1954 Act Notice; and
- (b) if the Subleases Tenant serves on the Operator a declaration in the prescribed form in respect of the sublease of the relevant New Station Area in response to a 1954 Act Notice, a binding obligation on the Operator and the Subleases Tenant to re-state the Deed of Subleases in respect of the relevant new Station Area that is the subject of the 1954 Act Notice shall immediately be created and the Deed of Subleases shall be re-stated within 14 Business Days of the date of such declaration.

3.5 Within 14 Business Days of the date on which the Deed of Subleases is re-stated, the Subleases Tenant shall apply to the Land Registry to register the re-stated Deed of Subleases on the registered title for the corresponding Station Leases and shall supply a copy of such completed registrations to the Operator once received.

3.6 In the event that the Land Registry does not permit the registration of the re-statement of the Deed of Subleases to incorporate New Station Areas pursuant to paragraph 3.3(a), the Operator shall enter into a separate Deed of Subleases in relation to the relevant New Station Areas and whereas the Subleases Tenant requests such a separate Deed of Subleases, then the following will apply:

- (a) within 10 Business Days of receipt of a notification and request from the Subleases Tenant in accordance with this paragraph 3.6, the Operator shall properly serve on the Subleases Tenant a 1954 Act Notice; and
- (b) if the Subleases Tenant serves on the Operator a declaration in the prescribed form in respect of the sublease of the relevant New Station Area in response to a 1954 Act Notice, a binding obligation on the Operator and the Subleases Tenant to enter into the Deed of Subleases in respect of the relevant New Station Area that is the subject of the 1954 Act Notice shall immediately be created and the Deed of Subleases shall be entered into within 14 Business Days of the date of such declaration.

### **Occupational Agreements**

3.7 If the Subleases Tenant requests that the Operator grants an Occupational Agreement to a third party nominated by the Subleases Tenant pursuant to paragraph 3.3(b), then the following will apply:

- (a) the Subleases Tenant shall provide to the Operator an execution copy (in duplicate) of the required form of Occupational Agreement;
- (b) the Operator shall within 10 Business Days of receipt of the execution copies of the Occupational Agreement execute the same and provide the duplicate copies to the Subleases Tenant with irrevocable authority to complete the same once the nominated third party has executed the Occupational Agreement;
- (c) the Subleases Tenant shall be entitled to demand, collect, receive and retain any fees or other charges levied on the third party pursuant to the Occupational Agreement by way of a licence fee and shall not be required to account to the Operator or otherwise compensate the Operator in respect of the same; and
- (d) the Subleases Tenant shall indemnify and keep indemnified the Operator in respect of any Loss suffered by the Operator as a result of the occupation or use by the nominated third party pursuant to the Occupational Agreement save where and to the extent such Loss has arisen as a result of the Operator's own acts or omissions.

### **Subleases Tenant**

3.8 Where RfL is not the Subleases Tenant, RfL shall procure that the Subleases Tenant performs, as and when they fall due, any of the obligations in this paragraph 3 which are expressed to be obligations of the Subleases Tenant.

## **4. OPERATOR DEPOTS**

### **Depot Leases**

4.1 The Operator shall enter into and remain a party to a Depot Lease and thereby become the Facility Owner in respect of each of the Operator Depots in accordance with paragraph 6 (*General Property Lease Provisions*).

### **Chingford Depot use**

4.2 The Operator shall procure that the Class 710 Maintainer has access to Chingford Depot in order to carry out maintenance and cleaning activities in accordance with the Class 710 TSA and shall, acting reasonably, agree with the Class 710 Maintainer arrangements for sharing any accommodation at Chingford Depot.

### **WeFOC use**

4.3 The Operator shall comply with its obligations under the WeFOC Agreements to which it is a party and RfL shall comply with its obligations under the WeFOC Agreements to which it is a party.

4.4 RfL shall appoint the Operator to exercise certain of RfL's rights and perform certain of RfL's obligations under the WeFOC Facilities Access Contract and the WeFOC

Connection Agreement in order to move trains over the boundary of the WeFOC and perform certain obligations in relation to the connections between the WeFOC and DBS's adjoining sidings facility. In exercising those rights and performing those obligations, the Operator shall not take any action or omit to take any action that would put RfL in breach of the WeFOC Facilities Access Contract or the WeFOC Connection Agreement.

4.5 The Operator hereby acknowledges that RfL is responsible under the terms of the WeFOC Facilities Access Contract and the WeFOC Connection Agreement for paying DBS a fee for access and connection services. Promptly following payment of that fee by RfL, the Operator shall pay to RfL by way of Other Adjustment, a sum that is equal to that fee.

4.6 The Operator shall optimise the use of the WeFOC for the purpose of stabling those Class 378 Units and Class 710 Units that are to be stabled there during the Concession Period.

## **5. OPERATOR ACCESS DEPOTS**

### **Access**

5.1 The Operator shall obtain access from each Facility Owner of the relevant Operator Access Depot:

- (a) in the case of Ilford Depot no later than the Start Date by entering into the Ilford Access Novation Agreement, and upon the expiry of the novated Depot Access Agreement thereunder, by entering into a new Depot Access Agreement with the East Anglia Franchisee until the Expiry Date that provides, among other things for the Class 710 Maintainer to carry out the activities referred to in paragraph 5.2(d) by no later than September 2017;
- (b) in the case of Willesden Depot, Camden Sidings and East Ham Depot no later than the Start Date, in each case by entering into a Depot Access Agreement for a term that is coterminous with the earlier of the end of the relevant Facility Owner's interest and the Expiry Date, and where that Facility Owner's interest ends before the Expiry Date, the Operator shall enter into a such further Depot Access Agreements with relevant Facility Owners as are necessary in order to obtain access at, as the case may be, Willesden Depot and Camden Sidings, in each case until the Expiry Date, provided that, in the case of Willesden Depot, the Operator shall enter into any such Depot Access Agreement on the basis that no payments shall be payable between the parties thereto under the performance regime in respect of the parties' performance in operating Willesden Depot and operating trains into and out of Willesden Depot; and
- (c) in the case of the NXG Facility and the ELL Sidings, by entering into a Depot Usage Agreement for a term that is coterminous with the Expiry Date.

### **Ilford Depot use**

5.2 The Ilford Depot shall be used, in each case under the terms of the Depot Access Agreement entered into pursuant to paragraph 5.1(a) by:

- (a) the Operator to procure the maintenance and all cleaning (being interior cleaning and exterior cleaning, both by carriage washer machine and hand) of the Class 315 Fleet and the Class 317 Fleet from the Start Date until all the Class 315 Units and Class 317 Units are replaced by Class 710 Units;

- (b) the Operator to carry out train preparation activities in relation to the Class 315 Fleet and the Class 317 Fleet;
- (c) the Operator to procure the cleaning (being interior and exterior cleaning by carriage washer machine) of those Class 710 Units that are stabled at Ilford Depot from the date Class 710 Units are first stabled at Ilford Depot and for the remainder of the Concession Period;
- (d) the Class 710 Maintainer to hand over Class 710 Units to the Operator and carry out train preparation activities and running maintenance on those Class 710 Units from the date Class 710 Units are first stabled at Ilford Depot and for the remainder of the Concession Period;
- (e) the Operator to stable the Class 315 Fleet, the Class 317 Fleet and that part of the Class 710 Fleet that is to be stabled at Ilford Depot, in the case:
  - (i) the Class 315 Fleet and the Class 317 Fleet, from the Start Date until the date all Class 315 Units and Class 317 Units are replaced by Class 710 Units; and
  - (ii) the Class 710 Fleet, from the date Class 710 Units are first stabled at Ilford Depot and for the remainder of the Concession Period;
- (f) the Operator to access maintenance buildings and bogie drops in connection with the Class 315 Fleet and Class 317 Fleet.

#### **New Cross Gate Facility use**

5.3 The New Cross Gate Facility shall be used by:

- (a) the Class 378 Maintainer to maintain and clean (being exterior cleaning by hand) that part of the Class 378 Fleet that is stabled there from the Start Date and for the remainder of the Concession Period;
- (b) the Operator to procure the cleaning (being interior cleaning and exterior cleaning by carriage washer machine) of that part of the Class 378 Fleet that is stabled there from the Start Date and for the remainder of the Concession Period; and
- (c) the Operator to stable that part of the Class 378 Fleet that is to be stabled there and to carry out train preparation activities in each case from the Start Date and for the remainder of the Concession Period.

#### **ELL Sidings use**

5.4 The ELL Sidings shall be used by:

- (a) the Operator to stable those Units that are to be stabled there during the Concession Period; and
- (b) the Class 378 Maintainer to carry out train preparation and running maintenance services under the Class 378 TSA.

#### **Willesden Depot use**

5.5 The Willesden Depot shall be used by:

- (a) the Class 710 Maintainer to maintain, clean (being exterior cleaning by hand) and carry out train preparation activities and running maintenance of:
  - (i) the Class 172 Fleet from the Start Date until all Class 172 Units are replaced by Class 710 Units; and
  - (ii) that part of the Class 710 Fleet that is stabled there from the Class 710 Operating Date and for the remainder of the Concession Period;
- (b) the Class 378 Maintainer to carry out train preparation activities and running maintenance of that part of the Class 378 Fleet that is to be stabled there from the Start Date and for the remainder of the Concession Period; and
- (c) the Operator to clean (being interior cleaning and exterior cleaning by carriage washer machine) the Class 172 Units, Class 378 Units and Class 710 Units stabled there.

#### **Camden Sidings use**

5.6 The Camden Sidings shall be used by:

- (a) the Operator to stable and clean (being interior cleaning and exterior cleaning by carriage washer machine) Class 378 Units and Class 710 Units from the Start Date and for the remainder of the Concession Period; and
- (b) the Class 710 Maintainer to carry out train preparation activities and running maintenance of that part of the Class 378 Fleet and Class 710 Fleet that is to be stabled there, in the case of the Class 378 Fleet from the Start Date and in the case of the Class 710 Fleet from the date Class 710 Units are first stabled there, and in each case for the Concession Period.

#### **East Ham Depot**

5.7 The East Ham Depot shall be used by:

- (a) the Operator to stable (and clean, being interior cleaning):
  - (i) at least two Class 172 Units from the Start Date and for the remainder of the period that the Operator leases Class 172 Units; and
  - (ii) Class 710 Units from the date Class 710 Units are first stabled there, and in each case for the Concession Period;
- (b) the Class 710 Maintainer to carry out train preparation activities and running maintenance of that part of the Class 172 Fleet and Class 710 Fleet that is to be stabled there, in the case of:
  - (i) the Class 172 Fleet from the Start Date and for the remainder of the period that the Operator leases Class 172 Units; and
  - (ii) the Class 710 Fleet from the date Class 710 Units are first stabled there, and in each case for the Concession Period.

### **Compliance with procedures**

5.8 The Operator shall:

- (a) co-operate with the Facility Owner's operating and health and safety procedures applicable at each Operator Access Depot, including complying with the Facility Owner's security arrangements, directions and notices; and
- (b) ensure that its actions shall not interfere with operations at any Operator Access Depot.

### **Services provided by Class 710 Maintainer at Operator Access Depots**

5.9 Where the Operator is required under paragraph 5.1 to enter into a Depot Access Agreement in respect of a depot at which the Class 710 Maintainer will carry out train preparation and running maintenance services under the Class 710 TSA, the Operator shall procure that the terms of any such Depot Access Agreement permit the Class 710 Maintainer to access and carry out those services at that depot subject to the rules and procedures applicable at that depot.

### **Competing demands**

5.10 The Operator acknowledges that from time to time there may be competing demands with, as the case may be, the Class 710 Maintainer or the Class 378 Maintainer to use the facilities at the relevant Operator Access Depot. The Operator shall co-operate with, as the case may be, the Class 710 Maintainer or the Class 378 Maintainer to ensure that those competing demands are met in a way that optimises the use of those facilities and in turn the likelihood of the Passenger Services being operated in accordance with the Timetable.

### **Depot access arrangements**

5.11 The Operator shall exercise its rights and carry out its obligations under each Depot Access Agreement to ensure that the activities described in this paragraph 5 may be carried out as contemplated by, as appropriate, this Agreement, the Class 378 TSA or the Class 710 TSA.

5.12 The Operator shall provide RfL with all assistance reasonably requested by RfL in connection with the calculation and settlement of Depot Access Charges and any disputes in connection with such Depot Access Charges.

## **6. GENERAL PROPERTY LEASE PROVISIONS**

### **Property Lease restrictions**

6.1 The Operator shall not without the prior written consent of RfL, whether generally or on a case-by-case basis:

- (a) enter into any new Property Lease other than pursuant to paragraph 1 (*Operator Stations*) or 4 (*Operator Depots*); or
- (b) effect any amendment to any Property Lease, except to the extent that the Operator is required to do so by virtue of, as appropriate, the Station Access Conditions, the Independent Station Access Conditions or the Depot Access Conditions.

6.2 To the extent the Operator is to enter into any Property Lease pursuant to paragraph 1 or 4, the Operator shall enter into that Property Lease with the relevant Infrastructure Manager:

- (a) in relation to:
  - (i) any Operator Station other than any Operator Station on the Devolved Route Group or Operator Station on the ELL Core Route, with Network Rail in the agreed terms marked **RSL** attached to this Agreement;
  - (ii) any Operator Station on the Devolved Route Group, with RfL in the agreed terms marked **SUL** attached to this Agreement;
  - (iii) any Operator Station on the ELL Core Route, with RfL in the agreed terms marked **USL** attached to this Agreement; and
  - (iv) any Operator Depot, with Network Rail in the agreed terms marked **DL** attached to this Agreement,

in each case no less than 14 days before the Start Date;
- (b) in relation to any other Property Lease, in such form and within such time period as the parties agree;
- (c) agreeing only such amendments to the relevant form of Property Lease attached to this Agreement as are necessary to give effect to changes contemplated by the Station Access Conditions or Depot Access Conditions or their equivalent or with RfL's consent to reflect the physical and practical characteristics of the relevant property; and
- (d) on the basis that such Property Lease is excluded from the provisions of Part II of the Landlord and Tenant Act 1954.

6.3 Within 14 days of the date of grant of a Property Lease which is registerable, the Operator shall apply to the Land Registry for the registration of such Property Lease and notification of the Property Lease on the registered title for the relevant property held by the relevant Infrastructure Manager, and upon receipt, supply a copy of the registered title for the Property Lease and the registered title held by the Infrastructure Manager to RfL.

6.4 Where:

- (a) the term of any Property Lease expires before the Expiry Date, the Operator shall enter into a new Property Lease with the relevant Infrastructure Manager on or before the expiry of that expiring Property Lease for a term commencing on the date of expiry of the initial Property Lease and expiring on the Expiry Date (each such lease once granted, shall be a Property Lease for the purposes of this Agreement); and
- (b) at RfL's request, additional land is to be included within the demise of the Property Lease, the Operator shall enter into a supplemental lease relating to that additional land as soon as practicable following the successful completion of any procedure (including obtaining any requisite approval from the ORR where appropriate) for including that additional land within the demise of such Property Lease and each such

supplemental lease, once granted, shall be a Property Lease for the purposes of this Agreement,

and in each case, the provisions of paragraph 6.2 shall apply.

6.5 The Operator shall not be in contravention of paragraph 6.4 if and to the extent that the relevant Infrastructure Manager refuses to enter into any leases specified therein.

6.6 No Property Lease shall have a term extending beyond the Expiry Date, unless RfL agrees otherwise.

### **The Operator's rights and obligations under Property Leases**

6.7 At each relevant property, the Operator shall carry out during the Concession Period the facilities management activities, including maintenance, cleaning and operating activities, specified in each Property Lease relevant thereto.

6.8 Subject to paragraph 6.9 the Operator shall at all times comply with its obligations and covenants and enforce its rights under each Property Lease.

6.9 The Operator shall not:

- (a) terminate or agree to terminate in whole or in part, or take or omit to take any other action which might result in the termination of any Property Lease;
- (b) assign all or part of its interest under any Property Lease; or
- (c) sublet any part of the property comprised in any Property Lease, including to any of its Affiliates,

except, in each case, to the extent that RfL may otherwise agree from time to time, such agreement not to be unreasonably withheld if:

- (i) the Operator has made arrangements, reasonably satisfactory to RfL, for the continued operation of the relevant property for the remainder of the Concession Period or if consent to the Closure of that property has been granted); and
- (ii) in the case of any sublease, that sublease:
  - (A) is terminable without compensation immediately upon the termination of this Agreement;
  - (B) is automatically terminated if the relevant sub-lessee ceases to be an Affiliate of the Operator;
  - (C) is for a term expiring no later than one day prior to the expiry of the Station Lease for the relevant property; and
  - (D) is excluded from the provisions of Part II of the Landlord and Tenant Act 1954.

### **Station Subleases**

6.10 If so requested by RfL, the Operator shall:



- (a) extend each Station Sublease on the same terms for such period as RfL may request (including a period equivalent to the concession term or franchise term (as the case may be) if the concession agreement or franchise agreement (as the case may be) to which the Train Operator who is the lessee under such Station Sublease is a party is extended); and
- (b) if any such Station Sublease terminates (which for the purposes of this paragraph 6.10(b) shall include the termination, at or around the time of termination of any concession agreement or franchise agreement, of a station sublease in respect of which the Operator was the lessor), grant a new Station Sublease on the same terms to such Train Operator and for such period as RfL may request (including a period equivalent to the concession term or franchise term (as the case may be) of the concession agreement or franchise agreement (as the case may be) to which the Train Operator who is the lessee under such Station Sublease is a party),

subject, where required, to the consent of the relevant Infrastructure Manager (and, if required, the relevant sub-lessee) and provided that no such sub-lease shall be longer than the relevant Station Lease.

6.11 The Operator shall notify RfL immediately on it becoming aware of any event which might give the Operator a right to forfeit or terminate any Station Sublease. The Operator shall notify RfL if it wishes to forfeit or terminate any such Station Sublease but shall not (without RfL's prior written consent) effect such forfeiture or termination until the date which occurs three months after the date of such notice.

## **7. GENERAL ACCESS AGREEMENT AND USAGE AGREEMENT PROVISIONS**

### **Access Agreement and Station and Depot Usage Agreement restrictions**

7.1 The Operator shall not without the prior written consent of RfL, whether generally or on a case-by-case basis:

- (a) enter into any new Station Access Agreement (except to the extent directed by the ORR), Station Usage Agreement, Depot Access Agreement or Depot Usage Agreement;
- (b) effect any amendment to any Station Access Agreement (except to the extent directed by the ORR), Station Usage Agreement or Depot Access Agreement; or
- (c) make any Proposal for Change in respect of any Station Access Agreement, Station Usage Agreement, Depot Access Agreement or Depot Usage Agreement.

7.2 The Operator shall, unless otherwise instructed by RfL, at all times comply with its obligations and covenants and enforce its rights under any Station Access Agreement and Depot Access Agreement.

7.3 The Operator shall not:

- (a) suspend or terminate or agree to suspend or terminate in whole or in part, or take or omit to take any other action which might result in the termination of any Station Access Agreement, Station Usage Agreement, any Depot Access Agreement or any other Depot Usage Agreement; or

- (b) assign all or part of its interest under any Station Access Agreement, Station Usage Agreement, Depot Access Agreement or any other Depot Usage Agreement, in each case, unless otherwise directed by RfL or, where appropriate, the ORR.

#### **Obligations in relation to Station Access and Usage Agreements**

7.4 The Operator shall enter into a Station Access Agreement or Station Usage Agreement with, as appropriate, the relevant access beneficiary or Facility Owner in respect of each relevant Operator Station and Operator Access Station referred to in paragraphs 1.2 and 2 (*Operator Access Stations*), in each case no less than 14 days before the Start Date.

7.5 The following shall apply, as appropriate, in relation to the Station Access Agreements and Station Usage Agreements that the Operator enters into pursuant to paragraph 7.4:

- (a) each such Station Access Agreement or Station Usage Agreement shall be on terms such that, as appropriate, the Facility Owner provides Common Station Services (or the equivalent thereof) to the Operator or vice versa;
- (b) each Station Access Agreement shall be on terms that are consistent with standard industry access terms regulated by the ORR (unless the Operator and, as appropriate, the access beneficiary or the Facility Owner otherwise agree); and
- (c) each Station Usage Agreement shall be substantially on terms that are consistent with the form in the agreed terms marked *SUA* (unless the Operator and, as appropriate, the access beneficiary or the Facility Owner otherwise agree), provided that in relation to the London Overground Stations in respect of which LUL has an interest, the Common Station Services and Common Station Amenities shall in each case be provided at no charge to the relevant beneficiary.

7.6 The Operator shall co-operate with LUL in assisting LUL to develop effective operating arrangements for the relevant Operator Access Stations in line with RfL's objectives for London Overground.

#### **Certain terms of Station Usage Agreements**

7.7 If either the Operator or LUL requires the equivalent of any Exclusive Station Services to be provided, as appropriate, by LUL or the Operator at any Operator Access Station, the Operator may negotiate the terms of such Exclusive Station Services with LUL and the cost of such Exclusive Station Services shall be, as appropriate, for the Operator's or LUL's account.

### **8. PROPOSALS FOR CHANGE**

#### **Notice of Proposal for Change**

- 8.1 The Operator shall notify RfL:
- (a) of any Proposal for Change or Railtrack Change Proposal, as soon as reasonably practicable upon receiving any notification from any Facility Owner, Relevant Operator (as defined in the Stations Access Conditions or Depot Access Conditions) or User (as defined in the Independent Station Access Conditions) pursuant to, as

appropriate, Part C of the Station Access Conditions, Part 3 of the Independent Station Access Conditions or part C of the Depot Access Conditions; and

- (b) a reasonable period in advance of:
- (i) responding to that Facility Owner, Relevant Operator, User or Network Rail (as the case may be) in respect of any notification referred to in paragraph 8.1(a);
  - (ii) submitting any Notice of Objection as defined in the Station Access Conditions or the Independent Station Access Conditions, as appropriate, or otherwise commenting or instigating relevant proceedings in respect of any notification referred to in paragraph 8.1(a); or
  - (iii) in the case of a Railtrack Change Proposal, requesting the appointment of an expert to determine a Material Variation Question (as defined in the Depot Access Conditions),

in order to allow the consultation pursuant to paragraph 8.2 to take place in a timely manner should it be required.

8.2 If and to the extent requested by RfL, the Operator shall:

- (a) consult RfL in relation to any of the matters referred to in paragraph 8.1; and
- (b) provide to RfL copies of any notices, correspondence or other information exchanged between any relevant party and the Operator in respect of those matters.

### **Response to notice of Proposal for Change**

8.3 The Operator shall:

- (a) respond to the relevant person identified in paragraph 8.1 in relation to any of the matters referred to therein in accordance with RfL's reasonable direction; and
- (b) as directed by RfL, waive its rights to any Financial Undertaking (as defined in, as appropriate, the Station Access Conditions, Independent Station Access Conditions or Depot Access Conditions) or any equivalent provision under the Station Access Conditions, the Independent Station Access Conditions or the Depot Access Conditions in relation to those matters referred to in paragraph 8.1.

8.4 Where RfL directs the Operator pursuant to paragraph 8.3(b), RfL shall compensate the Operator by way of Other Adjustment to the extent that the Operator:

- (a) would have been entitled to exercise those rights; and
- (b) suffered any Loss or other material adverse effect of the kind that is compensatable pursuant to those rights,

in each case, but for such direction.

8.5 The Operator shall provide to RfL such evidence as RfL requires in order to demonstrate to RfL's reasonable satisfaction the extent of any compensation to be paid pursuant to paragraph 8.4.

8.6 Where RfL does not direct the Operator pursuant to paragraph 8.3(b), but notifies the Operator that it reasonably believes the Proposal for Change or Railtrack Change Proposal will, if implemented, cause RfL Losses or have a material adverse effect on its existing or future business, then the Operator shall use all reasonable endeavours to procure a Financial Undertaking (as defined in, as appropriate, the Station Access Conditions, Independent Station Access Conditions or Depot Access Conditions) or equivalent protection under the Station Access Conditions, the Independent Station Access Conditions or Depot Access Conditions from the relevant party in favour of RfL or of sufficient extent in its favour to compensate RfL for those losses or effects.

8.7 Where the Operator does recover any compensation under the Station Access Conditions, the Independent Station Access Conditions or Depot Access Conditions in favour of RfL of the kind contemplated by paragraph 8.6, it shall pass any such compensation to RfL as soon as reasonably practicable after receipt.

### **Operator Proposals for Change**

8.8 The Operator shall not make a Proposal for Change to Network Rail, RfL or any other third party without RfL's prior written consent.

### **RfL Proposals for Change**

8.9 Where RfL wishes to make a Proposal for Change, RfL shall notify the Operator of that proposal and the Operator shall exercise its rights under, as appropriate, the Station Access Conditions, the Independent Station Access Conditions or the Depot Access Conditions to make such a proposal promptly after such notice and otherwise act in accordance with RfL's instructions in the development of that Proposal for Change.

### **Implementation of Proposals for Change**

8.10 The Operator shall co-operate with any Infrastructure Manager and any other relevant party in connection with any proposed works associated with any Proposal for Change or Railtrack Change Proposal.

8.11 The Operator's obligations under paragraph 8.9 shall not require it to take or omit to take, nor excuse it from taking or omitting to take, any action that would be prejudicial to:

- (a) proper performance of its obligations under this Agreement; or
- (b) the pursuit of reasonable profit from the proper performance of its obligations under this Agreement.

## **9. LONG TERM STATION LEASES LET BY RfL OR RfL'S NOMINEE**

### **Proposal to transfer Station Leases to RfL or RfL's nominee**

9.1 It is TfL's intention that RfL, another TfL Group company or other company nominated by RfL enters into long-term leases with Network Rail in respect of the Operator Stations other than the Operator Stations on the Devolved Route Group.

**Consequences of transfer of Station Leases to RfL or RfL's nominee**

9.2 If any of the entities referred to in paragraph 9.1 enter into long-term leases as contemplated by paragraph 9.1, then:

- (a) the Operator shall at RfL's request, execute and deliver all such further instruments and surrenders and do and perform all such further acts and things as shall be necessary or expedient for the purpose of putting in place those long-term leases; and
- (b) a Change shall occur where the Operator's compliance with paragraph 9.2(a) has a material impact on the Operator's rights and obligations under any Station Lease and/or the Operator is no longer obliged under the terms of any replacement Station Lease to pay any Long Term Charge (as defined in any such Station Lease).



**APPENDIX TO SCHEDULE 4.1**

**LONDON OVERGROUND STATIONS**

No.	London Overground Station	Route						Facility Owner and Access Beneficiaries													
		ELL	GOB	LCFL	LECL	NLL	RUL	WEL	Operator	c2c	Crossrail	East Anglia Franchisee	London Midland	LSER	LUL	Network Rail	Southern	SWT	TSGN	Virgin Trains	
1	Acton Central					✘			FO												
2	Anerley	✘							FO											B	
3	Barking		✘						B	FO					B						
4	Barking Riverside		✘						FO												
5	Battersea Park	✘							B								FO				
6	Bethnal Green				✘				FO												
7	Blackhorse Road		✘						B					FO							
8	Brockley	✘							FO											B	
9	Brondesbury					✘			FO												
10	Brondesbury Park					✘			FO												
11	Bruce Grove				✘				FO												
12	Bush Hill Park				✘				FO												
13	Bushey							✘	FO				B								
14	Caledonian Road & Barnsbury					✘			FO												
15	Cambridge Heath				✘				FO												
16	Camden Road					✘			FO												
17	Canada Water	✘							B					FO							

No.	London Overground Station	Route							Facility Owner and Access Beneficiaries											
		ELL	GOB	LCFL	LECL	NLL	RUL	WEL	Operator	c2c	Crossrail	East Anglia Franchisee	London Midland	LSER	LUL	Network Rail	Southern	SWT	TSGN	Virgin Trains
18	Canonbury	✘				✘			FO											
19	Carpenders Park							✘	FO											
20	Cheshunt				✘				B			FO								
21	Chingford			✘					FO											
22	Clapham High Street	✘							FO											
23	Clapham Junction	✘							B								FO	B		
24	Clapton			✘					FO											
25	Crouch Hill		✘						FO											
26	Crystal Palace	✘							FO										B	
27	Dalston Junction	✘							FO											
28	Dalston Kingsland					✘			FO											
29	Denmark Hill	✘							B					FO					B	
30	Edmonton Green				✘				FO			B								
31	Emerson Park							✘	FO											
32	Enfield Town				✘				FO											
33	Finchley Road & Frognal					✘			FO											
34	Forest Hill	✘							FO										B	
35	Gospel Oak		✘			✘			FO											
36	Gunnelsbury					✘			B						FO					
37	Hackney Central					✘			FO											



No.	London Overground Station	Route							Facility Owner and Access Beneficiaries											
		ELL	GOB	LCFL	LECL	NLL	RUL	WEL	Operator	c2c	Crossrail	East Anglia Franchisee	London Midland	LSER	LUL	Network Rail	Southern	SWT	TSGN	Virgin Trains
38	Hackney Downs				*				FO			B								
39	Hackney Wick					*			FO											
40	Haggerston	*							FO											
41	Hampstead Heath					*			FO											
42	Harlesden							*	B					FO						
43	Harringay Green Lanes		*						FO											
44	Harrow & Wealdstone							*	B			B		FO					B	
45	Hatch End							*	FO											
46	Headstone Lane							*	FO											
47	Highams Park			*					FO											
48	Highbury & Islington	*				*			B					FO					B	
49	Homerton					*			FO											
50	Honor Oak Park	*							FO										B	
51	Hoxton	*							FO											
52	Imperial Wharf					*			FO										B	
53	Kensal Green							*	B					FO						
54	Kensal Rise					*			FO											
55	Kensington (Olympia)					*			FO					B					B	
56	Kentish Town West					*			FO											
57	Kenton							*	B					FO						

No.	London Overground Station	Route							Facility Owner and Access Beneficiaries											
		ELL	GOB	LCFL	LECL	NLL	RUL	WEL	Operator	c2c	Crossrail	East Anglia Franchisee	London Midland	LSER	LUL	Network Rail	Southern	SWT	TSGN	Virgin Trains
58	Kew Gardens					✘			B						FO					
59	Kilburn High Road							✘	FO											
60	Leyton Midland Road		✘						FO											
61	Leytonstone High Road		✘						FO											
62	London Euston							✘	B				B		FO					B
63	London Fields				✘				FO											
64	London Liverpool Street				✘				B	B	B	B			FO					
65	New Bermondsey	✘							FO											
66	New Cross	✘							B					FO						
67	New Cross Gate	✘							FO											B
68	North Wembley							✘	B						FO					
69	Norwood Junction	✘							FO											B
70	Peckham Rye	✘							B					B		FO				
71	Penge West	✘							FO											B
72	Queen's Park							✘	B						FO					
73	Queens Road Peckham	✘							B							FO				
74	Rectory Road				✘				FO											
75	Richmond					✘			B						B			FO		
76	Romford							✘	B		FO	B								
77	Rotherhithe	✘							FO											

No.	London Overground Station	Route							Facility Owner and Access Beneficiaries											
		ELL	GOB	LCFL	LECL	NLL	RUL	WEL	Operator	c2c	Crossrail	East Anglia Franchisee	London Midland	LSER	LUL	Network Rail	Southern	SWT	TSGN	Virgin Trains
78	St. James Street			✘					FO											
79	Seven Sisters				✘				FO			B			B					
80	Shadwell	✘							FO											
81	Shepherd's Bush						✘		FO											B
82	Shoreditch High Street	✘							FO											
83	Silver Street				✘				FO											
84	South Acton						✘		FO											
85	South Hampstead							✘	FO											
86	South Kenton							✘	B						FO					
87	South Tottenham		✘						FO											
88	Southbury				✘				FO			B								
89	Stamford Hill				✘				FO											
90	Stoke Newington				✘				FO											
91	Stonebridge Park							✘	B						FO					
92	Stratford						✘		B	B	FO	B			B					
93	Surrey Quays	✘							FO											
94	Sydenham	✘							FO											B
95	Theobalds Grove				✘				FO			B								
96	Turkey Street				✘				FO			B								
97	Upminster							✘	B	FO					B					

No.	London Overground Station	Route							Facility Owner and Access Beneficiaries																															
		ELL	GOB	LCFL	LECL	NLL	RUL	WEL	Operator	c2c		Crossrail		East Anglia Franchisee		London Midland		LSER		LUL		Network Rail		Southern		SWT		TSGN		Virgin Trains										
98	Upper Holloway		✘						FO																															
99	Walthamstow Central			✘					FO																															
100	Walthamstow Queen's Road		✘						FO																															
101	Wandsworth Road	✘							FO																															
102	Wanstead Park		✘						FO																															
103	Wapping	✘							FO																															
104	Watford High Street							✘	FO																															
105	Watford Junction							✘	B							FO																					B	B		
106	Wembley Central							✘	B												FO																			
107	West Brompton					✘			B												FO																			
108	West Croydon	✘							FO																															
109	West Hampstead					✘			FO																															
110	White Hart Lane				✘				FO																															
111	Whitechapel	✘							B												FO																			
112	Willesden Junction					✘		✘	FO												B																			
113	Wood Street			✘					FO																															
114	Woodgrange Park		✘						FO																															
<b>Totals</b>		31	12	6	19	27	3	19	FO	B	FO	B	FO	B	FO	B	FO	B	FO	B	FO	B	FO	B	FO	B	FO	B	FO	B	FO	B	FO	B	FO	B	FO	B	FO	B
									82	31	2	2	2	1	1	9	1	3	2	1	16	8	2	0	3	0	2	0	0	20	0	2								

## SCHEDULE 4.2

### Station Environment

#### 1. SAFE, SECURE AND ATTRACTIVE CUSTOMER ENVIRONMENT

1.1 In providing relevant Concession Services, the Operator shall use all reasonable endeavours to provide a safe, secure and attractive customer environment at Operator Stations that is commensurate with the level that an experienced, professional and diligent operator of railway passenger services would provide, which such provision shall include:

- (a) responding to a passenger pressing a Help Point emergency call button or lift alarm button, in each case, at an Operator Station within 10 seconds of such button being pressed at any time during the Station Operating Day;
- (b) keeping station platform surfaces and routeways free from trip hazards and vegetation and providing customers with unimpeded access both to and from those platforms;
- (c) maintaining:
  - (i) CCTV and associated recording systems installed at Operator Stations in full working order at all times; and
  - (ii) records on the Fault Management System of inspections of that equipment and systems carried out by the Operator or any third party on its behalf;
- (d) monitoring all cameras installed at Operator Stations in order to achieve an immediate level of effective surveillance;
- (e) removing or procuring the removal of hazardous items and substances from Operator Stations within four hours of becoming aware of such any such items or substances;
- (f) whilst not adversely affecting the Operator Station environment and the provision of relevant Concession Services, taking proactive steps to prevent pest, including rodent and insect, infestation and roosting birds, and taking steps to remove such infestation or roosting and the evidence of such infestation or roosting where it does occur; and
- (g) taking steps to maintain Operator Stations in good condition, which shall include the Operator promptly:
  - (i) repairing damage and defects where the Operator is obliged to do so under the terms of the relevant Station Lease; and
  - (ii) enforcing its rights in accordance with paragraph 6.8 of Schedule 4.1 (*Property Leasing and Access*) where it is not obliged under the terms of that Station Lease to effect those repairs directly.

1.2 RfL shall be entitled:

- (a) to audit the Operator's compliance with its obligation under paragraph 1.1 in accordance with paragraph 2.3 of Schedule 8.1 (*Standards Regime (KPIs)*); and

- (b) to request that the Operator provides RfL with the inspection records referred to in paragraph 1.1(c)(ii) upon reasonable notice.

1.3 Where following an audit pursuant to paragraph 1.2(a), RfL becomes aware of any non-compliance with the outputs anticipated under paragraph 1.1, RfL shall notify the Operator and the Operator shall promptly rectify that non-compliance.

## **2. PHYSICAL ALTERATIONS AND ACCESSIBILITY OF OPERATOR STATIONS**

### **Operator's obligations in relation to accessibility**

2.1 The Operator shall:

- (a) as and when requested by RfL, provide:
- (i) information concerning the usage of Operator Stations (including, where and to the extent reasonably practicable, usage of Operator Stations by Disabled Persons); and
  - (ii) advice as to the most economical way in which accessibility for Disabled Persons could, in the Operator's reasonable opinion, be improved at Operator Stations;
- (b) co-operate reasonably with other Train Operators and/or any Infrastructure Manager to seek to ensure that, where it would be advantageous to do so, having regard to the needs of Disabled Persons, any planned work on the Operator Stations to facilitate accessibility and use by Disabled Persons is, so far as reasonably practicable, co-ordinated with other work to be carried out at the Operator Stations and/or other parts of the network; and
- (c) use all reasonable endeavours to secure sources of grant funding (other than from itself or an Affiliate) for improving accessibility for Disabled Persons at Operator Stations (in addition to any funding secured through RfL pursuant to paragraph 2.4), including from Local Authorities, local development agencies and the Lottery Commission. The Operator shall notify RfL of:
- (i) any such additional funding which it secures; and
  - (ii) the terms on which such additional funding has been granted.

2.2 In participating in any multi-modal fares scheme, the Operator shall, subject to paragraph 3 (*Multi-Modal Fares Schemes*) of Schedule 3.5 (*Transport, Travel and Other Fares Related Schemes*), use all reasonable endeavours to secure, through the planning and development of such scheme, improvements in disabled access to the entrances of any relevant station, including within and in the immediate proximity of such station.

2.3 If, during the Concession Period:

- (a) the Operator has complied with its obligations in sections 20(4) and 20(9), as varied by paragraph 2(3) of Schedule 2, in each case of the Equality Act (to take such steps as are reasonable to provide a reasonable alternative method of making services at an Operator Station accessible to a Disabled Person); and

- (b) notwithstanding such compliance, the Operator reasonably considers it is still required to carry out or procure physical works of alteration at an Operator Station in order to comply with the Equality Act Requirements in respect of that Operator Station, and, in so carrying out or procuring, would incur expenditure which it would not otherwise have an obligation to incur,

the Operator may seek funding from RfL in respect of that expenditure.

2.4 If the Operator seeks funding from RfL under paragraph 2.3, and demonstrates to RfL's satisfaction that the criteria in paragraph 2.3 have been satisfied, then RfL may agree to adjust the amount of Concession Payments in respect of some or all of the works and/or expenditure. In considering its response to any such request, RfL will have regard to the availability to it of funding, together with any other available sources of funding described in paragraph 2.1(c). If and to the extent RfL agrees to adjust Concession Payments in accordance with this paragraph 2.4 in any Concession Year:

- (a) RfL shall make such adjustment to the Concession Payments; and
- (b) the Operator shall spend the additional funds that are available as a consequence of that adjustment:
  - (i) in order to comply with the Equality Act Requirements referred to in paragraph 2.3(b); and
  - (ii) in accordance with any conditions RfL may notify the Operator of.

### **Increased access charges at Operator Access Stations**

2.5 If and to the extent the Operator is required to pay any increased access charges as a result of additional expenditure required to be incurred by another station Facility Owner for the purpose of complying with the Equality Act Requirements in respect of an Operator Access Station, provided that the Operator:

- (a) notifies RfL within seven days of becoming aware of any proposal for the increase in such charges (or the works to which they relate); and
- (b) complies with RfL's reasonable directions regarding the exercise of any rights the Operator may have in respect thereof,

the imposition of the increased access charges shall be a Change.

## **3. DEALING WITH CLAIMS RELATING TO OPERATOR STATIONS**

### **Notice of Equality Act Claims**

3.1 If during the Concession Period the Operator receives notification of a claim under the Equality Act in respect of any alleged non-compliance by it with the Equality Act Requirements or otherwise in respect of any Operator Station (an *Equality Act Claim*), then the Operator shall notify RfL within seven days of receiving notification of the Equality Act Claim. The Operator shall at the same time notify RfL of any reasonable alternative methods of making services at the Operator Station accessible to Disabled Persons that it has considered and/or put in place pursuant to sections 20(4) and 20(9), as varied by paragraph 2(3) of Schedule 2 in each case of the Equality Act.

### **Defending Equality Act Claims**

3.2 Promptly following any notice under paragraph 3.1, RfL shall notify the Operator whether it requires the Operator to defend the relevant Equality Act Claim and where it so notifies, the Operator shall act in accordance with the reasonable instructions of RfL to defend the Equality Act Claim (or any aspect of it) as required under paragraph 3.1 and shall not (without the prior consent of RfL) settle or enter into any compromise in relation to the Equality Act Claim (or the relevant aspect of it), including by entering into mediation.

3.3 If RfL requires the Operator to defend an Equality Act Claim or any aspect of the Equality Act Claim (which may include appealing the judgment) pursuant to paragraph 3.2, RfL will, subject to paragraph 3.7, pay by way of Other Adjustment, the Operator's reasonable costs of:

- (a) any defence or appeal required by RfL; and/or
- (b) compliance with RfL's instructions in accordance with paragraph 3.2.

### **Settling Equality Act Claims**

3.4 If, in the reasonable opinion of the Operator, it will be more cost effective to settle the Equality Act Claim rather than act in accordance with RfL's requirement under paragraph 3.2, it shall produce for RfL's approval a settlement proposal, setting out the terms of the Operator's proposals to make an offer to the Disabled Person making the Equality Act Claim and its reasons for making such offer (the *Settlement Proposal*).

3.5 If RfL does not accept the Settlement Proposal and still requires the Operator to defend the Equality Act Claim (or any aspect of it) then the Operator shall defend the Equality Act Claim in accordance with paragraph 3.1.

### **Awards in excess of Settlement Proposals**

3.6 If the Operator is required to defend a Equality Act Claim where it has submitted a Settlement Proposal to RfL and an award is made in respect of the Equality Act Claim in favour of the Disabled Person bringing it which is higher than the figure set out in the Settlement Proposal, then, subject to paragraph 3.7, RfL shall pay to the Operator by way of Other Adjustment:

- (a) the difference between such an award and the figure set out in the Settlement Proposal; and
- (b) the further reasonable costs incurred or payable by the Operator in defending the Equality Act Claim, to the extent that such costs have not already been paid by RfL under paragraph 3.2.

### **No obligation to pay**

3.7 RfL shall not have any obligation to make the payments described in paragraphs 3.3 or 3.6 where it is determined or, if no declaration or determination by the court on this point has been sought or made, RfL, in its reasonable opinion, considers that the Operator has not taken such steps as it is reasonable, in all the circumstances of the case, for it to take to provide a reasonable alternative method of making services at the Operator Station accessible to Disabled Persons.



**4. ADDITIONAL OBLIGATIONS RELATING TO PERSONS WITH DISABILITIES**

4.1 The Operator acknowledges that its obligations in this Schedule 4.2 are in addition to and do not limit its obligations to comply with:

- (a) the Equality Act;
- (b) any applicable condition in any of its Licences (including in respect of persons with disabilities); and
- (c) any other of the requirements of this Agreement.

4.2 The Operator shall provide services (including alternative transport services) for Disabled Persons that are consistent with the Disabled Person's Policy.



## SCHEDULE 4.3

### Station and Depot Condition and Enhancements

#### 1. GOB STATION DEEP CLEAN PROGRAMME

##### Developing the Station Deep Clean Programme

1.1 The Operator shall develop the Outline Station Deep Clean Programme in detail and submit a draft of that detailed programme to RfL no later than six weeks before the Start Date. The draft detailed programme shall be consistent with the Outline Station Deep Clean Programme, but shall set out in sufficient detail in order to fully support the process of ensuring its timely delivery:

- (a) what steps it will take (whether directly or by enforcing its contractual rights under any Station Lease, Station Access Agreement or Track Access Agreement) including measurable milestones before, during and after the GOB Blockade to procure the removal of all graffiti, trackside vegetation and litter by the relevant dates specified in the Outline Station Deep Clean Programme from:
  - (i) the areas within its control at the Operator Stations on the GOB;
  - (ii) the areas that may reasonably be considered to be within the Operator Stations on the GOB; and
  - (iii) the platforms and trackside of those platforms at the Operator Access Stations on the GOB at which the Passenger Services call;
- (b) what other activities a skilled and experienced Train Operator employed in the implementation of a deep station clean programme would include in such a programme and the means by which the Operator will carry out those activities; and
- (c) the Operator's approach to the management of the delivery of the programme and the steps it will take to monitor its compliance,

in each case by the relevant dates specified in the Outline Station Deep Clean Programme (which in each relevant case, shall be consistent with the relevant Committed Obligations in Schedule 10.1 (*List of Committed Obligations and Committed Obligation Payments*)).

1.2 RfL shall within one month of receipt of the Operator's draft deep station clean programme, inform the Operator whether, in RfL's reasonable opinion:

- (a) the Operator's draft, detailed programme is consistent with the Outline Station Deep Clean Programme; and
- (b) the programme will achieve the timely delivery of each of the activities in the Outline Station Deep Clean Programme.

1.3 The Operator shall within 14 days of RfL providing its opinion pursuant to paragraph 1.2, amend its draft station deep clean programme in accordance with that opinion and reissue that amended plan to RfL. Such amended plan shall be the ***Station Deep Clean Programme***.

### **Implementing and reporting on progress against the Station Deep Clean Programme**

1.4 The Operator shall implement the Station Deep Clean Programme in accordance with its terms.

1.5 The Operator shall report in each Periodic Concession Report that is to be issued prior to the completion of the Station Deep Clean Programme in accordance with paragraph 2.2 of Schedule 16.1 (*Records, plans and reports*), to RfL to such level of detail as RfL may require, the Operator's progress in delivering the Station Deep Clean Programme. The Operator shall promptly provide to RfL, such further information in relation to the Operator's progress in delivering the Station Deep Clean Programme as RfL reasonably requests.

### **Failure to implement the Station Deep Clean Programme**

1.6 Where the Operator fails to complete the Station Deep Clean Programme by the date of commencement of Passenger Services to and from the GOB Stations after the completion of the GOB Blockade, then the Operator shall pay RfL █████<sup>23</sup> per day (reduced pro rata by reference to the number of the GOB Stations in respect of which that milestone has been met) by way of Committed Obligation Payment.

## **2. UNIFORM LONDON OVERGROUND STATION CONDITION**

### **Uniform condition of London Overground Stations**

2.1 It is RfL's intention that all London Overground Stations and associated tracksides are maintained to an excellent standard of cleanliness throughout the Concession Period and are therefore at all times throughout that period, all London Overground Stations are free from graffiti, trackside vegetation and litter.

### **Maintaining clean stations and tracksides**

2.2 The Operator shall continue to procure that the objective set out in paragraph 2.1 is met throughout the Concession Period in relation to the Operator Stations and the platforms of the Operator Access Stations at which the Passenger Services call by:

- (a) complying with its obligations and enforcing any rights it may have from time to time under any Station Lease; and
- (b) enforcing any rights it may have from time to time under any Station Access Agreements and Track Access Agreements,

in each case to procure the reduction in, prevention of, or prompt removal of graffiti, trackside vegetation and litter from those stations and the related trackside of the London Overground Network.

## **3. STATION BRANDING**

### **London Overground Operating Brand**

3.1 The Operator shall maintain or procure the maintenance of the relevant requirements of the London Overground Operating Brand (as notified by RfL to the Operator from time to

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<sup>23</sup> This text has been redacted by Rail for London in accordance with the provisions of the Freedom of Information Act 2000.

time) at the London Overground Stations from the Start Date and for the duration of the Concession Period

### **Double Arrow symbol**

3.2 The Operator shall procure that the 'Double Arrow' symbol is prominently displayed at the entrance to each Operator Station where the railway passenger services of other Train Operators call.

## **4. FUTURE STATION ENHANCEMENTS AND MODERNISATIONS**

### **Review and prioritisation**

4.1 RfL will continue to review all London Overground Stations during the Concession Period, with the objective of identifying priorities for enhancements and modernisation works or asset investment.

### **Procurement of future station works**

4.2 RfL shall be entitled to notify the Operator that it wishes to proceed with any works or investment at London Overground Stations contemplated by paragraph 4.1 and may invite the Operator to procure all or any of those works and that investment and where RfL does invite the Operator to procure all or any of those works and that investment and the parties agree to proceed with that procurement, a Change shall occur.

### **Operator's role**

4.3 Whether or not RfL requires the Operator to procure all or any of the works or investment contemplated by paragraph 4.1, the Operator shall co-operate with RfL to ensure the timely delivery of those works or the making of that investment, including, where necessary:

- (a) participating during any GRIP (or equivalent) process by providing input in relation to:
  - (i) any project requirement, operational concept and maintenance concept documents prepared by any member of the TfL Group;
  - (ii) any such updated operational concept and maintenance concept documents both during any feasibility study phase or option selection phase;
  - (iii) any operational readiness and maintenance readiness documents during any option selection phase;
  - (iv) any updated optional readiness and maintenance readiness documents during any detailed design phase;
  - (v) updated optional readiness and maintenance readiness documents during any construction, testing and commissioning phase; and
  - (vi) updated optional readiness and maintenance readiness documents during any scheme handback phase;

- (b) exercising its rights under the Station Access Conditions to make any Proposal for Change required by RfL in accordance with paragraph 8.9 of Schedule 4.1 (*Property Leasing and Access*) in relation to any of those works or that investment;
- (c) apply to Network Rail for consent in respect of any aspect of those works or that investment where such consent is required;
- (d) during any construction, testing and commissioning phase:
  - (i) where necessary, take additional steps to ensure each relevant London Overground Station continues to represent a safe environment for staff and passengers;
  - (ii) work with RfL to confirm customer information during any disruption caused by such construction, testing and commissioning in accordance with the Marketing and Publicity Guidance;
  - (iii) grant RfL and/or its agents and subcontractors access to the relevant London Overground Stations in order to carry out such construction, testing and commissioning; and
  - (iv) implement those relevant actions specified in the updated operational concept and maintenance concept documents;
- (e) during any scheme hand back phase:
  - (i) implement those relevant actions specified in the updated operational concept and maintenance concept documents;
  - (ii) deliver specified staff training in respect of any new equipment that is installed at any London Overground Station, new systems and/or procedures in each case as a result of those works or that investment;
  - (iii) accept from RfL, its agents and/or subcontractors, health and safety files and operation and maintenance manuals; and
  - (iv) facilitate acceptance and handover of the works at completion and entry into service; and
- (f) during any project close out phase, provide feedback for benefits realisation.

## **5. FUTURE DEPOT ENHANCEMENTS AND MODERNISATIONS**

### **Procurement of future depot works**

5.1 RfL or its agents shall be entitled to proceed with works at Willesden Depot and/or Chingford Depot during the Concession Period to enhance facilities to be used by the Class 710 Maintainer as more particularly described and subject to the limitations in schedule 9 (*Maintenance Facilities and Chingford Stabling Site*) of the Class 710 MSA.

### **Cooperation**

5.2 The Operator shall cooperate with RfL to ensure the timely delivery of the works referred to in paragraph 5.1, including, where necessary:

- (a) participating during any GRIP (or equivalent) process by providing input in relation to:
  - (i) any project requirement, operational concept and maintenance concept documents prepared by RfL and/or its agents;
  - (ii) any such updated operational concept and maintenance concept documents both during any feasibility study phase or option selection phase;
  - (iii) any operational readiness and maintenance readiness documents during any option selection phase;
  - (iv) any updated operational readiness and maintenance readiness documents during any detailed design phase;
  - (v) updated optional readiness and maintenance readiness documents during any construction, testing and commissioning phase; and
  - (vi) updated optional readiness and maintenance readiness documents during any scheme handback phase;
- (b) permit access to Chingford Depot for RfL and/or its agents for inspection, surveying and preparatory works in relation to any of those works;
- (c) if requested by RfL, apply to Network Rail for consent in respect of any aspect of those works where such consent is required;
- (d) during any construction, testing and commissioning phase:
  - (i) where necessary, take additional steps to ensure Chingford Depot continues to represent a safe environment for staff;
  - (ii) grant RfL and/or its agents and subcontractors access to Chingford Depot in order to carry out such construction, testing and commissioning; and
  - (iii) implement those relevant actions specified in the updated operational concept and maintenance concept documents;
- (e) during any scheme hand back phase:
  - (i) implement those relevant actions specified in the updated operational concept and maintenance concept documents;
  - (ii) deliver specified staff training in respect of any new equipment that is installed at Willesden Depot and/or Chingford Depot and any new systems and/or procedures in each case as a result of those works and to the extent relevant to the activities undertaken by the Operator;
  - (iii) accept from RfL, its agents and/or subcontractors, health and safety files and operation and maintenance manuals to the extent relevant to the activities undertaken by the Operator; and
  - (iv) facilitate handover of the works at completion and entry into service at Chingford Depot.

**Willesden Depot Proposal for Change**

5.3 Without limiting paragraph 5.2, the relevant provisions of paragraph 8 (*Proposals for Change*) of Schedule 4.1 (*Property Leasing and Access*) shall apply to any Proposal for Change in respect of the enhancement works at Willesden Depot described in schedule 9 of the Class 710 MSA that the Operator receives, provided that:

- (a) under paragraph 8.3 thereof, the Operator shall respond to that Proposal for Change in accordance with RfL's direction and the Operator shall waive its rights to any Financial Undertaking (as defined in the Depot Access Conditions) in relation to that Proposal for Change;
- (b) paragraphs 8.4 to 8.6 inclusive thereof shall not apply; and
- (c) that Proposal for Change shall not constitute a Proposal for Change made by RfL for the purpose of paragraph 8.9 thereof.

**Chingford Depot Proposal for Change**

5.4 Without limiting paragraph 5.2, the Operator shall:

- (a) as and when required by RfL, make a Proposal for Change in respect of the enhancement works at Chingford Depot described in schedule 9 of the Class 710 MSA, subject to RfL procuring that the Operator is provided in a timely manner with all necessary information in order to make that Proposal for Change;
- (b) act in accordance with RfL's instructions when complying with its obligations and exercising its rights under the Depot Access Conditions as a proposer of change at depot.

5.5 RfL shall compensate the Operator by way of Other Adjustments on an ongoing basis in respect of the Operator's reasonable and proper costs incurred in making the Proposal for Change referred to in paragraph 5.4.



## **SCHEDULE 5**

### **TRAINS**

**Schedule 5.1: The Train Fleet**

**Appendix: Trains comprising the Train Fleet**

**Schedule 5.2: Operation, Maintenance and Refresh**

**Schedule 5.3: Introduction of Class 710 Fleet and related equipment**



## SCHEDULE 5.1

### The Train Fleet

#### 1. TRAIN FLEET

1.1 The Operator's Train Fleet:

- (a) as at the Start Date is as set out in Table 1; and
- (b) from the dates specified in Table 2 is as set out in Tables 1 and 2,

in each case contained in the Appendix, subject to paragraph 1 (*The Composition of the Train Fleet*) of the Appendix.

1.2 The Operator shall comply with its obligations under:

- (a) paragraph 2 (*Changes to the Train Fleet*) concerning changes to the composition and characteristics of the Train Fleet; and
- (b) Schedule 19 (*Continuation of the London Overground Concession*) with respect to the Train Fleet.

#### 2. CHANGES TO THE TRAIN FLEET

2.1 The Operator shall maintain the composition of the Train Fleet during the Concession Period, unless RfL otherwise agrees, such that there are no changes to any rolling stock vehicles comprising the Train Fleet, including changes:

- (a) to the classes or types;
- (b) branding or internal or external finishes, except as expressly contemplated by this Agreement;
- (c) to the interior configurations; or
- (d) which may reduce the journey time capabilities.

2.2 Subject to the other provisions of this Agreement, the Operator shall procure that the rolling stock vehicles specified in the Tables contained in the Appendix, with the capacity and other characteristics referred to there, are available for deployment in the provision of the Passenger Services during the periods referred to there.

2.3 During the Concession Period, the Operator shall advise RfL of any rolling stock vehicles damaged beyond economic repair or likely to be unavailable for service for a period of one Reporting Period or more.

2.4 If any change is made to the Train Fleet in accordance with this paragraph 2, RfL may, after consulting the Operator, notify the Operator of the passenger carrying capacity of any rolling stock vehicles or class of rolling stock vehicles comprising the Train Fleet following such change.

2.5 The Operator shall not serve an Extension Notice (as defined in the Class 317 Lease), extending the term of that lease, without the prior written consent of RfL.

### **3. MAINTENANCE OF RELEVANT APPROVALS**

Without limiting paragraph 3 (*Relevant Approvals*) of Schedule 5.3 (*Introduction of Class 710 Fleet and related equipment*), the Operator shall except to the extent already provided for under the Class 378 MSA or the Class 710 MSA, procure that all relevant consents, approvals, permissions and other certifications required for the purpose of operating the Train Fleet on the London Overground Network under Applicable Requirements are maintained until, in relation to each fleet comprising the Train Fleet, the relevant lease expiry date specified in the Appendix (*Trains Comprising the Train Fleet*) to Schedule 5.1 (*The Train Fleet*).

**APPENDIX TO SCHEDULE 5.1****TRAINS COMPRISING THE TRAIN FLEET****1. THE COMPOSITION OF THE TRAIN FLEET**

1.1 The Train Fleet consists of:

- (a) the rolling stock vehicles comprising the Class 172 Fleet specified in Table 1, and of those, in column 3 thereof, the Class 172 Units that are to be made Available on the relevant day to the Operator under the terms of the Class 710 TSA for the purpose of delivering the Passenger Services, in each case until the lease expiry date referred to in column 5 thereof;
- (b) the rolling stock vehicles comprising the Class 315 Units specified in row 1 of Table 2, until the lease expiry date referred to in column 4 thereof;
- (c) the rolling stock vehicles comprising the Class 317 Units specified in row 2 of Table 2, until the lease expiry date referred to in column 4 thereof;
- (d) the rolling stock vehicles comprising the Class 378 Units specified in Table 3, and of those, in column 3 thereof, the Class 378 Units that are to be made Available on the relevant day to the Operator under the terms of the Class 378 TSA for the purpose of delivering the Passenger Services, in each case until the lease expiry date referred to in column 5 thereof;
- (e) from the dates specified in column 1 and rows 1 and 2 of Table 4, the Class 710 Units referred to against those dates in column 2 thereof that are on lease under the Class 710 Lease, and of those, in column 3 thereof, the Class 710 Units that are to be made Available on the relevant day to the Operator under the terms of the Class 710 TSA for the purpose of delivering the Passenger Services in each case until the lease expiry date referred to in column 5 thereof; and
- (f) following any such lease expiry during the Concession Period, substitute rolling stock vehicles having:
  - (i) at least the capacity specified in respect of the original rolling stock vehicles being substituted; and
  - (ii) reliability, capability and quality that is at least equal to the reliability, capability and quality of the original rolling stock vehicles being substituted.

1.2 Where any of the Class 710 Units are Accepted earlier than anticipated in the delivery schedule of the Class 710 Units in the Class 710 MSA:

- (a) the Operator may propose to RfL that any Class 172 Unit, Class 315 Unit and/or Class 317 Unit is returned early to the relevant lessor; and
- (b) RfL shall consent to such proposal where it is reasonably satisfied that the Class 710 Units that have been Accepted provide sufficient capacity in order to deliver the relevant Passenger Services without creating additional risk to the Operator under Schedule 7 (*Operating Performance*) and in the case of the Class 172 Fleet, Class 710

Units are capable in RfL’s reasonable opinion of operating on the GOB in accordance with the requirements of the Timetable.

1.3 Where, despite the early Acceptance of any Class 710 Unit, it is either not possible to return any Class 172 Unit, Class 315 Unit or Class 317 Unit early to the relevant lessor, or RfL does not consent (acting reasonably) to that early return, then the Operator shall:

- (a) stable the Class 172 Fleet, Class 315 Fleet and/or Class 317 Fleet, or in each case such number of Units thereof as is notified by RfL to the Operator; and
- (b) procure that any such stabled Units are maintained in the redelivery condition set out in the relevant Rolling Stock Lease,

in each case until the relevant Rolling Stock Lease expiry date;

1.4 The Operator shall not exercise any extension option in any Rolling Stock Lease, extending the terms of that Rolling Stock Lease without RfL’s consent.

1.5 Where any Class 710 Unit is Accepted later than its anticipated date of delivery in the Class 710 MSA:

- (a) RfL may instruct the Operator to use reasonable endeavours to seek the agreement of the relevant lessor to extend the leasing of any Class 172 Unit, Class 315 Unit and/or Class 317 Unit beyond any of the lease expiry dates specified in this Appendix;
- (b) the Train Fleet:
  - (i) shall not include that Class 710 Unit until its Acceptance;
  - (ii) shall not include any Split Diagram Unit; and
  - (iii) shall include any Class 172 Unit, Class 315 Unit and/or Class 317 Unit whose leasing has been extended pursuant to paragraph 1.5(a) until it is no longer required to be operated in passenger service due to the Acceptance of that Class 710 Unit; and
- (c) the obligations under paragraph 5.3 of Schedule 1.1 (*Timetable and Service Development*) and paragraph 1.2 of Schedule 1.2 (*Passenger Service Operating Obligations*) to plan to operate and to operate respectively the Train Fleet shall reflect the Train Fleet as amended in accordance with paragraph 1.5(b).

**Table 1 (Class 172 Fleet)**

Column 1	Column 2	Column 3	Column 4	Column 5
Start of lease period of relevant Units	Cumulative number of Units on lease	Number of Units, configuration and Availability during relevant period	Owner / Lessor	Lease expiry date(s)
Start Date	8 x 2 car	7 Class 172 Units each Weekday	Angel Trains	30 June 2018

**Table 2 (Class 315 Fleet and Class 317 Fleet)**

Column 1	Column 2	Column 3	Column 4
Start of lease period of relevant Units	Cumulative number of Units on lease	Owner / Lessor	Lease expiry date(s)
Start Date	17 x 4 car Class 315 Units	European Rail	31 December 2018
Start Date	14 x 4 car Class 317 Units	Angel Trains	31 December 2018 unless Operator serves Extension Notice (as defined in the Class 317 Lease) before 1 July 2018, in which case, 30 June 2019

**Table 3 (Class 378 Fleet)**

Column 1	Column 2	Column 3	Column 4	Column 5
Start of lease period of relevant Units	Cumulative number of Units on lease	Number of Units, configuration and Availability during relevant period	Owner / Lessor	Lease expiry date(s)
Start Date	57 x 5 car Units	51 Class 378 Units to be made Available for service, and two 'hot spares' each day in accordance with the Class 378 TSA	QW Leasing leases to RfL, which sub-leases to Operator	Expiry Date

**Table 4 (Class 710 Fleet)**

Column 1	Column 2	Column 3	Column 4	Column 5
Start of lease period of relevant Units	Cumulative number of Units on lease	Number of Units, configuration and Availability during relevant period	Owner / Lessor	Lease expiry date(s)
4 December 2017	14 x 4-car Dual Voltage Units	<ul style="list-style-type: none"> <li>Number of Dual Voltage Units to be made Available for service each day in</li> </ul>	RfL	Expiry Date

Column 1	Column 2	Column 3	Column 4	Column 5
Start of lease period of relevant Units	Cumulative number of Units on lease	Number of Units, configuration and Availability during relevant period	Owner / Lessor	Lease expiry date(s)
		<p>accordance with the Availability Benchmark specified in the Class 710 TSA up to the Acceptance of the first 13 Dual Voltage Units; and</p> <ul style="list-style-type: none"> <li>12 Dual Voltage Units to be made Available for service and one 'hot spare' each day in accordance with the Class 710 TSA once all 14 Dual Voltage Units have been Accepted</li> </ul>		
13 April 2018	31 x 4-car AC Only Units	<ul style="list-style-type: none"> <li>Number of AC Only Units to be made Available for service each day in accordance with the Availability Benchmark specified in the Class 710 TSA up to the Acceptance of the first 28 AC Only Units; and</li> <li>29 AC Only Units to be made Available for service including two 'hot spares' each day in accordance with the Class 710 TSA once all 31 AC Only Units have been Accepted</li> </ul>	RfL	Expiry Date



## SCHEDULE 5.2

### Operation, Maintenance and Refresh

#### 1. LEASING OF THE CLASS 172 FLEET

1.1 The Operator shall become a party to the Class 172 Sublease with effect from the Start Date in accordance with the requirements of the Conditions Precedent Agreement until the lease expiry date specified in Table 1 of the Appendix (*Trains Comprising the Train Fleet*) to Schedule 5.1 (*The Train Fleet*).

1.2 The Operator shall make the available to RfL the Spares and Special Tools (as each case defined in the Class 172 Sublease) and RfL shall make those Spares and Special Tools available to the Class 710 Maintainer, in each case at no cost and for the duration of the Class 172 Sublease. RfL shall procure that the Class 710 Maintainer returns those Spares and Special Tools to the Operator in the redelivery condition specified in the Class 172 Lease.

1.3 The Operator hereby acknowledges that the balance standing to the credit of the Heavy Maintenance Security Account (as defined in the Rolling Stock Lease between Angel Trains and the Incumbent Operator in relation to the Class 172 Units) on the Start Date will be released to the Incumbent Operator thereon. The Operator shall procure on or before the Start Date that it has put in place security, as agreed with Angel Trains and RfL, for the Operator's obligations under the Class 172 Sublease to carry out heavy maintenance overhaul work.

1.4 RfL shall by way of Other Adjustment promptly reimburse the Operator an amount equal to any additional costs reasonably and properly incurred by the Operator any additional contribution that the Operator is required to make to the Heavy Maintenance Shortfall Amount (as defined in the Class 172 Lease) as a result of the enforcement by Angel Trains of the security referred to in paragraph 1.3 due to the Class 710 Maintainer failing to carry out heavy overhauls of the Class 172 Units in accordance with the terms of the Class 710 TSA, except to the extent where that failure is caused by the act or omission of the Operator.

#### 2. LEASING OF THE CLASS 315 FLEET AND THE CLASS 317 FLEET

2.1 The Operator shall become a party to the Class 315 Lease and the Class 317 Lease with effect from the Start Date in accordance with the requirements of the Conditions Precedent Agreement until the relevant lease expiry date specified in Table 2 of the Appendix (*Trains Comprising the Train Fleet*) to Schedule 5.1 (*The Train Fleet*).

2.2 The Operator hereby acknowledges that the balance standing to the credit of each of:

- (a) the Blocked Account (as defined in the Class 315 Lease); and
- (b) the Account (as defined in the Class 317 Lease),

in each case, on the Start Date will be released to the Incumbent Operator thereon. The Operator shall procure on the Start Date that an amount equivalent to the relevant balance is paid into the relevant account on the Start Date.

2.3 The Operator may retain:

- (a) 50 per cent. of any saving which it makes as a result of the early return of the Class 315 Fleet, or part thereof; and
- (b) 50 per cent. of any saving which it makes as a result of the early return of the Class 317 Fleet, or part thereof,

in each case due to the introduction into passenger revenue earning service of the Class 710 Fleet in advance of the relevant dates set out in the Appendix to Schedule 5.1. The Operator shall promptly pay the remaining 50 per cent. to RfL by way of Other Adjustment.

### **3. MAINTENANCE, REPAIR AND CLEANING OF THE CLASS 315 FLEET AND CLASS 317 FLEET**

#### **Obligation to maintain, repair and service etc.**

3.1 The Operator shall be responsible for procuring the maintenance, repair, stabling, servicing and cleaning of the Class 315 Fleet and Class 317 Fleet from the East Anglia Franchisee from the Start Date and in respect of any rolling stock vehicle comprising the Class 315 Fleet and Class 317 Fleet, for so long as that vehicle continues to be leased by the Operator.

#### **Interior Train Cleaning and Preparation**

3.2 The Operator shall procure that the interior of each Class 315 Unit and Class 317 Unit is cleaned to satisfy the Interior Cleaning Standard for so long as each such Class 315 Unit and Class 317 Unit continues to be operated by the Operator.

#### **Exterior Train Cleaning and Preparation**

3.3 The Operator shall procure that the exterior of each Class 315 Unit and Class 317 Unit is cleaned at Ilford Depot to satisfy the Exterior Cleaning Standard for so long as each such Class 315 Unit and Class 317 Unit continues to be operated by the Operator.

### **4. LEASING OF THE CLASS 378 FLEET, SIMULATOR AND RELATED EQUIPMENT**

4.1 RfL and the Operator shall enter into the Class 378 Leases with effect from the Start Date pursuant to which RfL will lease the Class 378 Fleet, the Class 378 Simulator and related equipment to the Operator. As at the date of this Agreement, the Class 378 Leases are in the agreed terms marked *CI378L*, but the parties agree that the final form remains subject to the approval of the headlessor.

4.2 Subject to paragraph 4.3, RfL shall procure that the Class 378 Simulator is installed at Willesden Depot by the Start Date and that the Operator has reasonable access during the Concession Period to the Class 378 Simulator for the purpose of driver training and competence assessments.

4.3 The Operator may on reasonable notice to RfL propose that the Class 378 Simulator is relocated to another location within the Greater London Area at the Operator's cost and risk, and subject to the consent of the owner of the Class 378 Simulator, RfL shall promptly consent to that proposal where it is reasonably satisfied that the Operator will:

- (a) take appropriate precautions to prevent damage to the Class 378 Simulator during its transportation and installation, including any precautions recommended by the Class 378 Maintainer; and
- (b) take out and maintain adequate insurance during the transportation of the Class 378 Simulator.

4.4 Where the lessor of the Class 378 Simulator and RfL consents in accordance with paragraph 4.3, in each case to the relocation of the Class 378 Simulator, the Operator shall:

- (a) prior to relocating the Class 378 Simulator to the notified location:
  - (i) notify the landlord that title to the Class 378 Simulator vests in the lessor of the Class 378 Simulator; and
  - (ii) provide a written acknowledgement from that landlord that the Class 378 Simulator is not and will not become a landlord's fixture and that, as between such landlord and the lessor of the Class 378 Simulator, title thereto will remain vested in the lessor and that the lessor may enter on to any such premises or land to remove the Class 378 Simulator;
- (b) procure the installation of the Class 378 Simulator to the notified location, taking the appropriate precautions upon which RfL based its consent to the relocation;
- (c) insure the Class 378 Simulator as anticipated by paragraph 4.3(b); and
- (d) procure continuing access thereafter to Class 378 Simulator by the Class 378 Maintainer at that location by ensuring that the Class 378 Simulator is in an accessible position and connected to the power supply in order to test its functionality.

## **5. MAINTENANCE, REPAIR AND CLEANING OF THE CLASS 378 FLEET**

### **Agency in relation to Class 378 Fleet**

5.1 Under the Class 378 TSA, the Class 378 Maintainer agrees to provide maintenance and related services for the Class 378 Fleet.

5.2 Under the Class 378 TSA, RfL is entitled to nominate the Operator to exercise some of its rights and/or perform some of its obligations, in connection with the Class 378 TSA. With effect from the date of the Class 378 TSA Agency Agreement, RfL shall nominate the Operator to exercise the rights, and perform the obligations, in each case of RfL under the Class 378 TSA specified in the Class 378 TSA Agency Agreement.

5.3 RfL shall not take any action which impedes or frustrates the Operator's proper day-to-day exercise of any rights and performance of obligations under the Class 378 TSA that RfL has nominated the Operator to exercise, and shall not unreasonably delay giving any instruction or approval to the Operator which is necessary for such proper exercise or performance.

### **Additional Services**

5.4 Pursuant to paragraph 5.2, the Operator shall procure that the Class 378 Maintainer carries out Class 378 Additional Services in accordance with the Class 378 TSA. RfL shall pay the Class 378 Maintainer in accordance with the terms of the Class 378 TSA in respect of any Class 378 Additional Services that the Class 378 Maintainer carries out in accordance with the terms of the Class 378 TSA. The Operator shall refund RfL any such payment that RfL makes to the Class 378 Maintainer pursuant to this paragraph 5.4 by way of adjustment to the Concession Payment to be made on the next Payment Date after that payment is made (a *Class 378 Additional Services Adjustment*).

### **Day-to-day relationship**

5.5 The Operator shall establish an effective working relationship with the Class 378 Maintainer in order to ensure the consistent and reliable delivery of the services under the Class 378 TSA and the Passenger Services, including:

- (a) developing contingency arrangements in relation to the Diagrams that Class 378 Units are to operate;
- (b) agreeing stabling arrangements where restrictions are imposed by any Infrastructure Manager;
- (c) operating Class 378 Units in accordance with the Maintenance Plan;
- (d) managing Class 378 Unit failures in service;
- (e) working with the Class 378 Maintainer to establish and manage a process for determining the cause of incidents and the attribution of responsibility;
- (f) developing processes to manage fault finding, repair, rectification, modifications and the carrying out of Class 378 operating diagrams from time to time;
- (g) developing practical arrangements with the Class 378 Maintainer for the hand over and hand back of Class 378 Units at the NXG Facility and other stabling locations identified in the Class 378 TSA; and
- (h) planning and managing the maintenance of the Class 378 Simulator, including the installation of software updates.

### **Interior Train Cleaning and Preparation**

5.6 The Operator shall procure that the interior of each Class 378 Unit is cleaned to satisfy the Interior Cleaning Standard in accordance with the requirements of the relevant Key Performance Indicator in Table 6 of Appendix 1 (*Key Performance Indicators*) to Schedule 8.1 (*Standards Regime (KPIs)*).

### **Exterior Train Cleaning and Preparation**

5.7 The Operator shall procure that the exterior of each Class 378 Unit that is stabled at:

- (a) the New Cross Gate Facility is cleaned at the New Cross Gate Facility; and
- (b) Willesden Depot is cleaned at Willesden Depot,

in each case to satisfy the Exterior Cleaning Standard in accordance with the requirements of the relevant Key Performance Indicator in Table 6 of Appendix 1 to Schedule 8.1.

### **Performance deductions**

5.8 RfL shall pay to the Operator in any Reporting Period any Class 378 Performance Regime Adjustment that is payable in relation to that Reporting Period as part of a TSA Performance Regime Adjustment in accordance with paragraph 3.1 of Schedule 11.1 (*Concession Payments*).

## **6. MODIFICATION TO THE CLASS 378 UNITS AND RELATED EQUIPMENT**

RfL shall provide the Operator with reasonable notice of any Modification to any Class 378 Units and/or related equipment and promptly upon receipt of such notice, the parties shall consult for a reasonable period of time to determine:

- (a) the effects of that Modification on:
  - (i) the Safety Management System; and
  - (ii) the operation and performance of the Class 378 Units and/or the Class 378 Simulator;
- (b) the programme of works to implement that Modification and the extent to which that programme may impact on the availability of Class 378 Units for the delivery of Passenger Services; and
- (c) the steps that may be taken to minimise the extent to which that the programme may impact on such availability.

## **7. LEASING OF THE CLASS 710 FLEET, SIMULATOR AND RELATED EQUIPMENT**

7.1 RfL and the Operator shall enter into the Class 710 Lease with effect from the Start Date pursuant to which RfL will lease the Class 710 Fleet, the Class 710 Simulator and related equipment to the Operator.

7.2 If a Class 710 Unit has been Accepted, but it cannot be operated in revenue earning passenger service from the date of Acceptance for any reason, except where that failure is caused by the Operator, then RfL will compensate the Operator by way of Other Adjustment for any additional costs it incurs in storing such Class 710 Unit during the period of delay, net of any savings realised by the Operator, provided RfL has approved in writing those storage arrangements, including ensuring where required that the Class 710 Maintainer has the continued ability to maintain that Class 710 Unit at that storage location.

7.3 RfL reserves the right to transfer its interest in the Class 710 Fleet, the Class 710 Simulator and that related equipment to any third party or parties without the prior consent of the Operator, and, if so required, the Operator shall promptly enter into a lease or leases with such third party or parties or cooperate with RfL to put in place leasing arrangements with such third party or parties and RfL, in each case when so directed by RfL. Where the Operator is required to enter into a new lease of the Class 710 Fleet, the Class 710 Simulator and that related equipment, such new lease shall be substantially on the terms of the Class 710

Lease. If during any Reporting Period the Operator is obliged by any subsequent lease to pay rental to the lessor:

- (a) RfL shall reimburse such rental to the Operator by way of adjustments to the Concession Payments in a timely manner so as to ensure that the Operator's cash flow is not adversely affected by the preferred payment cycle of the chosen lessor; and
- (b) consequential adjustments shall be made to the definition of Pass Through Adjustment and paragraph 3.1 of Schedule 11.1 (*Concession Payments*), including to the formula contained in that paragraph, to recognise those payments.

## **8. MAINTENANCE, REPAIR AND CLEANING OF THE CLASS 710 AND CLASS 172 FLEETS**

### **Obligation to maintain, repair and service etc.**

8.1 Under the Class 710 TSA, the Class 710 Maintainer agrees to provide full service maintenance and related services for the Class 710 Fleet and the Class 172 Fleet.

### **Agency in relation to Class 710 Fleet**

8.2 Under the Class 710 TSA, RfL is entitled to nominate the Operator to exercise some of its rights and/or perform some of its obligations, in connection with the Class 710 TSA. With effect from the date of the Class 710 TSA Agency Agreement, RfL shall nominate the Operator to exercise the rights, and perform the obligations, in each case of RfL under the Class 710 TSA specified in the Class 710 TSA Agency Agreement in relation to the Class 710 Fleet and the Class 172 Fleet.

8.3 RfL shall not take any action which impedes or frustrates the Operator's proper day-to-day exercise of any rights and performance of obligations under the Class 710 TSA relating to the Class 710 Fleet and the Class 172 Fleet that RfL has nominated the Operator to exercise, and shall not unreasonably delay giving any instruction or approval to the Operator which is necessary for such proper exercise or performance.

### **Additional Services**

8.4 Pursuant to paragraph 8.2, the Operator shall procure that the Class 710 Maintainer carries out Class 710 Additional Services in accordance with the Class 710 TSA. RfL shall pay the Class 710 Maintainer in accordance with the terms of the Class 710 TSA in respect of any Class 710 Additional Services that the Class 710 Maintainer carries out in accordance with the terms of the Class 710 TSA. The Operator shall refund RfL any such payment that RfL makes to the Class 710 Maintainer pursuant to this paragraph 8.4 by way of adjustment to the Concession Payment to be made on the next Payment Date after that payment is made (a *Class 710 Additional Services Adjustment*).

### **Day-to-day relationship**

8.5 The Operator shall establish an effective working relationship with the Class 710 Maintainer in order to ensure the consistent and reliable delivery of the services under the Class 710 TSA and the Passenger Services, including:

- (a) developing contingency arrangements in relation to the Diagrams that Class 710 Units and Class 172 Units are to operate;
- (b) agreeing stabling arrangements where restrictions are imposed by any Infrastructure Manager;
- (c) operating Class 710 Units and Class 172 Units in accordance with the Maintenance Plan;
- (d) managing Class 710 Unit and Class 172 Unit failures in service;
- (e) working with the Class 710 Manufacturer to establish and manage a process for determining the cause of incidents and the attribution of responsibility;
- (f) developing processes to manage fault finding, repair, rectification, modifications and the carrying out of Class 710 Additional Services;
- (g) developing practical arrangements with the Class 710 Maintainer for the hand over and hand back of Class 710 Units and Class 172 Units at Willesden Depot, Ilford Depot and Chingford Depot and other stabling locations identified in the Class 710 TSA;
- (h) planning and managing the maintenance of the Class 710 Simulator, including the installation of software updates; and
- (i) working with the Class 710 Manufacturer to develop the driver trainer training programme for the purpose of training the Operator's driver trainers.

#### **Interior Train Cleaning and Preparation**

8.6 The Operator shall procure that the interior of each Class 710 Unit and Class 172 Unit is cleaned to satisfy the Interior Cleaning Standard in accordance with the requirements of the relevant Key Performance Indicator in Table 6 of Appendix 1 (*Key Performance Indicators*) to Schedule 8.1 (*Standards Regime (KPIs)*).

#### **Exterior Train Cleaning and Preparation**

8.7 The Operator shall procure that the exterior of each Class 710 Unit and Class 172 Unit that is stabled at Willesden Depot is cleaned at Willesden Depot and each Class 710 Unit that is stabled at Ilford Depot and Chingford Depot is cleaned at, as appropriate, Ilford Depot and Chingford Depot, in each case to satisfy the Exterior Cleaning Standard in accordance with the requirements of the relevant Key Performance Indicator in Table 6 of Appendix 1 to Schedule 8.1.

#### **Performance deductions**

8.8 RfL shall pay to the Operator in any Reporting Period any Class 710 Performance Regime Adjustment that is payable in relation to that Reporting Period as part of a TSA Performance Regime Adjustment in accordance with paragraph 3.1 of Schedule 11.1 (*Concession Payments*).

### **9. MAINTENANCE REPORTING**

RfL:

- (a) shall provide the Operator with regular updates on progress in connection with the provision of maintenance and servicing of the Class 172 Fleet, Class 378 Fleet and the Class 710 Fleet; and
- (b) may for the purpose of any such update, provide the Operator with copies (or relevant parts thereof) of any Maintainer Performance Monitoring Report (as defined in the Class 710 TSA) and Maintenance Progress Report (as defined in the Class 378 TSA).

**10. DISTRIBUTION OF MEDIA MATERIAL ON TRAINS**

The Operator shall be prohibited from distributing or permitting the distribution of any media material whatsoever (including newspapers, magazines, leaflets, coupons and flyers) on any rolling stock vehicle forming part of the Train Fleet without the prior consent of RfL.



## SCHEDULE 5.3

### Introduction of Class 710 Fleet and related equipment

#### 1. MANUFACTURE AND SUPPLY OF THE CLASS 710 FLEET

##### Class 710 MSA

1.1 RfL has entered into the Class 710 MSA with the Class 710 Manufacturer for the design, manufacture, testing, certification, commissioning, Acceptance and supply of the Class 710 Fleet for their operation on the London Overground Network. RfL shall project-manage the Class 710 Manufacturer's delivery of the design, construction, testing, Acceptance and supply of the Class 710 Fleet under the Class 710 MSA.

1.2 The scheduled Acceptance dates for the Class 710 Units and related equipment are specified in the Class 710 MSA, with the first Class 710 Unit scheduled to be operated in revenue earning passenger service on 11 December 2017, provided that actual Acceptance of any Class 710 Unit or any related equipment will only occur when RfL is satisfied in accordance with the terms of the Class 710 MSA that the relevant Acceptance criteria have been satisfied or RfL decides to waive any such criteria.

##### Operator's role in facilitating the timely delivery of the Class 710 Fleet

1.3 RfL requires the Operator to facilitate the timely delivery of the Class 710 Fleet and related equipment under the Class 710 MSA by carrying out its obligations specified in this Schedule 5.3 and the Operator agrees that it will carry out those obligations.

1.4 The Operator shall appoint the Fleet Manager, with responsibility for procuring the Operator's compliance with its obligations under this Schedule 5.3 to facilitate the timely delivery of the Class 710 Fleet and related equipment under the Class 710 MSA.

1.5 The Operator shall appoint appropriately skilled persons in a timely manner to support the Fleet Manager in procuring the Operator's compliance with its obligations under this Schedule 5.3.

1.6 The Fleet Manager and the persons appointed by the Operator pursuant to paragraph 1.5 shall have the authority to bind the Operator in relation to the Operator's rights and obligations under this Agreement that relate to the testing, introduction into service and operation of the Class 710 Fleet, the Class 710 Simulator and the related equipment and RfL shall be entitled to rely on and treat as irrevocable decisions made and notified to RfL by or on behalf of the Fleet Manager and those persons in respect thereof.

##### Operator to inform itself fully

1.7 The Operator confirms that it has studied in detail the Train Technical Requirements and each document comprised therein, the Maintenance Plan and installation standard contemplated by the Class 710 MSA, and has obtained for itself all necessary information as to risks, contingencies and other circumstances which may influence or affect its ability to perform its obligations under this Schedule 5.3 and operate the Class 710 Fleet, the Class 710 Simulator and related equipment provided under the Class 710 MSA. The Operator shall not be entitled to any relief from its obligations under this Agreement, including any relief from

any liability it may incur under Schedule 7 (*Operating Performance*) or Schedule 8 (*Service Quality and Passenger Perception*) in delivering the Concession Services, on the grounds that it did not or could not have reasonably foreseen any matter which might affect or have affected the design, manufacture, testing, certification, commissioning, Acceptance, supply, maintenance or operation of the Class 710 Fleet, the Class 710 Simulator and related equipment provided under the Class 710 MSA.

## **2. DESIGN ASSURANCE**

### **Class 710 Unit, equipment and depot design assurance**

2.1 The Class 710 MSA sets out a process for progressive assurance to be provided by the Class 710 Manufacturer in relation to its performance under the Class 710 MSA. The Operator shall participate in the design assurance aspects of that process in accordance with this paragraph 2.

#### **Operator's expert opinion**

2.2 The Operator shall as and when required by RfL under any of the preliminary and detailed unit, equipment design and depot fit out programmes contemplated by the Class 710 MSA, provide its direction and expert opinion to RfL and the Class 710 Manufacturer in relation to any submission made by the Class 710 Manufacturer in respect of any of the Class 710 Units, Class 710 Simulator and the Chingford Depot fit out aspects referred to in paragraphs 2.3 and 2.4 in order that RfL may, as appropriate, issue to the Class 710 Manufacturer in a timely manner Assurance Acceptance (as defined in the Class 710 MSA).

### **Class 710 Unit and Class 710 Simulator design and depot fit out assurance**

2.3 The Class 710 Unit and Class 710 Simulator design aspects upon which the Operator is to provide its direction and expert opinion pursuant to paragraph 2.2 comprise:

- (a) the interior cab layout to the extent not defined by Railway Industry Standards or otherwise by Good Industry Practice;
- (b) the Train Management System (as defined in the Class 710 MSA) to the extent that system interfaces with the driver or train crew, including in relation to cab and door alarms, messages and prompts;
- (c) the passenger/train and train crew/train interfaces insofar as those interfaces reasonably affect the safe operation of the Class 710 Units; and
- (d) such other aspects of the Class 710 Unit and Class 710 Simulator design as RfL requires from time to time including proactively contributing to hazard reviews and the development of operating scenarios to be used on the Class 710 Simulator in accordance with the Class 710 MSA.

#### **Chingford fit out assurance**

2.4 The Chingford Depot fit out aspects that the Operator is to provide pursuant to paragraph 2.2 comprise the safety and staff welfare aspects of those areas of Chingford Depot that will be affected by the fit out works.

### **Close-Out Meetings**

2.5 The Operator shall as and when required by RfL, attend any Close-Out Meeting (as defined in the Class 710 MSA) with the Class 710 Manufacturer and RfL for the purpose of determining whether, as appropriate, the relevant preliminary or detailed design phase has been completed.

### **3. RELEVANT APPROVALS**

3.1 Where:

- (a) any documentation forming part of a submission to a Competent Authority for a Relevant Approval may only be prepared by a Train Operator in its capacity as an operator of the Class 710 Units, the Operator shall prepare that documentation; and
- (b) a Relevant Approval may only be granted to a Train Operator, the Operator shall make the formal presentation of the submissions for such Relevant Approval, including in relation to Route Acceptance (as defined in the Class 710 TSA),

provided that, in each case, the Class 710 Manufacturer has supplied in a timely manner any documentation and information relating to the Class 710 Units and related equipment and their maintenance and any other materials reasonably required in accordance with the Relevant Approvals Management Plan (as defined in the Class 710 MSA), which in each case, is in a format that is suitable for submission to the applicable Competent Authority without redrafting, and where appropriate, is reasonably necessary for the Operator to prepare its Safety Certificate.

3.2 The Operator shall communicate regularly and in an effective manner with the Class 710 Manufacturer to coordinate the exchange of information and the development of submissions to Competent Authorities for the purpose of obtaining Relevant Approvals.

### **4. TRAINING**

#### **Training programmes**

4.1 The Class 710 Manufacturer is obliged to develop a driver trainer training programme under the Class 710 MSA. As and when required by RfL, the Operator shall provide its expert opinion to RfL in relation to those programmes (including the relevant training materials) and to discuss in good faith with RfL and the Class 710 Manufacturer, any changes that the Operator considers are reasonably necessary in order that its driver trainers and other trainers can train its drivers and other employees to, as appropriate, operate the Class 710 Units, the Class 710 Simulator and any related items and to comply with the relevant provisions of the Class 710 TSA and the Class 710 Lease, in each case in accordance with all Applicable Laws and Standards (as defined in the Class 710 MSA), Relevant Approvals and the Safety Certificate.

4.2 The Operator shall use the Class 710 Simulator to train its drivers in developing a working knowledge of the London Overground Network and the Class 710 Units. The Operator shall report to RfL each Reporting Period as part of the Periodic Concession Report, the Minimum Simulator Available Hours (as defined in the Class 710 TSA) for that Reporting Period.

### **Available Class 710 Units for training**

4.3 The Operator shall work with RfL and the Class 710 Manufacturer to maximise the number of Class 710 Units that are available for the purpose of driver training, including meeting with RfL and the Class 710 Manufacturer no later than six months prior to Acceptance of the first Class 710 Unit to agree the times and locations for those units to be made available for that training to be carried out.

## **5. CLASS 710 UNIT AND EQUIPMENT TESTING**

### **Class 710 Unit testing**

5.1 The Class 710 Manufacturer shall be responsible for testing each Class 710 Unit until its Acceptance.

### **Testing of Class 710 Simulator**

5.2 The Operator shall as and when required by RfL, provide its expert opinion in relation to the testing of operating scenarios used on the Class 710 Simulator.

## **6. CLASS 710 UNIT AND EQUIPMENT ACCEPTANCE**

### **RfL to accept units**

6.1 RfL shall be responsible for decisions relating to Acceptance of the Class 710 Fleet under the Class 710 MSA.

### **Class 710 Simulator**

6.2 The Operator shall provide RfL with reasonable notice, which shall be no later than 13 January 2017, of its preferred location within the Greater London Area for the Class 710 Simulator to be located (the *Class 710 Simulator Location*).

6.3 RfL shall procure that the Class 710 Manufacturer installs the Class 710 Simulator at the Class 710 Simulator Location in order that the Class 710 Simulator may achieve Acceptance on the Simulator Acceptance Date, provided that neither RfL nor the Class 710 Manufacturer will procure access to the Class 710 Simulator Location where such access is required, which shall be the Operator's responsibility. The Operator shall be responsible for facilitating the installation by the Class 710 Manufacturer of the Class 710 Simulator at the Class 710 Simulator Location by ensuring that:

- (a) there is an appropriate place for the Class 710 Simulator to be installed, with access to the power supply in order that the Class 710 Simulator can be made functional by the Class 710 Manufacturer; and
- (b) the Class 710 Manufacturer has access to the Class 710 Simulator Location no later than:
  - (i) 13 February 2017 in order to scope that location for the purposes of installation and Acceptance of the Class 710 Simulator;
  - (ii) 13 March 2017 in order to deliver the Class 710 Simulator;
  - (iii) 1 May 2017 in order to complete site acceptance; and

- (iv) 9 August 2017 in order to carry out installation and the Acceptance of the Class 710 Simulator.

6.4 If the Class 710 Simulator is not installed at the Class 710 Simulator Location and Accepted by the Simulator Acceptance Date for whatever reason, the Operator shall take steps to mitigate any impact on the training of its train drivers in route knowledge of the London Overground Network.

6.5 The Operator shall as and when required by RfL, attend any meeting and provide its expert opinion to determine whether the Class 710 Simulator should be Accepted.

## **7. COMPENSATION BY OPERATOR FOR LATE ACCEPTANCES**

7.1 The Operator shall indemnify RfL against any liability on the part of RfL to compensate the Class 710 Manufacturer and/or Class 710 Maintainer under the terms of respectively, the Class 710 MSA or the Class 710 TSA due to:

- (a) the Class 710 Manufacturer and/or Class 710 Maintainer being prevented from complying with or suffering an adverse impact on its ability to perform any of its obligations under respectively the Class 710 MSA or the Class 710 TSA; and/or
- (b) the Class 710 Manufacturer or Class 710 Maintainer incurring any additional costs,

in each case where caused by the Operator failing to perform its obligations under this Agreement.

7.2 RfL shall procure that the Operator is entitled to participate fully in the process for claiming, disputing and settling claims made by the Class 710 Manufacturer or the Class 710 Maintainer under respectively the Class 710 MSA or the Class 710 TSA, in each case where the Operator is alleged to have caused any of the circumstances referred to in paragraph 7.1 due to its failure to comply with its obligations under this Agreement, provided that RfL shall have the right to settle any claim made against it by the Class 710 Manufacturer under the Class 710 MSA or the Class 710 Maintainer under the Class 710 TSA.

## **8. COMPENSATION BY RfL FOR LATE CLASS 710 SIMULATOR**

RfL shall compensate the Operator by way of Other Adjustment where the Class 710 Simulator is not installed at the Class 710 Simulator Location and Accepted on the Simulator Acceptance Date, (except where the Operator is responsible for the failure to grant access for installation, testing or Acceptance in accordance with paragraph 6.3) for the additional costs reasonably and properly incurred by the Operator in carrying out or procuring the carrying out the training of its train drivers by other means, provided that RfL shall not be liable to pay the Operator more than it is entitled to receive from the Class 710 Manufacturer in respect of that failure under the terms of the Class 710 MSA.

## **9. GENERAL ASSISTANCE**

In addition to the specific obligations specified in this Schedule 5.3 in relation to the Class 710 Fleet and related equipment, the Operator shall, to the extent reasonably requested by RfL and subject to payment of the Operator's reasonable costs by the relevant third party, co-operate with any third party which RfL may specify (including a Successor Operator, a rolling stock vehicle manufacturer, Network Rail or RfL (I)) in connection with the testing

and commissioning of new rolling stock vehicles or any new equipment to be fitted to rolling stock vehicles (whether such rolling stock vehicles are new or otherwise). Such co-operation shall not unreasonably disrupt the provision and operation of the Concession Services, and may include:

- (a) the movement of test trains within and around depots;
- (b) making available personnel to operate test trains along the London Overground Network and provide information on the London Overground Network;
- (c) making Train Slots available for such purposes;
- (d) granting or procuring the grant of access to the third party and its representatives to any relevant facilities; and
- (e) the delivery of rolling stock vehicles to specific locations.

**SCHEDULE 6**

**ANTICIPATED SERVICE CHANGES**

- Schedule 6.1:                    Anticipated Service Increments**  
**Appendix:            List of Anticipated Service Increments**
- Schedule 6.2:                    Adjustments to Concession Payments**
- Schedule 6.3:                    Mileage Adjustment Rates for Service Increment 4a**
- Schedule 6.4:                    High Speed 2**





## SCHEDULE 6.1

### Anticipated Service Increments

#### 1. CALLING A SERVICE INCREMENT

##### Notice of obligation to implement a Service Increment

1.1 RfL may issue a written notice to the Operator calling for the implementation of any Service Increment:

- (a) in accordance with the terms of that Service Increment set out in the Appendix, in which case paragraph 4 (*Consequences of calling a Service Increment*) shall apply; or
- (b) subject to paragraph 1.2, on different terms to those specified in that Service Increment and/or by calling for a Service Level Commitment that is different from the Service Level Commitment that is the subject of that Service Increment, provided that difference is not material.

##### Service Increment to be implemented on different terms

1.2 Where RfL issues a written notice to the Operator in accordance with paragraph 1.1(b):

- (a) the parties shall consult for a reasonable period of time after the call of the relevant Service Increment to agree the amendments to this Agreement that are required in order to reflect only that call on different terms and/or the different Service Level Commitment; and
- (b) such call shall be a Change, but only to the extent of determining the difference from the price specified in Schedule 6.2 (*Adjustments to Concession Payments*) and, in the case of Service Increment 4a, the mileage adjustment rates specified in Schedule 6.3 (*Mileage Adjustment Rates for Service Increment 4a*) caused only by that call on different terms and/or that different Service Level Commitment.

1.3 Where any condition specified in the Appendix in relation to a Service Increment is not satisfied (other than by reason of failure by the Operator to take reasonable steps to satisfy such condition, where appropriate), then that shall constitute 'different terms' for the purposes of paragraph 1.2 and paragraph (ee) of the definition of Change.

##### Applicable Service Increment

1.4 Where RfL calls any Service Increment, the Service Level Commitment that is the subject of that Service Increment shall be the Service Level Commitment that applies unless and until:

- (a) the date the Operator is required by RfL to operate an alternative Timetable through the issue of a new Service Level Commitment in accordance with the passenger service development procedure set out Schedule 1.1 (*Timetable and Service Development*) or this Schedule 6.1; or
- (b) the end of the Concession Period if RfL does not so require.

## 2. REQUIREMENT TO IMPLEMENT A SERVICE INCREMENT

2.1 Where RfL calls any Service Increment, the Operator shall, subject to the satisfaction of the conditions that apply to that Service Increment, implement that Service Increment in accordance with its terms, whether those terms are as set out in the Appendix or as notified to the Operator by RfL pursuant to paragraph 1.1(b).

2.2 The requirement to implement a Service Increment shall include an obligation on the Operator:

- (a) to use all reasonable endeavours in accordance with the requirements of paragraph 10 (*Timetable Development Rights during a Timetable Planning Period*) of Schedule 1.1 (*Timetable and Service Development*) to obtain the Timetable Development Rights that are necessary in order to provide the Passenger Services that are the subject of that Service Increment;
- (b) to consult with the Class 378 Maintainer and/or the Class 710 Maintainer as appropriate, in a timely manner in order to agree any necessary changes to the relevant maintenance plan to reflect any amended maintenance periodicities as a consequence of operating the Passenger Services that are the subject of that Service Increment;
- (c) to consult such other persons as are appropriate on any operational changes and/or practices in order to operate the Passenger Services that are the subject of that Service Increment within the operating capability and capacity of the existing London Overground Network; and
- (d) to mitigate the impacts of any upgrade or enhancement of the London Overground Network on existing services and passengers where the implementation of any Service Increment does require such an upgrade or enhancement before the relevant Passenger Services can be operated.

2.3 Where a Service Increment is called by RfL, the Operator shall implement that Service Increment as soon as reasonably practicable thereafter, but in any event shall operate the Passenger Services that are the subject of that Service Increment,

- (a) on the earliest date of operation specified in the Appendix; or
- (b) where RfL specifies otherwise, on any Passenger Change Date that occurs after the date referred to in paragraph 2.3(a) that is no less than 12 months after that Service Increment is called.

## 3. CONDITIONS TO THE REQUIREMENT TO OPERATE PASSENGER SERVICES

Unless otherwise stated in the Table in the Appendix as a condition to the operation of the Passenger Services that are the subject of a Service Increment, no infrastructure comprising the London Overground Network, the wider network or any London Overground Station need be upgraded or enhanced in any way, or additional rolling stock procured or existing rolling stock comprising the Train Fleet enhanced, in each case in order to operate those Passenger Services.

#### 4. CONSEQUENCES OF CALLING A SERVICE INCREMENT

##### **Financial consequences where Passenger Services to operate as anticipated**

4.1 Where in accordance with the terms of any Service Increment, RfL calls for the Passenger Services that are the subject of that Service Increment to be operated on the earliest date of operation specified in the Appendix, then from that date of operation of those Passenger Services:

- (a) Concession Payments specified in Appendix 1 (*Annual Concession Payment Figures*) to Schedule 11.2 (*Annual Concession Payments and Indexation*) shall be amended to reflect the payments set out in the relevant Table in Schedule 6.2 (*Adjustments to Concession Payments*) and the resulting adjusted Concession Payments shall be made accordingly;
- (b) the mobilisation payment that is specified in the relevant Table in Schedule 6.2 for the Concession Year in which those additional Passenger Services are to be first operated:
  - (i) is an amount as at the Indexation Base Month and shall be indexed in accordance with paragraph 3 (*Indexation by reference to RPI*) of Schedule 11.2; and
  - (ii) shall be payable by RfL to the Operator by way of Other Adjustment, provided that no other mobilisation payment specified in that Table in relation to any other Concession Year shall be payable; and
- (c) the traction electricity prices specified in Appendix 2 (*Assumed Electricity Prices*) to Schedule 11.2 shall apply.

##### **Financial consequences where Passenger Services to operate later than anticipated**

4.2 Where in accordance with the terms of any Service Increment, RfL calls for the Passenger Services that are the subject of that Service Increment to be operated in the same Concession Year as the Concession Year (the ***Reference Operating Year***) in which the earliest date of operation specified in the Appendix occurs, but on a later Passenger Change Date, then from that date of operation of those Passenger Services:

- (a) Concession Payments shall be amended to reflect the payments set out in relation to the Reference Operating Year in the relevant Table in Schedule 6.2 and each subsequent Concession Year as set out in the relevant Table in Schedule 6.2;
- (b) the mobilisation payment that is specified in the relevant Table in Schedule 6.2 for the Reference Operating Year:
  - (i) is an amount as at the Indexation Base Month and shall be indexed in accordance with paragraph 3 of Schedule 11.2; and
  - (ii) shall be payable by RfL to the Operator by way of Other Adjustment, provided that no other mobilisation payment specified in that Table in relation to any other Concession Year shall be payable; and

- (c) the traction electricity price for the Reference Operating Year shall continue to apply for the remainder of that Concession Year and the relevant traction electricity price for each subsequent Concession Year shall apply as set out in Appendix 2 to Schedule 11.2.

4.3 Where in accordance with the terms of any Service Increment, RfL calls for the Passenger Services that are the subject of that Service Increment to be operated in a later Concession Year (the *Operating Year*) than the Reference Operating Year, then from that date of operation of those Passenger Services:

- (a) Concession Payments shall be amended to reflect the payments set out in relation to the Operating Year in the relevant Table in Schedule 6.2 and each subsequent Concession Year as set out in the relevant Table in Schedule 6.2, provided that, those Concession Payments will not be amended to reflect the Concession Payments set out in the relevant Table in Schedule 6.2 for the Reference Operating Year or any other preceding Concession Year;
- (b) the mobilisation payment that is specified in the relevant Table in Schedule 6.2 for the Operating Year:
  - (i) is an amount as at the Indexation Base Month and shall be indexed in accordance with paragraph 3 of Schedule 11.2; and
  - (ii) shall be payable by RfL to the Operator by way of Other Adjustment, provided that no other mobilisation payment specified in that Table in relation to any other Concession Year shall be payable; and
- (c) the traction electricity price for the Operating Year shall be the price that is set out in Schedule 11.2 for the Operating Year and the traction electricity price for each subsequent Concession Year shall also apply as set out in Appendix 2 to Schedule 11.2.

#### **Service Increments where additional rolling stock is required**

4.4 Where a Service Increment is called by RfL and it is a condition to the operation of the Passenger Services that are the subject of that Service Increment that RfL procures Class 710 Optional Units, then with effect from the date occurring no less than two Reporting Periods prior to the date of operation of the relevant additional Passenger Services (except in relation to Service Increment 4d where the requirement shall be one Reporting Period):

- (a) RfL shall lease the relevant Class 710 Optional Units to the Operator in accordance with the terms of the Class 710 Lease and the Class 710 Lease shall be amended accordingly to reflect those additional Class 710 Optional Units; and
- (b) RfL shall procure that, to the extent necessary, the Class 710 TSA is amended in order that those Class 710 Optional Units are maintained in accordance with the terms of the Class 710 TSA.

**APPENDIX TO SCHEDULE 6.1**

**LIST OF ANTICIPATED SERVICE INCREMENTS**

Column 1	Column 2
Service Increment Description	Conditions to implementation of Service Increment
<p><b>3a Additional NLL Services</b></p>	
<p>This Service Increment 3a requires the Operator within the period following notice specified in paragraph 1 of column 2 to operate an additional two tph all day between Clapham Junction Station and Stratford Station as more particularly described in <i>SLC3a</i>.</p>	<p>The following are conditions to the operation of additional NLL Passenger Services that are the subject of this Service Increment 3a:</p> <ol style="list-style-type: none"> <li>1. RfL providing the Operator with a minimum of 12 months’ notice of the requirement to operate those Passenger Services which date of operation shall be no earlier than the Passenger Change Date in [REDACTED]<sup>24</sup>;</li> <li>2. RfL, no less than two Reporting Periods prior to the date of operation of those Passenger Services, procuring that six 4-car Class 710 Units are, subject to the terms of the Class 710 TSA, made available to the Operator for deployment on the WEL to provide existing Passenger Services in order that six 5-car Class 378 Units operating on the WEL can be redeployed to the NLL for the purpose of providing the Passenger Services that are the subject of this Service Increment 3a; and</li> <li>3. the Operator obtaining the Timetable Development Rights that are necessary in order to provide the Passenger Services that are the subject of this Service Increment 3a.</li> </ol>
<p><b>3b Additional ELL Services to Crystal Palace</b></p>	
<p>This Service Increment 3b requires the Operator within the period following notice specified in paragraph 1 of column 2 to operate an</p>	<p>The following are conditions to the operation of additional ELL Passenger Services that are the subject of this Service Increment 3b:</p>

<sup>24</sup> Certain of the text in this table has been redacted by Rail for London in accordance with the provisions of the Freedom of Information Act 2000.

Column 1	Column 2
Service Increment Description	Conditions to implementation of Service Increment
<p>additional two tph throughout the day between Dalston Junction Station and Crystal Palace Station, as more particularly described in <i>SLC3b</i>.</p>	<ol style="list-style-type: none"> <li>1. RfL providing the Operator with a minimum of 12 months’ notice of the requirement to operate those Passenger Services which date of operation shall be no earlier than the Passenger Change Date in [REDACTED];</li> <li>2. RfL, no less than two Reporting Periods prior to the date of operation of those Passenger Services, procuring that the six 4-car Class 710 Units referred to in Service Increment 3a are, subject to the terms of the Class 710 TSA, made available to the Operator for deployment on the WEL to provide existing Passenger Services in order that six 5-car Class 378 Units operating on the WEL can be redeployed to the ELL for the purpose of providing the Passenger Services that are the subject of this Service Increment 3b; and</li> <li>3. the Operator obtaining the Timetable Development Rights that are necessary in order to provide the Passenger Services that are the subject of this Service Increment 3b.</li> </ol>
<p><b>4a Additional ELL Services to Clapham Junction</b></p>	
<p>This Service Increment 4a requires the Operator within the period following notice specified in paragraph 1 of column 2 to operate an additional two tph throughout the day between Dalston Junction Station and Clapham Junction Station, as more particularly described in <i>SLC4a</i>.</p> <p>The mileage adjustment rates for the 5-car Class 710 Optional Units shall for the purpose of Schedule 1.3 (<i>Managing Changes to the Passenger Services</i>) shall be those rates set out in Schedule 6.3 (<i>Mileage Adjustment Rates for Service Increment 4a</i>).</p>	<p>The following are conditions to the operation of the additional ELL Passenger Services that are the subject of this Service Increment 4a:</p> <ol style="list-style-type: none"> <li>1. RfL providing the Operator with a minimum of 12 months’ notice of the requirement to operate those Passenger Services which date of operation shall be no earlier than the Passenger Change Date in [REDACTED];</li> <li>2. RfL, no less than two Reporting Periods prior to the date of operation of those Passenger Services, procuring that four 5-car Class 710 Optional Units are, subject to the terms of the Class 710 TSA, made available to the Operator for deployment on the NLL to provide existing Passenger Services in order that four 5-car Class 378 Units operating on the NLL can be redeployed to the ELL for the purpose of providing the Passenger Services that are the subject of this Service Increment 4a;</li> <li>3. RfL, no less than two Reporting Periods prior to the date of operation of the Passenger Services that are the subject of this Service Increment 4a, procuring that appropriate stabling that is no more than 60 minutes train driving time from a terminus station on the ELL is made available to the Operator to stable the four Class</li> </ol>

Column 1	Column 2
Service Increment Description	Conditions to implementation of Service Increment
	<p>378 Units referred to in paragraph 2; and</p> <p>4. the Operator obtaining the Timetable Development Rights that are necessary in order to provide the Passenger Services that are the subject of this Service Increment 4a.</p>
<p><b>4b Additional WEL Services</b></p>	
<p>This Service Increment 4b requires the Operator within the period following notice specified in paragraph 1 of column 2 to operate an additional one tph throughout the day between Watford Junction Station and Euston Station, thereby increasing the service from 3 tph to 4 tph, as more particularly described in <i>SLC4b</i>.</p>	<p>The following are conditions to the operation of the additional WEL Passenger Services that are the subject of this Service Increment 4b:</p> <ol style="list-style-type: none"> <li>1. RfL providing the Operator with a minimum of 12 months' notice of the requirement to operate those Passenger Services which date of operation shall be no earlier than the Passenger Change Date in [REDACTED];</li> <li>2. RfL, no less than two Reporting Periods prior to the date of operation of those Passenger Services, procuring that two 4-car Class 710 Optional Units are, subject to the terms of the Class 710 TSA, made available to the Operator for deployment on the WEL for the purpose of providing those Passenger Services;</li> <li>3. RfL, no less than two Reporting Periods prior to the date of operation of those Passenger Services, procuring that appropriate stabling that is no more than 60 minutes train driving time from a terminus station on the WEL is made available to the Operator to stable the two Class 710 Optional Units referred to in paragraph 2;</li> <li>4. the Operator obtaining the Timetable Development Rights that are necessary in order to provide the Passenger Services that are the subject of this Service Increment 4b.</li> </ol>

Column 1	Column 2
Service Increment Description	Conditions to implementation of Service Increment
<p><b>4c Additional LECL Services</b></p>	
<p>This Service Increment 4c requires the Operator within the period following notice specified in paragraph 1 of column 2 to operate an additional:</p> <p>(a) two tph in the Peak between Enfield Town Station and Seven Sisters Station; and</p> <p>(b) two tph in the Off-Peak between Enfield Town Station and Liverpool Street Station,</p> <p>in each case as more particularly described in <i>SLC4c</i>.</p>	<p>The following are conditions to the operation of the additional LECL Passenger Services that are the subject of this Service Increment 4c:</p> <ol style="list-style-type: none"> <li>1. RfL providing the Operator with a minimum of 12 months’ notice of the requirement to operate those Passenger Services which date of operation shall be no earlier than the Passenger Change Date in [REDACTED];</li> <li>2. RfL, no less than two Reporting Periods prior to the date of operation of those Passenger Services, procuring that two 4-car Class 710 Optional Units are, subject to the terms of the Class 710 TSA, made available to the Operator for deployment on the LECL for the purpose of providing those Passenger Services;</li> <li>3. RfL, no less than two Reporting Periods prior to the date of operation of those Passenger Services, procuring that appropriate stabling that is no more than 60 minutes train driving time from a terminus station on the LECL is made available to the Operator to stable the two Class 710 Optional Units referred to in paragraph 2;</li> <li>4. the Operator obtaining the Timetable Development Rights that are necessary in order to provide the Passenger Services that are the subject of this Service Increment 4c.</li> </ol>
<p><b>4d Additional GOB Services</b></p>	
<p>This Service Increment 4d requires the Operator within the period following notice specified in paragraph 1 of column 2 to operate an additional one tph in the Peak between Gospel Oak Station and Barking Station, thereby increasing the service from 4 tph to 5 tph in the Peak, as more particularly described in <i>SLC4d</i>.</p>	<p>The following are conditions to the operation of the additional GOB Passenger Services that are the subject of this Service Increment 4d:</p> <ol style="list-style-type: none"> <li>1. RfL providing the Operator with a minimum of 12 months’ notice of the requirement to operate those Passenger Services which date of operation shall be no earlier than the Passenger Change Date in [REDACTED];</li> <li>2. RfL, no less than two Reporting Periods prior to the date of operation of those Passenger Services, procuring that one 4-car Class 710 Optional Unit is, subject to the terms of the Class 710 TSA, made available</li> </ol>



Column 1	Column 2
Service Increment Description	Conditions to implementation of Service Increment
	<p>to the Operator for deployment on the GOB for the purpose of providing those Passenger Services;</p> <ol style="list-style-type: none"> <li>3. RfL, no less than one Reporting Period prior to the date of operation of those Passenger Services, procuring that appropriate stabling that is no more than 60 minutes train driving time from a terminus station on the GOB is made available to the Operator to stable the Class 710 Optional Unit referred to in paragraph 2;</li> <li>4. RfL procuring the completion of the electrification of the GOB; and</li> <li>5. the Operator obtaining the Timetable Development Rights that are necessary in order to provide the Passenger Services that are the subject of this Service Increment 4d.</li> </ol>
<p><b>4e Barking Riverside Extension</b></p>	
<p>This Service Increment 4e requires the Operator within the period following notice specified in paragraph 1 of column 2 to:</p> <ol style="list-style-type: none"> <li>(a) operate extended Passenger Services between Gospel Oak Station and Barking Riverside Station, beyond the existing terminus at Barking Station, as more particularly described in <i>SLC4e</i>; and</li> <li>(b) become the Facility Owner at Barking Riverside Station.</li> </ol> <p>Where this Service Increment 1a is called by RfL:</p> <ol style="list-style-type: none"> <li>(a) RfL shall procure the maintenance of the TVM and ticket gateline referred to in paragraph 4(a) of column 2; and</li> <li>(b) Barking Riverside Station shall be deemed to be added in a new row, a cross shall be deemed added to the GOB column and ‘FO’ shall be added to the ‘Operator’ column, in each case to the Table of stations in the Appendix (<i>London Overground Stations</i>) to Schedule 4.1</li> </ol>	<p>The following are conditions to the operation of the extended Passenger Services to Barking Riverside Station that are the subject of this Service Increment 4e:</p> <ol style="list-style-type: none"> <li>1. RfL providing the Operator with a minimum of 12 months’ notice of the requirement to operate those Passenger Services which date of operation shall be no earlier than the Passenger Change Date in [REDACTED];</li> <li>2. Service Increment 4d has been called for by RfL and the conditions to Service Increment 4d have been satisfied;</li> <li>3. RfL, no less than two Reporting Periods prior to the date of operation of those Passenger Services, procuring that two 4-car Class 710 Optional Units are, subject to the terms of the Class 710 TSA, made available to the Operator for deployment on the GOB for the purpose of providing those Passenger Services;</li> <li>4. RfL procuring the completion of the following infrastructure works:             <ol style="list-style-type: none"> <li>(a) construction and fit out works at Barking Riverside Station in order for the intended Passenger Services to call at that station, including two platforms, two station entrances, the installation of two lifts and the supply by RfL of one TVM per station entrance, a ticket gateline and other facilities commensurate with</li> </ol> </li> </ol>

Column 1	Column 2
Service Increment Description	Conditions to implementation of Service Increment
<p><i>(Property Leasing and Access).</i></p>	<p>other London Overground Stations of similar size, in each case for use at the station; and</p> <p>(b) construction works for the line between Barking Station and Barking Riverside Station and safety certification for the operation of railway passenger services; and</p> <p>5. the Operator obtaining the Timetable Development Rights that are necessary in order to provide the Passenger Services that are the subject of this Service Increment 4e.</p>
<p><b>5 STAR Services</b></p>	
<p>This Service Increment 5 requires the Operator within the period following notice specified in paragraph 1 of column 2 to:</p> <p>(a) operate a new two tph Passenger Service between Stratford Station and Angel Road Station, calling at Lea Bridge Station, Tottenham Hale Station and Northumberland Park Station, as more particularly described in <i>SLC5</i>; and</p> <p>(b) become the Facility Owner at Angel Road Station, Lea Bridge Station and Northumberland Park Station.</p> <p>The parties shall make such consequent changes to this Agreement as are necessary to reflect the addition of a new Route and stations including adding the Stratford to Angel Road Route to the definition of <i>Route</i>, and agreeing the following:</p> <p>(a) service punctuality bands relating to that route to Appendix 1 (<i>Service Punctuality Bands Table</i>) to Schedule 7.1 (<i>Operating Performance Regime</i>);</p> <p>(b) service reliability bands relating to that route to Appendix 2 (<i>Service</i></p>	<p>The following are conditions to the operation of the Passenger Services between Stratford Station and Angel Road Station that are the subject of this Service Increment 5:</p> <p>1. RfL providing the Operator with a minimum of 12 months’ notice of the requirement to operate the Passenger Services which date of operation shall be no earlier than the Passenger Change Date in [REDACTED];</p> <p>2. RfL, no less than two Reporting Periods prior to the date of operation of those Passenger Services, procuring that two 4-car Class 710 Optional Units are, subject to the terms of the Class 710 TSA, made available to the Operator for deployment on the new Route for the purpose of providing those Passenger Services;</p> <p>3. RfL, no less than two Reporting Periods prior to the date of operation of those Passenger Services, procuring that appropriate stabling that is no more than 60 minutes train driving time from a terminus station on the new Route is made available to the Operator to stable the Class 710 Optional Units referred to in paragraph 2;</p> <p>4. RfL procuring the completion of the following infrastructure works:</p> <p>(a) construction and fit out works of the new Lea Bridge Station in order for the intended Passenger Services to call at that station, two platforms, one station entrance, the installation of two lifts and the supply by RfL of one TVM per station entrance, a ticket gateline and other facilities commensurate with other</p>

Column 1	Column 2
Service Increment Description	Conditions to implementation of Service Increment
<p><i>Reliability Bands Table</i>) to Schedule 7.1; and</p> <p>(c) adjustments to Schedule 9 (<i>Revenue Protection Incentive Regime</i>) to reflect the Ticket Revenue relating to that route.</p>	<p>London Overground Stations of similar size, in each case for use at the station;</p> <p>(b) construction of new track between Coppermill Junction and Angel Road Station and safety certification for the operation of railway passenger services along that track; and</p> <p>(c) construction of new platforms at Angel Road Station, Northumberland Park Station, Stratford Station and Tottenham Hale Station.</p> <p>5. the Operator obtaining the Timetable Development Rights that are necessary in order to provide the Passenger Services that are the subject of this Service Increment 5.</p>



## SCHEDULE 6.2

### Adjustments to Concession Payments

#### 1. SERVICE INCREMENT 3a: ADDITIONAL NLL SERVICES

The figures in:

- (a) columns 2 to 4 inclusive of the table below show the increments or decrements to the figures for calculation of the Annual Concession Payments set out in Appendix 1 (*Annual Concession Payment Figures*) to Schedule 11.2 (*Annual Concession Payments and Indexation*) where Service Increment 3a is called in accordance with the relevant terms set out in Schedule 6.1 (*Anticipated Service Increments*); and
- (b) column 5 in the table below shows the one-off mobilisation payment that applies in relation to the Concession Year in which it is shown and which:
- (i) is indexed pursuant to, as the case may be, paragraph 4.1(b)(i), 4.2(b)(i) or 4.3(b)(i) in each case of Schedule 6.1 (*Anticipated Service Increments*); and
  - (ii) will be payable as a single Other Adjustment in the Reporting Period in which the Passenger Services that are the subject of Service Increment 3a are first operated.

Column 1	Column 2	Column 3	Column 4	Column 5
Concession Year	FXD (£)	VCRPI (£)	PRPI (£)	Service Increment Mobilisation Payment (£)
Year 1 (13 November 2016 to 31 March 2017)	25			
Year 2 (1 April 2017 to 31 March 2018)				
Year 3 (1 April 2018 to 31 March 2019)				
Year 4 (1 April 2019 to 31 March 2020)				
Year 5 (1 April 2020 to 31 March 2021)				

<sup>25</sup> The text in this table has been redacted by Rail for London in accordance with the provisions of the Freedom of Information Act 2000.

Column 1	Column 2	Column 3	Column 4	Column 5
Concession Year	FXD (£)	VCRPI (£)	PRPI (£)	Service Increment Mobilisation Payment (£)
Year 6 (1 April 2021 to 31 March 2022)	■	■	■	■
Year 7 (1 April 2022 to 31 March 2023)	■	■	■	■
Year 8 (1 April 2023 to 31 March 2024)	■	■	■	■
Year 9 (1 April 2024 to 27 April 2024)	■	■	■	■
Year 9 continued if (up to) 7 Reporting Period extension (Potentially 28 April 2024 to 9 Nov 2024)	■	■	■	■
Year 9 continued if (up to) 26 Reporting Period continuation (Potentially 28 April 2024 to 31 March 2025)	■	■	■	■
Year 10 if (up to) 26 Reporting Period continuation (Potentially 1 April 2025 to 31 March 2026)	■	■	■	■
Year 11 if (up to) 26 Reporting Period continuation (Potentially 1 April 2026 to 2 May 2026)	■	■	■	■

Column 1	Column 2	Column 3	Column 4	Column 5
Concession Year	FXD (£)	VCRPI (£)	PRPI (£)	Service Increment Mobilisation Payment (£)
<p><b>Year 11 continued if (up to) 7 Reporting Period extension (Potentially 3 May 2026 to 14 Nov 2026)</b></p>	■	■	■	■

**2. SERVICE INCREMENT 3b: ADDITIONAL ELL SERVICES TO CRYSTAL PALACE**

The figures in:

- (a) columns 2 to 4 inclusive of the table below show the increments or decrements to the figures for calculation of the Annual Concession Payments set out in Appendix 1 (*Annual Concession Payment Figures*) to Schedule 11.2 (*Annual Concession Payments and Indexation*) where Service Increment 3b is called in accordance with the relevant terms set out in Schedule 6.1 (*Anticipated Service Increments*); and
- (b) column 5 in the table below shows the one-off mobilisation payment that applies in relation to the Concession Year in which it is shown and which:
  - (i) is indexed pursuant to, as the case may be, paragraph 4.1(b)(i), 4.2(b)(i) or 4.3(b)(i) in each case of Schedule 6.1 (*Anticipated Service Increments*); and
  - (ii) will be payable as a single Other Adjustment in the Reporting Period in which the Passenger Services that are the subject of Service Increment 3b are first operated.

Column 1	Column 2	Column 3	Column 4	Column 5
Concession Year	FXD (£)	VCRPI (£)	PRPI (£)	Service Increment Mobilisation Payment (£)
Year 1 (13 November 2016 to 31 March 2017)	█ <sup>26</sup>	█	█	█
Year 2 (1 April 2017 to 31 March 2018)	█	█	█	█
Year 3 (1 April 2018 to 31 March 2019)	█	█	█	█
Year 4 (1 April 2019 to 31 March 2020)	█	█	█	█
Year 5 (1 April 2020 to 31 March 2021)	█	█	█	█
Year 6 (1 April 2021 to 31 March 2022)	█	█	█	█
Year 7 (1 April 2022 to 31 March 2023)	█	█	█	█

<sup>26</sup> The text in this table has been redacted by Rail for London in accordance with the provisions of the Freedom of Information Act 2000.



Column 1	Column 2	Column 3	Column 4	Column 5
Concession Year	FXD (£)	VCRPI (£)	PRPI (£)	Service Increment Mobilisation Payment (£)
Year 8 (1 April 2023 to 31 March 2024)	■	■	■	■
Year 9 (1 April 2024 to 27 April 2024)	■	■	■	■
Year 9 continued if (up to) 7 Reporting Period extension (Potentially 28 April 2024 to 9 Nov 2024)	■	■	■	■
Year 9 continued if (up to) 26 Reporting Period continuation (Potentially 28 April 2024 to 31 March 2025)	■	■	■	■
Year 10 if (up to) 26 Reporting Period continuation (Potentially 1 April 2025 to 31 March 2026)	■	■	■	■
Year 11 if (up to) 26 Reporting Period continuation (Potentially 1 April 2026 to 2 May 2026)	■	■	■	■
Year 11 continued if (up to) 7 Reporting Period extension (Potentially 3 May 2026 to 14 Nov 2026)	■	■	■	■

**3. SERVICE INCREMENT 4a: ADDITIONAL ELL SERVICES TO CLAPHAM JUNCTION**

The figures in:

- (a) columns 2 to 4 inclusive of the table below show the increments or decrements to the figures for calculation of the Annual Concession Payments set out in Appendix 1 (*Annual Concession Payment Figures*) to Schedule 11.2 (*Annual Concession Payments and Indexation*) where Service Increment 4a is called in accordance with the relevant terms set out in Schedule 6.1 (*Anticipated Service Increments*); and
- (b) column 5 in the table below shows the one-off mobilisation payment that applies in relation to the Concession Year in which it is shown and which:
  - (i) is indexed pursuant to, as the case may be, paragraph 4.1(b)(i), 4.2(b)(i) or 4.3(b)(i) in each case of Schedule 6.1 (*Anticipated Service Increments*); and
  - (ii) will be payable as a single Other Adjustment in the Reporting Period in which the Passenger Services that are the subject of Service Increment 4a are first operated.

Column 1	Column 2	Column 3	Column 4	Column 5
Concession Year	FXD (£)	VCRPI (£)	PRPI (£)	Service Increment Mobilisation Payment (£)
Year 1 (13 November 2016 to 31 March 2017)	█ <sup>27</sup>	█	█	█
Year 2 (1 April 2017 to 31 March 2018)	█	█	█	█
Year 3 (1 April 2018 to 31 March 2019)	█	█	█	█
Year 4 (1 April 2019 to 31 March 2020)	█	█	█	█
Year 5 (1 April 2020 to 31 March 2021)	█	█	█	█
Year 6 (1 April 2021 to 31 March 2022)	█	█	█	█
Year 7 (1 April 2022 to 31 March 2023)	█	█	█	█

<sup>27</sup> The text in this table has been redacted by Rail for London in accordance with the provisions of the Freedom of Information Act 2000.

Column 1	Column 2	Column 3	Column 4	Column 5
Concession Year	FXD (£)	VCRPI (£)	PRPI (£)	Service Increment Mobilisation Payment (£)
Year 8 (1 April 2023 to 31 March 2024)	■	■	■	■
Year 9 (1 April 2024 to 27 April 2024)	■	■	■	■
Year 9 continued if (up to) 7 Reporting Period extension (Potentially 28 April 2024 to 9 Nov 2024)	■	■	■	■
Year 9 continued if (up to) 26 Reporting Period continuation (Potentially 28 April 2024 to 31 March 2025)	■	■	■	■
Year 10 if (up to) 26 Reporting Period continuation (Potentially 1 April 2025 to 31 March 2026)	■	■	■	■
Year 11 if (up to) 26 Reporting Period continuation (Potentially 1 April 2026 to 2 May 2026)	■	■	■	■
Year 11 continued if (up to) 7 Reporting Period extension (Potentially 3 May 2026 to 14 Nov 2026)	■	■	■	■

**4. SERVICE INCREMENT 4b: ADDITIONAL WEL SERVICES**

The figures in:

- (a) columns 2 to 4 inclusive of the table below show the increments or decrements to the figures for calculation of the Annual Concession Payments set out in Appendix 1 (*Annual Concession Payment Figures*) to Schedule 11.2 (*Annual Concession Payments and Indexation*) where Service Increment 4b is called in accordance with the relevant terms set out in Schedule 6.1 (*Anticipated Service Increments*); and
- (b) column 5 in the table below shows the one-off mobilisation payment that applies in relation to the Concession Year in which it is shown and which:
  - (i) is indexed pursuant to, as the case may be, paragraph 4.1(b)(i), 4.2(b)(i) or 4.3(b)(i) in each case of Schedule 6.1 (*Anticipated Service Increments*); and
  - (ii) will be payable as a single Other Adjustment in the Reporting Period in which the Passenger Services that are the subject of Service Increment 4b are first operated.

Column 1	Column 2	Column 3	Column 4	Column 5
Concession Year	FXD (£)	VCRPI (£)	PRPI (£)	Service Increment Mobilisation Payment (£)
Year 1 (13 November 2016 to 31 March 2017)	█ <sup>28</sup>	█	█	█
Year 2 (1 April 2017 to 31 March 2018)	█	█	█	█
Year 3 (1 April 2018 to 31 March 2019)	█	█	█	█
Year 4 (1 April 2019 to 31 March 2020)	█	█	█	█
Year 5 (1 April 2020 to 31 March 2021)	█	█	█	█
Year 6 (1 April 2021 to 31 March 2022)	█	█	█	█
Year 7 (1 April 2022 to 31 March 2023)	█	█	█	█

<sup>28</sup> The text in this table has been redacted by Rail for London in accordance with the provisions of the Freedom of Information Act 2000.

Column 1	Column 2	Column 3	Column 4	Column 5
Concession Year	FXD (£)	VCRPI (£)	PRPI (£)	Service Increment Mobilisation Payment (£)
Year 8 (1 April 2023 to 31 March 2024)	■	■	■	■
Year 9 (1 April 2024 to 27 April 2024)	■	■	■	■
Year 9 continued if (up to) 7 Reporting Period extension (Potentially 28 April 2024 to 9 Nov 2024)	■	■	■	■
Year 9 continued if (up to) 26 Reporting Period continuation (Potentially 28 April 2024 to 31 March 2025)	■	■	■	■
Year 10 if (up to) 26 Reporting Period continuation (Potentially 1 April 2025 to 31 March 2026)	■	■	■	■
Year 11 if (up to) 26 Reporting Period continuation (Potentially 1 April 2026 to 2 May 2026)	■	■	■	■
Year 11 continued if (up to) 7 Reporting Period extension (Potentially 3 May 2026 to 14 Nov 2026)	■	■	■	■

**5. SERVICE INCREMENT 4c: ADDITIONAL LECL SERVICES**

The figures in:

- (a) columns 2 to 4 inclusive of the table below show the increments or decrements to the figures for calculation of the Annual Concession Payments set out in Appendix 1 (*Annual Concession Payment Figures*) to Schedule 11.2 (*Annual Concession Payments and Indexation*) where Service Increment 4c is called in accordance with the relevant terms set out in Schedule 6.1 (*Anticipated Service Increments*); and
- (b) column 5 in the table below shows the one-off mobilisation payment that applies in relation to the Concession Year in which it is shown and which:
  - (i) is indexed pursuant to, as the case may be, paragraph 4.1(b)(i), 4.2(b)(i) or 4.3(b)(i) in each case of Schedule 6.1 (*Anticipated Service Increments*); and
  - (ii) will be payable as a single Other Adjustment in the Reporting Period in which the Passenger Services that are the subject of Service Increment 4c are first operated.

Column 1	Column 2	Column 3	Column 4	Column 5
Concession Year	FXD (£)	VCRPI (£)	PRPI (£)	Service Increment Mobilisation Payment (£)
Year 1 (13 November 2016 to 31 March 2017)	█ <sup>29</sup>	█	█	█
Year 2 (1 April 2017 to 31 March 2018)	█	█	█	█
Year 3 (1 April 2018 to 31 March 2019)	█	█	█	█
Year 4 (1 April 2019 to 31 March 2020)	█	█	█	█
Year 5 (1 April 2020 to 31 March 2021)	█	█	█	█
Year 6 (1 April 2021 to 31 March 2022)	█	█	█	█
Year 7 (1 April 2022 to 31 March 2023)	█	█	█	█

<sup>29</sup> The text in this table has been redacted by Rail for London in accordance with the provisions of the Freedom of Information Act 2000.

Column 1	Column 2	Column 3	Column 4	Column 5
Concession Year	FXD (£)	VCRPI (£)	PRPI (£)	Service Increment Mobilisation Payment (£)
Year 8 (1 April 2023 to 31 March 2024)	■	■	■	■
Year 9 (1 April 2024 to 27 April 2024)	■	■	■	■
Year 9 continued if (up to) 7 Reporting Period extension (Potentially 28 April 2024 to 9 Nov 2024)	■	■	■	■
Year 9 continued if (up to) 26 Reporting Period continuation (Potentially 28 April 2024 to 31 March 2025)	■	■	■	■
Year 10 if (up to) 26 Reporting Period continuation (Potentially 1 April 2025 to 31 March 2026)	■	■	■	■
Year 11 if (up to) 26 Reporting Period continuation (Potentially 1 April 2026 to 2 May 2026)	■	■	■	■
Year 11 continued if (up to) 7 Reporting Period extension (Potentially 3 May 2026 to 14 Nov 2026)	■	■	■	■

**6. SERVICE INCREMENT 4d: ADDITIONAL GOB SERVICES**

The figures in:

- (a) columns 2 to 4 inclusive of the table below show the increments or decrements to the figures for calculation of the Annual Concession Payments set out in Appendix 1 (*Annual Concession Payment Figures*) to Schedule 11.2 (*Annual Concession Payments and Indexation*) where Service Increment 4d is called in accordance with the relevant terms set out in Schedule 6.1 (*Anticipated Service Increments*); and
- (b) column 5 in the table below shows the one-off mobilisation payment that applies in relation to the Concession Year in which it is shown and which:
  - (i) is indexed pursuant to, as the case may be, paragraph 4.1(b)(i), 4.2(b)(i) or 4.3(b)(i) in each case of Schedule 6.1 (*Anticipated Service Increments*); and
  - (ii) will be payable as a single Other Adjustment in the Reporting Period in which the Passenger Services that are the subject of Service Increment 4d are first operated.

Column 1	Column 2	Column 3	Column 4	Column 5
Concession Year	FXD (£)	VCRPI (£)	PRPI (£)	Service Increment Mobilisation Payment (£)
Year 1 (13 November 2016 to 31 March 2017)	█ <sup>30</sup>	█	█	█
Year 2 (1 April 2017 to 31 March 2018)	█	█	█	█
Year 3 (1 April 2018 to 31 March 2019)	█	█	█	█
Year 4 (1 April 2019 to 31 March 2020)	█	█	█	█
Year 5 (1 April 2020 to 31 March 2021)	█	█	█	█
Year 6 (1 April 2021 to 31 March 2022)	█	█	█	█
Year 7 (1 April 2022 to 31 March 2023)	█	█	█	█

<sup>30</sup> The text in this table has been redacted by Rail for London in accordance with the provisions of the Freedom of Information Act 2000.



Column 1	Column 2	Column 3	Column 4	Column 5
Concession Year	FXD (£)	VCRPI (£)	PRPI (£)	Service Increment Mobilisation Payment (£)
Year 8 (1 April 2023 to 31 March 2024)	■	■	■	■
Year 9 (1 April 2024 to 27 April 2024)	■	■	■	■
Year 9 continued if (up to) 7 Reporting Period extension (Potentially 28 April 2024 to 9 Nov 2024)	■	■	■	■
Year 9 continued if (up to) 26 Reporting Period continuation (Potentially 28 April 2024 to 31 March 2025)	■	■	■	■
Year 10 if (up to) 26 Reporting Period continuation (Potentially 1 April 2025 to 31 March 2026)	■	■	■	■
Year 11 if (up to) 26 Reporting Period continuation (Potentially 1 April 2026 to 2 May 2026)	■	■	■	■
Year 11 continued if (up to) 7 Reporting Period extension (Potentially 3 May 2026 to 14 Nov 2026)	■	■	■	■

**7. SERVICE INCREMENT 4e: BARKING RIVERSIDE EXTENSION**

The figures in:

- (a) columns 2 to 4 inclusive of the table below show the increments or decrements to the figures for calculation of the Annual Concession Payments set out in Appendix 1 (*Annual Concession Payment Figures*) to Schedule 11.2 (*Annual Concession Payments and Indexation*) where Service Increment 4e is called in accordance with the relevant terms set out in Schedule 6.1 (*Anticipated Service Increments*); and
- (b) column 5 in the table below shows the one-off mobilisation payment that applies in relation to the Concession Year in which it is shown and which:
- (c) is indexed pursuant to, as the case may be, paragraph 4.1(b)(i), 4.2(b)(i) or 4.3(b)(i) in each case of Schedule 6.1 (*Anticipated Service Increments*); and
- (d) will be payable as a single Other Adjustment in the Reporting Period in which the Passenger Services that are the subject of Service Increment 4e are first operated.

Column 1	Column 2	Column 3	Column 4	Column 5
Concession Year	FXD (£)	VCRPI (£)	PRPI (£)	Service Increment Mobilisation Payment (£)
Year 1 (13 November 2016 to 31 March 2017)	█ <sup>31</sup>	█	█	█
Year 2 (1 April 2017 to 31 March 2018)	█	█	█	█
Year 3 (1 April 2018 to 31 March 2019)	█	█	█	█
Year 4 (1 April 2019 to 31 March 2020)	█	█	█	█
Year 5 (1 April 2020 to 31 March 2021)	█	█	█	█
Year 6 (1 April 2021 to 31 March 2022)	█	█	█	█
Year 7 (1 April 2022 to 31 March 2023)	█	█	█	█

<sup>31</sup> The text in this table has been redacted by Rail for London in accordance with the provisions of the Freedom of Information Act 2000.

Column 1	Column 2	Column 3	Column 4	Column 5
Concession Year	FXD (£)	VCRPI (£)	PRPI (£)	Service Increment Mobilisation Payment (£)
Year 8 (1 April 2023 to 31 March 2024)	■	■	■	■
Year 9 (1 April 2024 to 27 April 2024)	■	■	■	■
Year 9 continued if (up to) 7 Reporting Period extension (Potentially 28 April 2024 to 9 Nov 2024)	■	■	■	■
Year 9 continued if (up to) 26 Reporting Period continuation (Potentially 28 April 2024 to 31 March 2025)	■	■	■	■
Year 10 if (up to) 26 Reporting Period continuation (Potentially 1 April 2025 to 31 March 2026)	■	■	■	■
Year 11 if (up to) 26 Reporting Period continuation (Potentially 1 April 2026 to 2 May 2026)	■	■	■	■
Year 11 continued if (up to) 7 Reporting Period extension (Potentially 3 May 2026 to 14 Nov 2026)	■	■	■	■

**8. SERVICE INCREMENT 5: STAR SERVICES**

The figures in:

- (a) columns 2 to 4 inclusive of the table below show the increments or decrements to the figures for calculation of the Annual Concession Payments set out in Appendix 1 (*Annual Concession Payment Figures*) to Schedule 11.2 (*Annual Concession Payments and Indexation*) where Service Increment 5 is called in accordance with the relevant terms set out in Schedule 6.1 (*Anticipated Service Increments*); and
- (b) column 5 in the table below shows the one-off mobilisation payment that applies in relation to the Concession Year in which it is shown and which:
  - (i) is indexed pursuant to, as the case may be, paragraph 4.1(b)(i), 4.2(b)(i) or 4.3(b)(i) in each case of Schedule 6.1 (*Anticipated Service Increments*); and
  - (ii) will be payable as a single Other Adjustment in the Reporting Period in which the Passenger Services that are the subject of Service Increment 5 are first operated.

Column 1	Column 2	Column 3	Column 4	Column 5
Concession Year	FXD (£)	VCRPI (£)	PRPI (£)	Service Increment Mobilisation Payment (£)
Year 1 (13 November 2016 to 31 March 2017)	█ <sup>32</sup>	█	█	█
Year 2 (1 April 2017 to 31 March 2018)	█	█	█	█
Year 3 (1 April 2018 to 31 March 2019)	█	█	█	█
Year 4 (1 April 2019 to 31 March 2020)	█	█	█	█
Year 5 (1 April 2020 to 31 March 2021)	█	█	█	█
Year 6 (1 April 2021 to 31 March 2022)	█	█	█	█
Year 7 (1 April 2022 to 31 March 2023)	█	█	█	█

<sup>32</sup> The text in this table has been redacted by Rail for London in accordance with the provisions of the Freedom of Information Act 2000.

Column 1	Column 2	Column 3	Column 4	Column 5
Concession Year	FXD (£)	VCRPI (£)	PRPI (£)	Service Increment Mobilisation Payment (£)
Year 8 (1 April 2023 to 31 March 2024)	■	■	■	■
Year 9 (1 April 2024 to 27 April 2024)	■	■	■	■
Year 9 continued if (up to) 7 Reporting Period extension (Potentially 28 April 2024 to 9 Nov 2024)	■	■	■	■
Year 9 continued if (up to) 26 Reporting Period continuation (Potentially 28 April 2024 to 31 March 2025)	■	■	■	■
Year 10 if (up to) 26 Reporting Period continuation (Potentially 1 April 2025 to 31 March 2026)	■	■	■	■
Year 11 if (up to) 26 Reporting Period continuation (Potentially 1 April 2026 to 2 May 2026)	■	■	■	■
Year 11 continued if (up to) 7 Reporting Period extension (Potentially 3 May 2026 to 14 Nov 2026)	■	■	■	■



**SCHEDULE 6.3**

**Mileage Adjustment Rates for Service Increment 4a**

**1. MILEAGE ADJUSTMENT RATES FOR CLASS 710 5-CARS**

The mileage adjustment rates for the purposes of Service Increment 4a and Schedule 1.3 (*Managing Disruption to the Passenger Services*) shall be:

Column 1	Column 2	Column 3
Concession Year	Class 710 Units	Class 710 Units
	5-car MR(-)	5-car MR(+)
	(£ per m)	(£ per m)
Year 1 (13 November 2016 to 31 March 2017)	[REDACTED] <sup>33</sup>	[REDACTED]
Year 2 (1 April 2017 to 31 March 2018)	[REDACTED]	[REDACTED]
Year 3 (1 April 2018 to 31 March 2019)	[REDACTED]	[REDACTED]
Year 4 (1 April 2019 to 31 March 2020)	[REDACTED]	[REDACTED]
Year 5 (1 April 2020 to 31 March 2021)	[REDACTED]	[REDACTED]
Year 6 (1 April 2021 to 31 March 2022)	[REDACTED]	[REDACTED]
Year 7 (1 April 2022 to 31 March 2023)	[REDACTED]	[REDACTED]
Year 8 (1 April 2023 to 31 March 2024)	[REDACTED]	[REDACTED]
Year 9 (1 April 2024 to 27 April 2024)	[REDACTED]	[REDACTED]

<sup>33</sup> The text in this table has been redacted by Rail for London in accordance with the provisions of the Freedom of Information Act 2000.

Column 1	Column 2	Column 3
Concession Year	Class 710 Units	Class 710 Units
	5-car MR(-) (£ per m)	5-car MR(+) (£ per m)
Year 9 continued if (up to) 7 Reporting Period extension (Potentially 28 April 2024 to 9 Nov 2024)	■	■
Year 9 continued if (up to) 26 Reporting Period continuation (Potentially 28 April 2024 to 31 March 2025)	■	■
Year 10 if (up to) 26 Reporting Period continuation (Potentially 1 April 2025 to 31 March 2026)	■	■
Year 11 if (up to) 26 Reporting Period continuation (Potentially 1 April 2026 to 2 May 2026)	■	■
Year 11 continued if (up to) 7 Reporting Period extension (Potentially 3 May 2026 to 14 Nov 2026)	■	■



## SCHEDULE 6.4

### High Speed 2

#### 1. HIGH SPEED 2'S UNCERTAIN IMPACT ON THE CONCESSION SERVICES

The construction of High Speed 2 is anticipated to impact on the provision of the Concession Services during the Concession Period, although it is not possible to predict with confidence precisely how the Concession Services will be impacted.

#### 2. CO-OPERATION WITH THE CONSTRUCTION OF HIGH SPEED 2

2.1 Without prejudice to the Operator's obligations under paragraph 10 (*Timetable Development Rights during a Timetable Planning Period*) of Schedule 1.1 (*Timetable and Service Development*), paragraph 3 (*Obligation to use All Reasonable Endeavours*) of Schedule 1.2 (*Passenger Service Operating Obligations*), paragraphs 1 (*Infrastructure Manager proposals to change the Plan of the Day*) and 2 (*Cooperation with Restrictions of Use*) of Schedule 1.3 (*Managing Changes to the Passenger Services*), the Operator shall co-operate with RfL, the Secretary of State and/or any other third party relevant to the construction of High Speed 2, in developing the best overall solution for the associated construction works, and in so doing, shall use all reasonable endeavours to optimise the potentially competing needs to:

- (a) minimise disruption to the Concession Services during the implementation of the construction works;
- (b) facilitate construction with the objective of securing the best service level output for passengers from the construction of High Speed 2; and
- (c) maximise value for money for the taxpayer from the construction of High Speed 2.

2.2 In fulfilling its obligation to co-operate pursuant to paragraph 2.1, the Operator shall, among other things:

- (a) make suitably senior and qualified personnel available from time to time to attend:
  - (i) meetings of the High Speed 2 project team; or
  - (ii) such other meetings with RfL, the Secretary of State and/or any other third party relevant to the construction of High Speed 2 as those parties reasonably require;
- (b) procure that those employees are proactive in:
  - (i) seeking to identify solutions that minimise overall rail industry costs; and
  - (ii) communicating those solutions and the Operator's opinion on any other relevant matter regarding High Speed 2, including its opinion in respect of High Speed 2's construction timetable and schedule of works or any implementation timetable or schedule of works in respect of a particular element of High Speed 2;

- (c) use all reasonable endeavours to agree in advance of any phase of the construction works comprising part of High Speed 2:
  - (i) the costs associated with any such phase, where possible, on a fixed cost basis; and
  - (ii) suitable compensation arrangements with any relevant third party;
- (d) provide to RfL as and when reasonably requested by it within such reasonable period as it may specify, the Operator's assessment of High Speed 2's impact on the Concession Services;
- (e) record the costs it incurs as a consequence of the implementation of High Speed 2 on a transparent basis; and
- (f) unless otherwise instructed by RfL, not seek to challenge compensation arrangements on the basis that the compensation paid thereunder is inadequate given the actual level of disruption experienced or cost incurred.

2.3 The Operator shall on reasonable notice grant or procure the granting of access to any London Overground Station or Operator Depot or Operator Access Depot to any employees or agents of RfL, the Secretary of State and/or any other third party relevant to the construction of High Speed 2 as is reasonably necessary in order to further the development or construction of High Speed 2.

### **3. HIGH SPEED 2 PRICED CHANGE EXAMPLE**

#### **Purpose**

3.1 Notwithstanding the uncertainty of the impact of the construction of High Speed 2 on the provision of the Concession Services, as referred to in paragraph 1 (*High Speed 2's uncertain impact on the Concession Services*), RfL has assumed the following impacts as described in the remainder of this paragraph 3 (the *HS2 Priced Change Example*) in order to ascertain, for information purposes, the likely costs and savings that might be incurred and realised by the Operator as a result.

#### **Assumed impact on Concession Services**

3.2 It is assumed that the impact of the High Speed 2 construction works on the provision of the Concession Services (the *Assumed High Speed 2 Impact*) will:

- (a) necessitate one possession of 23 consecutive days of the NLL in August 2021 which will close the sections of track between Shepherds Bush Station and Willesden Junction Station and between Acton Central Station and Willesden Junction Station in order that bridge replacement and other asset protection works can be carried out, and during any such possession, the Operator shall meet the requirements set out in the Alternative Timetable Guidance, provided that the Operator shall not be required to provide any alternative transport services in accordance with Schedule 1.3 in respect of any Passenger Services affected thereby (*Component A*);
- (b) necessitate one possession of the WEL of nine consecutive days, including two weekends in August 2017, and during any such possession, the Operator shall meet

the requirements set out in the Alternative Timetable Guidance, provided that the Operator shall not be required to provide any alternative transport services in accordance with Schedule 1.3 (*Managing Changes to the Passenger Services*) in respect of any Passenger Services affected thereby (**Component B**); and

- (c) prevent the Operator from 20 May 2018 and for the remainder of the Concession Period from using the DC electrified tracks and platforms at London Euston Station for the purpose of providing the Passenger Services on the WEL that will be operated from the Start Date as set out in SLC1a (the **HS2 Affected WEL Services**), such that:
- (i) the HS2 Affected WEL Services will use one dedicated, ungated platform on the far eastern side of London Euston Station, provided that the Operator will not have exclusive use of that platform in the case of disruption;
  - (ii) there will be no stabling capacity at London Euston Station;
  - (iii) the sleeper service operated by Serco Caledonian Sleepers Limited as at the date of this Agreement, will continue to terminate services at London Euston Station but with altered departure and arrival times in order to reduce its requirements for platforms at London Euston Station;
  - (iv) traction changeover points will be constructed south of South Hampstead Station in order to permit the operation of Class 378 Units and Class 710 Units in both AC and DC into and out of the platform referred to in paragraph 3.2(c)(i);
  - (v) certain staff accommodation at London Euston Station as at the date of this Agreement will be relocated to the periphery of London Euston Station, increasing the walking time of the Operator's affected train crew between that accommodation and the remaining platform that is available for use by the HS2 Affected WEL Services from seven to 15 minutes;
  - (vi) the carriage washer at Camden Sidings will continue to be available for use; and
  - (vii) Class 378 Units and Class 710 Units will have automatic pantograph capabilities,

(together **Component C**).

### **Assumed Service Level Commitments**

3.3 The HS2 Priced Change Example assumes that all Service Increments have been called and that the Passenger Services thereunder will be operational from the earliest possible operating date specified in the relevant paragraph in Schedule 6.1 (*Anticipated Service Increments*).

### **Financial consequences**

3.4 The Record of Assumptions sets out the changes to the Concession Payments and the assumed traction electricity prices and consumption to reflect Component A, Component B and Component C (the **HS2 Priced Change Example Price**). The parties hereby agree that, for the purpose of any Change, in the event that RfL issues a Service Level Commitment

and/or a Variation that reflects the impact of the construction of High Speed 2 on the provision of the Concession Services which is:

- (a) consistent with Component A, Component B or Component C, then the HS2 Priced Change Example Price shall apply; or
- (b) inconsistent with Component A, Component B or Component C, then the HS2 Priced Change Example Price shall apply only to the extent that that impact remains consistent with the Revised Inputs that produce that HS2 Priced Change Example Price.

**SCHEDULE 7**

**OPERATING PERFORMANCE**

- Schedule 7.1: Operating Performance Regime**
- Appendix 1: Service Reliability Bands Tables**
- Appendix 2: Service Punctuality Bands Tables**
- Schedule 7.2: Performance Payments under Track Access Agreements**
- Schedule 7.3: PPM Regime**
- Schedule 7.4: General Operating Performance Provisions**



## SCHEDULE 7.1

### Operating Performance Regime

#### 1. SERVICE RELIABILITY

##### Reliability Adjustments

1.1 For each Reporting Period during the Concession Period, RfL shall, subject to paragraph 4 (*Performance Failures during Operator Industrial Action*), calculate a Reliability Adjustment as follows:

$$RA = \sum_{i=1}^n \text{£RP}_i$$

where:

RA means the Reliability Adjustment for a Reporting Period, which is equal to the aggregate of all (n) Reliability Payments that apply in relation to any such Reporting Period; and

£RP means the Reliability Payment for a Route that is payable in respect of that Reporting Period by the Operator to RfL, calculated in accordance with, as appropriate, paragraph 1.3, 1.4 or 1.5.

1.2 A Reliability Adjustment for a Reporting Period shall comprise part of an Operating Performance Adjustment in accordance with paragraph 2.3 of Schedule 11.1 (*Concession Payments*).

##### Performance above Reliability Threshold

1.3 Where in any Reporting Period during the Concession Period, the Reliability Metric for any Route is above the Reliability Threshold for that Route and the Concession Year in which that Reporting Period occurs, the Reliability Payment in relation to that Route for that Reporting Period in accordance with paragraph 1.1 shall be zero.

##### Performance within Low Reliability Band

1.4 Where in any Reporting Period during the Concession Period, the Reliability Metric for any Route is within the Low Reliability Band for that Route and the Concession Year in which that Reporting Period occurs, a Reliability Payment shall be payable by the Operator to RfL in relation to that Reporting Period in accordance with paragraph 1.1, calculated as follows:

$$\text{£RP} = [(R \times PS \times \text{£RR})] \times R_bF \times [(OR \times R_sF) + (NRR \times R_sF) + (RfLR \times R_sF)]$$

where:

£RP means the Reliability Payment for that Route and that Reporting Period;

R means the difference between the level of reliability achieved by the Operator in that Reporting Period and the Reliability Threshold for that Route and that Concession Year, calculated in accordance with the following:

$$R = RM - RT$$

where:

- RM means the Reliability Metric for that Route and that Reporting Period; and
- RT means the Reliability Threshold for that Route and the Concession Year in which that Reporting Period occurs;
- PS means, subject to paragraph 5.1 of Schedule 7.4 (*General Operating Performance Provisions*), the number of Passenger Services planned to be operated in that Reporting Period on that Route;
- £RR means the Reliability Rate;
- R<sub>b</sub>F means the Reliability Factor that is applicable to the Low Reliability Band for that Route;
- OR means the percentage of Passenger Services that incurred a Reliability Event on that Route in that Reporting Period that was attributable to the Operator or a Rolling Stock Maintainer, where the attribution of responsibility to the Operator or a Rolling Stock Maintainer for any Significant Minutes Lateness or Short Formations incurred in that Reporting Period shall be consistent with the aggregate attribution of responsibility to the Operator and Rolling Stock Maintainers for Cancellations incurred in that Reporting Period;
- R<sub>s</sub>F means the Responsibility Factor;
- NRR means the percentage of Passenger Services that incurred a Reliability Event on that Route in that Reporting Period that was attributable to Network Rail or which Network Rail is accountable to the Operator for under the Network Rail TAA, where the attribution of responsibility to Network Rail for any Significant Minutes Lateness or Short Formations incurred in that Reporting Period shall be consistent with the attribution of responsibility to Network Rail for Cancellations incurred in that Reporting Period; and
- RfLR means the percentage of Passenger Services that incurred a Reliability Event on that Route in that Reporting Period that was attributable to RfL (I), where the attribution of responsibility to RfL (I) for any Significant Minutes Lateness or Short Formations incurred in that Reporting Period shall be consistent with the attribution of responsibility to RfL (I) for Cancellations incurred in that Reporting Period.

**Performance within Lower Reliability Band**

1.5 Where in any Reporting Period during the Concession Period, the Reliability Metric for any Route is within the Lower Reliability Band for that Route and the Concession Year in which that Reporting Period occurs, a Reliability Payment shall be payable by the Operator to RfL in relation to that Reporting Period in accordance with paragraph 1.1, calculated as follows:

$$£RP = £L + £Lr$$

where:

- £RP means the Reliability Payment for that Route and that Reporting Period;



£L means the proportion of that Reliability Payment that relates to the Reliability Metric that is within the Low Reliability Band for that Route and Concession Year, calculated in accordance with the following:

$$£L = [(R_{Low} \times PS \times £RR)] \times R_bF \times [(OR \times R_sF) + (NRR \times R_sF) + (RfLR \times R_sF)]$$

where:

$R_{Low}$  means the difference between the Lower Reliability Threshold for that Route and Concession Year and the Reliability Threshold for that Route and Concession Year, calculated in accordance with the following:

$$R_{Low} = LRT - RT$$

where:

LRT means the Lower Reliability Threshold for that Route and Concession Year; and

RT means the Reliability Threshold for that Route and Concession Year; and

$R_bF$  means the Reliability Factor that is applicable to the Low Reliability Band for that Route; and

All other factors have the meanings given to them in paragraph 1.4; and

£Lr means the proportion of that Reliability Payment that relates to the Reliability Metric that is within the Lower Reliability Band for that Route and Concession Year, calculated in accordance with the following:

$$£Lr = [(R_{Lower} \times PS \times £RR)] \times R_bF \times [(OR \times R_sF) + (NRR \times R_sF) + (RfLR \times R_sF)]$$

where:

$R_{Lower}$  means difference between the Reliability Metric achieved by the Operator in that Reporting Period on that Route and the Lower Reliability Threshold for that Route and Concession Year, calculated in accordance with the following:

$$R_{Lower} = RM - LRT$$

where:

RM means the Reliability Metric achieved by the Operator in that Reporting Period on that Route; and

LRT means the Lower Reliability Threshold for that Route and Concession Year; and

$R_bF$  means the Reliability Factor that is applicable to the Lower Reliability Band for that Route; and

All other factors have the meanings given to them in paragraph 1.4.

**2. SERVICE PUNCTUALITY**

**Punctuality Adjustments**

2.1 For each Reporting Period during the Concession Period, RfL shall, subject to paragraph 4 (*Performance Failures during Operator Industrial Action*), calculate a Punctuality Adjustment as follows:

$$PA = \sum_{i=1}^n \text{£PP}_i$$

where:

PA means the Punctuality Adjustment for a Reporting Period which is equal to the aggregate of all (n) Punctuality Payments that apply in relation to any such Reporting Period; and

£PP means the Punctuality Payment for a Route that is payable in respect of that Reporting Period by, as the case may be, RfL to the Operator or the Operator to RfL, in each case calculated in accordance with, as appropriate, paragraph 2.3, 2.4, 2.5, 2.6, or 2.7.

**Payment of Punctuality Adjustments**

2.2 A Punctuality Adjustment for a Reporting Period shall comprise part of an Operating Performance Adjustment in accordance with paragraph 2.3 of Schedule 11.1 (*Concession Payments*).

**T3 above Upper Punctuality Threshold**

2.3 Where in any Reporting Period during the Concession Period, T3 for any Route is above the Upper Punctuality Threshold for that Route and Concession Year in which that Reporting Period occurs, a Punctuality Payment shall be payable by RfL to the Operator in relation to that Reporting Period in accordance with paragraph 2.1, calculated as follows:

$$\text{£PP} = \text{£U} + \text{£M}$$

where:

£PP means the Punctuality Payment for that Route and Reporting Period;

£U means the proportion of that Punctuality Payment that relates to the part of that T3 that is within the Upper Punctuality Band for that Route and Concession Year, calculated in accordance with the following:

$$\text{£U} = [(\text{P}_{\text{Upper}} \times \text{PS} \times \text{EPR})] \times \text{PF} \times [((1 - \text{TOS}) \times \text{RF}) + ((1 - \text{NR}) \times \text{RF}) + ((1 - \text{RfL}) \times \text{RF})]$$

where:

$\text{P}_{\text{Upper}}$  means the difference between the lower of (i) the punctuality achieved by the Operator in that Reporting Period on that Route and (ii) the Punctuality Ceiling for

that Route and Concession Year, and the Upper Punctuality Threshold for that Route and Concession Year, calculated in accordance with the following:

$$P_{\text{Upper}} = \text{Min}(T3, PC) - \text{UPT}$$

where:

PC means the Punctuality Ceiling for that Route and Concession Year; and

UPT means the Upper Punctuality Threshold for that Route and Concession Year;

PS means, subject to paragraph 5.1 of Schedule 7.4 (*General Operating Performance Provisions*), the number of Passenger Services planned to be operated in that Reporting Period on that Route;

£PR means the Punctuality Rate;

PF means the Punctuality Factor that is applicable to the Upper Punctuality Band for that Route;

TOS means the percentage of Relevant Minutes Delay that occurred on that Route in that Reporting Period that was attributable to the Operator or a Rolling Stock Maintainer;

RF means the Responsibility Factor;

NR means the percentage of Relevant Minutes Delay that occurred on that Route in that Reporting Period that was attributable to Network Rail or which Network Rail is accountable to the Operator for under the Network Rail TAA (otherwise known as ‘TOC-on-TOC delay’); and

RfL means the percentage of Relevant Minutes Delay that occurred on that Route in that Reporting Period that was attributable to RfL (I),

provided that, where no Relevant Minutes Delay occur on that Route in that Reporting Period, each of TOS and RR shall be zero and NR shall be one; and

£M means the proportion of that Punctuality Payment that relates to the part of that T3 that is within the Middle Punctuality Band for that Route and Concession Year, calculated in accordance with the following:

$$EM = [(P_{\text{Middle}} \times PS \times \text{£PR})] \times PF \times [((1 - \text{TOS}) \times RF) + ((1 - \text{NR}) \times RF) + ((1 - \text{RfL}) \times RF)]$$

where:

$P_{\text{Middle}}$  means the difference between the Upper Punctuality Threshold for that Route and Concession Year and the Punctuality Threshold for that Route and Concession Year, calculated in accordance with the following:

$$P_{\text{Middle}} = \text{UPT} - \text{PT}$$

where:

UPT means the Upper Punctuality Threshold for that Route and Concession Year; and

PT means the Punctuality Threshold for that Route and Concession Year;

PF means the Punctuality Factor that is applicable to the Middle Punctuality Band for that Route; and

All other factors have the meanings given to them above in this paragraph 2.3.

**T3 within Middle Punctuality Band**

2.4 Where in any Reporting Period during the Concession Period, T3 for any Route is within the Middle Punctuality Band for that Route and the Concession Year in which that Reporting Period occurs, a Punctuality Payment shall be payable by RfL to the Operator in relation to that Reporting Period in accordance with paragraph 2.1, calculated as follows:

$$£PP = [(P \times PS \times £PR)] \times PF \times [(1 - TOS) \times RF) + ((1 - NR) \times RF) + ((1 - RfL) \times RF)]$$

where:

£PP means the Punctuality Payment for that Route and Reporting Period;

P means the difference between the level of T3 achieved by the Operator in that Reporting Period on that Route and the Punctuality Threshold for that Route and Concession Year, calculated in accordance with the following:

$$P = T3 - PT$$

where:

PT means the Punctuality Threshold for that Route and Concession Year;

PF means the Punctuality Factor that is applicable to the Middle Punctuality Band for that Route; and

All other factors have the meanings given to them in paragraph 2.3.

**T3 within Low Punctuality Band**

2.5 Where in any Reporting Period during the Concession Period, T3 for any Route is within the Low Punctuality Band for that Route and the Concession Year in which that Reporting Period occurs, a Punctuality Payment shall be payable by the Operator to RfL in relation to that Reporting Period in accordance with paragraph 2.1, calculated as follows:

$$£PP = [(P \times PS \times £PR)] \times PF \times [(TOS \times RF) + (NR \times RF) + (RfL \times RF)]$$

where:

P means the difference between the level of T3 achieved by the Operator in that Reporting Period on that Route and the Punctuality Threshold for that Route and Concession Year, calculated in accordance with the following:

$$P = T3 - PT$$

where:

PT means the Punctuality Threshold for that Route and Concession Year;

PF means the Punctuality Factor that is applicable to the Low Punctuality Band for that Route; and

All other factors have the meanings given to them in paragraph 2.3.

### **T3 within Lower Punctuality Band**

2.6 Where in any Reporting Period during the Concession Period, T3 for any Route is within the Lower Punctuality Band for that Route and the Concession Year in which that Reporting Period occurs, a Punctuality Payment shall be payable by the Operator to RfL in relation to that Reporting Period in accordance with paragraph 2.1, calculated as follows:

$$£PP = £L + £Lr$$

where:

£PP means the Punctuality Payment for that Route and Reporting Period;

£L means the proportion of that Punctuality Payment that relates to the part of that T3 that is within the Low Punctuality Band for that Route and Concession Year, calculated in accordance with the following:

$$£L = [(P_{Low} \times PS \times £PR)] \times PF \times [(TOS \times RF) + (NR \times RF) + (RfL \times RF)]$$

where:

P<sub>Low</sub> means the difference between the Lower Punctuality Threshold for that Route and Concession Year and the Punctuality Threshold for that Route and Concession Year, calculated in accordance with the following:

$$P_{Low} = LPT - PT$$

where:

LPT means the Lower Punctuality Threshold for that Route and Concession Year; and

PT means the Punctuality Threshold for that Route and Concession Year;

PF means the Punctuality Factor that is applicable to the Low Punctuality Band for that Route; and

All other factors have the meanings given to them in paragraph 2.3; and

£Lr means the proportion of that Punctuality Payment that relates to the part of that T3 that is within the Lower Punctuality Band for that Route and Concession Year, calculated in accordance with the following:

$$\text{£Lr} = [(P_{\text{Lower}} \times \text{PS} \times \text{£PR})] \times \text{PF} \times [(TOS \times \text{RF}) + (\text{NR} \times \text{RF}) + (\text{RfL} \times \text{RF})]$$

where:

P<sub>Lower</sub> means the difference between the level of T3 achieved by the Operator in that Reporting Period and the Lower Punctuality Threshold for that Route and Concession Year, calculated in accordance with the following:

$$P_{\text{Lower}} = T3 - \text{LPT}$$

where:

LPT means the Lower Punctuality Threshold for that Route and Concession Year; and

PF means the Punctuality Factor that is applicable to the Lower Punctuality Band for that Route; and

All other factors have the meanings given to them in paragraph 2.3.

### **T3 equal to or below Remedial Plan Punctuality Threshold**

2.7 Where in any Reporting Period during the Concession Period, T3 for any Route is equal to below the Remedial Plan Punctuality Threshold for that Route and the Concession Year in which that Reporting Period occurs, then without limiting paragraph 2.8, a Punctuality Payment shall be payable by the Operator to RfL in relation to that Reporting Period in accordance with paragraph 2.1, calculated as follows:

$$\text{£PP} = \text{£L} + \text{£Lr} + \text{£RP}$$

where:

£PP means the Punctuality Payment for that Route and Reporting Period;

£L means the proportion of that Punctuality Payment that relates to the part of that T3 that is within the Low Punctuality Band for that Route and Concession Year, calculated in accordance with the following:

$$\text{£L} = [(P_{\text{Low}} \times \text{PS} \times \text{£PR})] \times \text{PF} \times [(TOS \times \text{RF}) + (\text{NR} \times \text{RF}) + (\text{RfL} \times \text{RF})]$$

where:

P<sub>Low</sub> means the difference between the Lower Punctuality Threshold for that Route and Concession Year and the Punctuality Threshold for that

Route and Concession Year, calculated in accordance with the following:

$$P_{\text{Low}} = \text{LPT} - \text{PT}$$

where:

LPT means the Lower Punctuality Threshold for that Route and the Concession Year; and

PT means the Punctuality Threshold for that Route and the Concession Year;

PF means the Punctuality Factor that is applicable to the Low Punctuality Band for that Route; and

All other factors have the meanings given to them in paragraph 2.3;

£Lr means the proportion of that Punctuality Payment that relates to the part of that T3 that is within the Lower Punctuality Band for that Route and the Concession Year, calculated in accordance with the following:

$$\text{£Lr} = [(P_{\text{Lower}} \times \text{PS} \times \text{£PR})] \times \text{PF} \times [(\text{TOS} \times \text{RF}) + (\text{NR} \times \text{RF}) + (\text{RfL} \times \text{RF})]$$

where:

$P_{\text{Lower}}$  means the difference between the Remedial Plan Punctuality Threshold for that Route and Concession Year and the Lower Punctuality Threshold for that Route and Concession Year, calculated in accordance with the following:

$$P_{\text{Lower}} = \text{RPPT} - \text{LPT}$$

where:

RPPT means the Remedial Plan Punctuality Threshold for that Route and Concession Year; and

LPT means the Lower Punctuality Threshold for that Route and Concession Year;

PF means the Punctuality Factor that is applicable to the Lower Punctuality Band for that Route and Concession Year; and

All other factors have the meanings given to them in paragraph 2.3; and

£RP means the proportion of that Punctuality Payment that relates to the part of that T3 that is below the Remedial Plan Punctuality Threshold for that Route and Concession Year, calculated in accordance with the following:

$$\text{£RP} = [(P_{\text{RP}} \times \text{PS} \times \text{£PR})] \times \text{PF} \times [(\text{TOS} \times \text{RF}) + (\text{NR} \times \text{RF}) + (\text{RfL} \times \text{RF})]$$

where:

$P_{\text{RP}}$  means the difference between the level of T3 achieved by the Operator in that Reporting Period and the Remedial Plan Punctuality Threshold for that Route and Concession Year, calculated in accordance with the following:

$$P_{\text{RP}} = \text{T3} - \text{RPPT}$$

where:

$\text{RPPT}$  means the Remedial Plan Punctuality Threshold for that Route and Concession Year;

$\text{PF}$  means the Punctuality Factor that is applicable to the Remedial Plan Punctuality Band for that Route; and

All other factors have the meanings given to them in paragraph 2.3.

2.8 Where in any Reporting Period during the Concession Period, T3 for any Route is equal to or below the Remedial Plan Punctuality Threshold for that Route and Concession Year in which that Reporting Period occurs, then a contravention of this Agreement shall have occurred and the provisions of paragraph 1 (*Remedial Plan Notices and Remedial Agreements*) of Schedule 17.1 (*Remedial Plans and Remedial Agreements*) shall apply.

### **Calculating performance against Remedial Plan and Default Punctuality Thresholds**

2.9 In respect of each Reporting Period, RfL shall calculate the Operator's performance for the Thirteen Period Measurement Period in which that Reporting Period occurs by:

- (a) ascertaining in each of the Reporting Periods that comprise that Thirteen Period Measurement Period, both:
  - (i) T3 for each Route; and
  - (ii) Aggregate T3 across all Routes against the Default Punctuality Threshold; and
- (b) separately comparing:
  - (i) each T3 for each Route against the Remedial Plan Punctuality Threshold for that Route; and
  - (ii) Aggregate T3 across all Routes against the Default Punctuality Threshold.

2.10 Where in any four Reporting Periods in any Thirteen Period Measurement Period T3 is equal to or below the Remedial Plan Punctuality Threshold for any single Route or equal to or below the Remedial Plan Punctuality Thresholds for any combination of Routes, then an Event of Default shall have occurred and the provisions of Schedule 17 (*Remedies, Termination and Expiry*) shall apply, except where Network Rail is mainly responsible for that level of T3 and at the time of that occurrence the Operator is complying with:



- (a) its obligations under this Agreement to manage Network Rail's performance under the Network Rail TAA, including, where necessary, enforcing its contractual rights thereunder; and
- (b) the terms of any Remedial Agreement that may be in force which provides among its terms for the Operator to take certain other steps to manage Network Rail's performance under the Network Rail TAA.

### **Operator's performance equal to or below the Default Punctuality Threshold**

2.11 Where Aggregate T3 across all Routes in any Thirteen Period Measurement Period is equal to or below the Default Punctuality Threshold, then an Event of Default shall have occurred and the provisions of Schedule 17 (*Remedies, Termination and Expiry*) shall apply, except where Network Rail is mainly responsible for that Aggregate T3 and at the time of that occurrence the Operator is complying with:

- (a) its obligations under this Agreement to manage Network Rail's performance under the Network Rail TAA, including, where necessary, enforcing its contractual rights thereunder; and
- (b) the terms of any Remedial Agreement that may be in force which provides among its terms for the Operator to take certain other steps to manage Network Rail's performance under the Network Rail TAA.

### **3. ONGOING LIABILITY**

Notwithstanding the occurrence of an Event of Default pursuant to paragraph 2.10 or 2.11, the Operator shall, subject to paragraph 1.8 of Schedule 17.7 (*Liability*), remain liable for any Operating Performance Adjustments that are payable by it to RfL thereafter.

### **4. PERFORMANCE FAILURES DURING OPERATOR INDUSTRIAL ACTION**

On any day in a Reporting Period on which any Industrial Action by any of the employees, agents or subcontractors of the Operator (including any person with whom the Operator has a contract of arrangement for the lending, seconding, hiring, contracting out or supervision by that person of train drivers, conductors, other train crew or station or depot staff used by the Operator in the provision of the Concession Services) prevents the Operator from operating the Passenger Services in one or more Peak:

- (a) the Reliability Adjustment and Punctuality Adjustment for that Reporting Period shall not reflect any Performance Failure that occurs on that day; and
- (b) paragraph 4 (*Concession Payments where Operator Industrial Action*) of Schedule 11.1 (*Concession Payments*) shall apply in relation to the Concession Payment to be made for that Reporting Period.

### **5. RECURRENT PERFORMANCE FAILURES**

If a Recurrent Performance Failure occurs, then a contravention of this Agreement shall have occurred and the provisions of paragraph 1 (*Remedial Plan Notices and Remedial Agreement*) of Schedule 17.1 (*Remedial Plans and Remedial Agreements*) shall apply.

**6. INDEXATION OF ADJUSTMENTS**

Each of the Punctuality Adjustments and Reliability Adjustments are references to amounts as at the Indexation Base Month and shall be indexed in accordance with paragraph 3 (*Indexation by reference to RPI*) of Schedule 11.2 (*Annual Concession Payments and Indexation*).

APPENDIX 1 TO SCHEDULE 7.1

SERVICE RELIABILITY BANDS TABLES

ELL											
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	
Reliability Band	Year 1 (2016/17) %	Year 2 (2017/18) %	Year 3 (2018/19) %	Year 4 (2019/20) %	Year 5 (2020/21) %	Year 6 (2021/22) %	Year 7 (2022/23) %	Year 8 (2023/24) %	Year 9 (2024) %	Any later year / part year %	
Above Reliability Threshold	98.5	98.5	98.5	98.5	98.5	98.5	98.5	98.5	98.5	98.5	100% Reliability Threshold
Low Reliability Band	97.5	97.5	97.5	97.5	97.5	97.5	97.5	97.5	97.5	97.5	Lower Reliability Threshold
Lower Reliability Band											0%

GOB											
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	
Reliability Band	Year 1 (2016/17) %	Year 2 (2017/18) %	Year 3 (2018/19) %	Year 4 (2019/20) %	Year 5 (2020/21) %	Year 6 (2021/22) %	Year 7 (2022/23) %	Year 8 (2023/24) %	Year 9 (2024) %	Any later year / part year %	
Above Reliability Threshold	99.0	99.0	99.0	99.0	99.0	99.0	99.0	99.0	99.0	99.0	100% Reliability Threshold
Low Reliability Band	97.5	97.5	97.5	97.5	97.5	97.5	97.5	97.5	97.5	97.5	Lower Reliability Threshold
Lower Reliability Band											0%

LCFL										
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11
Reliability Band	Year 1 (2016/17) %	Year 2 (2017/18) %	Year 3 (2018/19) %	Year 4 (2019/20) %	Year 5 (2020/21) %	Year 6 (2021/22) %	Year 7 (2022/23) %	Year 8 (2023/24) %	Year 9 (2024) %	Any later year / part year %
Above Reliability Threshold	98.5	98.5	98.5	98.5	98.5	98.5	98.5	98.5	98.5	98.5
Low Reliability Band	97.5	97.5	97.5	97.5	97.5	97.5	97.5	97.5	97.5	97.5
Lower Reliability Band										

100%  
Reliability Threshold  
Lower Reliability Threshold  
0%

LECL										
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11
Reliability Band	Year 1 (2016/17) %	Year 2 (2017/18) %	Year 3 (2018/19) %	Year 4 (2019/20) %	Year 5 (2020/21) %	Year 6 (2021/22) %	Year 7 (2022/23) %	Year 8 (2023/24) %	Year 9 (2024) %	Any later year / part year %
Above Reliability Threshold	98.5	98.5	98.5	98.5	98.5	98.5	98.5	98.5	98.5	98.5
Low Reliability Band	97.5	97.5	97.5	97.5	97.5	97.5	97.5	97.5	97.5	97.5
Lower Reliability Band										

100%  
Reliability Threshold  
Lower Reliability Threshold  
0%

NLL										
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11
Reliability Band	Year 1 (2016/17) %	Year 2 (2017/18) %	Year 3 (2018/19) %	Year 4 (2019/20) %	Year 5 (2020/21) %	Year 6 (2021/22) %	Year 7 (2022/23) %	Year 8 (2023/24) %	Year 9 (2024) %	Any later year / part year %
Above Reliability Threshold	98.5	98.5	98.5	98.5	98.5	98.5	98.5	98.5	98.5	98.5
Low Reliability Band	97.5	97.5	97.5	97.5	97.5	97.5	97.5	97.5	97.5	97.5
Lower Reliability Band										

100%  
Reliability Threshold  
Lower Reliability Threshold  
0%

RUL										
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11
Reliability Band	Year 1 (2016/17) %	Year 2 (2017/18) %	Year 3 (2018/19) %	Year 4 (2019/20) %	Year 5 (2020/21) %	Year 6 (2021/22) %	Year 7 (2022/23) %	Year 8 (2023/24) %	Year 9 (2024) %	Any later year / part year %
Above Reliability Threshold	99.5	99.5	99.5	99.5	99.5	99.5	99.5	99.5	99.5	99.5
Low Reliability Band	97.5	97.5	97.5	97.5	97.5	97.5	97.5	97.5	97.5	97.5
Lower Reliability Band										

100%  
Reliability Threshold  
Lower Reliability Threshold  
0%

WEL										
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11
Reliability Band	Year 1 (2016/17) %	Year 2 (2017/18) %	Year 3 (2018/19) %	Year 4 (2019/20) %	Year 5 (2020/21) %	Year 6 (2021/22) %	Year 7 (2022/23) %	Year 8 (2023/24) %	Year 9 (2024) %	Any later year / part year %
<b>Above Reliability Threshold</b>										
<b>Low Reliability Band</b>	99.0	99.0	99.0	99.0	99.0	99.0	99.0	99.0	99.0	99.0
<b>Lower Reliability Band</b>	97.5	97.5	97.5	97.5	97.5	97.5	97.5	97.5	97.5	97.5

100%  
Reliability Threshold  
Lower Reliability Threshold  
0%

**APPENDIX 2 TO SCHEDULE 7.1**  
**SERVICE PUNCTUALITY BANDS TABLES**

<b>ELL</b>											
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	<b>Column 4</b>	<b>Column 5</b>	<b>Column 6</b>	<b>Column 7</b>	<b>Column 8</b>	<b>Column 9</b>	<b>Column 10</b>	<b>Column 11</b>	
<b>Punctuality Band</b>	<b>Year 1 (2016/17) %</b>	<b>Year 2 (2017/18) %</b>	<b>Year 3 (2018/19) %</b>	<b>Year 4 (2019/20) %</b>	<b>Year 5 (2020/21) %</b>	<b>Year 6 (2021/22) %</b>	<b>Year 7 (2022/23) %</b>	<b>Year 8 (2023/24) %</b>	<b>Year 9 (2024) %</b>	<b>Any year or part year thereafter %</b>	
<b>Above Punctuality Ceiling</b>	99.0	99.0	99.0	99.0	99.0	99.0	99.0	99.0	99.0	99.0	100%
<b>Upper Punctuality Band</b>	90.3	92.6	92.6	92.6	92.6	92.6	92.6	92.6	92.6	92.6	Punctuality Ceiling
<b>Middle Punctuality Band</b>	89.8	92.1	92.1	92.1	92.1	92.1	92.1	92.1	92.1	92.1	Upper Punctuality Threshold
<b>Low Punctuality Band</b>	89.3	91.6	91.6	91.6	91.6	91.6	91.6	91.6	91.6	91.6	Punctuality Threshold
<b>Lower Punctuality Band</b>	86.8	86.8	86.8	86.8	86.8	86.8	86.8	86.8	86.8	86.8	Lower Punctuality Threshold
<b>Remedial Plan Punctuality Band</b>											Remedial Plan Punctuality Threshold
											0%

GOB											
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	
Punctuality Band	Year 1 (2016/17) %	Year 2 (2017/18) %	Year 3 (2018/19) %	Year 4 (2019/20) %	Year 5 (2020/21) %	Year 6 (2021/22) %	Year 7 (2022/23) %	Year 8 (2023/24) %	Year 9 (2024) %	Any year or part year thereafter %	
<b>Above Punctuality Ceiling</b>	99.0	99.0	99.0	99.0	99.0	99.0	99.0	99.0	99.0	99.0	100%
<b>Upper Punctuality Band</b>	94.4	95.1	95.1	95.1	95.1	95.1	95.1	95.1	95.1	95.1	Punctuality Ceiling
<b>Middle Punctuality Band</b>	93.9	94.6	94.6	94.6	94.6	94.6	94.6	94.6	94.6	94.6	Upper Punctuality Threshold
<b>Low Punctuality Band</b>	93.4	94.1	94.1	94.1	94.1	94.1	94.1	94.1	94.1	94.1	Punctuality Threshold
<b>Lower Punctuality Band</b>	91.6	91.6	91.6	91.6	91.6	91.6	91.6	91.6	91.6	91.6	Lower Punctuality Threshold
<b>Remedial Plan Punctuality Band</b>											Remedial Plan Punctuality Threshold
											0%



LCFL											
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	
Punctuality Band	Year 1 (2016/17) %	Year 2 (2017/18) %	Year 3 (2018/19) %	Year 4 (2019/20) %	Year 5 (2020/21) %	Year 6 (2021/22) %	Year 7 (2022/23) %	Year 8 (2023/24) %	Year 9 (2024) %	Any year or part year thereafter %	
<b>Above Punctuality Ceiling</b>	94.0	94.0	94.0	94.0	94.0	94.0	94.0	94.0	94.0	94.0	100%
<b>Upper Punctuality Band</b>	88.7	90.1	90.1	90.1	90.1	90.1	90.1	90.1	90.1	90.1	Punctuality Ceiling
<b>Middle Punctuality Band</b>	88.0	89.4	89.4	89.4	89.4	89.4	89.4	89.4	89.4	89.4	Upper Punctuality Threshold
<b>Low Punctuality Band</b>	87.3	88.7	88.7	88.7	88.7	88.7	88.7	88.7	88.7	88.7	Punctuality Threshold
<b>Lower Punctuality Band</b>	85.3	85.3	85.3	85.3	85.3	85.3	85.3	85.3	85.3	85.3	Lower Punctuality Threshold
<b>Remedial Plan Punctuality Band</b>											Remedial Plan Punctuality Threshold
											0%

LECL											
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	
Punctuality Band	Year 1 (2016/17) %	Year 2 (2017/18) %	Year 3 (2018/19) %	Year 4 (2019/20) %	Year 5 (2020/21) %	Year 6 (2021/22) %	Year 7 (2022/23) %	Year 8 (2023/24) %	Year 9 (2024) %	Any year or part year thereafter %	
<b>Above Punctuality Ceiling</b>	94.0	94.0	94.0	94.0	94.0	94.0	94.0	94.0	94.0	94.0	100%
<b>Upper Punctuality Band</b>	89.3	90.6	90.6	90.6	90.6	90.6	90.6	90.6	90.6	90.6	Punctuality Ceiling
<b>Middle Punctuality Band</b>	88.6	89.9	89.9	89.9	89.9	89.9	89.9	89.9	89.9	89.9	Upper Punctuality Threshold
<b>Low Punctuality Band</b>	87.9	89.2	89.2	89.2	89.2	89.2	89.2	89.2	89.2	89.2	Punctuality Threshold
<b>Lower Punctuality Band</b>	85.9	85.9	85.9	85.9	85.9	85.9	85.9	85.9	85.9	85.9	Lower Punctuality Threshold
<b>Remedial Plan Punctuality Band</b>											Remedial Plan Punctuality Threshold
											0%

NLL											
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	
Punctuality Band	Year 1 (2016/17) %	Year 2 (2017/18) %	Year 3 (2018/19) %	Year 4 (2019/20) %	Year 5 (2020/21) %	Year 6 (2021/22) %	Year 7 (2022/23) %	Year 8 (2023/24) %	Year 9 (2024) %	Any year or part year thereafter %	
<b>Above Punctuality Ceiling</b>	99.0	99.0	99.0	99.0	99.0	99.0	99.0	99.0	99.0	99.0	100%
<b>Upper Punctuality Band</b>	92.6	92.6	92.6	92.6	92.6	92.6	92.6	92.6	92.6	92.6	Punctuality Ceiling
<b>Middle Punctuality Band</b>	92.1	92.1	92.1	92.1	92.1	92.1	92.1	92.1	92.1	92.1	Upper Punctuality Threshold
<b>Low Punctuality Band</b>	91.6	91.6	91.6	91.6	91.6	91.6	91.6	91.6	91.6	91.6	Punctuality Threshold
<b>Lower Punctuality Band</b>	89.8	89.8	89.8	89.8	89.8	89.8	89.8	89.8	89.8	89.8	Lower Punctuality Threshold
<b>Remedial Plan Punctuality Band</b>											Remedial Plan Punctuality Threshold
											0%

RUL											
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	
Punctuality Band	Year 1 (2016/17) %	Year 2 (2017/18) %	Year 3 (2018/19) %	Year 4 (2019/20) %	Year 5 (2020/21) %	Year 6 (2021/22) %	Year 7 (2022/23) %	Year 8 (2023/24) %	Year 9 (2024) %	Any year or part year thereafter %	
<b>Above Punctuality Ceiling</b>	99.8	99.8	99.8	99.8	99.8	99.8	99.8	99.8	99.8	99.8	100%
<b>Upper Punctuality Band</b>	98.9	98.9	98.9	98.9	98.9	98.9	98.9	98.9	98.9	98.9	Punctuality Ceiling
<b>Middle Punctuality Band</b>	98.7	98.7	98.7	98.7	98.7	98.7	98.7	98.7	98.7	98.7	Upper Punctuality Threshold
<b>Low Punctuality Band</b>	98.5	98.5	98.5	98.5	98.5	98.5	98.5	98.5	98.5	98.5	Punctuality Threshold
<b>Lower Punctuality Band</b>	97.1	97.1	97.1	97.1	97.2	97.1	97.1	97.1	97.1	97.1	Lower Punctuality Threshold
<b>Remedial Plan Punctuality Band</b>											Remedial Plan Punctuality Threshold
											0%

WEL											
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	
Punctuality Band	Year 1 (2016/17) %	Year 2 (2017/18) %	Year 3 (2018/19) %	Year 4 (2019/20) %	Year 5 (2020/21) %	Year 6 (2021/22) %	Year 7 (2022/23) %	Year 8 (2023/24) %	Year 9 (2024) %	Any year or part year thereafter %	
<b>Above Punctuality Ceiling</b>	99.0	99.0	99.0	99.0	99.0	99.0	99.0	99.0	99.0	99.0	100%
<b>Upper Punctuality Band</b>	94.9	94.9	94.9	94.9	94.9	94.9	94.9	94.9	94.9	94.9	Punctuality Ceiling
<b>Middle Punctuality Band</b>	94.4	94.4	94.4	94.4	94.4	94.4	94.4	94.4	94.4	94.4	Upper Punctuality Threshold
<b>Low Punctuality Band</b>	93.9	93.9	93.9	93.9	93.9	93.9	93.9	93.9	93.9	93.9	Punctuality Threshold
<b>Lower Punctuality Band</b>	92.4	92.4	92.4	92.4	92.4	92.4	92.4	92.4	92.4	92.4	Lower Punctuality Threshold
<b>Remedial Plan Punctuality Band</b>	92.4	92.4	92.4	92.4	92.4	92.4	92.4	92.4	92.4	92.4	Remedial Plan Punctuality Threshold
											0%



## SCHEDULE 7.2

### Performance Payments under Track Access Agreements

#### 1. PAYMENTS TO AND FROM NETWORK RAIL

##### Payments in relation to Network Rail's performance

1.1 The Operator shall, subject to paragraph 1.3, in each Reporting Period pay to RfL by way of a Track Access Agreement Performance Adjustment for that Reporting Period in accordance with paragraph 3.3 of Schedule 11.1 (*Concession Payments*), any Network Rail (Schedule 8) Payment paid to the Operator under any Network Rail TAA, for reasons attributable to the performance by Network Rail of its performance obligations, and the Operator shall, if RfL so directs, exercise its rights under any Network Rail TAA to ensure that any such Network Rail (Schedule 8) Payment will, when paid to RfL pursuant to this paragraph 1.1, compensate RfL to the fullest extent possible for any adverse impacts on Ticket Revenue, Non-Ticket Revenue or additional costs incurred by RfL as a consequence of such performance, including, where appropriate, seeking compensation for RfL's actual costs incurred.

1.2 RfL shall, subject to paragraph 1.3, in each Reporting Period pay to the Operator by way of a Track Access Agreement Performance Adjustment for that Reporting Period in accordance with paragraph 3.3 of Schedule 11.1, a sum that is equivalent to any Network Rail (Schedule 8) Payment that the Operator is obliged to make to Network Rail in relation to a Reporting Period under the terms of schedule 8 (*Performance Regime*) of any Network Rail TAA (*NRTAA Performance Regime*) where the Network Rail Performance Sum (as defined therein) is greater than zero in that Reporting Period.

##### Set-off of payments

1.3 Any payment to be made by the Operator to RfL pursuant to paragraph 1.1 in any Reporting Period shall be set-off against any payment to be made in the same Reporting Period by RfL to the Operator pursuant to paragraph 1.2.

#### 2. PAYMENTS TO AND FROM RFL (I)

The parties hereby acknowledge that no payments are payable by RfL (I) or the Operator to the other under the performance regime in the RfL (I) TAA in respect of their performance in operating the ELL Core Route and trains on the ELL Core Route respectively. In the event that payments do become payable under the performance regime in the RfL (I) TAA on a similar basis to the performance-related payments described in paragraph 1 (*Payments to and from Network Rail*), then the parties shall promptly implement a Variation to provide for a pass through of performance-related payments under the performance regime in the RfL (I) TAA the on similar terms to that described in paragraph 1.

#### 3. RFL PAYMENTS IN RESPECT OF TOC-ON-TOC PERFORMANCE

3.1 Subject to paragraph 3.3, if in any Reporting Period the Operator is required to pay Network Rail a 'Train Operator Performance Sum (TPS)' under the NRTAA Performance Regime due to RfL (I)'s performance under the RfL (I) TAA, then RfL shall pay to the Operator by way of a Track Access Agreement Performance Adjustment for that Reporting

Period in accordance with paragraph 3.3 of Schedule 11.1 (*Concession Payments*), an amount (the *RfL (I) NR TOC-on-TOC Payment*) equal to the lesser of:

- (a) the amount of such Train Operator Performance Sum (TPS); and
- (b) the value of RfL(I)P (as a positive amount) in the following formula:

$$\text{RfL(I)P} = \text{RWAML} \times \text{BF} \times \text{TPR}$$

where:

RfL(I)P means the RfL (I) NR TOC-on-TOC Payment;

RWAML has the same meaning as 'TWAML' in the NRTAA Performance Regime, save that 'MLT' therein shall mean Minutes Lateness allocated to RfL (I) using the same methodology as specified in paragraph 8 of the NRTAA Performance Regime;

BF has the same meaning as in paragraph 10 of the NRTAA Performance Regime; and

TPR has the same meaning as in paragraph 10 of the NRTAA Performance Regime.

3.2 Where in any Reporting Period, RfL (I) has disputed any Minutes Lateness under the terms of the RfL (I) TAA, RfL shall be obliged to make any RfL (I) NR TOC-on-TOC Payment:

- (a) on the next Payment Date falling no less than seven days after such dispute is resolved in accordance with the terms of the RfL (I) TAA; and
- (b) only to the extent that following such resolution, any such Minutes Lateness are allocated to RfL (I).

3.3 If a performance benchmark is subsequently calibrated and included within the Network Rail TAA which recognises the potential impact of RfL (I)'s performance under the RfL (I) TAA, then a Change shall occur and the parties shall amend paragraph 3.1:

- (a) to include a benchmark that recognises that potential impact; and
- (b) to provide for any future RfL (I) NR TOC-on-TOC Payment to be paid where that performance is worse than that benchmark.



## SCHEDULE 7.3

### PPM Regime

#### 1. MEASURING PUNCTUALITY

When measuring the PPM achieved by the Operator in any Reporting Period for the purpose of paragraph 2 (*PPM Calculations*), the following shall apply:

- (a) a Passenger Service shall be treated as having arrived ‘punctually’ for the purpose of the definition of PPM if it arrives at its final destination within five minutes of its scheduled arrival time at that final destination as shown in the Plan of the Day;
- (b) any Cancellation will be regarded as not having arrived punctually; and
- (c) in relation to any Passenger Service, punctuality shall be measured once at the scheduled final destination of that Passenger Service.

#### 2. PPM CALCULATIONS

##### PPM Threshold

2.1 For each Reporting Period, RfL shall determine the Operator’s performance against the PPM Threshold by:

- (a) ascertaining the PPM achieved by the Operator in that Reporting Period;
- (b) ascertaining the PPM achieved by the Operator, measured as a moving annual average, over, subject to paragraph 2.2, the preceding 12 Reporting Periods and that Reporting Period (the *PPM MAA*); and
- (c) comparing the PPM MAA against the PPM Threshold.

2.2 Where less than 13 Reporting Periods have occurred during the Concession Period, RfL shall for the purpose of calculating the PPM MAA and determining the Operator’s performance against the PPM Threshold pursuant to paragraph 2.1, aggregate the PPM that the Operator achieves in each of the Reporting Periods in that Concession Year with a notional PPM at the PPM Threshold for such number of Reporting Periods as are necessary to generate the PPM MAA.

##### Force Majeure

2.3 In calculating the PPM for the purposes of paragraph 2.1, any Passenger Service that does not arrive at its destination within five minutes of the arrival time scheduled in the Plan of the Day because of the occurrence or continuing effect of a Force Majeure Event shall be deemed to have arrived at its destination within five minutes of the arrival time scheduled in the Plan of the Day.

#### 3. FAILURE TO ACHIEVE PPM THRESHOLD

3.1 If the PPM MAA is below the PPM Threshold in any two consecutive Reporting Periods that occur during the Concession Term, then a *PPM Failure* shall have occurred.

3.2 If a PPM Failure occurs, it shall constitute a contravention of this Agreement and the provisions of paragraph 1 (*Remedial Plan Notices and Remedial Agreements*) of Schedule 17.1 (*Remedial Plans and Remedial Agreements*) shall apply, provided that, where the Operator is required by RfL pursuant to that paragraph to submit and implement a Remedial Plan to ensure in future Reporting Periods that the PPM MAA is no less than the PPM Threshold:

- (a) the Operator shall in submitting any such Remedial Plan, notify RfL of the expenditure it will incur in implementing that plan; and
- (b) the Operator shall not be required to spend more than ■<sup>34</sup> in any Concession Year (an amount as at the Indexation Base Month and shall be indexed in accordance with paragraph 3 (*Indexation by reference to RPI*) of Schedule 11.2 (*Annual Concession Payments and Indexation*)) in implementing any such plan, taking account of any expenditure that the Operator is to incur in implementing any concurrent Remedial Plan pursuant to this paragraph 3.2.

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<sup>34</sup> This text has been redacted by Rail for London in accordance with the provisions of the Freedom of Information Act 2000.

## SCHEDULE 7.4

### General Operating Performance Provisions

#### 1. PERFORMANCE MONITORING SYSTEM

1.1 The Operator shall procure and maintain throughout the Concession Period a performance monitoring system to collect operating performance data that is agreed by RfL (the *Performance Monitoring System*) and procure access for RfL to the Performance Monitoring System, including granting or procuring the grant of any necessary third party licences.

1.2 The Performance Monitoring System shall be capable of:

- (a) recording accurate performance data for the London Overground Network against the Plan of the Day;
- (b) configuring reports by time intervals specified by the user;
- (c) downloading data for further analysis using third party software;
- (d) producing printer-friendly reports; and
- (e) accessing via the internet.

#### 2. DAILY PERFORMANCE DATA

##### Daily recording and monitoring

2.1 On each day of the Concession Period, the Operator shall monitor and accurately record on the Performance Monitoring System all Performance Failures that occur on that day using any reliable and accurate data available to it, including from:

- (a) any Network Monitoring System;
- (b) the Operator Control Room;
- (c) any information obtained from the Concession Employees (including drivers of Units);
- (d) in relation to the Class 172 Fleet and the Class 710 Fleet, the Maintainer Daily Performance Record and the Data (in each case as defined in the Class 710 TSA) provided by the Class 710 Maintainer; and
- (e) in relation to the Class 378 Fleet, the daily record provided by the Class 378 Maintainer referred to in paragraph 1.1 of part 3 (*General Provisions*) of schedule 3 (*Performance Regime*) of the Class 378 TSA.

##### Daily reporting prior to the Class 710 Operating Date

2.2 By 07.00 on each day of the Concession Period that occurs prior to the Class 710 Operating Date (other than the first two days of the Concession Period), the Operator shall provide RfL with the Operator Daily Performance Record which shall include data relating to the Train Fleet (other than the Class 710 Fleet).

### **Daily reporting on and after the Class 710 Operating Date**

2.3 By 07.00 on each day of the Concession Period that occurs on and after the Class 710 Operating Date (other than in relation to the Class 710 Fleet only, the first two days after the Class 710 Operating Date), the Operator shall provide RfL with the Operator Daily Performance Record which shall include data relating to the Train Fleet.

2.4 That part of any Operator Daily Performance Record that relates to:

- (a) the Class 378 Fleet shall be used by RfL to produce the RfL Daily Performance Record for the purposes of the Class 378 TSA and the Class 378 TSA Agency Agreement; and
- (b) the Class 172 Fleet and the Class 710 Fleet shall be used (in the case of the Class 172 Fleet, for so long as it is operated) by RfL to produce the RfL Daily Performance Record for the purposes of the Class 710 TSA and the Class 710 TSA Agency Agreement.

### **3. PERIODIC PERFORMANCE DATA**

#### **Periodic reporting prior to Class 710 Operating Date**

3.1 At the end of each Reporting Period that commences prior to the Class 710 Operating Date, the Operator shall include data relating to the Train Fleet (other than the Class 710 Fleet) and the PPM MAA in the Periodic Concession Report for that Reporting Period.

#### **Periodic reporting on and after the Class 710 Operating Date**

3.2 At the end of each Reporting Period that commences on or after the Class 710 Operating Date, the Operator shall for that Reporting Period include data relating to the Train Fleet and the PPM MAA in the Periodic Concession Report.

#### **Attribution**

3.3 The Operator shall use reasonable endeavours to procure that RfL (I) is entitled to actively participate in the performance attribution process applicable under the Network Rail TAA, including procuring that RfL (I):

- (a) has access to the relevant performance data and attribution information at the same time as the Operator has such access; and
- (b) is able to make representations to Network Rail and other interested parties in relation to the attribution of performance incidents.

### **4. NOTICE OF CALCULATIONS**

4.1 RfL shall perform the calculations pursuant to this Schedule 7 for each Reporting Period by utilising the performance data on the Performance Monitoring System for that Reporting Period.

4.2 As soon as reasonably practicable after the end of each Reporting Period, RfL shall notify the Operator of the results of the calculations that are to be performed in respect of that Reporting Period pursuant to paragraph 4.1.

## 5. GENERAL PRINCIPLES FOR CALCULATIONS PURSUANT TO THIS SCHEDULE 7

### Disregarding certain Performance Failures

5.1 In performing the calculations pursuant to Schedule 7.1 (*Operating Performance Regime*), RfL shall disregard any Performance Failure that:

- (a) is caused by the occurrence or continuing effect of a Force Majeure Event;
- (b) in the case of a Cancellation or Short Formation, is caused by the implementation in accordance with its terms of an RfL Agreed Recovery Plan; and
- (c) in the case of a Class 172 Unit, a Class 710 Unit or a Class 378 Unit, is attributable to an RfL Failure,

with the effect in each case that RfL shall not include in any such calculation both that Performance Failure and the affected Passenger Service in the number of Passenger Services planned to be operated in the relevant Reporting Period on the relevant Route.

### Meaning of Train Plan

5.2 For the purposes of calculating the number (if any) of Short Formations in any Reporting Period, **Train Plan** shall, unless otherwise stated, mean the then current train plan which has been finalised pursuant to paragraph 13.2 of Schedule 1.1 (*Timetable and Service Development*) and which includes any amendments thereto:

- (a) pursuant to paragraphs 2.3 and 2.6 of Schedule 1.2 (*Passenger Service Operating Obligations*);
- (b) pursuant to paragraph 2.3 of Schedule 1.2, where such amendments are agreed by RfL in accordance with such paragraph; and
- (c) pursuant to paragraph 6 (*Alternative Timetable Arrangements*) of Schedule 1.3 (*Managing Changes to the Passenger Services*), where:
  - (i) such amendments are required as a consequence of any Infrastructure Manager exercising its rights pursuant to the relevant Track Access Agreement; and
  - (ii) the Operator has complied with the provisions of such paragraph in respect thereof.

### Disputed Minutes Lateness or Minutes Delay

5.3 Where the attribution of any Minutes Lateness or Minutes Delay pursuant to any Track Access Agreement is in dispute between the relevant Infrastructure Manager and the Operator at the end of a Reporting Period, RfL shall, for the purpose of performing the calculations pursuant to, as appropriate, paragraphs 1 (*Service Reliability*) and 2 (*Service Punctuality*) of Schedule 7.1, allocate, as the case may be, those Minutes Lateness or Minutes Delay between the Operator and that Infrastructure Manager in the proportions of:

A to B

where:

A is the total number of, as the case may be, undisputed Minutes Lateness or Minutes Delay from the 12 preceding Reporting Periods that are attributable to the Operator pursuant to that Track Access Agreement; and

B is the total number of, as the case may be, undisputed Minutes Lateness or Minutes Delay from the 12 preceding Reporting Periods that are attributable to the relevant Infrastructure Manager pursuant to that Track Access Agreement.

5.4 Where the attribution of any Minutes Lateness or Minutes Delay pursuant to any Track Access Agreement is resolved between the relevant Infrastructure Manager and the Operator in accordance with the terms of that Track Access Agreement during any Reporting Period, RfL shall, for the purposes of performing the calculations in paragraphs 1 and 2 of Schedule 7.1, make provision for any resulting increase or decrease in, as the case may be, Minutes Lateness or Minutes Delay attributable to the Operator and attributable to the relevant Infrastructure Manager.

5.5 The Operator agrees with RfL to comply with the requirements of the relevant Track Access Agreement in respect of Minutes Lateness attribution.

## 6. RfL AGREED RECOVERY PLANS

6.1 The Operator may propose a recovery plan to RfL that meets the requirements of paragraph 6.2 where there is a prevention or restriction of access to the track or a section of track (howsoever caused) that:

- (a) is of the kind contemplated by paragraph 1(a)(i) of Schedule 17.6 (*Force Majeure*) but which does not satisfy the conditions of that paragraph; but
- (b) results, due to the extent and/or sustained nature of that prevention or restriction, in a disproportionate level of Cancellations and/or Short Formations.

6.2 Any recovery plan proposed by the Operator pursuant to paragraph 6.1 shall seek to:

- (a) minimise the disruption arising from the given prevention or restriction by providing the best possible level of service given such disruption, including by:
  - (i) keeping service intervals to reasonable durations;
  - (ii) keeping extended journey times to reasonable durations; and
  - (iii) managing any resulting overcrowding; and
- (b) return the level of service to that level specified in the Timetable as soon as reasonably practicable.

6.3 RfL shall consider any recovery plan proposed by the Operator pursuant to paragraph 6.1 and confirm whether or not it agrees to the terms of that recovery plan, in each case in a timely manner, provided that RfL shall not be obliged to accept any such recovery plan.

6.4 If RfL confirms pursuant to paragraph 6.3 that it agrees to the terms of any recovery plan proposed by the Operator pursuant to paragraph 6.1:

- (a) that recovery plan shall be an ***RfL Agreed Recovery Plan***;

- (b) the Operator shall implement that RfL Agreed Recovery Plan in accordance with its terms; and
- (c) the provisions of paragraph 5.1(b) shall apply.





**SCHEDULE 8**

**SERVICE QUALITY AND PASSENGER PERCEPTION**

- Schedule 8.1: Standards Regime (KPIs)**
  - Appendix 1: Key Performance Indicators**
  - Appendix 2: Measures used to inform Standards Regime (KPIs) compliance**
- Schedule 8.2: Standards Regime (MSS)**
  - Appendix: MSS Thresholds**
- Schedule 8.3: Standards Regime (AMTS)**
- Schedule 8.4: Satisfaction Regime (CSS)**
  - Appendix: CSS Bands Tables**
- Schedule 8.5: Staff Regime (SIS)**
  - Appendix: SIS Bands Tables**
- Schedule 8.6: Monitoring Trends**



## SCHEDULE 8.1

### Standards Regime (KPIs)

#### 1. INTRODUCTION

1.1 This Standards Regime (KPIs) provides for:

- (a) the responsibilities, including auditing, and reporting requirements of the Operator;
- (b) the audits that may be carried out by RfL;
- (c) the rights of RfL to witness any audit carried out by the Operator; and
- (d) the remedies available to RfL if the Operator under-performs against the Key Performance Indicators.

1.2 This Standards Regime (KPI) and the Operator's responsibilities, RfL auditing rights and remedies hereunder are limited to those facilities that are installed at a KPI Measured Station or on any rolling stock vehicle comprising the Train Fleet or, in respect of the Key Performance Indicators set out in rows 9 and 10 of Table 6 in Appendix 1 (*Key Performance Indicators*) any Split Diagram Unit, in each case as at the Start Date or as subsequently installed as expressly contemplated by this Agreement or as a consequence of the implementation of a Variation.

#### 2. AUDITING

##### **KPI Audit Programme**

2.1 The Operator shall establish an audit programme by the Start Date which shall provide for a reasonable spread and frequency of audits across London Overground and across those facilities that are the subject of the Key Performance Indicators in order to ascertain:

- (a) the extent to which the Operator is implementing the Fault Management System in accordance with its terms;
- (b) the extent to which the Operator is meeting, and the way in which the Operator seeks to meet, in each case, the standards of the Key Performance Indicators; and
- (c) the extent to which the Operator is accurately reporting faults in accordance with paragraph 3 (*Reporting Requirements of the Operator*),

(the *KPI Audit Programme*).

2.2 The Operator shall implement the KPI Audit Programme in accordance with its terms:

- (a) in relation to a KPI Measured Station, from the date that the Operator becomes the Facility Owner of that KPI Measured Station;
- (b) in relation to a Unit, during any period that the Operator first operates that Unit in passenger revenue earning service; and

- (c) in all other respects, from the Start Date.

**RfL auditing**

2.3 RfL, and its nominee on its behalf, shall have the right to:

- (a) verify the accuracy of any reports provided by the Operator pursuant to paragraph 3.2(ii);
- (b) witness any audits carried out by the Operator under the KPI Audit Programme; and
- (c) carry out its own independent audits of the extent to which the Operator is implementing the Fault Management System in accordance with its terms and the way in which the Operator seeks to meet the standards of the Key Performance Indicators, in addition to any further independent audits it may carry out pursuant to paragraph 2 (*Increased Monitoring by RfL*) of Schedule 17.3 (*Other RfL Remedies*).

2.4 In undertaking independent audits carried out pursuant to paragraph 2.3(c), RfL shall:

- (a) populate those parts of the MSS Questionnaire that contain any standard in relation to any Key Performance Indicator specified in Appendix 2; and
- (b) use all reasonable endeavours to ensure that the persons employed carry out such audits diligently and objectively.

2.5 The Operator shall:

- (a) co-operate with RfL, and its nominees on its behalf, in permitting RfL and its nominees to exercise their respective rights under paragraph 2.3 and shall provide to RfL, within 48 hours of RfL's request, any underlying data relating to any report provided by the Operator pursuant to paragraph 3.2(iii);
- (b) grant such access to the facilities under its control as is necessary to enable RfL and RfL's employees and nominees on its behalf to witness any audits conducted by the Operator pursuant to the KPI Audit Programme and exercise its independent audit rights under paragraph 2.3(c); and
- (c) provide notice from time to time of current location-specific access, security and safety rules and regulations to RfL or its nominees for the purpose of ensuring that RfL or its nominees can carry out RfL's auditing rights in an efficient, secure and safe manner.

2.6 In carrying out any independent audit pursuant to paragraph 2.3(c), or witnessing any audits conducted by the Operator pursuant to the KPI Audit Programme, RfL shall, subject to paragraph 2.5(c), ensure that its employees or nominees:

- (a) are appropriately trained and briefed with respect to any location-specific safety rules and regulations; and
- (b) obey any location-specific rules and regulations in respect of security and access.

2.7 RfL shall use all reasonable endeavours to notify the Operator of the result of any independent audit that is undertaken within any Reporting Period as soon as reasonably practicable thereafter.

### 3. REPORTING REQUIREMENTS OF THE OPERATOR

3.1 The Operator shall record any fault associated with the Standards Regime (KPIs) on the Fault Tracking Database automatically where the Fault Management System provides for this and to the extent not recorded automatically, promptly upon the Operator becoming aware of that fault.

3.2 The Operator shall:

- (a) include in the Periodic Concession Report for each Reporting Period (except during the first Reporting Period of the Concession Period):
  - (i) a statement of the amount of the KPI Adjustment that should be made in respect of the preceding Reporting Period in accordance with paragraph 5.1;
  - (ii) a breakdown of the amount stated pursuant to paragraph 3.2(i) where required by RfL and to such level of disaggregation as RfL may require; and
  - (iii) an accurate report of its performance, providing its assessment of that performance and the reasons for any failures against any Key Performance Indicator; and
- (b) at the same time, provide copies, where required by RfL, of the records of the audits carried out pursuant to the KPI Audit Programme.

3.3 The Operator shall be proactive in identifying and reporting to RfL faults associated with this Standards Regime (KPIs) which may be present on a repeated basis or in a number of assets or processes.

3.4 The Operator shall self-certify (such certification to be made by a director of the Operator) to RfL every Reporting Period its compliance with its obligations under this Standards Regime (KPIs).

### 4. PAYMENTS

#### Failure to meet any Key Performance Indicator standard

4.1 If the Operator fails to meet any Key Performance Indicator standard specified in Appendix 1 in any Reporting Period, then, subject to the mitigation, if any, described in the same row as that standard in Appendix 1 and paragraph 4.2, the Operator shall include in the next calculation it makes pursuant to paragraph 5.1, the performance failure payment in respect of that standard in the amount specified for that standard in Appendix 1.

4.2 The Operator and RfL may, from time to time, agree (in writing) a contingency plan relating to any of the Key Performance Indicators (each a *KPI Contingency Plan*). Any such KPI Contingency Plan may identify any measures to be taken by the Operator to address any failure to meet any Key Performance Indicator standard together with such other provisions as the parties may agree. Provided that the Operator complies with the terms and provisions of a KPI Contingency Plan, no KPI Adjustment will be made pursuant to paragraph 5.1 in respect of the relevant Key Performance Indicator.

**Material Inconsistencies**

4.3 If either any investigation carried out by RfL or its nominee pursuant to paragraph 2.3 or any report produced by the Operator pursuant to paragraph 3.2(iii) reveals material inconsistencies in the Operator’s performance in respect of this Standards Regime (KPIs) in any Reporting Period, including failures by the Operator:

- (a) to accurately calculate its performance in accordance with paragraph 5.1 (except to the extent the Operator can demonstrate to the reasonable satisfaction of RfL that any such inconsistency is due to manifest error);
- (b) to report faults in accordance with the Fault Management System; or
- (c) to audit its performance in accordance with the KPI Audit Programme,

then the Operator shall include in the next calculation it makes pursuant to paragraph 5.1, a KPI Incentive Payment, calculated in accordance with paragraph 4.4.

4.4 Any **KPI Incentive Payment** payable pursuant to paragraph 4.3 in any Reporting Period shall be calculated in accordance with the following:

$$KPIP = \text{Max}(0, CKPIA_{rp-1} - KPIA_{rp-1}) \times 10$$

where:

**KPIP** means the KPI Incentive Payment payable by the Operator to RfL for any Reporting Period;

**CKPIA<sub>rp-1</sub>** means the KPI Adjustment that should have been made in the immediately preceding Reporting Period, but for the material inconsistencies in the Operator’s compliance with this Standards Regime (KPIs); and

**KPIA<sub>rp-1</sub>** means the KPI Adjustment made in the immediately preceding Reporting Period.

4.5 Any KPI Incentive Payment calculated pursuant to paragraph 4.4 shall be taken account of in the determination of whether the Operator has contravened the Remedial Plan KPI Threshold.

**5. CALCULATION OF KPI ADJUSTMENTS**

**KPI Adjustments**

5.1 The Operator shall calculate the **KPI Adjustment** for any Reporting Period, within the time period contemplated by paragraph 3.2 in accordance with, subject to paragraph 5.3, the following:

$$KPIA = - PFP - KPIP$$

where:

**KPIA** means the KPI Adjustment payable by the Operator to RfL for any Reporting Period;

**PFP** means the total performance failure payments for the immediately preceding Reporting Period, calculated by aggregating the performance failure payments in

respect of all failures to meet any Key Performance Indicator in accordance with paragraph 4.1 in such Reporting Period; and

**KPIP** means the KPI Incentive Payment for that Reporting Period, calculated in accordance with paragraph 4.4.

5.2 Any KPI Adjustment shall be made by way of a Quality Performance Adjustment in accordance with paragraph 2.1 of Schedule 11.1 (*Concession Payments*).

### **KPI failures during Operator Industrial Action**

5.3 On any day in a Reporting Period on which any Industrial Action by any of the employees, agents or subcontractors of the Operator (including any person with whom the Operator has a contract of arrangement for the lending, seconding, hiring, contracting out or supervision by that person of train drivers, conductors, other train crew or station or depot staff used by the Operator in the provision of the Concession Services) prevents the Operator from operating the Passenger Services in one or more Peak:

- (a) the KPI Adjustment for that Reporting Period shall not reflect any failures to meet any Key Performance Indicator in accordance with paragraph 4.1 in such Reporting Period; and
- (b) paragraph 4 (*Concession Payments where Operator Industrial Action*) of Schedule 11.1 (*Concession Payments*) shall apply in relation to the Concession Payment to be made for that Reporting Period.

## **6. REMEDIAL PLANS**

### **Remedial Plans in respect of contraventions**

6.1 It shall be a contravention of this Agreement if:

- (a) a KPI Adjustment is made in any three out of six consecutive Reporting Periods that is equal to or in excess of ██████████<sup>35</sup> (an amount as at the Indexation Base Month and indexed in accordance with paragraph 3 (*Indexation by reference to RPI*) of Schedule 11.2 (*Annual Concession Payments and Indexation*)) (a **Remedial Plan KPI Threshold**);
- (b) the Operator fails to implement the Fault Management System in accordance with its terms;
- (c) the Operator fails to implement the KPI Audit Programme in accordance with its terms; or
- (d) the circumstances described in paragraph 4.3 occur on two occasions.

6.2 If any of the contraventions referred to in paragraph 6.1 occurs, then:

- (a) in the case of the occurrence of a contravention referred to in paragraph 6.1(a), the provisions of Schedule 17.2 (*Quality Regime, Remedial Plans and Remedial Agreements*) shall apply;

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<sup>35</sup> This text has been redacted by Rail for London in accordance with the provisions of the Freedom of Information Act 2000.

- (b) in the case of the occurrence of a contravention referred to in any of paragraphs 6.1(b), (c) and (d), RfL shall be entitled to exercise its rights pursuant to Schedule 17.1 (*Remedial Plans and Remedial Agreements*); and
- (c) without prejudice to paragraph 6.4, the Operator shall pay by way of Other Adjustment, RfL's reasonable costs incurred in respect of any independent audits RfL specifically carries out and RfL notifies the Operator of in order for RfL to satisfy itself that such contraventions will not occur again.

6.3 Without prejudice to paragraph 2.36 of Schedule 17.5 (*Events of Default, Termination Event and Voluntary Termination*), no Event of Default shall have occurred if any of the circumstances referred to in paragraph 6.1 occurs.

#### **Remedial Plan in respect of material inconsistencies**

6.4 If there are two or more instances where the Operator is required to carry out the calculation pursuant to paragraph 4.3, then:

- (a) RfL may require the Operator to instruct an independent third party nominated by RfL to carry out an investigation (at the Operator's cost);
- (b) such investigation shall focus on recommending changes to ensure that the Operator complies with its obligations in relation to this Standards Regime (KPIs) and is not therefore required to carry out the calculation pursuant to paragraph 4.4; and
- (c) the recommendations that the independent third party shall submit to RfL and the Operator within such time period as RfL may specify shall be deemed a Remedial Plan for the purposes of Schedule 17.1 and, subject to RfL's approval, the Operator shall cease implementing any Remedial Plan that it is currently implementing insofar as the purpose of that plan is to remedy the occurrence of material inconsistencies and instead implement that deemed Remedial Plan.

6.5 The Operator shall:

- (a) co-operate with the investigation carried out pursuant to paragraph 6.4(a);
- (b) assist the independent third party nominated by RfL to carry out that investigation in the finalisation of any related Remedial Plan; and
- (c) implement in accordance with its terms any Remedial Agreement agreed or determined pursuant to paragraph 6.6.

6.6 RfL and the Operator shall agree, or in the absence of such agreement, RfL shall reasonably determine the terms of the Remedial Agreement (prepared on the basis of the Remedial Plan concluded pursuant to paragraph 6.4(c)).

6.7 Any expenditure incurred by the Operator in complying with its obligations pursuant to paragraph 6.4 shall not be included in the remedial spending cap referred to in paragraph 5.1 of Schedule 17.2.



## Remedial Plan in respect of persistent failures

6.8 If, in RfL's reasonable opinion, the Operator has persistently failed to meet the same Key Performance Indicator standard, then a contravention shall have occurred and the provisions of Schedule 17.1 shall apply.

## 7. PERFORMANCE AGAINST DEFAULT KPI THRESHOLD

If a KPI Adjustment is made in any Reporting Period during the Concession Period that is equal to or in excess of ■■■<sup>36</sup> (an amount as at the Indexation Base Month and indexed in accordance with paragraph 3 (*Indexation by reference to RPI*) of Schedule 11.2 (*Annual Concession Payments and Indexation*)) (the **Default KPI Threshold**), then an Event of Default shall have occurred and the provisions of Schedule 17 (*Remedies, Termination and Expiry*) shall apply.

## 8. INDEXATION OF ADJUSTMENTS

Any KPI Adjustment is an amount as at the Indexation Base Month and shall be indexed in accordance with paragraph 3 (*Indexation by reference to RPI*) of Schedule 11.2 (*Annual Concession Payments and Indexation*).

## 9. CHANGING THE KEY PERFORMANCE INDICATORS

9.1 RfL may amend the requirements of any Key Performance Indicator from time to time and shall promptly notify the Operator of its intention to do so.

9.2 If RfL notifies the Operator of its intention to amend the requirements of any Key Performance Indicator pursuant to paragraph 9.1:

- (a) a Change shall occur; and
- (b) the Operator shall no later than 28 days thereafter advise RfL of those amendments (if any) it believes are reasonably required to the Fault Management System in order that that system continues to meet the requirements specified in paragraphs 19.1 and 19.2 of Schedule 2.2 (*List of Concession Services*).

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<sup>36</sup> This text has been redacted by Rail for London in accordance with the provisions of the Freedom of Information Act 2000.



**APPENDIX 1 TO SCHEDULE 8.1**

**KEY PERFORMANCE INDICATORS**

**Table 1: Key Performance Indicator – Staffing Levels and Customer Service Standards**

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
No.	Input (per Unit unless otherwise stated)	Availability Standard	Payment to RfL (£)	Mitigation	Notes
1	<b>Ticket office opening hours</b> (including both the main and excess fares window where present)	Hours of operation as required pursuant to paragraph 5 ( <i>Staffing of Ticket Offices and Gatelines</i> ) of Schedule 2.2 ( <i>List of Concession Services</i> ) whereby all products are capable of being retailed.	█ <sup>37</sup> per hour (or part of an hour) per failure	<p>A ticket office may be closed outside the Peak for no more than 10 minutes at a time in any fixed 7-hour period (or part thereof) starting when the ticket office is scheduled to open and each subsequent 7-hour period running consecutively thereafter.</p> <p>This is on the condition that:</p> <ul style="list-style-type: none"> <li>(a) passengers are able to purchase an appropriate range of tickets and Oyster products as required by the provisions of this Agreement from a TVM that must accept credit/debit card payments and be able to provide change as necessary;</li> <li>(b) the closure has been logged and the ticket office shutter and excess fares window (where present) remain open and a printed and clear notice is displayed in each window advising passengers to use the TVMs if they need to purchase a ticket; and</li> </ul>	

<sup>37</sup> Certain of the text in each of the tables in this Appendix have been redacted by Rail for London in accordance with the provisions of the Freedom of Information Act 2000.

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
No.	Input (per Unit unless otherwise stated)	Availability Standard	Payment to RfL (£)	Mitigation	Notes
				(c) a member of the Operator’s staff must be available in the booking hall with necessary capabilities, to provide customer assistance to standard specified in the SIS Questionnaire.	
2	<b>KPI Measured Station staff availability</b>	A member of staff shall be available on each KPI Measured Station as required pursuant to paragraph 3 ( <i>Staffing of London Overground Stations</i> ) of Schedule 2.2	■ per hour (or part of an hour) per failure	A member of staff need not be available for up to 10 minutes (taken as a single block outside the Peak) in any 7-hour period (or part thereof) starting when the station is scheduled to open and each subsequent 7-hour period running consecutively thereafter. Each period of the station staff being unavailable must not be consecutive with the other.	
3	<b>KPI Measured Station Platform Staff availability</b>	In addition to the staffing requirement pursuant to Key Performance Indicator 2 ( <i>Station staff availability</i> ), and paragraph 3 ( <i>Staffing of London Overground Stations</i> ) of Schedule 2.2, a member of staff shall be available at Clapham Junction Station, Platforms 1 and 2 and Willesden Junction Station (high level platforms only), in each case between the	■ per hour (or part of an hour) per failure	A member of staff need not be available for up to 10 minutes (taken as a single block outside the Peak) in any 7-hour period (or part thereof) starting when the station is scheduled to open and each subsequent 7-hour period running consecutively thereafter. Each period of the station staff being unavailable must not be consecutive with the other.	

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
No.	Input (per Unit unless otherwise stated)	Availability Standard	Payment to RfL (£)	Mitigation	Notes
		following times: <ul style="list-style-type: none"> <li>Monday to Friday between 07:00 and 20:00; and</li> <li>Saturday between 09:00 and 17:00</li> </ul>			
4	<b>Ticket barrier direct staffing availability</b> (defined as gatelines and associated wide aisle gates)	A member of staff shall be available to supervise all gatelines as required pursuant to paragraph 5.5 of Schedule 2.2	█ per hour (or part of an hour) per failure	No mitigation.	For Interchange Stations (other than Harrow & Wealdstone Station), ticket barrier staff will be expected to have a customer-facing role
5	<b>Ticket barriers operational and in use</b> (defined as gatelines and associated wide aisle gates)	All ticket gatelines at each Operator Station fully operational and in use on or before 31 January 2019 and for the remainder of the Concession Term	█ per hour any ticket gateline is not fully operational and in use	Any Operator Employee that facilitates the Operator's compliance with this Key Performance Indicator need not be available for 10 minutes (as a single block) in any 7-hour period running consecutively thereafter, providing that such Operator Employee is engaged in a customer-facing activity	

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
No.	Input (per Unit unless otherwise stated)	Availability Standard	Payment to RfL (£)	Mitigation	Notes
6	<b>Ticket queuing at all London Overground Stations</b>	95 per cent. of people queuing are served within three minutes of joining queue, measured over any one hour period in accordance with a methodology and audit programme approved by RfL by the Start Date (such approval not to be unreasonably withheld)	█ per ticket retail area at a station per day	No mitigation.	

**Table 2: Equipment Availability Standards for each KPI Measured Station**

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
No.	Input (per Unit unless otherwise stated)	Availability – permissible downtime per Concession Year (unless otherwise stated)	Payment to RfL (£)	Mitigation	Notes
1	<b>Ticket Vending Machines</b> (including the ability to retail the full range of paper tickets and provide Oyster products and services as well as accepting cash and card payments)	100 hours per machine	█ per TVM not fully functioning per hour (or part hour)	No mitigation.	
2	<b>Customer Information System visual displays defective or not showing relevant / accurate information</b> (including part of the display screen being defective)	48 hours per display screen	█ per defective visual display per hour (or part hour)	No mitigation.	
3	<b>Electronic Service Update Boards defective and connected to TfL Group data system</b>	Allowed one day (taken in a single block) in each Reporting Period per ESUB	█ per defective and/or unconnected Electronic Service Update Board per hour (or part hour)	Allowed one day (taken in a single block) unavailability in each Reporting Period per ESUB provided a timed, dated, neatly handwritten and accurate notice is placed alongside the defective ESUB, updated at least every 30 minutes during the Station Operating Day.	

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
No.	Input (per Unit unless otherwise stated)	Availability – permissible downtime per Concession Year (unless otherwise stated)	Payment to RfL (£)	Mitigation	Notes
4	<b>KPI Measured Station public address system</b> (either component(s) or system failure) that results in unintelligible or inaudible information)	48 hours per station platform	█ per failure of public address system per hour (or part hour)	One speaker per KPI Measured Station may be defective for up to five consecutive days.	
5	<b>Help Points</b>	Respond to a passenger pressing a Help Point information call button at any Operator Station within 20 seconds of such button being pressed at any time during the Station Operating Day.	█ per failure to respond per hour	No mitigation.	



Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
No.	Input (per Unit unless otherwise stated)	Availability – permissible downtime per Concession Year (unless otherwise stated)	Payment to RfL (£)	Mitigation	Notes
6	Lifts (at stations leased from Network Rail)	100 hours per lift	█ per lift per hour (or part hour)	No mitigation, with the exception of lifts undergoing renewal by Network Rail. The Operator is expected to engage with Network Rail and RfL to agree upon a programme of possessions that minimises the impact on customers.	Notwithstanding the requirement to maximise the availability of lifts, the Operator should ensure that any lift contaminated with bio-hazards is taken out of use immediately until the hazard has been satisfactorily removed  The Operator is expected to engage with Network Rail to agree a programme of maintenance that minimises the impact on customers.
7	Escalators (at stations leased from Network Rail)	100 hours per escalator	█ per escalator per hour (or part hour)	No mitigation, with the exception of escalators undergoing renewal by Network Rail.	The Operator is expected to engage with Network Rail to agree a programme of maintenance that minimises the impact on customers.
8	Escalators (at stations leased from RfL (I))	None	█ per escalator per hour (or part hour)	Maximum inoperability two hours per day.	

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
No.	Input (per Unit unless otherwise stated)	Availability – permissible downtime per Concession Year (unless otherwise stated)	Payment to RfL (£)	Mitigation	Notes
9	Lifts (at stations leased from RfL (I))	None	█ per lift per hour (or part hour)	Maximum inoperability two hours per day.	
10	<p><b>Public Toilets</b> Open at each KPI Measured Station and the following facilities available, functioning and, as appropriate, stocked and throughout the Station Operating Day:</p> <ul style="list-style-type: none"> <li>lockable cubicle doors;</li> <li>flushing toilets;</li> <li>toilet seats present and not broken;</li> <li>running water;</li> <li>personal hygiene and sanitary items available for use;</li> <li>lighting and heating present and working; and</li> <li>hand-driers present and working,</li> </ul> <p>(each a <i>Toilet Facility</i>)</p>	N/A	<p>Subject to notes (1) and (2), █ for each hour (or part hour) any Toilet Facility requirement not met</p>	No mitigation.	<p>Toilets are cleaned as part of the daily cleaning requirement.</p> <p>(1) Where two or more of the same kind of Shared Toilet Facility do not meet the relevant requirement in any public toilet, █ shall be payable per hour (or part hour) that those two or more Shared Toilet Facilities do not meet the relevant requirement.</p> <p>(2) The following shall be payable per hour (or part hour) that any public toilet is closed: █ for each individual toilet in that public toilet and, subject to note (1), █ for each Shared Toilet Facility in that public toilet.</p>

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
No.	Input (per Unit unless otherwise stated)	Availability – permissible downtime per Concession Year (unless otherwise stated)	Payment to RfL (£)	Mitigation	Notes
11	<p><b>Waiting shelters and waiting rooms</b></p> <p>Open and available for use at each KPI Measured Station throughout the Station Operating Day.</p> <p>Available for the purposes of this Key Performance Indicator means:</p> <ul style="list-style-type: none"> <li>• all seats are available, complete and unlikely to mark or damage clothing;</li> <li>• any means of heating or cooling is operational; and</li> <li>• doors and glazing intact</li> </ul>	None	<p>█ for each waiting shelter or waiting room per hour (or part hour) not open and available</p>	No mitigation.	Notwithstanding the requirement to maximise the availability of these facilities the Operator should ensure that any facility contaminated with bio-hazards is taken out of use immediately until the hazard has been satisfactorily removed.
12	<p><b>KPI Measured Station lighting (public areas)</b></p> <p>KPI Measured Station lighting, canopy lighting and all illuminated signage is in fully working order</p>	N/A	<p>█ per defective light in any 24 hour period</p>	An individual light may be defective for up to seven days but not where there are three or more defective lights on the KPI Measured Station.	

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
No.	Input (per Unit unless otherwise stated)	Availability – permissible downtime per Concession Year (unless otherwise stated)	Payment to RfL (£)	Mitigation	Notes
13	<b>Manual boarding ramps</b> Ramp(s) at each KPI Measured Station available for use in designated location	N/A	█ per day any ramp not available for use in designated location	No mitigation.	
14	<b>Hearing induction loops</b> Hearing induction loop at each KPI Measured Station fully available for customer use	24 hours per induction loop	█ per induction loop per hour (or part hour) not fully available for customer use	No mitigation.	

**Table 3: poster quality standards (excludes 3<sup>rd</sup> party advertising hoardings) in each KPI Measured Station**

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
No.	Defect (per Unit unless otherwise stated)	Availability – permissible downtime per Concession Year (unless otherwise stated)	Payment to RfL (£)	Mitigation	Notes
1	<b>Damaged / defaced posters</b> (this includes poorly installed or substantially misaligned posters and those damaged by water ingress or rendered partly illegible for any reason)	None	■ per day (or part day) any poster is damaged or defaced	No mitigation.	
2	<b>Damaged / defaced Poster boards</b>	None	■ per day (or part day) any poster board is damaged or defaced	No mitigation.	Payment applies irrespective of the condition of any poster or other item displayed on a poster board
3	<b>Engineering works/alternative timetable posters that are out-of-date</b>	None	■ per day (or part day) works / alternative timetable posters are out-of-date	Presence and accuracy of posters measured from noon the next day.	

**Table 4: Station cleaning and premises management standards for each KPI Measured Station**

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
No.	Standard	Input (per Unit unless otherwise stated)	Requirement	Payment to RfL (£)	Mitigation
1	<p><b>Daily Light Cleaning</b> Operator to implement a cleaning regime that it considers will achieve at every KPI Measured Station a mean score of 80 under the MSS Questionnaire across those measures relating to this Key Performance Indicator identified in Appendix 2</p>	<p>Minimum requirements for daily light cleaning, which may be supplemented in order to achieve a mean score of 80, are as follows:</p> <ul style="list-style-type: none"> <li>• public areas:                             <ul style="list-style-type: none"> <li>○ sweep and mop all public areas including waiting rooms and waiting areas;</li> <li>○ damp wipe all seats and handrails;</li> <li>○ remove all chewing gum, animal faeces, fly posters (any item not authorised by RfL) and fly stickers (including glue); and</li> <li>○ pick litter, leaves and loose vegetation and empty bins from all areas, including outside areas within three metres of the station boundary (as defined in the station lease); and</li> </ul> </li> <li>• public toilets:                             <ul style="list-style-type: none"> <li>○ clean and disinfect toilets and replenish personal hygiene and sanitary items and alcohol hand</li> </ul> </li> </ul>	<p>Twice daily: before Morning Peak and between 1300 and start of Evening Peak at each Operator Station.</p>	<p><b>Failure to carry out inputs set out in column 3 at periodicity specified in column 4, at [REDACTED] per failure</b></p>	

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
No.	Standard	Input (per Unit unless otherwise stated)	Requirement	Payment to RfL (£)	Mitigation
		cleaners as necessary.			
2	<p><b>Periodic Heavy Cleaning and Premises Management activities</b></p> <p>Operator to implement a cleaning regime that it considers will achieve at every KPI Measured Station a mean score of 80 under the MSS Questionnaire across those measures relating to this Key Performance Indicator identified in Appendix 2</p>	<p>Minimum requirements for periodic heavy cleaning, which may be supplemented in order to achieve a mean score of 80, are as follows:</p> <ul style="list-style-type: none"> <li>• machine scrub all floors including forecourts and passages;</li> <li>• wash all windows (including ticket office windows) and paintwork;</li> <li>• clean all displays, including customer information screens, ESUBs and poster boards;</li> <li>• clean CCTV cameras and DOO CCTV cameras;</li> <li>• clean TVMs;</li> <li>• cut back all overhanging vegetation surrounding the station buildings, including platforms, signage and equipment;</li> <li>• remove litter recently exposed from the removal of vegetation; and</li> <li>• weed flower beds and cut grass.</li> </ul>	Once in every Reporting Period.	<p><b>Failure to carry out inputs set out in column 3 at the periodicity specified in column 4, at [REDACTED] per failure</b></p>	
3	<p><b>Trackside Cleaning</b></p> <p>At every KPI Measured</p>	No litter or vegetation on the trackside acceptable in any part of the KPI	No mitigation	<b>Irrespective of the planned removal date,</b>	72 hours for the Operator to determine the earliest

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
No.	Standard	Input (per Unit unless otherwise stated)	Requirement	Payment to RfL (£)	Mitigation
	Station the Operator will achieve a mean score of 80 under the MSS Questionnaire across those measures relating to this Key Performance Indicator identified in Appendix 2	Measured Station		<b>after 83 full days have elapsed since the litter or vegetation on the trackside was identified, [REDACTED] per day or part day</b>	practical date for removal followed by removal no later than such agreed date and the plan for removal to be made available to RfL



**Table 5: Graffiti at each KPI Measured Station**

Column 1	Column 2	Column 3	Column 4	Column 5
No.	Input (per Unit unless otherwise stated)	Standard	Response time	Payment to RfL (£)
1	<p><b>Graffiti (KPI Measured Stations) that does not require a possession or power isolation for removal</b></p> <p>At every KPI Measured Station the Operator will achieve a mean score of 80 under the MSS Questionnaire across those measures relating to this Key Performance Indicator identified in Appendix 2.</p>	None acceptable in any part of KPI Measured Station	Cleaned / painted out within 12 opening hours, Monday to Sunday.	Failure at ■■■ per item per day (or part thereof)
2	<p><b>Graffiti (KPI Measured Stations) that does require a possession or power isolation for removal in accordance with the relevant Railway Group Standard</b></p> <p>At every KPI Measured Station the Operator will achieve a mean score of 80 under the MSS Questionnaire across those measures relating to this Key Performance Indicator identified in Appendix 2.</p>	None acceptable in any part of KPI Measured Station	72 hours for the Operator to determine the earliest practical date for removal followed by removal no later than such agreed date and the plan for removal to be made available to RfL.	<p>■■■ per item per day until the removal plan is agreed between the Operator and Network Rail</p> <p>■■■ per item per day or part day beyond planned removal date (provided such date is less than 84 days from date the graffiti is identified)</p> <p>Irrespective of the planned removal date, after 83 full days have elapsed since the graffiti was identified, ■■■ per item per day or part day</p>

Column 1	Column 2	Column 3	Column 4	Column 5
No.	Input (per Unit unless otherwise stated)	Standard	Response time	Payment to RfL (£)
3	<p><b>Scratch Graffiti (KPI Measured Stations)</b> At every KPI Measured Station the Operator will achieve a mean score of 80 under the MSS Questionnaire across those measures relating to this Key Performance Indicator identified in Appendix 2.</p>	None acceptable in any part of KPI Measured Station	Scatched paint repaired within 24 hours, Monday to Sunday.	<b>Failure at ■ per item per day or part thereof</b>

**Table 6: Train Cleaning and Condition Standards**

Column 1	Column 2	Column 3	Column 4	Column 5
No.	Standard	Input (per Unit unless otherwise stated)	Compliance	Payment to RfL (£)
1	<p><b>Exterior 48-hour Wash</b> Operator to implement a cleaning regime that it considers will achieve for every Unit in the Train Fleet, a mean score of 80 under the MSS Questionnaire across those measures relating to this Key Performance Indicator identified in Appendix 2.</p>	Each Unit in the Train Fleet must be cleaned no more than 48 hours before it is operated to deliver a Passenger Service.	95 per cent. compliance	█ per day or part of day per non-compliant Unit
2	<p><b>Interior Daily Cleaning</b> Operator to implement a cleaning regime that it considers will achieve for every Unit in the Train Fleet, a mean score of 80 under the MSS Questionnaire across those measures relating to this Key Performance Indicator identified in Appendix 2.</p>	<p>Each Unit in the Train Fleet must be cleaned prior to delivering a Passenger Service on the first Diagram Leg of its Diagram.</p> <p>Minimum requirements for interior daily clean, which may be supplemented in order to achieve a mean score of 80 are as follows:</p> <ul style="list-style-type: none"> <li>• check all safety notices present;</li> <li>• dust luggage racks;</li> <li>• litter pick all areas including cabs;</li> <li>• empty litter bins and re-line;</li> <li>• remove chewing gum;</li> <li>• clean handrails;</li> <li>• wipe clean telephone handsets and cables;</li> <li>• clean/ sweep door runners;</li> <li>• replace torn and/or soiled seat covers and ensure seat upholstery secure;</li> </ul>	100 per cent. compliance	█ per day or part of day per non-compliant Unit

Column 1	Column 2	Column 3	Column 4	Column 5
No.	Standard	Input (per Unit unless otherwise stated)	Compliance	Payment to RfL (£)
		<ul style="list-style-type: none"> <li>brush saloon and cab seats;</li> <li>clean floors in saloons and cabs (including under seats) with mop;</li> <li>clean all saloon glazing;</li> <li>remove passengers' lost property;</li> <li>clean spillages, including biohazards;</li> <li>report any vandalised, damaged or missing items;</li> <li>clean inside surface of can windscreens (using specialist material);</li> <li>spot clean ceilings and door surfaces, including inter vehicle gangways and cabs; and</li> <li>spot clean passenger information displays and CCTV housings.</li> </ul>		
3	<p><b>Interior Turnaround Clean</b></p> <p>Operator to implement a cleaning regime that it considers will achieve for every Unit in the Train Fleet, a mean score of 80 under the MSS Questionnaire across those measures relating to this Key Performance Indicator identified in Appendix 2.</p>	<p>Each Unit in the Train Fleet must be cleaned prior to the start of every alternate Diagram Leg that Unit is scheduled to operate in passenger service that day.</p> <p>Minimum requirements for interior daily clean, which may be supplemented in order to achieve a mean score of 80 are as follows:</p> <ul style="list-style-type: none"> <li>litter pick all areas including cabs;</li> <li>empty litter bins and re-line;</li> <li>remove passengers' lost property;</li> </ul>	100 per cent. compliance	<p>█ per missed turnaround clean</p>

Column 1	Column 2	Column 3	Column 4	Column 5
No.	Standard	Input (per Unit unless otherwise stated)	Compliance	Payment to RfL (£)
		<ul style="list-style-type: none"> <li>• clean spillages, including biohazards; and</li> <li>• report any vandalised, damaged or missing items.</li> </ul>		
4	<p><b>Interior Weekly Clean</b> Operator to implement a cleaning regime that it considers will achieve for every Unit in the Train Fleet, a mean score of 80 under the MSS Questionnaire across those measures relating to this Key Performance Indicator identified in Appendix 2.</p>	<p>Each Unit in the Train Fleet must receive a supplementary interior clean every seven days for so long as it is expected to be used in the provision of the Passenger Services.</p> <p>Minimum requirements for interior daily clean, which may be supplemented in order to achieve a mean score of 80 are as follows:</p> <ul style="list-style-type: none"> <li>• check all safety notices present;</li> <li>• wash and wipe luggage racks;</li> <li>• litter pick all areas including cabs;</li> <li>• empty litter bins and re-line;</li> <li>• disinfect litter bin;</li> <li>• remove chewing gum;</li> <li>• clean handrails;</li> <li>• wipe clean telephone handsets and cables;</li> <li>• clean/ sweep door runners;</li> <li>• replace torn and/or soiled seat covers and ensure seat upholstery secure;</li> <li>• vacuum saloon and cab seats;</li> <li>• clean seat frames;</li> <li>• clean floors in saloons and cabs with machine;</li> </ul>	100 per cent. compliance	<p>█ per day or part of day per non-compliant Unit</p>

Column 1	Column 2	Column 3	Column 4	Column 5
No.	Standard	Input (per Unit unless otherwise stated)	Compliance	Payment to RfL (£)
		<ul style="list-style-type: none"> <li>• clean all saloon glazing;</li> <li>• clean driver’s instrument panel and sun blind;</li> <li>• remove passengers’ lost property;</li> <li>• clean spillages, including biohazards;</li> <li>• report any vandalised, damaged or missing items;</li> <li>• clean inside surface of can windscreens (using specialist material);</li> <li>• spot clean ceilings and door surfaces, including inter vehicle gangways and cabs;</li> <li>• clean passenger information displays and CCTV housings; and</li> <li>• clean light fittings.</li> </ul>		
5	<p><b>Interior 30-day clean</b> Operator to implement a cleaning regime that it considers will achieve for every Unit in the Train Fleet, a mean score of 80 under the MSS Questionnaire across those measures relating to this Key Performance Indicator identified in Appendix 2.</p>	<p>Each Unit in the Train Fleet must receive a supplementary interior clean every thirty days for so long as it is expected to be used in the provision of the Passenger Services. Minimum requirements for interior 30 day clean, which may be supplemented in order to achieve a mean score of 80 are as follows:</p> <ul style="list-style-type: none"> <li>• check all safety notices present;</li> <li>• empty litter bins and re-line;</li> <li>• disinfect litter bin;</li> </ul>	100 per cent. compliance	<p>█ per day or part of day per non-compliant Unit</p>

Column 1	Column 2	Column 3	Column 4	Column 5
No.	Standard	Input (per Unit unless otherwise stated)	Compliance	Payment to RfL (£)
		<ul style="list-style-type: none"> <li>• remove chewing gum;</li> <li>• wash and wipe seat hard surfaces (tops and backs);</li> <li>• clean handrails;</li> <li>• clean all wall, ceiling and door surfaces, including cabs;</li> <li>• clean inter-vehicle gangway bellows;</li> <li>• wipe clean telephone handsets and cables;</li> <li>• clean door pockets;</li> <li>• clean door seals;</li> <li>• clean door steps/threshold plates;</li> <li>• clean/ sweep door runners;</li> <li>• replace torn and/or soiled seat covers and ensure seat upholstery secure;</li> <li>• steam or dry clean saloon and cab seats in situ, or replace with laundered covers;</li> <li>• clean seat frames;</li> <li>• clean floors in saloons and cabs with machine;</li> <li>• clean all saloon glazing;</li> <li>• clean driver's instrument panel and sun blind;</li> <li>• remove passengers' lost property;</li> <li>• clean spillages, including biohazards;</li> </ul>		

Column 1	Column 2	Column 3	Column 4	Column 5
No.	Standard	Input (per Unit unless otherwise stated)	Compliance	Payment to RfL (£)
		<ul style="list-style-type: none"> <li>report any vandalised, damaged or missing items;</li> <li>clean inside surface of can windscreens (using specialist material);</li> <li>clean passenger emergency alarm, call-for-aid and emergency door release apparatus;</li> <li>clean passenger information displays;</li> <li>clean light fittings; and</li> <li>clean HVAC diffusers/ grilles</li> </ul>		
6	<p><b>Exterior 30-day wash</b></p> <p>Operator to implement a cleaning regime that it considers will achieve for each Class 315 Unit and Class 317 Unit in the Train Fleet, a clean appearance (that is, no noticeable dirt) to the following areas of each such Unit:</p> <ul style="list-style-type: none"> <li>bodysides and roof;</li> <li>driving end;</li> <li>intermediate bodyend; and</li> <li>underframe.</li> </ul>	Each Class 315 Unit and Class 317 Unit in the Train Fleet must receive a supplementary exterior wash every 30 days.	100 per cent. compliance	<p>█ per day or part of day per non-compliant Class 315 Unit or Class 317 Unit</p>
7	<b>Public Address</b>	Fully serviceable: Each Class 315 Unit and Class 317 Unit in the Train Fleet has fully functioning, audible and intelligible Public Address prior to entering passenger service on	100 per cent. compliance	<p>█ per day or part of day per key system component (such as an individual speaker, microphone, system controller)</p>



Column 1	Column 2	Column 3	Column 4	Column 5
No.	Standard	Input (per Unit unless otherwise stated)	Compliance	Payment to RfL (£)
		any day.		
8	<b>Internal CCTV and recording equipment (where fitted)</b>	Fully serviceable: Each Class 315 Unit and Class 317 Unit has fully functioning CCTV cameras and recording equipment prior to entering passenger service on any day.	100 per cent. compliance	█ per day or part of day per key system component (such as an individual camera, recording apparatus, system controller)
9	<b>Graffiti (Trains)</b> For every Unit in the Train Fleet and Split Diagram Unit, the Operator will achieve a mean score of 80 under the MSS Questionnaire across those measures relating to this Key Performance Indicator identified in Appendix 2.	No graffiti allowed prior to Unit or Split Diagram Unit entering passenger service on any day.	100 per cent. compliance	█ per day or part of day per non-compliant vehicle, provided that where the Operator is obliged to make a payment to RfL in relation to any offensive graffiti on a vehicle, the Operator shall not also be obliged to make a payment to RfL in relation to any other non-offensive graffiti on the Unit of which that vehicle comprises part for so long as that offensive graffiti remains on that vehicle
10	<b>Graffiti (offensive)</b> For every Unit in the Train Fleet and Split Diagram Unit	No graffiti allowed prior to Unit or Split Diagram Unit entering passenger service on any day.	100 per cent. compliance	█ per day or part of day per non-compliant Unit or Split Diagram Unit
11	<b>Scratched Graffiti (Trains)</b> For every Unit in the Train Fleet, the Operator will achieve a mean score of 80 under the MSS Questionnaire across those measures relating to this Key Performance Indicator identified in Appendix 2.	Remove / replace aspect of that Unit that is scratched within 48 hours.	100 per cent. compliance	█ per day or part of day per non-compliant Unit

Column 1	Column 2	Column 3	Column 4	Column 5
No.	Standard	Input (per Unit unless otherwise stated)	Compliance	Payment to RfL (£)
12	Seats, Perches and Handrails	Fully serviceable. Each Class 315 Unit and Class 317 Unit has: <ul style="list-style-type: none"> <li>no missing seats or covers; and</li> <li>no torn or soiled covers,</li> </ul> in each case prior to Class 315 Unit or Class 317 Unit entering passenger service on any day.	100 per cent. compliance	█ per day or part of day per non-compliant Unit
13	Internal Lighting	Fully serviceable: Each Class 315 Unit and Class 317 Unit has fully functioning lighting prior to entering passenger service on any day.	100 per cent. compliance	█ per day or part of day per failed light
14	Visual Passenger Information Systems (where fitted)	Fully serviceable: Each Class 315 Unit and Class 317 Unit has fully functioning visual passenger information systems and display screens showing correct information in each case prior to entering passenger service on any day.	100 per cent. compliance	█ per day or part of day per display screen
15	External Passenger Doors	Fully serviceable. Each Class 315 Unit and Class 317 Unit has all doors working prior to entering passenger service on any day.	100 per cent. compliance	█ per door 1-2 doors locked out of service per Diagram Leg
				█ per door 3-5 doors locked out of service per Diagram Leg
				█ per door 6 or more doors locked out of service per Diagram Leg
16	Internal Passenger Doors	Fully serviceable. Each Class 315 Unit and Class 317 Unit has all doors working prior to	100 per cent. compliance	█ per pair of doors locked out of service

Column 1	Column 2	Column 3	Column 4	Column 5
No.	Standard	Input (per Unit unless otherwise stated)	Compliance	Payment to RfL (£)
		entering passenger service on any day.		



**APPENDIX 2 TO SCHEDULE 8.1**

**MEASURES USED TO INFORM STANDARDS REGIME (KPIS) COMPLIANCE**

Column 1	Column 2	Column 3	Column 4
No.	Aspect	Key Performance Indicator	Related Standards Regime (MSS) measure (MSS Questionnaire Reference)
1	Station cleaning and premises management standards for each KPI Measured Station	Daily light cleaning	<p>The mean score achieved in relation to this KPI shall be the mean score of the following 29 measures in aggregate terms:</p> <ul style="list-style-type: none"> <li>• cleanliness of platform floors (S1.1a), platform walls (S1.1b) and ceilings (S1.1c);</li> <li>• level of litter on platform (S1.6) and on track (S1.7);</li> <li>• cleanliness of platform seating (S1.8b);</li> <li>• cleanliness of seating (S1.9c), floors (S1.9d), walls and ceilings (S1.9e) in waiting room or enclosed waiting areas;</li> <li>• cleanliness of glass Platform Edge Doors (S1.11);</li> <li>• level of litter in waiting room or enclosed waiting area (S1.9h);</li> <li>• cleanliness of walls (S3.8b) and ceilings (S3.8c) in subway from Ticket Hall to Street;</li> <li>• cleanliness of routeway floors (S2.1a), walls (S2.1b), and ceilings (S2.1c);</li> <li>• level of litter in all routeway areas including litter on lifts and escalators (S2.2);</li> <li>• cleanliness of lifts (S2.5b), escalators (S2.6b), and direction signs (S2.7b);</li> <li>• cleanliness of ticket hall floors (S3.1a), walls (S3.1b) and ceilings (S3.1c);</li> <li>• level of litter in Ticket Hall (S3.2), Ticket Office Windows (S3.6);</li> </ul>

Column 1	Column 2	Column 3	Column 4
No.	Aspect	Key Performance Indicator	Related Standards Regime (MSS) measure (MSS Questionnaire Reference)
			<ul style="list-style-type: none"> <li>• cleanliness of public toilets (S4.1b);</li> <li>• presence of Toilet Rolls, Hand Towels/ Working Hand Driers, Soap and Mirrors in Public Toilets (S4.1e);</li> <li>• cleanliness of floors in subway from Ticket Hall to Street (S3.8a); and</li> <li>• level of litter in subway from Ticket Hall to Street (S3.9)</li> </ul>
2	Station cleaning and premises management standards for each KPI Measured Station	Periodic heavy cleaning and premises management activities	<ul style="list-style-type: none"> <li>• The mean score achieved in relation to this KPI shall be the mean score of the 29 measures included for daily light cleaning under item 1 of this table</li> </ul>
3	Station cleaning and premises management standards for each KPI Measured Station	Trackside cleaning	<p>The mean score achieved in relation to this KPI shall be the mean score of the following 1 measure:</p> <ul style="list-style-type: none"> <li>• Cleanliness of trackside walls (S1.2)</li> </ul>
4	Graffiti in each KPI Measured Station	Graffiti (Stations) that does not require a possession or power isolation for removal	<p>The mean score achieved in relation to this KPI shall be the mean score of the following 8 measures in aggregate terms:</p> <ul style="list-style-type: none"> <li>• level of non-scratched graffiti on platforms but excluding trackside walls (S1.4b) and in waiting rooms or enclosed waiting areas (S1.9g);</li> <li>• level of non-scratched graffiti in routeways (S2.3b), in lifts (2.5d) and on escalators (2.6d); and</li> <li>• level of non-scratched graffiti in Ticket Hall (S3.3b), in public toilets (S4.1d), and from Ticket Hall to Street (S3.10b)</li> </ul>
5	Graffiti in each KPI Measured Station	Graffiti (Stations) that does require a possession or power isolation for removal	<p>The mean score achieved in relation to this KPI shall be the mean score of the following 1 measure in aggregate terms:</p> <ul style="list-style-type: none"> <li>• level of trackside graffiti (S1.5)</li> </ul>
6	Graffiti in each KPI Measured Station	Scratched Graffiti (Stations)	<p>The mean score achieved in relation to this KPI shall be the mean score of the following 8 measures in aggregate terms:</p> <ul style="list-style-type: none"> <li>• level of scratched graffiti on platforms but excluding trackside walls</li> </ul>

Column 1	Column 2	Column 3	Column 4
No.	Aspect	Key Performance Indicator	Related Standards Regime (MSS) measure (MSS Questionnaire Reference)
			(S1.4a) and in waiting rooms or enclosed waiting areas (S1.9f); <ul style="list-style-type: none"> <li>level of scratched graffiti in routeways (S2.3a), in lifts (2.5c) and on escalators (2.6c); and</li> <li>level of scratched graffiti in Ticket Hall (S3.3a), in public toilets (S4.1c), and from Ticket Hall to Street (S3.10a)</li> </ul>
7	<b>Train maintenance and cleaning standards</b>	<b>Exterior 48-hour wash</b>	The MSS score achieved in relation to this KPI shall be the mean score of the following 1 measure in aggregate terms: <ul style="list-style-type: none"> <li>external cleanliness of Unit (T1.01)</li> </ul>
8	<b>Train maintenance and cleaning standards</b>	<b>Interior daily cleaning</b>	The mean score achieved in relation to this KPI shall be the mean score of the following 8 measures in aggregate terms: <ul style="list-style-type: none"> <li>cleanliness of ceilings and surfaces (T1.1) and internal floors (T1.2);</li> <li>level of litter (T1.3); and</li> <li>cleanliness of train seats (T1.6a), train perches (T1.6b), arm rests between seats (T1.7a), hand rails and hangers (T1.8b) and windows (T1.13)</li> </ul>
9	<b>Train maintenance and cleaning standards</b>	<b>Interior weekly cleaning</b>	The mean score achieved in relation to this KPI shall be the mean score of the following 8 measures in aggregate terms: <ul style="list-style-type: none"> <li>cleanliness of ceilings and surfaces (T1.1) and internal floors (T1.2);</li> <li>level of litter (T1.3); and</li> <li>cleanliness of train seats (T1.6a), train perches (T1.6b), arm rests between seats (T1.7a), hand rails and hangers (T1.8b) and windows (T1.13)</li> </ul>
10	<b>Train maintenance and cleaning standards</b>	<b>Interior turnaround cleaning</b>	The mean score achieved in relation to this KPI shall be the mean score of the following 1 measure in aggregate terms: <ul style="list-style-type: none"> <li>level of litter (T1.3)</li> </ul>

Column 1	Column 2	Column 3	Column 4
No.	Aspect	Key Performance Indicator	Related Standards Regime (MSS) measure (MSS Questionnaire Reference)
11	Train maintenance and cleaning standards	Graffiti (Trains)	The mean score achieved in relation to this KPI shall be the mean score of the following 1 measure in aggregate terms: <ul style="list-style-type: none"> <li>external level of other (non-scratched) graffiti (T1.12)</li> </ul>
12	Train maintenance and cleaning standards	Scratched Graffiti (Trains)	The mean score achieved in relation to this KPI shall be the mean score of the following 1 measure in aggregate terms: <ul style="list-style-type: none"> <li>external level of trackside graffiti (T1.11)</li> </ul>



## SCHEDULE 8.2

### Standards Regime (MSS)

#### 1. INTRODUCTION

Throughout the Concession Period, RfL or its nominee will conduct Mystery Shopper Surveys to ascertain the experience of passengers on Passenger Services and at stations. Each Mystery Shopper Survey will investigate the following main aspects of that experience:

- (a) on the train (including the condition, cleanliness, brightness, temperature, noise levels, quality of ride and audibility of announcements); and
- (b) at the stations (including the condition, cleanliness, state of repair, conditions of the advertisements and equipment on the station, routeways, platforms, seating, waiting areas, ticket halls, toilets and subways connected to or from the ticket halls and the level of crowding in public areas).

#### 2. METHODOLOGY AND SURVEYS

##### Carrying out of surveys

2.1 Mystery Shopper Surveys will be conducted quarterly:

- (a) by RfL or a specialist contractor appointed by RfL with experience of conducting similar surveys for RfL;
- (b) in relation to:
  - (i) an Operator Station, from the date the Operator first becomes the Facility Owner of that Operator Station; and
  - (ii) Passenger Services on a Route, from the date the Operator first commences operating Passenger Services on that Route; and
- (c) in accordance with the MSS Methodology and by populating the MSS Questionnaire across a number of visits to stations and a number of trips on the Passenger Services.

2.2 RfL shall:

- (a) procure that the results of any Mystery Shopper Survey are provided to the Operator as soon as reasonably practicable following completion of any such survey; and
- (b) to the extent reasonably practicable, allow the Operator a reasonable opportunity to make representations to RfL concerning the results of such surveys, but RfL shall not be obliged by those representations to make any adjustments to the calculations to be performed pursuant to paragraph 3 (*Performance against the MSS Thresholds*).

2.3 The results of any Mystery Shopper Survey will be used to determine the Operator's performance against the criteria referred to in paragraph 1 (*Introduction*) (as more particularly set out in the MSS Methodology) in accordance with paragraph 3.

### **Changing the MSS Methodology and/or MSS Questionnaire**

2.4 RfL shall be entitled to change the MSS Methodology and/or MSS Questionnaire, provided that where that change has a material adverse impact on the Operator's ability to comply with the terms of this Standards Regime (MSS), a Change shall occur.

### **3. PERFORMANCE AGAINST THE RELEVANT MSS THRESHOLDS**

#### **Each Mystery Shopper Survey to produce an MSS Score**

3.1 Each Mystery Shopper Survey will be conducted over a Survey Period and will produce an overall score (the *MSS Score*) of the Operator's performance in the relevant Survey Period against the criteria specified in the MSS Methodology. The first Survey Period shall commence on the first date of the first Reporting Period to occur after the Start Date.

#### **Calculating the Operator's performance against the Relevant MSS Threshold**

3.2 As soon as reasonably practicable after completion of any Mystery Shopper Survey (the *Relevant Mystery Shopper Survey*), RfL shall calculate the Operator's performance in relation to the MSS Threshold for the Concession Year in which that Mystery Shopper Survey is carried out on a moving annual average basis (the *MSS MAA Score*) in accordance with, subject to paragraph 4 (*Mystery Shopper Surveys in the first Concession Year*), the following:

$$MSS_{\text{maa}} = \frac{LMSSS + PMSSS}{4}$$

where:

$MSS_{\text{maa}}$  means the MSS MAA Score;

LMSSS means the latest MSS Score determined pursuant to that Mystery Shopper Survey;  
and

PMSSS means the aggregate of the MSS Scores for the three Mystery Shopper Surveys carried out immediately prior to that Mystery Shopper Survey.

#### **Performance equal to or better than the MSS Threshold**

3.3 If following any Relevant Mystery Shopper Survey, the MSS MAA Score in respect of the Operator's performance against the MSS Threshold for the Concession Year in which that Mystery Shopper Survey is carried out is equal to or more than that MSS Threshold, then no further action shall arise.

#### **Performance worse than the MSS Threshold**

3.4 If following any Relevant Mystery Shopper Survey, the MSS MAA Score is less than the MSS Threshold for the Concession Year in which that Mystery Shopper Survey is carried out, then such event shall be recorded in the Periodic Concession Report for the relevant Reporting Period and included as an agenda item of the next Concession Performance Meeting.

**Performance worse than the Remedial Plan MSS Threshold**

3.5 If following any Relevant Mystery Shopper Survey, the MSS Score for that survey is equal to or less than the Remedial Plan MSS Threshold for the Concession Year in which that Mystery Shopper Survey is carried out, then a contravention of this Agreement shall have occurred and the provisions of Schedule 17.2 (*Quality Regime Remedial Plans and Remedial Agreements*) shall apply.

**4. MYSTERY SHOPPER SURVEYS IN THE FIRST 12 MONTHS**

Where RfL or its nominee has conducted less than four Mystery Shopper Surveys, RfL shall, for the purpose of performing the calculation of *PMSSS* specified in paragraph 3.2, aggregate the MSS Scores that the Operator achieves in the first 12 months of the Concession Period with notional MSS Scores at the MSS Threshold for the first Concession Year for such number of Mystery Shopper Surveys as are necessary to generate an MSS MAA Score in accordance with paragraph 3.2.



**APPENDIX TO SCHEDULE 8.2**

**MSS THRESHOLDS**

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 9	Column 10
MSS Thresholds	Year 1 (2016/17)	Year 2 (2017/1)	Year 3 (2018/19)	Year 4 (2019/20)	Year 5 (2020/21)	Year 6 (2021/22)	Year 7 (2022/23)	Year 8 (2023/24)	Year 9 (2024)	Any year or part year thereafter
MSS Threshold	74.0	77.0	80.0	80.0	80.0	80.0	80.0	80.0	80.0	80.0
Remedial Plan MSS Threshold	71.0	74.0	77.0	77.0	77.0	77.0	77.0	77.0	77.0	77.0



## SCHEDULE 8.3

### Standards Regime (AMTS)

#### 1. INTRODUCTION

Throughout the Concession Period, RfL or its nominee will conduct Accessibility Mystery Traveller Surveys to ascertain the experience of passengers with reduced mobility on Passenger Services and at stations. Each Accessibility Mystery Traveller Survey will investigate aspects of that experience, including freedom of movement, information provision and the availability of boarding ramps (including the proficiency of their use) and the functionality of lifts and escalators, the quality of advice and assistance provided by Concession Employees and the appropriateness of their behaviour.

#### 2. METHODOLOGY AND SURVEYS

##### Carrying out of surveys

2.1 Accessibility Mystery Traveller Surveys will be conducted quarterly:

- (a) by RfL or a specialist contractor appointed by RfL with experience of conducting similar surveys for RfL;
- (b) in relation to:
  - (i) an Operator Station, from the date the Operator first becomes the Facility Owner of that Operator Station; and
  - (ii) Passenger Services on a Route, from the date the Operator first commences operating Passenger Services on that Route; and
- (c) in accordance with the AMTS Methodology and by populating the AMTS Questionnaire across a number of visits to stations and a number of trips on the Passenger Services.

2.2 RfL shall procure that a report is produced of the outcome of any Accessibility Mystery Traveller Survey (the *AMTS Report*) and that AMTS Report is provided to the Operator as soon as reasonably practicable following completion of any such survey.

##### Changing the AMTS Methodology and/or AMTS Questionnaire

2.3 RfL shall be entitled to change the AMTS Methodology and/or AMTS Questionnaire, provided that where that change has a material adverse impact on the Operator's ability to comply with the terms of this Standards Regime (AMTS), a Change shall occur.

#### 3. FINDINGS OF AMTS REPORT

3.1 The parties shall discuss the findings of each AMTS Report at the next Concession Performance Meeting. Where the AMTS Report sets out adverse findings from the related Accessibility Mystery Traveller Survey, the Operator shall explain at the next Concession Performance Meeting:

- (a) why the experience of the mystery traveller surveyors led to those adverse findings; and
- (b) what reasonable additional steps the Operator will take, including where appropriate, improving the redeployment of its existing resources and procuring or recruiting, as appropriate, additional resources, to ensure that no future Accessibility Mystery Traveller Survey will result in adverse findings being reported in any future AMTS Report.

#### **4. TAKING ADDITIONAL STEPS TO ADDRESS ADVERSE FINDINGS**

Following any Concession Performance Meeting at which the adverse findings of an AMTS Report are discussed, the Operator shall take such additional steps as the Operator recommends over such period as would be reasonable in the circumstances.

#### **5. RECURRENT FAILURES**

Where the same adverse finding set out in an AMTS Report is also set out in a previous AMTS Report produced no more than 24 months before the later AMTS Report, then:

- (a) a contravention of this Agreement shall have occurred; and
- (b) the provisions of Schedule 17.2 (*Quality Regime Remedial Plans and Remedial Agreements*) shall apply.



## SCHEDULE 8.4

### Satisfaction Regime (CSS)

#### 1. PURPOSE

The purpose of this Satisfaction Regime (CSS) is to record customer perception of the Operator's provision of the Passenger Services and the relevant Station Services and to incentivise the Operator's performance of those services by measuring levels of that perception against specified thresholds.

#### 2. SURVEYS AND METHODOLOGY

##### Carrying out of surveys

2.1 RfL or its nominee will carry out Customer Satisfaction Surveys in accordance with the CSS Methodology by populating the CSS Questionnaire across a number of visits to London Overground Stations, trips on Passenger Services and replacement bus services both during and in advance of travel.

2.2 The Operator shall co-operate with the carrying out of any Customer Satisfaction Survey by granting access on trains and at London Overground Stations to RfL (or its nominee) to carry out Customer Satisfaction Surveys and by otherwise co-operating with RfL (in such manner as RfL may reasonably direct) in order to enable RfL or its nominee to carry out Customer Satisfaction Surveys.

2.3 The results of any Customer Satisfaction Survey carried out during the Concession Period will be used to determine the Operator's performance against this Satisfaction Regime (CSS) in accordance with paragraphs 3 (*Satisfaction Regime Adjustments*) to 5 (*Performance in respect of any Default CSS Threshold*) (inclusive).

##### Each Customer Satisfaction Survey to produce a CSS Score

2.4 Each Customer Satisfaction Survey will be conducted over a Survey Period and will produce a score (each a **CSS Score**) of the Operator's performance in respect of each of the CSS Headline Measure, the CSS Information Measure and the CSS Security Measure for that Survey Period against the criteria specified in the CSS Methodology. The first Survey Period shall commence on the first date of the first Reporting Period to occur after the Start Date.

##### Changing the CSS Methodology and/or CSS Questionnaire

2.5 RfL shall be entitled to change the CSS Methodology and/or CSS Questionnaire, provided that where that change has a material adverse impact on the Operator's ability to comply with the terms of this Satisfaction Regime (CSS), a Change shall occur.

#### 3. SATISFACTION REGIME ADJUSTMENTS

##### Calculation of Satisfaction Regime Adjustments

3.1 In the next Reporting Period after the completion of any Customer Satisfaction Survey, RfL shall calculate a Satisfaction Regime Adjustment as follows:

$$\text{SRA} = \sum_{i=1}^n \text{£CSSMP}_i$$

where:

**SRA** means the Satisfaction Regime Adjustment for a Survey Period that is payable in that Reporting Period, which is equal to the aggregate of all (n) CSS Payments that are payable in respect of that Survey Period; and

**£CSSMP** means the CSS Measure Payment that is payable in respect of a CSS Measure, calculated in accordance with, as appropriate, paragraph 3.4, 3.5, 3.6 or 3.7.

3.2 A Satisfaction Regime Adjustment shall comprise part of a Quality Performance Adjustment in accordance with paragraph 2.5 of Schedule 11.1 (*Concession Payments*) and shall be made on the Payment Date of the Reporting Period referred to in paragraph 3.1.

3.3 The parties agree that SRA may be a positive or negative number in any Reporting Period.

### **CSS Score within Upper CSS Band**

3.4 The CSS Measure Payment for a CSS Measure shall be calculated as follows where the CSS Score for that CSS Measure generated by any Customer Satisfaction Survey is in the Upper CSS Band for the Concession Year in which that Customer Satisfaction Survey is conducted:

$$\text{£CSSMP} = \text{£U} + \text{£M}$$

where:

**£CSSMP** means the CSS Measure Payment for the CSS Headline Measure, CSS Information Measure or CSS Security Measure;

**£U** means the proportion of that CSS Measure Payment that relates to the CSS Score for the relevant CSS Measure that is within that Upper CSS Band, calculated in accordance with the following:

$$\text{£U} = \text{CSS}_{\text{Upper}} \times \text{£CSSR} \times \text{CSSF}$$

where:

**CSS<sub>Upper</sub>** means the difference between the CSS Score achieved in relation to the relevant CSS Measure in that Customer Satisfaction Survey and the Upper CSS Threshold for that CSS Measure and Concession Year, calculated in accordance with the following:

$$\text{CSS}_{\text{Upper}} = \text{CSSS} - \text{UCT}$$

where:

**CSSS** means the CSS Score achieved in relation to the relevant CSS Measure in that Customer Satisfaction Survey; and

UCT means that Upper CSS Threshold for that CSS Measure and Concession Year;

CSSR means the relevant CSS Rate; and

CSSF means the CSS Factor that applies to that Upper CSS Band; and

£M means the proportion of that CSS Measure Payment that relates to the CSS Score for that CSS Measure that is within the Middle CSS Band for that CSS Measure and Concession Year, calculated in accordance with the following:

$$£M = CSS_{\text{Middle}} \times £CSSR \times CSSF$$

where:

$CSS_{\text{Middle}}$  means the difference between that Upper CSS Threshold and the CSS Threshold for that CSS Measure and Concession Year, calculated in accordance with the following:

$$CSS_{\text{Middle}} = UCT - CT$$

where:

UCT means that Upper CSS Threshold; and

CT means that CSS Threshold;

CSSR means the relevant CSS Rate; and

CSSF means the CSS Factor that applies to that Middle CSS Band.

### **CSS Score within the Middle CSS Band**

3.5 The CSS Measure Payment for a CSS Measure shall be calculated as follows where the CSS Score for that CSS Measure generated by any Customer Satisfaction Survey is in the Middle CSS Band for the Concession Year in which that Customer Satisfaction Survey is conducted:

$$£CSSMP = CSS_{\text{Middle}} \times £CSSR \times CSSF$$

where:

£CSSMP means the CSS Measure Payment for the CSS Headline Measure, CSS Information Measure or CSS Security Measure;

$$CSS_{\text{Middle}} = CSSS - CT$$

where:

CSSS means the CSS Score achieved in relation to the relevant CSS Measure in that Customer Satisfaction Survey; and

CT means the CSS Threshold for that CSS Measure and Concession Year;

CSSR means the relevant CSS Rate; and

CSSF means the CSS Factor that applies to that Middle CSS Band.

### **CSS Score within the Lower CSS Band**

3.6 The CSS Measure Payment for a CSS Measure shall be calculated as follows where the CSS Score for that CSS Measure generated by any Customer Satisfaction Survey is in the Lower CSS Band for the Concession Year in which that Customer Satisfaction Survey is conducted:

$$\pounds\text{CSSMP} = \text{CSS}_{\text{Lower}} \times \pounds\text{CSSR} \times \text{CSSF}$$

where:

$\pounds\text{CSSMP}$  means the CSS Measure Payment for the CSS Headline Measure, CSS Information Measure or CSS Security Measure;

$$\text{CSS}_{\text{Lower}} = \text{CSSS} - \text{CT}$$

where:

CSSS means the CSS Score achieved in relation to the relevant CSS Measure in that Customer Satisfaction Survey; and

CT means the CSS Threshold for that CSS Measure and Concession Year;

CSSR means the relevant CSS Rate; and

CSSF means the CSS Factor that applies to that Lower CSS Band.

### **CSS Score within the Remedial Plan CSS Band**

3.7 The CSS Measure Payment for a CSS Measure shall be calculated as follows where the CSS Score for that CSS Measure generated by any Customer Satisfaction Survey is in the Remedial Plan CSS Band for the Concession Year in which that Customer Satisfaction Survey is conducted:

$$\pounds\text{CSSMP} = \pounds\text{L} + \pounds\text{RP}$$

where:

$\pounds\text{CSSMP}$  means the CSS Measure Payment for the CSS Headline Measure, CSS Information Measure or CSS Security Measure;

$\pounds\text{L}$  means the proportion of that CSS Measure Payment that relates to the CSS Score for the relevant CSS Measure that is within the Lower CSS Band for that Concession Year, calculated in accordance with the following:

$$\pounds\text{L} = \text{CSS}_{\text{Lower}} \times \pounds\text{CSSR} \times \text{CSSF}$$

where:

$\text{CSS}_{\text{Lower}}$  means the difference between the Remedial Plan CSS Threshold and the CSS Threshold in each case for that CSS Measure and Concession Year, calculated in accordance with the following:

$$CSS_{\text{Lower}} = RPCT - CT$$

where:

RPCT means that Remedial Plan CSS Threshold; and

CT means that CSS Threshold;

CSSR means the relevant CSS Rate; and

CSSF means the CSS Factor that applies to that Lower CSS Band; and

£RP means the proportion of that CSS Measure Payment that relates to the CSS Score for that CSS Measure that is within that Remedial Plan CSS Band, calculated in accordance with the following:

$$£RP = CSS_{\text{RP}} \times £\text{CSSR} \times \text{CSSF}$$

where:

CSS<sub>RP</sub> means the difference between the CSS Score achieved in relation to that CSS Measure in that Customer Satisfaction Survey and that Remedial Plan CSS Threshold, calculated in accordance with the following:

$$CSS_{\text{RP}} = \text{CSSS} - RPCT$$

where:

CSSS means the CSS Score achieved in relation to that CSS Measure in that Customer Satisfaction Survey; and

RPCT means that Remedial Plan CSS Threshold;

CSSR means the relevant CSS Rate; and

CSSF means the CSS Factor that applies to that Remedial Plan CSS Band.

#### **4. PERFORMANCE WITHIN ANY REMEDIAL PLAN CSS BAND**

4.1 If following any Customer Satisfaction Survey any CSS Score for any CSS Measure is within the Remedial Plan CSS Band for that CSS Measure and Concession Year in which that Customer Satisfaction Survey is conducted, then without limiting paragraph 3.7:

- (a) a contravention of this Agreement shall have occurred; and
- (b) the provisions of paragraph 2 (*Remedial Plan Notices*) of Schedule 17.2 (*Quality Regime Remedial Plans and Remedial Agreements*) shall apply.

4.2 The Operator shall continue to implement any Remedial Plan in accordance with its terms that the Operator has been required to implement pursuant to Schedule 17.2 due to the occurrence of any contravention pursuant to paragraph 4.1.

## **5. PERFORMANCE IN RESPECT OF ANY DEFAULT CSS THRESHOLD**

### **Performance better than any Default CSS Threshold**

5.1 If following any Customer Satisfaction Survey, the CSS Score in relation to any CSS Measure is more than the Default CSS Threshold for that CSS Measure and the Concession Year in which that Customer Satisfaction Survey is conducted, then, subject to the other provisions of this Schedule 8.4, no further action shall arise.

### **Performance equal to or worse than any Default CSS Threshold**

5.2 If in any Thirteen Period Measurement Period, any three CSS Scores for any CSS Measure are equal to or less than the Default CSS Threshold for that CSS Measure and Concession Year to which any such CSS Score relates, then:

- (a) an Event of Default shall have occurred; and
- (b) the provisions of Schedule 17 (*Remedies, Termination and Expiry*) shall apply,

provided that the CSS Score of any Customer Satisfaction Survey that is carried out within one Reporting Period of the occurrence of any Industrial Action by the Concession Employees that affects the provision of the Concession Services shall be disregarded for these purposes.

## **6. INDEXATION OF ADJUSTMENTS**

Any Satisfaction Regime Adjustment is an amount as at the Indexation Base Month and shall be indexed in accordance with paragraph 3 (*Indexation by reference to RPI*) of Schedule 11.2 (*Annual Concession Payments and Indexation*).

APPENDIX TO SCHEDULE 8.4

CSS BANDS TABLES

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	
CSS Band	Year 1 (2016/17) %	Year 2 (2017/18) %	Year 3 (2018/19) %	Year 4 (2019/20) %	Year 5 (2020/21) %	Year 6 (2021/22) %	Year 7 (2022/23) %	Year 8 (2023/24) %	Year 9 (2024) %	Any year or part year thereafter %	
<b>HEADLINE</b>											
Upper CSS Band	85.6	86.0	86.7	87.5	87.9	88.0	88.0	88.0	88.0	88.0	100% Upper CSS Threshold
Middle CSS Band	82.3	82.5	82.6	82.9	83.0	83.0	83.0	83.0	83.0	83.0	CSS Threshold
Lower CSS Band	79.3	79.5	79.6	79.9	80.0	80.0	80.0	80.0	80.0	80.0	Remedial Plan CSS Threshold
Remedial Plan CSS Band	77.3	77.5	77.6	77.9	78.0	78.0	78.0	78.0	78.0	78.0	Default CSS Threshold
											0%
<b>INFORMATION</b>											
Upper CSS Band	75.1	78.0	81.0	81.0	81.0	81.0	81.0	81.0	81.0	81.0	100% Upper CSS Threshold
Middle CSS Band	72.0	72.0	72.0	72.0	72.0	72.0	72.0	72.0	72.0	72.0	CSS Threshold
Lower CSS Band	69.0	69.0	69.0	69.0	69.0	69.0	69.0	69.0	69.0	69.0	Remedial Plan CSS Threshold
Remedial Plan CSS Band	67.0	67.0	67.0	67.0	67.0	67.0	67.0	67.0	67.0	67.0	Default CSS Threshold
											0%

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	
CSS Band	Year 1 (2016/17) %	Year 2 (2017/18) %	Year 3 (2018/19) %	Year 4 (2019/20) %	Year 5 (2020/21) %	Year 6 (2021/22) %	Year 7 (2022/23) %	Year 8 (2023/24) %	Year 9 (2024) %	Any year or part year thereafter %	
<b>SECURITY</b>											
<b>Upper CSS Band</b>	90.1	90.3	90.4	90.4	90.4	90.4	90.4	90.4	90.4	90.4	100%
<b>Middle CSS Band</b>	87.1	87.3	87.4	87.4	87.4	87.4	87.4	87.4	87.4	87.4	Upper CSS Threshold
<b>Lower CSS Band</b>	84.1	84.3	84.4	84.4	84.4	84.4	84.4	84.4	84.4	84.4	CSS Threshold
<b>Remedial Plan CSS Band</b>	84.1	84.3	84.4	84.4	84.4	84.4	84.4	84.4	84.4	84.4	Remedial Plan CSS Threshold
	82.1	82.3	82.4	82.4	82.4	82.4	82.4	82.4	82.4	82.4	Default CSS Threshold
											0%



## SCHEDULE 8.5

### Staff Regime (SIS)

#### 1. PURPOSE

Throughout the Concession Period, RfL or its nominee will conduct surveys by populating SIS Questionnaires to ascertain the availability, appearance and helpfulness of Concession Employees at stations, on trains and on replacement bus services. Each SIS Questionnaire will investigate the following main aspects of that experience:

- (a) the provision of information;
- (b) Concession Employee appearance; and
- (c) Concession Employee behaviour.

#### 2. METHODOLOGY AND SURVEYS

##### Carrying out surveys

2.1 RfL or its nominee will carry out quarterly surveys from the Start Date in accordance with the SIS Methodology by populating the SIS Questionnaire across a number of visits to London Overground Stations, trips on Passenger Services and replacement bus services.

2.2 RfL shall:

- (a) procure that the results of any SIS Questionnaire are provided to the Operator as soon as reasonably practicable following completion of any such survey; and
- (b) to the extent reasonably practicable, allow the Operator a reasonable opportunity to make representations to RfL concerning the results of such surveys, but RfL shall not be obliged by those representations to make any adjustments to the calculations to be performed pursuant to paragraph 3 (*SIS Adjustments*).

2.3 The results set out in any SIS Questionnaire will be used to determine the Operator's performance against the criteria referred to in paragraph 1 (*Purpose*) (as more particularly set out in the SIS Methodology) in accordance with paragraph 3.

##### Each SIS Survey to produce an SIS Score

2.4 Each SIS Questionnaire will be conducted over a Survey Period and will produce a score (the *SIS Score*) of the Operator's performance in that Survey Period in accordance with the SIS Questionnaire and the SIS Methodology. The first Survey Period shall commence on the first date of the first Reporting Period to occur after the Start Date.

##### Changing the SIS Methodology and/or SIS Questionnaire

2.5 RfL shall be entitled to change the SIS Methodology and/or SIS Questionnaire, provided that where that change has a material adverse impact on the Operator's ability to comply with the terms of this Staff Regime (SIS), a Change shall occur.

### 3. SIS ADJUSTMENTS

#### Calculation of SIS Adjustments

3.1 In the next Reporting Period after the completion of any SIS Survey, RfL shall calculate an SIS Adjustment, subject to paragraph 3.7, as follows:

$$\text{SISA} = \sum_{i=1}^n \text{£SISP}_i$$

where:

**SISA** means the SIS Adjustment for a Survey Period that is payable in that Reporting Period which is equal to the aggregate of all (n) SIS Payments that are payable in respect of that Survey Period; and

**£SISP** means the SIS Payment that is payable in respect of that Survey Period, calculated in accordance with, as appropriate, paragraph 3.3, 3.4, 3.5 or 3.6.

3.2 An SIS Adjustment shall comprise part of a Quality Performance Adjustment in accordance with paragraph 2.5 of Schedule 11.1 (*Concession Payments*) and shall be made on the Payment Date of the Reporting Period referred to in paragraph 3.1.

#### SIS Score within Upper SIS Band

3.3 The SIS Payment following an SIS Survey shall be calculated as follows where the SIS Score for that SIS Survey is in the Upper SIS Band for the Concession Year in which that SIS Survey is conducted:

$$\text{£SISP} = \text{£U} + \text{£M}$$

where:

**£SISP** means the SIS Payment in respect of an SIS Survey;

**£U** means the proportion of that SIS Payment that relates to the SIS Score that is within that Upper SIS Band, calculated in accordance with the following:

$$\text{£U} = \text{SIS}_{\text{Upper}} \times \text{£SISR} \times \text{SISF}$$

where:

**SIS<sub>Upper</sub>** means the difference between the SIS Score achieved in that SIS Survey and the Upper SIS Threshold for the Concession Year in which that SIS Survey is conducted, calculated in accordance with the following:

$$\text{SIS}_{\text{Upper}} = \text{SISS} - \text{UST}$$

where:

**SISS** means the SIS Score achieved in that SIS Survey; and

**UST** means that Upper SIS Threshold;

**SISR** means the relevant SIS Rate; and

SISF means the SIS Factor that applies to that Upper SIS Band; and

£M means the proportion of that SIS Payment that relates to the SIS Score that is within the Middle SIS Band for the Concession Year in which that SIS Survey is conducted, calculated in accordance with the following:

$$£U = SIS_{\text{Middle}} \times £SISR \times SISF$$

where:

$SIS_{\text{Middle}}$  means the difference between that Upper SIS Threshold and the SIS Threshold for the Concession Year in which that SIS Survey is conducted, calculated in accordance with the following:

$$SIS_{\text{Middle}} = UST - ST$$

where:

UST means that Upper SIS Threshold; and

ST means that SIS Threshold;

SISR means the relevant SIS Rate; and

SISF means the SIS Factor that applies to that Middle SIS Band.

#### **SIS Score within the Middle SIS Band**

3.4 The SIS Payment following an SIS Survey shall be calculated as follows where the SIS Score for that SIS Survey is in the Middle SIS Band for the Concession Year in which that SIS Survey is conducted:

$$£SISP = SIS_{\text{Middle}} \times £SISR \times SISF$$

where:

£SISP means the SIS Payment in respect of an SIS Survey;

$$SIS_{\text{Middle}} = SISS - ST$$

where:

SISS means the SIS Score achieved in that SIS Survey; and

ST means the SIS Threshold for the Concession Year in which that SIS Survey was conducted;

SISR means the relevant SIS Rate; and

SISF means the SIS Factor that applies to that Middle SIS Band.

#### **SIS Score within the Lower SIS Band**

3.5 The SIS Payment following an SIS Survey shall be calculated as follows where the SIS Score for that SIS Survey is in the Lower SIS Band for the Concession Year in which that SIS Survey is conducted:

$$\pounds\text{SISP} = \text{SIS}_{\text{Lower}} \times \pounds\text{SISR} \times \text{SISF}$$

where:

$\pounds\text{SISP}$  means the SIS Payment in respect of an SIS Survey;

$$\text{SIS}_{\text{Lower}} = \text{SISS} - \text{ST}$$

where:

SISS means the SIS Score achieved in that SIS Survey; and

ST means the SIS Threshold for the Concession Year in which that SIS Survey is conducted;

SISR means the relevant SIS Rate; and

SISF means the SIS Factor that applies to that Lower SIS Band.

### **SIS Score within the Remedial Plan SIS Band**

3.6 The SIS Payment following an SIS Survey shall be calculated as follows where the SIS Score for that SIS Survey is in the Remedial Plan SIS Band for the Concession Year in which that SIS Survey is conducted:

$$\pounds\text{SISP} = \pounds\text{L} + \pounds\text{RP}$$

where:

$\pounds\text{SISP}$  means the SIS Payment in respect of an SIS Survey;

$\pounds\text{L}$  means the proportion of that SIS Payment that relates to the SIS Score that is within the Lower SIS Band for that Concession Year, calculated in accordance with the following:

$$\pounds\text{L} = \text{SIS}_{\text{Lower}} \times \pounds\text{SISR} \times \text{SISF}$$

where:

$\text{SIS}_{\text{Lower}}$  means the difference between the Remedial Plan SIS Threshold and the SIS Threshold in each case for that Concession Year, calculated in accordance with the following:

$$\text{SIS}_{\text{Lower}} = \text{RPST} - \text{ST}$$

where:

RPST means the Remedial Plan SIS Threshold for that Concession Year; and

ST means the SIS Threshold for that Concession Year;

SISR means the relevant SIS Rate; and

SISF means the SIS Factor that applies to that Lower SIS Band; and

£RP means the proportion of that SIS Payment that relates to the SIS Score that is within that Remedial Plan SIS Band, calculated in accordance with the following:

$$\text{£RP} = \text{SIS}_{\text{RP}} \times \text{£SISR} \times \text{SISF}$$

where:

$\text{SIS}_{\text{RP}}$  means the difference between the SIS Score achieved in that SIS Survey and that Remedial Plan SIS Threshold, calculated in accordance with the following:

$$\text{SIS}_{\text{RP}} = \text{SISS} - \text{RPST}$$

where:

SISS means the SIS Score achieved in that SIS Survey; and

RPST means that Remedial Plan SIS Threshold;

SISR means the relevant SIS Rate; and

SSIF means the SIS Factor that applies to that Remedial Plan SIS Band.

### **Outcome of SIS Surveys during Operator Industrial Action**

3.7 On any day in a Reporting Period on which any Industrial Action by any of the employees, agents or subcontractors of the Operator (including any person with whom the Operator has a contract of arrangement for the lending, seconding, hiring, contracting out or supervision by that person of train drivers, conductors, other train crew or station or depot staff used by the Operator in the provision of the Concession Services) prevents the Operator from operating the Passenger Services in one or more Peak:

- (a) the SIS Adjustment for that Reporting Period shall not reflect the outcome of any SIS Survey carried out on that day; and
- (b) paragraph 4 (*Concession Payments where Operator Industrial Action*) of Schedule 11.1 (*Concession Payments*) shall apply in relation to the Concession Payment to be made for that Reporting Period.

### **4. PERFORMANCE WITHIN ANY REMEDIAL PLAN SIS BAND**

If following any SIS Survey any SIS Score is within the Remedial Plan SIS Band for the Concession Year in which that SIS Survey is conducted, then without limiting paragraph 3.6:

- (a) a contravention of this Agreement shall have occurred; and
- (b) the provisions of Schedule 17.2 (*Quality Regime Remedial Plans and Remedial Agreements*) shall apply.

### **5. PERFORMANCE IN RESPECT OF ANY DEFAULT SIS THRESHOLD**

If in any Thirteen Period Measurement Period, any three SIS Scores are equal to or less than the relevant Default SIS Threshold, in each case for the Concession Year to which any such SIS Score relates, then:

- (a) an Event of Default shall have occurred; and
- (b) the provisions of Schedule 17 (*Remedies, Termination and Expiry*) shall apply.

**6. INDEXATION OF ADJUSTMENTS**

Any SIS Adjustment is an amount as at the Indexation Base Month and shall be indexed in accordance with paragraph 3 (*Indexation by reference to RPI*) of Schedule 11.2 (*Annual Concession Payments and Indexation*).

**APPENDIX TO SCHEDULE 8.5**

**SIS BANDS TABLES**

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 9	Column 10
SIS Band	Year 1 (2016/17) %	Year 2 (2017/18) %	Year 3 (2018/19) %	Year 4 (2019/20) %	Year 5 (2020/21) %	Year 6 (2021/22) %	Year 7 (2022/23) %	Year 8 (2023/24) %	Year 9 (2024) %	Any year or part year thereafter %
<b>Upper SIS Band</b>	91.1	92.5	94.0	95.0	96.0	96.0	96.0	96.0	96.0	96.0
<b>Middle SIS Band</b>	88.0	88.0	88.0	88.0	88.0	88.0	88.0	88.0	88.0	88.0
<b>Lower SIS Band</b>	85.0	85.0	85.0	85.0	85.0	85.0	85.0	85.0	85.0	85.0
<b>Remedial Plan SIS Band</b>	83.0	83.0	83.0	83.0	83.0	83.0	83.0	83.0	83.0	83.0

100%

Upper SIS Threshold

SIS Threshold

Remedial Plan SIS Threshold

Default SIS Threshold

0%





## SCHEDULE 8.6

### Monitoring Trends

#### 1. JOURNEY TIME METRIC

1.1 RfL will during the Concession Period for the purpose of monitoring trends in journey time performance and preparing business cases for future investments in increased capacity, monitor all time-based aspects of a passenger's journey in a single measure of performance, which will include time spent:

- (a) purchasing tickets;
- (b) in London Overground Stations, including time moving to and from platforms;
- (c) waiting on platforms;
- (d) on Passenger Services; and
- (e) interchanging,

(the *Journey Time Metric*).

1.2 RfL will generate the data that comprises the Journey Time Metric by periodically surveying the metrics referred to in paragraph 1.1.

1.3 The Operator shall:

- (a) co-operate with RfL in generating the data that comprises the Journey Time Metric by providing or procuring the provision of access for surveys to be carried out at London Overground Stations; and
- (b) provide RfL on request with its expert opinion of the trends in journey time performance that are evident from the data that comprises the Journey Time Metric.

#### 2. NATIONAL PASSENGER SURVEYS

2.1 The Operator agrees with RfL that:

- (a) the Secretary of State or his representative or agent may measure the level of passenger satisfaction with relevant Concession Services through the carrying out of National Passenger Surveys;
- (b) the Secretary of State shall determine how, when (normally twice per annum) and where National Passenger Surveys are to be carried out;
- (c) the Operator shall grant access on trains or at stations to the Secretary of State or his representative or agent to carry out National Passenger Surveys;
- (d) the Operator shall co-operate with the Secretary of State or his representative or agent (in such manner as the Secretary of State may reasonably request or as RfL may reasonably direct) in order to enable the Secretary of State or his representative or agent to carry out National Passenger Surveys; and

- (e) the Secretary of State and/or RfL may, from time to time, publish the results of each National Passenger Survey.

2.2 RfL shall procure that:

- (a) the findings of any National Passenger Survey are made available by the Secretary of State to the Operator within a reasonable period of time after the completion of each such survey; and
- (b) if any such survey includes a comparison between its findings and the findings of any equivalent earlier survey, such comparison forms a reasonable basis for monitoring the trends of passenger satisfaction over time.

**SCHEDULE 9**  
**REVENUE PROTECTION INCENTIVE REGIME**

**Schedule 9: Revenue Protection Incentive Regime**



## SCHEDULE 9

### Revenue Protection Incentive Regime

#### 1. GENERAL TICKET REVENUE PROTECTION OBLIGATIONS

The Operator shall:

- (a) efficiently and effectively protect Ticket Revenue and implement measures in line with the retail obligations set out in Schedule 3.2 (*Fares Selling*) and the revenue protection obligations set out in Schedule 3.3 (*Ticket and Non-Ticket Revenue*), in each case to ensure that passengers are in possession of a valid ticket before boarding a train; and
- (b) ensure regular and effective Ticket Revenue protection activity across all Passenger Services that start and finish on the London Overground Classic Route Group or the Devolved Route Group at all times during all periods of operation of those Passenger Services, without diminishing the wider passenger interests of:
  - (i) safety required by applicable Law; or
  - (ii) security and customer service required by this Agreement.

#### 2. TICKETLESS TRAVEL SURVEYS

##### Carrying out surveys

2.1 RfL or its nominee shall carry out Ticketless Travel Surveys in accordance with the Ticketless Travel Survey Methodology separately across each of the Passenger Services that start and finish:

- (a) on any Route;
- (b) on the London Overground Classic Route Group; and
- (c) on the Devolved Route Group,

and in each case, during all periods of operation of those Passenger Services.

##### Results of surveys and representations

2.2 RfL shall:

- (a) procure that the results of any Ticketless Travel Survey are provided to the Operator as soon as reasonably practicable following completion of any such survey; and
- (b) to the extent reasonably practicable, allow the Operator a reasonable opportunity to make representations to RfL concerning the results of any such survey, but RfL shall not be obliged by those representations to make any adjustments to the calculations to be performed pursuant to paragraph 3 (*Performance against Ticketless Travel Route Group Thresholds*), 5 (*Performance against Remedial Plan Thresholds*) or 6 (*Performance against Default Thresholds*).

2.3 The results of the Ticketless Travel Survey for any Survey Period shall be used by RfL to calculate both the Ticketless Travel LOC Rate and the Ticketless Travel Devolved Rate in that Survey Period in accordance with the Ticketless Travel Survey Methodology.

2.4 If following any Ticketless Travel Survey, either Ticketless Travel Route Group Rate for that Ticketless Travel Survey is higher than the Relevant Ticketless Travel Target, then the Managing Director shall attend a meeting with representatives of RfL as soon as reasonably practicable thereafter, at which the Operator shall:

- (a) explain why that Ticketless Travel Route Group Rate was higher than the Relevant Ticketless Travel Target for the Concession Year in which that Ticketless Travel Survey was carried out; and
- (b) propose the steps that the Operator will take to ensure that the Ticketless Travel Route Group Rate for future Ticketless Travel Surveys is equal to or below the Relevant Ticketless Travel Target for the Concession Year in which each such Ticketless Travel Survey is to be carried out.

**Use of the Ticketless Travel Survey Methodology**

2.5 The Operator agrees that:

- (a) it shall only use the Ticketless Travel Survey Methodology as contemplated by this Agreement, including for the purposes of:
  - (i) determining whether RfL or its nominee referred to in paragraph 2.1 has carried out any Ticketless Travel Survey in accordance with that methodology; and
  - (ii) the Operator itself analysing trends in ticketless travel on the Passenger Services; and
- (b) the Ticketless Travel Survey Methodology is subject to the terms of Schedule 16.2 (*Confidentiality and Freedom of Information Act Requirements*) and the Operator shall not disclose that methodology or any part of it except as it is permitted to do so under that Schedule.

**3. PERFORMANCE AGAINST TICKETLESS TRAVEL ROUTE GROUP THRESHOLDS**

As soon as reasonably practicable after completion of any Ticketless Travel Survey (the *Relevant Ticketless Travel Survey*), RfL shall, subject to paragraph 2.3, separately calculate the Operator’s performance against each of the Ticketless Travel LOC Threshold and the Ticketless Travel Devolved Threshold on a moving annual average basis (the *Ticketless Travel MAA Rate*) in accordance with the following:

$$TT_{\text{maa}R} = \frac{TTR + PTTR}{4}$$

where:

TT<sub>maa</sub>R means the Ticketless Travel MAA Rate in respect of, as appropriate, the London Overground Classic Route Group or the Devolved Route Group;

**TTR** means the Ticketless Travel Route Group Rate in respect of, as appropriate, the London Overground Classic Route Group or the Devolved Route Group, determined pursuant to the Relevant Ticketless Travel Survey; and

**PTTR** means, subject to paragraph 7 (*Surveys in first Concession Year*), the aggregate of each Ticketless Travel Route Group Rate in respect of, as appropriate, the London Overground Classic Route Group or the Devolved Route Group, for the three Ticketless Travel Surveys carried out immediately prior to the Relevant Ticketless Travel Survey.

#### **4. REVENUE PROTECTION INCENTIVE ADJUSTMENTS**

##### **Calculation of Revenue Protection Incentive Adjustments**

4.1 If following any Ticketless Travel Survey, the resulting Ticketless Travel MAA Rate in relation to any Route Group, calculated in accordance with paragraph 3 (*Performance against Ticketless Travel Route Group Thresholds*), is equal to, as appropriate, the Ticketless Travel LOC Threshold or the Ticketless Travel Devolved Threshold, then no Revenue Protection Incentive Adjustment shall be made by RfL to the Operator or vice versa, in each case in relation thereto.

4.2 If following any Ticketless Travel Survey, the resulting Ticketless Travel MAA Rate for any Route Group, calculated in accordance with paragraph 3, is either less or more than, as appropriate, the Ticketless Travel LOC Threshold, or the Ticketless Travel Devolved Threshold, then on the Payment Date of the Reporting Period after RfL calculates the Operator's performance pursuant to paragraph 3, the following amount shall, subject to paragraph 4.3, be payable by way of a Revenue Protection Incentive Adjustment:

$$RPIA = (TT_{\text{maa}R} - RTTT) \times RTR$$

where:

**RPIA** means the Revenue Protection Incentive Adjustment for the Survey Period to which that Ticketless Travel Survey relates:

- (a) payable by the Operator to RfL where the relevant Ticketless Travel MAA Rate is more than the Relevant Ticketless Travel Target; and
- (b) payable by RfL to the Operator (as a positive amount) where the relevant Ticketless Travel MAA Rate is less than the Relevant Ticketless Travel Target;

**TT<sub>maa</sub>R** means the relevant Ticketless Travel MAA Rate;

**RTTT** means the Relevant Ticketless Travel Target; and

**RTR** means the Relevant Ticket Revenue for that Survey Period.

##### **Outcome of Ticketless Travel Surveys during Operator Industrial Action**

4.3 On any day in a Reporting Period on which any Industrial Action by any of the employees, agents or subcontractors of the Operator (including any person with whom the Operator has a contract of arrangement for the lending, seconding, hiring, contracting out or

supervision by that person of train drivers, conductors, other train crew or station or depot staff used by the Operator in the provision of the Concession Services) prevents the Operator from operating the Passenger Services in one or more Peak:

- (a) the Revenue Protection Incentive Adjustment for that Reporting Period shall not reflect the outcome of any Ticketless Travel Survey carried out on that day; and
- (b) paragraph 4 (*Concession Payments where Operator Industrial Action*) of Schedule 11.1 (*Concession Payments*) shall apply in relation to the Concession Payment to be made for that Reporting Period.

#### **Payment of Revenue Protection Incentive Adjustments**

4.4 Any Revenue Protection Incentive Adjustment calculated pursuant to paragraph 3 shall be made on the Payment Date of the next Reporting Period after the completion of any Ticketless Travel Survey by way of a Performance Adjustment in accordance with paragraph 2.1 of Schedule 11.1 (*Concession Payments*).

### **5. PERFORMANCE AGAINST REMEDIAL PLAN THRESHOLDS**

5.1 As soon as reasonably practicable after completion of any Ticketless Travel Survey, RfL shall, subject to paragraph 2.3, separately calculate the Operator's performance against each of the Ticketless Travel Remedial Plan Thresholds by:

- (a) separately calculating the Ticketless Travel Route Rate for each Route resulting from that Ticketless Travel Survey; and
- (b) comparing the Ticketless Travel Route Rate for a Route against the Ticketless Travel Remedial Plan Threshold for that Route.

5.2 If following any Ticketless Travel Survey, any Ticketless Travel Route Rate for a Route is equal to or higher than the Ticketless Travel Remedial Plan Threshold for that Route, then:

- (a) a contravention of this Agreement shall have occurred; and
- (b) the provisions of Schedule 17.1 (*Remedial Plans and Remedial Agreements*) shall apply.

### **6. PERFORMANCE AGAINST DEFAULT THRESHOLDS**

6.1 As soon as reasonably practicable after the completion of any Ticketless Travel Survey, RfL shall, subject to paragraph 2.3, separately calculate the Operator's performance against each of the Ticketless Travel LOC Default Threshold and the Ticketless Travel Devolved Default Threshold by:

- (a) calculating the Ticketless Travel MAA Rate for each Route Group in accordance with paragraph 3 (*Performance against Ticketless Travel Route Group Thresholds*); and
- (b) comparing the Ticketless Travel MAA Rate for a Route Group against, as appropriate, the Ticketless Travel LOC Default Threshold or the Ticketless Travel Devolved Default Threshold.



6.2 If following any Ticketless Travel Survey, the Ticketless Travel MAA Rate for the London Overground Route Group or the Devolved Route Group is equal to or higher than, as appropriate, the Ticketless Travel LOC Default Threshold or the Ticketless Travel Devolved Default Threshold, then:

- (a) an Event of Default shall have occurred; and
- (b) the provisions of Schedule 17 (*Remedies, Termination and Expiry*) shall apply.

## **7. SURVEYS IN FIRST CONCESSION YEAR**

Where RfL or its nominee has conducted less than four Ticketless Travel Surveys during the Concession Period, RfL shall, for the purposes of performing the calculations specified in paragraph 3 (*Performance against Ticketless Travel Route Group Thresholds*) in relation to the rates of ticketless travel on London Overground Classic Route Group and the Devolved Route Group, assume that the Operator has performed at the Relevant Ticketless Travel Target for such number of notional Ticketless Travel Surveys as is necessary for the purposes of generating a Ticketless Travel MAA Rate in accordance with paragraph 3.



**SCHEDULE 10**

**COMMITTED OBLIGATIONS**

**Schedule 10.1:** **List of Committed Obligations and Committed Obligations Payments**

**Schedule 10.2:** **Miscellaneous Provisions**



**SCHEDULE 10.1**

**List of Committed Obligations and Committed Obligation Payments**

Column 1	Column 2	Column 3	Column 4	Column 5
No.	Committed Obligation	Delivery Date	Nature of COP ('RP' or 'PB')	Committed Obligation Payment (£)
1	<p><b>Station Deep Clean Programme</b></p> <p>The Operator shall complete a station deep clean in relation to all the areas that may reasonably be considered to be within the Operator Stations on the GOB and the platforms and trackside of those platforms at the Operator Access Stations on the GOB at which the Passenger Services call, comprising in each case:</p> <ul style="list-style-type: none"> <li>(a) the removal of graffiti (including scratched graffiti) from all station surfaces including scratches in glazing to the standard required by the Standards Regime (KPIs);</li> <li>(b) a deep clean of all customer areas of the station to the standard required by the Standards Regime (KPIs), including canopy undersides, glazing, signage and TVMs;</li> <li>(c) removal of chewing gum from surfaces to the standard required by the Standards Regime (KPIs);</li> <li>(d) removal of evidence of animal habitats;</li> </ul>	Complete by the date of commencement of Passenger Services to and from the GOB Stations after the completion of the GOB Blockade	RP	<div style="background-color: black; width: 20px; height: 20px; display: inline-block;"></div> <sup>38</sup>


<sup>38</sup> Certain of the text in this table has been redacted by Rail for London in accordance with the provisions of the Freedom of Information Act 2000.

Column 1	Column 2	Column 3	Column 4	Column 5
No.	Committed Obligation	Delivery Date	Nature of COP ('RP' or 'PB')	Committed Obligation Payment (£)
	<ul style="list-style-type: none"> <li>(e) removal of unpleasant odours from the public areas;</li> <li>(f) removal of rubbish, scrap and redundant materials/facilities;</li> <li>(g) removal of undergrowth on station property;</li> <li>(h) cleaning and unblocking drains, gutters and drainpipes;</li> <li>(i) patch repair of damaged paintwork;</li> <li>(j) replacement of damaged glazing; and</li> <li>(k) cut-back of track-side vegetation.</li> </ul>			
2	<p><b>Customer Experience Directorate</b></p> <p>The Operator shall:</p> <ul style="list-style-type: none"> <li>(a) implement a new executive team structure for the management of the matters contemplated by this Agreement which shall include the creation and maintenance for the remainder of the Concession Term of a <b>Customer Experience Directorate</b>, whose responsibilities shall include: <ul style="list-style-type: none"> <li>(i) the effective and efficient delivery of frontline services;</li> <li>(ii) providing a focus on customer service and Operator delivery of operational performance;</li> <li>(iii) the full integration of the management and direction of frontline customer experience, operations and Concession Employees; and</li> </ul> </li> </ul>	<p>Implement team structure, including create Customer Experience Directorate, provide certificate on or before 1 September 2017 and maintain Customer Experience Directorate for the remainder of the Concession Term</p>	<p>RP</p>	<p style="text-align: center;">■</p>

Column 1	Column 2	Column 3	Column 4	Column 5
No.	Committed Obligation	Delivery Date	Nature of COP ('RP' or 'PB')	Committed Obligation Payment (£)
	<p>(iv) the creation of a new local general manager structure to empower and enable local staff ownership of issues and the delivery of customer experience; and</p> <p>(b) provide a certificate to RfL signed by a nominated and duly authorised statutory director of the Operator, addressed to RfL, which confirms that the Operator has complied with its obligation under paragraph 2(a) to establish the Customer Experience Directorate.</p>			
3	<p><b>Performance Directorate</b></p> <p>The Operator shall:</p> <p>(a) implement a new executive team structure for the management of the matters contemplated by this Agreement which shall include the creation and maintenance for the remainder of the Concession Term of a <b>Performance Directorate</b>, whose responsibilities shall include:</p> <p>(i) driving improvements through new performance management initiatives, new relationships and effective management of third party suppliers;</p> <p>(ii) managing safety and environmental matters on behalf of the Operator; and</p> <p>(iii) delivering all rolling stock fleet management obligations required by this Agreement; and</p>	<p>Implement team structure, including create Performance Directorate, provide certificate on or before 1 September 2017 and maintain Performance Directorate for the remainder of the Concession Term</p>	<p>RP</p>	<p>■</p>

Column 1	Column 2	Column 3	Column 4	Column 5
No.	Committed Obligation	Delivery Date	Nature of COP ('RP' or 'PB')	Committed Obligation Payment (£)
	(b) provide a certificate to RfL signed by a nominated and duly authorised statutory director of the Operator, addressed to RfL, which confirms that the Operator has complied with its obligation under paragraph 3(a) to establish the Performance Directorate.			
4	<p><b>Concession Transformation Directorate</b></p> <p>4.1 The Operator shall implement a new executive team structure for the management of the matters contemplated by this Agreement which shall include the creation of a <b>Concession Transformation Directorate</b> and its maintenance for so long as the parties agree (both acting reasonably) that the Concession Transformation Directorate should continue to be constituted in order to fulfil its responsibilities.</p> <p>4.2 The responsibilities of the Concession Transformation Directorate shall include:</p> <p>(a) facilitating a responsive and collaborative relationship between the Operator and RfL in relation to project development and delivery, as well as contract and compliance reporting;</p> <p>(b) creating a dedicated project management office to deliver greater assurance and resource planning for concession projects (as more particularly described in paragraph 5); and</p> <p>(c) enhancing the Operator's delivery of innovation and best practice through drawing on resources and expertise of other companies within the Operator's group of companies.</p>	Implement team structure, including create Concession Transformation Directorate, provide certificate on or before 1 September 2017 and maintain Concession Transformation Directorate for so long as the parties agree (both acting reasonably) that the Concession Transformation Directorate should continue	RP	■



Column 1	Column 2	Column 3	Column 4	Column 5
No.	Committed Obligation	Delivery Date	Nature of COP ('RP' or 'PB')	Committed Obligation Payment (£)
	<p>4.3 The Operator shall provide a certificate to RfL signed by a nominated and duly authorised statutory director of the Operator, addressed to RfL, which confirms that the Operator has complied with its obligation under paragraph 4.1 to establish the Customer Transformation Directorate.</p>			
5	<p><b>Project Management Office</b></p> <p>The Operator shall create a standalone project management office (including a transformation team) within its organisation (the <i>Project Management Office</i>) to be responsible for the successful delivery of projects using a recognised project management methodology and having the following roles and responsibilities:</p> <ul style="list-style-type: none"> <li>(a) setting the transformation programme reporting and meeting structures;</li> <li>(b) implementing industry best practice methodologies in project controls and governance;</li> <li>(c) reporting to the senior management team within the Operator's organisation and to RfL;</li> <li>(d) delivering a comprehensive change agenda;</li> <li>(e) supporting the Operator's cultural change programme;</li> <li>(f) supporting the major change programmes occurring on the London Overground Network (including the introduction into service of the LOTRAIN Fleet);</li> <li>(g) planning and delivering the resourcing of projects;</li> </ul>	<p>Create Project Management Office on or before 31 December 2016 and maintain for the remainder of the Concession Term</p>	<p>RP</p>	

Column 1	Column 2	Column 3	Column 4	Column 5
No.	Committed Obligation	Delivery Date	Nature of COP ('RP' or 'PB')	Committed Obligation Payment (£)
	<p>(h) providing greater transparency to RfL; and</p> <p>(i) achieving cost efficiencies in project delivery,</p> <p>and the Operator shall thereafter maintain the Project Management Office for the remainder of the Concession Term.</p>			
6	<p><b>Leadership Programme</b></p> <p>6.1 The Operator shall deliver a leadership development programme (the <i>Leadership Programme</i>) for at least 12 of the Operator's directors and managers (as the Operator may select) per year, having the scope set out in paragraph 6.2.</p> <p>6.2 The scope of the Leadership Programme shall include:</p> <p>(a) educating attendees as to the contributions a leader must make in leading an organisation, others and one's self, including a leader's role in developing teams;</p> <p>(b) aligning the directors and managers to an agreed people strategy;</p> <p>(c) creating communities as a leader;</p> <p>(d) coaching and mentoring skills;</p> <p>(e) leading oneself (including managing energy and personality); and</p> <p>(f) developing an action programme linked to an aspect of change within the business of the Operator.</p>	<p>Deliver first programme on or before 31 December 2017, second programme no later than 12 months thereafter and each subsequent programme by 31 December in each year thereafter for the remainder of the Concession Term</p>	<p>Payable per director or manager that has not undertaken the Leadership Programme in given year</p>	<p>■</p>

Column 1	Column 2	Column 3	Column 4	Column 5
No.	Committed Obligation	Delivery Date	Nature of COP ('RP' or 'PB')	Committed Obligation Payment (£)
7	<p><b>Leadership Conferences</b></p> <p>7.1 The Operator shall deliver at least one leadership conference per annum for such Concession Employees of the Operator who are managers as the Operator may select and having the scope set out in paragraph 7.2 (the <i>Leadership Conference</i>).</p> <p>7.2 The scope of the Leadership Conference shall include:</p> <p>(a) understanding the vision of the Operator for the business of providing the Passenger Services and London Overground Stations;</p> <p>(b) understanding the strategy and business goals of RfL; and</p> <p>(c) adopting international best practice and continuous improvement from other companies within the same group of companies as the Operator, in particular in relation to innovation.</p>	Deliver first Leadership Conference on or before 31 October 2017 and each subsequent Leadership Conference by 31 October in each year thereafter for the remainder of the Concession Term	A one-off payment in respect of each year in which the relevant Leadership Conference is not delivered	■
8	<p><b>PTS Staff Events</b></p> <p>The Operator shall deliver no fewer than 40 “proud to serve” events to describe the cultural changes to be introduced by the Operator during the Concession Term (the <i>PTS Staff Events</i>) and the Operator shall procure that all Concession Employees attend a PTS Staff Event.</p>	All Concession Employees attend and no fewer than 40 PTS Staff Events delivered on or before 30 November 2017	A one-off payment per PTS Event not held	■
9	<p><b>PTS Manager Events</b></p> <p>The Operator shall deliver no fewer than five “proud to serve” conferences for Concession Employees who are managers to describe the cultural changes to be</p>	All managers attend and no fewer than five PTS Manager Events delivered on or before 31 December	A one-off payment per PTS Manager Event not held	■

Column 1	Column 2	Column 3	Column 4	Column 5
No.	Committed Obligation	Delivery Date	Nature of COP ('RP' or 'PB')	Committed Obligation Payment (£)
	introduced by the Operator during the Concession Term and encourage management engagement (the <i>PTS Manager Events</i> ) and the Operator shall procure that all Concession Employees who are managers attend a PTS Manager Event.	2016		
10	<p><b>Annual Employee Surveys</b></p> <p>The Operator shall undertake an annual survey of all Concession Employees (the <i>Annual Employee Survey</i>) to understand levels of satisfaction of Concession Employees.</p>	Undertake first Annual Employee Survey on or before 31 October 2017 and thereafter by each subsequent 31 October throughout the remainder of the Concession Term	A one-off payment per Annual Employee Survey not undertaken in a given year	■

Column 1	Column 2	Column 3	Column 4	Column 5
No.	Committed Obligation	Delivery Date	Nature of COP ('RP' or 'PB')	Committed Obligation Payment (£)
11	<p><b>Wellbeing Campaigns</b></p> <p>The Operator shall undertake a series of health and wellbeing initiatives (the <b>Wellbeing Campaign</b>) for all Concession Employees which will include the following activities:</p> <ul style="list-style-type: none"> <li>(a) nutritionist consultations;</li> <li>(b) health checks; and</li> <li>(c) distributing seasonal sport or activity promotional material.</li> </ul>	<p>Undertake a separate Wellbeing Campaign on or before each of:</p> <ul style="list-style-type: none"> <li>(a) 31 December 2017;</li> <li>(b) 31 December 2019;</li> <li>(c) 31 December 2021;</li> <li>(d) 31 December 2023; and</li> <li>(e) if RfL exercises its right to extend this Agreement beyond such date, on or before 31 December 2025</li> </ul>	RP	<div style="background-color: black; width: 20px; height: 20px; margin: 0 auto;"></div>
12	<p><b>Stress management courses</b></p> <p>The Operator shall procure that no fewer than 100 Concession Employees in the role of a manager undertake a training course on stress management and identifying signs of stress within the workforce.</p>	<p>No fewer than 100 managers undertake the training course on or before 31 December 2017</p>	RP	<div style="background-color: black; width: 20px; height: 20px; display: inline-block;"></div> per manager

Column 1	Column 2	Column 3	Column 4	Column 5
No.	Committed Obligation	Delivery Date	Nature of COP ('RP' or 'PB')	Committed Obligation Payment (£)
13	<p><b>Head Office Refurbishment</b></p> <p>13.1 Subject to paragraph 13.2, the Operator shall spend at least [REDACTED] in refurbishing its head office location (the <i>Head Office Refurbishment</i>), and in connection with this obligation, the Operator shall:</p> <p>(a) by no later than 31 March 2018, submit to RfL a plan setting out in reasonable detail the refurbishment work it proposes to undertake as part of the Head Office Refurbishment and how it will spend the sum identified in this paragraph 13.1 (the <i>Head Office Refurbishment Plan</i>);</p> <p>(b) consult with and take into account RfL's reasonable requests in connection with the Head Office Refurbishment Plan insofar as any such request relates to the accommodation which RfL uses at such location; and</p> <p>(c) complete the Head Office Refurbishment on or before 30 November 2018 in accordance with the Head Office Refurbishment Plan (as may be amended to take into account RfL's reasonable requests).</p> <p>13.2 The Operator shall use all reasonable endeavours to obtain any required, necessary or desirable third party consents or approvals for the refurbishment work referred to in paragraph 13.1. If the Operator is unable to obtain any third party consent and/or approval, having used all reasonable endeavours to do so, it shall promptly notify RfL. The Operator and RfL shall then promptly seek to agree alternative proposals for the Head Office Refurbishment. If no such third party consent and/or approval is reasonably likely to be obtained, the Operator and RfL shall seek to agree an alternative</p>	Spend at least the specified sum in carrying out the Head Office Refurbishment, consult as required and complete the Head Office Refurbishment on or before 30 November 2018	Underspend: PB	If underspend: amount of underspend + 1.45% if alternative use or alternative date not agreed with RfL

Column 1	Column 2	Column 3	Column 4	Column 5
No.	Committed Obligation	Delivery Date	Nature of COP ('RP' or 'PB')	Committed Obligation Payment (£)
	<p>use for the funds which would have been spent on the refurbishment work and the date by which such alternative use shall be implemented.</p> <p>13.3 If the Operator fails to spend the specified sum in paragraph 13.1 in completing the Head Office Refurbishment on or before 30 November 2018, the Operator shall seek to agree with RfL an alternative use for that sum and the date by which such alternative shall be implemented.</p> <p>13.4 If:</p> <p>(a) the Operator and RfL are required pursuant to this paragraph 13 to agree an alternative use for the specified sum in paragraph 13.1 and they fail to reach agreement on an alternative use; or</p> <p>(b) the Operator fails to implement any agreed alternative use on or before the agreed implementation date,</p> <p>then the Operator shall pay the relevant Committed Obligation Payment to RfL.</p> <p>13.5 If the Operator spends the specified sum in paragraph 13.1 but does not complete the Head Office Refurbishment by 30 November 2018, then the Operator shall pay the relevant Committed Obligation Payment to RfL for each Reporting Period in which that failure subsists.</p>		<p>No underspend, but Head Office Refurbishment not complete: RP</p>	<p>If no underspend but Head Office Refurbishment not complete: [REDACTED]</p>

Column 1	Column 2	Column 3	Column 4	Column 5
No.	Committed Obligation	Delivery Date	Nature of COP ('RP' or 'PB')	Committed Obligation Payment (£)
14	<p><b>Camden Road Refurbishment</b></p> <p>14.1 Subject to paragraph 14.2, the Operator shall spend at least [REDACTED] in refurbishing its satellite office at Camden Road for the General Manager (North) (the <i>Camden Road Refurbishment</i>), and in connection with this obligation, the Operator shall:</p> <p>(a) by no later than 1 February 2017, submit to RfL a plan setting out in reasonable detail the refurbishment work it proposes to undertake as part of the Camden Road Refurbishment and how it will spend the sum identified in this paragraph 14.1 (the <i>Camden Road Refurbishment Plan</i>);</p> <p>(b) consult with and take into account RfL's reasonable requests in connection with the Camden Road Refurbishment Plan; and</p> <p>(c) complete the Camden Road Refurbishment on or before 1 September 2017 in accordance with the Camden Road Refurbishment Plan (as may be amended to take into account RfL's reasonable requests).</p> <p>14.2 The Operator shall use all reasonable endeavours to obtain any required, necessary or desirable third party consents or approvals for the refurbishment work.</p> <p>14.3 If the Operator is unable to obtain any such consent and/or approval, having used all reasonable endeavours to do so, it shall promptly notify RfL. The Operator and RfL shall then promptly seek to agree alternative proposals for the Camden Road Refurbishment. If no such third party consent and/or approval is reasonably likely to be obtained, the Operator and RfL shall seek to agree an alternative use for the funds which would have been spent on the refurbishment work and the date by which such alternative</p>	<p>Spend at least the specified sum in carrying out the Camden Road Refurbishment, consult as required and complete the Camden Road Refurbishment on or before 1 September 2017</p>	<p>Underspend: PB</p>	<p>If underspend: amount of underspend + 1.45% if alternative use or alternative date not agreed with RfL or Operator fails to implement alternative use</p>



Column 1	Column 2	Column 3	Column 4	Column 5
No.	Committed Obligation	Delivery Date	Nature of COP ('RP' or 'PB')	Committed Obligation Payment (£)
	<p>use shall be implemented.</p> <p>14.4 If the Operator fails spend the sum specified in paragraph 14.1 in connection with the Camden Road Refurbishment on or before 1 September 2017, the Operator shall seek to agree with RfL an alternative use for the amounts contemplated in paragraph 14.1 and the date by which such alternative use shall be implemented. If the Operator and RfL fail to reach agreement on an alternative use for that sum and the date by which such alternative shall be implemented.</p> <p>14.5 If:</p> <p>(a) the Operator and RfL are required pursuant to this paragraph 14 to agree an alternative use for the specified sum in paragraph 14.1 and they fail to reach agreement on an alternative use; or</p> <p>(b) the Operator fails to implement any agreed alternative use on or before the agreed implementation date,</p> <p>then the Operator shall pay the relevant Committed Obligation Payment to RfL.</p> <p>14.6 If the Operator spends the specified sum in paragraph 14.1 but does not complete the Camden Road Refurbishment by 1 September 2017, then the Operator shall pay the relevant Committed Obligation Payment to RfL for each Reporting Period in which that failure subsists.</p>		<p>No underspend, but Camden Road Refurbishment not complete: RP</p>	<p>If no underspend but Camden Road Refurbishment not complete: [REDACTED]</p>
15	<p><b>LED lighting replacement</b></p> <p>15.1 The Operator shall promptly establish a fund of at least [REDACTED] to be used in</p>	<p>Promptly establish Lighting Replacement Fund and a reasonable period in</p>	<p>One-off payment per station falling below the percentage of</p>	<p>[REDACTED]</p>

Column 1	Column 2	Column 3	Column 4	Column 5
No.	Committed Obligation	Delivery Date	Nature of COP ('RP' or 'PB')	Committed Obligation Payment (£)
	<p>connection with the replacement of existing lighting at London Overground Stations with LED lighting (the <b>Lighting Replacement Fund</b>) which the Operator shall spend to achieve the milestones set out in paragraph 15.2. A reasonable period in advance of spending the Lighting Replacement Fund in any particular year, the Operator shall submit to RfL its proposals for how the sums will be spent in that year (including the London Overground Stations at which lighting will be replaced) and (each party acting reasonably) shall agree the proposals with RfL.</p> <p>15.2 On or before:</p> <p>(a) 30 November 2017, the Operator shall have procured the replacement of lighting with LED lighting at 12 per cent. of London Overground Stations;</p> <p>(b) 30 November 2018, the Operator shall have procured the replacement of lighting with LED lighting at a further 17 per cent. of London Overground Stations (meaning, on or before such date, 29 per cent. of London Overground Stations in aggregate will have been replaced);</p> <p>(c) 30 November 2019, the Operator shall have procured the replacement of lighting with LED lighting at a further 15 per cent. of London Overground Stations (meaning, on or before such date, 44 per cent. of London Overground Stations in aggregate will have been replaced); and</p> <p>(d) 30 November 2020, the Operator shall have procured the replacement of lighting with LED lighting at a further 14 per cent. of London Overground Stations (meaning, on or before such date, 58 per cent. of London Overground Stations in aggregate will have been replaced).</p>	<p>advance of the relevant year specified in paragraph 15.2, agree proposals for spending fund and to replace lighting with RfL</p> <p>Replace lighting at agreed London Overground Stations to the extent specified in:</p> <p>(a) paragraph 15.2(a) on or before 30 November 2017;</p> <p>(b) paragraph 15.2(b) on or before 30 November 2018;</p> <p>(c) paragraph 15.2(c) on or before 30 November 2019; and</p> <p>(d) paragraph 15.2(d) before 30 November 2020</p>	<p>stations specified which is not completed</p>	

Column 1	Column 2	Column 3	Column 4	Column 5
No.	Committed Obligation	Delivery Date	Nature of COP ('RP' or 'PB')	Committed Obligation Payment (£)
	15.3 If the Operator fails to replace the required LED lighting by any date specified in paragraph 15.2, the Operator shall pay the Committed Obligation Payment to RfL.			
16	<b>Energy management system</b> The Operator shall obtain certification to “International Standard for Energy Management” (ISO 50001) standards in respect of the Operator’s energy management system and the Operator shall thereafter maintain such accreditation throughout the remainder of the Concession Term.	Obtain certification by 30 November 2018 and maintain accreditation throughout the remainder of the Concession Term	RP	■
17	<b>Carbon trust triple standard certification</b> The Operator shall obtain independent certification against Carbon Trust standards in respect of: (i) carbon, (ii) water, and (iii) waste and maintain each of those standards throughout the remainder of the Concession Term.	Obtain independent certification in relation to each standard on or before 30 November 2018 and maintain independent certification throughout the remainder of the Concession Term	RP	■ in respect of each standard where independent certification is not first obtained or maintained thereafter
18	<b>Recycling Bins</b> In order to increase the level of recycling by the Operator and users of the Passenger Services, the Operator shall procure the installation and ongoing upkeep throughout the remainder of the Concession Term of no fewer than 166 recycling bins:	Procure the installation of no fewer than 166 recycling bins at agreed locations on or before 30 November 2017 and ongoing upkeep	One-off payment	■ where 50 per cent. or less bins installed by deadline

Column 1	Column 2	Column 3	Column 4	Column 5
No.	Committed Obligation	Delivery Date	Nature of COP ('RP' or 'PB')	Committed Obligation Payment (£)
	(a) at locations at London Overground Stations; and (b) to a specification, in each case to be proposed by the Operator and agreed with RfL (acting reasonably).	throughout the remainder of the Concession Term		█ where less than 100 per cent. but more than 50 per cent. of bins installed by deadline
19	<b>Waste Compactors</b> In order to increase the level of recycling by the Operator and users of the Passenger Services, the Operator shall procure the installation and ongoing maintenance throughout the remainder of the Concession Term of a waste compactor: (a) at two London Overground Stations; and (b) to a specification, in each case to be proposed by the Operator and agreed with RfL.	Procure the installation of both waste compactors at agreed locations on or before 30 November 2017 and ongoing maintenance throughout the remainder of the Concession Term	One-off payment per waste compactor not installed	█
20	<b>Environment and Energy Manager</b> 20.1 The Operator shall appoint a suitably qualified (to ISO14001 auditor standards and being an associate member of the Institute of Environmental Management and Assessment) and competent person to the role of environment and energy manager (the <b>E&amp;E Manager</b> ) having the roles and responsibilities set out in paragraph 20.2 (and shall thereafter maintain such qualified and competent appointment in each Reporting Period throughout the remainder of the Concession Term).	Appoint E&E Manager on or before the Start Date and maintain qualified and competent appointment in each Reporting Period throughout Concession Term	RP	█


Column 1	Column 2	Column 3	Column 4	Column 5
No.	Committed Obligation	Delivery Date	Nature of COP ('RP' or 'PB')	Committed Obligation Payment (£)
	<p>20.2 The roles and responsibilities of the E&amp;E Manager shall include:</p> <ul style="list-style-type: none"> <li>(a) effectively managing the Operator’s obligations under Schedule 15.4 (<i>Environment</i>);</li> <li>(b) progressing the obligations set out in paragraphs 15 (<i>LED lighting replacement</i>) to 19 (<i>Waste Compactors</i>) inclusive;</li> <li>(c) providing RfL with regular updates of the Operator’s performance against the environmental matters contemplated by this Agreement; and</li> <li>(d) carrying out environmental audits and inspections across the London Overground Network.</li> </ul>			
<p>21</p>	<p><b>Safety Culture Consultancy</b></p> <p>21.1 The Operator shall spend no less than ■■■ (being no less than ■■■ in aggregate) in reviewing, developing and improving the safety culture within the Operator’s business (the <i>Safety Culture Investment</i>).</p> <p>21.2 The Safety Culture Investment shall focus on matters which include:</p> <ul style="list-style-type: none"> <li>(a) attitudes of Concession Employees to safety;</li> <li>(b) safety performance of the Operator in connection with the obligations set out in this Agreement; and</li> <li>(c) safety performance during periods of change contemplated by this Agreement (including the introduction of the Class 710 Fleet and any Service Increments).</li> </ul>	<p>Spend at least ■■■ on or before each of 30 November 2018 and 30 November 2019 (being no less than ■■■ in aggregate) in completing Safety Culture Investment</p>	<p>PB</p>	<p>Amount of underspend + 1.45% if alternative use or alternative date not agreed with RfL or Operator fails to implement alternative use</p>

Column 1	Column 2	Column 3	Column 4	Column 5
No.	Committed Obligation	Delivery Date	Nature of COP ('RP' or 'PB')	Committed Obligation Payment (£)
	<p>21.3 If the Operator fails to spend at least the amounts specified in paragraph 21.1 on or before each of 30 November 2018 and 30 November 2019, the Operator shall seek to agree with RfL an alternative use for the amounts contemplated in paragraph 21.1 and the date by which such alternative shall be implemented. If the Operator and RfL fail to reach agreement on an alternative use for the amounts or if the Operator fails to implement the alternative use on or before the agreed date, the Operator shall pay the Committed Obligation Payment to RfL.</p>			

Column 1	Column 2	Column 3	Column 4	Column 5
No.	Committed Obligation	Delivery Date	Nature of COP ('RP' or 'PB')	Committed Obligation Payment (£)
22	<p><b>Relationship Manager</b></p> <p>22.1 The Operator shall appoint a suitably qualified and competent person to the role of relationship manager (the <i>Operator-LUL Relationship Manager</i>) and shall thereafter maintain such qualified and competent appointment in each Reporting Period throughout the remainder of the Concession Term.</p> <p>22.2 The principal responsibilities of the Operator-LUL Relationship Manager shall include:</p> <ul style="list-style-type: none"> <li>(a) identifying how the Operator can develop and improve the quality of interface management;</li> <li>(b) developing the corporate interfaces to ensure consistency and strategic alignment in service delivery;</li> <li>(c) agreeing high level performance targets and joint initiatives;</li> <li>(d) understanding contractual interfaces; and</li> <li>(e) planning joint revenue protection and customer security initiatives,</li> </ul> <p>(in each case) with LUL.</p> <p>22.3 Except in cases of emergency, or as a consequence of the proper exercise of disciplinary procedures of the Operator, the Operator shall give RfL reasonable notice of a proposal to replace the Operator-LUL Relationship Manager.</p>	<p>Appoint Operator LUL Relationship Manager on or before the Start Date and maintain qualified and competent appointment in each Reporting Period throughout the Concession Term</p>	<p>RP</p>	<p>■</p>

Column 1	Column 2	Column 3	Column 4	Column 5
No.	Committed Obligation	Delivery Date	Nature of COP ('RP' or 'PB')	Committed Obligation Payment (£)
23	<p><b>Joint Team Planning Events</b></p> <p>23.1 The Operator shall spend at least the amounts specified in paragraph 23.3 providing two joint team planning events per annum, to which members of the team involved in the day-to-day operation of this Agreement from the Operator and RfL shall be invited.</p> <p>23.2 The purposes of the joint team planning events shall be as follows:</p> <ul style="list-style-type: none"> <li>(a) to promote the sharing of ideas, issues and opportunities;</li> <li>(b) to spread best practice;</li> <li>(c) to encourage social interaction; and</li> <li>(d) to plan the business of the Operator contemplated by this Agreement.</li> </ul> <p>23.3 In complying with its obligations under paragraph 23.1:</p> <ul style="list-style-type: none"> <li>(a) the Operator shall be required to spend at least: <ul style="list-style-type: none"> <li>(i) [REDACTED] per annum in respect of the period commencing on the Start Date and ending on the second anniversary of the Start Date; and</li> <li>(ii) [REDACTED] per annum thereafter for the remainder of the Concession Term; and</li> </ul> </li> </ul>	Spend the relevant specified sum providing two joint team planning events on or before the relevant date in the given year and provide those team planning events	PB	Amount of underspend + 1.45% if alternative use or alternative date not agreed with RfL or Operator fails to implement alternative use



Column 1	Column 2	Column 3	Column 4	Column 5
No.	Committed Obligation	Delivery Date	Nature of COP ('RP' or 'PB')	Committed Obligation Payment (£)
	<p>(b) the first such joint team planning event:</p> <p>(i) may take place prior to the Start Date; but</p> <p>(ii) will nevertheless count towards the quantum of joint team planning events to be provided by the Operator during the one-year period commencing on the Start Date.</p> <p>23.4 If the Operator fails to spend at least the relevant specified sum in connection with the provision of two joint team planning events per annum in each case on or before 16 November 2017, 16 November 2018 and each anniversary thereafter during the remainder of the Concession Term, then the Operator shall seek to agree with RfL an alternative use for the amount of any underspend per annum and the date by which the Operator shall implement such alternative use. If the Operator and RfL fail to reach agreement on an alternative use for the amount of the underspend or an alternative date for implementation of the alternative use, or if the or if the Operator fails to implement the alternative use on or before the agreed date, the Operator shall pay the Committed Obligation to RfL.</p>			
24	<p><b>Innovation</b></p> <p>24.1 The Operator shall develop and submit to RfL for approval a draft innovation strategy setting out the Operator's proposed:</p> <p>(a) structured approach to delivering change;</p> <p>(b) approach to joint business planning with RfL;</p>	<p>Develop and submit draft strategy on or before 31 May 2017 and agree as soon as reasonably practicable thereafter</p> <p>Implement strategy</p>	RP	

Column 1	Column 2	Column 3	Column 4	Column 5
No.	Committed Obligation	Delivery Date	Nature of COP ('RP' or 'PB')	Committed Obligation Payment (£)
	<p>(c) methods for assessing future trends; and</p> <p>(d) methods for managing and delivering innovation and continuous improvement, and the Operator and RfL (each acting reasonably) shall seek to agree the innovation strategy as soon as reasonably practicable thereafter.</p> <p>24.2 The Operator shall implement the agreed innovation strategy in accordance with its terms.</p>	thereafter		
25	<p><b>Stakeholders</b></p> <p>The Operator shall create and maintain a comprehensive third party community stakeholder database to which the Operator and RfL shall both have access (the <i>Stakeholder Communities Database</i>) having the following outputs:</p> <p>(a) all contacts with those community stakeholders are properly recorded;</p> <p>(b) all contacts with those community stakeholders have a full audit trail; and</p> <p>(c) ensuring that contacts with those community stakeholders are managed and progressed on a timely basis.</p>	Create Stakeholder Communities Database on or before 28 February 2017 and maintain the database throughout the remainder of the Concession Term	RP	■
26	<p><b>Business Improvement Portal Fund</b></p> <p>26.1 The Operator shall establish a customer experience and business delivery fund (the <i>Business Improvement Portal Fund</i>) into which the Operator shall pay at least ■ per annum (calculated from the Start Date) throughout the Concession Term.</p> <p>26.2 The Operator shall be entitled to make the contribution referred to in</p>	Establish the Business Improvement Portal Fund by the Start Date, pay into the fund each year throughout the Concession Term and spend the fund in	PB	Amount of underspend + 1.45%

Column 1	Column 2	Column 3	Column 4	Column 5
No.	Committed Obligation	Delivery Date	Nature of COP ('RP' or 'PB')	Committed Obligation Payment (£)
	<p>paragraph 26.1 in respect of the first year into the Business Improvement Portal Fund prior to the Start Date.</p> <p>26.3 The purpose of the Business Improvement Portal Fund shall be to enhance the customer experience or business delivery through the development of ideas from customers, Concession Employees or community stakeholders through a business improvement internet-based portal.</p> <p>26.4 The Operator shall spend the Business Improvement Portal Fund in accordance with a spending profile and plan agreed with RfL, both parties acting reasonably.</p> <p>26.5 If the Operator fails to pay into the Business Improvement Portal Fund in any particular year the sum specified in paragraph 26.1 or to spend the Business Improvement Portal Fund in accordance with the profile and plan agreed pursuant to paragraph 26.4, a Committed Obligation Payment shall be paid by the Operator to RfL.</p>	<p>accordance with the profile and plan agreed pursuant to paragraph 26.4</p>		
27	<p><b>Barking Driver Depot</b></p> <p>The Operator shall establish an operational new driver depot at Barking with the ability to</p>	<p>Establish driver depot with the capability referred to in paragraph 27(a) on or before</p>	<p>RP</p>	<p>█ in relation to paragraph 27(a)</p>

Column 1	Column 2	Column 3	Column 4	Column 5
No.	Committed Obligation	Delivery Date	Nature of COP ('RP' or 'PB')	Committed Obligation Payment (£)
	accommodate the resources required for the provision of the Passenger Services: <ul style="list-style-type: none"> <li>(a) operating on the RUL on or before 31 October 2018; and</li> <li>(b) operating on the GOB on or before the Passenger Change Date occurring in December 2019,</li> </ul> which shall thereafter be maintained throughout the remainder of the Concession Term.	31 October 2018 and the capability referred to in paragraph 27(b) on or before the Passenger Change Date occurring in December 2019 and maintain throughout the remainder of the Concession Term		■ in relation to paragraph 27(b)
28	<p><b>Rostering System</b></p> <p>28.1 The Operator shall, implement new computerised rostering and resourcing systems (the <i>Rostering Systems</i>) having the functions set out in paragraph 28.2 (and shall thereafter maintain such Rostering Systems throughout the remainder of the Concession Term).</p> <p>28.2 The functions of the Rostering Systems shall include:</p> <ul style="list-style-type: none"> <li>(a) supporting the efficient and proactive deployment of drivers;</li> <li>(b) supporting service recovery following perturbation;</li> <li>(c) integrating resourcing in the day-to-day management of service delivery;</li> <li>(d) allowing the better planning of long-term resources;</li> <li>(e) supporting the delivery of training of new rolling stock and infrastructure;</li> </ul>	Implement Rostering Systems on or before ■ and maintain throughout the remainder of the Concession Term	RP	■

Column 1	Column 2	Column 3	Column 4	Column 5
No.	Committed Obligation	Delivery Date	Nature of COP ('RP' or 'PB')	Committed Obligation Payment (£)
	(f) supporting the management of sickness; and (f) the management of leave.			
29	<p><b>Competency Management System</b></p> <p>29.1 The Operator shall implement a new competency management system (<i>CMS</i>) having the functions set out in paragraph 29.2 (and shall thereafter maintain the CMS throughout the remainder of the Concession Term).</p> <p>29.2 The functions of the CMS shall include:</p> <p>(a) supporting greater driver management visibility by being truly paperless;</p> <p>(b) setting out performance competence and productivity key performance indicators;</p> <p>(c) setting out customer service competence and key performance indicators;</p> <p>(d) supporting the management of train driver licensing, including European Driver Licences, Safety Critical Work ID cards, Driving Cab Passes and Route and Traction Knowledge; and</p> <p>(e) supporting the management and investigation of operational incidents, including collating and uploading evidence and generating reports through the replication of existing paper-based investigation processes.</p>	Implement CMS on or before 31 December 2017 and maintain throughout the remainder of the Concession Term	RP	■
30	<p><b>Driver Delay App</b></p> <p>The Operator shall introduce and make available to all drivers an electronic application</p>	Introduce and make available Driver Delay App	RP	■

Column 1	Column 2	Column 3	Column 4	Column 5
No.	Committed Obligation	Delivery Date	Nature of COP ('RP' or 'PB')	Committed Obligation Payment (£)
	which allows drivers to quickly and accurately record and share with the control centre and performance team the causes of delay to any Passenger Service (the <i>Driver Delay App</i> ) and the Operator shall thereafter maintain such Driver Delay App throughout the remainder of the Concession Term.	on or before [REDACTED] and maintain availability throughout the remainder of the Concession Term		
31	<p><b>Driver Training Programme</b></p> <p>The Operator shall introduce a tablet-based training programme for all drivers to support the introduction of the Class 710 Fleet including the following elements:</p> <ul style="list-style-type: none"> <li>(a) media-rich interactive photorealistic graphics;</li> <li>(b) fleet operations, faults and failures training;</li> <li>(c) early production of training materials in advance of the introduction to support early familiarisation;</li> <li>(d) remote uploads and updates for quick and easy modification;</li> <li>(e) a multi-platform approach to training (intranet, desktop); and</li> <li>(f) supporting the control of skills fade following training by making materials accessible at all times,</li> </ul> <p>and maintain the availability of that training programme throughout the period of introduction of the Class 710 Fleet, such period to be agreed by the parties, both acting reasonably, provided that that period shall include a reasonable period of time after the introduction into service of the last Class 710 Unit.</p>	Introduce training programme on or before 31 December 2017 and maintain availability of that training programme throughout the agreed period of introduction of the Class 710 Fleet	RP	[REDACTED]

Column 1	Column 2	Column 3	Column 4	Column 5
No.	Committed Obligation	Delivery Date	Nature of COP ('RP' or 'PB')	Committed Obligation Payment (£)
32	<p><b>Additional Diagrams</b></p> <p>The Operator shall deploy a total of four Diagrams of “service protection” drivers at Dalston Junction and Liverpool Street stations, or other defined locations on each day when Passenger Services are operating, to respond to disruption and to alleviate perturbation in the Passenger Services.</p>	<p>Deploy Diagrams on or before 31 December 2017 and maintain those Diagrams throughout the remainder of the Concession Term</p>	<p>RP</p>	<p>■</p>

Column 1	Column 2	Column 3	Column 4	Column 5
No.	Committed Obligation	Delivery Date	Nature of COP ('RP' or 'PB')	Committed Obligation Payment (£)
33	<p><b>Network Rail Alliance Agreement</b></p> <p>33.1 The Operator shall enter into an alliance agreement with Network Rail (the <i>Alliance Agreement</i>) having the proposed outputs set out in paragraph 33.2 and the Operator shall thereafter maintain an alliance with Network Rail in accordance with the terms of that Alliance Agreement (as amended from time to time) throughout the remainder of the Concession Term.</p> <p>33.2 The Alliance Agreement shall have the following proposed outputs:</p> <p>(a) jointly agreed business targets including:</p> <ul style="list-style-type: none"> <li>(i) safety;</li> <li>(ii) performance;</li> <li>(iii) customer service quality;</li> <li>(iv) industry value for money;</li> <li>(v) efficiencies in delivery of infrastructure programmes;</li> <li>(vi) National Passenger Survey results; and</li> <li>(vii) realising measurable financial and operating efficiencies beyond those achievable by either organisation acting alone; and</li> </ul> <p>(b) more cost effective and efficient ways of working, whilst continually improving safety and performance.</p>	<p>Enter into the Alliance Agreement on or before 26 May 2017 and maintain an alliance with Network Rail in accordance with the terms of that Alliance Agreement (as amended from time to time) throughout the remainder of the Concession Term</p>	<p>RP</p>	<p>■</p>



Column 1	Column 2	Column 3	Column 4	Column 5
No.	Committed Obligation	Delivery Date	Nature of COP ('RP' or 'PB')	Committed Obligation Payment (£)
34	<p><b>Network Rail Director, London</b></p> <p>34.1 The Operator shall provide funding to Network Rail for the purpose of funding the appointment by Network Rail of the Director, London. Such funding shall be the lesser of [REDACTED] per year and 50 per cent. of the employment costs per year of the Director, London. The Director, London shall be accountable for delivery of the Passenger Services and other rail services operated by other Train Operators and freight operators within and around London.</p> <p>34.2 The Operator shall procure that any agreement with Network Rail in relation to the funding and appointment of the Director, London provides for the Operator to make representations to Network Rail in relation to the initial appointment and ongoing performance of the Director, London and that Network Rail will have regard to those representations.</p> <p>34.3 If the Operator fails to contribute the amount specified in paragraph 34.1 to Network Rail to fund the appointment of the Director, London by Network Rail, the Operator and RfL shall seek to agree an alternative use for such sums on other passenger benefit schemes to be implemented by the Operator by a particular date. If the Operator and RfL fail to reach agreement on an alternative use for the sums or if the Operator fails to implement the agreed alternative use on or before the agreed date, the Operator shall pay the Committed Obligation Payment to RfL.</p>	Contribute funding on or before 26 May 2017 and each anniversary thereof for the remainder of the Concession Term	PB	Amount of underspend + 1.45% if alternative use or alternative date not agreed with RfL or Operator fails to implement alternative use

Column 1	Column 2	Column 3	Column 4	Column 5
No.	Committed Obligation	Delivery Date	Nature of COP ('RP' or 'PB')	Committed Obligation Payment (£)
35	<p><b>Accreditation of Relationship with Network Rail</b></p> <p>The Operator shall obtain accreditation to BS11000 standard for the relationship with Network Rail constituted by the Alliance Agreement (and the Operator shall thereafter maintain such accreditation throughout the remainder of the Concession Term).</p>	Obtain accreditation within 18 months of entering into the Alliance Agreement and maintain accreditation throughout the remainder of the Concession Term	RP	█
36	<p><b>Alliance Manager</b></p> <p>The Operator shall appoint a suitably qualified person with relevant infrastructure management competency to the role of manager of the Alliance Agreement (the <i>Alliance Manager</i>) whose responsibilities shall include:</p> <ul style="list-style-type: none"> <li>(a) facilitate the entry into of the Alliance Agreement;</li> <li>(b) managing the day-to-day operation of the Alliance Agreement;</li> <li>(c) seeking to drive achievement of the aims and objectives set out in the Alliance Agreement, together with the alliance joint tasks to be delivered pursuant to the Alliance Agreement; and</li> <li>(d) managing Network Rail's performance,</li> </ul> <p>and the Operator shall thereafter maintain such a qualified and competent appointment throughout the remainder of the Concession Term.</p>	Appoint the Alliance Manager no later than six months prior to entering into the Alliance Agreement and maintain such qualified and competent appointment throughout the remainder of the Concession Term	RP	█
37	<p><b>Performance Team</b></p>	Appoint persons on or before 31 December 2017	RP	█ per person not appointed or role

Column 1	Column 2	Column 3	Column 4	Column 5
No.	Committed Obligation	Delivery Date	Nature of COP ('RP' or 'PB')	Committed Obligation Payment (£)
	<p>The Operator shall appoint five suitably qualified, experienced and competent persons (the <i>Performance Team</i>) to performance analysis and improvement roles having the following purposes:</p> <p>(a) to conduct analysis of causes of delay so as to enable development of action plans and initiatives to improve performance; and</p> <p>(b) to submit findings and recommendations to the joint alliance performance board (or similar group, as agreed with RfL, until such time as the joint alliance performance board is constituted),</p> <p>and the Operator shall thereafter maintain such qualified, experienced and competent appointments as part of the Performance Team throughout the remainder of the Concession Term.</p>	and maintain such qualified, experienced and competent appointment as part of the Performance Team throughout the remainder of the Concession Term		maintained
38	<p><b>Root Cause Training</b></p> <p>The Operator shall procure that every member of the Performance Team undertakes an industry-recognised training course covering statistical techniques and root cause analysis (the <i>Root Cause Training</i>).</p>	Procure that every member of the Performance Team has undertaken the Root Cause Training on or before 16 November 2017	One-off payment	█ per member of the Performance Team not received Root Cause Training
39	<p><b>Every Train Programme</b></p> <p>39.1 The Operator shall train 30 “change champions” to support the achievement of performance projections (the <i>Every Train Programme</i>) covering the matters described in paragraph 39.2.</p>	Complete Every Train Programme on or before 31 January 2018	One-off payment	█

Column 1	Column 2	Column 3	Column 4	Column 5
No.	Committed Obligation	Delivery Date	Nature of COP ('RP' or 'PB')	Committed Obligation Payment (£)
	<p>39.2 The objectives of the Every Train Programme shall include:</p> <ul style="list-style-type: none"> <li>(a) emphasising the impact of sub-threshold delays;</li> <li>(b) encouraging the delivery of “to the second” performance;</li> <li>(c) the behaviours required to minimise sub-threshold delays; and</li> <li>(d) providing opportunities to suggest methods for improving performance.</li> </ul>			
<p>40</p>	<p><b>Education Fund</b></p> <p>40.1 The Operator shall establish an education fund (the <i>Education Fund</i>) containing ■ and paying a further ■ into the Education Fund in subsequent years which shall be used for the following purposes:</p> <ul style="list-style-type: none"> <li>(a) professional learning and development of performance team employees; and</li> <li>(b) improving competencies of performance team employees.</li> </ul> <p>40.2 The Operator shall consult with RfL and shall seek to agree how to best use the Education Fund to meet the purposes set out in paragraph 40.1. Once agreed, the Operator shall spend the Education Fund in accordance with the terms of that agreement.</p> <p>40.3 If the Operator fails to:</p> <ul style="list-style-type: none"> <li>(a) pay ■ into the Education Fund on or before 16 November 2018;</li> <li>(b) pay further sums of ■ on or before each anniversary thereof for the remainder of the Concession Term; or</li> </ul>	<p>Establish Education Fund on or before 16 November 2018 and further fund by each anniversary thereafter for the remainder of the Concession Term</p> <p>Spend Education Fund in accordance with agreement with RfL</p>	<p>PB</p>	<p>Amount of underspend + 1.45% if alternative use or alternative date not agreed with RfL, Operator fails to spend Education Fund as agreed or Operator fails to implement alternative use</p>

Column 1	Column 2	Column 3	Column 4	Column 5
No.	Committed Obligation	Delivery Date	Nature of COP ('RP' or 'PB')	Committed Obligation Payment (£)
	(c) spend the Education Fund in accordance with any agreement with RfL, then, in each case, the Operator shall seek to agree with RfL an alternative use for the amount of any underfunding or underspending and the date by which the Operator shall implement such alternative use. If the Operator and RfL fail to reach agreement on an alternative use for the amount of the underfunding or if the Operator fails to implement the alternative use on or before the agreed date, the Operator shall pay the Committed Obligation Payment to RfL.			
41	<b>Delay Reduction Training</b> The Operator shall procure that 250 person-days of relevant expertise is provided to the Operator to import knowledge on international best practice in connection with reducing infrastructure and operator-on-operator delays.	Expertise procured on or before 16 November 2019	RP	█, provided that the aggregate amount of Committed Obligation Payments payable in relation to this Committed Obligation shall not exceed █
42	<b>Operator Presence in Network Rail Facilities</b> The Operator shall appoint nine qualified and competent managers to work on early and/or late shifts at the Network Rail control room or route operating centre (as the case may be) at Romford and Three Bridges (or such other location as may be agreed by the Operator with RfL) and to represent the Operator's interests in decisions made by Network Rail at such locations (and the Operator shall maintain such qualified and competent appointments throughout the remainder of the Concession Term).	Appoint managers on or before 31 August 2017 and maintain such qualified and competent appointments throughout the remainder of the Concession Term	RP	█ per manager

Column 1	Column 2	Column 3	Column 4	Column 5
No.	Committed Obligation	Delivery Date	Nature of COP ('RP' or 'PB')	Committed Obligation Payment (£)
43	<p><b>Controller Training</b></p> <p>43.1 The Operator shall procure that four days of training covering the matters set out in paragraph 43.2 (the <b>Controller Training</b>) is delivered to those Concession Employees who work in control rooms pursuant to Committed Obligation 42 and any additional or replacement Concession Employees appointed thereafter.</p> <p>43.2 The matters to be covered by the Controller Training include:</p> <ul style="list-style-type: none"> <li>(a) control systems and processes;</li> <li>(b) interfaces with Network Rail and other Train Operators;</li> <li>(c) the focus on customer experience; and</li> <li>(d) performance regimes and “Every Train in its Path” delivery.</li> </ul>	Procure Controller Training on or before 16 November 2018 in relation to those Concession Employees appointed pursuant to Committed Obligation 42 and in relation to those replacement or additional Concession Employees appointed thereafter, promptly after their appointment	RP	<p>█ provided that the aggregate amount of Committed Obligation Payments payable hereunder shall not exceed █</p>
44	<p><b>Decision Support System</b></p> <p>The Operator shall procure that a real-time decision support system and processes providing options for redeployment of resources in response to disruption (the <b>Decision Support System</b>) is installed and available for use by the Operator (and the Operator shall thereafter maintain such Decision Support System for the remainder of the Concession Period).</p>	Procure Decision Support System installed and available on or before █ and maintained throughout the remainder of the Concession Period	RP	█

Column 1	Column 2	Column 3	Column 4	Column 5
No.	Committed Obligation	Delivery Date	Nature of COP ('RP' or 'PB')	Committed Obligation Payment (£)
45	<p><b>Network Rail MOMs at Enfield Town</b></p> <p>45.1 The Operator shall provide funding of up to [REDACTED] per year (to be determined by reference to each anniversary of the Start Date) to Network Rail to ensure that no fewer than three Network Rail MOMs are based at Enfield Town station and shall procure that such Network Rail MOMs cover each shift by the Start Date and continue to cover each shift throughout the Concession Period.</p> <p>45.2 If the Operator fails to procure that the Network Rail MOMs deployed at Enfield Town contemplated by paragraph 45.1, cover each shift by the Start Date and continue to cover each shift throughout the Concession Period, the Committed Obligation Payment shall be payable.</p> <p>45.3 If the Operator fails to spend any amount specified in paragraph 45.1 for the purpose specified in paragraph 45.1, the Operator shall seek to agree with RfL an alternative use for the amount of any underspend and the date by which the Operator shall implement such alternative use. If the Operator and RfL fail to reach agreement on an alternative use for the amount of the underspend or an alternative date for implementation of the alternative use, or if the Operator fails to implement the alternative use on or before the agreed date, the Operator shall pay the Committed Obligation Payment to RfL.</p>	Provide funding from the Start Date and annually thereafter for the remainder of the Concession Period to ensure that no fewer than three Network Rail MOMs are based at Enfield Town station by the Start Date and continue to be deployed throughout the Concession Period	Underspend: PB	Amount of underspend + 1.45% if alternative use or alternative date not agreed with RfL, Operator fails to spend fund as agreed or Operator fails to implement alternative use
			One-off payment per person per shift that is not covered	[REDACTED]
46	<p><b>Network Rail S&amp;T Team at Hackney Downs</b></p> <p>46.1 The Operator shall provide funding of up to [REDACTED] per year (to be determined by reference to each anniversary of the Start Date) to Network Rail to ensure that the Network Rail S&amp;T team at Hackney Downs station at the Start Date is maintained and</p>	Provide funding from the Start Date and annually thereafter for the remainder of the Concession Period to ensure that the Network Rail	Underspend: PB	Amount of underspend + 1.45% if alternative use or alternative date not agreed with RfL, Operator fails to spend

Column 1	Column 2	Column 3	Column 4	Column 5
No.	Committed Obligation	Delivery Date	Nature of COP ('RP' or 'PB')	Committed Obligation Payment (£)
	<p>shall procure that such Network Rail S&amp;T team covers each shift throughout the Concession Period.</p> <p>46.2 If the Operator fails to procure that the Network Rail S&amp;T team located at Hackney Downs station at the Start Date is maintained and covers each shift throughout the Concession Period, the Committed Obligation Payment shall be payable.</p> <p>46.3 If the Operator fails to spend any amount specified in paragraph 46.1 for the purpose specified in paragraph 46.1, the Operator shall seek to agree with RfL an alternative use for such amount and the date by which the Operator shall implement such alternative use. If the Operator and RfL fail to reach agreement on an alternative use for such amount or if the Operator fails to implement the alternative use on or before the agreed date, the Operator shall pay the Committed Obligation Payment to RfL</p>	S&T team at Hackney Downs station at the Start Date is maintained		fund as agreed or Operator fails to implement alternative use
			One-off payment per person per shift that is not covered	■
47	<p><b>Platform Staff</b></p> <p>The Operator shall appoint part time Concession Employees up to the equivalent of 11.5 full time equivalent positions to assist passengers embarking and disembarking Passenger Services safely during the Peak at such locations as may be agreed with RfL (and the Operator shall thereafter maintain Concession Employees in such roles throughout the remainder of the Concession Term).</p>	Appoint Concession Employees on or before 31 January 2018 and maintain appointments throughout the remainder of the Concession Term	One-off payment per full time equivalent position (or part position) not appointed	■
48	<p><b>Service Increment 3 Platform Staff</b></p> <p>If RfL provides notice to the Operator to operate the Passenger Services anticipated by Service Increment 3, the Operator shall appoint part time Concession Employees up to the equivalent of 12 full time equivalent positions to assist passengers embarking and</p>	Appoint six Concession Employees for each Service Increment on or before the end of the month in which the implementation date of	One-off payment per full time equivalent position not appointed	■



Column 1	Column 2	Column 3	Column 4	Column 5
No.	Committed Obligation	Delivery Date	Nature of COP ('RP' or 'PB')	Committed Obligation Payment (£)
	disembarking Passenger Services safely during the Peak at such locations as may be agreed with RfL (and the Operator shall thereafter maintain Concession Employees in such roles throughout the remainder of the Concession Term).	Service Increment 3b or 4a occurs (if RfL provides notice to the Operator to operate those Passenger Services anticipated by Service Increment 3)		
49	<p><b>Dwell Time Course</b></p> <p>The Operator shall procure that all Concession Employees who are platform-based staff at London Overground Stations (including those appointed pursuant to Committed Obligations 47 and 48) undertake a station dwell time course (the <i>Dwell Time Course</i>) the content for which shall include methods to expedite the alighting and boarding of trains at busy stations safely and in a customer-friendly manner.</p>	Procure all relevant Concession Employees have undertaken the Dwell Time Course on or before 31 January 2018 and all new relevant Concession Employees employed after that date have undertaken the Dwell Time course within one month of their employment commencing	RP	█ per Concession Employee not undertaken Dwell Time Course
50	<p><b>Competency Programme</b></p> <p>50.1 The Operator shall deliver a competency training programme (the <i>Competency Programme</i>) having the content set out in paragraph 50.2 to at least four Concession Employees working at London Overground Stations (and shall thereafter maintain staff having such competencies throughout the remainder of the Concession Term).</p>	Deliver Competency Programme on or before 30 June 2018 and maintain level of competency within the Operator's business throughout the remainder of	RP	█ per Concession Employee not undertaken Competency Programme or minimum number of

Column 1	Column 2	Column 3	Column 4	Column 5
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	50.2 The matters to be covered by the Competency Programme include: (a) bridge bash examination; and (b) individual working alone.	the Concession Term		Concession Employees not competent
51	<p><b>Timetable Robustness Verification</b></p> <p>51.1 The Operator shall undertake a programme to analyse and verify the robustness timetables, including a review of current timetable planning rules, sectional running times and appropriateness of permanent speed restrictions on the London Overground Network (the <i>Timetable Robustness Verification</i>) and in connection therewith, the Operator shall:</p> <p>(a) implement a system and processes to analyse GPS data; and</p> <p>(b) spend up to [REDACTED] to procure expert advice and modelling expertise to identify and prove continuous improvements to the timetables, promptly paying any underspend to RfL.</p> <p>51.2 The Operator shall provide to RfL a report setting out the Operator's findings, recommendations and measurable delivery outcomes from the Timetable Robustness Verification exercise promptly after completion of that programme and in any event on or before 16 September 2018.</p> <p>51.3 The Operator and RfL shall promptly after its provision discuss (each acting reasonably) the recommendations and outcomes in the report referred to in paragraph 51.2 with the purpose of agreeing a programme for acting on those recommendations and achieving those outcomes.</p>	<p>Implement system, procure advice and promptly provide report to RfL after completion of Timetable Robustness Verification and in any event on or before 16 September 2018</p> <p>Promptly meet to discuss recommendations and outcomes</p>	RP	<p>[REDACTED] provided that the aggregate amount of Committed Obligation Payments payable hereunder shall not exceed [REDACTED]</p>

Column 1	Column 2	Column 3	Column 4	Column 5
No.	Committed Obligation	Delivery Date	Nature of COP ('RP' or 'PB')	Committed Obligation Payment (£)
52	<p><b>Incremental Timetable Robustness Verification</b></p> <p>52.1 The Operator shall undertake a Timetable Robustness Verification in the context of the Service Level Commitment which is expected to apply from the implementation date of any Service Increment (the <i>Incremental Timetable Robustness Verification</i>). In connection therewith, the Operator shall spend up to [REDACTED] to procure expert advice and modelling expertise to identify and prove continuous improvements to the timetables, promptly paying any underspend to RfL.</p> <p>52.2 The Operator shall provide to RfL a report setting out the Operator's findings, recommendations and measurable delivery outcomes from the Incremental Timetable Robustness Verification exercise a reasonable period in advance of the anticipated implementation date of the relevant Service Increment.</p> <p>52.3 The Operator and RfL shall promptly after its provision discuss (each acting reasonably) the recommendations and outcomes in the report referred to in paragraph 52.2 with the purpose of agreeing a programme for acting on those recommendations and achieving those outcomes.</p>	Procure advice and promptly provide report to RfL a reasonable period in advance of the anticipated implementation date of the relevant Service Increment	RP	[REDACTED] provided that the aggregate amount of Committed Obligation Payments payable in relation to this Committed Obligation shall not exceed [REDACTED]
53	<p><b>Cascades Project Manager</b></p> <p>53.1 The Operator shall appoint a suitably qualified and competent person to the role of fleet cascade manager (the <i>Cascades Project Manager</i>) (in addition to the Fleet Manager) having the roles and responsibilities set out in paragraph 53.2 and shall procure that such a qualified and competent person fulfils such role for so long as the parties agree (both acting reasonably) that the role should be maintained in order to fulfil his</p>	Appoint Cascades Project Manager on or before 31 January 2018 and maintain that appointment for so long as the parties agree (both acting reasonably) that the role should be maintained	RP	[REDACTED]

Column 1	Column 2	Column 3	Column 4	Column 5
No.	Committed Obligation	Delivery Date	Nature of COP ('RP' or 'PB')	Committed Obligation Payment (£)
	<p>responsibilities.</p> <p>53.2 The roles and responsibilities of the Cascades Project Manager shall include:</p> <p>(a) managing the outward cascade of the Class 172 Units, the Class 315 Units and the Class 317 Units (the <i>Legacy Rolling Stock Units</i>) prior to 31 December 2018;</p> <p>(b) in respect of the outward cascade described in paragraph 53.2(a) managing the relationship between the Operator and each of the following stakeholders in the Legacy Rolling Stock Units:</p> <ul style="list-style-type: none"> <li>(i) Angel Trains;</li> <li>(ii) Eversholt Rail;</li> <li>(iii) The Chiltern Railway Company;</li> <li>(iv) RfL; and</li> <li>(v) the East Anglia Franchisee;</li> </ul> <p>(c) managing the rectification of any dilapidations agreed between the Operator and the relevant rolling stock lessor;</p> <p>(d) managing the handback process of the Legacy Rolling Stock; and</p> <p>(e) supporting and developing the relationship between the Operator and the relevant rolling stock lessors.</p>			

Column 1	Column 2	Column 3	Column 4	Column 5
No.	Committed Obligation	Delivery Date	Nature of COP ('RP' or 'PB')	Committed Obligation Payment (£)
54	<p><b>Fleet IT Analyst / Developer Role</b></p> <p>54.1 The Operator shall appoint a suitably qualified and competent person to the role of data analyst and reporter (the <i>Fleet IT Analyst / Developer</i>) having the roles and responsibilities set out in paragraph 54.2 and thereafter shall maintain such qualified and competent appointment throughout the remainder of the Concession Term.</p> <p>54.2 The roles and responsibilities of the Fleet IT Analyst / Developer shall include, in respect of the Class 710 Fleet, the Class 378 Fleet and the Legacy Rolling Stock Units (for as long as the Legacy Rolling Stock Units form part of the Train Fleet):</p> <p>(a) design and development of “dashboards”; and</p> <p>(b) no less than once each Reporting Period, produce standard management reporting on fleet performance measures to assist in the overall management of the relevant maintainer’s performance under the Class 378 TSA and/or the Class 710 TSA (as the case may be) including fleet availability, operating performance, incident and defect allocation and status of key operating systems.</p>	<p>Appoint Fleet IT Analyst / Developer on or before the Start Date and maintain such qualified and competent appointment throughout the remainder of the Concession Term</p>	<p>RP</p>	<p>■</p>
55	<p><b>Door Resilience Project – Class 315 And Class 317 Fleets</b></p> <p>The Operator shall undertake door resilience analysis and rectification activities in respect of door operation on all the Class 315 Units which form part of the Train Fleet at the relevant time (the <i>Relevant Class 315 Units</i>) and all the Class 317 Units which form part of the Train Fleet at the relevant time (the <i>Relevant Class 317 Units</i>) (the <i>Door Resilience Project</i>) which shall include undertaking the following:</p> <p>(a) door set up (including: door reset, pocket clean, header gear inspection and</p>	<p>Submit Door Resilience Certificate of Completion to RfL on or before 31 July 2017</p>	<p>RP</p>	<p>■</p>

Column 1	Column 2	Column 3	Column 4	Column 5
No.	Committed Obligation	Delivery Date	Nature of COP ('RP' or 'PB')	Committed Obligation Payment (£)
	clean); and (b) ensuring door arrangements are in optimal working order, and the Operator shall submit a certificate of completion (the <i>Door Resilience Certificate of Completion</i> ) to RfL confirming that the Door Resilience Project has been completed.			
56	<b>Class 317 Brake Controllers</b> The Operator shall fit reconditioned brake controllers to each Relevant Class 317 Unit in order to improve fleet reliability.	Fit brake controllers to Relevant Class 317 Units on or before [REDACTED]	RP until the earlier of the failure to fit brake controllers no longer subsisting and the expiry or termination of the lease of the Relevant Class 317 Unit	[REDACTED]
57	<b>Class 317 Doors</b> 57.1 The Operator shall spend no less than [REDACTED] replacing all internal cab door locks and strengthening all driver internal cab doors on each Relevant Class 317 Unit. 57.2 If the Operator fails to spend the amount specified in paragraph 57.1 in connection with replacing the internal cab door locks and the strengthening of driver cab doors on each Relevant Class 317 Unit on or before [REDACTED], the Operator shall seek to agree with RfL an alternative use for the amount of any underspend and the date by which	Spend specified sum and complete lock replacement and door strengthening on or before [REDACTED]	Underspend: PB	If underspend: amount of underspend + 1.45% if alternative use or alternative date not agreed with RfL or Operator fails to implement alternative use

Column 1	Column 2	Column 3	Column 4	Column 5
No.	Committed Obligation	Delivery Date	Nature of COP ('RP' or 'PB')	Committed Obligation Payment (£)
	<p>the Operator shall implement such alternative use. If the Operator and RfL fail to reach agreement on an alternative use for the amount of the underspend or an alternative date for implementation of the alternative use, or if the Operator fails to implement the alternative use on or before the agreed date, the Operator shall pay the Committed Obligation Payment to RfL.</p> <p>57.3 If the Operator spends the specified sum in paragraph 57.1 but does not complete the lock replacement and door strengthening by [REDACTED], then the Operator shall pay the relevant Committed Obligation Payment to RfL for each Reporting Period in which that failure subsists.</p>		<p>No underspend, but lock and door work not complete: RP</p>	<p>If no underspend lock and door work not complete: [REDACTED]</p>
<p>58</p>	<p><b>Maintenance Planning Communications And Processes</b></p> <p>58.1 The Operator shall undertake a review of its maintenance planning communications and processes arrangements (the <i>Communications Project</i>) which shall include the following:</p> <ul style="list-style-type: none"> <li>(a) standardising and implementing effective and efficient communications and processes for maintenance planning; and</li> <li>(b) considering the role that maintenance providers and the London Overground control room play in such processes,</li> </ul> <p>and the Operator shall submit a report to RfL setting out its findings and recommendations from the Communications Project (the <i>Communications Report</i>) on or before 31 May 2017.</p> <p>58.2 The Operator shall (having first agreed its proposals with RfL) spend no more</p>	<p>Submit Communications Report to RfL and spend specified sum implementing the proposals agreed with RfL on or before 31 December 2017</p>	<p>PB</p>	<p>Amount of underspend + 1.45% if alternative use or alternative date not agreed with RfL or Operator fails to implement alternative use</p>

Column 1	Column 2	Column 3	Column 4	Column 5
No.	Committed Obligation	Delivery Date	Nature of COP ('RP' or 'PB')	Committed Obligation Payment (£)
	<p>than [REDACTED] implementing the recommendations set out in the Communications Report.</p> <p>58.3 If the Operator fails to spend the amount specified in paragraph 58.2 in connection with implementing the recommendations set out in the Communications Report on or before 31 December 2017, the Operator shall seek to agree with RfL an alternative use for the amount of any underspend and the date by which the Operator shall implement such alternative use. If the Operator and RfL fail to reach agreement on an alternative use for the amount of the underspend or an alternative date for implementation of the alternative use, or if the Operator fails to implement the alternative use on or before the agreed date, the Operator shall pay the Committed Obligation Payment to RfL.</p>			
59	<p><b>Door Data</b></p> <p>59.1 The Operator shall appoint a suitably qualified and competent person to the role of door data analyst (the <i>Door Data Analyst</i>) having the roles and responsibilities set out in paragraph 59.1 and shall procure that a qualified and competent person fulfils such role until the earlier of:</p> <p>(a) the completion of the outward cascade of all Class 315 Units; and</p> <p>(b) 31 December 2018.</p> <p>59.2 The responsibilities of the Door Data Analyst shall include:</p> <p>(a) downloading door data from the software deployed on the Relevant Class 315 Units (the <i>Door Data</i>);</p> <p>(b) analysing the Door Data to enable the Operator to proactively deal with any door</p>	<p>Appoint Data Door Analyst from the Start Date and maintain qualified and competent appointment until the earlier of the dates described in paragraphs 59.1(a) and 59.1(b)</p> <p>Provide Door Data to RfL at least once in each Reporting Period from the Start Date until the earlier of the dates described in paragraphs 59.1(a) and</p>	RP	[REDACTED]



Column 1	Column 2	Column 3	Column 4	Column 5
No.	Committed Obligation	Delivery Date	Nature of COP ('RP' or 'PB')	Committed Obligation Payment (£)
	<p>issues with the intention of preventing those issues from affecting performance;</p> <p>(c) identifying, with the lessor of the Relevant Class 315 Units, areas where door reliability may be improved; and</p> <p>(d) conducting continuous improvement workshops with the lessor of the Relevant Class 315 Units.</p> <p>59.3 The Operator shall provide the Door Data in a raw data format to RfL each Reporting Period from the Start Date until the earlier of the dates described in paragraphs 59.1(a) and 59.1(b).</p>	59.1(b)		
60	<p><b>Customer Service Course</b></p> <p>The Operator shall procure that each Concession Employee having a train care role and who also interfaces with customers undertakes a training course equivalent to the Incumbent Operator's customer service course (the <i>Customer Service Course</i>).</p>	All relevant employees have undertaken Customer Service Course on or before 31 May 2017	RP	█ per Concession Employee not undertaken Customer Service Course
61	<p><b>Class 710 Cleaning Course</b></p> <p>The Operator shall procure that each Concession Employee having a role in cleaning the Class 710 Fleet, undertakes a course on the cleaning processes of the Class 710 Fleet.</p>	All Concession Employees having a role in cleaning the Class 710 Fleet have undertaken the course on or before 30 November 2018	RP	█ per Concession Employee not undertaken cleaning course
62	<p><b>New Concession Employees attending Customer Service and Class 710 Cleaning Course</b></p>	All relevant employees have undertaken the Customer Service Course or cleaning	RP	█ per Concession Employee not undertaken course

Column 1	Column 2	Column 3	Column 4	Column 5
No.	Committed Obligation	Delivery Date	Nature of COP ('RP' or 'PB')	Committed Obligation Payment (£)
	The Operator shall procure that any new Concession Employee: (a) having a train care role or a role in cleaning the Class 710 Fleet; and (b) appointed following delivery of an earlier course under, as appropriate, as set out in Committed Obligation 60 or 61, undertakes the relevant training course (as set out in Committed Obligation 60 or 61).	course, as appropriate, on or before each of 30 November 2019 and 30 November 2021		under paragraph 60 or 61
63	<b>Train Presentation Manual</b> The Operator shall update the train presentation manual that it maintains so that it includes instructions for completing train presentation of Class 710 Units and distribute the updated manual to all cleaning staff.	Distributed updated train presentation manual to all cleaning staff on or before 31 December 2019	One-off payment	■
64	<b>Defect In Service Instructions</b> 64.1 The Operator shall undertake a review of its defect in service instructions process (the <i>DISI</i> ) and the Operator shall promptly submit a report to RfL setting out its findings and recommendations from the review (the <i>DISI Report</i> ). 64.2 The Operator shall (having first agreed its proposals with RfL) spend no more than ■ in connection with the implementation of the recommendations set out in the DISI Report. 64.3 If the Operator fails to spend the amount specified in paragraph 64.2 in implementing the proposals agreed with RfL on or before 31 December 2017, the Operator shall seek to agree with RfL an alternative use for the amount of any underspend and the date by which the Operator shall implement such alternative use. If the Operator	Promptly submit DISI Report and spend specified sum implementing the proposals agreed with RfL on or before 31 December 2017	PB	Amount of underspend + 1.45% if alternative use or alternative date not agreed with RfL or Operator fails to implement alternative use

Column 1	Column 2	Column 3	Column 4	Column 5
No.	Committed Obligation	Delivery Date	Nature of COP ('RP' or 'PB')	Committed Obligation Payment (£)
	and RfL fail to reach agreement on an alternative use for the amount of the underspend or an alternative date for implementation of the alternative use, or if the Operator fails to implement the alternative use on or before the agreed date, the Operator shall pay the Committed Obligation Payment to RfL.			
65	<p><b>Class 17x User Group</b></p> <p>65.1 The Operator shall establish a users' group for those Train Operators within the same group of companies as the Operator which utilise Class 17x rolling stock (the <i>Class 17x Users' Group</i>) having the aims set out in paragraph 65.2 and the Operator shall thereafter maintain the Class 17x Users' Group for so long as the Class 172 Units form part of the Train Fleet.</p> <p>65.2 The aims of the Class 17x Users' Group shall include ensuring that:</p> <ul style="list-style-type: none"> <li>(a) all issues with the Class 17x rolling stock and achievable solutions in relation thereto are identified and recorded;</li> <li>(b) reliability information is shared between Train Operators;</li> <li>(c) best practice in fault handling and rectification is shared between Train Operators; and</li> <li>(d) a joint approach to working with Bombardier Transportation UK Limited is agreed.</li> </ul>	Establish and maintain Class 17x Users' Group on or before [REDACTED] and report in every third Periodic Concession Report once the Class 17x Users' Group has been established	RP	[REDACTED]

Column 1	Column 2	Column 3	Column 4	Column 5
No.	Committed Obligation	Delivery Date	Nature of COP ('RP' or 'PB')	Committed Obligation Payment (£)
	<p>65.3 Once the Class 17x Users' Group has been established, the Operator shall report in every third Periodic Concession Report, the issues and solutions identified and progress made with the other aims of the Class 17x Users' Group.</p>			
<p><b>66</b></p>	<p><b>Accessing The London Overground Network</b></p> <p>66.1 The Operator shall deploy a suitably qualified and competent "welcome host" (the <i>Welcome Host</i>) having:</p> <ul style="list-style-type: none"> <li>(a) the experience and skillsets set out in paragraph 67.2(a)); and</li> <li>(b) the roles and responsibilities set out in paragraph 67.2(b)),</li> </ul> <p>at each Operator Station.</p> <p>66.2 In relation to the Welcome Hosts:</p> <ul style="list-style-type: none"> <li>(a) the experience and skillsets shall include having experienced working in a customer-focussed environment and demonstrating an ability to: <ul style="list-style-type: none"> <li>(i) anticipate customer needs;</li> <li>(ii) positively engage and interact with customers;</li> <li>(iii) focus on results and outcomes;</li> <li>(iv) organise themselves to ensure results are delivered; and</li> <li>(v) collaborate with others to achieve business goals; and</li> </ul> </li> </ul>	<p>Deploy a Welcome Host at each Operator Station on or before 31 January 2019 and for the remainder of the Concession Term</p>	<p>RP</p>	<p>█ where Welcome Host not deployed at each Operator Station on more than one occasion in a Reporting Period</p>

Column 1	Column 2	Column 3	Column 4	Column 5
No.	Committed Obligation	Delivery Date	Nature of COP ('RP' or 'PB')	Committed Obligation Payment (£)
	<p>(b) the roles and responsibilities shall include:</p> <ul style="list-style-type: none"> <li>(i) greeting customers on the “unpaid” side of the ticket gateline;</li> <li>(ii) supervising the ticket gatelines;</li> <li>(iii) providing high standards of customer service; and</li> <li>(iv) providing effective revenue protection;</li> </ul> <p>(c) assisting customers with the use of ticket vending machines; and</p> <p>(d) making customer service and information announcements.</p>			
67	<p><b>Customer Service Induction Training</b></p> <p>The Operator shall in order to enhance the level of customer service provided, procure that all customer-facing Concession Employees providing customer service at stations and on trains are provided with at least 20 days of induction training, covering the following matters:</p> <ul style="list-style-type: none"> <li>(a) delivering pro-active help, anticipating customer needs, driven by observing customers' body language;</li> <li>(b) conversational skills and the ability to put inexperienced customers at ease;</li> <li>(c) clarity of speech and explanation;</li> <li>(d) optimum use of the new technological smart devices; and</li> </ul>	All customer-facing Concession Employees providing customer service at stations and on trains are provided with at least 20 days of induction training on or before 30 November 2017	One-off payment	<p>█ per relevant customer-facing Concession Employee who does not receive the full amount of training</p>

Column 1	Column 2	Column 3	Column 4	Column 5
No.	Committed Obligation	Delivery Date	Nature of COP ('RP' or 'PB')	Committed Obligation Payment (£)
	(e) dealing with customers while prioritising train service performance duties (only applicable to those customer-facing Concession Employees providing platform services).			
68	<p><b>Additional Customer Service Training</b></p> <p>The Operator shall in relation to all customer-facing Concession Employees providing customer service at stations and on trains procure that each of those customer-facing Concession Employees that is employed in such capacity six months prior to the relevant 31 March, undertake training relevant to their particular role on four additional half days of scheduled training per year.</p>	Procure that relevant customer-facing Concession Employees undertake training on or before each 31 March 2018 and on or before each 31 March thereafter for the remainder of the Concession Term	One-off payment (provided that more than one payment can be made where a customer-facing Concession Employee does not receive requisite training in two or more years)	█ per relevant customer-facing Concession Employee who does not receive the relevant additional training in a year
69	<p><b>Reduced Mobility Training</b></p> <p>69.1 The Operator shall procure that all customer-facing Concession Employees providing customer service at stations and on trains attend a 1-day training course on assisting customers with reduced mobility in accordance with the programme set out in paragraph 69.1.</p> <p>69.2 On or before:</p> <p>(a) 31 March 2017, the Operator shall have procured that 10 per cent. of relevant customer-facing Concession Employees attend the training course referred to in</p>	<p>Procure that relevant customer-facing Concession Employees attend training course to the extent specified in:</p> <p>(a) paragraph 69.2(a) on or before 31 March 2017;</p> <p>(b) paragraph 69.2(a)</p>	One-off payment	█ per relevant customer-facing Concession Employee falling below the percentage of customer-facing Concession Employees specified who does not attend the training

Column 1	Column 2	Column 3	Column 4	Column 5
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	<p>paragraph 69.1;</p> <p>(b) 31 March 2018, the Operator shall have procured a further 40 per cent. of relevant customer-facing Concession Employees attend the training course referred to in paragraph 69.1 (meaning, on or before such date, 50 per cent. of relevant customer-facing Concession Employees will have attended the training course referred to in paragraph 69.1); and</p> <p>(c) 31 March 2019, the Operator shall have procured a further 50 per cent. of relevant customer-facing Concession Employees attend the training course referred to in paragraph 69.1 (meaning, on or before such date, all relevant customer-facing Concession Employees will have attended the training course referred to in paragraph 69.1),</p> <p>and the Operator shall procure that any relevant customer-facing Concession Employees that are employed after this date attend training course promptly following the start of their employment</p>	<p>on or before 31 March 2018; and</p> <p>(c) paragraph 69.2(a) on or before 31 March 2019, and any relevant customer-facing Concession Employees that are employed after this date attend training course promptly following the start of their employment</p>		
70	<p><b>Staff Training</b></p> <p>70.1 The Operator shall appoint Concession Employees to become peer trainers (the <b>Peer Trainers</b>), having the roles and responsibilities set out in paragraph 70.2 in accordance with the programme set out in paragraph 70.3, and thereafter maintain at least 24 Peer Trainers thereafter for the remainder of the Concession Term.</p> <p>70.2 The roles and responsibilities of the Peer Trainers shall include coaching other Concession Employees on various customer service-related matters and passing on</p>	<p>Appoint relevant number of Peer Trainers on or before relevant date and maintain at least 24 Peer Trainers thereafter for the remainder of the Concession Term</p>	RP	<p>█ per Peer Trainer not appointed or appointment maintained</p>

Column 1	Column 2	Column 3	Column 4	Column 5
No.	Committed Obligation	Delivery Date	Nature of COP ('RP' or 'PB')	Committed Obligation Payment (£)
	<p>learning from the training referred to in paragraph 70.2.</p> <p>70.3 On or before:</p> <p>(a) 31 March 2018, the Operator shall have appointed 10 Peer Trainers;</p> <p>(b) 30 November 2018, the Operator shall have appointed 20 Peer Trainers; and</p> <p>(c) 30 November 2019, the Operator shall have appointed 24 Peer Trainers.</p> <p>70.4 The Operator shall procure that each Peer Trainer is given an additional two days' release from frontline duties per annum for training and development specific to the role.</p>			
71	<p><b>Provision of Information to Passengers</b></p> <p>71.1 The Operator shall appoint at least 10 suitably qualified and competent information control managers (the <i>Information Control Managers</i>) having the roles and responsibilities set out in paragraph 71.2 and thereafter maintain at least 10 Information Control Managers for the remainder of the Concession Term.</p> <p>71.2 The roles and responsibilities of the Information Control Managers shall include:</p> <p>(a) overseeing and managing information systems across the London Overground Network;</p> <p>(b) giving timely and informative travel advice to customers and Concession Employees;</p> <p>(c) playing a key role in incident review forums;</p>	<p>Appoint 10 Information Control Managers on or before 31 December 2017 and maintain at least 10 Information Control Managers thereafter for the remainder of the Concession Term</p>	<p>RP</p>	<p>█ per Concession Employee not appointed or appointment maintained</p>



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No.	Committed Obligation	Delivery Date	Nature of COP ('RP' or 'PB')	Committed Obligation Payment (£)
	<ul style="list-style-type: none"> <li>(d) providing input to the ongoing review of passenger information during disruption plans;</li> <li>(e) coordinating resource deployment during disruption;</li> <li>(f) initiating and chairing conference calls with managers to determine the appropriate form of response to incidents (and interfacing closely with the route controllers in connection therewith); and</li> <li>(g) feeding back in real-time the impact of decisions made in periods of disruption, based on insights from frontline managers.</li> </ul>			
72	<p><b>Information Control Manager Training</b></p> <p>The Operator shall provide training to all Information Control Managers covering:</p> <ul style="list-style-type: none"> <li>(a) the Operator's requirements and obligations in relation to passenger information during disruption, as well as the needs of customers and RfL (using real customer and RfL feedback);</li> <li>(b) impacts of decisions made on information provision and RfL/TfL's brand reputation;</li> <li>(c) the passenger information during disruption plan and the agreed code of practice in connection therewith;</li> <li>(d) case studies from across the railway industry of where disruption (and information provision) has been managed to differing levels of effectiveness in the past;</li> </ul>	Provide training to each Information Control Manager within 12 weeks of appointment	One-off payment	<p>■ per Information Control Manager that does not receive the full amount of training</p>

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No.	Committed Obligation	Delivery Date	Nature of COP ('RP' or 'PB')	Committed Obligation Payment (£)
	<ul style="list-style-type: none"> <li>(e) understanding what information frontline Concession Employees need, in what format and when, using feedback from a cross-section of Concession Employees;</li> <li>(f) managing stress when dealing with difficult situations; and</li> <li>(g) operating key equipment, standard contingency plans and the multi-modal smart device application.</li> </ul>			
73	<p><b>Smart Devices</b></p> <p>The Operator shall equip all customer-facing Concession Employees providing customer service at stations and on trains with a smart device appropriate to their role in order to access real-time travel information and knowledge from the route control centre to assist with the timely provision of information to customers.</p>	Equip on or before 28 February 2018 and procure that all relevant customer-facing Concession Employees continue to be equipped throughout the remainder of the Concession Term	RP	█ per relevant customer-facing Concession Employee not equipped with a smart device
74	<p><b>Control of Operating Information</b></p> <p>The Operator shall procure that all information relating to the operation of the London Overground Network is controlled from one central information control location, so that:</p> <ul style="list-style-type: none"> <li>(a) the quality and frequency (during times of disruption to the Passenger Services) of information provision is improved;</li> <li>(b) information is standardised to the TfL approach;</li> <li>(c) the management of all customer information communication and systems is</li> </ul>	All relevant information is controlled from one central information control location on or before 31 July 2017	One-off payment	█

Column 1	Column 2	Column 3	Column 4	Column 5
No.	Committed Obligation	Delivery Date	Nature of COP ('RP' or 'PB')	Committed Obligation Payment (£)
	<p>unified into one location, operating 24-hours per day;</p> <p>(d) Information Control Managers can see underlying customer feedback, permitting a targeted operational response in real-time;</p> <p>(e) real-time information is delivered to departure boards and public address systems from a central location;</p> <p>(f) customer-facing Concession Employees providing customer service at stations and on trains can be directed to locations where they are most needed; and</p> <p>(g) all real-time train running information provided to the public relating to the Passenger Services is controlled by a single system and that such system can be connected to a single industry-wide integrated source when such service becomes available.</p>			

Column 1	Column 2	Column 3	Column 4	Column 5
No.	Committed Obligation	Delivery Date	Nature of COP ('RP' or 'PB')	Committed Obligation Payment (£)
75	<p><b>Customer Service Controllers</b></p> <p>75.1 The Operator shall appoint at least five qualified and competent customer support controllers having relevant experience working in a customer focussed environment and providing evidence of delivering customer information in real-time in the rail sector (the <b>Customer Support Controllers</b>) having the roles and responsibilities set out in paragraph 75.2, and thereafter maintain such qualified and competent appointments for the remainder of the Concession Term.</p> <p>75.2 The roles and responsibilities of the Customer Support Controllers shall include:</p> <ul style="list-style-type: none"> <li>(a) supporting Information Control Managers in fulfilling their duties;</li> <li>(b) updating TfL and RfL on a real-time basis (as may be reasonably necessary or desirable);</li> <li>(c) managing the provision and deployment of RfL-issued publicity across the London Overground Network, working with Concession Employees at London Overground Stations as may be necessary;</li> <li>(d) focussing on results and outcomes; and</li> <li>(e) collaborating with others to achieve business goals.</li> </ul>	<p>Appoint five Customer Service Controllers on or before 31 December 2017 and thereafter maintain such qualified and competent appointments for the remainder of the Concession Term</p>	<p>RP</p>	<p>█ per Customer Support Controller</p>

Column 1	Column 2	Column 3	Column 4	Column 5
No.	Committed Obligation	Delivery Date	Nature of COP ('RP' or 'PB')	Committed Obligation Payment (£)
76	<p><b>Disruption Event Resolution System</b></p> <p>76.1 The Operator shall introduce a proactive disruption event resolution system for the London Overground Network having the capability set out in paragraph 76.2, and thereafter maintain that system throughout the remainder of the Concession Term.</p> <p>76.2 The proactive disruption event resolution system shall be used to:</p> <p>(a) register, track and manage all disruption events from initial notification to resolution;</p> <p>(b) monitor disruption events and define actions (to be agreed by the Operator and RfL or, in the absence of agreement, to be the current passenger information during disruption code of practice) that need to be taken to deal with disruption events;</p> <p>(c) log all created disruption events, specified actions and controller entries to enable audits to be carried out following the conclusion of the disruption; and</p> <p>(d) generate a report for each material disruption event (which the Operator shall provide to RfL as soon as reasonably practicable following the conclusion of the disruption event)</p>	<p>Introduce system on or before [REDACTED] and thereafter maintain system throughout the remainder of the Concession Term</p>	<p>RP</p>	<p>[REDACTED]</p>

Column 1	Column 2	Column 3	Column 4	Column 5
No.	Committed Obligation	Delivery Date	Nature of COP ('RP' or 'PB')	Committed Obligation Payment (£)
77	<p><b>Electronic Publication Update Boards</b></p> <p>77.1 Subject to paragraph 77.4, the Operator shall:</p> <p>(a) spend up to [REDACTED] procuring the installation of electronic publication update boards (<i>EPUBs</i>):</p> <p>(i) having the functions described in paragraph 77.2;</p> <p>(ii) to be located at no fewer than 81 Operator Stations to be agreed by the Operator and RfL; and</p> <p>(iii) which shall be operational at public entrances during the Peak and otherwise at such locations within the relevant Operator Stations as the parties agree will allow customers to make travel decisions before they enter the London Overground Network; and</p> <p>(b) thereafter maintain such EPUBs throughout the remainder of the Concession Term and publish the information referred to in paragraph 77.2 in accordance with TfL's guidelines as may be issued by RfL to the Operator from time to time.</p> <p>77.2 The functions of the EPUBs shall be to enable passengers and prospective passengers to:</p> <p>(a) see the forthcoming weekend engineering works poster during normal operations of Passenger Services;</p>	Spend the specified sum on or before [REDACTED] and thereafter maintain EPUBs throughout the remainder of the Concession Term	Underspend: PB	If underspend: amount of underspend + 1.45% if alternative use or alternative date not agreed with RfL or Operator fails to implement alternative use

Column 1	Column 2	Column 3	Column 4	Column 5
No.	Committed Obligation	Delivery Date	Nature of COP ('RP' or 'PB')	Committed Obligation Payment (£)
	<p>(b) see information about disruption and advice on services which are available (including alternative transportation options) when Passenger Services are disrupted; and</p> <p>(c) be provided with urgent notices and information.</p> <p>77.3 The Operator shall use all reasonable endeavours to obtain any required, necessary or desirable third party consents or approvals for the installation, removal and/or redistribution (as the case may be) of any relevant equipment in connection with such obligation (including any consents required from Network Rail, the relevant Facility Owner, station users, any local authority and the ORR (to the extent this is necessary)).</p> <p>77.4 If the Operator is unable to obtain any consent and/or approval referred to in paragraph 77.3, having used all reasonable endeavours to do so, it shall notify RfL. The Operator and RfL shall then seek to agree alternative location(s) at which to install an equivalent number of pieces of equipment as originally proposed. If no such alternative location is reasonably practicable, the Operator and RfL shall seek to agree an alternative use for the funds which would have been spent on installing such equipment on other passenger benefit schemes to be implemented by the Operator by a particular date. If the Operator and RfL fail to reach agreement on an alternative use for the funds or if the Operator fails to implement the alternative use by the agreed date, the Operator shall pay the relevant Committed Obligation Payment to RfL.</p>		<p>No underspend, but EPUBs not installed or maintained: RP</p>	<p>If no underspend but, subject to paragraph 77.4, EPUBs not installed or maintained: <span style="background-color: black; color: black;">████</span> per EPUB</p>

Column 1	Column 2	Column 3	Column 4	Column 5
No.	Committed Obligation	Delivery Date	Nature of COP ('RP' or 'PB')	Committed Obligation Payment (£)
	<p>77.5 If the Operator fails to spend the amount specified in paragraph 77.1 in connection with the installation of EPUBs on or before [REDACTED], the Operator shall seek to agree with RfL an alternative use for the amount of any underspend and the date by which the Operator shall implement such alternative use. If the Operator and RfL fail to reach agreement on an alternative use for the amount of the underspend or an alternative date for implementation of the alternative use, or if the Operator fails to implement the alternative use on or before the agreed date, the Operator shall pay the relevant Committed Obligation Payment to RfL.</p> <p>77.6 If the Operator spends the specified sum in paragraph 77.1 but does not procure the installation of the EPUBs by [REDACTED] or their maintenance thereafter, then the Operator shall pay the relevant Committed Obligation Payment to RfL for each Reporting Period in which that failure subsists.</p>			



Column 1	Column 2	Column 3	Column 4	Column 5
No.	Committed Obligation	Delivery Date	Nature of COP ('RP' or 'PB')	Committed Obligation Payment (£)
78	<p><b>Interchange Advice Boards</b></p> <p>78.1 Subject to paragraph 78.4, the Operator shall:</p> <p>(a) spend up to █████ procuring the installation of no fewer than 48 interchange advice boards (<b>IABs</b>) having the functions described in paragraph 78.2 at 12 London Overground interchanges as follows:</p> <p>(i) Willesden Junction, Gospel Oak, Hackney Downs, Hackney Central, Walthamstow Central, Walthamstow Queens Road, Shadwell and Clapham High Street stations; and</p> <p>(ii) where agreement can be reached with the Facility Owner, Whitechapel, Canada Water, Clapham Junction and Highbury &amp; Islington stations (or such other stations as reasonably agreed with RfL); and</p> <p>(b) the Operator shall thereafter maintain such IABs throughout the remainder of the Concession Term.</p> <p>78.2 The functions of the IABs shall be to:</p> <p>(a) display multi-modal real-time information at all times;</p> <p>(b) enable passengers to avoid making an interchange if it will disrupt their journey;</p>	Spend the specified sum on or before █████ and thereafter maintain IABs throughout the remainder of the Concession Term	Underspend: PB	If underspend: amount of underspend + 1.45% if alternative use or alternative date not agreed with RfL or Operator fails to implement alternative use

Column 1	Column 2	Column 3	Column 4	Column 5
No.	Committed Obligation	Delivery Date	Nature of COP ('RP' or 'PB')	Committed Obligation Payment (£)
	<p>(c) provide information about the disruption, including alternative routes where applicable; and</p> <p>(d) allow passengers to make an informed decision about onward travel arrangements.</p> <p>78.3 The Operator shall use all reasonable endeavours to obtain any required, necessary or desirable third party consents or approvals for the installation, removal and/or redistribution (as the case may be) of any relevant equipment in connection with such obligation (including any consents required from Network Rail, the relevant Facility Owner, station users, any local authority and the ORR (to the extent this is necessary)).</p> <p>78.4 If the Operator is unable to obtain any such consent and/or approval, having used all reasonable endeavours to do so, it shall notify RfL. The Operator and RfL shall then seek to agree alternative location(s) at which to install an equivalent number of pieces of equipment as originally proposed. If no such alternative location is reasonably practicable, the Operator and RfL shall seek to agree an alternative use for the funds which would have been spent on installing such equipment on other passenger benefit schemes to be implemented by the Operator by a particular date. If the Operator and RfL fail to reach agreement on an alternative use for the funds or if the Operator fails to implement the alternative scheme by the agreed date, the Operator shall pay the relevant Committed Obligation Payment to RfL.</p>		<p>No underspend, but IABs not installed or maintained: RP</p>	<p>If no underspend but, subject to paragraph 78.4, IABs not installed or maintained: ■■■ per IAB</p>

Column 1	Column 2	Column 3	Column 4	Column 5
No.	Committed Obligation	Delivery Date	Nature of COP ('RP' or 'PB')	Committed Obligation Payment (£)
	<p>78.5 If the Operator fails to spend the amount specified in paragraph 78.1 in connection with the installation of IABs on or before [REDACTED], the Operator shall seek to agree with RfL an alternative use for the amount of any underspend and the date by which the Operator shall implement such alternative use. If the Operator and RfL fail to reach agreement on an alternative use for the amount of the underspend or an alternative date for implementation of the alternative use, or if the Operator fails to implement the alternative use on or before the agreed date, the Operator shall pay the relevant Committed Obligation Payment to RfL.</p> <p>78.6 If the Operator spends the specified sum in paragraph 78.1 but does not procure the installation of the IABs by [REDACTED] or their maintenance thereafter, then the Operator shall pay the relevant Committed Obligation Payment to RfL for each Reporting Period in which that failure subsists.</p>			
79	<p><b>Sentiment System</b></p> <p>The Operator shall procure and install (and shall thereafter maintain throughout the remainder of the Concession Term) at the information control centre referred to in paragraph 74 “sentiment mapping system” (the <i>Sentiment System</i>) having the following functions:</p> <p>(a) analysing twitter comments (or related hashtags) mentioning London Overground for the sentiment of the information or opinion expressed;</p> <p>(b) identifying trending topics relating to London Overground and bringing these to</p>	Procure and install the Sentiment System on or before [REDACTED] and maintain Sentiment System throughout the remainder of the Concession Term	RP	[REDACTED]

Column 1	Column 2	Column 3	Column 4	Column 5
No.	Committed Obligation	Delivery Date	Nature of COP ('RP' or 'PB')	Committed Obligation Payment (£)
	<p>the attention of the Information Control Managers;</p> <p>(c) allowing all source data (including tweets and other postings) to be seen by the Information Control Manager; and</p> <p>(d) providing a moving score against at least angry, happy, sad, fear, disgust and surprise emotions.</p>			
80	<p><b>Investigation Managers</b></p> <p>80.1 The Operator shall appoint four suitably qualified and competent persons to the role of “investigation manager” (the <i>Investigation Managers</i>) having:</p> <p>(a) the experience and skillsets set out in paragraph 80.2(a); and</p> <p>(b) roles and responsibilities set out in paragraph 80.2(b),</p> <p>and thereafter maintain such qualified and competent appointments throughout the remainder of the Concession Term.</p> <p>80.2 In relation to the Investigations Managers:</p> <p>(a) the experience and skillsets shall include having relevant experience working as a manager in an operational environment (ideally in the transport sector) and demonstrating an ability to:</p> <p>(i) positively engage and interact with customers and other Concession Employees;</p> <p>(ii) analyse complex issues and draw information together from a range of</p>	<p>Appoint four suitably qualified and competent Investigation Managers on or before 30 April 2017 and maintain such qualified and competent appointments throughout the remainder of the Concession Term</p>	<p>RP</p>	<p>█ per Investigation Manager not appointed or appointment not maintained</p>

Column 1	Column 2	Column 3	Column 4	Column 5
No.	Committed Obligation	Delivery Date	Nature of COP ('RP' or 'PB')	Committed Obligation Payment (£)
	<p>sources to reach conclusions;</p> <ul style="list-style-type: none"> <li>(iii) focus on results and outcomes;</li> <li>(iv) handle uncomfortable conversations and challenges; and</li> <li>(v) collaborate with others to achieve business goals; and</li> </ul> <p>(b) the roles and responsibilities shall include:</p> <ul style="list-style-type: none"> <li>(i) undertaking Concession Employee-related investigations;</li> <li>(ii) undertaking all stations-related investigations;</li> <li>(iii) supporting frontline resourcing on a day-to-day basis;</li> <li>(iv) acting as a first point of contact for Concession Employee-related issues; and</li> <li>(v) providing on-the-job coaching and motivation to Concession Employees.</li> </ul>			

Column 1	Column 2	Column 3	Column 4	Column 5
No.	Committed Obligation	Delivery Date	Nature of COP ('RP' or 'PB')	Committed Obligation Payment (£)
81	<p><b>Supporting Community Groups</b></p> <p>81.1 The Operator shall establish a fund which shall be used to support disabled persons groups and to develop practical solutions to help Concession Employees better assist persons with reduced mobility (the <i>PRM Fund</i>).</p> <p>81.2 The Operator shall pay at least [REDACTED] per annum into the PRM Fund (calculated from the Start Date). The Operator shall agree with RfL how the PRM Fund may best be used to implement practical solutions to assist persons with reduced mobility and shall implement any such solutions agreed with RfL.</p> <p>81.3 If the Operator fails to pay at least the specified sum annually into the PRM Fund (calculated from the Start Date), or spend the PRM Fund as agreed with RfL, the Operator shall seek to agree with RfL an alternative use for the amount of any underfunding or underspending and the date by which the Operator shall implement such alternative use. If the Operator and RfL fail to reach agreement on an alternative use for the amount of the underspend or an alternative date for implementation of the alternative use, or if the Operator fails to implement the alternative use on or before the agreed date, the Operator shall pay the relevant Committed Obligation Payment to RfL.</p> <p>81.4 If the Operator fails to implement any practical solutions agreed with RfL by the agreed implementation date, then the Operator shall pay to RfL the relevant Committed Obligation Payment.</p>	<p>Establish PRM Fund and make first payment into fund on or before the Start Date (with subsequent payments being made annually thereafter)</p> <p>Spend PRM Fund implementing practical solutions agreed with RfL by agreed implementation date</p>	<p>Under-funding / spending: PB</p> <p>No under-funding / spending, but practical solutions not implemented: RP</p>	<p>If under-funding / spending: amount of under-funding / spending + 1.45% if alternative use or alternative date not agreed with RfL or Operator fails to implement alternative use</p> <p>If no under-funding / spending but agreed practical solutions not implemented: [REDACTED]</p>

Column 1	Column 2	Column 3	Column 4	Column 5
No.	Committed Obligation	Delivery Date	Nature of COP ('RP' or 'PB')	Committed Obligation Payment (£)
82	<p><b>Fault Reporting Application</b></p> <p>82.1 The Operator shall:</p> <p>(a) introduce a fault reporting application which will enable the reporting of faults covered by the Standards Regime (KPIs) (the <i>Fault Reporting App</i>); and</p> <p>(b) such Fault Reporting App shall be installed on the smart devices referred to in paragraph 73 and made available throughout the remainder of the Concession Term.</p> <p>82.2 The functions of the Fault Reporting App shall include:</p> <p>(a) reporting failures under the Standards Regime (KPIs);</p> <p>(b) performing station audits and fault reporting; and</p> <p>(c) tracking the progress of fault rectification.</p>	<p>Introduce Fault Reporting App on or before 28 February 2018 and maintain its availability throughout the remainder of the Concession Term</p>	<p>RP</p>	<p>■</p>
83	<p><b>Customer Guardians</b></p> <p>83.1 The Operator shall recruit and deploy at least 96 suitably qualified and competent “customer guardians” (the <i>Customer Guardians</i>) having the roles and responsibilities set out in paragraph 83.2 in accordance with the programme set out in paragraph 83.3, and maintain and continue to deploy qualified and competent Customer Guardians throughout the remainder of the Concession Term.</p> <p>83.2 The roles and responsibilities of the Customer Guardians shall include:</p> <p>(a) providing high levels of passenger reassurance both at London Overground</p>	<p>Recruit and deploy the relevant number of suitably qualified and competent Customer Guardians on or before the relevant date and from 31 January 2019, continue to deploy at least 96 suitably qualified and competent Customer</p>	<p>RP</p>	<p>■ per Customer Guardian not recruited and deployed</p>

Column 1	Column 2	Column 3	Column 4	Column 5
No.	Committed Obligation	Delivery Date	Nature of COP ('RP' or 'PB')	Committed Obligation Payment (£)
	<p>Stations and on Passenger Services;</p> <p>(b) addressing poor passenger behaviour both at London Overground Stations and on Passenger Services;</p> <p>(c) providing an accessible point of contact for customers and the provision of information;</p> <p>(d) interacting with customers;</p> <p>(e) carrying out ticket checking duties;</p> <p>(f) having a knowledge of the law, byelaws, crowd dynamics, revenue protection, the Police and Criminal Evidence Act, gateline management and RfL's revenue enforcement and prosecutions policy;</p> <p>(g) challenging ticketless travel and fare evasion in a sensitive manner;</p> <p>(h) procuring evidence to support the prosecution of those evading the payment of fares;</p> <p>(i) providing a visible presence to discourage fare evasion;</p> <p>(j) issuing penalty fares;</p> <p>(k) easing passenger flows at key London Overground Stations at the busiest times through the management of ticket gatelines; and</p> <p>(l) making use of the mobile CCTV technology provided by the Operator.</p> <p>83.3 On or before:</p>	<p>Guardians throughout the remainder of the Concession Term</p>		



Column 1	Column 2	Column 3	Column 4	Column 5
No.	Committed Obligation	Delivery Date	Nature of COP ('RP' or 'PB')	Committed Obligation Payment (£)
	(a) 31 January 2018, the Operator shall have appointed and deployed 42 Customer Guardians; and (b) 31 January 2019, the Operator shall have appointed and deployed at least 96 Customer Guardians.			
84	<p><b>Customer Guardians</b></p> <p>The Operator shall:</p> <p>(a) equip each Customer Guardian with a wearable CCTV camera to:</p> <p>(i) support their roles and responsibilities;</p> <p>(ii) provide personal security;</p> <p>(iii) prevent unwanted behaviours; and</p> <p>(iv) collect evidence to support the prosecution of byelaw offences;</p> <p>(b) instruct each Customer Guardian to effectively deploy such technology.</p>	Equip and instruct each Customer Guardian on or before 31 January 2019 and continue to equip each Customer Guardian throughout the remainder of the Concession Term	RP	█ per Customer Guardian not equipped or instructed
85	<p><b>Training of Customer Guardians</b></p> <p>85.1 The Operator shall spend up to █ implementing a bespoke training and qualification scheme for the Customer Guardians with the intention of improving their development and performance.</p> <p>85.2 If the Operator fails to spend up to the sum specified in paragraph 85.1 in providing the bespoke training and qualification of Customer Guardians, the Operator</p>	Spend specified sum on or before 31 March 2020 implementing a bespoke training and qualification scheme	PB	Amount of underspend + 1.45% if alternative use or alternative date not agreed with RfL or Operator fails to implement alternative use

Column 1	Column 2	Column 3	Column 4	Column 5
No.	Committed Obligation	Delivery Date	Nature of COP ('RP' or 'PB')	Committed Obligation Payment (£)
	<p>shall seek to agree with RfL an alternative use for a sum equal to the difference between what it has spent under paragraph 85.1 and the specified sum together with the date by which such sum shall be spent. If the Operator and RfL fail to reach agreement on an alternative use for the sums or if the Operator fails to implement the agreed alternative on or before the agreed date, the Operator shall pay the Committed Obligation Payment to RfL.</p>			
86	<p><b>Guardian Stakeholder Relationship Manager</b></p> <p>86.1 The Operator shall appoint a suitably qualified and competent person to the role of guardian stakeholder relationship manager (the <i>Guardian Stakeholder Relationship Manager</i>) and shall thereafter maintain such role throughout the remainder of the Concession Term.</p> <p>86.2 The Guardian Stakeholder Relationship Manager shall be a key point of contact for RfL in relation to any matters which may affect the role of the Customer Guardian and his primary responsibilities shall include:</p> <ul style="list-style-type: none"> <li>(a) building strong and effective working relationships with other Train Operators;</li> <li>(b) addressing fare evasion at London Overground stations operated by other Train Operators and interchange stations;</li> <li>(c) establishing a revenue protection knowledge group with other Train Operators using the London Overground Network and RfL to review revenue protection performance and share knowledge of revenue protection trends at London Overground Stations where the Operator is not the station facility owner;</li> </ul>	<p>Appoint Guardian Stakeholder Relationship Manager on or before 1 June 2017 and maintain that qualified and competent appointment throughout the remainder of the Concession Term</p>	<p>RP</p>	<p>■</p>

Column 1	Column 2	Column 3	Column 4	Column 5
No.	Committed Obligation	Delivery Date	Nature of COP ('RP' or 'PB')	Committed Obligation Payment (£)
	<ul style="list-style-type: none"> <li>(d) strategically deploying Customer Guardians to such locations where they can be most effective;</li> <li>(e) working with the British Transport Police in an effort to reduce fare evasion;</li> <li>(f) effectively disseminating revenue protection knowledge;</li> <li>(g) attending educational establishments to build relationships and educate young persons about revenue protection;</li> <li>(h) attending event planning meetings;</li> <li>(i) working with Revenue Protection and Gateline Analysts (as defined in paragraph 89) to track ticketless travel trends; and</li> <li>(j) determining how the Customer Guardians can meet the Ticketless Travel Target Rate.</li> </ul>			
87	<p><b>Video Analytics</b></p> <p>87.1 The Operator shall spend [REDACTED] as capital expenditure to procure and install video analytics equipment (<i>Passenger Flow Equipment</i>), which shall be used to:</p> <ul style="list-style-type: none"> <li>(a) remotely monitor passenger flows and behaviours;</li> <li>(b) determine future ticket gateline strategy; and</li> <li>(c) monitor queues at TVMs and ticket offices to identify actions (if any) required to</li> </ul>	Spend specified sum on or before [REDACTED] and actively use and procure the maintenance of the Passenger Flow Equipment throughout the remainder of the Concession Term	Underspend: PB	If underspend: amount of underspend + 1.45% if alternative use or alternative date not agreed with RfL or Operator fails to implement alternative use

Column 1	Column 2	Column 3	Column 4	Column 5
No.	Committed Obligation	Delivery Date	Nature of COP ('RP' or 'PB')	Committed Obligation Payment (£)
	<p>reduce queue times,</p> <p>and the Operator shall, once installed, actively use the Passenger Flow Equipment as described in this paragraph 87.1 and procure its maintenance throughout the remainder of the Concession Term.</p> <p>87.2 If the Operator fails to spend the amount specified in paragraph 87.1 in the procurement and installation of the Passenger Flow Equipment on or before [REDACTED], the Operator shall seek to agree with RfL an alternative use for the amounts which it has not spent and the date by which such alternative use shall be implemented. If the Operator and RfL fail to reach agreement on an alternative use for the amounts or if the Operator fails to implement the alternative use on or before the agreed date, the Operator shall pay the relevant Committed Obligation Payment to RfL.</p> <p>87.3 If the Operator fails to install the Passenger Flow Equipment on or before [REDACTED], use or procure the maintenance of that equipment, then the Operator shall pay to RfL the relevant Committed Obligation Payment.</p>		<p>No underspend, but Passenger Flow Equipment not installed, used or maintained: RP</p>	<p>If no underspend, but Passenger Flow Equipment not installed, used or maintained: [REDACTED]</p>
<p>88</p>	<p><b>Additional Video Analytics</b></p> <p>88.1 The Operator shall spend [REDACTED] (in addition to the sum specified in paragraph 87) as capital expenditure in order to procure and install additional Passenger Flow Equipment, and the Operator shall, once installed, actively use the Passenger Flow Equipment as described in this paragraph 87.1 and procure its maintenance throughout the remainder of the Concession Term.</p> <p>88.2 If the Operator fails to spend the amount specified in paragraph 88.1 in the</p>	<p>Spend specified sum on or before [REDACTED] and actively use and maintain additional Passenger Flow Equipment throughout the remainder of the Concession Term</p>	<p>Underspend: PB</p>	<p>If underspend: amount of underspend + 1.45% if alternative use or alternative date not agreed with RfL or Operator fails to implement alternative use</p>

Column 1	Column 2	Column 3	Column 4	Column 5
No.	Committed Obligation	Delivery Date	Nature of COP ('RP' or 'PB')	Committed Obligation Payment (£)
	<p>procurement and installation of the Passenger Flow Equipment on or before [REDACTED], the Operator shall seek to agree with RfL an alternative use for the amounts which it has not spent and the date by which such alternative use shall be implemented. If the Operator and RfL fail to reach agreement on an alternative use for the amounts or if the Operator fails to implement the alternative use on or before the agreed date, the Operator shall pay the Committed Obligation Payment to RfL.</p> <p>88.3 If the Operator fails to install the Passenger Flow Equipment on or before [REDACTED], use or procure the maintenance of that equipment, then the Operator shall pay to RfL the relevant Committed Obligation Payment.</p>		<p>No underspend, but Passenger Flow Equipment not installed, used or maintained: RP</p>	<p>If no underspend, but Passenger Flow Equipment not installed, used or maintained: [REDACTED]</p>
<p>89</p>	<p><b>Revenue Protection and Gateline Analysts</b></p> <p>89.1 The Operator shall appoint two suitably qualified and competent persons to the role of revenue protection and gateline analyst (the <i>Revenue Protection and Gateline Analysts</i>) who shall have the roles and responsibilities set out in paragraph 89.2. Following the appointment of the Revenue Protection and Gateline Analysts, the Operator shall maintain such qualified and competent appointments for the remainder of the Concession Term.</p> <p>89.2 The roles and responsibilities of the Revenue Protection and Gateline Analysts shall be to:</p> <ul style="list-style-type: none"> <li>(a) evaluate data to support revenue protection activity and strategy;</li> <li>(b) direct the deployment of resources (including Customer Guardians) to fare evasion hotspots, including London Overground Stations where the Operator is</li> </ul>	<p>Appoint two suitably qualified and competent Revenue Protection and Gateline Analysts on or before 31 March 2018 and maintain such qualified and competent appointments throughout the remainder of the Concession Term</p>	<p>RP</p>	<p>[REDACTED] per Revenue Protection and Gateline Analyst not appointed or appointment not maintained</p>

Column 1	Column 2	Column 3	Column 4	Column 5
No.	Committed Obligation	Delivery Date	Nature of COP ('RP' or 'PB')	Committed Obligation Payment (£)
	<p>not the station facility owner;</p> <p>(c) project ticketless travel rates and identifying risks;</p> <p>(d) monitor passenger flows and expected revenue versus ticketless travel; and</p> <p>(e) analyse the use of staff passes with RfL to determine examples of misuse and to inform the revenue protection strategy.</p>			
90	<p><b>Signage</b></p> <p>90.1 The Operator shall spend at least [REDACTED] on new signs to support the use of pay-as-you-go validators and deploy that signage across the London Overground Stations as may be reasonably determined by the Operator (in consultation with RfL) and maintain that signage thereafter.</p> <p>90.2 If the Operator fails to spend the amount referred to in paragraph 90.1 on or before 31 March 2017, the Operator shall seek to agree an alternative use for the difference between what it has spent and that amount and the date by which such alternative use shall be implemented. If the Operator and RfL fail to reach agreement on an alternative use for the amounts or if the Operator fails to implement the alternative use on or before the agreed date, the Operator shall pay the relevant Committed Obligation Payment to RfL.</p> <p>90.3 If the Operator fails to deploy the signage on or before 31 March 2017 or maintain it thereafter, then the Operator shall pay to RfL the relevant Committed</p>	Spend the specified sum and deploy the signage on or before 31 March 2017 and maintain that signage thereafter	<p>Underspend: PB</p> <hr/> <p>No underspend, but signage not deployed: RP</p>	<p>If underspend: amount of underspend + 1.45% if alternative use or alternative date not agreed with RfL or Operator fails to implement alternative use</p> <hr/> <p>If no underspend, but signage not deployed or maintained: [REDACTED]</p>

Column 1	Column 2	Column 3	Column 4	Column 5
No.	Committed Obligation	Delivery Date	Nature of COP ('RP' or 'PB')	Committed Obligation Payment (£)
	Obligation Payment.			
91	<p><b>Validators</b></p> <p>91.1 The Operator shall:</p> <p>(a) spend at least [REDACTED] on procuring and installing new validators or moving existing validators, with the aim of ensuring better usage and growth; and</p> <p>(b) install those new or move those existing validators.</p> <p>91.2 If the Operator fails to spend the amount referred to in paragraph 91.1 on or before 30 November 2018, the Operator shall seek to agree an alternative use for the difference between what it has spent and that amount and the date by which such alternative use shall be implemented. If the Operator and RfL fail to reach agreement on an alternative use for the amounts or if the Operator fails to implement the alternative use on or before the agreed date, the Operator shall pay the relevant Committed Obligation Payment to RfL.</p> <p>91.3 If the Operator fails to install and move validators on or before 30 November 2018, then the Operator shall pay to RfL the relevant Committed Obligation Payment.</p>	Spend the specified sum and install or move validators on or before 30 November 2018	<p>Underspend: PB</p> <p>No underspend, but validators not installed and moved: RP</p>	<p>If underspend: amount of underspend + 1.45% if alternative use or alternative date not agreed with RfL or Operator fails to implement alternative use</p> <p>If no underspend, but validators not installed and moved: [REDACTED]</p>


Column 1	Column 2	Column 3	Column 4	Column 5
No.	Committed Obligation	Delivery Date	Nature of COP ('RP' or 'PB')	Committed Obligation Payment (£)
92	<p><b>Additional Validators</b></p> <p>92.1 The Operator shall</p> <p>(a) spend at least [REDACTED] (in addition to the sum specified in paragraph 91) on procuring and installing additional new validators or moving existing validators, with the aim of ensuring better usage and growth; and</p> <p>(b) install those new or move those existing validators.</p> <p>92.2 If the Operator fails to spend the amount referred to in paragraph 92.1 on or before 30 November 2021, the Operator shall seek to agree an alternative use for the difference between what it has spent and that amount and the date by which such alternative use shall be implemented. If the Operator and RfL fail to reach agreement on an alternative use for the amounts or if the Operator fails to implement the alternative scheme on or before the agreed date, the Operator shall pay the Committed Obligation Payment to RfL.</p> <p>92.3 If the Operator fails to install validators on or before 30 November 2021, then the Operator shall pay to RfL the relevant Committed Obligation Payment.</p>	Spend the specified sum and install validators on or before 30 November 2021	Underspend: PB	If underspend: amount of underspend + 1.45% if alternative use or alternative date not agreed with RfL or Operator fails to implement alternative use
			No underspend, but validators not installed and moved: RP	If no underspend, but validators not installed and moved: [REDACTED]
93	<p><b>Asset Status App</b></p> <p>The Operator shall make available to relevant Concession Employees and other Train Operators an asset status application to enable Concession Employees and other Train Operators to share gateline, ticket vending machine and validator status data to assist accurate revenue protection decisions and to allow faults/issues to be identified and</p>	Make available asset status application on or before 31 October 2018 and continue to make that application available for the remainder of the Concession Term	RP	[REDACTED]



Column 1	Column 2	Column 3	Column 4	Column 5
No.	Committed Obligation	Delivery Date	Nature of COP ('RP' or 'PB')	Committed Obligation Payment (£)
	remedied more quickly.			
94	<p><b>Reducing Water Consumption</b></p> <p>94.1 The Operator shall reduce the amount of water used in performing the obligations under this Agreement by at least two per cent. (as compared with the water usage of the Incumbent Operator during the final one-year period of the Previous Concession Agreement) and maintain at least that level of reduction throughout the remainder of the Concession Period.</p> <p>94.2 If, on or before 30 November 2018, the Operator fails to reduce the amount of water used in performing the obligations under this Agreement by at least two per cent. (as compared with the water usage of the Incumbent Operator during the final one-year period of the Previous Concession Agreement) or maintain that level of reduction throughout the remainder of the Concession Period, then the Operator shall be required to spend at least [REDACTED] on additional water saving initiatives. The Operator shall seek to agree with RfL the additional water savings initiatives on which the funding referred to in this paragraph shall be used and the date on or before which the Operator shall implement the additional water savings initiatives. If the Operator and RfL fail to reach agreement on the additional water saving initiatives, or if the Operator fails to implement the additional water saving initiatives on or before the agreed date, the Operator shall pay the Committed Obligation Payment to RfL.</p>	Reduce the amount of water usage by at least two per cent. as specified on or before 30 November 2018 and maintain that level of reduction throughout the remainder of the Concession Period	PB	[REDACTED] + 1.45% if additional initiatives not agreed with RfL or Operator fails to implement additional initiatives
95	<p><b>Noise and Vibration Management Plan</b></p> <p>95.1 In addition to the requirements set out in paragraph 5 (<i>Annual Environmental Improvement Plan</i>) of Schedule 15.4 (<i>Environment</i>), as part of the Annual Environmental</p>	Prepare and submit noise and vibration management plan on or before Start Date	RP	[REDACTED]

Column 1	Column 2	Column 3	Column 4	Column 5
No.	Committed Obligation	Delivery Date	Nature of COP ('RP' or 'PB')	Committed Obligation Payment (£)
	Improvement Plan to be submitted by no later than the Start Date and on 1 November of each year thereafter during the remainder of the Concession Term, the Operator shall prepare and submit to RfL a noise and vibration management plan, covering: <ul style="list-style-type: none"> <li>(a) the Operator's commitment to reduce noise and vibration across the London Overground Network;</li> <li>(b) processes for responding to noise and vibration complaints; and</li> <li>(c) community liaison practices in relation to noise-related issues.</li> </ul>	and annually by 1 November during the remainder of the Concession Term		
96	<b>Funding to Reduce Noise Levels</b> The Operator shall use reasonable endeavours to seek funding from third parties to facilitate upgrades to buildings and public address systems at London Overground Stations (including, in particular, at Homerton, Crystal Palace and Upper Holloway stations) to reduce noise levels.	Use reasonable endeavours to seek funding on or before 30 November 2018 and thereafter throughout the remainder of the Concession Term	One-off payment	■
97	<b>Additional Safety Reporting Metrics</b> The Operator shall expand the safety reporting metrics utilised in reporting on the provision of the Passenger Services to include (and to set improvement targets for) fatal and weighted injuries, passenger and staff RIDDOR reportable accidents, audit findings and close-out and close call/near misses.	On or before 30 November 2017 and thereafter throughout the remainder of the Concession Term	One-off payment	■
98	<b>Travel Safe Officers</b> The Operator shall procure that no fewer than 30 travel safe officers are engaged and able	No fewer than 30 travel safe officers engaged, including	RP	■ per travel safe officer not engaged

Column 1	Column 2	Column 3	Column 4	Column 5
No.	Committed Obligation	Delivery Date	Nature of COP ('RP' or 'PB')	Committed Obligation Payment (£)
	to support frontline staff at London Overground Stations without ticket gatelines, including no fewer than 10 travel safe officers being deployed during the hours of darkness.	no fewer than 10 travel safe officers deployed during the hours of darkness on or before 30 November 2017 and thereafter during the period until and including 31 January 2019		
99	<p><b>Customer Guardian support</b></p> <p>The Operator shall procure that no less than 10 per cent. of the total number of Customer Guardians are able to support frontline staff at London Overground Stations without ticket gatelines, particularly during the hours of darkness.</p>	Procure that no less than 10 per cent. of the total number of Customer Guardians able to support on or before 1 February 2018 and thereafter throughout the remainder of the Concession Term	RP	█ per Customer Guardian not supporting frontline staff
100	<p><b>Safety Accreditation</b></p> <p>In respect of the combined London Overground Classic Route Group and Devolved Route Group safety management system, the Operator shall, throughout the Concession Term:</p> <p>(a) procure that the "Occupational Health and Safety Management" accreditation to OHSAS 18001 standards obtained by the Incumbent Operator are maintained;</p> <p>(b) incorporate best practice from other Train Operators within the Operator's group</p>	Procure accreditation, incorporate best practice and demonstrate that the Operator meets HSE objectives throughout the Concession Term	RP	█

Column 1	Column 2	Column 3	Column 4	Column 5
No.	Committed Obligation	Delivery Date	Nature of COP ('RP' or 'PB')	Committed Obligation Payment (£)
	<p>of companies in the use of the ORR's Risk Management Maturity Model; and</p> <p>(c) demonstrate that it meets applicable health, safety and environmental (<i>HSE</i>) objectives that TfL sets for all of its suppliers:</p> <ul style="list-style-type: none"> <li>(i) actively promoting a positive HSE culture and displaying excellent HSE leadership;</li> <li>(ii) effectively communicating with all parties to ensure that everyone receives HSE information relevant to them and that all stakeholders are engaged in a timely manner;</li> <li>(iii) ensuring project teams and site personnel are fully competent to carry out their work safely and in compliance with HSE legislation;</li> <li>(iv) planning all works in compliance with applicable legislation and TfL/LU standards;</li> <li>(v) reporting, investigating and managing all accidents, incidents and Near Misses in compliance with TfL standards and HSE legislation; and</li> <li>(vi) setting appropriate HSE targets and objectives, actively monitoring performance against these and using performance data to inform improvement plans with the aim of continuously improving HSE performance.</li> </ul>			
101	<p><b>Partnership with the Samaritans</b></p> <p>The Operator shall support the industry-wide partnership with The Samaritans covering</p>	Support partnership with Samaritans on or before 30 November 2017 and	RP	

Column 1	Column 2	Column 3	Column 4	Column 5
No.	Committed Obligation	Delivery Date	Nature of COP ('RP' or 'PB')	Committed Obligation Payment (£)
	<p>the following matters:</p> <ul style="list-style-type: none"> <li>(a) the creation of specific local plans for areas of the London Overground Network which are susceptible to trespass or suicides;</li> <li>(b) the improvement of the Operator's ability to predict, prevent and react to external events, including trespass and suicides;</li> <li>(c) balancing the need for humanity and sensitivity in dealing with actual or potential trespass and suicide incidents with reducing the impact on the operation of the Passenger Services;</li> <li>(d) ensuring posters are prominently displayed at locations which are susceptible to trespass or suicides;</li> <li>(e) ensuring literature is made available in mess rooms to inform Concession Employees;</li> <li>(f) encouraging Concession Employees to attend suicide awareness workshops; and</li> <li>(g) informing Concession Employees about how to safely interact with persons showing indicators that they may attempt to harm themselves.</li> </ul>	thereafter throughout the remainder of the Concession Term		
102	<p><b>Operational Use of West Croydon Siding</b></p> <p>If RfL provides the Operator with notice to operate those Passenger Services in Service Increment 3b, the Operator shall lead the project to bring Oakfield sidings (or an equivalent site) into operational use, including working with Network Rail to ensure all key activities are correctly planned from the outset, undertaking a joint site inspection,</p>	Bring Oakfield sidings (or an equivalent site) into operational use on or before 30 November 2018 and thereafter maintain operational use throughout	One-off payment	<div style="background-color: black; width: 20px; height: 20px; margin: 0 auto;"></div>

Column 1	Column 2	Column 3	Column 4	Column 5
No.	Committed Obligation	Delivery Date	Nature of COP ('RP' or 'PB')	Committed Obligation Payment (£)
	train planning study and assessing requirements for any additional security measures and working with a designer to create a new authorised working route.	the remainder of the Concession Term		
103	<p><b>Funding for West Croydon Siding</b></p> <p>103.1 If RfL provides the Operator with notice to operate those Passenger Services in Service Increment 3b, the Operator shall spend no less than [REDACTED] in connection with the project described in paragraph 102 in relation to Oakfield sidings (the <i>Sidings Fund</i>).</p> <p>103.2 If the Operator does not spend the whole of the Sidings Fund on or before 30 November 2018, the Operator shall seek to agree with RfL an alternative use for the amount of the underspend and the date by which the Operator shall implement such alternative use. If the Operator and RfL fail to reach agreement on an alternative use for the amount of the underspend or an alternative date for implementation of the alternative use, or if the Operator fails to implement the agreed alternative on or before the agreed date, the Operator shall pay the Committed Obligation Payment to RfL.</p>	Spend Sidings Fund on or before 30 November 2018	PB	Amount of underspend + 1.45% if alternative use or alternative date not agreed with RfL or Operator fails to implement alternative use
104	<p><b>Ticket Gatelines – Priced Option</b></p> <p>104.1 If:</p> <p>(a) the Priced Option is called by RfL in accordance with its terms;</p> <p>(b) there is sufficient space to accommodate ticket gatelines at the particular London Overground Station without compromising passenger safety and/or passenger flows (to be determined in the reasonable opinion of the Operator, in discussion with RfL);</p>	Spend Gateline Fund installing nine ticket gatelines at London Overground Stations on or before date agreed by RfL and the Operator	PB	Amount of underspend + 1.45% if alternative use or alternative date not agreed with RfL or Operator fails to implement alternative use

Column 1	Column 2	Column 3	Column 4	Column 5
No.	Committed Obligation	Delivery Date	Nature of COP ('RP' or 'PB')	Committed Obligation Payment (£)
	<p>(c) RfL has procured on behalf of the Operator any such additional land as may be required to accommodate the installation of ticket gatelines at the particular London Overground Station; and</p> <p>(d) RfL has, on behalf of the Operator, implemented any such structural work and/or provided any such new building as may be required to accommodate the installation of ticket gatelines at the particular London Overground Station,</p> <p>then subject to paragraph 104.2, the Operator shall spend no less than [REDACTED] (the <i>Gateline Fund</i>) installing no fewer than nine ticket gatelines at London Overground Stations and on or before such dates as may be agreed by the Operator and RfL.</p> <p>104.2 The Operator shall use all reasonable endeavours to obtain any required, necessary or desirable third party consents or approvals for the installation, removal and/or redistribution (as the case may be) of any relevant equipment in connection with such obligation (including any consents required from Network Rail, the relevant Facility Owner, station users, any local authority and the ORR (to the extent this is necessary)).</p> <p>104.3 If the Operator is unable to obtain any consent and/or approval referred to in paragraph 104.2, having used all reasonable endeavours to do so, it shall notify RfL. The Operator and RfL shall then seek to agree alternative location(s) at which to install the relevant ticket gatelines. If no such alternative location is reasonably practicable, the Operator and RfL shall seek to agree an alternative use for the funds which would have been spent on installing ticket gatelines on other passenger benefit schemes to be implemented by the Operator by a particular date. If the Operator and RfL fail to reach agreement on an alternative use for the funds or if the Operator fails to implement the alternative use by the agreed date, the Operator shall pay the Committed Obligation</p>			

Column 1	Column 2	Column 3	Column 4	Column 5
No.	Committed Obligation	Delivery Date	Nature of COP ('RP' or 'PB')	Committed Obligation Payment (£)
	<p>Payment to RfL.</p> <p>104.4 If the Operator does not spend the whole of the Gateline Fund on or before such date as may be agreed with RfL pursuant to paragraph 104.1, the Operator shall seek to agree with RfL an alternative use for the amount of the underspend and the date by which the Operator shall implement such alternative use. If the Operator and RfL fail to reach agreement on an alternative use for the amount of the underspend or an alternative date for implementation of the alternative use, or if the Operator fails to implement the agreed alternative on or before the agreed date, the Operator shall pay the Committed Obligation Payment to RfL.</p>			

**1. INDEXATION**

The Committed Obligation Payments specified in column 5 of the table above are references to amounts as at the Indexation Base Month and shall be indexed in accordance with paragraph 3 (*Indexation by reference to RPI*) of Schedule 11.2 (*Annual Concession Payments and Indexation*).



## SCHEDULE 10.2

### Miscellaneous Provisions

#### 1. APPLICATION

This Schedule 10.2 sets out further terms which apply to the Committed Obligations set out in Schedule 10.1 (*List of Committed Obligations and Committed Obligation Payments*) and the references to Committed Obligations in this Schedule 10 are only to the Committed Obligations in Schedule 10.1.

#### 2. CONTINUATION OF AVAILABILITY

2.1 Save as expressly provided in this Schedule 10, the Operator shall maintain facilities established in accordance with its Committed Obligations throughout the remainder of the Concession Period.

2.2 The Operator shall be treated as maintaining Committed Obligations notwithstanding temporary non-availability due to accidental damage or vandalism or maintenance, repair or replacement activities, or temporary staff absence (for sickness or holiday), subject in each case to the Operator taking all reasonable steps to keep any such period of temporary non-availability to a minimum.

2.3 Where Schedule 10.1 includes a commitment regarding staffing or particular appointments it plans to make:

- (a) the obligation of the Operator applies, but shall not be regarded as being contravened by:
  - (i) temporary absences (for sickness or holiday); or
  - (ii) temporary non-fulfilment of a relevant post whilst the Operator is recruiting for that post, subject to the Operator using all reasonable endeavours to keep the duration between appointments as short as reasonably practicable; and
- (b) the Operator's rights in relation to the numbers or deployment of its other staff remain unaffected.

#### 3. EXPENDITURE COMMITMENTS

##### Annual Expenditure

3.1 Where Schedule 10.1 (*List of Committed Obligations and Committed Obligation Payments*) provides for the expenditure of an annual amount (or an amount over some other period) by the Operator, that amount:

- (a) is net of Value Added Tax;
- (b) is the amount required to be expended by the Operator itself or procured by the Operator to be expended; and
- (c) will, for those Concession Years of less than 12 months, be reduced pro-rata by reference to Reporting Periods (unless otherwise stated in Schedule 10.1) where the

commitment is for the expenditure of an amount per Concession Year or calendar year.

### **Expenditure Commitments**

3.2 All expenditure commitments set out in Schedule 10.1, to the extent they have not already been incurred by the Operator, are amounts as at the Indexation Base Month and shall be indexed in accordance with paragraph 3 (*Indexation by reference to RPI*) of Schedule 11.2 (*Annual Concession Payments and Indexation*)).

### **Expenditure by Infrastructure Managers**

3.3 All amounts which the Operator has committed (whether unconditionally or otherwise) pursuant to Schedule 10.1 to expend in connection with improvements to track or London Overground Stations shall be in addition to any expenditure made by any Infrastructure Manager as part of its infrastructure improvements or maintenance programme to the extent such expenditure is not directly funded or reimbursed by the Operator.

## **4. LIAISON AND CO-OPERATION**

Where the Operator is committed to liaison and co-operation under Schedule 10.1 (*List of Committed Obligations and Committed Obligation Payments*), it shall participate actively in the relevant measures including through the application of management time and internal resources, correspondence and attendance at meetings, in each case as the Operator reasonably considers in all the circumstances to be an appropriate use of its resources and effective to help achieve the relevant objective.

## **5. NATURE OF COMMITMENT**

5.1 Any Committed Obligation shall be in addition to any obligation of the Operator elsewhere in this Agreement and nothing in this Schedule 10 shall limit or restrict an obligation imposed on the Operator elsewhere in this Agreement.

5.2 Where in Schedule 10.1 (*List of Committed Obligations and Committed Obligation Payments*), references are made to particular manufacturers, suppliers of equipment or services or products, the Operator may fulfil its relevant commitment by using reasonable equivalents.

5.3 Each commitment under this Schedule 10 shall come to an end on expiry of the Concession Period for whatever reason, save in respect of any accrued payments owed pursuant to Schedule 10.1 but not yet paid.

## **6. REVIEW OF COMPLIANCE**

6.1 Progress in delivering Committed Obligations is an agenda item for Concession Performance Meetings and the Operator shall ensure that at such meetings, RfL is given such progress reports to such level of detail and in such format as it may in each case reasonably request.

6.2 In addition to its obligation under paragraph 6.1, the Operator shall from time to time promptly provide such evidence of its compliance with any Committed Obligation as RfL may reasonably request.

## 7. LATE COMPLETION OR NON-DELIVERY OF COMMITTED OBLIGATIONS

If the Operator fails to deliver in full a Committed Obligation in accordance with and by the timeframe specified for its delivery in Schedule 10.1 (*List of Committed Obligations and Committed Obligation Payments*), such late, partial or non-delivery shall constitute a contravention of this Agreement.

## 8. COMMITTED OBLIGATION PAYMENTS

### Obligation to pay

8.1 In addition to being a contravention of this Agreement, if any of the Committed Obligations referred to in the Table set out in the Schedule 10.1 (*List of Committed Obligations and Committed Obligation Payments*) is not delivered in full by the date specified for that Committed Obligation in column 3 of the Table, then the Operator shall pay to RfL the relevant Committed Obligation Payment as indicated in column 5 of the Table.

### Nature of Committed Obligation Payments

8.2 Where in relation to any Committed Obligation, 'RP' is marked in column 4 of the Table set out in Schedule 10.1 next to the Committed Obligation Payment in column 5 of the Table that is payable in respect of the non-delivery of that Committed Obligation, then the Operator shall pay to RfL:

- (a) in respect of each relevant period (whether a Reporting Period, Concession Year or other time period) or part thereof for which that Committed Obligation remains undelivered in full; and
- (b) until the Committed Obligation is delivered in full,

the Committed Obligation Payment set out in column 5 of that Table, as adjusted in accordance with paragraph 8.4 (if appropriate), and column 6 of that Table shall specify whether paragraph 8.4 shall apply to each Committed Obligation specified therein, should any such Committed Obligation be partially delivered by the date specified for that Committed Obligation in column 3 of that Table.

8.3 Where in relation to any Committed Obligation, 'PB' is marked in column 4 of the Table in Schedule 10.1 next to the Committed Obligation Payment in column 5 of that Table, then the Operator shall pay to RfL a Committed Obligation Payment equal to the balance of the amount set out in column 5 of that Table that remains unspent by the Operator by the date specified for delivery of that Committed Obligation in column 3 of that Table.

### Pro-rating of Committed Obligation Payments where partial delivery

8.4 Where:

- (a) in relation to any Committed Obligation that is to be subject to the terms of this paragraph 8.4 (as specified in the Table in Schedule 10.1) is expressed in that Table in terms of a requirement to deliver or carry out activities in respect of a specified number of facilities; and

- (b) the Operator has delivered or carried out the relevant activity in respect of one or more but not all of the number of facilities specified in that Committed Obligation by the relevant delivery date,

then the relevant Committed Obligation Payment shall be reduced pro rata by reference to the number of facilities so delivered or by reference to the number of those activities that have been carried out (as appropriate).

#### **Adjustment to Committed Obligation Payment where partial spend**

8.5 Where in relation to any Committed Obligation that is expressed in terms of a requirement to spend a specified sum in fulfilling its stated objective, the Operator is able to achieve that stated objective within the timeframe specified for its delivery without investing the full amount referred to in that Committed Obligation, whether because of cost savings or securing additional investment from third parties, the Operator may apply to RfL for the consent referred to in paragraph 8.6.

8.6 RfL's consent for the purposes of paragraph 8.5 is its consent for the Operator to invest any unspent amount towards the fulfilment of such other commitments as the Operator proposes at that time. That consent may not be unreasonably withheld.

8.7 If RfL consents to an application pursuant to paragraph 8.5 in respect of any Committed Obligation, then:

- (a) Schedule 10.1 shall be amended to reflect the terms of any new commitments; and
- (b) no Committed Obligation Payment shall be payable in respect of the unspent amount that relates to that Committed Obligation.

#### **9. COMMITTED OBLIGATION PAYMENT ADJUSTMENTS**

Any Committed Obligation Payment Adjustment for any Reporting Period shall be the aggregation of all Committed Obligation Payments that are payable in that Reporting Period.

#### **10. WAIVER OF PAYMENTS UNDER SCHEDULE 10.1**

10.1 RfL may at its reasonable discretion decide to waive its right to receive any Committed Obligation Payment.

10.2 In deciding whether to waive such rights RfL may, but shall not be obliged to, take into consideration the circumstances under which the late, partial or non-delivery arose.

**SCHEDULE 11**

**PAYMENTS**

- Schedule 11.1: Concession Payments**
- Schedule 11.2: Annual Concession Payments and Indexation**
  - Appendix 1: Annual Concession Payment Figures**
  - Appendix 2: Assumed Electricity Prices**
- Schedule 11.3: Pass Through Access Charge Adjustments**
- Schedule 11.4: Profit Share**
  - Appendix: Threshold Profit**



## SCHEDULE 11.1

### Concession Payments

#### 1. CONCESSION PAYMENTS

1.1 The Concession Payment for any Reporting Period shall be, subject to paragraph 4 (*Concession Payments where Operator strike action*), an amount equal to:

$$£CP = PCP + PA + PTA + OA$$

where:

£CP means the Concession Payment for that Reporting Period;

PCP means:

$$ACP \times \frac{RPD}{FYD}$$

where:

ACP means the Annual Concession Payment for the Concession Year in which that Reporting Period occurs;

RPD means the number of days in that Reporting Period; and

FYD is equal to the number of days in the Concession Year in which that Reporting Period occurs;

PA means the Performance Adjustment to be made on that Reporting Period's Payment Date, calculated in accordance with paragraph 2 (*Performance Adjustments*);

PTA means the Pass Through Adjustment to be made on that Reporting Period's Payment Date, calculated in accordance with paragraph 3 (*Pass Through Adjustments*); and

OA means the Other Adjustment to be made on that Reporting Period's Payment Date.

1.2 Where a Concession Year starts or ends during a Reporting Period, £CP and PCP shall be determined as if references in paragraph 1.1 to a Reporting Period were to each of the separate sections of two such Reporting Periods which fall either side of such Concession Year start or end, and the Concession Payment for such Reporting Period shall be the sum of £CP as determined for each such section of such Reporting Period.

1.3 The parties agree that:

- (a) each of £CP, PA, PTA and OA may be a positive or negative number in any Reporting Period;
- (b) where any of the adjustments that are to be made to PCP in any Reporting Period:
  - (i) is positive, RfL shall pay to the Operator that adjustment as an addition to PCP on the Payment Date for that Reporting Period; and

- (ii) is negative, the Operator shall pay to RfL that adjustment as a reduction to PCP on the Payment Date for that Reporting Period;
- (c) where £CP is a positive number in any Reporting Period, RfL shall pay that amount to the Operator on the Payment Date for that Reporting Period; and
- (d) where £CP is a negative number in any Reporting Period, the Operator shall pay the corresponding positive amount to RfL on the Payment Date for that Reporting Period.

**2. PERFORMANCE ADJUSTMENTS**

**Calculation of Performance Adjustments**

2.1 The Performance Adjustment for any Reporting Period shall be an amount equal to:

$$PA = OPA + QPA + RPIA - COPA$$

where:

PA means the Performance Adjustment for that Reporting Period;

OPA means the Operating Performance Adjustment to be made on that Reporting Period's Payment Date, calculated in accordance with paragraph 2.3;

QPA means the Quality Performance Adjustment to be made on that Reporting Period's Payment Date, calculated in accordance with paragraph 2.5;

RPIA means the Revenue Protection Incentive Adjustment to be made on that Reporting Period's Payment Date, calculated in accordance with paragraph 4 (*Revenue Protection Incentive Adjustments*) of Schedule 9 (*Revenue Protection Incentive Regime*); and

COPA means the Committed Obligation Payment Adjustment to be made on that Reporting Period's Payment Date, calculated in accordance with paragraph 9 (*Committed Obligation Payments Adjustments*) of Schedule 10.2 (*Miscellaneous Provisions*).

2.2 The parties agree that each of OPA, QPA and RPIA may be a positive or negative number in any Reporting Period.

**Calculation of Operating Performance Adjustments**

2.3 The Operating Performance Adjustment for any Reporting Period shall be the aggregate of the adjustments listed in this paragraph 2.3 to be made in that Reporting Period, each as calculated in accordance with Schedule 7.1 (*Operating Performance Regime*):

$$OPA = PA + RA$$

where:

OPA means the Operating Performance Adjustment for a Reporting Period;

PA means the Punctuality Adjustment for that Reporting Period; and

RA means the Reliability Adjustment for that Reporting Period.



2.4 The parties agree that PA may be a positive or negative number and RA shall be zero or a negative number, in each case in any Reporting Period.

#### **Calculation of Quality Performance Adjustments**

2.5 The Quality Performance Adjustment for any Reporting Period shall be the aggregate of the adjustments listed in this paragraph 2.5 to be made in that Reporting Period:

- (a) the KPI Adjustment, calculated in accordance with Schedule 8.1 (*Standards Regime (KPIs)*);
- (b) the Satisfaction Regime Adjustment, calculated in accordance with Schedule 8.4 (*Satisfaction Regime (CSS)*); and
- (c) the SIS Adjustment calculated in accordance with Schedule 8.5 (*Staff Regime (SIS)*).

### **3. PASS THROUGH ADJUSTMENTS**

#### **Calculation of Pass Through Adjustments**

3.1 The Pass Through Adjustment for any Reporting Period shall be an amount equal to:

$$PTA = ATA + TALA - ASA + TPRA + TAAPA + ACA + TEA$$

where:

PTA means the Pass Through Adjustment for that Reporting Period;

ATA means the Alternative Timetable Adjustment to be made on that Reporting Period's Payment Date, calculated in accordance with paragraph 9.1 of Schedule 1.3 (*Managing Changes to the Passenger Services*);

TALA means the Ticketing and Account Liabilities Adjustment to be made on that Reporting Period's Payment Date, calculated in accordance with paragraph 5.4 of Schedule 3.3 (*Ticket and Non-Ticket Revenue*);

ASA means the Additional Services Adjustment to be made on that Reporting Period's Payment Date;

TPRA means the TSA Performance Regime Adjustment to be made on that Reporting Period's Payment Date;

TAAPA means the Track Access Agreement Performance Adjustment to be made on that Reporting Period's Payment Date, calculated in accordance with paragraph 3.3;

ACA means the Access Charge Adjustment to be made on that Reporting Period's Payment Date, calculated in accordance with paragraph 3.4; and

TEA means the Traction Electricity Adjustment to be made on that Reporting Period's Payment Date, calculated in accordance with paragraph 3.5.

3.2 The parties agree that each of PTA, ATA, TALA, TAAPA, ACA and TEA may be a positive or negative number in any Reporting Period.

### Calculation of Track Access Agreement Performance Adjustments

3.3 The Track Access Agreement Performance Adjustment for any Reporting Period shall be the aggregate of the payments listed in this paragraph 3.3 to be made in that Reporting Period, each as calculated in accordance with Schedule 7.2 (*Performance Payments under Track Access Agreements*):

- (a) any Network Rail (Schedule 8) Payment; and
- (b) any RfL (I) NR TOC-on-TOC Payment.

### Calculation of Access Charge Adjustments

3.4 The Access Charge Adjustment for any Reporting Period shall be the aggregate of the adjustments listed in this paragraph 3.4 to be made in that Reporting Period, each as calculated in accordance with the relevant paragraph of Schedule 11.3 (*Pass Through Access Charge Adjustments*):

- (a) the Track Access Adjustment; and
- (b) the Station Charge Adjustment.

### Calculation of Traction Electricity Adjustments

3.5 The Traction Electricity Adjustment for any Reporting Period shall be an amount equal to:

$$TEA = AV \times (TEC - ATEC)$$

where:

TEA means the Traction Electricity Adjustment for assumed traction electricity price per kWh on the London Overground Network (other than the ELL Core Route) in a Reporting Period;

AV means the aggregate actual traction electricity volume consumed by the Train Fleet on the London Overground Network (other than the ELL Core Route) in the preceding Reporting Period, calculated in accordance with the following:

$$AV = M_{et}V + M_{od}V$$

where:

$M_{et}V$  means the metered volume for that preceding Reporting Period, calculated pursuant to the Network Rail TAA in accordance with the Traction Electricity Rules (as defined in the Network Rail TAA) in respect of those Units comprising the Train Fleet that are fitted with traction electricity consumption meters; and

$M_{od}V$  means the modelled volume for that preceding Reporting Period, calculated pursuant to the Network Rail TAA in accordance with the Traction Electricity Rules (as defined in the Network Rail TAA) in respect of those Units comprising the Train Fleet that are not fitted with traction electricity consumption meters;

TEC means the traction electricity price per kWh that the Operator is charged under the terms of the traction electricity purchasing arrangement specified by RfL pursuant to paragraph 3.6 in relation to that preceding Reporting Period; and

ATEC means the assumed traction electricity price per kWh specified in relation to the Concession Year in which that Reporting Period occurs in column 3 of the table in Appendix 2 to Schedule 11.2, indexed in accordance with paragraph 3 (*Indexation By Reference to RPI*) of Schedule 11.2.

3.6 RfL may notify the Operator from time to time of the means by which it requires the Operator to purchase traction electricity for the purpose of operating the Train Fleet, and the Operator shall use reasonable endeavours to promptly comply with any such requirement.

**4. CONCESSION PAYMENTS WHERE OPERATOR INDUSTRIAL ACTION**

4.1 Where the Operator is unable to perform its obligations under this Agreement in one or more Peak in any Reporting Period due to any Industrial Action by any of the employees, agents or subcontractors of the Operator (including any person with whom the Operator has a contract or arrangement for the lending, seconding, hiring contracting out or supervision by that person of train drivers, conductors, other train crew or station or depot staff used by the Operator in the provision of the Concession Services), the Concession Payment for that Reporting Period shall, subject to paragraph 4.2, be calculated in accordance with the following:

$$£CP = £SD + £NSD + PA + PTA + OA$$

where:

£CP means the Concession Payment for that Reporting Period;

£SD means the part of that Concession Payment that relates to those days in that Reporting Period on which such Industrial Action occurred, calculated in accordance with the following:

$$£SD = \sum_{i=1}^{SDRP} (DFC + DVC_i)$$

where:

SDRP means the total number of days in that Reporting Period on which such Industrial Action occurred;

DFC means the Operator's daily fixed costs on any day in that Reporting Period on which such Industrial Action occurred, calculated in accordance with the following:

$$DFC = \frac{FXD}{FYD} + \left( \frac{VCRPI \times PVF}{FYD} \right)$$

where:

FXD means FXD for the relevant Concession Year in which that Reporting Period occurs as set out in column 2 of the Table in Appendix 1

(Annual Concession Payment Figures) to Schedule 11.2 (Annual Concession Payments and Indexation);

FYD has the meaning given to it in paragraph 1.1;

VCRPI means VCRPI for the relevant Concession Year in which that Reporting Period occurs as set out in column 3 of the Table in Appendix 1 to Schedule 11.2; and

PVF means 0.3, being the proportion of VCRPI that represents fixed costs; and

DVC means the Operator's daily variable costs on any day in that Reporting Period on which such Industrial Action occurred, calculated in accordance with the following:

$$DVC = \left[ \left( \frac{VCRPI \times PVV}{FYD} \right) + \left( \frac{PRPI}{FYD} \right) \right] \times PS_i$$

where:

VCRPI means VCRPI for the relevant Concession Year in which that Reporting Period occurs as set out in column 3 of the Table in Appendix 1 to Schedule 11.2;

PVV means 0.7, being the proportion of VCRPI that represents variable costs;

FYD has the meaning given to it in paragraph 1.1; and

PRPI means PRPI for the relevant Concession Year in which that Reporting Period occurs as set out in column 4 of the Table in Appendix 1 to Schedule 11.2; and

PS means the percentage of Passenger Services actually run on the relevant day on which such Industrial Action occurred as a proportion of the number of Passenger Services in the Timetable for that day,

provided that, £SD in any such Reporting Period shall be no more than 85 per cent. of the equivalent daily value of PCP as defined in paragraph 1.1 for that Reporting Period;

£NSD means the part of that Concession Payment that relates to those days on which no Industrial Action occurred, calculated in accordance with the following:

$$£NSD = PCP \times \frac{NSD}{RPD}$$

where:

PCP has the meaning given to it in paragraph 1.1;

NSD means the number of days in that Reporting Period on which no Industrial Action occurred; and

RPD has the meaning given to it in paragraph 1.1;

PA has the meaning given to it in paragraph 2.1;

PTA has the meaning given to it in paragraph 3.1; and

OA has the meaning given to it in paragraph 1.1.

4.2 Where RfL, acting reasonably, determines that the Concession Payment payable pursuant to paragraph 4.1 is insufficient to meet the Operator's costs having regard to the circumstances of the relevant Industrial Action and any other considerations RfL reasonably considers appropriate, RfL shall reasonably determine the amount of Concession Payment that is sufficient to meet those costs.

## **5. PAYMENT OF CONCESSION PAYMENTS**

### **Notification of Concession Payments**

5.1 RfL shall notify the Operator, no less than seven days prior to the end of each Reporting Period, of the amount of the Concession Payment payable in respect of that Reporting Period.

5.2 Each such notification shall set out in reasonable detail how the Concession Payment has been calculated.

### **Payment Dates**

5.3 The Payment Date for a Reporting Period shall be the last Business Day of that Reporting Period.

5.4 Each Concession Payment shall be payable by RfL or, as the case may be, the Operator in the amount notified by RfL in accordance with paragraph 5.1 on the Payment Date of the Reporting Period to which it relates.

### **Method and timing of payment and invoices**

5.5 Each Concession Payment shall be made:

- (a) by automatic electronic funds transfer in pounds sterling to such bank account in the United Kingdom as the payee of such payment may have previously specified to the payer in writing; and
- (b) so that cleared funds are received in that account on or before the due date for payment.

5.6 The Operator shall submit an invoice for the Concession Payments set out in the notice given by RfL pursuant to paragraph 5.1 (or such other sum as may have been agreed between the parties prior to submission of such invoice) notwithstanding any dispute as to the amount of any such Concession Payment.

## **Disputes**

5.7 If either party disputes the amount of a Concession Payment, the dispute shall be resolved in accordance with the Dispute Resolution Rules but shall not affect the obligation of either party to pay a Concession Payment notified in accordance with this paragraph 5.

## **Failure to pay**

5.8 If either party fails to pay any amount to the other party on its due date, it shall in addition pay interest on such amount at the Interest Rate, calculated on a daily basis, from the due date for payment to the date on which payment is made.

## **Corrections**

5.9 If the amount of any Concession Payment is agreed or determined to be incorrect and either party has made a payment to the other party:

- (a) which is greater than it would have made if the amount of the Concession Payment had been correct, then the recipient shall repay the excess within three Business Days of the agreement or determination; or
- (b) which is less than it would have made if the amount of the Concession Payment had been correct, then the payer shall pay the amount of any shortfall to the payee within three Business Days of the agreement or determination,

together, in each case, with interest on the amount payable at the Interest Rate, calculated on a daily basis from the date on which the Concession Payment was paid until the date on which such excess amount or shortfall is paid.

## **6. PAYMENTS FREE AND CLEAR**

All sums payable by either party under this Agreement shall be paid free and clear of any deductions, withholdings, set-offs or counter-claims, save only as may be required by Law or as expressly permitted or required under this Agreement.

## **7. VALUE ADDED TAX**

7.1 Subject to paragraph 7.2(a), all Concession Payments payable by RfL to the Operator under this Agreement are exclusive of Value Added Tax.

7.2 If Value Added Tax is properly chargeable on the supply for which any such Concession Payment is the consideration:

- (a) RfL shall:
  - (i) make, in a timely manner, such Other Adjustments as are necessary to ensure that the Operator is in funds to meet its Value Added Tax liability arising on those Concession Payments; and
  - (ii) in any event, pay the balance of that Value Added Tax liability to the Operator by way of a further Other Adjustment following delivery of an appropriate Value Added Tax invoice to RfL and such payment shall be made

no less than five days before the Operator is required to account to HM Revenue & Customs for the balance of that Value Added Tax liability; and

- (b) the parties shall agree on or before the Start Date the process for the submission of such invoices by the Operator to RfL, including the timing of such submissions and the content of such invoices.

7.3 If it is subsequently determined by HM Revenue & Customs that Value Added Tax was not properly chargeable on the supply for which any such Concession Payment is the consideration, then the Operator shall, promptly following notification of such determination, issue a credit note to RfL and repay such Value Added Tax to RfL.





## SCHEDULE 11.2

### Annual Concession Payments and Indexation

#### 1. ANNUAL CONCESSION PAYMENTS

The Annual Concession Payment for any Concession Year is an amount equal to:

$$\text{ACP} = \text{FXD} + (\text{VCRPI} \times \text{RPI}) + (\text{PRPI} \times \text{RPI})$$

where:

**ACP** means the Annual Concession Payment for the relevant Concession Year;

**FXD** means the Operator's fixed costs for that Concession Year, which shall be in the case of a Concession Year that is as at the date of this Agreement a period during the Concession Period of:

- (a) 12 months beginning on 1 April and ending on 31 March, the figure shown in column 3 and the relevant row of the Table set out in Appendix 1 in respect of that Concession Year, provided that where the Concession Period is extended by RfL pursuant to paragraph 1.1 or 1.4 of Schedule 19 (*Continuation of London Overground*) to include the Concession Year commencing 1 April 2025, but that Concession Year is less than 12 months, then FXD shall be that figure prorated by reference to the number of days in that shorter Concession Year;
- (b) less than 12 months, the figure shown in column 3 and the relevant row of the Table set out in Appendix 1 in respect of that Concession Year; and
- (c) less than 12 months but is subsequently extended as a consequence of RfL extending the Concession Period pursuant to paragraph 1.1 or 1.4 of Schedule 19, the aggregate of the figures shown in column 3 and the relevant rows of the Table set out in Appendix 1 in respect of that extended Concession Year, prorated by reference to the number of days in that extended Concession Year;

**VCRPI** means the Operator's variable costs for that Concession Year which are to be inflated by the RPI Index, which shall be in the case of a Concession Year that is as at the date of this Agreement a period during the Concession Period of:

- (a) 12 months beginning on 1 April and ending on 31 March, the figure shown in column 4 and the relevant row of the Table set out in Appendix 1 in respect of that Concession Year, provided that where the Concession Period is extended by RfL pursuant to paragraph 1.1 or 1.4 of Schedule 19 to include the Concession Year commencing 1 April 2025, but that Concession Year is less than 12 months, then VCRPI shall be that figure prorated by reference to the number of days in that shorter Concession Year;
- (b) less than 12 months, the figure shown in column 4 and the relevant row of the Table set out in Appendix 1 in respect of that Concession Year; and

- (c) less than 12 months but is subsequently extended as a consequence of RfL extending the Concession Period pursuant to paragraph 1.1 or 1.4 of Schedule 19, the aggregate of the figures shown in column 4 and the relevant rows of the Table set out in Appendix 1 in respect of that extended Concession Year, prorated by reference to the number of days in that extended Concession Year;

RPI is ascertained in accordance with paragraph 3 (*Indexation by reference to RPI*); and

PRPI means the Operator's profit for that Concession Year which is to be inflated by the RPI Index, which shall be in the case of a Concession Year that is as at the date of this Agreement a period during the Concession Period of:

- (a) 12 months beginning on 1 April and ending on 31 March, the figure shown in column 5 and the relevant row of the Table set out in Appendix 1 in respect of that Concession Year, provided that where the Concession Period is extended by RfL pursuant to paragraph 1.1 or 1.4 of Schedule 19 to include the Concession Year commencing 1 April 2025, but that Concession Year is less than 12 months, then PRPI shall be that figure prorated by reference to the number of days in that shorter Concession Year;
- (b) less than 12 months, the figure shown in column 5 and the relevant row of the Table set out in Appendix 1 in respect of that Concession Year; and
- (c) less than 12 months but is subsequently extended as a consequence of RfL extending the Concession Period pursuant to paragraph 1.1 or 1.4 of Schedule 19, the aggregate of the figures shown in column 5 and the relevant rows of the Table set out in Appendix 1 in respect of that extended Concession Year, prorated by reference to the number of days in that extended Concession Year.

## 2. ASSUMED ELECTRICITY PRICES

The assumed traction electricity prices per kWh for the purpose of paragraph 3.5 of Schedule 11.1 (*Concession Payments*) are set out in the Table in Appendix 2.

## 3. INDEXATION BY REFERENCE TO RPI

3.1 At the start of each Concession Year (other than the first Concession Year), indexation shall be applied to those amounts, values and adjustments referred to in this Agreement that are expressly required to be indexed in accordance with the methodology set out in this paragraph 3.

3.2 Those amounts that are specified in this Agreement to be indexed in accordance with this paragraph 3 shall be indexed as follows:

$$IA_n = A \times \frac{RPI_n}{RPI_0}$$

where:

- $IA_n$  means the indexed relevant amount specified in this Agreement for the relevant Concession Year;
- A means the relevant amount specified in this Agreement for the relevant Concession Year before indexation;
- $RPI_n$  means the RPI Index for March in the year immediately preceding the relevant Concession Year; and
- $RPI_0$  means the RPI Index for the Indexation Base Month.



**APPENDIX 1 TO SCHEDULE 11.2**

**ANNUAL CONCESSION PAYMENT FIGURES**

Column 1	Column 2	Column 3	Column 4
Concession Year	FXD (£)	VCRPI (£)	PRPI (£)
<b>Year 1</b> (13 November 2016 to 31 March 2017)	█ <sup>39</sup>	█	█
<b>Year 2</b> (1 April 2017 to 31 March 2018)	█	█	█
<b>Year 3</b> (1 April 2018 to 31 March 2019)	█	█	█
<b>Year 4</b> (1 April 2019 to 31 March 2020)	█	█	█
<b>Year 5</b> (1 April 2020 to 31 March 2021)	█	█	█
<b>Year 6</b> (1 April 2021 to 31 March 2022)	█	█	█
<b>Year 7</b> (1 April 2022 to 31 March 2023)	█	█	█
<b>Year 8</b> (1 April 2023 to 31 March 2024)	█	█	█
<b>Year 9</b> (1 April 2024 to 27 April 2024)	█	█	█
<b>Year 9 continued if (up to) 7 Reporting Period extension (Potentially 28 April 2024 to 9 Nov 2024)</b>	█	█	█

<sup>39</sup> The text in this table has been redacted by Rail for London in accordance with the provisions of the Freedom of Information Act 2000.

Column 1	Column 2	Column 3	Column 4
Concession Year	FXD (£)	VCRPI (£)	PRPI (£)
Year 9 continued if (up to) 26 Reporting Period continuation (Potentially 28 April 2024 to 31 March 2025)	■	■	■
Year 10 if (up to) 26 Reporting Period continuation (Potentially 1 April 2025 to 31 March 2026)	■	■	■
Year 11 if (up to) 26 Reporting Period continuation (Potentially 1 April 2026 to 2 May 2026)	■	■	■
Year 11 continued if (up to) 7 Reporting Period extension (Potentially 3 May 2026 to 14 Nov 2026)	■	■	■

**APPENDIX 2 TO SCHEDULE 11.2  
ASSUMED ELECTRICITY PRICES**

<b>Column 1</b>	<b>Column 2</b>
<b>Concession Year</b>	<b>Network Rail Traction Electricity Price (pence per kWh)</b>
<b>Year 1 (13 November 2016 to 31 March 2017)</b>	9.57
<b>Year 2 (1 April 2017 to 31 March 2018)</b>	9.60
<b>Year 3 (1 April 2018 to 31 March 2019)</b>	9.96
<b>Year 4 (1 April 2019 to 31 March 2020)</b>	10.85
<b>Year 5 (1 April 2020 to 31 March 2021)</b>	11.06
<b>Year 6 (1 April 2021 to 31 March 2022)</b>	11.53
<b>Year 7 (1 April 2022 to 31 March 2023)</b>	11.84
<b>Year 8 (1 April 2023 to 31 March 2024)</b>	12.28
<b>Year 9 (1 April 2024 to 27 April 2024)</b>	12.66
<b>Year 9 continued if (up to) 7 Reporting Period extension (Potentially 28 April 2024 to 9 Nov 2024)</b>	12.66

Column 1	Column 2
Concession Year	Network Rail Traction Electricity Price (pence per kWh)
<p><b>Year 9 continued if (up to) 26 Reporting Period continuation (Potentially 28 April 2024 to 31 March 2025)</b></p>	<p>12.66</p>
<p><b>Year 10 if (up to) 26 Reporting Period continuation (Potentially 1 April 2025 to 31 March 2026)</b></p>	<p>13.00</p>
<p><b>Year 11 if (up to) 26 Reporting Period continuation (Potentially 1 April 2026 to 2 May 2026)</b></p>	<p>13.13</p>
<p><b>Year 11 continued if (up to) 7 Reporting Period extension (Potentially 3 May 2026 to 14 Nov 2026)</b></p>	<p>13.13</p>



## SCHEDULE 11.3

### Pass Through Access Charge Adjustments

#### 1. TRACK ACCESS ADJUSTMENTS

1.1 The Track Access Adjustment for each of the Network Rail TAA and the RfL (I) TAA to be made in respect of any Reporting Period shall be determined in accordance with the following formula:

$$\text{TAA} = (\text{GCA} - \text{W}) \times \frac{\text{RPD}}{\text{FYD}}$$

where:

TAA means the Track Access Adjustment to be made in that Reporting Period;

GCA is the value of 'GC' for the Concession Year in which the Reporting Period falls under Part 3A of Schedule 7 (*Track Charges*) (or its equivalent) of the relevant Track Access Agreement;

W is the value of 'W<sub>i</sub>' for the Concession Year in which the Reporting Period falls under Part 2 of Schedule 7 (or its equivalent) of the relevant Track Access Agreement;

RPD means the number of days in that Reporting Period; and

FYD means the number of days in the Concession Year in which that Reporting Period falls,

except that, where a Reporting Period falls during two Concession Years, TAA shall be determined as if the references to Reporting Period were to each of the two periods within such Reporting Period which fall wholly within one of such Concession Years and the Track Access Adjustment to be made in that Reporting Period shall reflect the sum of TAA as determined for each such period.

1.2 The Operator shall notify RfL upon becoming aware that any Track Access Adjustment is to be made and shall supply such information as RfL may require in relation thereto. The Operator shall exercise its rights under the relevant Track Access Agreement in such manner and take such other action as RfL may reasonably require in connection with any related payment thereunder (including in relation to any agreement of the amount of any such payment and including submitting any relevant dispute to any relevant dispute resolution procedures). The Operator shall not, without the consent of RfL, agree or propose to agree a value for 'W<sub>i</sub>' or 'GC' under Parts 2 or 3A of Schedule 7 (or its equivalent) of that Track Access Agreement.

1.3 The Operator shall provide such evidence of payment as RfL may require (including any certificates) for the purpose of determining the value of W and GCA under paragraph 1.1.

1.4 If no value is ascertained for W or GCA prior to the date on which the Concession Payment for the relevant Reporting Period is determined, then a Track Access Adjustment shall only be determined to the extent such values can be ascertained at such time and, when such values are subsequently ascertained, adjustment shall be made to reflect the full Track Access Adjustment for such Reporting Period.

1.5 The values of W and GCA when used in the computation in paragraph 1.1 shall be taken to exclude any input Value Added Tax which is recoverable in respect of the payments they represent by the Operator under Sections 24 to 26 of the Value Added Tax Act 1994.

## 2. STATION CHARGE ADJUSTMENT

2.1 The Station Charge Adjustment to be made in respect of any Reporting Period shall be the aggregate of each adjustment determined in accordance with the following formula for each Operator Station and each Operator Access Station (each, an *Individual Station Charge Adjustment*):

$$\text{ISCA} = L \times \frac{\text{RPD}}{\text{FYD}}$$

where:

ISCA means the Individual Station Charge Adjustment for the relevant station for that Reporting Period;

L is the value of 'L<sub>t</sub>' for the Concession Year in which that Reporting Period falls:

- (a) under condition F11.2 of the Stations Access Conditions if that Operator Station or Operator Access Station is not a Managed Station; and
- (b) under condition 42.2 of the Independent Station Access Conditions if that Operator Access Station is a Managed Station,

but in each case, only to the extent that value represents an amount payable to or by Network Rail or RfL (I) or any other relevant Facility Owner by or to the Operator on its own behalf under the relevant Station Access Agreement (excluding any amount payable to Network Rail or RfL (I) by the Operator in its capacity as Facility Owner of a station on behalf of a beneficiary which is party to a Station Access Agreement in respect of that Operator Station);

RPD means the number of days in that Reporting Period; and

FYD means the number of days in the Concession Year in which that Reporting Period falls except that, where a Reporting Period occurs during two Concession Years, the Station Charge Adjustment shall be determined as if the references to Reporting Period were to each of the two periods within such Reporting Period which fall wholly within one of such Concession Years and the Station Charge Adjustment for such Reporting Period shall be the sum of the Station Charge Adjustment as determined for each such period.

2.2 The Operator shall notify RfL upon becoming aware that any Station Charge Adjustment is to be made and shall supply such information as RfL may require in relation thereto. The Operator shall exercise such rights as it may have under any relevant Station Lease or Station Access Agreement in such manner and take such other action as RfL may reasonably require in connection with any related payment thereunder (including in relation to any agreement of the amount of any such payment and including submitting any relevant dispute under any relevant dispute resolution procedures). The Operator shall not, without the consent of RfL, agree or propose to agree a value for 'L<sub>t</sub>' or 'P<sub>t</sub>' under any relevant Station Lease or Station Access Agreement.

2.3 The Operator shall provide such evidence of payment as RfL may require (including any certificates) for the purpose of determining the values of L and P under paragraph 2.1.

2.4 If no value is ascertained for any of L or P prior to the date on which the Concession Payment for the relevant Reporting Period is determined, then a Station Charge Adjustment shall only be determined to the extent such value can be ascertained at such time and, when such value is subsequently ascertained, an adjustment shall be made to reflect the full Station Charge Adjustment for such Reporting Period.

2.5 The values of L and P when used in the computation in paragraph 2.1 shall be taken to exclude any input Value Added Tax which is recoverable in respect of the payments it represents by the Operator under Sections 24 to 26 of the Value Added Tax Act 1994.

### **3. CHARGE FOR ACCESS TO THE ELL CORE ROUTE**

3.1 It is the parties' intention that the Operator will not be charged for access to the ELL Core Route under the terms of the RfL (I) TAA.

3.2 If the Operator is charged for access to the ELL Core Route, then:

- (a) RfL shall by way of Access Charge Adjustments, pay to the Operator amounts equal to the amounts that the Operator is charged for such access;
- (b) RfL shall pay the amounts referred to in paragraph 3.2(a) into an account specifically created by the Operator for the purpose, and the Operator shall grant a charge in favour of RfL on terms acceptable to RfL over amounts standing to the credit of that account from time to time;
- (c) the parties shall make consequential amendments to paragraph 3.4 of Schedule 11.1 (*Concession Payments*) to recognise the payments referred to in paragraph 3.2(a); and
- (d) RfL shall be entitled to withdraw any such amount paid into that account as and when required, including on the same day that it is deposited, for the purpose of paying RfL (I) that amount for access to the ELL Core Route.



## SCHEDULE 11.4

### Profit Share

#### 1. OVERALL PURPOSE

The objective of the profit share arrangements set out in this Schedule 11.4 is to ensure that, at the end of the Concession Period, any reconciled cumulative excess profit made by the Operator has been shared between the Operator and RfL.

#### 2. ANNUAL CALCULATION AND INFORMATION PROVISION

##### Annual calculation

2.1 Within four Reporting Periods after the end of each Concession Year, the Operator shall provide to RfL a calculation of:

- (a) the Cumulative Profit Share Amount for that Concession Year calculated in accordance with paragraph 3 (*Cumulative Profit Share Amount Calculation*); and
- (b) with effect from the Concession Year ending 31 March 2019, its proposed Profit Share Payment payable, calculated in accordance with paragraph 4.2.

2.2 Any calculations provided pursuant to paragraph 2.1 shall be certified by the Operator's auditors.

2.3 As soon as reasonably practicable following RfL's request, the Operator shall supply to RfL any additional information that RfL might reasonably require in relation to any calculation provided pursuant to paragraph 2.1.

2.4 Where, as required by its Parent, the Operator reports its financial results by reference to financial years that have different start and end dates from Concession Years, the Operator shall in performing the calculations pursuant to paragraph 2.1:

- (a) reconcile those financial results to report by reference to Concession Years, extracting and reporting on all relevant information for the purpose of performing the calculation pursuant to paragraph 2.1; and
- (b) procure that its auditor's certification pursuant to paragraph 2.2, duly certifies the accuracy of that reconciliation.

2.5 Where the Annual Audited Accounts in relation to any previous Concession Year are subject to adjustment or restatement, RfL shall be entitled to require:

- (a) the recalculation (and recertification pursuant to paragraph 2.2) of the Cumulative Profit Share Amount for the relevant Concession Year; and
- (b) that within 30 days of RfL notifying the Operator that it requires a payment to be made pursuant to this paragraph 2.5, a further Profit Share Payment is to be made by way of Other Adjustment that is equal to the amount which is the difference between the Profit Share Payment actually paid pursuant to paragraph 4.2 and the amount that would have been paid had the Cumulative Profit Share Amount been originally

calculated on the basis that such adjustment or revision was included in the Annual Audited Accounts.

2.6 Within 28 days of receiving the calculations pursuant to paragraph 2.1 in relation to any Concession Year, or where RfL has requested additional information in accordance with paragraph 2.3, within 28 days of such request, RfL shall notify the Operator whether it agrees or disputes any such calculation, including where RfL reasonably considers that in calculating the Cumulative Profit Share Amount, any particular item or transaction has not been accounted for on a reasonable basis (for example, where the accounting treatment looks to the form rather than the substance, of the item or transaction) and in providing any such notification that disputes any such calculation, RfL shall explain in reasonable detail why it disputes such calculation.

2.7 Where RfL does reasonably consider that in calculating the Cumulative Profit Share Amount, any particular item or transaction has not been accounted for on a reasonable basis (including where the accounting treatment looks to the form rather than the substance, of the item or transaction), then RfL shall be entitled to require it to be accounted for on such other basis as it may reasonably determine and notify to the Operator pursuant to paragraph 2.6, provided that the Secretary of State shall not be entitled pursuant to this paragraph 2.7 to alter the accounting policies of the Operator from those set out in the Record of Assumptions and applied through the Suite of Models.

2.8 If in relation to any calculation provided by the Operator in accordance with paragraph 2.1, RfL fails to notify the Operator of its agreement or otherwise with that calculation in accordance with paragraph 2.5, then RfL shall be deemed to have agreed the calculation.

#### **Disputed calculation**

2.9 If RfL notifies the Operator in accordance with paragraph 2.5 that it disputes any calculation provided by the Operator in accordance with paragraph 2.1, the parties shall seek to resolve the dispute through discussion in accordance with paragraphs 2.1 to 2.3 (inclusive) of Schedule 20, provided that, if the dispute cannot be resolved through such discussion within 21 Business Days of the date of receipt of that notice by the Operator, either party may refer the matter for expert determination by a single expert in accordance with paragraphs 2.10 to 2.12 inclusive.

#### **Expert Determination**

2.10 Where pursuant to paragraph 2.9, either party wishes to refer a dispute of any calculation provided by the Operator in accordance with paragraph 2.1 to an expert, that party shall propose to the other party by way of notice, the expert to be appointed, who shall be an accountant. The parties shall seek to agree the choice of expert as soon as reasonably practicable thereafter and in any event, within 14 days of receipt of any such notice.

2.11 If the parties agree the choice of expert pursuant to paragraph 2.10, the parties shall duly appoint that expert as soon as reasonably practicable thereafter. If no agreement has been reached within 14 days of service of the notice referred to in paragraph 2.10, either party may ask the President of the Institute of Chartered Accountants in England and Wales to nominate an expert willing to accept an appointment on the terms set out in paragraph 2.12. That

nominated expert shall be appointed by the parties as soon as reasonably practicable thereafter.

2.12 The Operator and RfL agree, and the expert appointed is obliged, to follow the terms and principles set out in this paragraph 2.12:

- (a) the expert must act as an expert and not as an arbitrator;
- (b) the Arbitration Act 1996 and the law of arbitration shall not apply to the expert, to the determination procedure or to the expert's decision;
- (c) acceptance by the expert of the terms set out in this paragraph 2.12 shall be a condition of appointment of the expert;
- (d) the expert shall establish such rules and procedures for the conduct of the determination as he sees fit having regard to the timescale set out in paragraph 2.12(f);
- (e) RfL and the Operator shall abide by the rules and procedures established by the expert;
- (f) the expert shall make his decision in writing available to the parties as soon as reasonably practicable and in any event within 42 days of his appointment;
- (g) the decision must include full detailed reasons to explain the findings and justify the decision;
- (h) the decision shall be final and binding;
- (i) RfL and the Operator shall each bear its own costs in relation to the expert determination, including the costs of providing all data, information and submissions and the costs and expenses of all witnesses and persons retained by, as the case may be, RfL or the Operator; and
- (j) the costs and expenses of the expert and any independent advisers to the expert and any costs of his appointment if he is appointed by the President of the Institute of Chartered Accountants in England and Wales shall be shared equally between RfL and the Operator.

### **3. CUMULATIVE PROFIT SHARE AMOUNT CALCULATION**

The Operator shall calculate the Cumulative Profit Share Amount for the purposes of paragraph 2.1(a), in accordance with the following:

$$\text{CPSA} = (\text{CAP} - \text{CTP}) \times 0.5$$

where:

**CPSA** is the Cumulative Profit Share Amount for all of the Concession Years from the Start Date up to and including the relevant Concession Year;

**CAP** is the cumulative Actual Profit for all of the Concession Years from the Start Date up to and including that Concession Year; and

CTP is the cumulative threshold profit for that Concession Year, expressed in nominal terms as specified in the table set out in the Appendix and with the relevant increments thereto, also specified in that table, where the Priced Option has been called in any preceding Concession Year or that Concession Year,

provided that if (CAP – CTP) is a negative number, CPSA shall be zero.

#### **4. PROFIT SHARE PAYMENTS**

4.1 No Profit Share Payment shall be payable until the Concession Year ending on 31 March 2019.

4.2 With effect from the Concession Year ending on 31 March 2019, a Profit Share Payment shall be payable each Concession Year on the following basis:

$$\text{PSP} = \text{CPSA} - \text{NPSP}$$

where:

PSP means the Profit Share Payment for the relevant Concession Year;

CPSA means the Cumulative Profit Share Amount for that Concession Year; and

NPSP means the net of any Profit Share Payments made by the Operator to RfL against any Profit Share Payments made by RfL to the Operator, in each case, in any previous Concession Year.

4.3 Where in relation to any Concession Year, the Profit Share Payment calculated pursuant to paragraph 4.2:

- (a) is a positive amount, the Operator shall pay that Profit Share Payment to RfL; and
- (b) is a negative amount, RfL shall pay that Profit Share Payment to the Operator,

in each case by way of an Other Adjustment on the next Payment Date following the agreement of that amount, or where agreement cannot be reached and the dispute is referred for determination pursuant to paragraph 2.9, in each case as soon as reasonably practicable after such determination, together with interest at a rate equal to the Interest Rate from the date when such payment would have been payable but for that referral until the date of actual payment (after as well as before judgment). Such interest shall accrue from day to day.



APPENDIX TO SCHEDULE 11.4

THRESHOLD PROFIT

Table 1: Threshold Profit in relation to Concession Payments in Appendix 1 to Schedule 11.2, with Priced Option not called but Service Increments called

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10
Concession Year	Cumulative Threshold Profit (£)	Service Increment 3a	Service Increment 3b	Service Increment 4a	Service Increment 4b	Service Increment 4c	Service Increment 4d	Service Increment 4e	Service Increment 5
		Cumulative Threshold Profit (£)	Cumulative Threshold Profit (£)	Cumulative Threshold Profit (£)	Cumulative Threshold Profit (£)	Cumulative Threshold Profit (£)	Cumulative Threshold Profit (£)	Cumulative Threshold Profit (£)	Cumulative Threshold Profit (£)
Year 1 (13 November 2016 to 31 March 2017)	█ <sup>40</sup>	█	█	█	█	█	█	█	█
Year 2 (1 April 2017 to 31 March 2018)	█	█	█	█	█	█	█	█	█
Year 3 (1 April 2018 to 31 March 2019)	█	█	█	█	█	█	█	█	█
Year 4 (1 April 2019 to 31 March 2020)	█	█	█	█	█	█	█	█	█
Year 5 (1 April 2020 to	█	█	█	█	█	█	█	█	█

<sup>40</sup> The text in this table has been redacted by Rail for London in accordance with the provisions of the Freedom of Information Act 2000.

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10
Concession Year	Cumulative Threshold Profit (£)	Service Increment 3a	Service Increment 3b	Service Increment 4a	Service Increment 4b	Service Increment 4c	Service Increment 4d	Service Increment 4e	Service Increment 5
		Cumulative Threshold Profit (£)	Cumulative Threshold Profit (£)	Cumulative Threshold Profit (£)	Cumulative Threshold Profit (£)	Cumulative Threshold Profit (£)	Cumulative Threshold Profit (£)	Cumulative Threshold Profit (£)	Cumulative Threshold Profit (£)
31 March 2021)									
Year 6 (1 April 2021 to 31 March 2022)	■	■	■	■	■	■	■	■	■
Year 7 (1 April 2022 to 31 March 2023)	■	■	■	■	■	■	■	■	■
Year 8 (1 April 2023 to 31 March 2024)	■	■	■	■	■	■	■	■	■
Year 9 (1 April 2024 to 27 April 2024)	■	■	■	■	■	■	■	■	■
Year 9 continued if (up to) 7 Reporting Period extension (Potentially 28 April 2024 to 9 Nov 2024)	■	■	■	■	■	■	■	■	■

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10
Concession Year	Cumulative Threshold Profit (£)	Service Increment 3a	Service Increment 3b	Service Increment 4a	Service Increment 4b	Service Increment 4c	Service Increment 4d	Service Increment 4e	Service Increment 5
		Cumulative Threshold Profit (£)	Cumulative Threshold Profit (£)	Cumulative Threshold Profit (£)	Cumulative Threshold Profit (£)	Cumulative Threshold Profit (£)	Cumulative Threshold Profit (£)	Cumulative Threshold Profit (£)	Cumulative Threshold Profit (£)
Year 9 continued if (up to) 26 Reporting Period continuation (Potentially 28 April 2024 to 31 March 2025)	■	■	■	■	■	■	■	■	■
Year 10 if (up to) 26 Reporting Period continuation (Potentially 1 April 2025 to 31 March 2026)	■	■	■	■	■	■	■	■	■
Year 11 if (up to) 26 Reporting Period continuation (Potentially 1 April 2026 to 2 May 2026)	■	■	■	■	■	■	■	■	■

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10
Concession Year	Cumulative Threshold Profit (£)	Service Increment 3a	Service Increment 3b	Service Increment 4a	Service Increment 4b	Service Increment 4c	Service Increment 4d	Service Increment 4e	Service Increment 5
		Cumulative Threshold Profit (£)	Cumulative Threshold Profit (£)	Cumulative Threshold Profit (£)	Cumulative Threshold Profit (£)	Cumulative Threshold Profit (£)	Cumulative Threshold Profit (£)	Cumulative Threshold Profit (£)	Cumulative Threshold Profit (£)
Year 11 continued if (up to) 7 Reporting Period extension (Potentially 3 May 2026 to 14 Nov 2026)	■	■	■	■	■	■	■	■	■

**Table 2: Threshold Profit in relation to Concession Payments in Appendix 1 to Schedule 11.2, with Priced Option and Service Increments called**

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10
Concession Year	Priced Option	Service Increment 3a	Service Increment 3b	Service Increment 4a	Service Increment 4b	Service Increment 4c	Service Increment 4d	Service Increment 4e	Service Increment 5
	Cumulative Threshold Profit (£)	Cumulative Threshold Profit (£)	Cumulative Threshold Profit (£)	Cumulative Threshold Profit (£)	Cumulative Threshold Profit (£)	Cumulative Threshold Profit (£)	Cumulative Threshold Profit (£)	Cumulative Threshold Profit (£)	Cumulative Threshold Profit (£)
Year 1 (13 November 2016 to 31 March 2017)	■ <sup>41</sup>	■	■	■	■	■	■	■	■
Year 2 (1 April 2017 to 31 March 2018)	■	■	■	■	■	■	■	■	■
Year 3 (1 April 2018 to 31 March 2019)	■	■	■	■	■	■	■	■	■
Year 4 (1 April 2019 to 31 March 2020)	■	■	■	■	■	■	■	■	■
Year 5 (1 April 2020 to 31 March 2021)	■	■	■	■	■	■	■	■	■
Year 6 (1 April 2021 to 31 March 2022)	■	■	■	■	■	■	■	■	■

<sup>41</sup> The text in this table has been redacted by Rail for London in accordance with the provisions of the Freedom of Information Act 2000.

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10
Concession Year	Priced Option	Service Increment 3a	Service Increment 3b	Service Increment 4a	Service Increment 4b	Service Increment 4c	Service Increment 4d	Service Increment 4e	Service Increment 5
	Cumulative Threshold Profit (£)	Cumulative Threshold Profit (£)	Cumulative Threshold Profit (£)	Cumulative Threshold Profit (£)	Cumulative Threshold Profit (£)	Cumulative Threshold Profit (£)	Cumulative Threshold Profit (£)	Cumulative Threshold Profit (£)	Cumulative Threshold Profit (£)
Year 7 (1 April 2022 to 31 March 2023)	■	■	■	■	■	■	■	■	■
Year 8 (1 April 2023 to 31 March 2024)	■	■	■	■	■	■	■	■	■
Year 9 (1 April 2024 to 27 April 2024)	■	■	■	■	■	■	■	■	■
If up to 7 Reporting Period extension (Potentially 28 April 2024 to 9 Nov 2024)	■	■	■	■	■	■	■	■	■
If Schedule 19 continuation (Potentially 28 April 2024 to 31 March 2025)	■	■	■	■	■	■	■	■	■

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10
Concession Year	Priced Option	Service Increment 3a	Service Increment 3b	Service Increment 4a	Service Increment 4b	Service Increment 4c	Service Increment 4d	Service Increment 4e	Service Increment 5
	Cumulative Threshold Profit (£)	Cumulative Threshold Profit (£)	Cumulative Threshold Profit (£)	Cumulative Threshold Profit (£)	Cumulative Threshold Profit (£)	Cumulative Threshold Profit (£)	Cumulative Threshold Profit (£)	Cumulative Threshold Profit (£)	Cumulative Threshold Profit (£)
If Schedule 19 continuation (Potentially 1 April 2025 to 31 March 2026)	■	■	■	■	■	■	■	■	■
If Schedule 19 continuation (Potentially 1 April 2026 to 2 May 2026)	■	■	■	■	■	■	■	■	■
If up to 7 Reporting Period extension (Potentially 3 May 2026 to 14 Nov 2026)	■	■	■	■	■	■	■	■	■





**SCHEDULE 12**

**PRICED OPTION**

- Schedule 12.1: Priced Option**
- Schedule 12.2: Calling and implementing the Priced Option**
- Schedule 12.3: Adjustments to Concession Payments**
- Schedule 12.4: Adjustments to Service Increment Concession Payments**



**SCHEDULE 12.1****Priced Option****1. PRICED OPTION: STATION TICKET OFFICE PROGRAMME****Description, objective and specification**

1.1 The closure by the Operator of, subject to paragraph 1.3, the ticket offices at all Operator Stations in accordance with this Priced Option.

1.2 This Priced Option requires the Operator to:

- (a) within one month of RfL's notice calling this Priced Option, prepare and submit to RfL for approval a programme for implementing the closure of ticket offices at the Operator Stations and (as appropriate) the installation of appropriate ticketing facilities at the Operator Stations, which implemented will have no adverse impact on the ticket retailing capabilities at the Operator Stations (the *Ticket Office Closure Programme*) and RfL shall promptly review and notify the Operator whether or not it approves the Ticket Office Closure Programme; and
- (b) subject to RfL's approval of the Ticket Office Closure Programme:
  - (i) to lead the statutory consultation process and exercise its rights under the TSA to secure the necessary approvals and otherwise to effect the ticket office closures at the Operator Stations in accordance with the Ticket Office Closure Programme;
  - (ii) to decommission the ticket offices at the Operator Stations, and in so doing:
    - (A) removing all ticket office equipment, furniture and consumables;
    - (B) retaining all fixtures and fittings, including any air conditioning plant and machinery and/or any fixed/moveable fire appliances;
    - (C) applying vinyl over closed ticket office windows, provided that the designs for such vinyls shall be agreed with RfL on a station-by-station basis; and
    - (D) procuring that all such ticket offices are locked, fully secured and maintained in a safe and secure manner in accordance with any Licence conditions;
  - (iii) to procure the installation of specified alternative ticketing facilities, including those specified in paragraph 1.5, in each case in accordance with the Ticket Office Closure Programme; and
  - (iv) to close:
    - (A) the ticket office of at least one Operator Station and (as appropriate) procure the installation of alternative ticketing facilities at that

Operator Station in accordance with the Ticket Office Closure Programme on [REDACTED]<sup>42</sup>; and

- (B) the ticket offices of all Operator Stations and (as appropriate) procure the installation of alternative ticketing facilities at those Operator Stations in accordance with the Ticket Office Closure Programme within the 12 months following [REDACTED]<sup>43</sup> with the last such ticket office being closed and (as appropriate) alternative ticketing facilities procured by [REDACTED]<sup>44</sup>.

1.3 In preparing the Ticket Office Closure Programme, the Operator:

- (a) shall ensure that the Ticket Office Closure Programme is fully implemented in accordance with the dates specified in paragraph 1.2(b)(iv), but may otherwise make changes to:
  - (i) the phasing of the ticket office closures at Operator Stations as it considers appropriate; and/or
  - (ii) the location of existing TVMs; and
- (b) may propose that not all ticket offices at Operator Stations close where the Operator reasonably believes that it would not be appropriate to close any such ticket office or where the statutory consultation process concludes that it would not be appropriate.

1.4 In implementing the Ticket Office Closure Programme, the Operator may amend the phasing of the Ticket Office Closure Programme, providing that the Operator informs RfL promptly of such amendment and such implementation and any such amendment has no adverse impact on the ticket retailing capabilities at each relevant Operator Station.

1.5 This Priced Option requires RfL to supply by [REDACTED]<sup>45</sup>, at no cost to the Operator 67 TVMs (or such lesser number of TVMs as the parties agree, acting reasonably, is necessary for the Operator to continue to comply with its obligations under this Agreement following the implementation of the Ticket Office Closure Programme) that are over and above those TVMs supplied pursuant to Schedule 3.6 (*Ticket Equipment*), in order to facilitate the delivery by the Operator of alternative ticketing facilities pursuant to paragraph 1.2(b).

1.6 Promptly after RfL supplies the TVMs pursuant to paragraph 1.5, the Operator shall procure their installation at the relevant Operator Stations identified in the Ticket Office Closure Programme, in order that they may be used by passengers calling at those stations throughout the remainder of the Concession Period, by, without limitation:

- (a) conducting all necessary site inspections and surveys;
- (b) securing all necessary consents;

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<sup>42</sup> This text has been redacted by Rail for London in accordance with the provisions of the Freedom of Information Act 2000.

<sup>43</sup> This text has been redacted by Rail for London in accordance with the provisions of the Freedom of Information Act 2000.

<sup>44</sup> This text has been redacted by Rail for London in accordance with the provisions of the Freedom of Information Act 2000.

<sup>45</sup> This text has been redacted by Rail for London in accordance with the provisions of the Freedom of Information Act 2000.

- (c) carrying out all necessary enabling works, including all data management, power cabling and fixture preparation; and
- (d) delivering those TVMs from a location notified by RfL to the Operator to the relevant Operator Stations and installing them at the enabled locations.

**Price for exercising the Priced Option (in £ base date)**

1.7 Where this Priced Option is called by RfL in accordance with its terms:

- (a) the price for this Priced Option shall be the price set out in Table 1 in Schedule 12.3 (*Adjustments to Concession Payments*) and adjustments shall be made to Concession Payments accordingly;
- (b) the first milestone payment in Table 2 in Schedule 12.3 shall be made by way of Other Adjustment upon the closure of the first ticket office at an Operator Station;
- (c) the second milestone payment in Table 2 in Schedule 12.3 shall be made by way of Other Adjustment upon the closure of all ticket offices at Operator Stations; and
- (d) the adjustments to the Concession Payments set out in Schedule 12.4 (*Adjustments to Service Increment Concession Payments*) shall apply and where any Service Increment is called in accordance with the terms of Schedule 6.1 (*Anticipated Service Increments*), the Concession Payments relating to that Service Increment set out in the relevant Table in Schedule 6.2 (*Adjustment to Concession Payments*) shall be adjusted by the Concession Payments in the relevant Table in Schedule 12.4.

**Notice period for calling the Priced Option to maintain price**

1.8 The price referred to in paragraph 1.7 shall apply where RfL calls this Priced Option by issuing a notice to the Operator no later than [REDACTED]<sup>46</sup>.

**Effects on the Concession Agreement of exercising the Priced Option**

1.9 Where RfL calls this Priced Option:

- (a) the changes to the Concession Payments anticipated by this Priced Option shall be made from the date of closure of the first ticket office at an Operator Station;
- (b) the Operator shall continue to staff the stations and supervise the ticket gatelines in accordance with paragraph 5 (*Staffing of ticket offices and gatelines*) of Schedule 2.2 (*List of Concession Services*) during and after implementation of the Ticket Office Closure Programme;
- (c) the Operator shall continue to satisfy the Key Performance Indicator relating to ticket queuing times at Operator Stations in the Appendix 1 (*Key Performance Indicators*) to Schedule 8.1 (*Standards Regime (KPI)*) during and after implementation of the Ticket Office Closure Programme; and
- (d) no other changes shall be made to any of the service quality regimes set out in Schedule 8 (*Service Quality and Passenger Perception*).

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<sup>46</sup> This text has been redacted by Rail for London in accordance with the provisions of the Freedom of Information Act 2000.

1.10 Where any approvals required pursuant to paragraph 1.2(b)(i), are not given, a Change shall occur.

## SCHEDULE 12.2

### Calling and implementing the Priced Option

#### 1. TERMS ON WHICH THE PRICED OPTION MAY BE CALLED

1.1 RfL may call the Priced Option by issuing a written notice to the Operator:

- (a) in accordance with the terms of the Priced Option set out in Schedule 12.1 (*Priced Option*), in which case those terms, including the price specified for the Priced Option in Schedule 12.3 (*Adjustments to Concession Payments*) shall apply; and
- (b) subject to paragraph 1.2, on different terms to those specified in the Priced Option, provided that difference is not material.

1.2 Where RfL issues a written notice to the Operator in accordance with paragraph 1.1(b):

- (a) the parties shall consult for a reasonable period of time after the call of the Priced Option to agree the amendments to this Agreement that are required in order to reflect only that call on different terms; and
- (b) such call shall be a Change, but only to the extent of determining the difference from the price specified in Schedule 12.3 caused only by that call on different terms.

1.3 Where any condition specified in Schedule 12.1 is not satisfied (other than by reason of failure by the Operator to take reasonable steps to satisfy such condition, where appropriate), then that shall constitute 'different terms' for purposes of paragraph 1.1(b) and paragraph (kk) of the definition of Change.

#### 2. IMPLEMENTATION OF THE PRICED OPTION

The Operator shall implement the Priced Option in accordance with:

- (a) its terms where RfL has called the Priced Option in accordance with its terms; and
- (b) any additional or alternative terms agreed pursuant to paragraph 1.1(b).





**SCHEDULE 12.3**

**Adjustments to Concession Payments**

**1. PRICED OPTION: CONCESSION PAYMENTS**

This Table 1 sets out the increments or decrements to the figures for calculation of the Annual Concession Payments and set out in Appendix 1 (*Annual Concession Payment Figures*) to Schedule 11.2 (*Annual Concession Payments and Indexation*) where the Priced Option is called in accordance with paragraph 1 (*Priced Option: Station Ticket Office Programme*) of Schedule 12.1 (*Priced Option*).

Column 1	Column 2	Column 3	Column 4
Concession Year	FXD (£)	VCRPI (£)	PRPI (£)
Year 1 (13 November 2016 to 31 March 2017)	█ <sup>47</sup>	█	█
Year 2 (1 April 2017 to 31 March 2018)	█	█	█
Year 3 (1 April 2018 to 31 March 2019)	█	█	█
Year 4 (1 April 2019 to 31 March 2020)	█	█	█
Year 5 (1 April 2020 to 31 March 2021)	█	█	█
Year 6 (1 April 2021 to 31 March 2022)	█	█	█
Year 7 (1 April 2022 to 31 March 2023)	█	█	█
Year 8 (1 April 2023 to 31 March 2024)	█	█	█
Year 9 (1 April 2024 to 27 April 2024)	█	█	█

<sup>47</sup> The text in this table has been redacted by Rail for London in accordance with the provisions of the Freedom of Information Act 2000.

Column 1	Column 2	Column 3	Column 4
Concession Year	FXD (£)	VCRPI (£)	PRPI (£)
Year 9 continued if (up to) 7 Reporting Period extension (Potentially 28 April 2024 to 9 Nov 2024)	■	■	■
Year 9 continued if (up to) 26 Reporting Period continuation (Potentially 28 April 2024 to 31 March 2025)	■	■	■
Year 10 if (up to) 26 Reporting Period continuation (Potentially 1 April 2025 to 31 March 2026)	■	■	■
Year 11 if (up to) 26 Reporting Period continuation (Potentially 1 April 2026 to 2 May 2026)	■	■	■
Year 11 continued if (up to) 7 Reporting Period extension (Potentially 3 May 2026 to 14 Nov 2026)	■	■	■

**2. PRICED OPTION: MILESTONE PAYMENTS**

This Table 2 sets out the milestone payments that are:

- (a) amounts as at the Indexation Base Month and shall be indexed in accordance with paragraph 3 (*Indexation by reference to RPI*) of Schedule 11.2 (*Annual Concession Payments and Indexation*); and

- (b) payable by way of Other Adjustments where the Priced Option is called in accordance with paragraph 1 (*Priced Option: Station Ticket Office Programme*) of Schedule 12.1 (*Priced Option*).

Column 1	Column 2
Milestone Payment	Amount (£)
<p><b>First Milestone Payment</b></p>	<p>■<sup>48</sup></p>
<p><b>Second Milestone Payment</b></p>	<p>■</p>

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<sup>48</sup> The text in this table has been redacted by Rail for London in accordance with the provisions of the Freedom of Information Act 2000.



**SCHEDULE 12.4**

**Adjustments to Service Increment Concession Payments**

**1. SERVICE INCREMENT 3a: ADDITIONAL NLL SERVICES**

The figures in columns 2 to 4 inclusive of the table below show the increments or decrements to the figures in the relevant table in Schedule 6.2 (*Adjustments to Concession Payments*) where Service Increment 3a is called in accordance with the relevant terms set out in Schedule 6.1 (*Anticipated Service Increments*).

Column 1	Column 2	Column 3	Column 4
Concession Year	FXD (£)	VCRPI (£)	PRPI (£)
Year 1 (13 November 2016 to 31 March 2017)	49		
Year 2 (1 April 2017 to 31 March 2018)			
Year 3 (1 April 2018 to 31 March 2019)			
Year 4 (1 April 2019 to 31 March 2020)			
Year 5 (1 April 2020 to 31 March 2021)			
Year 6 (1 April 2021 to 31 March 2022)			
Year 7 (1 April 2022 to 31 March 2023)			
Year 8 (1 April 2023 to 31 March 2024)			
Year 9 (1 April 2024 to 27 April 2024)			

<sup>49</sup> The text in this table has been redacted by Rail for London in accordance with the provisions of the Freedom of Information Act 2000.

Column 1	Column 2	Column 3	Column 4
Concession Year	FXD (£)	VCRPI (£)	PRPI (£)
Year 9 continued if (up to) 7 Reporting Period extension (Potentially 28 April 2024 to 9 Nov 2024)	■	■	■
Year 9 continued if (up to) 26 Reporting Period continuation (Potentially 28 April 2024 to 31 March 2025)	■	■	■
Year 10 if (up to) 26 Reporting Period continuation (Potentially 1 April 2025 to 31 March 2026)	■	■	■
Year 11 if (up to) 26 Reporting Period continuation (Potentially 1 April 2026 to 2 May 2026)	■	■	■
Year 11 continued if (up to) 7 Reporting Period extension (Potentially 3 May 2026 to 14 Nov 2026)	■	■	■

**2. SERVICE INCREMENT 3b: ADDITIONAL ELL SERVICES TO CRYSTAL PALACE**

The figures in columns 2 to 4 inclusive of the table below show the increments or decrements to the figures in the relevant table in Schedule 6.2 (*Adjustments to Concession Payments*) where Service Increment 3b is called in accordance with the relevant terms set out in Schedule 6.1 (*Anticipated Service Increments*).

Column 1	Column 2	Column 3	Column 4
Concession Year	FXD (£)	VCRPI (£)	PRPI (£)
<b>Year 1</b> (13 November 2016 to 31 March 2017)	█ <sup>50</sup>	█	█
<b>Year 2</b> (1 April 2017 to 31 March 2018)	█	█	█
<b>Year 3</b> (1 April 2018 to 31 March 2019)	█	█	█
<b>Year 4</b> (1 April 2019 to 31 March 2020)	█	█	█
<b>Year 5</b> (1 April 2020 to 31 March 2021)	█	█	█
<b>Year 6</b> (1 April 2021 to 31 March 2022)	█	█	█
<b>Year 7</b> (1 April 2022 to 31 March 2023)	█	█	█
<b>Year 8</b> (1 April 2023 to 31 March 2024)	█	█	█
<b>Year 9</b> (1 April 2024 to 27 April 2024)	█	█	█
<b>Year 9 continued if (up to) 7 Reporting Period extension (Potentially 28 April 2024 to 9 Nov 2024)</b>	█	█	█

<sup>50</sup> The text in this table has been redacted by Rail for London in accordance with the provisions of the Freedom of Information Act 2000.

Column 1	Column 2	Column 3	Column 4
Concession Year	FXD (£)	VCRPI (£)	PRPI (£)
Year 9 continued if (up to) 26 Reporting Period continuation (Potentially 28 April 2024 to 31 March 2025)	■	■	■
Year 10 if (up to) 26 Reporting Period continuation (Potentially 1 April 2025 to 31 March 2026)	■	■	■
Year 11 if (up to) 26 Reporting Period continuation (Potentially 1 April 2026 to 2 May 2026)	■	■	■
Year 11 continued if (up to) 7 Reporting Period extension (Potentially 3 May 2026 to 14 Nov 2026)	■	■	■



**3. SERVICE INCREMENT 4a: ADDITIONAL ELL SERVICES TO CLAPHAM JUNCTION**

The figures in columns 2 to 4 inclusive of the table below show the increments or decrements to the figures in the relevant table in Schedule 6.2 (*Adjustments to Concession Payments*) where Service Increment 4a is called in accordance with the relevant terms set out in Schedule 6.1 (*Anticipated Service Increments*).

Column 1	Column 2	Column 3	Column 4
Concession Year	FXD (£)	VCRPI (£)	PRPI (£)
<b>Year 1</b> (13 November 2016 to 31 March 2017)	█ <sup>51</sup>	█	█
<b>Year 2</b> (1 April 2017 to 31 March 2018)	█	█	█
<b>Year 3</b> (1 April 2018 to 31 March 2019)	█	█	█
<b>Year 4</b> (1 April 2019 to 31 March 2020)	█	█	█
<b>Year 5</b> (1 April 2020 to 31 March 2021)	█	█	█
<b>Year 6</b> (1 April 2021 to 31 March 2022)	█	█	█
<b>Year 7</b> (1 April 2022 to 31 March 2023)	█	█	█
<b>Year 8</b> (1 April 2023 to 31 March 2024)	█	█	█
<b>Year 9</b> (1 April 2024 to 27 April 2024)	█	█	█
<b>Year 9 continued if (up to) 7 Reporting Period extension (Potentially 28 April 2024 to 9 Nov 2024)</b>	█	█	█

<sup>51</sup> The text in this table has been redacted by Rail for London in accordance with the provisions of the Freedom of Information Act 2000.

Column 1	Column 2	Column 3	Column 4
Concession Year	FXD (£)	VCRPI (£)	PRPI (£)
Year 9 continued if (up to) 26 Reporting Period continuation (Potentially 28 April 2024 to 31 March 2025)	█	█	█
Year 10 if (up to) 26 Reporting Period continuation (Potentially 1 April 2025 to 31 March 2026)	█	█	█
Year 11 if (up to) 26 Reporting Period continuation (Potentially 1 April 2026 to 2 May 2026)	█	█	█
Year 11 continued if (up to) 7 Reporting Period extension (Potentially 3 May 2026 to 14 Nov 2026)	█	█	█

**4. SERVICE INCREMENT 4b: ADDITIONAL WEL SERVICES**

The figures in columns 2 to 4 inclusive of the table below show the increments or decrements to the figures in the relevant table in Schedule 6.2 (*Adjustments to Concession Payments*) where Service Increment 4b is called in accordance with the relevant terms set out in Schedule 6.1 (*Anticipated Service Increments*).

Column 1	Column 2	Column 3	Column 4
Concession Year	FXD (£)	VCRPI (£)	PRPI (£)
<b>Year 1</b> (13 November 2016 to 31 March 2017)	█ <sup>52</sup>	█	█
<b>Year 2</b> (1 April 2017 to 31 March 2018)	█	█	█
<b>Year 3</b> (1 April 2018 to 31 March 2019)	█	█	█
<b>Year 4</b> (1 April 2019 to 31 March 2020)	█	█	█
<b>Year 5</b> (1 April 2020 to 31 March 2021)	█	█	█
<b>Year 6</b> (1 April 2021 to 31 March 2022)	█	█	█
<b>Year 7</b> (1 April 2022 to 31 March 2023)	█	█	█
<b>Year 8</b> (1 April 2023 to 31 March 2024)	█	█	█
<b>Year 9</b> (1 April 2024 to 27 April 2024)	█	█	█
<b>Year 9 continued if (up to) 7 Reporting Period extension (Potentially 28 April 2024 to 9 Nov 2024)</b>	█	█	█

<sup>52</sup> The text in this table has been redacted by Rail for London in accordance with the provisions of the Freedom of Information Act 2000.

Column 1	Column 2	Column 3	Column 4
Concession Year	FXD (£)	VCRPI (£)	PRPI (£)
Year 9 continued if (up to) 26 Reporting Period continuation (Potentially 28 April 2024 to 31 March 2025)	■	■	■
Year 10 if (up to) 26 Reporting Period continuation (Potentially 1 April 2025 to 31 March 2026)	■	■	■
Year 11 if (up to) 26 Reporting Period continuation (Potentially 1 April 2026 to 2 May 2026)	■	■	■
Year 11 continued if (up to) 7 Reporting Period extension (Potentially 3 May 2026 to 14 Nov 2026)	■	■	■

**5. SERVICE INCREMENT 4c: ADDITIONAL LECL SERVICES**

The figures in columns 2 to 4 inclusive of the table below show the increments or decrements to the figures in the relevant table in Schedule 6.2 (*Adjustments to Concession Payments*) where Service Increment 4c is called in accordance with the relevant terms set out in Schedule 6.1 (*Anticipated Service Increments*).

Column 1	Column 2	Column 3	Column 4
Concession Year	FXD (£)	VCRPI (£)	PRPI (£)
<b>Year 1</b> (13 November 2016 to 31 March 2017)	█ <sup>53</sup>	█	█
<b>Year 2</b> (1 April 2017 to 31 March 2018)	█	█	█
<b>Year 3</b> (1 April 2018 to 31 March 2019)	█	█	█
<b>Year 4</b> (1 April 2019 to 31 March 2020)	█	█	█
<b>Year 5</b> (1 April 2020 to 31 March 2021)	█	█	█
<b>Year 6</b> (1 April 2021 to 31 March 2022)	█	█	█
<b>Year 7</b> (1 April 2022 to 31 March 2023)	█	█	█
<b>Year 8</b> (1 April 2023 to 31 March 2024)	█	█	█
<b>Year 9</b> (1 April 2024 to 27 April 2024)	█	█	█
<b>Year 9 continued if (up to) 7 Reporting Period extension (Potentially 28 April 2024 to 9 Nov 2024)</b>	█	█	█

<sup>53</sup> The text in this table has been redacted by Rail for London in accordance with the provisions of the Freedom of Information Act 2000.

Column 1	Column 2	Column 3	Column 4
Concession Year	FXD (£)	VCRPI (£)	PRPI (£)
Year 9 continued if (up to) 26 Reporting Period continuation (Potentially 28 April 2024 to 31 March 2025)	■	■	■
Year 10 if (up to) 26 Reporting Period continuation (Potentially 1 April 2025 to 31 March 2026)	■	■	■
Year 11 if (up to) 26 Reporting Period continuation (Potentially 1 April 2026 to 2 May 2026)	■	■	■
Year 11 continued if (up to) 7 Reporting Period extension (Potentially 3 May 2026 to 14 Nov 2026)	■	■	■

**6. SERVICE INCREMENT 4d: ADDITIONAL GOB SERVICES**

The figures in columns 2 to 4 inclusive of the table below show the increments or decrements to the figures in the relevant table in Schedule 6.2 (*Adjustments to Concession Payments*) where Service Increment 4d is called in accordance with the relevant terms set out in Schedule 6.1 (*Anticipated Service Increments*).

Column 1	Column 2	Column 3	Column 4
Concession Year	FXD (£)	VCRPI (£)	PRPI (£)
<b>Year 1</b> (13 November 2016 to 31 March 2017)	█ <sup>54</sup>	█	█
<b>Year 2</b> (1 April 2017 to 31 March 2018)	█	█	█
<b>Year 3</b> (1 April 2018 to 31 March 2019)	█	█	█
<b>Year 4</b> (1 April 2019 to 31 March 2020)	█	█	█
<b>Year 5</b> (1 April 2020 to 31 March 2021)	█	█	█
<b>Year 6</b> (1 April 2021 to 31 March 2022)	█	█	█
<b>Year 7</b> (1 April 2022 to 31 March 2023)	█	█	█
<b>Year 8</b> (1 April 2023 to 31 March 2024)	█	█	█
<b>Year 9</b> (1 April 2024 to 27 April 2024)	█	█	█
<b>Year 9 continued if (up to) 7 Reporting Period extension (Potentially 28 April 2024 to 9 Nov 2024)</b>	█	█	█

<sup>54</sup> The text in this table has been redacted by Rail for London in accordance with the provisions of the Freedom of Information Act 2000.

Column 1	Column 2	Column 3	Column 4
Concession Year	FXD (£)	VCRPI (£)	PRPI (£)
Year 9 continued if (up to) 26 Reporting Period continuation (Potentially 28 April 2024 to 31 March 2025)	■	■	■
Year 10 if (up to) 26 Reporting Period continuation (Potentially 1 April 2025 to 31 March 2026)	■	■	■
Year 11 if (up to) 26 Reporting Period continuation (Potentially 1 April 2026 to 2 May 2026)	■	■	■
Year 11 continued if (up to) 7 Reporting Period extension (Potentially 3 May 2026 to 14 Nov 2026)	■	■	■



**7. SERVICE INCREMENT 4e: BARKING RIVERSIDE EXTENSION**

The figures in columns 2 to 4 inclusive of the table below show the increments or decrements to the figures in the relevant table in Schedule 6.2 (*Adjustments to Concession Payments*) where Service Increment 4e is called in accordance with the relevant terms set out in Schedule 6.1 (*Anticipated Service Increments*).

Column 1	Column 2	Column 3	Column 4
Concession Year	FXD (£)	VCRPI (£)	PRPI (£)
<b>Year 1</b> (13 November 2016 to 31 March 2017)	█ <sup>55</sup>	█	█
<b>Year 2</b> (1 April 2017 to 31 March 2018)	█	█	█
<b>Year 3</b> (1 April 2018 to 31 March 2019)	█	█	█
<b>Year 4</b> (1 April 2019 to 31 March 2020)	█	█	█
<b>Year 5</b> (1 April 2020 to 31 March 2021)	█	█	█
<b>Year 6</b> (1 April 2021 to 31 March 2022)	█	█	█
<b>Year 7</b> (1 April 2022 to 31 March 2023)	█	█	█
<b>Year 8</b> (1 April 2023 to 31 March 2024)	█	█	█
<b>Year 9</b> (1 April 2024 to 27 April 2024)	█	█	█
<b>Year 9 continued if (up to) 7 Reporting Period extension (Potentially 28 April 2024 to 9 Nov 2024)</b>	█	█	█

<sup>55</sup> The text in this table has been redacted by Rail for London in accordance with the provisions of the Freedom of Information Act 2000.

Column 1	Column 2	Column 3	Column 4
Concession Year	FXD (£)	VCRPI (£)	PRPI (£)
Year 9 continued if (up to) 26 Reporting Period continuation (Potentially 28 April 2024 to 31 March 2025)	█	█	█
Year 10 if (up to) 26 Reporting Period continuation (Potentially 1 April 2025 to 31 March 2026)	█	█	█
Year 11 if (up to) 26 Reporting Period continuation (Potentially 1 April 2026 to 2 May 2026)	█	█	█
Year 11 continued if (up to) 7 Reporting Period extension (Potentially 3 May 2026 to 14 Nov 2026)	█	█	█

**8. SERVICE INCREMENT 5: STAR SERVICES**

The figures in columns 2 to 4 inclusive of the table below show the increments or decrements to the figures in the relevant table in Schedule 6.2 (*Adjustments to Concession Payments*) where Service Increment 5 is called in accordance with the relevant terms set out in Schedule 6.1 (*Anticipated Service Increments*).

Column 1	Column 2	Column 3	Column 4
Concession Year	FXD (£)	VCRPI (£)	PRPI (£)
<b>Year 1</b> (13 November 2016 to 31 March 2017)	56		
<b>Year 2</b> (1 April 2017 to 31 March 2018)			
<b>Year 3</b> (1 April 2018 to 31 March 2019)			
<b>Year 4</b> (1 April 2019 to 31 March 2020)			
<b>Year 5</b> (1 April 2020 to 31 March 2021)			
<b>Year 6</b> (1 April 2021 to 31 March 2022)			
<b>Year 7</b> (1 April 2022 to 31 March 2023)			
<b>Year 8</b> (1 April 2023 to 31 March 2024)			
<b>Year 9</b> (1 April 2024 to 27 April 2024)			
<b>Year 9 continued if (up to) 7 Reporting Period extension (Potentially 28 April 2024 to 9 Nov 2024)</b>			

<sup>56</sup> The text in this table has been redacted by Rail for London in accordance with the provisions of the Freedom of Information Act 2000.

Column 1	Column 2	Column 3	Column 4
Concession Year	FXD (£)	VCRPI (£)	PRPI (£)
Year 9 continued if (up to) 26 Reporting Period continuation (Potentially 28 April 2024 to 31 March 2025)	■	■	■
Year 10 if (up to) 26 Reporting Period continuation (Potentially 1 April 2025 to 31 March 2026)	■	■	■
Year 11 if (up to) 26 Reporting Period continuation (Potentially 1 April 2026 to 2 May 2026)	■	■	■
Year 11 continued if (up to) 7 Reporting Period extension (Potentially 3 May 2026 to 14 Nov 2026)	■	■	■

**SCHEDULE 13**

**CHANGES AND VARIATIONS**

- Schedule 13.1: Financial Consequences of Change**
- Schedule 13.2: Identity of the Suite of Models**
- Schedule 13.3: Runs of the Model Suite**
- Schedule 13.4: Variations**



## SCHEDULE 13.1

### Financial Consequences of Change

#### 1. FINANCIAL CONSEQUENCES OF A CHANGE

1.1 When there is or is to be a Qualifying Change,

- (a) the values of FXD, VCRPI and PRPI specified for each Concession Year in the table set out in the Appendix 1 (*Annual Concession Payment Figures*) to Schedule 11.2 (*Annual Concession Payments and Indexation*) and the assumed traction electricity price per kWh for each Concession Year specified in Appendix 2 (*Assumed Electricity Prices*) to Schedule 11.2 shall be restated in the amounts and values ascertained by a Run of the Model Suite in accordance with Schedule 13.3 (*Runs of the Model Suite*); but
- (b) after taking into account any reconciliation payment relating to Estimated Revisions pursuant to paragraph 7 (*Estimated Revisions*) of Schedule 13.3 (*Runs of the Model Suite*).

1.2 Where a Run of the Model Suite is required it shall be performed:

- (a) where it is reasonably practicable to do so, at least three Reporting Periods prior to the Qualifying Change; or
- (b) as soon as reasonably practicable thereafter.

1.3 The restated amounts and values shall have effect on and from the later of:

- (a) the date of the Qualifying Change or the date of the last Change pursuant to paragraph 3.1 (as the case may be); and
- (b) the date on which RfL approves or the Model Suite Run Auditor certifies the results of the Run of the Model Suite.

1.4 RfL may stipulate (on or before the date on which RfL approves or the Model Suite Run Auditor certifies the results of the Run of the Model Suite) that those amounts and values are to apply for a limited period of time only, with provision thereafter, if appropriate, for a further Run of the Model Suite with new Revised Inputs based on information available at that time.

#### 2. ESTIMATED FINANCIAL CONSEQUENCES

2.1 Where:

- (a) there is or is to be a Change before there is a Run of the Model Suite in relation to it; and
- (b) RfL reasonably determines that the Change is likely to be a Qualifying Change,

then RfL shall in accordance with paragraph 2.3 notify to the Operator a reasonable estimate of the values of FXD, VCRPI and PRPI specified for each Concession Year in the table set out in Appendix 1 (*Annual Concession Payment Figures*) to Schedule 11.2 (*Annual*

*Concession Payments and Indexation*), and the assumed traction electricity price per kWh for each Concession Year specified in Appendix 2 (*Assumed Electricity Prices*) to Schedule 11.2 which a Run of the Model Suite using RfL's view of Revised Inputs and any Model Changes would produce (*Estimated Revisions*).

2.2 In the circumstances described in paragraph 2.1, the values of FXD, VCRPI and PRPI specified for each Concession Year in the table set out in Appendix 1 to Schedule 11.2, and the assumed traction electricity price per kWh for each Concession Year specified in Appendix 2 to Schedule 11.2 shall be restated in the amounts and values of the Estimated Revisions, and Concession Payments shall be paid accordingly until the Run of the Model Suite has taken place and its results have been put into effect.

2.3 RfL shall use all reasonable endeavours to provide the notification required by paragraph 2.1 at least two Reporting Periods before it considers the Change is likely to occur. If, having exercised all reasonable endeavours, RfL cannot provide two Reporting Periods' notice, it shall provide such notification as soon as reasonably practicable afterwards.

2.4 The restated amounts and values shall have effect on and from the later of:

- (a) the date of the Change; and
- (b) the date on which RfL notifies the Operator of the Estimated Revisions.

### **3. CHANGES BENEATH THRESHOLD AMOUNT**

3.1 Subject to paragraph 3.3, paragraph 1 (*Financial Consequences of a Change*) shall also apply to any two or more Changes which do not exceed the Threshold Amount taken alone but which do exceed it when taken together (any such Change being a *Sub-Threshold Change*).

3.2 If either party believes that two or more Sub-Threshold Changes, when taken together, exceed the Threshold Amount, such that paragraph 3.1 applies, such party shall notify the other party within the time limit prescribed in paragraph 4.1(b)(iii).

3.3 Where the parties have aggregated two or more Sub-Threshold Changes pursuant to paragraph 3.1 and consequently performed a Run of the Model Suite in accordance with paragraph 1 in relation to those Sub-Threshold Changes, upon the performance of that Run of the Model Suite and any restatement of the values of FXD, VCRPI and PRPI specified for each Concession Year in the table set out in Appendix 1 (*Annual Concession Payment Figures*) to Schedule 11.2 (*Annual Concession Payments and Indexation*) and the assumed traction electricity price per kWh for each Concession Year specified in Appendix 2 (*Assumed Electricity Prices*) to Schedule 11.2:

- (a) those Sub-Threshold Changes shall be disregarded and no longer aggregated to determine whether the Threshold Amount has been exceeded; and
- (b) it shall once again be necessary for the purpose of paragraph 3.1 for two or more subsequent Sub-Threshold Changes to exceed, when taken together, the Threshold Amount in order for a Run of the Model Suite to be performed thereunder.



#### **4. TIME LIMITS**

##### **Requirement to notify a Qualifying Change**

4.1 Either party may require there to be a Run of the Model Suite in respect of a Change provided that:

- (a) there are good reasons for considering that a Change is likely to be a Qualifying Change; and
- (b) that party notifies the other party of its requirement within six months of:
  - (i) the notification or agreement of any Change that is a Variation pursuant to paragraph 1 (*Variations to this Agreement*) of Schedule 13.4 (*Variations*);
  - (ii) becoming aware of any other Change; or
  - (iii) where the claim is pursuant to paragraph 3.1, the occurrence of the last Sub-Threshold Change.

4.2 Unless otherwise agreed between the parties, there shall be no entitlement to a Run of the Model Suite unless the claiming party has notified the other party within the six-month period referred to in paragraph 4.1.

##### **Requirement to notify a Sub-Threshold Change**

4.3 Each party shall promptly notify the other party where that notifying party, acting in good faith, believes there are good reasons for considering that a Sub-Threshold Change has occurred. Such notification shall also specify the notifying party's best estimate of the financial impact of any such Sub-Threshold Change.

4.4 RfL shall keep a register of any Sub-Threshold Changes that have been notified pursuant to paragraph 4.3 and promptly update that register and make it available to the Operator following the notification of any Sub-Threshold Change pursuant to paragraph 4.3.



## SCHEDULE 13.2

### Identity of the Suite of Models

#### 1. OPERATOR'S OBLIGATIONS

1.1 The Operator shall deliver two copies of each of the Financial Model, each of the Operational Models and the Record of Assumptions (each such copy in electronic format on CD-ROM and in hard format) (the *Escrow Documents*) to RfL in the agreed form, accompanied by a notice that the Escrow Documents are to be Placed in Escrow:

- (a) on the date of this Agreement;
- (b) within seven days of the Start Date, but updated only as strictly necessary for any elapsed time between the actual Start Date and the date assumed to be the Start Date in the Initial Business Plan; and
- (c) within seven days of any approval or audit of a Run of the Model Suite as provided for in paragraph 1.3 of Schedule 13.3 (*Runs of the Model Suite*), but updated with the Revised Inputs and any Model Changes.

1.2 The Operator shall deliver with each such deposit of the Escrow Documents all of the following information to the extent that it is relevant:

- (a) details of the Escrow Documents deposited (including full filename and version details, any details required to access the Escrow Documents including media type, backup command/software used, compression used, archive hardware and operating system details);
- (b) the names and contact details of persons who are able to provide support in relation to accessing and interpreting the Escrow Documents; and
- (c) if required by RfL, a certificate from independent auditors approved by RfL, confirming that the deposited version of the Escrow Documents is in the agreed form in accordance with paragraph 1.1(a) or (as the case may be) is in accordance with paragraphs 1.1(b) or (c).

#### 2. RfL'S OBLIGATIONS

2.1 RfL shall:

- (a) within three days following receipt, acknowledge receipt to the Operator of any version of the Escrow Documents delivered to it for the purposes of being Placed in Escrow;
- (b) save as provided under paragraph 2.1(c), store each copy of the Escrow Documents in a different physical location from any other copy of each such document and use all reasonable endeavours to ensure that each copy of the Escrow Documents is at all times kept in a safe and secure environment. In so doing RfL shall be deemed to have Placed in Escrow the Escrow Documents for the purposes of this Agreement;

- (c) notify the Operator if it becomes aware at any time during the term of this Agreement that any copy of the Escrow Documents or part thereof stored in a particular location has been lost, damaged or destroyed; in such an event, RfL shall be permitted to create a new copy of the Escrow Documents or part thereof from any other copy Placed in Escrow and shall within seven days notify the Operator accordingly and afford it the right to make reasonable inspections in order to satisfy itself that a 'complete and accurate' copy has been made. Following the making of such a new copy of the Escrow Documents, RfL shall retain all copies of the Escrow Documents in accordance with paragraph 2.1(b);
- (d) within seven days of receipt of a notice from the Operator stating that the Escrow Documents are required for the purposes of an indicative or actual Run of the Model Suite in relation to any Change, or should RfL itself so decide, release one copy of the Escrow Documents to the Operator and retain one copy of the Escrow Documents in escrow in accordance with paragraph 2.1(b);
- (e) maintain a record of any release of any copy of any version of the Escrow Documents made, including details of any version released and the date of release as well as the identity of the person to whom the Escrow Documents are released;
- (f) have no obligation or responsibility to any person whatsoever to determine the existence, relevance, completeness, accuracy, effectiveness or any other aspect of the Escrow Documents; and
- (g) not be liable for any loss, damage or destruction caused to the Operator arising from any loss of, damage to or destruction of the Escrow Documents.

2.2 If the Operator fails to perform a Run of the Model Suite pursuant to paragraph 1.1(a) of Schedule 13.3 (*Runs of the Model Suite*) and fails to return the copy of the Escrow Documents released pursuant to paragraph 2.1(d):

- (a) such failure to return the released copy to RfL shall be a contravention of this Agreement;
- (b) RfL may release the other copy of the Escrow Documents that are Placed in Escrow and take a copy thereof (the **Replacement Copy**) in order that RfL may perform a Run of the Model Suite pursuant to paragraph 1.1(b) of Schedule 13.3 (*Runs of the Model Suite*);
- (c) once copied, the Replacement Copy shall be Placed in Escrow; and
- (d) once the Run of the Model Suite has been approved or audited as provided for in paragraph 1.3 of Schedule 13.3 (*Runs of the Model Suite*) the Replacement Copy shall also be Placed in Escrow.

**SCHEDULE 13.3****Runs of the Model Suite****1. RUN OF THE MODEL SUITE**

1.1 Any Run of the Model Suite that is required for the purposes of this Agreement shall be performed after making any Model Changes and utilising the Revised Inputs and shall be performed by:

- (a) the Operator promptly on receiving notification of the Revised Inputs and any Model Changes from RfL pursuant to paragraph 2.3; or
- (b) RfL if the Operator fails to do so.

1.2 The party that performs the Run of the Model Suite pursuant to paragraph 1.1 shall provide the non-performing party with a reasonable opportunity to be in attendance and shall promptly notify such other party of the New Results.

1.3 RfL, as soon as reasonably practicable after receiving or generating the New Results pursuant to paragraph 1.2, shall either:

- (a) certify to the Operator its approval of the New Results; or
- (b) notify the Operator that it requires the Run of the Model Suite and its results to be audited by the Model Suite Run Auditor.

1.4 For purposes of paragraph 1.3(b), the requirement for an audit is one that requires the Model Suite Run Auditor either to certify:

- (a) that the New Results have been produced by applying the Revised Inputs (as provided to the Operator by RfL pursuant to paragraph 2.3) to the Financial Model after making the Model Changes (as provided to the Operator by RfL pursuant to paragraph 2.3); or
- (b) the restated values of FXD, VCRPI and PRPI to be specified for each Concession Year in the table set out in Appendix 1 (*Annual Concession Payment Figures*) to Schedule 11.2 (*Annual Concession Payments and Indexation*), and the assumed traction electricity price per kWh for each Concession Year specified in Appendix 2 (*Assumed Electricity Prices*) to Schedule 11.2 by itself applying the Revised Inputs (as provided to the Operator by RfL pursuant to paragraph 2.3) to the Financial Model after making the Model Changes (as provided to the Operator by RfL pursuant to paragraph 2.3).

1.5 The parties shall procure that any Model Suite Run Auditor is, as soon as reasonably practicable after his appointment, able to discharge the audit requirements.

1.6 The results as certified by RfL pursuant to paragraph 1.3 or by the Model Suite Run Auditor pursuant to paragraph 1.4 shall be final and binding on the parties, except in the case of manifest error.

1.7 The costs of any audit shall be met as the Model Suite Run Auditor may direct.

## 2. REVISED INPUTS AND MODEL CHANGES

2.1 Revised Inputs means:

- (a) the data that the Suite of Models utilised in order to produce the Old Results, as such data is recorded in the Suite of Models released to the Operator by RfL pursuant to paragraph 2.1(d) of Schedule 13.2 (*Identity of the Suite of Models*) or released by RfL pursuant to paragraph 2.2 of Schedule 13.2 for the purposes of a Run of the Model Suite; but
- (b) amended, whether by way of increase, reduction or other alterations to such data, (if at all) only as the parties may agree or RfL may reasonably determine is required by the provisions of paragraphs 3 (*Agreement or Determination of Revised Inputs*) to 7 (*Estimated Revisions*) (inclusive) in respect of a Change in order to produce the New Results.

2.2 **Model Changes** means any changes that the parties may agree or RfL may reasonably determine are required to the Financial Model and/or the Operational Models, as released to the Operator by RfL pursuant to paragraph 2.1(d) of Schedule 13.2 or released by RfL pursuant to paragraph 2.2 of Schedule 13.2 for purposes of a Run of the Model Suite, as a consequence of and in order to give effect to the Revised Inputs.

2.3 RfL shall provide a written statement of the Revised Inputs and any Model Changes to the Operator for purposes of paragraph 1.1 promptly after they have been agreed or determined.

## 3. AGREEMENT OR DETERMINATION OF REVISED INPUTS

The parties shall agree or RfL shall reasonably determine the Revised Inputs that are required in respect of a Change:

- (a) on the basis of the general adjustments and/or assumptions referred to in paragraph 4 (*General Adjustments/Assumptions*);
- (b) on the basis of the assumptions in the Record of Assumptions as added to and/or amended (if at all) in accordance with paragraph 5 (*Assumptions in the Record of Assumptions*);
- (c) so as to provide for profit in accordance with paragraph 6 (*Revised Input for Profit*); and
- (d) so as to provide for Estimated Revisions in accordance with paragraph 7 (*Estimate of Revisions*).

## 4. GENERAL ADJUSTMENTS/ASSUMPTIONS

4.1 Revised Inputs are to be agreed between the parties or reasonably determined by RfL on the basis that:

- (a) any increase in costs relating to a Change; and/or
- (b) any reduction in revenues relating to a Change,

that is attributable to any activities, actions or omissions of the Operator which are not permitted under, or would otherwise constitute a contravention of, the terms of this Agreement, is to be disregarded.

4.2 Revised Inputs are to be agreed between the parties or reasonably determined by RfL on the basis that:

- (a) any reduction in costs relating to a Change; and/or
- (b) any increase in revenues relating to a Change,

that is attributable to any activities, actions or omissions of the Operator which are not permitted under, or would otherwise constitute a contravention of, the terms of this Agreement, is to be taken into account.

4.3 Revised Inputs are also to be agreed between the parties or reasonably determined by RfL on the basis that:

- (a) the Operator will use all reasonable endeavours to:
  - (i) reduce any costs that may arise or income that may be foregone; and
  - (ii) increase any revenue that may arise and avoid any cost that may be avoided, as a consequence of a Change; and
- (b) any requirement for borrowing in respect of Capital Expenditure by the Operator is dealt with in accordance with paragraph 2 (*Capital Expenditure*) of Schedule 13.4 (*Variations*).

## 5. ASSUMPTIONS IN THE RECORD OF ASSUMPTIONS

5.1 The parties shall (unless to do so would be contrary to paragraph 4 (*General Adjustments/Assumptions*)) agree or RfL shall reasonably determine Revised Inputs that are in accordance with the assumptions that are contained in the Record of Assumptions, as added to or modified pursuant to paragraph 5.2 or 5.3.

5.2 Where RfL reasonably considers that additional assumptions are required in relation to circumstances not dealt with by the assumptions in the Record of Assumptions, the parties shall agree or RfL shall reasonably determine additional assumptions for this purpose.

5.3 Where RfL reasonably considers that:

- (a) a Change is likely to result in an increase in either or both of the costs of the Operator and the revenues of the Operator; and
- (b) an assumption relevant to the Change contained in the Record of Assumptions does not accord with what would be achievable by, or experienced by, an economic and efficient Train Operator,

then the parties shall agree or RfL shall reasonably determine a modification to the assumption so that, as modified, it does accord with what would be achievable by, or experienced by, an economic and efficient Train Operator.

## 6. REVISED INPUT FOR PROFIT

6.1 The parties shall agree or RfL shall reasonably determine Revised Inputs in relation to profit:

- (a) where a Change is forecast to result in an increase to the Operator's costs and/or revenue, that provide for an increase in the amount of profit in any Concession Year equal to the lower of:
- (i) ■<sup>57</sup> per cent.; or
  - (ii) the average profit margin in the current Business Plan for the remaining Concession Term,

of the forecast increase in costs for that Concession Year; and/or

- (b) where a Change is forecast to result in a reduction in the Operator's costs and/or revenue, that provide for a decrease in the amount of profit in any Concession Year equal to the lower of:
- (i) ■<sup>58</sup> per cent.; or
  - (ii) the average profit margin in the current Business Plan for the remaining Concession Term,

provided that, the Revised Input in relation to profit where any such Change is a Charge Variation shall ensure that the Operator does not earn any additional profit or suffer any reduced profit as a consequence of a change to access charges resulting from that Charge Variation.

6.2 In agreeing or determining Revised Inputs in respect of any Change, the parties or RfL shall effect such change (if any) in the amount attributable to profit in paragraph 6.1 as they agree or RfL reasonably determines to reflect the risk for the Operator in continuing to provide the Concession Services on the terms of this Agreement after and as a result of the Change.

6.3 In agreeing or determining Revised Inputs for the purposes of any Protected Proposal, the parties or RfL shall effect such change (if any) to the amount attributable to profit as they agree or RfL reasonably determines:

- (a) fairly rewards the Operator for proposing the Protected Proposal; and
- (b) reasonably incentivises the Operator to propose further Protected Proposals,

by sharing with the Operator a reasonable amount of the additional profit that is expected to arise from implementing the Protected Proposal.

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<sup>57</sup> This text has been redacted by Rail for London in accordance with the provisions of the Freedom of Information Act 2000.

<sup>58</sup> This text has been redacted by Rail for London in accordance with the provisions of the Freedom of Information Act 2000.



## 7. ESTIMATED REVISIONS

7.1 This paragraph 7 applies only where and to the extent that, prior to the Run of the Model Suite, payments made between RfL and the Operator have been altered in accordance with Estimated Revisions notified by RfL to the Operator pursuant to paragraph 2 (*Estimated Financial Consequences*) of Schedule 13.1 (*Financial Consequences of Change*).

7.2 No Revised Inputs shall be made for Estimated Revisions that have been paid or are to be paid in respect of any Change.

7.3 Where Estimated Revisions have been paid and/or are to be paid then, as soon as reasonably practicable after the performance of the related Run of the Model Suite, the parties shall agree or RfL shall reasonably determine the difference (the ***Reconciliation Amount***) between:

- (a) the total amount of Estimated Revisions paid and/or to be paid; and
- (b) the total amount of the payments, as determined by that Run of the Model Suite, in respect of the same period as the period over which Estimated Revisions have been paid/or are to be paid.

7.4 The Reconciliation Amount shall be paid by the Operator to RfL where it is positive and paid by RfL to the Operator where it is negative, in either case, on the first Payment Date after agreement or determination by way of Other Adjustment.



## SCHEDULE 13.4

### Variations

#### 1. VARIATIONS TO THIS AGREEMENT

##### Right to vary

1.1 The terms of this Agreement may be varied as follows but not otherwise:

- (a) by RfL, in relation to:
  - (i) any aspect of the Concession Services; and
  - (ii) any provision of this Agreement other than those provisions specified in paragraph 1.2,

by service of a notice on the Operator referring to this paragraph 1.1(a) and setting out the variation to the terms of this Agreement; and

- (b) in relation to any other provision of this Agreement, by agreement in writing between the parties to that effect,

(each a *Variation*).

##### Restricted provisions

1.2 Without prejudice to RfL's rights under paragraph 1.1(a), the terms of each of clause 4 (*Term*) (to the extent any Variation would have the effect of shortening the Concession Term), Schedule 11 (*Payments*), Schedule 13 (*Changes and Variations*), Schedule 14 (*Financial Obligations and Credit Support*), Schedule 17 (*Remedies, Termination and Expiry*), Schedule 18 (*Continuity, Restrictions on Dealing and Transfer*) and Schedule 19 (*Continuation of London Overground Concession*) shall not be varied at any time other than in accordance with the terms of this Agreement or with the agreement of the parties.

##### TfL Direct Investment and Variations

1.3 Where a Variation involves TfL Direct Investment and such TfL Direct Investment will have, in RfL's reasonable opinion, the effect of making it easier for the Operator to satisfy any Performance Threshold than is the case before that TfL Direct Investment is made, then that Variation shall also include an adjustment to make that Performance Threshold more challenging in order to maintain the risk to the Operator that applies before that TfL Direct Investment is made of satisfying that Performance Threshold.

##### Representations

1.4 RfL shall, to the extent reasonably practicable, allow the Operator a reasonable opportunity to make representations to RfL concerning any Variation to be made in accordance with paragraph 1.1(a), prior to making any such Variation.

## Variation Procedures

1.5 RfL may:

- (a) issue, revise and withdraw from time to time procedures that it requires to be followed for the purposes of orderly consideration of Variations. This will include for the purpose of establishing in relation to any Change whether it is a Qualifying Change; and
- (b) require the Operator to provide any information that RfL reasonably requires for this purpose (including in relation to prospective change to profit, costs and revenue as a consequence of proceeding with the Variation).

1.6 Procedures issued pursuant to paragraph 1.5 may provide for indicative iterations of Runs of the Model Suite in relation to one or more Changes that RfL is considering and may also provide for any number of Changes to be grouped together as a single Change for the purposes of agreeing or determining Revised Inputs and then performing a Run of the Model Suite.

1.7 Procedures issued pursuant to paragraph 1.5 shall have contractual effect between the parties in accordance with their terms.

## Operator proposed Variations are Protected Proposals

1.8 The Operator may notify RfL of any proposal for a Variation by notice setting out the proposed method of implementing such Variation including:

- (a) the time scale for doing so;
- (b) the effect (if any) on the timing of the performance of its other obligations under this Agreement;
- (c) the impact of effecting the proposed Variation on the provision of the Concession Services and the Operator's proposals as to how to minimise such impact; and
- (d) the financial consequences of implementing the Variation proposed by the Operator in terms of the Revised Inputs that the Operator considers the Variation would require.

1.9 RfL shall be under no obligation to consider a Variation proposed by the Operator but if it wishes to do so, it shall do so pursuant to paragraph 1.1 of this Schedule 13.4.

1.10 Where the Operator proposes a Variation in sufficient detail for it to be apparent that its implementation is likely to result in an increase in the overall profitability of the Operator through costs saving measures (a ***Protected Proposal***), RfL may not proceed with the Protected Proposal or seek to implement the substance of it by proposing a Variation of its own without complying with the provisions of paragraph 6 (*Revised Input for Profit*) of Schedule 13.3 (*Runs of the Model Suite*).

## 2. CAPITAL EXPENDITURE

### Capital Expenditure Threshold

2.1 The Operator shall notify RfL promptly if it reasonably expects that a Change to which paragraph 1 (*Variations to this Agreement*) relates would require it to incur, singly or in aggregate with other Changes from time to time, Capital Expenditure in excess of:

- (a) 0.5 per cent. of its annual Turnover as disclosed by its latest available Annual Audited Accounts in any of the first four Concession Years; and
- (b) £1 million (indexed by reference to the Retail Prices Index) thereafter,

and, in each case, when so notified, RfL shall either:

- (i) withdraw the Change;
- (ii) undertake to meet the excess through additional funding as and when such Capital Expenditure is incurred; or
- (iii) direct the Operator to use all reasonable endeavours to borrow or otherwise raise the money required to fund any Change on commercial terms and at rates which are consistent with market conditions at the time.

### Operator to Seek Finance

2.2 If RfL elects to require the Operator to use all reasonable endeavours as described in paragraph 2.1(iii) then the Operator shall:

- (a) seek finance from a representative range of lending institutions and other financial institutions including those which at that time provide finance to the Operator and the Parent;
- (b) if it is unable to raise funding, provide RfL with all information RfL may reasonably require in relation to the efforts made by the Operator and the reasons for a failure to raise additional finance;
- (c) so far as it is able (having used all reasonable efforts to do so), the Operator shall provide to RfL letters from lenders and financiers it has approached for finance stating their reasons for refusing to provide it and if RfL so requires, arrange and attend meetings with them for RfL to discuss those reasons; and
- (d) if funding is not available, or is not available on terms that RfL considers to be commercial terms or at rates which are consistent with market conditions at that time RfL may:
  - (i) withdraw the Change; or
  - (ii) undertake to fund the Capital Expenditure as and when such Capital Expenditure is incurred.

**Treatment of Borrowings in Revised Inputs**

2.3 In calculating the Revised Inputs for the purposes of any Change referred to in this paragraph 2, the Operator shall account for the Capital Expenditure in accordance with international accounting standards, taking into account the basis on which such Capital Expenditure has been financed.

**Meaning of Capital Expenditure**

2.4 The expression *Capital Expenditure* when used in this Schedule 13.4 refers to the nature of the expenditure incurred by the Operator and, accordingly, does not include expenditure incurred under operating leases.

**SCHEDULE 14**

**FINANCIAL OBLIGATIONS AND CREDIT SUPPORT**

**Schedule 14: Financial Obligations and Credit Support**

**Appendix 1: Form of Performance Bond**

**Appendix 2: Form of Guarantee**





## SCHEDULE 14

### Financial Obligations and Credit Support

#### 1. OBLIGATIONS

Except to the extent provided for under this Agreement, or as RfL may otherwise agree from time to time, the Operator shall not:

- (a) incur any liability or financial indebtedness except in the ordinary course of providing and operating the Concession Services;
- (b) make any loan or grant any credit, or have or permit to subsist any loan or any credit, to any person (other than the Inter-company Loan Facility, the deposit of cash with a Bank as permitted under paragraph 1(d) or to an employee in the ordinary course of its business);
- (c) create or permit to subsist any Security Interest over any of its assets or property or give any guarantee or indemnity to or for the benefit of any person or otherwise assume liability or become obliged (actually or contingently) in respect of any obligation of any other person, in each case other than in the ordinary course of the business of providing and operating the Concession Services; or
- (d) create or acquire any subsidiary or make or have any investment in any other entity, except for the deposit of cash with a Bank.

#### 2. PERFORMANCE BOND AND GUARANTEE

##### Requirement to procure a Performance Bond and Guarantee

2.1 The Operator shall on or prior to the date of this Agreement, procure the provision of an executed:

- (a) Performance Bond with a value of █████<sup>59</sup> during the period from (and including) the date of this Agreement to (and including) the Performance Bond Longstop Date, as security to RfL for the payment of all sums that the Operator may be liable from time to time to pay to RfL under this Agreement, including any liability arising under paragraphs 2.4 and 2.5 of Schedule 17.4 (*Termination and Expiry*); and
- (b) Guarantee as security to RfL for the performance by the Operator of all of its obligations under this Agreement.

2.2 The Operator shall maintain the continuing validity and effectiveness of the Performance Bond (including any replacement thereof) and the Guarantee:

- (a) from, in each case, the date that such security is provided to RfL in executed form and for the duration of the Concession Period; and

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<sup>59</sup> This text has been redacted by Rail for London in accordance with the provisions of the Freedom of Information Act 2000.

- (b) following the end of the Concession Period, for the period that obligations or liabilities of the Operator in connection with this Agreement remain outstanding or unperformed, provided that, in the case of:
- (i) the Performance Bond, such period shall expire one year after the Expiry Date (as that date may be extended in accordance with this Agreement (the *Performance Bond Longstop Date*)); and
  - (ii) the Guarantee, such period shall expire three years after the end of the Concession Period, save to the extent any claim has been made under the Guarantee prior to the expiry of that period, in which case the Guarantee shall remain in full force and effect in relation to any such claim until the date of its withdrawal, satisfaction or dismissal by a final and binding order of a court of competent jurisdiction.

### **Replacement or renewal of Performance Bond**

2.3 The Operator shall replace, renew or extend the Performance Bond with a replacement Performance Bond issued by a Bond Provider with the Required Rating and that meets the requirements of paragraphs 2.1 and 2.2:

- (a) within 15 Business Days of the Bond Provider's rating falling below the Required Rating; and
- (b) if the Performance Bond is due to expire prior to the Performance Bond Longstop Date (the *Interim Performance Bond Expiry Date*), on or before the date falling 15 Business Days prior to any Interim Performance Bond Expiry Date.

### **Demands under the Performance Bond**

2.4 The Performance Bond shall be on terms that it is payable without further enquiry by the Bond Provider to RfL for the full amount (or permitted balance thereof if a demand or demands have already been made) in London in accordance with RfL's written demand(s) on the Bond Provider, certifying as to any one or more of the following:

- (a) whether or not this Agreement is, or is to be, terminated as a result thereof:
  - (i) the Operator has failed to pay any sum to RfL which is due and payable under the terms of this Agreement; or
  - (ii) an Event of Default has occurred and is continuing and RfL expects to incur additional costs in connection with early termination of this Agreement, including costs referred to in paragraph 2.4 of Schedule 17.4 (*Termination and Expiry*);
- (b) that this Agreement has either terminated or expired and, in either case, there are liabilities or obligations outstanding from the Operator to RfL;
- (c) that the Operator has failed to perform or comply with its obligations under the Supplemental Agreement; or
- (d) the Operator has not provided a replacement, renewed or extended Performance Bond when required pursuant to paragraph 2.3.

- 2.5 If RfL makes a demand under paragraph 2.4(d), then:
- (a) any such amount demanded shall be paid by the Bond Provider into an interest-bearing account with a clearing bank in London and held on trust for RfL and the Operator for application in or towards amounts in respect of which RfL would have been entitled to make any demand under the Performance Bond;
  - (b) any interest accruing in such account and any balance remaining at the Performance Bond Longstop Date shall, subject to RfL's right of set-off under paragraph 6 (*Set-off*) of Schedule 20 (*Other Provisions*), belong to the Operator; and
  - (c) if the Operator subsequently delivers a replacement, renewed or extended Performance Bond that meets the requirements of paragraphs 2.1 and 2.2, the balance standing to the credit of the account referred to in paragraph 2.5(b) (including any interest) shall belong to the Operator, and RfL shall promptly take such steps as are reasonably requested by the Operator to ensure the release of such balance to the Operator.
- 2.6 Any reference in this Agreement to circumstances in which RfL may issue a demand notice or take any other action under the Performance Bond or the Guarantee shall be without prejudice to the generality of paragraph 2.1(a) or (b) respectively.

### 3. FINANCIAL RATIO

#### Lock-up Period

- 3.1 The Operator may not without RfL's prior consent:
- (a) declare or pay any dividend (equity or preference) or make any other distribution including surrendering any taxable losses to any of its Affiliates or pay any of its Affiliates in respect of taxable losses that they wish to surrender to the Operator;
  - (b) pay management charges to any of its Affiliates in excess of those specified in the Initial Business Plan or any Updated Business Plan; or
  - (c) make payment under any intra-group borrowings, including under the Inter-company Loan Facility,

during any Lock-up Period if either of the circumstances referred to in paragraph 3.2 apply.

- 3.2 The restrictions described in paragraph 3.1 shall apply where:
- (a) the ratio of Current Assets to Current Liabilities is less than the ratio of 1:1 and/or the Operator's minimum cash balance is less than █████<sup>60</sup>, in each case as shown in the latest Management Accounts, in which case, the Lock-up Period shall continue until the ratio of Current Assets to Current Liabilities, as shown in the latest Management Accounts, is once again equal to or more than the ratio of 1:1; or
  - (b) the Management Accounts for any three Reporting Periods out of any 13 consecutive Reporting Periods (the *Financial Performance Measurement Period*) disclose that the ratio of Current Assets to Current Liabilities is less than the ratio of 1:1 and/or the

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<sup>60</sup> This text has been redacted by Rail for London in accordance with the provisions of the Freedom of Information Act 2000.

Operator's minimum cash balance is less than ■■■<sup>61</sup>, in which case, the Lock-up Period shall continue for a period of 13 consecutive Reporting Periods commencing with the next Reporting Period after the Financial Performance Measurement Period, regardless of whether the ratio of Current Assets to Current Liabilities, as shown in any Management Accounts relating to any of the Reporting Periods in that Lock-up Period, is equal to or more than the ratio of 1:1.

3.3 Where any Lock-up Period referred to in paragraph 3.2(b) occurs, the next Financial Performance Measurement Period shall not commence until the next Reporting Period after the end of that Lock-up Period, provided that the Lock-up Period referred to in paragraph 3.2(a) may apply from the next Reporting Period after the end of any Financial Performance Measurement Period where either of the circumstances referred to in paragraph 3.2(a) apply.

#### **Minimum Share Capital**

3.4 The Operator shall procure that the Minimum Share Capital is fully paid up in cash within 30 days of the date of this Agreement and that no part of the Minimum Share Capital is repaid until the expiry of this Agreement.

#### **Inter-company Loan Facility**

3.5 The Operator shall procure that the Inter-company Loan Facility is available to it on the terms set out in the Support Letter within 30 days of the date of this Agreement and for the remainder of the Concession Term.

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<sup>61</sup> This text has been redacted by Rail for London in accordance with the provisions of the Freedom of Information Act 2000.

**APPENDIX 1 TO SCHEDULE 14**  
**FORM OF PERFORMANCE BOND**

**Dated** \_\_\_\_\_ 20[\_\_\_\_\_]

[\_\_\_\_\_]

**RAIL FOR LONDON LIMITED**

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**ON-DEMAND PERFORMANCE BOND**

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Freshfields Bruckhaus Deringer LLP  
65 Fleet Street  
London EC4Y 1HS

**THIS BOND** is made as a deed on [\_\_\_\_] 20[\_\_\_\_]

**BETWEEN:**

- (1) [\_\_\_\_] whose registered office is at [\_\_\_\_] and registered number is [\_\_\_\_] (the **Bond Provider**); and
- (2) **RAIL FOR LONDON LIMITED** whose registered office is at Windsor House, 42-50 Victoria Street, London SW1H 0TL and registered number is 05965930 (**RfL**).

**RECITALS**

(A) By a concession agreement to be made between RfL and [\_\_\_\_] (the **Operator**) on [\_\_\_\_] (the **Concession Agreement**), as amended or varied from time to time, the Operator was awarded the right to operate the services relating to the concession in accordance with the terms of the Concession Agreement, as more particularly specified and defined in the Concession Agreement.

(B) Under the Concession Agreement, the Operator is obliged to procure, in favour of RfL, a performance bond.

(C) The Bond Provider has agreed with RfL, at the request of the Operator, to provide this performance bond in satisfaction of the Operator's obligation referred to in Recital (B) (this **Bond**).

**THE PARTIES AGREE AS FOLLOWS:**

**1. OBLIGATION TO MEET DEMANDS UNDER THIS BOND**

The Bond Provider irrevocably and unconditionally undertakes to pay to RfL or its assigns, immediately on receipt of the first and all subsequent written demands to the Bond Provider, the sum stated in each such demand, without proof or conditions. RfL may at any time make any number of demands under this Bond provided that the maximum aggregate liability of the Bond Provider under this Bond shall not exceed the sum of [REDACTED]<sup>62</sup> during the period from (and including) the date of this Bond to (and including) the Performance Bond Longstop Date, (the **Maximum Amount**).

**2. PRIMARY OBLIGATION**

The Bond Provider's obligation to make payment under this Bond shall be a primary, independent, irrevocable and absolute obligation and it shall not be entitled to delay or withhold payment for any reason whatsoever.

**3. DEMAND IS CONCLUSIVE EVIDENCE OF LIABILITY**

3.1 A demand shall be conclusive evidence of the Bond Provider's liability and of the amount of the sum or sums which it is liable to pay to RfL, notwithstanding any objection made by the Operator or any other person. The Bond Provider shall have no right and shall not be under any duty or responsibility to enquire:

- (a) into the reason or circumstances of any demand;

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<sup>62</sup> This text has been redacted by Rail for London in accordance with the provisions of the Freedom of Information Act 2000.

- (b) the respective rights, obligations and/or liabilities of RfL and the Operator under the Concession Agreement; or
- (c) the authenticity of any written demand made by or the authority of the persons signing any written demand by RfL.

3.2 RfL shall not be obliged, before enforcing any of its rights or remedies conferred upon it by this Bond or by law, to take any step or action, including, without limitation:

- (a) the taking of any legal proceedings or action or the obtaining of any judgment against the Operator in any court, arbitration or adjudication;
- (b) the making or filing of any claim in bankruptcy, liquidation, winding up or dissolution of the Operator; or
- (c) the pursuance or exhaustion of any other right or remedy against the Operator,

and the liabilities of the Bond Provider under this Bond may be enforced irrespective of whether any legal proceedings are being or have been taken against the Operator.

#### **4. NO CLAIMS**

The Bond Provider must not (so long as the Operator has any actual or contingent obligations pursuant to the Concession Agreement) by reason of performance by it of its obligations under this Bond or on any other ground:

- (a) claim or recover by the institution of proceedings or the threat of proceedings or otherwise any sum from the Operator or claim any set-off or counterclaim against the Operator; or
- (b) claim or prove in a liquidation or other insolvency proceeding of the Operator in competition with RfL in respect of any payment by the Bond Provider under this Bond and in case the Bond Provider receives any sums from the Operator in respect of any payment of the Bond Provider under this Bond, the Bond Provider must hold such monies on trust for RfL so long as any sums are payable (contingently or otherwise) under this Bond.

#### **5. PAYMENTS**

All payments under this Bond shall be in pounds sterling and shall be made free and clear of, and without any set-off, counterclaim or deduction on account of, any liability whatsoever including, without limitation, any present or future taxes, duties, charges, fees, deductions or withholdings of any nature whatsoever and by whomsoever imposed.

#### **6. DURATION**

This Bond is a continuing obligation and shall remain in full force and effect until the earlier of:

- (a) the payment by the Bond Provider to RfL of a sum or sums in aggregate which equals or equal the Maximum Amount; or

(b) [\_\_\_\_],<sup>63</sup>

when it shall expire and cease to be valid, whether or not this Bond is returned to the Bond Provider except in respect of any demand made by RfL in accordance with clause 1 (*Obligation to meet demands under this Bond*) on or before such date.

## **7. REQUIREMENTS FOR MAKING DEMANDS**

All demands to be made in accordance with clause 1 (*Obligation to meet demands under this Bond*) must be in writing and be sent by hand, courier, prepaid first-class post or recorded delivery to the Bond Provider at [\_\_\_\_]<sup>64</sup> (marked for the attention of [\_\_\_\_]<sup>65</sup>), and:

- (a) any demands sent by prepaid first-class post or recorded delivery will be deemed (in the absence of evidence of earlier receipt) to have been delivered at 9.00 a.m. on the second business day (which expression means a day (excluding Saturdays) on which banks generally are open in the City of London for the transaction of normal banking business) after posting;
- (b) any demands sent by courier will be deemed to have been delivered on the date and at the time that the courier's delivery receipt is signed; and
- (c) the Bond Provider may by five days' written notice to RfL change its postal address or addressee for receipt of such demands.

## **8. TRANSFER**

8.1 RfL may assign, transfer or novate the benefit of, and its rights under, this Bond to any person to whom the Concession Agreement is assigned, transferred or novated by RfL without having to obtain the consent of the Bond Provider, and RfL shall notify the Bond Provider of the identity of any such assignee, transferee or novatee within 20 Business Days of any such assignment, transfer or novation.

8.2 The Bond Provider shall not assign, transfer or novate this Bond in whole or in part without the prior written consent of RfL.

## **9. VALID AND BINDING OBLIGATION**

The Bond Provider hereby covenants, warrants and represents that it is duly authorised to enter into, deliver and perform its obligations under this Bond and that it constitutes valid, binding and enforceable obligations of the Bond Provider in accordance with its terms.

## **10. RIGHTS OF THIRD PARTIES**

A person who is not a party to this Bond has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Bond.

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<sup>63</sup> Insert date in execution version. Total period of bond coverage (whether made up of a series of bonds or a single bond) to be 12 months after the Expiry Date of the Concession Agreement (including possible extensions thereto).

<sup>64</sup> Insert address of Bond Provider in execution version.

<sup>65</sup> Insert for whose attention demands are to be marked in execution version.



**11. INVALIDITY**

If any provision of this Bond is or becomes invalid, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired in any way.

**12. ENTIRE AGREEMENT**

The terms of this Bond constitute the entire agreement and understanding between the parties to this Bond in connection with the subject matter to this Bond. Neither party to this bond has relied upon any representation by the other party except as expressly set out in this Bond.

**13. GOVERNING LAW AND JURISDICTION**

13.1 This Bond and any dispute, controversy, proceedings or claim of whatever nature arising out of or in any way relating to this Bond or its formation (including any non-contractual disputes or claims) shall be governed by and construed in accordance with English law.

13.2 The parties irrevocably agree that the courts of England shall have exclusive jurisdiction to hear and decide any suit, action or proceedings, and/or to settle any disputes, which may arise out of or in any way relate to this Bond or its formation and, for these purposes, each party irrevocably submits to the jurisdiction of the courts of England. Nothing in this clause 13.2 shall affect the ability of RfL to enforce any judgment against the Bond Provider in any jurisdiction.

**IN WITNESS** whereof this Bond has been executed as a deed on the date first above written.

SIGNED FOR AND ON  
BEHALF OF **[BOND PROVIDER]**

DIRECTOR:

DIRECTOR/SECRETARY:



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

DIRECTOR:



.....

IN THE PRESENCE OF:

SIGNATURE OF WITNESS:

NAME OF WITNESS:

ADDRESS OF WITNESS:



.....

.....

.....

**APPENDIX 2 TO SCHEDULE 14**

**FORM OF GUARANTEE**

**Dated** \_\_\_\_\_ 20[\_\_\_\_\_]

[\_\_\_\_\_]

**RAIL FOR LONDON LIMITED**

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**GUARANTEE**

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Freshfields Bruckhaus Deringer LLP  
65 Fleet Street  
London EC4Y 1HS

**THIS DEED** is made on [\_\_\_\_] 20[\_\_\_\_]

**BETWEEN:**

- (1) [\_\_\_\_] (No. [\_\_\_\_]) whose registered office is at [\_\_\_\_] (the *Guarantor*); and
- (2) **RAIL FOR LONDON LIMITED** (No. [\_\_\_\_]) whose registered office is at [\_\_\_\_] and registered number is [\_\_\_\_] (*RfL*).

**RECITALS**

(A) By a concession agreement to be made between RfL and [\_\_\_\_] (the *Operator*) on [\_\_\_\_] (the *Concession Agreement*), as amended or varied from time to time, the Operator was awarded the right to operate London Overground in accordance with the terms of the Concession Agreement, as more particularly specified and defined in the Concession Agreement.

(B) The Guarantor has agreed with RfL, at the request of the Operator, to guarantee the due and proper performance of the Operator's obligations under the Concession Agreement upon the terms and conditions of this Guarantee.

**THE PARTIES AGREE as follows:**

**1. DEFINITIONS AND INTERPRETATION**

1.1 In this Guarantee, words and phrases commencing with capital letters will, unless defined below or a contrary intention appears, have the same meaning ascribed to them under the Concession Agreement:

*Guaranteed Obligations* has the meaning given to it in clause 2.1(a);

*Relevant Right* has the meaning given to it in clause 11 (*Waiver of Relevant Rights*); and

*Taxes* means any kind of tax, duty, levy or other charge (other than Value Added Tax) whether or not similar to any in force at the date of this Guarantee and whether imposed by a local, governmental or other relevant authority in the United Kingdom or elsewhere.

1.2 In the event of any conflict between the Concession Agreement and this Guarantee, the latter will prevail.

**2. GUARANTEE AND INDEMNITY**

**Guarantee**

2.1 In consideration of RfL entering into the Concession Agreement with the Operator, the Guarantor irrevocably and unconditionally:

- (a) guarantees to RfL the due and punctual performance and observance by the Operator of each and all of its duties and obligations (whether express, implied, actual or contingent) under the Concession Agreement (the *Guaranteed Obligations*) when they or any part of them become due and performable according to the terms of the Concession Agreement; and

- (b) covenants with and undertakes to RfL fully to perform and observe such Guaranteed Obligations (or to procure the full performance and observance thereof) within 30 Business Days of written demand in accordance with the terms of this Guarantee if the Operator shall fail in any respect to perform and observe the same.

### **Indemnity**

2.2 The Guarantor, as principal obligor and as separate and independent obligations and liabilities from its obligations and liabilities under clause 2.1, agrees to indemnify RfL against all loss, debt, damage, interest, liability, cost and expense (including legal expenses) incurred or suffered by RfL by reason of a failure by the Operator to perform any or all of the Guaranteed Obligations when they are due and performable and undertakes to pay to RfL immediately on RfL's first written demand, the amount of that loss, debt, damage, interest, liability, cost and expense without set-off or counterclaim and free and clear of, and without deduction for or on account of, any present or future taxes, duties, charges, fees, deductions or withholdings of any nature whatsoever.

### **More than one demand**

2.3 RfL may serve more than one demand under this clause 2.

### **Awards**

2.4 The Guarantor agrees to satisfy and discharge any court, arbitrator or adjudicator's award made against the Operator in favour of RfL.

### **Right to amend Concession Agreement**

2.5 The Guarantor irrevocably authorises RfL and the Operator to make any amendment or variation to the terms of the Concession Agreement in their absolute discretion and the Guarantor shall be bound by and shall guarantee all of the Guaranteed Obligations under the Concession Agreement as amended or varied.

### **Limit of liability**

2.6 Without prejudice to clause 10 (*Costs and Expenses*) and notwithstanding any other provision of this Guarantee, the Guarantor's maximum aggregate liability hereunder shall not exceed the aggregate of an amount equal to:

- (a) the Overall Performance Cap in relation to Capped Performance Adjustments payable by the Operator to RfL, net of Capped Performance Adjustments payable by RfL to the Operator, in each case in any Thirteen Period Measurement Period; and
- (b) the Overall Liability Cap in relation to any other liability,

provided that, the Guarantor's liability shall be unlimited in relation to those matters set out in the Concession Agreement that are either expressed to be unlimited or are unlimited by operation of law.

### 3. PRESERVATION OF RIGHTS

3.1 The obligations of the Guarantor under this Guarantee are in addition to and independent of any other security that RfL may at any time hold in respect of the Guaranteed Obligations.

3.2 The Guarantor's obligations and liabilities under this Guarantee will remain in full force and effect and are not to be discharged, diminished or affected in any way by reason of any of the following:

- (a) the insolvency, bankruptcy, liquidation, winding-up, dissolution, administration, receivership, incapacity, amalgamation, reconstruction, re-organisation or any analogous proceeding relating to the Operator or the Guarantor;
- (b) any change in the status, function, constitution, control or ownership of the Operator, the Guarantor or RfL;
- (c) the taking, variation, compromise, renewal, release or refusal or neglect to perfect or enforce any right, remedies or securities against the Operator or any other person;
- (d) any purported obligation of the Operator or any other person to RfL (or any security for that obligation) becoming wholly or in part void, invalid, illegal or unenforceable for any reason;
- (e) any incapacity, lack of power, authority or legal personality or any change in the constitution of, or any amalgamation or reconstruction of, the Operator, RfL or any other person;
- (f) any variation to or amendment of the Concession Agreement (including, without limitation, any extension of time for performance, or any concession or waiver by RfL in respect of the Operator's obligations under the Concession Agreement) so that references to the Concession Agreement in this Guarantee shall include each such variation or amendment;
- (g) any provision of the Concession Agreement being or becoming illegal, invalid, void, voidable or unenforceable for any reason whatsoever;
- (h) any failure of supervision or detection or prevention of any default of the Operator under or in connection with the Concession Agreement;
- (i) any additional or advance payment to the Operator under or in connection with the Concession Agreement;
- (j) the suspension or termination of the Concession Agreement or of the employment of the Operator under the Concession Agreement for any reason whatsoever;
- (k) any indulgence, forbearance or waiver of any right of action or remedy of RfL against the Operator or negligence by RfL in enforcing any such right of action or remedy;
- (l) any compromise of any dispute with the Operator arising out of or in connection with the Concession Agreement; and

- (m) any other fact, circumstance, act, event, omission or provision of statute or law or otherwise which but for this clause might operate to discharge, impair or otherwise affect any of the obligations of the Guarantor under this Guarantee or any of the rights, powers or remedies conferred on RfL by this Guarantee or by law.

#### **4. NO COMPETITION**

4.1 The Guarantor must not (so long as the Operator has any actual or contingent obligations pursuant to the Concession Agreement) by reason of performance by it of its obligations under this Guarantee or on any other ground:

- (a) exercise any right it may have to be subrogated to or otherwise entitled to share in, any security or monies held, received or receivable by RfL or to claim any right of contribution in relation to any payment made by the Guarantor under this Guarantee;
- (b) following a claim being made on the Guarantor under this Guarantee, exercise any right it may have to demand or accept repayment of any monies due from the Operator or claim any set-off or counterclaim against the Operator;
- (c) claim or recover by the institution of proceedings or the threat of proceedings or otherwise any sum from the Operator or claim any set-off or counterclaim against the Operator;
- (d) take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of RfL under the Concession Agreement or otherwise; or
- (e) claim or prove in a liquidation or other insolvency proceeding of the Operator in competition with RfL in respect of any payment by the Guarantor under this Guarantee or otherwise be entitled in competition with RfL to claim or have the benefit of any security which RfL has or may hold for any monies or liabilities due or incurred by the Operator to RfL and in case the Guarantor receives any sums from the Operator in respect of any payment of the Guarantor under this Guarantee the Guarantor must hold such monies on trust for RfL so long as any sums are payable (contingently or otherwise) under this Guarantee.

4.2 The Guarantor undertakes to RfL that it has not taken and will not take any security from the Operator in respect of the Guarantor's obligations under this Guarantee and any security taken and all monies received by the Guarantor in breach of this provision will be held on trust for RfL as security for the obligations of the Guarantor.

#### **5. IMMEDIATE RECOURSE**

RfL will not be obliged, before enforcing any of its rights or remedies conferred upon it by this Guarantee or by law, to take any step or action, including, without limitation:

- (a) the taking of any legal proceedings or action or the obtaining of any judgment against the Operator in any court, arbitration or adjudication;
- (b) the making or filing of any claim in bankruptcy, liquidation, winding-up or dissolution of the Operator; or
- (c) the pursuance or exhaustion of any other right or remedy against the Operator,

and the liabilities of the Guarantor under this Guarantee may be enforced irrespective of whether any legal proceedings are being or have been taken against the Operator. The Guarantor hereby waives any right it may have of first requiring RfL to proceed against or enforce any rights or security or claim payment from any person before claiming it under this Guarantee.

## **6. REPRESENTATIONS AND WARRANTIES**

6.1 The Guarantor represents and warrants to RfL in the terms set out in the remainder of this clause 6.

### **Incorporation**

6.2 The Guarantor is duly incorporated and validly existing with limited liability under the laws of Germany and has the power to own its assets and carry on its business.

### **Power and Capacity**

6.3 The Guarantor has the power and capacity to enter into and comply with its obligations under this Guarantee.

### **Authorisation**

6.4 The Guarantor has taken all necessary action:

- (a) to authorise the entry into and compliance with its obligations under this Guarantee;
- (b) to ensure that its obligations under this Guarantee are valid, legally binding and enforceable in accordance with their terms; and
- (c) to make this Guarantee admissible in evidence in the courts of England.

### **Consents**

6.5 All consents and filings required by it for the conduct of its business as presently conducted and in connection with the entry into, performance, validity, enforceability and admissibility in evidence of this Guarantee have been unconditionally obtained and are in full force and effect.

### **No Contravention**

6.6 Neither the entry into of this Guarantee by the Guarantor nor the performance of any of its obligations under it do now or will:

- (a) conflict with its constitutional documents;
- (b) contravene any law, regulation, judgment or order to which the Guarantor is subject;  
or
- (c) breach any agreement or the terms of any consent binding on the Guarantor.



## 7. CONTINUING OBLIGATION

This Guarantee is a continuing guarantee and will, subject to clause 18 (*Expiry*), remain in full force and effect until each and every part of the Guaranteed Obligations have been discharged and performed in full.

## 8. SUSPENSE ACCOUNT

Until all Guaranteed Obligations have been irrevocably satisfied in full, RfL may place and keep any money received or recovered from the Guarantor in relation to the Guaranteed Obligations in a suspense account and interest accrued shall be credited to that account.

## 9. PAYMENTS

9.1 All payments to be made by the Guarantor to RfL under this Guarantee shall be made to RfL in immediately available cleared funds and paid in full in pounds sterling (or a successor currency) without set-off or counterclaim free of any present or future Taxes, deduction, levies, charges, fees or withholding whatsoever. If the Guarantor is obliged by law to make any deduction or withholding from any such payment, the amount due from the Guarantor in respect of such payment shall be increased to the extent necessary to ensure that, after the making of such deduction or withholding, RfL receives a net amount equal to the amount RfL would have received had no such deduction or withholding been made.

9.2 The Guarantor shall pay interest to RfL on all amounts due from it under this Guarantee from the date any such demand is made until payment of such amounts (both before and after any judgment) calculated on a daily basis at the Interest Rate.

9.3 All payments by the Guarantor under this Guarantee must be made to RfL to its account at a bank in the United Kingdom as RfL may notify the Guarantor on the date of this Guarantee or otherwise in any notice of demand served under the terms of clause 2 (*Guarantee and Indemnity*).

9.4 If a payment under this Guarantee is due on a day that is not a Business Day, the due date for that payment will instead be the next Business Day.

## 10. COSTS AND EXPENSES

The Guarantor will pay to RfL on demand the amount of all costs and expenses (including legal fees and other out-of-pocket expenses and any Value Added Tax or similar tax thereon) incurred by RfL in connection with the negotiation, preparation, execution, amendment, release, enforcement or attempted enforcement of, or preservation of RfL's rights under, this Guarantee, or in consequence of any payment made under this Guarantee (whether made by the Guarantor or a third person) being declared void for any reason whatsoever.

## 11. WAIVER OF RELEVANT RIGHTS

For the benefit of RfL and the Operator, the Guarantor waives any right or remedy that it has or may have to subrogation, indemnification or payment on any other basis by the Operator and any other remedy against the Operator (each a *Relevant Right*) by reason of or in connection with the performance of the Guarantor's obligations under this Guarantee in circumstances where the Operator promotes, enters into, or implements a voluntary

arrangement (under Part 26 of the Companies Act 2006). Damages shall not be an adequate remedy for RfL or the Operator in respect of a breach of this clause 11 and the parties shall consent to any application brought by RfL or the Operator for injunctive relief to prevent any such Relevant Right being enforced.

## **12. ASSIGNMENT**

RfL may assign, novate or otherwise transfer the benefit of, and its rights under, this Guarantee to any person to whom the Concession Agreement is assigned without having to obtain the consent of the Guarantor. The Guarantor shall not assign, novate or otherwise transfer this Guarantee or any right or obligation arising or pursuant to this Guarantee to any person.

## **13. THIRD PARTY RIGHTS**

Except for the Operator's rights under clause 10 (*Costs and Expenses*), a person who is not a party to this Guarantee has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Guarantee.

## **14. PARTIAL INVALIDITY**

If any provision of this Guarantee is or becomes invalid, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired in any way.

## **15. GOVERNING LAW**

This guarantee and any dispute, controversy, proceedings or claim of whatever nature arising out of or in any way relating to this Guarantee or its formation (including any non-contractual disputes or claims), shall be governed by and construed in accordance with English law.

## **16. JURISDICTION**

The parties irrevocably agree that the courts of England shall have exclusive jurisdiction to hear and decide any suit, action or proceedings, and/or to settle any disputes, which may arise out of or in any way relate to this Guarantee or its formation and, for these purposes, each party irrevocably submits to the jurisdiction of the courts of England. Nothing in this clause 16 shall affect the ability of RfL to enforce any judgment against the Guarantor in any jurisdiction.

## **17. NOTICES**

17.1 All demands and notices to be given under this Guarantee must be in writing and sent by hand, courier, prepaid first-class post or recorded delivery to the address of the relevant party set out in clause 17.2 or such other address as that party may by notice in writing nominate for the purpose of service and any demands or notices:

- (a) sent by prepaid first-class post or recorded delivery will be deemed (in the absence of evidence of earlier receipt) to have been delivered at 9.00 a.m. on the second Business Day after posting; and

(b) sent by courier will be deemed to have been delivered on the date and at the time that the courier's delivery receipt is signed.

17.2 Unless notified otherwise, all demands and notices shall be addressed to the parties as follows:

**[The Guarantor]**

Address: [\_\_\_\_\_]

Attention: [\_\_\_\_\_]

**RfL**

Address: [\_\_\_\_\_]

Attention: [\_\_\_\_\_]

**18. EXPIRY**

This Guarantee shall expire on the date which falls three years after the end of the Concession Period, save to the extent any claim has been made under this Guarantee prior to the expiry of such period, in which case this Guarantee shall remain in full force and effect in relation to any such claim until the date of its withdrawal, satisfaction or dismissal by a final and binding order of a court of competent jurisdiction.

**IN WITNESS** whereof this deed has been executed and delivered on the date first above written.

SIGNED FOR AND ON  
BEHALF OF [GUARANTOR]

DIRECTOR:

DIRECTOR/SECRETARY:



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

DIRECTOR:



.....

IN THE PRESENCE OF:

SIGNATURE OF WITNESS:

NAME OF WITNESS:

ADDRESS OF WITNESS:



.....

.....

.....

**SCHEDULE 15**

**CONCESSION MANAGEMENT PROVISIONS**

- Schedule 15.1: Personnel, Communications and Access**
- Schedule 15.2: Co-location**
- Schedule 15.3: Responsible procurement**
- Schedule 15.4: Environment**
- Schedule 15.5: Pensions**



## SCHEDULE 15.1

### Personnel, Communication and Access

#### 1. OPERATOR'S CONTRACT MANAGER

1.1 The Operator shall appoint a competent Contract Manager who shall have power and authority delegated to it by the Operator to act and to make decisions on behalf of the Operator in relation to this Agreement. The principal responsibilities of the Contract Manager to the Operator shall be, amongst other things:

- (a) to manage this Agreement on behalf of the Operator;
- (b) to ensure that the necessary resources within the Operator's organisation are made available expeditiously for the performance of the Operator's obligations under this Agreement;
- (c) to ensure that any necessary sub-contracts are placed and managed so that the requirements of this Agreement are fully met; and
- (d) to facilitate the Operator in fulfilling its obligations under this Agreement to RfL, including where necessary, to procure and co-ordinate the performance of third parties.

1.2 The Contract Manager may from time to time delegate any of the powers, functions and authorities vested in him to an assistant or agent and may at any time revoke any such delegation. Any such delegation or revocation shall be in writing signed by the Contract Manager and shall state which power, function or authority is thereby delegated or revoked and the persons to whom or from whom the same are delegated or revoked respectively. No such delegation or revocation shall have effect until RfL is deemed to have received notice of it in writing in accordance with paragraph 4.3 of Schedule 20 (*Other Provisions*).

#### 2. KEY PERSONNEL

2.1 The Operator shall identify a schedule of Key Personnel who shall be employed by the Operator in the performance of this Agreement. This shall include the following persons, which roles unless otherwise agreed by RfL shall be carried out by separate individuals:

- (a) a Managing Director;
- (b) a Contract Manager;
- (c) a safety manager, whose role will include responsibility for ensuring that the Operator complies with its legal obligations in relation to the Concession Services including the Safety Certificate (the *Safety Manager*);
- (d) a finance manager, whose role will include responsibility in relation to the Financial Model (the *Finance Manager*);
- (e) a manager whose role will include responsibility for managing the performance of the Infrastructure Managers and ensuring compliance by the Operator with Schedule 7 (*Operating Performance*) (the *Train Service Delivery Manager*);

- (f) a manager experienced in the provision of customer service, whose role will include responsibility for overseeing the Operator's compliance with the levels of customer service contemplated by this Agreement (the *Customer Service Manager*);
- (g) a manager experienced in the procurement and operation of rolling stock, whose role will include responsibility for facilitating the Operator's obligations under this Agreement in relation to the delivery of the Class 710 Units and its operation in revenue-earning passenger service (the *Fleet Manager*); and
- (h) a manager experienced in the introduction of new rolling stock into passenger revenue-earning service, whose role will include assisting the Class 710 Manufacturer, as the Class 710 Manufacturer requires, in introducing the Class 710 Fleet into passenger revenue-earning service in relation to certification, design and acceptance and test running (the *Class 710 Project Manager*).

2.2 The Operator shall procure that, provided they remain in the employment of a Parent, the individuals referred to in paragraph 2.1, unless RfL otherwise agrees:

- (a) remain in the related posts for the shorter of three years and the end of the Concession Period, except in the case of the Class 710 Project Manager, who shall remain in post until at least three months after the introduction of the Class 710 Fleet into passenger revenue-earning service;
- (b) are not transferred within the group of any Parent; and
- (c) devote substantially all of their time to performing the duties attached to those posts.

2.3 The Operator shall not appoint any Key Personnel or any other members of the Operator's Executive without the prior written consent of RfL (such consent not to be unreasonably withheld), except where any of those individuals are appointed pursuant to TUPE.

2.4 Where the Operator wishes to replace any Key Personnel, it shall provide RfL with a minimum of three months' notice of its proposal, together with its plan to employ that replacement.

2.5 The Operator shall provide to RfL an organisation chart detailing the responsibilities and reporting lines of each of the Key Personnel on or prior to the Start Date and shall update such chart (and provide a copy to RfL promptly thereafter) as and when any changes occur.

### 3. SENTINEL

Where RfL notifies the Operator that RfL is satisfied (acting reasonably) that:

- (a) the Sentinel scheme has been adopted as the accepted industry-wide railway competence scheme; and
- (b) participating in the Sentinel scheme will not require:
  - (i) the Operator to incur additional subscriptions over and above those which it would otherwise incur under any pre-existing scheme for managing and monitoring rail workers' competence and authority to work on the railways;
  - or



- (ii) the Concession Employees to undertake any additional training, except any induction training to be undertaken by the Operator's appointed administrators of the scheme in order to familiarise themselves with its requirements,

then the Operator shall within 12 months of that date of that notice, procure that all Concession Employees that are required to by the terms of the Sentinel scheme duly complete that training and carry Sentinel cards at all relevant times during the Concession Period.

#### **4. RfL'S CONCESSION MANAGER**

4.1 RfL shall appoint a competent Concession Manager who shall have power and authority delegated to him by RfL to act and to make decisions on behalf of RfL in relation to this Agreement and amend this Agreement on behalf of RfL. The principal responsibilities of the Concession Manager to RfL shall be, amongst other things:

- (a) to manage this Agreement on behalf of RfL;
- (b) to monitor the Operator's performance of its obligations under this Agreement and where appropriate, issue Remedial Plan Notices and agree the terms of Remedial Agreements;
- (c) to ensure that the necessary resources within RfL are made available expeditiously for the performance of RfL's obligations under this Agreement; and
- (d) to facilitate RfL in fulfilling its obligations under this Agreement to the Operator, including where necessary, to procure and co-ordinate the performance of third parties.

4.2 The Concession Manager may from time to time delegate any of the powers, functions and authorities vested in him to an assistant or agent and may at any time revoke any such delegation. Any such delegation or revocation shall be in writing signed by the Concession Manager and shall state which power, function or authority is thereby delegated or revoked and the persons to whom or from whom the same are delegated or revoked respectively. No such delegation or revocation shall have effect until the Operator is deemed to have received notice of it in writing in accordance with paragraph 4.3 of Schedule 20 (*Other Provisions*).

4.3 Except in cases of emergency, or as a consequence of the proper exercise of disciplinary procedures of RfL, RfL shall give the Contract Manager reasonable notice of a proposal to replace the Concession Manager.

#### **5. CONTROL OF COMMUNICATIONS, INFORMATION AND DOCUMENTS**

5.1 All correspondence between the Operator and RfL (other than correspondence in connection with the matters referred to in paragraph 4.1 of Schedule 20 (*Other Provisions*)) shall be sent to the Contract Manager and/or the Concession Manager (as appropriate) in accordance with the terms of paragraph 4.2 of Schedule 20.

5.2 The Operator shall use a logical and structured system for correspondence reference. All correspondence between the Operator and RfL shall be given a unique reference number

and, wherever possible, correspondence shall be cross-referenced to the relevant clause or paragraph of or schedule to this Agreement, as the context may require.

5.3 The Operator shall maintain a sequentially numbered register of all correspondence relating to London Overground. Such register shall record the reference number for each piece of correspondence, its date, a brief description of the topic covered in the correspondence, the date on which a response is due and the date on which a response was made or received.

5.4 The correspondence register referred to in paragraph 4.3 and any outstanding items shall be reviewed at each Concession Performance Meeting.

## **6. CONCESSION PERFORMANCE MEETINGS**

6.1 The parties shall hold a Concession Performance Meeting once in each Reporting Period at a time and location notified to the Operator by RfL.

6.2 The parties shall review the financial, operating and contractual performance of the Operator at each Concession Performance Meeting, using the contents of the latest Periodic Concession Report as a means of informing the agenda.

6.3 Each Concession Performance Meeting shall be chaired by the Concession Manager and minuted by the Concession Manager or his nominee from RfL. The minutes shall be published within seven Business Days of each such meeting.

6.4 The Operator shall procure that its Managing Director and such other directors as required shall attend each Concession Performance Meeting and each such representative shall have full power and authority delegated to him by the Operator to act and to make binding decisions on behalf of the Operator.

6.5 RfL shall be entitled to invite other members of the TfL Group to attend any Concession Performance Meeting, provided that RfL has confirmed to the Operator such attendance in advance.

6.6 In addition to the obligation to prepare the Periodic Concession Report pursuant to paragraph 2.2 of Schedule 16.1 (*Records, plans and reports*), the Operator shall prepare and present such additional reports to each Concession Performance Meeting as RfL may reasonably request. The Operator's obligations under this paragraph 5.6 are subject to the Operator receiving at least 28 days' notice of the requirement to prepare and present any such additional report.

6.7 No comment or failure to comment nor any agreement or approval, implicit or explicit by RfL or any other member of the TfL Group at such meetings will relieve the Operator of any of its obligations under this Agreement.

## **7. DEVELOPMENT OF RAILWAY INDUSTRY STANDARDS**

7.1 The Operator shall at all times during the Concession Period co-operate with TfL, RfL and any other competent authority in the development, modification, agreement and implementation of railway industry standards. References to *Railway Industry Standards* in this paragraph 7 shall include Railway Group Standards, TSIs, recommendations following

accident investigations and any consultation documents on any proposed legislative change affecting the railway industry.

7.2 In co-operating with RfL and/or any third party in developing any railway industry standards, the Operator shall make appropriately skilled and qualified Concession Employees reasonably available, free of charge to:

- (a) attend meetings with RfL and/or such third party to discuss and review the need for the development, agreement, amendment or need for derogation from any railway industry standards;
- (b) provide the Operator's opinion on any proposed railway industry standards;
- (c) provide the Operator's opinion on any existing railway industry standards or any replacement railway industry standards;
- (d) review and comment upon implementation timetables and programmes for any railway industry standards or any replacement railway industry standards;
- (e) make recommendations for modifications to any existing or new railway industry standards in the light of operating experience;
- (f) make representations to competent authorities to prevent the introduction of new railway industry standards where in the Operator's opinion the introduction of such new railway industry standards would cause disproportionate additional cost; and
- (g) make representations to competent authorities to seek derogations from the application of new railway industry standards where such new railway industry standards are judged inappropriate by the Operator.

## **8. SYSTEM INTERFACE COMMITTEES**

8.1 The Operator shall at all times during the Concession Period co-operate with the reasonable requirements of any relevant System Interface Committees in the development, modification, agreement and implementation of any system interface recommendations made by those committees.

8.2 In co-operating with any relevant System Interface Committee, the Operator shall make appropriately skilled and qualified Concession Employees reasonably available, free of charge to:

- (a) attend meetings with that committee to discuss and review the need for the development, agreement, amendment or need for derogation from any recommendations made by that committee;
- (b) provide the Operator's opinion on any such proposed recommendations;
- (c) review and comment upon implementation timetables and programmes for any such recommendations;
- (d) make recommendations for modifications to any existing or system interface recommendations in the light of operating experience; and

- (e) make representations to competent authorities to seek derogations from the application of such recommendations where the Operator reasonably believes that such derogations are appropriate.

**9. RIGHT OF ASSESSMENT OR INSPECTION**

9.1 The Operator shall, if requested by RfL, allow RfL:

- (a) to inspect and copy any records referred to in Schedule 16.1 (*Records, plans and reports*) and RfL may verify any such records; and
- (b) to inspect and copy at any reasonable time any books, records and any other material kept by or on behalf of the Operator and/or its auditors and any assets (including the Concession Assets) used by the Operator in connection with the Concession Services.

9.2 The Operator shall make available to RfL the information referred to in paragraph 9.1 and grant or procure the grant of such access (including to or from third parties) as RfL shall reasonably require in connection therewith.

9.3 RfL shall be permitted to take photographs, film or make a video recording, or make any other kind of record of any such inspection.

9.4 If any inspection reveals that information previously supplied to RfL was in any material respect inaccurate or if such inspection reveals any other material contravention of the Operator's obligations under this Agreement, the costs of any such inspection shall be borne by the Operator.

## SCHEDULE 15.2

### Co-location

#### 1. ACCOMMODATION FOR RFL MANAGEMENT TEAM

1.1 The Operator shall from the date referred to in paragraph 1.4 and at all times thereafter during the term of this Agreement provide secure, separate and fully serviced office accommodation for RfL's concession management team, within the same building as the Operator's management team, which building shall be located within Zone 1, 2 or 3 (the *RfL Accommodation*).

1.2 The Operator shall provide to RfL no later than eight weeks before the Start Date, its design proposal for the RfL Accommodation, which shall meet the following specification as a minimum:

- (a) one secure suite which RfL shall be able to control access to day-to-day;
- (b) one open-plan office that provides sufficient capacity for 12 workstations;
- (c) two separate senior managers' offices, each of not less than 150 square feet with facilities to hold meetings;
- (d) adequate furniture for meetings to be held in the offices referred to in paragraph 1.2(c) and in the remainder of the RfL Accommodation in order that RfL's employees may carry out their functions in relation to the performance of this Agreement;
- (e) adequate toilet and kitchen facilities for RfL's employees, provided that these facilities may be shared with Concession Employees;
- (f) a level of comfort and facilities that is consistent with the other areas of the building that are used by Concession Employees;
- (g) adequate office cleaning and waste disposal services (including secure waste disposal services); and
- (h) private, direct telephone lines for each workspace and each of the offices referred to in paragraph 1.2(c).

1.3 RfL shall review the Operator's design proposal for the RfL Accommodation and the parties shall, acting reasonably, thereafter no less than eight weeks prior to the Start Date, agree the design for the RfL Accommodation.

1.4 The RfL Accommodation shall be available for use on the Start Date and for the Concession Period, in each case without any unreasonable time restrictions through the common part of the building in which it is located.

1.5 The Operator shall procure that:

- (a) RfL's employees have access to a boardroom-style meeting room within the building in which the RfL Accommodation is located, provided that such meeting room may be a shared facility with Concession Employees. Such meeting room shall be of

sufficient capacity for those RfL employees that are located at the RfL Accommodation to all meet simultaneously; and

- (b) the Operator Control Room is located within the building in which the RfL Accommodation is located.

## **2. SUPPORT AND SERVICES**

2.1 The Operator shall co-operate with RfL to assist RfL in the successful mobilisation of its resources and the carrying out of its activities prior to the start of London Overground, and this co-operation shall include:

- (a) regularly consulting RfL (including RfL's information technology representatives) on the Operator's project plans for the Operator's fit out of the RfL Accommodation; and
- (b) taking reasonable steps to accommodate RfL's information technology requirements for the RfL Accommodation as soon as reasonably practicable.

2.2 The Operator shall establish a facilities management function prior to making the RfL Accommodation available to RfL and maintain that function, in each case for the purpose of rectifying or procuring the rectification of defects reported or identified in respect of the building in which the RfL Accommodation is located. The Operator shall procure that any such defects reported to it by RfL are duly recorded by that facilities management function and investigated and rectified promptly following such notification.

## SCHEDULE 15.3

### Responsible Procurement

#### 1. COMPLIANCE WITH LAWS

##### Bribery Act

1.1 The Operator shall comply with the Bribery Act 2010 and any guidance issued by the Secretary of State under it.

##### Crime and Disorder Act 1998

1.2 The Operator acknowledges that TfL is under a duty in accordance with section 17 of the Crime and Disorder Act 1998:

- (a) to have due regard to the impact of crime, disorder and community safety in the exercise of its duties;
- (b) where appropriate, to identify actions to reduce levels of crime and disorder; and
- (c) to exercise its functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area,

and in the performance of the Concession Services, the Operator will assist and co-operate with RfL, and will use reasonable endeavours to procure that its Direct Subcontractors observe these duties and assists and co-operates with RfL where possible to enable TfL to satisfy its duty.

#### 2. COMPLIANCE WITH POLICIES

2.1 The Operator, at no additional cost to RfL, undertakes to procure that all Concession Employees comply with all of TfL's policies and standards that are relevant to the performance of the Concession Services, including TfL's:

- (a) 'Code of Conduct' including the provisions set out in and those relating to safety, security, and any other on site regulations specified by TfL for personnel working at its premises or accessing TfL's computer systems; and
- (b) 'Drugs and Alcohol Policy'.

2.2 RfL shall procure that TfL provides the Operator on request with copies of the policies and standards referred to in paragraph 2.1 that may apply from time to time.

#### 3. CORRUPT GIFTS AND PAYMENT OF COMMISSION

The Operator shall not, and shall ensure that its employees, agents, Direct Subcontractors and Indirect Subcontractors do not, pay any commission, fees or grant any rebates to any employee, officer or agent of TfL or any member of the TfL Group nor favour any employee, officer or agent of TfL or any member of the TfL Group with gifts or entertainment of significant cost or value nor enter into any business arrangement with employees, officers or

agents of TfL or any member of the TfL Group other than as a representative of TfL, without TfL's prior written approval.

#### **4. EQUALITY AND DIVERSITY STATUTORY DUTIES**

##### **Duty not to discriminate**

4.1 Without limiting any other provision of this Agreement, the Operator shall (and shall procure that its Direct Subcontractors shall), in relation to London Overground:

- (a) not unlawfully discriminate; and
- (b) procure that the Concession Employees do not unlawfully discriminate,

within the meaning and scope of the Equality Act and any other relevant enactments in force from time to time relating to discrimination in employment.

##### **Equality Act duties**

4.2 The Operator acknowledges that under section 149 of the Equality Act, TfL is under a duty to have due regard for the need to, amongst other things:

- (a) eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by or under the Equality Act on the grounds of age, disability, gender reassignment, marriage and civil partnerships, pregnancy and maternity, race, religion and belief, sex and sexual orientation (a *Relevant Protected Characteristic*);
- (b) promote equality of opportunity between persons who share a Relevant Protected Characteristic and persons who do not share it. In providing the Concession Services, the Operator shall assist and cooperate with TfL where possible in satisfying this duty; and
- (c) foster good relations between people who share a Relevant Protected Characteristic and persons who do not.

4.3 The Operator shall inform TfL promptly in writing should it become aware of any proceedings brought against it in connection with this Agreement by any person for breach of the Equality Act.

##### **GLA Act duties**

4.4 The Operator, at no additional cost to RfL acknowledges that TfL is under a duty by virtue of a direction under section 155 of the GLA Act in respect of section 404(2) of that act to have due regard to the need to:

- (a) promote equality of opportunity for all persons irrespective of their race, sex, disability, age, sexual orientation or religion;
- (b) eliminate unlawful discrimination; and
- (c) promote good relations between persons of different racial groups, religious beliefs and sexual orientation,



and in providing the Concession Services, the Operator shall assist and co-operate with TfL where possible to enable TfL to satisfy its duty.

### **Direct Subcontractors**

4.5 On entering into any agreement with a Direct Subcontractor in relation to this Agreement, the Operator shall impose obligations upon the Direct Subcontractor to comply with this paragraph 4 as if the Direct Subcontractor was in the position of the Operator.

## **5. EQUALITY AND DIVERSITY PLANS**

### **Developing the plans**

5.1 The Operator shall develop each of the following plans:

- (a) a strategic equality and diversity plan;
- (b) an equality and diversity training plan; and
- (c) supplier diversity plan,

and submit a separate draft of each such plan to RfL no later than four months before the Start Date in accordance with the requirements of paragraph 5.2.

5.2 Each of the draft plans referred to in paragraph 5.1 shall set out in sufficient detail, the relevant requirements of the Equality and Diversity Framework.

5.3 RfL shall within one month of receipt of any of the Operator's draft plans referred to in paragraph 5.1, inform the Operator whether, in RfL's reasonable opinion meets the requirements of paragraph 5.2.

5.4 The Operator shall within 14 days of RfL providing its opinion pursuant to paragraph 5.2 in relation to any plan referred to in paragraph 5.1, amend the relevant draft plan in accordance with that opinion and reissue that amended plan to RfL. Such amended plan shall be, as appropriate:

- (a) the Strategic Equality and Diversity Plan;
- (b) the Equality and Diversity Training Plan; and
- (c) the Supplier Diversity Plan.

### **Electronic Library**

5.5 The Operator shall ensure that the Electronic Library at all times includes up-to-date versions of the Strategic Equality and Diversity Plan, the Equality and Diversity Training Plan and the Supplier Diversity Plan.

### **Strategic Equality and Diversity Plan**

5.6 During the Concession Period, the Operator shall comply with the Strategic Equality and Diversity Plan and shall procure that each of its Direct Subcontractors and Indirect Subcontractors adopts and implements an equality and diversity policy in respect of their respective employees engaged in relation to the performance of this Agreement which is at least as extensive in scope as the Strategic Equality and Diversity Plan.

### **Equality and Diversity Training Plan**

5.7 During the Concession Period, the Operator shall comply with the Equality and Diversity Training Plan in relation to all Concession Employees and shall procure that each of its Direct Subcontractors and its Indirect Subcontractors adopts and implements a diversity training plan in respect of their respective employees engaged in relation to the performance of this Agreement which is at least as extensive in scope as the Equality and Diversity Training Plan.

### **Supplier Diversity Plan**

5.8 During the Concession Period, the Operator shall comply with the Supplier Diversity Plan and shall procure that each of its Direct Subcontractors and its Indirect Subcontractors adopts and implements a supplier diversity training plan in relation to the performance of this Agreement which is at least as extensive in scope as the Supplier Diversity Plan.

## **6. DIVERSITY MONITORING AND REPORTING**

6.1 Subject to paragraph 6.2, the Operator shall provide to RfL on or before the Start Date and subsequently every six months thereafter (or at such lesser or greater intervals as determined by RfL acting reasonably and notified to the Operator) the following information:

- (a) the proportion of Concession Employees, agents and consultants and, to the extent reasonably possible, the employees of its Direct Subcontractors and Indirect Subcontractors, in each case engaged pursuant to the terms of the relevant sub-contracts in the performance of this Agreement, who are:
  - (i) female;
  - (ii) of non-white British origin or who classify themselves as being non-white British;
  - (iii) from the Local Community; and/or
  - (iv) disabled; and
- (b) the proportion of its Direct Subcontractors and Indirect Subcontractors that are SMEs and/or BAMEs.

6.2 The Operator shall ensure at all times that it, its Direct Subcontractors and its Indirect Subcontractors comply with the requirements of the Data Protection Act 1998 (as may be amended) in the collection and reporting of the information to RfL pursuant to paragraph 6.1.

## **7. DIVERSITY INFRACTIONS**

7.1 If the Operator or any of its Direct Subcontractors commits a Diversity Infraction, RfL shall be entitled (but shall not be obliged) to without prejudice to any other right or remedy it might have under this Agreement, serve written notice upon the Operator identifying in reasonable detail the nature of the Diversity Infraction, and

- (a) where a Diversity Infraction is committed by the Operator, the Operator shall cease committing and remedy such Diversity Infraction within 30 days of receipt of such notice (or such longer period as may be specified by RfL in the notice); and

- (b) where the Diversity Infraction is committed by a Direct Subcontractor of the Operator, the Operator shall procure that the relevant Direct Subcontractor ceases committing and remedies the Diversity Infraction within 30 days of receipt by the Operator of such notice (or such longer period as may be specified by RfL in the notice).

7.2 If the Operator fails to procure the remedy of any Diversity Infraction referred to in paragraph 7.1(b), then RfL may (in its sole discretion) serve a further written notice upon the Operator and within 30 days of receipt of such further notice (or such longer period as may be specified by RfL in the notice) upon which the Operator shall terminate the engagement of its Direct Subcontractor under the relevant sub-contract and procure performance of the affected works or services by a replacement Direct Subcontractor which complies with the obligations of paragraphs 4 (*Equality and diversity statutory duties*) to 6 (*Diversity Monitoring and Reporting*) (inclusive)]

7.3 RfL may, in its sole discretion, require that the Operator to provide evidence to substantiate any replacement Direct Subcontractor's compliance with the obligations specified in paragraphs 4 to 6 inclusive.

## **8. EQUALITY AND DIVERSITY AUDITS**

8.1 RfL (or its nominee) may undertake an audit of any and/or all information relating to the Operator's compliance with paragraphs 4 (*Equality and diversity statutory duties*) to 6 (*Diversity Monitoring and Reporting*) (inclusive) in accordance with paragraph 9 (*Right of Assessment or Inspection*) of Schedule 15.1 (*Personnel, communication and access*).

8.2 The Operator shall, and shall procure that each of its Direct Subcontractors shall and, where applicable subject to the provisions of paragraphs 4 to 6 (inclusive), its Indirect Subcontractors shall, maintain and retain the Minimum Records for a minimum of six years with respect to all matters relating to the Operator's performance of and compliance with paragraphs 4 to 6 (inclusive). The Operator shall procure that each sub-contract between the Operator and its Direct Subcontractors and, where applicable, subject to the provisions of paragraphs 4 to 6 (inclusive), each sub-contract between its Direct Subcontractor and any Indirect Subcontractor of the Operator and each sub-contract between the Operator's Indirect Subcontractors shall contain rights of audit in favour of and enforceable by RfL substantially equivalent to those granted by the Operator pursuant to paragraph 8.1.

8.3 The Operator shall promptly provide, and shall procure that its Direct Subcontractors shall and, where applicable subject to the provisions of paragraphs 4 to 6 (inclusive), its Indirect Subcontractors shall, promptly provide all reasonable co-operation to RfL or its nominated auditor, in each case in relation to any audit, including to the extent reasonably possible in each particular circumstance:9.1.

- (a) granting or procuring the grant of access to any premises used in the Operator's performance of this Agreement or in any Direct Subcontractor's or Indirect Subcontractor's performance of its sub-contract, whether on the Operator's own premises or otherwise;
- (b) granting or procuring the grant of access to any equipment (including all computer hardware and software and databases) used (whether exclusively or non-exclusively) in the performance of the Operator's or any Direct Subcontractor's or Indirect

Subcontractors obligations specified in paragraphs 4 to 6 (inclusive), wherever situated and whether the Operator owns the equipment or otherwise; and

- (c) complying with RfL's (or its nominee's) reasonable requests for access to the Operator's senior personnel (including Key Personnel) engaged in the performance of this Agreement or the relevant Direct Subcontractor's or Indirect Subcontractor's performance of its sub-contract.

## **9. STRATEGIC LABOUR NEEDS AND TRAINING PLAN**

9.1 The Operator shall develop a draft strategic labour needs and training plan and submit that draft to RfL no later than four months before the Start Date. The draft plan shall set out in sufficient detail the relevant requirements of the Equality and Diversity Framework.

9.2 RfL shall within one month of receipt of the Operator's draft strategic labour needs and training plan, inform the Operator whether, in RfL's reasonable opinion meets the requirements of paragraph 9.1.

9.3 The Operator shall within 14 days of RfL providing its opinion pursuant to paragraph 9.2, amend its draft strategic labour needs and training plan in accordance with that opinion and reissue that amended plan to RfL. Such amended plan shall be the *Strategic Labour Needs and Training Plan*.

9.4 The Operator shall:

- (a) comply with the provisions of the Strategic Labour Needs and Training Plan; and
- (b) at no additional cost to RfL and subject to the provisions of paragraph 9.2, review and amend the Strategic Labour Needs and Training Plan as a minimum, every 12 months following the Start Date or at such other times as may be requested by RfL, to reflect:
  - (i) Good Industry Practice;
  - (ii) any changes to the terms of this Agreement; and
  - (iii) any amendments proposed by RfL.

9.5 Any changes or amendments to the Strategic Labour Needs and Training Plan shall not be implemented until approved in writing by RfL.

## **10. STRATEGIC LABOUR NEEDS AND TRAINING CO-ORDINATOR**

10.1 Within 20 Business Days of the Start Date, the Operator shall nominate a member of its personnel with the necessary skills and authority to:

- (a) be responsible for the implementation and on-going development and maintenance of the Strategic Labour Needs and Training Plan; and
- (b) act as the single point of contact between RfL personnel on all matters concerning the Strategic Labour Needs and Training Plan,

(the *Strategic Labour Needs and Training Co-ordinator*), provided that, the Strategic Labour Needs and Training Co-ordinator need not be a dedicated resource.

10.2 The Operator shall add the Strategic Labour Needs and Training Co-ordinator to the list of Key Personnel.

## **11. COMMUNITY RELATIONS**

11.1 The Operator acknowledges that members of the TfL Group work closely with strategic labour needs and training third party organisations.

11.2 The Operator shall:

- (a) at the time of placing an advertisement for an employment vacancy, notify the Concession Manager (and/or any third parties nominated by RfL) of such advertisement, providing details of:
  - (i) the employment vacancy;
  - (ii) the date of the advertisement; and
  - (iii) the publication in which the advertisement is scheduled to appear or appeared (as applicable); and
- (b) attend a minimum of two events each year, to publicise employment, apprenticeship and training opportunities arising from the provision of the Concession Services.

## **12. SLNT MONITORING AND REPORTING**

The Operator shall each Reporting Period provide RfL with a Periodic SLNT Report detailing the Operator's performance against the Strategic Labour Needs and Training Plan.

## **13. SLNT INFRACTIONS**

13.1 If the Operator fails to:

- (a) ensure that each output for the monitoring period is delivered in accordance with the Strategic Labour Needs and Training Plan; and/or
- (b) review the Strategic Labour Needs and Training Plan in accordance with paragraph 9.4(b),

then the Operator shall explain the reasons for such failure in the next Concession Performance Meeting.

## **14. SLNT AUDITS**

14.1 RfL (or its nominee) may undertake an audit of any and/or all information relating to the Operator's compliance with paragraphs 9 (*Strategic Labour Needs and Training Plan*) to 12 (*SLNT Monitoring and Reporting*) (inclusive) in accordance with paragraph 9 (*Right of Assessment or Inspection*) of Schedule 15.1 (*Personnel, communication and access*).

14.2 The Operator shall maintain and retain records relating to the Strategic Labour Needs and Training Plan and its compliance with the provisions of paragraphs 9 to 12 (inclusive) for a minimum of six years.

## 15. LONDON LIVING WAGE

15.1 Without prejudice to any other provision of this Agreement, the Operator shall:

- (a) ensure that no Concession Employee, contracted employee and/or employee of its Direct Subcontractors or Indirect Subcontractors who, in each case is employed in the carrying out of the Operator's rights and obligations under this Agreement or the performance of activities reasonably ancillary thereto, in each case either:
  - (i) within the GLA Area; or
  - (ii) outside the GLA Area where employed at a facility in respect of which the Operator is the Facility Owner or at other premises reasonably proximate to the London Overground Network,
- (b) is paid an hourly wage (or equivalent of an hourly wage) less than the London Living Wage as adjusted annually;
- (c) provide to RfL such information concerning the London Living Wage as RfL or its nominees may reasonably require from time to time;
- (d) disseminate on behalf of RfL to its employees engaged in complying with its obligations under this Agreement such perception questionnaires as RfL may reasonably require from time to time and promptly collate and return to RfL responses to such questionnaires; and
- (e) co-operate and provide all reasonable assistance in monitoring the effect of the London Living Wage.

15.2 RfL reserves the right to audit the provision of the London Living Wage to the employees referred to in paragraph 15.1(a).

15.3 Any failure by the Operator to comply with the terms of this paragraph 15 shall be a contravention of this Agreement and the provisions of paragraph 1 (*Remedial Plan Notices and Remedial Agreements*) of Schedule 17.1 (*Remedial Plans and Remedial Agreements*).

## 16. ETHICAL SOURCING

16.1 RfL is committed to ensuring that workers employed in its supply chains throughout the world are treated fairly, humanely and equitably. In the course of complying with this Agreement, the Operator shall comply with and shall procure that its Direct Subcontractors (as applicable) comply with those principles of the ETI Base Code or any subsequent website created for the purpose, or an equivalent code of conduct (the *Ethical Sourcing Principles*) in relation to the provision of the Concession Services.

16.2 The Operator shall within three Reporting Periods of the Start Date and annually thereafter conduct a risk analysis of:

- (a) human rights issues; and
- (b) labour conditions,

in each case of the supply chains used in the fulfilment of this Agreement, and shall agree with RfL a process for managing high-risk supply chains. This may include where appropriate, the carrying out of social audits and the agreement of corrective action plans.

16.3 During the course of this Agreement, if RfL has reasonable cause to believe that the Operator is not complying with any of the Ethical Sourcing Principles, RfL shall notify the Operator and RfL and the Operator shall agree an action plan with appropriate timeframes for compliance by the Operator (the *Ethical Sourcing Action Plan*), such Ethical Sourcing Action Plan to be agreed by no later than 20 Business Days from the date of RfL notifying the Operator that remedial action is required or such other period as RfL and the Operator may otherwise agree in writing.

16.4 During the course of this Agreement, RfL has the right to request the Operator to carry out one or more audits in accordance with paragraph 9 (*Right of Assessment or Inspection*) of Schedule 15.1 (*Personnel, communication and access*) to verify whether the Operator is complying with the Ethical Sourcing Principles (or any associated Ethical Sourcing Action Plan).

## **17. FLEET OPERATOR RECOGNITION SCHEME ACCREDITATION**

17.1 Where the Operator operates Delivery and Servicing Vehicles in performing the Concession Services, it shall within 90 days of the Start Date:

- (a) (unless already registered) register for FORS or a scheme, which in the reasonable opinion of RfL, is an acceptable substitute to FORS (the *Alternative Scheme*); and
- (b) (unless already accredited) have attained the standard of Bronze Accreditation (or higher) or the equivalent within the Alternative Scheme.

17.2 The Operator shall maintain the standard of Bronze Accreditation (or equivalent standard within the Alternative Scheme) by way of an annual independent assessment in accordance with the FORS Standard or take such steps as may be required to maintain the equivalent standard within the Alternative Scheme. Alternatively, where the Operator has attained Silver Accreditation or Gold Accreditation, the maintenance requirements shall be undertaken in accordance with the periods set out in the FORS Standard.

## **18. SAFETY EQUIPMENT ON VEHICLES**

The Operator shall ensure that any Lorry which it uses to provide the Concession Services, shall:

- (a) have Side Guards fitted, unless the Operator can demonstrate to the reasonable satisfaction of RfL that the vehicle will not perform the function for which it was built if Side Guards are fitted;
- (b) have front, side and rear blind spots completely eliminated or minimised as far as practical and possible, though the use of fully operational direct and indirect vision aids and driver audible alerts;
- (c) have equipment fitted with an audible means of warning other road users of the Lorry's left manoeuvre; and

- (d) have prominent signage on the Lorry to warn cyclists and other road users of the dangers of passing the vehicle on the inside and of getting too close to the Lorry.

## **19. DRIVER LICENCE CHECKS**

Where the Operator operates Delivery and Servicing Vehicles in providing the Concession Services, the Operator shall ensure that

- (a) it has a system in place to ensure all its Drivers hold a valid driving licence for the category of vehicle that they are tasked to drive, along with recording any endorsements, or restrictions on the Driver's licence; and
- (b) each of its Drivers engaged in the provision of the Concession Services has a driving licence check with the DVLA or equivalent licensing authority before that Driver commences driving any vehicles in support of the Concession Services and that the driving licence check with the DVLA or equivalent licensing authority is repeated in accordance with either the following risk scale (in the case DVLA licences only), or the Operator's risk scale, provided that the Operator's risk scale has been approved in writing by RfL within the preceding 12 months:
  - (i) 0 – 3 points on the driving licence: annual checks;
  - (ii) 4 – 8 points on the driving licence: six monthly checks;
  - (iii) 9 – 11 points on the driving licence: quarterly checks; or
  - (iv) 12 or more points on the driving licence: monthly checks.

## **20. DRIVER TRAINING**

Where the Operator operates Delivery and Servicing Vehicles in providing the Concession Services, the Operator shall ensure each of its Drivers undergo approved progressive training (to include a mix of theoretical, e-learning, practical and on the job training) and continued professional development to include training covering the safety of vulnerable road users and on-cycle hazard awareness, throughout the Concession Term.

## **21. COLLISION REPORTING**

Where the Operator operates Delivery and Servicing Vehicles in providing the Concession Services, the Operator shall:

- (a) ensure that it has a system in place to capture, investigate and analyse road traffic collisions that results in fatalities, injury or damage to vehicles, persons or property and for generating Collision Reports; and
- (b) within five Business Days of a written request from RfL, provide RfL with a Collision Report.

## **22. SELF-CERTIFICATION OF COMPLIANCE**

22.1 Where the Operator operates Delivery and Servicing Vehicles to provide the Concession Services, within 90 days of the Start Date, the Operator shall make a written



report to RfL detailing its compliance with paragraphs 18 (*Safety Equipment on Vehicles*), to 20 (*Driver Training*) inclusive (the **WRRR Self-certification Report**).

22.2 The Operator shall provide updates of the WRRR Self-certification Report to RfL on each three-month anniversary of its submission of the initial WRRR Self-certification Report.

### **23. OBLIGATIONS OF THE OPERATOR REGARDING SUBCONTRACTORS**

The Operator shall ensure that each of its Direct Subcontractors that operate Delivery and Servicing Vehicles to provide the Concession Services shall:

- (a) comply with paragraph 17 (*Fleet Operator Recognition Scheme Accreditation*); and
- (b) where its Direct Subcontractors operate the following vehicles to provide the Concession Services, comply with the following:
  - (i) for Lorries, paragraphs 18 (*Safety Equipment on Vehicles*) to 21 (*Collision Reporting*) inclusive; and
  - (ii) for Vans, paragraphs 19 (*Driver Licence Checks*) to 21 inclusive,

as if those Direct Subcontractors were a party to this Agreement.

### **24. FAILURE TO COMPLY WITH WORK RELATED ROAD RISK OBLIGATIONS**

Without limiting the effect of any provision of this Agreement relating to termination, if the Operator fails to comply with any of paragraph 17 (*Fleet Operator Recognition Scheme Accreditation*) to 23 (*Obligations of the Operator regarding subcontractors*) inclusive:

- (a) the Operator will have contravened this Agreement to a material extent; and
- (b) RfL may refuse the Operator, its employees, agents and Delivery and Servicing Vehicles entry onto any property that is owned, occupied or managed by RfL for any purpose (including deliveries).



## SCHEDULE 15.4

### Environment

#### 1. GENERAL

1.1 Without prejudice to its other obligations contained in this Agreement, the Operator shall ensure that throughout the Concession Term it:

- (a) complies with all Applicable Requirements related to the environment;
- (b) measures and reports on carbon emissions and develops plans to reduce carbon usage that supports TfL in delivering its programme to improve the energy efficiency of its premises and premises associated with its functions (including stations and depots) that will help decrease emissions and lower costs under the Carbon Reduction Commitment;
- (c) carries out its obligations in response to any environmental incidents, including environmental incidents occurring on or about the London Overground Network, at Ilford Depot or on its own premises in accordance with Good Industry Practice; and
- (d) complies with the requirements of FORS.

#### 2. ENVIRONMENTAL OBJECTIVES

The Operator shall be aware of, and contribute towards, the following TfL environmental objectives:

- (a) to reduce greenhouse gas emissions (CO<sub>2</sub>);
- (b) to reduce pollutant emissions to the air (NO<sub>x</sub> and 'PM10');
- (c) to reduce transport related noise and vibration;
- (d) to maintain and, where possible, enhance the quality of London's built environment;
- (e) to reduce resource consumption and improve green procurement;
- (f) to reduce the waste generated by applying the principles of 'reduce, reuse and recycle'; and
- (g) reduce water consumption.

#### 3. ENVIRONMENTAL MANAGEMENT SYSTEM

From the Start Date and throughout the Concession Period, the Operator shall operate an environmental management system (the *Environmental Management System*) which shall be independently accredited to BS EN ISO 14001 or equivalent within one year of the Start Date.

#### 4. PROCUREMENT OF SUSTAINABLE MATERIALS

When procuring materials, the Operator shall consider the principles of resource efficiency. RfL may from time to time request the Operator to provide evidence of such consideration.

## 5. ANNUAL ENVIRONMENTAL IMPROVEMENT PLAN

5.1 Not later than the Start Date and on the 1 November of each year thereafter, the Operator shall prepare and submit to RfL its proposed annual environmental improvement plan (the *Annual Environmental Improvement Plan*) for the following calendar year.

5.2 The Operator shall ensure that each proposed Annual Environmental Improvement Plan:

- (a) supports the environmental objectives specified in paragraph 2 (*Environmental objectives*);
- (b) establishes challenging but specific, measureable, achievable, realistic and time oriented environmental objectives and targets, covering (but not limited to):
  - (i) CO<sub>2</sub> emissions;
  - (ii) waste management;
  - (iii) resource use (including energy consumption);
  - (iv) water consumption; and
  - (v) PM10 and NO<sub>x</sub> emissions;
- (c) contains initiatives to improve the Operator's environmental culture;
- (d) details who within the Operator's organisation is responsible and accountable for each objective, target and initiative;
- (e) contains sufficient detail to satisfy RfL that the Operator has understood its environmental obligations under this Agreement;
- (f) contains an associated assurance programme; and
- (g) has been reviewed, approved and signed by the Managing Director prior to submission to RfL.

5.3 RfL shall (acting reasonably) review the proposed Annual Environmental Improvement Plan and provide the Operator with any reasonable amendments or comments. The Operator shall take into account any reasonable amendments or comments provided by RfL and shall continue to update and resubmit the proposed Annual Environmental Improvement Plan until it has obtained RfL's acceptance.

5.4 Any subsequent Annual Environmental Improvement Plan shall take effect at the beginning of the calendar year to which it relates or, if later, the date it is accepted by RfL in accordance with paragraph 5.3 and the Operator shall from such date:

- (a) comply with such Annual Environmental Improvement Plan; and
- (b) use best endeavours to ensure that the objectives, targets and initiatives contained in the Annual Environmental Improvement Plan are performed, complied with or achieved (as the case may be).

5.5 The Operator shall ensure that the actions required to meet environmental objectives, targets and initiatives contained in the relevant Annual Environmental Improvement Plan are identified and communicated effectively to the Concession Employees and the Direct Subcontractors, where applicable.

5.6 The Operator shall regularly review and monitor the status of the environmental objectives, targets and initiatives set out in the Annual Environmental Improvement Plan, and have in place processes that define what action is to be taken when an objective or target is not met or it becomes apparent that it will not be met.

5.7 The Operator shall report to RfL on the implementation of the Annual Environmental improvement Plan on a quarterly basis.

## **6. ANNUAL ENVIRONMENTAL REPORTING**

Not later than 28 February in each calendar year, the Operator shall prepare and submit to RfL an annual environmental report (the *Environmental Report*) which shall:

- (a) review and describe the extent to which the Operator has complied with its general environmental obligations contained in this Agreement and all Applicable Requirements during the previous calendar year;
- (b) review and describe the extent to which the Operator achieved the specific environmental objectives, targets and initiatives set out in the Annual Environmental Improvement Plan for the previous calendar year;
- (c) identify any common themes arising from either of the reported items in paragraphs 6(a) and (b);
- (d) identifies which objectives have not been met, the reasons why and the actions taken to address the issue; and
- (e) be reviewed, approved by and signed by the Managing Director prior to submission to RfL.

## **7. PERIODIC ENVIRONMENTAL REPORTING**

7.1 The Operator shall include in each Periodic Concession Report:

- (a) a summary of all environmental incidents which have occurred in relation to any of the London Overground Network, Ilford Depot and the Operator's premises, including the aggregate number of environmental incidents which have occurred, a description of the incidents and their dates, locations and regulatory impact; and
- (b) a report progress of actions arising from environment-related audits, investigations and inspections.

7.2 The Operator shall provide RfL with all environmental audit reports, investigations, reviews and inspections carried out as part of the implementation of the Environmental Management System including the independent accreditation and re-accreditation audits of the Environmental Management System and ongoing assurance audits and/or inspections.

7.3 The Operator shall ensure that a governance process is in place to deal with recommendations arising from any environmental-related investigations, audits, reviews or inspections.

## **8. CONTROL OF VEHICLE EMISSIONS**

8.1 The Operator shall:

- (a) consider CO<sub>2</sub>, air quality and noise impacts as part of the decision making process when procuring and leasing road vehicles; and
- (b) adopt a technology neutral approach in the procurement and leasing of its road vehicles.

8.2 The Operator shall procure that all Direct Subcontractors' cars and vans meet the following CO<sub>2</sub> limits and European emission standards (euro standards) from the Start Date:

- (a) cars: maximum certified CO<sub>2</sub> emissions of 95 g/km and a minimum of Euro 5 emission standards;
- (b) vans equal to or less than 1205 kg kerb weight: maximum certified CO<sub>2</sub> emissions of 105 g/km and a minimum of Euro 5 emission standards;
- (c) vans between 1205 and 1660 kg kerb weight: maximum certified CO<sub>2</sub> emissions of 145 g/km and a minimum of Euro 5 emission standards; and
- (d) vans greater than 1660 kg kerb weight: maximum certified CO<sub>2</sub> emissions of 205 g/km and a minimum of Euro 5 emission standards.

8.3 From the Start Date, all of the Operator's heavy duty road vehicles and non-road diesel engines shall (unless otherwise agreed by RfL in its absolute discretion) meet the following emission standards:

- (a) heavy duty road vehicles >3500 kg kerb weight: Euro 6 European emission standards, except that where the Operator is unable to attain Euro 6 emission standards for all such vehicles by the Start Date, a Euro 5 emission standard shall be acceptable in relation to the number of heavy duty vehicles that is reasonably proportionate to the number of heavy duty road vehicles the Operator operates at the Start Date, provided that the Operator shall attain a Euro 6 emission standard in relation to all such vehicles as soon as reasonably practicable following the Start Date;
- (b) non-road diesel engines between 19 and 36 kW: Stage 3A European emission standards; and
- (c) non-road diesel engines between 37 and 560 kW: Stage 3B European emission standards.

8.4 If any road vehicles or non-road diesel engines become due for replacement during the Concession Term, the Operator shall ensure that the replacement vehicle or engine meets the European emission standards and CO<sub>2</sub> limits (if applicable) for that year in which it is introduced into the fleet as set out in the relevant following table(s):

European Emissions Standards for Road Vehicles							
	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20
Cars	Euro 5	Euro 5	Euro 6	Euro 6	Euro 6	Euro 6	Euro 6
Vans ≤ 1205kg kerb weight	Euro 5	Euro 5	Euro 5	Euro 6	Euro 6	Euro 6	Euro 6
Vans 1205 to 1660 kg kerb weight	Euro 5	Euro 5	Euro 5	Euro 6	Euro 6	Euro 6	Euro 6
Vans > 1660 kg kerb weight	Euro 5	Euro 5	Euro 5	Euro 6	Euro 6	Euro 6	Euro 6
Heavy Duty Vehicles > 3500 kg kerb weight	Euro 5	Euro 6	Euro 6	Euro 6	Euro 6	Euro 6	Euro 6

European Emissions Standards for Non-Road Diesel Vehicles							
	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20
Non-road diesel engines 19-37kW	Stage 3A	Stage 3A	Stage 3A	Stage 3A	Stage 3A	Stage 3A	Stage 3A
Non-road diesel engines 19-56kW	Stage 3B	Stage 3B	Stage 3B	Stage 3B	Stage 3B	Stage 3B	Stage 3B
Non-road diesel engines 56-560kW	Stage 3B	Stage 3B	Stage 4	Stage 4	Stage 4	Stage 4	Stage 4

Certified CO <sub>2</sub> Limits (g/km)							
	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20	2020/21
Cars	95	90	85	80	75	70	65
Vans ≤ 1205kg kerb	105	100	95	90	85	80	75

Certified CO <sub>2</sub> Limits (g/km)							
weight							
Vans 1205 to 1660 kg kerb weight	145	140	135	130	125	120	115
Vans > 1660 kg kerb weight	205	200	195	190	185	180	175

8.5 The Operator shall procure that each Concession Employee required to drive in connection with the provision of the Concession Services:

- (a) that is employed at the Start Date shall undertake a ‘Safe and Fuel Efficient Driving’ (SAFED) training course within three months of the Start Date, which course shall consist of theoretical training and practical implementation skills and shall be a minimum duration of one hour; and
- (b) that is employed three months after the Start Date shall also be required to undertake such course within three months of commencing such employment.

8.6 The Operator shall encourage its Direct Subcontractors to undertake fuel efficient driver training that is the same or similar to the training referred to in paragraph 8.5.

8.7 RfL may require the Operator to provide evidence of its compliance with paragraph 8.5 from time to time.

8.8 In accordance with Mayoral environmental strategies and commitments to reduce carbon dioxide emissions, the Operator shall, wherever possible, include zero or ultra-low carbon vehicles, such as electric, plug-in hybrid or bio methane vehicles, in its fleet. Where the Operator is unable to comply with this paragraph 8.8, the Operator shall provide to RfL an explanation of the reasons for such failure.

**9. ENVIRONMENTAL INDICATORS**

The Operator shall measure and report to RfL, on a Reporting Period and year-to-date basis, on the following environmental indicators in relation to London Overground in each Periodic Concession Report:

- (a) ‘NO<sub>x</sub>’ and ‘PM10’ for air quality;
- (b) energy consumption (amounts of electricity and gas/fuel, disaggregated by traction and non-traction) and for non-traction energy, this information shall be disaggregated by Operator Station and any office buildings;
- (c) CO<sub>2</sub> emissions (total tonnes and grams per passenger kilometre), disaggregated in accordance with paragraph 9(b);
- (d) number of noise related complaints received and the Operator’s response;



- (e) commercial and industrial waste, and percentage recycled, in terms of both tonnes and per passenger kilometre split by source;
- (f) tonnes of hazardous solid waste, litres of hazardous liquid waste and percentage recycled;
- (g) number of pollution spill incidents to land or water caused by the Operator; and
- (h) cubic metres of water consumed disaggregated in accordance with paragraph 9(b).

#### **10. ENVIRONMENTAL INTERFERENCE**

In performing its obligations under this Agreement, the Operator shall:

- (a) at all times use all reasonable endeavours to prevent any unlawful nuisance (including noisy working operations), obstruction, trespass, interference with any right of light, way, air or water, or other interference with the rights of any adjoining landowners, tenants or occupiers or any statutory undertaker; and
- (b) not commit any act or omission whereby any property (including the air above, water running on or through the soil, subsoil or groundwater beneath) shall become contaminated with a substance which may have a deleterious effect on the environment or on human health,

and the Operator shall indemnify RfL from and against any and all Loss suffered by RfL from a failure by the Operator to comply with its obligations under this paragraph 10.

#### **11. WASTE ELECTRICAL AND ELECTRONIC EQUIPMENT REGULATIONS 2006**

When procuring any WEE Equipment for use in accordance with the Concession Services whether by direct purchase by the Operator, purchase on behalf of RfL, lease or otherwise the Operator will ensure that, in accordance with the WEEE Regulations, the producer of the WEE Equipment (whether that be the Operator or a third party) shall assume responsibility for financing the costs of the collection, treatment, recovery and environmentally sound disposal of such WEE Equipment.



## SCHEDULE 15.5

### Pensions

#### 1. GENERAL

1.1 The Operator shall, in respect of the Concession Services, become the Designated Employer of, and administer, the London Overground Shared Cost Section of the Railways Pension Scheme, a single-employer section of the Railways Pension Scheme established on a Shared Costs Arrangement basis in accordance with the provisions of the Protection Order (the *Concession Section*). Subject to paragraphs 1.2, 2 (*Restrictions on membership*), 3 (*Closed Schemes*), and 4.1(c), each Protected Employee employed by the Operator in the fulfilment of its obligations under this Agreement shall be offered membership of the Concession Section by the Operator and each such member who accepts membership of the Concession Section shall be provided with Protected Pension Rights required to be provided by the Protection Order on and from the Start Date, or later date of commencement of his or her employment by the Operator, for the duration of this Agreement.

1.2 The Operator may elect to offer to each Non-Protected Employee:

- (a) membership of the Operator's pension scheme or a pension scheme nominated by the Operator; or
- (b) membership of the Concession Section.

1.3 The Operator shall fund and offer any persons employed by the Operator during the Concession Term to provide the Concession Services who are Non-Protected Employees, pension benefits and benefits on death in service or leaving service due to incapacity which shall be no more favourable than the pension benefits under the Concession Section. Where the Operator proposes to offer any Non-Protected Employees membership of the Operator's pension scheme or a pension scheme nominated by the Operator, the Operator will provide to RfL such information as it may request regarding the management, operation and funding of the scheme(s) and of any associated benefits (including life assurance and ill-health cover) to be provided to such Non-Protected Employees who are offered membership.

1.4 The Operator shall comply with all relevant employment and pensions' legislation and shall perform its obligations under this Schedule 15.5 in a manner which is consistent with the Railways Pension Scheme.

1.5 The Operator shall be responsible for funding the Concession Section on and from the Start Date for the duration of this Agreement in accordance with the requirements of the scheme-specific funding provisions of Part 3 of the Pensions Act 2004. Any revised employer and employee contribution rate notified by the Trustee following a formal valuation or other actuarial assessment will be the sole responsibility of the Operator and the active members of the Concession Section, and RfL shall not be obliged to reimburse to the Operator all or part of the revised rates.

#### 2. RESTRICTIONS ON MEMBERSHIP

The Operator will restrict membership of the Concession Section to those employees employed by the Operator in the fulfilment of its obligations under this Agreement.

### 3. CLOSED SCHEMES

Subject to any requirements of HM Revenue & Customs, the Operator shall take such steps as may be necessary (including entering into any relevant deed of participation) to allow Closed Scheme Employees to continue in active membership of the Closed Schemes in accordance with their terms. For the purposes of this paragraph 3:

- (a) **Closed Scheme Employees** means such of the employees of the Operator who were, immediately prior to the commencement of their employment with the Operator, active members of any of the Closed Schemes; and
- (b) **Closed Schemes** means the British Railways Superannuation Fund and the BR (1974) Pension Fund.

### 4. VARIATIONS IN BENEFITS AND CONTRIBUTIONS; INVESTMENTS

4.1 The Operator shall promptly consult with RfL in relation to any proposal it considers would fall within the scope of paragraphs 4.1(a) to (f) (inclusive) prior to putting such a proposal to the Pensions Committee of the Concession Section, the Trustee of the Railways Pension Scheme, or to any trade union or works council. The Operator shall not, without the prior written consent of RfL (which may be given on such terms and subject to such conditions as RfL thinks fit):

- (a) restructure or change the composition of the earnings of employees of the Operator or its subsidiaries in such a way as to increase the part of those earnings which qualifies as pensionable earnings (including Section Pay) under the Rules applicable to the Concession Section or take any action (or consent to the taking of any action) which could detrimentally affect the funding of the Concession Section, including varying or providing different or additional benefits under the Concession Section or promising to do so, unless:
  - (i) such change is required by Law; or
  - (ii) such change only affects benefits payable in respect of past service of members of the Concession Section and on or prior to the effective date of the change the Operator pays an additional cash payment to the Trustee which, in the opinion of the Actuary, meets in full the additional funding cost imposed on the Concession Section;
- (b) provide retirement, death, disability or life assurance benefits for or in respect of any of its employees other than under the Concession Section or as provided in paragraphs 2 (*Restrictions on membership*) or 3 (*Closed Schemes*);
- (c) omit to provide the above-mentioned benefits for and in respect of its Protected Employees save that, without prejudice to any rights which any such Protected Employee may otherwise have, the Operator shall not be obliged for the purposes of this Agreement to offer such benefits to any Protected Employee employed on a fixed term contract of 12 months or less;
- (d) take any action (or consent to the taking of any action) which could affect the contributions payable by the Participating Employer under the Concession Section, including making any redundancies, exercising any discretion allowed to the Operator

as Designated Employer arising out of any actuarial valuation of the Concession Section, and varying or providing different or additional benefits under the Concession Section in respect of future service, unless such action is required by Law;

- (e) agree to adopt a revised investment strategy for the Concession Section; or
- (f) take (or omit to take) any action which could result in the Concession Section being wound up, in whole or in part.

#### 4.2 The Operator:

- (a) shall:
  - (i) use all reasonable endeavours to procure that the provisions of clause 5G (Consultation with Pensions Committees) of the Railways Pension Scheme are amended such that they do not apply in respect of the Concession Section; and
  - (ii) in any event consult with RfL as to the manner in which the Section Assets of the Concession Section are to be invested as part of its discussions with the Trustee or any Pensions Committee in this regard; and
- (b) shall not propose or agree to any amendment to the Railways Pension Scheme without the prior written consent of RfL (which may be given on such terms and subject to such conditions as RfL thinks fit).

### 5. OTHER TRANSFERS TO THE CONCESSION SECTION

#### 5.1 The Operator and RfL acknowledge that:

- (a) article 7(4) of the Protection Order shall apply where, for the purposes of this Agreement, under the terms of the Railways Pension Scheme, a transfer payment is made to the Concession Section from another section of the Railways Pension Scheme in relation to Protected Employees (as defined under the Protection Order) who had accrued benefits in such other section prior to the Start Date and who become members of that Concession Section; and
- (b) RfL shall not be obliged to reimburse the Operator for any amounts being due as a result.

### 6. COVENANT RATING

The Operator shall not during the Concession Period take any action outside of the ordinary course of its trading the main purpose (or one of the purposes) of which is to result in a material weakening of the financial strength of the Operator, without the prior written consent of RfL (such consent not to be unreasonably withheld) and shall use its reasonable endeavours to procure that the Trustee awards to the Operator the strongest possible covenant rating for the Concession Section, including by, but not limited to, co-operating with the Trustee and promptly providing to the Trustee any documentation that the Trustee may reasonably request from the Operator in connection with the Trustee deciding on such an employer covenant rating.

## 7. DISCHARGE OF OBLIGATIONS

7.1 RfL may at any time during the Concession Period seek information from the Trustee with a view to satisfying itself that the Operator (as Participating Employer) has fully discharged their respective obligations under the Railways Pension Scheme, including their obligations in respect of the payment of contributions to the Concession Section. The Operator hereby consents to disclosure of any such information to RfL by the Trustee.

7.2 The Operator shall, at its expense, promptly provide such information in relation to the Concession Section, including actuarial advice and information, as RfL may from time to time request and shall authorise and consent to the Trustee doing so.

7.3 The Operator shall use all reasonable endeavours to provide to RfL:

- (a) within one month of the expiry of each Concession Year; and
- (b) at other times as soon as practicable following a request by RfL (including in respect of the final Concession Year during the Concession Period, any request of RfL that is made within a reasonable period of the expiry of the Concession Period),

a certificate signed by the Trustee stating either that the Operator (as Participating Employer) has fully complied with its obligations under the Railways Pension Scheme, including its obligation to contribute to the Concession Section or, if it or any of them has not so complied, stating the extent to which it has not (or they have not) done so. Where the certificate is given pursuant to paragraph 7.3(a), it shall cover the relevant Concession Year and where given pursuant to paragraph 7.3(b), it shall cover such period as RfL shall specify.

7.4 If the Trustee does not certify that the Operator (as Participating Employer) has fully complied with its obligations under the Railways Pension Scheme or if RfL otherwise reasonably considers that the Operator (as Participating Employer) has not complied with such obligations, RfL shall be entitled to withhold from any Concession Payments payable by it under Schedule 11.1 (*Concession Payments*) by way of an Other Adjustment, an amount which is, in RfL's opinion, no greater than the amount of any contribution that the Operator (as Participating Employer) has thereby failed to make or avoided making.

7.5 RfL may withhold such amount until such time as it reasonably determines that the relevant contributions have been made in full by the Operator (as Participating Employer). Following that determination, the amount withheld shall become payable (without interest) on the next Payment Date, being a day which falls no less than seven days after such determination or, if there is no such day, 14 days after the date of such determination. To the extent that RfL has not so determined within four weeks after the expiry of the Concession Period, the Operator's right to receive the amount so withheld under this Agreement shall lapse and RfL shall not be obliged to pay such amount.

## 8. TERMINATION OF PROVISIONS

8.1 Unless on the termination of this Agreement (whether through default, effusion of time or otherwise) the Operator agrees to remain the Designated Employer in relation to the Concession Section, RfL shall procure that the Successor Operator is substituted for the Operator as the Designated Employer in relation to the Concession Section so that following such termination:

- (a) the Operator shall have no liability for any deficit in the value of the Concession Section that may be payable by the Operator, other than in respect of unpaid contributions owed by the Operator to the Concession Section for any period prior to the termination of this Agreement;
- (b) the Operator shall have no right to any benefit connected with any surplus assets in the Concession Section that may be payable to or received by the Operator, and the Operator shall procure that the value of such surplus is retained in the Concession Section for the benefit of Successor Operators; and
- (c) no claims arise against the Operator under Section 75 of the Pensions Act 1995.

8.2 Paragraph 8.1 is subject to the Operator complying with its obligations under this Schedule 15.5 in relation to the Concession Section.

8.3 If the Concession Section is wound up through any act or omission of the Operator in contravention of paragraph 4.1(f), then:

- (a) the Operator shall have no right to any benefit connected with any surplus assets in the Concession Section that may be payable to or received by the Operator, and the Operator hereby assigns that benefit to RfL and the right to any surplus shall vest in RfL absolutely; and
- (b) any claims that the Trustee may have in relation to the Concession Section under Section 75 of the Pensions Act 1995 shall be payable by the Operator.

8.4 This paragraph 8 shall remain in force notwithstanding the termination of this Agreement.

## **9. DEFINITIONS**

Unless otherwise defined or stated in this Agreement, terms used in this Schedule 15.5 shall have the meanings given to them in the Railway Pension Scheme.





**SCHEDULE 16**

**CONCESSION INFORMATION**

**Schedule 16.1:**

**Records, plans and reporting**

**Schedule 16.2:**

**Confidentiality and Freedom of Information Act  
Requirements**



## SCHEDULE 16.1

### Records, plans and reporting

#### 1. CORPORATE INFORMATION

1.1 The Operator shall provide the following information to RfL on or before the Start Date and shall notify RfL of any change to such information within 21 days of such change:

- (a) its name;
- (b) its business address and registered office;
- (c) its directors and company secretary;
- (d) its auditors;
- (e) its trading name or names; and
- (f) to the best of the Operator's knowledge and belief, having made due and diligent enquiry, the identity of all persons holding, separately or acting by agreement, directly or indirectly, the right to cast more than 20 per cent. of the votes at general meetings of the Operator.

1.2 The Operator shall inform RfL of any material change or proposed material change in its business (including the employment or the termination of employment of any Key Personnel, the termination of any Key Contract and any litigation or other dispute which may have a material effect on its business) and any material change in or restructuring of the capitalisation or financing of the Operator or the Parent.

#### 2. OPERATING INFORMATION

##### Daily Performance Record

2.1 The Operator shall provide RfL with the Operator Daily Performance Record in accordance with the requirements of paragraphs 2.2 and 2.3 of Schedule 7.4 (*General Operating Performance Provisions*).

##### Periodic Concession Report

2.2 The Operator shall submit to RfL a Periodic Concession Report for each Reporting Period during the Concession Period within 10 days of the last day of each such Reporting Period.

#### 3. BUSINESS PLANS

##### Initial Business Plan

3.1 No earlier than three Reporting Periods and no later than one Reporting Period before the Start Date, the Operator shall deliver to RfL its Initial Business Plan, describing its planned activities for each Concession Year during the Concession Term, which shall include:

- (a) a description of the Operator's strategy, including as to how the Operator will be able to meet its obligations under this Agreement for the Concession Term, supported by operating plans demonstrating this;
- (b) details of any investments proposed to be made or procured by the Operator in relation to the Concession Services during the Concession Term;
- (c) the Suite of Models and Record of Assumptions in the agreed form (in addition to the two copies of each such document required pursuant to Schedule 13.2 (*Identity of the Suite of Models*));
- (d) a profit and loss forecast, cash flow forecast and forecast balance sheet for each of the first 13 Reporting Periods following the Start Date, together with a list of assumptions on the basis of which each such forecast has been prepared; and
- (e) all known changes to costs and revenues from the costs and revenues set out in the Operator's tender to RfL upon which RfL agreed to enter into this Agreement with the Operator.

3.2 At the same time as it provides the Initial Business Plan, the Operator shall also provide plans which support the information set out in the Initial Business Plan by explaining how the Operator will meet its obligations in relation to operating performance, customer service and revenue protection under this Agreement.

3.3 RfL may require the resubmission of the Initial Business Plan on the Start Date, adjusted to the extent necessary to reflect any difference between the actual Start Date and the date assumed to be the Start Date in the Initial Business Plan submitted in accordance with paragraph 3.1.

#### **Updated Business Plans**

3.4 Not more than three Reporting Periods and not less than one Reporting Period prior to the start of each Concession Year (other than the first Concession Year), the Operator shall deliver to RfL an Updated Business Plan:

- (a) in substantially the same form as the immediately preceding Business Plan delivered to RfL in accordance with this Agreement, revised to include the information available to the Operator as at the date of its delivery, describing the Operator's planned activities for each Concession Year during the remainder of the Concession Term;
- (b) containing a statement of the differences between such Updated Business Plan, the Initial Business Plan and the immediately preceding Business Plan delivered to RfL in accordance with this Agreement, together with an explanation of such differences;
- (c) containing revised financial and operational models, together with a detailed statement, reconciliation and explanation of any material difference in the outputs provided by such financial and operational models from the Model Suite as to the date of this Agreement and any such models provided in the immediately preceding Business Plan;

- (d) containing details of any Business Action Plan notified to RfL and any progress made in respect of such Business Action Plans;
- (e) containing a revised profit and loss forecast, cash flow forecast and forecast balance sheet for each of the 13 Reporting Periods in that Concession Year; and
- (f) supported by the further plans referred to in paragraph 3.2.

**Material changes to the business outlook or prospective financial results**

3.5 The Operator shall:

- (a) notify RfL as soon as reasonably practicable if the business outlook or prospective financial results of the Operator are likely to be materially different from those specified in the most recent Business Plan; and
- (b) within one month of any request by RfL following receipt of a notification in accordance with paragraph 3.5(a), supply RfL with a revised Updated Business Plan for the remainder of the Concession Term which reflects the latest view of its business.

**Provisions relating to Business Plans**

3.6 The Operator shall:

- (a) comply with any guidance issued by RfL from time to time as to its reasonable requirements for the format of any Business Plan. The contents and assumptions to be included in any Business Plan shall, unless the parties otherwise agree, be consistent with the Record of Assumptions; and
- (b) attend such meetings and make such presentations as RfL shall request in connection with any Business Plan.

3.7 The Operator shall not be relieved of any of its obligations under this Agreement as a result of any comment or failure to comment by RfL on any Business Plan or any agreement with or approval, implicit or explicit, of any Business Plan by RfL at any time.

3.8 RfL may at any time require the Operator to produce a Business Action Plan in respect of any aspect of any Business Plan. Such Business Action Plan may include steps relating to:

- (a) timetable development;
- (b) performance management improvement;
- (c) customer service improvement; and
- (d) improvements in the quality of service delivery or the efficiency of delivery of the Concession Services.

3.9 The Operator shall confirm with each Updated Business Plan submitted to RfL, that that plan has been approved by the Operator's board.

### **Business cases for the improvement of the network**

3.10 The Operator shall co-operate with RfL in the development of business plans and business cases connected with the improvement of the network (including any in respect of inter-modal schemes).

## **4. MARKETING PLAN**

4.1 Not less than:

- (a) 28 days before the Start Date, RfL shall deliver to the Operator a Marketing Plan for the first Concession Year; and
- (b) one Reporting Period prior to the start of each Concession Year (other than the first such year), RfL shall deliver to the Operator a Marketing Plan for that Concession Year.

4.2 The Operator shall, within 14 days of receipt of a Marketing Plan, review such Marketing Plan and provide RfL with its informed opinion to assist RfL's decision making in relation to marketing activities for London Overground.

4.3 The Operator shall support RfL as RfL may reasonably require in the implementation of the Marketing Plan.

## **5. ACCOUNTING AND FINANCIAL INFORMATION**

### **Accounting Records**

5.1 The Operator shall prepare and at all times during the Concession Period maintain true, up to date and complete accounting records in respect of this Agreement as separate and stand alone accounts (the *Management Accounts*) in accordance with international accounting practices. Such records shall be prepared on a consistent basis for each Reporting Period.

### **Reporting Period Financial Information**

5.2 The Operator shall deliver to RfL, as an appendix to the Periodic Concession Report, Management Accounts for such Reporting Period, setting out a cashflow statement, profit and loss account and balance sheet for that Reporting Period and cumulatively for the Concession Year to date.

5.3 The Management Accounts shall also set out:

- (a) a comparison of the Operator's performance during such period against the forecast provided by the Operator in the then current Business Plan;
- (b) a comparison of the Operator's cumulative performance during the Concession Year in which such period occurs against the forecast referred to in paragraph 5.3(a);
- (c) a detailed statement and explanation of any material difference between such Management Accounts and the forecast referred to in paragraph 5.3(a), cross-referring to deviations from the applicable Operational Models; and

- (d) where the level of financial performance specified in the Management Accounts is worse than forecast by the Operator in its current Business Plan, a Financial Action Plan to ensure that the level of financial performance forecast in its current Business Plan for the remainder of the currency of that Business Plan is achieved and the Operator shall use all reasonable endeavours to implement such Financial Action Plan.

### **Quarterly Financial Information**

5.4 Within four weeks after the end of the third, sixth, tenth and thirteenth Reporting Periods in each Concession Year, the Operator shall deliver to RfL an updated version of the profit and loss forecast, cash flow forecast and forecast balance sheet provided in accordance with paragraph 3.1(d), for each of the following 13 Reporting Periods.

### **Annual Financial Information**

5.5 Within three weeks of the end of each Concession Year, the Operator shall deliver to RfL its Annual Management Accounts for that Concession Year.

5.6 Within four Reporting Periods after the end of each Concession Year, the Operator shall deliver to RfL the following information:

- (a) certified true copies of its annual report and Annual Audited Accounts for that Concession Year, together with copies of all related directors' and auditors' reports; and
- (b) a reconciliation to the Management Accounts for the same period.

### **Accounting Standards and Practices**

5.7 Each set of Management Accounts and Annual Management Accounts shall be:

- (a) be drawn up in a form consistent with the form of profit and loss account, cashflow projection and balance sheets specified by RfL from time to time; and
- (b) be prepared consistently in accordance with the Operator's normal accounting policies, details of which shall be supplied, on request, to RfL and any changes to which shall be notified to RfL on submission of such accounts, together with a commentary of the impact of those changes on the Management Accounts and Annual Management Accounts.

5.8 Each set of Annual Audited Accounts shall:

- (a) be prepared and audited in accordance with international accounting standards regulations or such other accounting conventions, policies and requirements as RfL may from time to time specify after consultation with the Operator, provided that those other conventions, policies and requirements are compatible with the requirement of the accounting conventions applicable in the UK at the time and consistently applied and in accordance with international accounting standards regulation; and
- (b) together with the notes thereto and subject to any qualifications contained in any relevant auditors' report, give a true and fair view of the financial information

pertaining to this Agreement and whether the Annual Management Accounts have been properly prepared in accordance with the requirements under this Schedule 16.1.

### **Parent Accounts**

5.9 The Operator shall, upon the request of RfL, promptly deliver to, or procure delivery to, RfL, certified true copies of the annual reports and audited accounts of the Parent, together with copies of all related directors' and auditors' reports. If the Parent is domiciled outside England and Wales, the equivalent documents in the jurisdiction of residence of the Parent shall be delivered to RfL.

## **6. SAFETY INFORMATION**

### **Co-operation with competent authorities**

6.1 The Operator shall co-operate with any request from any relevant competent authority for provision of information and/or preparation and submission of reports detailing or identifying compliance with safety obligations set out in the Safety Regulations including any breaches of the Safety Regulations.

### **Provision of formal notices**

6.2 The Operator shall notify RfL as soon as practicable of the receipt and contents of any formal notification relating to safety or any improvement or prohibition notice received from ORR. Immediately upon receipt of such notification or notice, the Operator shall provide RfL with a copy of such notification or notice.

### **Provision of updates, information relating to incidents and reports**

6.3 The Operator shall:

- (a) provide RfL with regular updates (on a 'real time' basis) on service and safety information, including details of any significant disruption, peak performance, cancellations, stations or route closures, major incidents (whether resulting in a disruption to Passenger Services or a serious crime or death or injury to any person using or on the railway), and any incidents classified as near misses and any other information reasonably requested by RfL;
- (b) inform RfL promptly of the occurrence of any serious accident or incident (including any incident likely to cause major disruption to the Passenger Services involving criminal activities or causing major disruption to the Passenger Services), whether 'reportable' or not, and co-operate fully and promptly with RfL and other TfL Group companies concerning such accident or incident, including by the provision of all information requested by RfL;
- (c) provide RfL with regular information on safety issues, including providing annual safety objectives, progress reports on achievement of such objectives, and a safety performance report at the end of each Reporting Period, reporting (to the standard required by RIDDOR) on the following: dangerous occurrences: major customer accidents, major employee accidents, major employee assaults, major contractor incidents, procedural irregularities, and incidents of trespass;



- (d) provide RfL with copies of all relevant material correspondence from or to the Operator concerning health, safety and environmental matters, including correspondence with regulatory bodies, incident reports, accident reports and any correspondence relating to accidents, incidents and significant occurrences; and
- (e) comply promptly with any other request from RfL (or any other member of the TfL Group) for information concerning any safety-related matter connected with the Concession Services.

6.4 The Operator shall co-operate with any safety auditors appointed by RfL, including providing timely responses to any safety issues raised by such auditors.

6.5 Notwithstanding the reporting obligations in this paragraph 6, the Operator shall remain fully responsible for the proper discharge of all its safety-related obligations and duties under this Agreement and all applicable laws and regulations (including the Safety Regulations).

## **7. FURTHER INFORMATION**

7.1 The Operator shall:

- (a) deliver to RfL, or procure the delivery to RfL of, such information, records or documents as it may request within such period as it may reasonably require and which relate to or are connected with the Operator's performance of this Agreement; and
- (b) procure that each Affiliate of the Operator complies with paragraph 7.1(a) in respect of any information, records or documents that relate to its dealings with the Operator in connection with the Operator's performance of this Agreement.

7.2 The information referred to in paragraph 7.1(a) shall include:

- (a) any agreement, contract or arrangement to which the Operator is a party in connection with any rolling stock vehicles used in the operation of the Passenger Services;
- (b) in so far as the Operator has or is able to obtain the same, any other agreement contract or arrangement which may be associated with the procurement, leasing, financing or maintenance of any such rolling stock vehicles;
- (c) any agreement for the manufacture or supply of any rolling stock vehicles; or
- (d) any arrangements for the securitisation of any lease granted in respect of such rolling stock vehicles.

7.3 RfL may require the Operator to provide:

- (a) the information required to be provided under this Schedule 16 more frequently than set out in this Schedule 16;
- (b) the information required to be provided under this Schedule 16, or, in RfL's discretion, more detailed financial information, at any time in connection with the re-letting of the Concession; and

- (c) such unaudited accounts under such accounting policies as may be prescribed by RfL, acting reasonably, from time to time.

## **8. CONTRAVENTIONS OF THIS AGREEMENT**

8.1 The Operator shall notify RfL, so far as possible before it may occur and in any event as soon as reasonably practicable thereafter, of any contravention by the Operator of any provision of this Agreement. This includes where the Operator is under an obligation to use all reasonable endeavours to achieve a particular result by a particular time, where such result is not achieved by such time.

8.2 The Operator shall deliver to RfL, or procure the delivery to RfL of, such information, records or documents as RfL may request within such period as RfL may reasonably require for the purpose of determining the existence, likelihood, nature or scope of any contravention of, Event of Default or Termination Event under, this Agreement.

## **9. INFORMATION TO AND FROM THIRD PARTIES**

### **Information to Stakeholders**

9.1 The Operator shall comply with any reasonable requests and guidance issued by RfL from time to time in respect of the provision of information to and co-operation and consultation with Stakeholders.

### **Information from third parties**

9.2 The Operator shall, if RfL so requests, use all reasonable endeavours to ensure that RfL has direct access to any information, data or records relating to the Operator which is or are maintained by third parties and to which RfL is entitled to have access, or of which RfL is entitled to receive a copy under this Agreement.

9.3 The Operator shall, if RfL so requests, procure the provision by RSP to RfL of such information, data and records as the Operator is entitled to receive under the Ticketing and Settlement Agreement, in such form as RfL may specify from time to time.

9.4 The obligations of the Operator under this Schedule 16.1 to provide information to RfL shall not apply if RfL notifies the Operator that it has received the relevant information directly from any other person (including any Infrastructure Manager or RSP). The Operator shall, if RfL so requests, confirm or validate any such information which is received from any such other person.

9.5 The Operator shall promptly advise RfL of any changes that are to be made to its systems or processes or the systems and processes of the RSP that will materially affect the continuity of any of the records that are provided pursuant to this Schedule 16.1. Any such advice shall include an assessment of the materiality of the relevant change.

## **10. MAINTENANCE AND STANDARD OF INFORMATION**

### **Maintenance of records**

10.1 The Operator shall maintain true, up to date and complete records of all of the information required to be provided by the Operator under this Agreement.

10.2 Each record required to be maintained by the Operator in accordance with paragraph 10.1 shall be held for a period of six years following the date on which such record was required to be created.

10.3 References to records in this Schedule 16.1 shall include records maintained under the Previous Concession Agreement or the Previous Franchise Agreement to the extent that such records relate to the Concession Services and the Operator has access to them (which it shall use all reasonable endeavours to secure).

### **Electronic Library**

10.4 The Operator shall maintain and update throughout the Concession Period an electronic library containing such information about London Overground (including copies of associated contracts and information necessary for the re-letting of the Concession Services) as RfL may require (the *Electronic Library*). The Electronic Library shall be developed in accordance with a structure and format approved by RfL. The Operator shall make the Electronic Library immediately available to RfL and its advisers (via a web browser) at all times during the Concession Period, and similarly accessible to any potential Successor Operator and its advisers.

### **Compatibility of information**

10.5 The Operator shall not be responsible for any records maintained under the Previous Concession Agreement or the Previous Franchise Agreement, as referred to in paragraph 10.3, being true, complete and up to date. As soon as reasonably practicable after becoming aware that any such records are not true, complete and up to date, the Operator shall take all reasonable steps to remedy any such deficiency, and shall thereafter maintain such records in accordance with paragraph 10.1.

10.6 All financial, operating or other information, and any data and records required to be provided to RfL under this Agreement shall be provided, if so requested by RfL, in a form compatible with RfL's electronic data and records systems on the Start Date, as modified from time to time.

10.7 The Operator shall ensure that the interconnection of such systems or the provision of such information, data and records to RfL under this Agreement will not result in any infringement of any third party intellectual property rights to which its systems or such information, data or records may be subject.



**SCHEDULE 16.2****Confidentiality and Freedom of Information Act Requirements****1. CONFIDENTIALITY**

Subject to the provisions of the Act, the Transport Act, the Railways Act 2005 and paragraphs 2 (*Disclosure of Confidential Information*) to 10 (*Continuing Obligation*) inclusive, each party shall hold in confidence all documents, materials and other information, whether technical or commercial, supplied by or on behalf of the other party (including all documents and information supplied in the course of proceedings under the Dispute Resolution Rules or the rules of any other dispute resolution procedures to which a dispute is referred in accordance with this Agreement) and shall not, except with the other party's written authority, publish or otherwise disclose the same otherwise than as expressly provided for in this Agreement unless or until the recipient party can demonstrate that any such document, material or information is in the public domain through no fault of its own and through no contravention of this Agreement, whereupon to the extent that it is in the public domain this obligation shall cease.

**2. DISCLOSURE OF CONFIDENTIAL INFORMATION**

Each party may disclose any data or information acquired by it under or pursuant to this Agreement or information relating to a dispute arising under this Agreement without the prior written consent of the other party if such disclosure is made in good faith:

- (a) to any Affiliate of such party or outside consultants or advisers of such Affiliate, upon obtaining from such Affiliate and/or such outside consultants or advisers of such Affiliate an undertaking of confidentiality equivalent to that contained in paragraph 1 (*Confidentiality*);
- (b) to any outside consultants or advisers engaged by or on behalf of such party and acting in that capacity, upon obtaining from such consultants or advisers an undertaking of confidentiality equivalent to that contained in paragraph 1;
- (c) to any lenders, security trustee, bank or other financial institution (and its or their advisers) from which such party is seeking or obtaining finance, upon obtaining from any such person an undertaking of confidentiality equivalent to that contained in paragraph 1;
- (d) to the extent required by Law or pursuant to an order of any court of competent jurisdiction or under the Dispute Resolution Rules or the rules of any other dispute resolution procedures to which a dispute is referred in accordance with this Agreement or the rules of a recognised stock exchange or a formal or informal request of any taxation authority;
- (e) to any insurer, upon obtaining from such insurer an undertaking of confidentiality equivalent to that contained in paragraph 1;
- (f) to any director, employee or officer of such party, to the extent necessary to enable such party to perform its obligations under this Agreement or to protect or enforce its rights under this Agreement; or

- (g) by the Operator, to the ORR, the Rail Passengers' Council or a Local Authority.

### **3. RfL PUBLICATION OF CERTAIN INFORMATION**

#### **RfL right to publish specific information**

3.1 The Operator acknowledges that RfL is subject to the Transparency Commitment. Accordingly, notwithstanding paragraph 1 (*Confidentiality*), the Operator hereby gives its consent for RfL to publish the Concession Agreement Information to the general public, the press or to one or more individuals, companies or other bodies, including to any prospective Successor Operator) in such form and at such times as it sees fit (irrespective of whether the same was provided to RfL by the Operator or a third party).

3.2 RfL may in its absolute discretion redact all or part of the Concession Agreement Information prior to its publication. In so doing and in its absolute discretion, RfL may:

- (a) take account of the exemptions/exceptions that would be available in relation to information requested under the FOI Legislation; and/or
- (b) consult with the Operator regarding any redactions to the Concession Agreement Information to be published pursuant to paragraph 3.1, but RfL shall make the final decision regarding publication and/or redaction of the Concession Agreement Information.

#### **RfL right to publish other information**

3.3 Without prejudice to any other provision of this Schedule 16.2, RfL may publish any other information relating to the Operator if it has previously notified the Operator and the Operator does not demonstrate to the reasonable satisfaction of RfL within 14 days of such notification that the publication of such information would be materially detrimental to its business. If the Operator attempts so to demonstrate to RfL but it is not so satisfied, RfL shall allow seven more days before publishing the relevant information.

### **4. PASSENGER SERVICE DEVELOPMENT INFORMATION**

Nothing in this Schedule 16.2 shall be deemed to prohibit, prevent or hinder, or render either party liable for, the disclosure by either party to any Infrastructure Manager, the ORR, other Train Operators, any operators of services for the carriage of goods by rail, the Rail Passengers' Council and/or any Local Authority of any information relating to the development of the Service Level Commitment in accordance with Schedule 1.1 (*Timetable and Service Development*).

### **5. PUBLICATION BY RfL**

Nothing in this Schedule 16.2 shall be deemed to prohibit, prevent or hinder, or render RfL liable for, the disclosure of any information by RfL to the ORR, the Parliamentary Commissioner for Administration, a Minister of the Crown, any department of the government of the United Kingdom, the Scottish Parliament, the National Assembly of Wales, the Mayor of London, the Greater London Authority, the Rail Passengers' Council, any Local Authority or any department or officer of any of them or of information which is otherwise disclosed for the purpose of facilitating the carrying out of the functions of TfL in relation to the operation of railway passenger services to, from or within London.

## **6. NO PUBLICATION BY OPERATOR WITHOUT CONSENT**

6.1 Subject to paragraph 6.3 and whether or not any other restriction contained in this Schedule 16.2 applies, the Operator shall not, and shall procure that its Concession Employees and Subcontractors do not, make any announcement (including any communication to the public, to any clients or suppliers of either party or to all or any of the employees of either party or to representatives of the press, television, radio or other media) concerning the existence, provisions or subject matter of this Agreement or containing any information about any member of the TfL Group (including any information that is confidential by virtue of this Schedule 16.2 without the prior written approval of RfL).

6.2 RfL shall have absolute discretion in deciding whether to give any consent referred to in paragraph 6.1.

6.3 Paragraph 6.1 shall not apply:

- (a) if and to the extent that such announcement is required by Law or by any securities exchange or regulatory or Governmental body having jurisdiction over the Operator or any of its Affiliates (including the Financial Conduct Authority, the Prudential Regulation Authority, the London Stock Exchange, The Panel on Takeovers and Mergers and the Serious Fraud Office) and whether or not the requirement has the force of law and provided that any such announcement will be made only after consultation with RfL; or
- (b) to the Operator making such announcements to its Concession Employees and Subcontractors as are necessary to instruct or direct any of them for the purpose of carrying out its obligations or exercising its rights, in each case, under this Agreement, provided that, the Operator shall not be entitled by virtue of this paragraph 6.3(b) to make any such announcement concerning any matter that relates to the Operator's relationship with RfL or any other member of the TfL Group.

## **7. PROVISION OF INFORMATION TO THE ORR**

The Operator hereby authorises RfL to provide to the ORR, to the extent so requested by the ORR, such information as may be provided to RfL in relation to the Operator under this Agreement.

## **8. DISCLOSURE BY COMPTROLLER AND AUDITOR GENERAL**

The parties recognise that the Comptroller and Auditor General may, in pursuance of its functions under the Exchequer and Audit Department Act 1921, the National Audit Act 1983 and the Government Resources and Accounts Act 2000, disclose information which it has obtained pursuant to those Acts and which a party to this Agreement would not be able to disclose otherwise than under this Schedule 16.2.

## **9. FREEDOM OF INFORMATION**

9.1 The Operator acknowledges that RfL:

- (a) is subject to the FOI Legislation and agrees to assist and co-operate with RfL to enable RfL to comply with its obligations under the FOI Legislation; and

- (b) may be obliged under the FOI Legislation to disclose Information without consulting or obtaining the consent of the Operator.

9.2 Without limiting paragraph 9.1, the Operator shall and shall procure that its Subcontractors (if any) shall:

- (a) transfer to the Concession Manager (or such other person as may be notified by RfL to the Operator) each Information Request relevant to the Concession Agreement, the Concession Services or any member of the TfL Group that it or they (as the case may be) receive as soon as reasonably practicable and in any event, within two Business Days of receiving such Information Request; and
- (b) in relation to Information held by the Operator on behalf of RfL, provide to RfL with details about and/or copies of all such Information that RfL requests and such details and/or copies shall be provided within five Business Days of a request from RfL (or such other period as RfL may reasonably specify), and in such forms as RfL may reasonably specify.

9.3 RfL shall be responsible for determining whether Information is exempt information under the FOI Legislation and for determining what Information will be disclosed in response to any Information Request in accordance with the FOI Legislation.

9.4 The Operator shall not itself respond to any person making any Information Request, save to acknowledge receipt, unless expressly authorised to do so by RfL.

## **10. CONTINUING OBLIGATION**

This Schedule 16.2 (and any other provisions necessary to give effect hereto) shall survive the termination of this Agreement, irrespective of the reason for termination.



**SCHEDULE 17**

**REMEDIES, TERMINATION AND EXPIRY**

- Schedule 17.1: Remedial Plans and Remedial Agreements**
- Schedule 17.2: Quality Regime Remedial Plans and Remedial Agreements**
- Schedule 17.3: Other RfL Remedies**
- Appendix 1: Form of Event of Default Step-in Notice**
- Appendix 2: Form of Event of Default Step-out Notice**
- Schedule 17.4: Termination and Expiry**
- Schedule 17.5: Events of Default, Termination Event and Voluntary Termination**
- Schedule 17.6: Force Majeure**
- Schedule 17.7: Liability**



## SCHEDULE 17.1

### Remedial Plans and Remedial Agreements

#### 1. REMEDIAL PLAN NOTICES AND REMEDIAL AGREEMENTS

##### RfL right to issue a Remedial Plan Notice

1.1 Without limiting its other rights under this Schedule 17, if RfL is satisfied that the Operator is contravening or is likely to contravene any term of this Agreement, RfL may serve a notice on the Operator requiring it to propose such steps as the Operator considers appropriate for the purpose of securing or facilitating compliance with the term in question (a *Remedial Plan Notice*).

##### Contents of Remedial Plan Notices

1.2 Each Remedial Plan Notice shall specify the following:

- (a) the term or terms of this Agreement that RfL is satisfied that the Operator is contravening or is likely to contravene (each a *Relevant Term*); and
- (b) the time period within which RfL requires the Operator to provide an appropriate plan for the purpose of facilitating or securing compliance with any Relevant Term (a *Remedial Plan*).

##### Obligation to submit Remedial Plan

1.3 If RfL issues a Remedial Plan Notice, the Operator shall submit a Remedial Plan to RfL within the period specified in such Remedial Plan Notice.

##### Contents of Remedial Plans

1.4 Each Remedial Plan shall set out:

- (a) the Relevant Term which has caused a Remedial Plan to be required;
- (b) an explanation of the reasons for the contravention or likely contravention of the Relevant Term;
- (c) the steps proposed for the purposes of securing or facilitating compliance with the Relevant Term; and
- (d) the time period within which the Operator proposes to implement those steps.

#### 2. REMEDIAL AGREEMENTS

2.1 If RfL is satisfied that the matters referred to in paragraph 1.4(c) and (d) are appropriate (with or without further modification as the parties may agree) it may, without limiting its other rights under this Agreement or otherwise, require the Operator to enter into a supplemental agreement (the *Remedial Agreement*) with RfL to implement those matters.

2.2 The Operator shall comply with the terms of any Remedial Agreement.

### 3. EVENT OF DEFAULT

If the parties enter into a Remedial Agreement in relation to non-compliance with a Relevant Term and the Operator is non-compliant with that Relevant Term by the end of the period for being compliant specified in that Remedial Agreement, then an Event of Default shall occur, provided that where that non-compliance concerns the Operator's performance being equal to or worse than a Remedial Plan Quality Threshold under any of Standards Regime (KPIs), the Standards Regime (MSS), the Satisfaction Regime (CSS) or the Staff Regime (SIS), then the provisions of paragraph 6 (*Event of Default*) of Schedule 17.2 (*Quality Regime Remedial Plan and Remedial Agreements*) shall apply.

## SCHEDULE 17.2

### Quality Regime Remedial Plans and Remedial Agreements

#### 1. APPLICATION OF THIS SCHEDULE 17.2

The provisions of this Schedule 17.2 supplement the provisions of Schedule 17.1 (*Remedial Plans and Remedial Agreements*) and apply in relation to any contravention of a Relevant Term that is a Remedial Plan Quality Threshold.

#### 2. REMEDIAL PLAN NOTICES

If RfL is satisfied that the Operator is contravening or is likely to contravene any Relevant Term that is a Remedial Plan Quality Threshold, it may serve a Remedial Plan Notice on the Operator in accordance with paragraph 1.1 of Schedule 17.1 (*Remedial Plans and Remedial Agreements*).

#### 3. REMEDIAL PLANS

Where RfL has served on the Operator a Remedial Plan Notice in respect of any Relevant Term that is a Remedial Plan Quality Threshold, the Operator shall submit to RfL a Remedial Plan in accordance with paragraph 1.3 of Schedule 17.1 (*Remedial Plans and Remedial Agreements*).

#### 4. REMEDIAL AGREEMENTS

RfL may, subject to paragraph 5, require the Operator to enter into a Remedial Agreement in accordance with paragraph 2.1 of Schedule 17.1 (*Remedial Plans and Remedial Agreements*) in relation to any Remedial Plan that concerns a Relevant Term that is a Remedial Plan Quality Threshold.

#### 5. REMEDIAL SPENDING CAP

5.1 Subject to this paragraph 5, RfL may require the Operator to spend (from unbudgeted resources) up to █████<sup>66</sup> in any Concession Year (an amount as at the Indexation Base Month and indexed in accordance with paragraph 3 of (*Indexation by reference to RPI*) of Schedule 11.2 (*Annual Concession Payments and Indexation*)) in carrying out the steps specified in any Remedial Agreement or Corrective Action Notice for securing or facilitating compliance with a Relevant Term which is a Remedial Plan Quality Threshold.

5.2 The amount referred to in paragraph 5.1 is a combined annual limit for all remedial expenditure carried out pursuant to any Remedial Agreement or Corrective Action Notice in relation to the Standards Regime (KPIs), the Standards Regime (MSS), the Satisfaction Regime (CSS) and the Staff Regime (SIS).

5.3 RfL may not require the Operator to enter into a Remedial Agreement or require a Corrective Action Notice to be complied with, in each case relating to any Relevant Term that is a Remedial Plan Quality Threshold, where the solutions proposed in that agreement or

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<sup>66</sup> This text has been redacted by Rail for London in accordance with the provisions of the Freedom of Information Act 2000.

notice would require the Operator to incur expenditure in excess of the combined annual limit referred to in paragraph 5.1.

5.4 The Operator shall promptly inform RfL where it reasonably believes that the circumstances referred to in paragraph 5.3 apply. If RfL agrees, acting reasonably, that those circumstances do apply, then RfL and the Operator shall promptly discuss whether alternative solutions can be identified that will not require the Operator to incur expenditure in excess of that combined annual limit.

5.5 If any alternative solution referred to in paragraph 5.4 can be identified, the parties shall promptly (as the case may be) enter into a Remedial Agreement or revised Remedial Agreement or RfL shall reissue the Corrective Action Notice, in each case, on that basis. If such solutions cannot be identified or the combined annual limit has already been reached, then the Operator shall not be required to enter into a related Remedial Agreement or comply with the related Corrective Action Notice, but shall use all reasonable endeavours to continue to achieve compliance with the relevant Remedial Plan Quality Threshold, including by identifying and implementing solutions which do not require external expenditure, or (where applicable) solutions which will only require the Operator to incur expenditure up to the combined annual limit.

## **6. EVENT OF DEFAULT**

If the parties enter into a Remedial Agreement in relation to non-compliance with a Relevant Term that concerns the Operator's performance being equal to or worse than a Remedial Plan Quality Threshold under any of the Standards Regime (KPIs), the Standards Regime (MSS), the Satisfaction Regime (CSS) or the Staff Regime (SIS) and (subject to paragraph 5 (*Remedial Spending Cap*)) the Operator is not materially compliant with that Relevant Term by the end of the period for being compliant specified in that Remedial Agreement, then an Event of Default shall have occurred.

## SCHEDULE 17.3

### Other RfL Remedies

#### 1. CORRECTIVE ACTION NOTICES

##### RfL right to issue Corrective Action Notices

1.1 Without limiting its other rights under this Schedule 17, RfL may issue a Corrective Action Notice to the Operator in any case where:

- (a) RfL is satisfied that the Operator is contravening or is likely to contravene a Relevant Term;
- (b) RfL does not approve of the terms of any Remedial Plan submitted to it by the Operator (including a Remedial Plan submitted under Schedule 17.2 (*Quality Regime Remedial Plans and Remedial Agreements*)); or
- (c) the Operator fails to comply with its obligations in respect of the implementation of any Remedial Agreement or prior Corrective Action Notice (including a Remedial Agreement or prior Corrective Action Notice relating to a breach of any Remedial Plan Quality Threshold issued pursuant to paragraph 1.1(b) or this paragraph 1.1(c)), but, notwithstanding the consequent occurrence of an Event of Default, RfL does not wish to terminate this Agreement.

##### Contents of a Corrective Action Notice

1.2 Each Corrective Action Notice shall specify the following:

- (a) the Relevant Term that RfL is satisfied that the Operator is contravening or is likely to contravene;
- (b) the action that RfL reasonably requires the Operator to take or procure and/or the outputs RfL reasonably requires to see delivered to facilitate or secure compliance with that Relevant Term; and
- (c) the time period within which RfL requires the Operator to take that action or see those outputs delivered.

1.3 Any Corrective Action Notice served in relation to the Operator's performance against any Remedial Plan Quality Threshold is subject to the same limitations regarding the cap on the Operator's annual expenditure as apply in respect of relevant Remedial Agreements specified in paragraph 5 (*Remedial Spending Cap*) of Schedule 17.2 (*Quality Regime Remedial Plan and Remedial Agreements*). Consequently, RfL is not entitled to issue a Corrective Action Notice to the Operator where the effect of such notice would require the Operator to incur expenditure in excess of the relevant annual cap.

##### Event of Default

1.4 An Event of Default shall occur if RfL issues a Corrective Action Notice to the Operator in relation to non-compliance with:

- (a) a Relevant Term (other than where that non-compliance concerns the Operator's performance being equal to or worse than a Remedial Plan Quality Threshold under any of Standards Regime (KPIs), the Standards Regime (MSS), the Satisfaction Regime (CSS) or the Staff Regime (SIS)) and the Operator is non-compliant with that Relevant Term by the end of the period specified in that notice for being compliant with that Relevant Term; or
- (b) a Relevant Term that concerns the Operator's performance being equal to or worse than a Remedial Plan Quality Threshold under any of Standards Regime (KPIs), the Standards Regime (MSS), the Satisfaction Regime (CSS) or the Staff Regime (SIS), and (subject to paragraph 5 (*Remedial Spending Cap*) of Schedule 17.2) the Operator is not materially compliant with that Relevant Term by the end of the period specified in that notice for being compliant with that Relevant Term.

## **2. INCREASED MONITORING BY RfL**

2.1 Following the occurrence of a contravention of this Agreement, RfL may at its option (but shall not be obliged to) commence or increase the level and/or frequency of monitoring (whether by inspection, audit or otherwise) of the Operator's performance of any relevant obligation until such time as the Operator demonstrates, to RfL's reasonable satisfaction, that it is capable of performing and will perform such obligation as required by this Agreement.

2.2 The Operator shall co-operate fully with RfL in relation to such monitoring referred to in paragraph 2.1.

2.3 The results of such monitoring will be reviewed at each Concession Performance Meeting held pursuant to paragraph 6 (*Concession Performance Meetings*) of Schedule 15.1 (*Personnel, Communication and Access*).

2.4 The Operator shall compensate RfL for all reasonable costs incurred by RfL in carrying out such monitoring and if such monitoring is in respect of a contravention of any Remedial Plan Quality Threshold or any other obligation contained in Schedule 8 (*Service Quality and Passenger Perception*), the contravention of which expressly contemplates the requirement for a Remedial Plan, such compensation shall not be included in any remedial spending required in respect of any Remedial Plan pursuant to Schedule 17.2 (*Quality Regime Remedial Plans and Remedial Agreements*) and capped pursuant to paragraph 5 (*Remedial Spending Cap*) thereof.

## **3. EFFECT OF FORCE MAJEURE EVENT**

Without prejudice to the operation of paragraph 3.2 of Schedule 17.6 (*Force Majeure*), the following provisions shall apply in relation to Force Majeure Events affecting performance of the requirements of a Remedial Agreement or a Corrective Action Notice:

- (a) the Operator shall give written notice to RfL promptly after it becomes aware (and in any event within 24 hours after becoming aware) of the occurrence or likely occurrence of a Force Majeure Event which will or is likely to affect the Operator's ability to comply with a Remedial Agreement or a Corrective Action Notice within the period specified therein;



- (b) each notice submitted in accordance with paragraph 3(a) shall state the extent or likely extent of the relevant Force Majeure Event and, in the case of a Force Majeure Event which has not occurred at such time, the reasons why the Operator considers it likely to occur;
- (c) the Operator shall use, and shall continue to use, all reasonable endeavours to avoid or reduce the effect or likely effect of any Force Majeure Event on its ability to comply with any Remedial Agreement or Corrective Action Notice; and
- (d) the Operator shall be entitled to a reasonable extension of the remedial period applicable to a Remedial Agreement or a Corrective Action Notice in order to take account of the effect of a Force Majeure Event which has occurred on the Operator's ability to comply with any Remedial Agreement or a Corrective Action Notice.

#### **4. RfL STEP-IN FOLLOWING EVENT OF DEFAULT**

##### **Notice of step-in**

4.1 Where an Event of Default has occurred and is continuing and RfL has decided not to terminate this Agreement at that time or a Termination Notice has been duly served on the Operator specifying the future date of termination of this Agreement, RfL may, in either case, serve an Event of Default Step-in Notice on the Operator, informing the Operator of the following:

- (a) the Event of Default that has occurred and is continuing (to the extent not already notified in a Termination Notice);
- (b) the extent to which, if any, RfL wishes to expel the Operator from the infrastructure and/or facilities related to London Overground and, subject to paragraph 4.3(a), the date from which RfL requires that expulsion to apply;
- (c) the steps that RfL intends to take itself or the steps that RfL intends its nominee to take on its behalf, each in relation to the operation or the carrying out of the Concession Services or of any of the Operator's obligations under this Agreement to ensure the continuity or delivery of those services and/or obligations;
- (d) the identity of its nominee, if relevant and known at the time; and
- (e) the date on which RfL expects those steps to first be taken (which may be the date of the Event of Default Step-In Notice) and the time period that RfL estimates is reasonably necessary to take those steps.

4.2 Following service of an Event of Default Step-In Notice, where so requested by RfL, the Operator shall as soon as reasonably practicable after that request, submit to RfL proposals that demonstrate that the Operator is and will continue to be capable of ensuring the continuity or delivery of the Concession Services and/or its obligations under this Agreement in relation to which that Event of Default Step-In Notice was served.

### Effect of step-in

4.3 Where RfL indicates in any Event of Default Step-In Notice that it wishes to expel the Operator from some or all of the infrastructure and/or facilities related to London Overground:

- (a) the date referred to in paragraph 4.1(b) shall be no less than seven days after the date of that Event of Default Step-In Notice;
- (b) the Operator shall comply with the terms of any such expulsion; and
- (c) in so requiring, neither RfL will have avoided this Agreement nor the Operator have been released from any of its obligations or liability under this Agreement.

4.4 To the extent RfL has not already notified the Operator in an Event of Default Step-In Notice, RfL shall, where relevant, notify the Operator of the identity of its nominee as soon as reasonably practicable after that nominee's appointment.

4.5 RfL or its nominee shall be entitled to take such steps during any Event of Default Step-In Period as RfL or that nominee (as the case may be) reasonably considers necessary in order to fulfil the objective referred to in paragraph 4.1(c).

4.6 The Operator shall co-operate with RfL and/or its nominee during any Event of Default Step-In Period to assist RfL and/or its nominee (as the case may be) in fulfilling the objective referred to in paragraph 4.1(c), including by:

- (a) providing to RfL and/or its nominee (as the case may be) on reasonable notice, access to or copies of such financial, operating, management or other information relevant to the Concession Services or any of the Operator's obligations under this Agreement;
- (b) granting or procuring the grant to RfL and/or its nominee of such access as RfL or its nominee (as the case may be) reasonably requires to the infrastructure and/or facilities, including Computer Systems, related to London Overground;
- (c) procuring the prompt assistance and availability to RfL and/or its nominee of all relevant Concession Employees; and
- (d) taking such other action or omitting to take such action as RfL reasonably requires.

4.7 Where RfL and/or its nominee takes any steps pursuant to paragraph 4.5, RfL may recover all costs that either or both reasonably incur (including their respective administrative expenses, staff costs, other overheads and in the case of the nominee, a reasonable profit element) in relation to the taking of those steps, in each case by way of Other Adjustments.

4.8 Concession Payments shall continue to be payable by RfL in accordance with Schedule 11.1 (*Concession Payments*) during any Event of Default Step-In Period except where a Termination Notice has been duly served on the Operator, in which case during the Event of Default Step-In Period from the date of such notice, RfL shall, subject to paragraph 4.7, pay the Operator by way of Other Adjustments on an emerging cost basis for such costs as the Operator reasonably and prudently incurs in the carrying out of the remainder of the Concession Services and otherwise complying with its obligations under this Agreement that are not the subject matter of the relevant Event of Default Step-In Notice.

Any such payment shall not include any margin on those costs or any management fees unless RfL otherwise agrees in its absolute discretion.

4.9 The Operator shall provide such information as RfL reasonably requires during any Event of Default Step-In Period where a Termination Notice has been duly served by RfL in order that RfL may verify that any costs by the Operator during that Event of Default Step-in Period have been reasonably and prudently incurred by the Operator.

**Notice of step-out**

4.10 RfL may in its discretion, regardless of whether it has asked for the Operator to provide the proposals referred to in paragraph 4.2, serve on the Operator an Event of Default Step-out Notice, specifying the following:

- (a) the extent to which RfL wishes the Operator to resume providing those Concession Services and/or meeting those obligations under this Agreement in relation to which the relevant Event of Default Step-In Notice was served; and
- (b) the date on which the Operator is to resume providing those services and/or obligations, provided that the Operator shall be given no less notice than a skilled and experienced Train Operator of London Overground would require in order to resume those services and/or obligations.

4.11 The Operator shall comply with the requirements of any Event of Default Step-out Notice.

4.12 RfL may:

- (a) serve more than one Event of Default Step-Out Notice in relation to those Concession Services and/or those obligations under this Agreement that are the subject of a single Event of Default Step-In Notice; and
- (b) require the Operator to resume the provision of those services and/or obligations in full, partially or gradually.

4.13 RfL:

- (a) shall or shall procure that its nominee shall use all reasonable endeavours to ensure that:
  - (i) the Operator does not suffer or incur any Loss; or
  - (ii) the Operator's ability to deliver the Concession Services and/or its obligations under this Agreement is not materially diminished,

in either case arising from RfL's or its nominee's actions or omissions during any Event of Default Step-In Period; but

- (b) shall not be liable for any such Loss suffered or incurred by the Operator or any reduction in such ability, in either case arising from those actions or omissions during any Event of Default Step-In Period.



**APPENDIX 1 TO SCHEDULE 17.3**

**FORM OF EVENT OF DEFAULT STEP-IN NOTICE**

Private and confidential

From: Rail for London Limited  
Windsor House  
42-50 Victoria Street  
London  
SW1H 0TL (*RfL*)

To: [*name an Operator*]  
[*address*]  
[*address*]  
[*address*] (the *Operator*)

[*Insert date*]

Dear Sirs,

**London Overground Concession Agreement – Event of Default Step-in Notice**

1. Capitalised terms used in this notice shall have the same meaning given to them in the concession agreement dated [\_\_\_\_] between RfL and the Operator under which, among other things, the Operator agreed to provide the Concession Services and RfL agreed to make Concession Payments to the Operator (the *Concession Agreement*).
2. We hereby give you notice:
  - (a) that the following Event of Default has occurred and is continuing [*specify*]; and
  - (b) that, pursuant to paragraph 4.1 of schedule 17.3 (*Other RfL Remedies*) of the Concession Agreement, [*we are*][*specify nominee if known*] as our nominee is stepping in and assuming your role in carrying out those of your obligations under the Concession Agreement that are specified in paragraph 3 from the Event of Default Step-in Date and for the estimated Event of Default Step-in Period, in each case as specified in paragraph 4 and in order to secure [*continuity of those services*][*delivery of those obligations*].
3. During the Event of Default Step-in Period, [*we*][*specify nominee if known*] intend[*s*] to take the following steps in relation to carrying out [*the following Concession Services*][*the following of your obligations under the Concession Agreement:*] [*specify*].
4. For the purpose specified in paragraph 3, you shall not perform those [*Concession Services*][*obligations*] specified in that paragraph for the duration of the Event of Default Step-in Period and you shall and you shall procure that your employees, agents, sub-

contractors and other representatives shall not attend the following infrastructure and facilities during that time, unless otherwise instructed by us: [*specify*].

5. The Event of Default Step-in Date is [*insert date RfL or its nominee will step in*] and the expected Event of Default Step-in Period is [*insert expected period of step-in*].

Yours faithfully

Signed for and on behalf of RfL

**APPENDIX 2 TO SCHEDULE 17.3**

**FORM OF EVENT OF DEFAULT STEP-OUT NOTICE**

Private and confidential

From: Rail for London Limited  
Windsor House  
42-50 Victoria Street  
London  
SW1H 0TL (*RfL*)

To: [name an Operator]  
[address]  
[address]  
[address] (the *Operator*)

[Insert date]

Dear Sirs,

**London Overground Concession Agreement – Event of Default Step-out Notice**

1. Capitalised terms used in this notice shall have the same meaning given to them in the concession agreement dated [\_\_\_\_] between RfL and the Operator under which, among other things, the Operator agreed to provide the Concession Services and RfL agreed to make Concession Payments to the Operator (the *Concession Agreement*).
2. We hereby give you notice:
  - (a) that as per an Event of Default Step-in Notice dated [\_\_\_\_], from the Event of Default Step-in Date specified in that Event of Default Step-in Notice, [we][[specify nominee], as our nominee] stepped in and assumed your role in carrying out certain [Concession Services][of your obligations under the Concession Agreement]; and
  - (b) that pursuant to paragraph[s] 4.10 [and 4.12] of schedule 17.3 (*Other RfL Remedies*) of the Concession Agreement, [we are][[specify nominee] is] stepping out and ceasing to perform [those][the following] [Concession Services][obligations] from the Event of Default Step-out Date specified in paragraph 3.
3. The Event of Default Step-out Date is [insert date RfL or its nominee will step out].

We require you to resume the performance of the [Concession Services][obligations] specified in paragraph 2(b) from the Event of Default Step-out Date, [fully.][as follows:]

Yours faithfully

Signed for and on behalf of RfL





## SCHEDULE 17.4

### Termination and Expiry

#### 1. TERMINATION NOTICES

1.1 RfL may, on and at any time:

- (a) after the occurrence of an Event of Default (subject to paragraphs 1.2 and 1.3) which is unremedied or continuing and which RfL considers to be material;
- (b) after the occurrence of a Termination Event which is unremedied or continuing; or
- (c) pursuant to paragraph 4 (*Voluntary Termination*) of Schedule 17.5 (*Events of Default, Termination Event and Voluntary Termination*),

terminate this Agreement by serving a Termination Notice on the Operator. This Agreement shall terminate with effect from the date specified in any such Termination Notice, which date in the case of a Termination Notice issued pursuant to paragraph 4 of Schedule 17.5, shall be no earlier than the notice period specified in paragraph 4 of Schedule 17.5.

1.2 RfL may not serve a Termination Notice in respect of an Event of Default in relation to which a Remedial Plan Notice has been issued until the period has expired within which the Operator is required to deliver to RfL the Remedial Plan specified in such Remedial Plan Notice.

1.3 RfL may not serve a Termination Notice in respect of an Event of Default for which the Operator is implementing a Remedial Agreement in accordance with its terms.

#### 2. CONSEQUENCES OF TERMINATION OR EXPIRY

##### Continued performance until termination

2.1 Subject to Applicable Requirements, or as otherwise set out in this Agreement, the parties shall continue to perform their obligations under this Agreement, notwithstanding the giving of any Termination Notice until the termination of this Agreement becomes effective in accordance with this Agreement.

##### Cessation of rights and obligations on termination

2.2 Upon termination of this Agreement (whether through default or effluxion of time or otherwise) the obligations of the parties shall cease except for:

- (a) any accrued rights and obligations as at the date of termination;
- (b) any rights and obligations arising as a result of any antecedent contravention of this Agreement;
- (c) any rights and obligations which are expressed to continue in accordance with the terms of this Agreement; and

- (d) any other rights and obligations which give effect to such termination or to the consequences of such termination or which otherwise apply (expressly or impliedly) on or after such termination.

### **Right to bring a claim and pursue other remedies**

2.3 Nothing in this paragraph 2 shall prevent RfL from bringing an action against the Operator in connection with the termination of this Agreement prior to the expiry of the Concession Term, and the rights of RfL under this paragraph 2 are in addition and without prejudice to any other right RfL may have to obtain redress or relief available at law (whether by way of damages, specific performance, or otherwise) on account of the acts or omissions of the Operator, whether pursuant to this Agreement, the Performance Bond, Guarantee or otherwise.

### **Retendering costs**

2.4 Subject to paragraph 2.5, and paragraph 1.9 of Schedule 17.7 (*Liability*), upon termination of this Agreement by RfL pursuant to paragraph 1.1(a), the Operator shall be liable to RfL for any retendering costs incurred by RfL in retendering London Overground together with the increased costs of appointing a Successor Operator to carry out the Operator's obligations under this Agreement following termination until the end of the Concession Term.

2.5 If the terms and conditions of any new concession offered by RfL in the retendering process (including the basis upon which payment is made) are materially different from the terms and conditions contained in this Agreement, then an adjustment shall be made to the amount calculated in accordance with paragraph 2.4 which reasonably reflects how the increased costs of a Successor Operator would have been different (whether greater or lesser) had the new concession been let on substantially the same terms and conditions.

### **Voluntary termination compensation**

2.6 Where RfL terminates this Agreement pursuant to paragraph 4 (*Voluntary Termination*) of Schedule 17.5 (*Events of Default, Termination Event and Voluntary Termination*), then the Operator shall be entitled to recover from RfL:

- (a) its reasonable costs of demobilisation;
- (b) any Loss incurred under agreements with third parties provided that such agreements have been entered into in the ordinary course of business and on reasonable commercial terms; and
- (c) an amount in respect of the Operator's loss of profit for 12 months from the date of termination, which shall not exceed the profit of the relevant Concession Year specified in the Financial Model.

### **No other claim**

2.7 The Operator shall have no claim for compensation or otherwise as a result of termination of this Agreement except in accordance with the express provisions of this Agreement.

## SCHEDULE 17.5

### Events of Default, Termination Event and Voluntary Termination

#### 1. PROVISIONS RELATING TO EVENTS OF DEFAULT

##### Contravention

1.1 The occurrence of an Event of Default shall constitute a contravention of this Agreement by the Operator.

##### Notification of Event of Default

1.2 The Operator shall notify RfL as soon as reasonably practicable on, and in any event within 24 hours of, it becoming aware of the occurrence of an Event of Default or an event which is likely to result in the occurrence of an Event of Default. The Operator shall take such action or steps as RfL may require to remedy any Event of Default or potential Event of Default.

##### Consequences of Event of Default

1.3 On the occurrence of an Event of Default, the provisions of Schedule 17.4 (*Termination and Expiry*) shall apply, but the provisions of Schedule 17.1 (*Remedial Plans and Remedial Agreements*), Schedule 17.2 (*Quality Regime Remedial Plans and Remedial Agreements*) and Schedule 17.3 (*Other RfL Rights*) shall also continue to apply.

#### 2. EVENTS OF DEFAULT

2.1 Each of the following is an Event of Default events in the remainder of this paragraph 2.

##### Insolvency-related events

2.2 The following insolvency-related events:

- (a) **Administration:** any step being taken by any person with a view to the administration of the Operator or the Parent or any Bond Provider under Part II of the Insolvency Act 1986;
- (b) **Insolvency:** any of the Operator or the Parent or Bond Provider stopping or suspending or threatening to stop or suspend payment of all or a material part of (or of a particular type of) its debts, or being unable to pay its debts, or being deemed unable to pay its debts under Section 123(1) or (2) of the Insolvency Act 1986 except that in the interpretation of this paragraph:
  - (i) the words 'it is proved to the satisfaction of the court that' in sub-section (1)(e) and sub-section (2) of Section 123 shall be deemed to be deleted; and
  - (ii) any of the Operator or the Parent or any Bond Provider shall not be deemed to be unable to pay its debts for the purposes of this paragraph if any such demand as is mentioned in Section 123(1)(a) of the Insolvency Act 1986 is being contested in good faith by such person with recourse to all appropriate

measures and procedures and such person has adequate funds to discharge the amount of such demand or if any such demand is satisfied before the expiration of 21 days from such demand;

- (c) **Arrangements with Creditors:** The directors of the Operator or the Parent or any Bond Provider making any proposal under Section 1 of the Insolvency Act 1986, or any of the Operator or the Parent or any Bond Provider proposing or making any agreement for the deferral, rescheduling or other readjustment (or proposing or making a general assignment or an arrangement or composition with or for the benefit of creditors) of all or a material part of (or of a particular type of) its debts, or a moratorium being agreed or declared in respect of or affecting all or a material part of (or of a particular type of) its debts;
- (d) **Security Enforceable:** Any step being taken to enforce security over or a distress, execution or other similar process being levied or served against any property of the Operator or the whole or a substantial part of the assets or undertaking of the Operator, the Parent or any Bond Provider, including the appointment of a receiver, administrative receiver, manager or similar person to enforce that security;
- (e) **Stopping Business/Winding-Up:** Any step being taken by the Operator, the Parent or any Bond Provider with a view to its winding-up or any person presenting a winding-up petition or any of the Operator or the Parent or any Bond Provider ceasing or threatening to cease to carry on all or a material part of its business, except for the purpose of and followed by a reconstruction, amalgamation, reorganisation, merger or consolidation on terms approved by RfL before that step is taken;
- (f) **Railway Administration Order:** A railway administration order being made in relation to the Operator under Sections 60 to 62 of the Act; and
- (g) **Analogous Events:** Any event occurring which, under the Law of any relevant jurisdiction, has an analogous or equivalent effect to any of the events listed in this paragraph 2.2,

unless, in the case of paragraphs 2.2(a), (d) and (e), the relevant petition, proceeding or other step is being actively contested in good faith by the relevant person with recourse to all appropriate resources and procedures and such person has adequate funds to discharge the relevant debt.

**Non-payment**

2.3 For reasons attributable to the Operator, RfL is unable to withdraw any Revenue Sweep from the Revenue Account within three days of the due date for such withdrawal.

2.4 The Operator failing to pay to RfL any other amount due under this Agreement within 28 days of the due date for such payment.

**Change of Control**

2.5 Without the prior consent of RfL a change occurring in the identity of any one person, or two or more persons acting by agreement, who may Control the Operator or the Parent on and from the date of this Agreement and during the Concession Period, which shall include a person, or two or more persons acting by agreement, ceasing to Control the Operator or the

Parent at any time during the Concession Period, whether or not any other person Controls the Operator or the Parent at the same time and, for the purposes of this paragraph 2.5, two or more persons shall be deemed to be acting by agreement in relation to the Operator or the Parent if, assuming the Operator or the Parent was a target company as defined in section 824(1) of the Companies Act 2006, such persons would be under an obligation to disclose an interest in shares in such company by virtue of an agreement between such persons.

### **Revocation of Licence**

2.6 Revocation of any Licence required to be held by the Operator in order to comply with its obligations under this Agreement.

### **Safety Certificate and Safety Authorisation**

2.7 Any Safety Certificate and/or Safety Authorisation of the Operator being withdrawn or terminated.

### **Breach of Law**

2.8 It becoming unlawful for the Operator to provide all or a material part of the Passenger Services or to operate all or a material number of the Operator Stations or any Depot (except to the extent not required so to do under this Agreement).

2.9 The Operator or any of the directors or senior managers of the Operator being convicted of manslaughter, fraud or any other indictable criminal offence in each case relating directly to the provision and operation of the Concession Services.

2.10 The Operator being in material non-compliance with a prohibition or enforcement order (or the equivalent thereof) issued by the ORR pursuant to its safety functions. If the Operator makes an appeal against such prohibition or enforcement order (or such equivalent thereof) in accordance with its terms, no Event of Default shall have occurred under this paragraph 2.10 until such appeal has been determined to be unsuccessful.

### **Non-membership of Inter-Operator Schemes**

2.11 The Operator ceasing to be a member of, or ceasing to participate in or to be party to, any of the Inter-Operator Schemes, or having its membership or participation therein suspended.

### **Operating Performance**

2.12 Where T3 is equal to or below the Remedial Plan Punctuality Threshold for any single Route or combination of Routes in any four Reporting Periods in any Thirteen Period Measurement Period, except where Network Rail is mainly responsible for that level of T3 and at the time of that occurrence the Operator is complying with:

- (a) its obligations under this Agreement to manage Network Rail's performance under the Network Rail TAA, including, where necessary, enforcing its contractual rights thereunder; and

- (b) the terms of any Remedial Agreement that may be in force which provides among its terms for the Operator to take certain other steps to manage Network Rail's performance under the Network Rail TAA.

2.13 Where Aggregate T3 across all Routes is equal to or below the Default Punctuality Threshold in any Reporting Period, except where Network Rail is mainly responsible for that level of T3 and at the time of that occurrence the Operator is complying with:

- (a) its obligations under this Agreement to manage Network Rail's performance under the Network Rail TAA, including, where necessary, enforcing its contractual rights thereunder; and
- (b) the terms of any Remedial Agreement that may be in force which provides among its terms for the Operator to take certain other steps to manage Network Rail's performance under the Network Rail TAA.

**Standards Regime (KPIs)**

2.14 A KPI Adjustment is made in any Reporting Period during the Concession Period that is equal to or more than the Default KPI Threshold.

**Satisfaction Regime (CSS)**

2.15 In any Thirteen Period Measurement Period, any three CSS Scores for any CSS Measure are equal to or less than the Default CSS Threshold for that CSS Measure and Concession Year to which any such CSS Score relates, provided that the CSS Score of any Customer Satisfaction Survey that is carried out within one Reporting Period of the occurrence of any Industrial Action by the Concession Employees that affects the provision of the Concession Services shall be disregarded for these purposes.

**Staff Regime (SIS)**

2.16 In any Thirteen Period Measurement Period, any three SIS Scores are equal to or less than the Default SIS Threshold, in each case for the Concession Year to which any such SIS Score relates.

**Revenue Protection**

2.17 The Ticketless Travel MAA Rate:

- (a) for London Overground Classic Route Group is equal to or higher than the Ticketless Travel LOC Default Threshold; and/or
- (b) for the Devolved Route Group is equal to or higher than the Ticketless Travel Devolved Default Threshold.

**Performance Bond**

2.18 A failure by the Operator to procure the provision to RfL of a Performance Bond which fulfils the requirements of paragraph 2 (*Performance Bond and Guarantee*) of Schedule 14 (*Financial Obligations and Credit Support*), including failing to replace, renew or extend the Performance Bond with a replacement Performance Bond issued by a Bond

Provider with the Required Rating and that meets the requirements of paragraphs 2.1 and 2.2 of Schedule 14:

- (a) within 15 Business Days of the Bond Provider's rating falling below the Required Rating; or
- (b) if the Performance Bond is due to expire prior to the Performance Bond Longstop Date, on or before the date falling 15 Business Days prior to any Interim Performance Bond Expiry Date.

2.19 Any Performance Bond ceasing to be a legal, valid and binding obligation on the relevant Bond Provider (other than in accordance with its terms) or it otherwise becoming unlawful or impossible for any Bond Provider to perform its obligations thereunder.

2.20 The Bond Provider failing or refusing to comply with any payment obligation assumed under the Performance Bond.

### **Guarantee**

2.21 A failure by the Operator to procure the provision to RfL of a Guarantee which fulfils the requirements of paragraph 2 of Schedule 14.

2.22 The Guarantee ceasing to be a legal, valid and binding obligation on the relevant Guarantor (other than in accordance with its terms) or it otherwise becoming unlawful or impossible for the Guarantor to perform its obligations thereunder.

2.23 The Guarantor failing or refusing to comply with any performance obligation assumed under the Guarantee.

### **Support Letter**

2.24 The Support Letter ceasing to be a legal, valid and binding obligation on the Parent (other than in accordance with its terms) or it otherwise becoming unlawful or impossible for the Parent to perform its obligations thereunder.

2.25 The Parent failing or refusing to comply with any undertaking made in the Support Letter.

### **Diversity Infraction**

2.26 Following receipt of a notice given pursuant to paragraph 7.1 of Schedule 15.3 (*Responsible Procurement*), the Operator failing to remedy a Diversity Infraction to the satisfaction of RfL within the timescale prescribed in that paragraph 7.1(a) or (b), as appropriate.

2.27 Following receipt of a notice given pursuant to paragraph 7.2 of Schedule 15.3, the Operator, failing to terminate the engagement of its direct subcontractor under its contract with that subcontractor and procuring performance by another person on the terms specified in that paragraph within the further timescale prescribed in that paragraph.

### **Remedial Agreements and Corrective Action Notices**

2.28 The Operator is non-compliant with a Relevant Term (other than where that non-compliance concerns the Operator's performance being equal to or worse than a Remedial

Plan Quality Threshold under any of the Standards Regime (KPIs), the Standards Regime (MSS), the Satisfaction Regime (CSS) or the Staff Regime (SIS)) by the end of the period for being compliant specified in any Remedial Agreement entered into pursuant to Schedule 17.1 (*Remedial Plans and Remedial Agreements*) or Corrective Action Notice issued pursuant to Schedule 17.3 (*Other RfL Remedies*), in each case relating to that Relevant Term.

2.29 Subject to paragraph 5 (*Remedial Spending Cap*) of Schedule 17.2 (*Quality Regime Remedial Plan and Remedial Agreements*), the Operator is materially non-compliant with a Relevant Term that concerns the Operator's performance being equal to or worse than a Remedial Plan Quality Threshold under any of the Standards Regime (KPIs), the Standards Regime (MSS), the Satisfaction Regime (CSS) or the Staff Regime (SIS) by the end of the period for being compliant specified in any Remedial Agreement entered into pursuant to Schedule 17.1 or Corrective Action Notice issued pursuant to Schedule 17.3, in each case relating to that Relevant Term.

### **Enforcement Orders**

2.30 Non-compliance by the Operator with:

- (a) a provisional order;
- (b) a final order;
- (c) a penalty; or
- (d) any other order made relating to a contravention of either a relevant condition or requirement (as defined in Section 55 of the Act) or another order.

### **Other rail concessions or bus contracts**

2.31 Termination, as a result of an event of default (excluding termination as a result of non-satisfaction of a condition precedent), of any other train operating agreement (whether heavy or light rail) or Bus Framework Agreement.

### **Maximum performance liability**

2.32 The Operator's liability to RfL in respect of Capped Performance Adjustments, net of Capped Performance Adjustments payable by RfL to the Operator, in each case in any Thirteen Period Measurement Period is equal to or, but for the application of paragraph 1.8 of Schedule 17.7 (*Liability*), would exceed the Overall Performance Cap.

### **Maximum aggregate liability**

2.33 The Operator's liability to RfL under the Transaction Documents (excluding its liability to pay Capped Performance Adjustments to RfL) reaches or exceeds 80 per cent. of the Overall Liability Cap.

### **Key Contracts**

2.34 Termination of any Key Contract except where requested by RfL or (other than in relation to termination of any Rolling Stock Lease contemplated at the date of this Agreement) to the extent that the Operator has demonstrated to the reasonable satisfaction of RfL that it is no longer necessary for it to be party to such Key Contract or that it has made



adequate alternative arrangements in order to be able to continue to provide and operate the Concession Services.

### **Security over Primary Concession Assets**

2.35 If the Security Interest granted by the Operator pursuant to paragraph 15.2 of Schedule 18.2 (*Restrictions on dealings*) ceases to be valid, binding and enforceable as a first priority Security Interest, unless the Operator replaces such security with replacement security acceptable to RfL within five days after written notice from RfL.

### **Contravention of Other Obligations**

2.36 The occurrence of the following:

- (a) the Operator contravening to a material extent or persistently contravening any one or more of its obligations under this Agreement (other than such non-performance or non-compliance as may constitute an Event of Default under the other provisions of this Schedule 17.5);
- (b) the service by RfL on the Operator of a written notice specifying:
  - (i) such contravention; and
  - (ii) to the extent the contravention is capable of being remedied, the reasonable period within which the Operator is required to so remedy; and
- (c) the Operator contravening or persistently contravening such obligation or obligations again to a material extent or permitting the contravention to continue or, if the contravention is capable of remedy, failing to remedy such contravention within such period as RfL has specified in the notice served pursuant to paragraph 2.36(b)(ii).

## **3. TERMINATION EVENT**

RfL may terminate this Agreement in accordance with Schedule 17.4 (*Termination and Expiry*) if any Force Majeure Event continues with the effect of preventing the Operator from delivering, wholly or mainly, the Passenger Services for more than six consecutive months (a *Termination Event*).

## **4. VOLUNTARY TERMINATION**

RfL may terminate this Agreement at any time on or before the last day of the Concession Term by issuing a Termination Notice to the Operator stating:

- (a) that RfL is terminating this Agreement under this paragraph 4; and
- (b) the date that this Agreement will terminate, which shall be no less than 60 days after the date of such notice.



## SCHEDULE 17.6

### Force Majeure

#### 1. FORCE MAJEURE EVENTS

The following events shall constitute Force Majeure Events, subject to the conditions specified in paragraph 2 (*Conditions to Force Majeure Events*) being satisfied:

- (a) the Operator or any of its agents or subcontractors is prevented or restricted by any Infrastructure Manager (including by virtue of the implementation of any Contingency Plan) from gaining access to any section or part of track (including any track running into, through or out of a station). For the purposes of this paragraph 1:
  - (i) references to a party being prevented or restricted from gaining access to any section or part of track shall mean that such party is not permitted to operate any trains on the relevant section or part of track, or is only permitted to operate a reduced number of trains from that which it was scheduled to operate;
  - (ii) the period of such prevention or restriction shall be deemed to commence with effect from the first occasion on which the Operator is prevented or restricted from operating a train on such section or part of track;
  - (iii) references in paragraphs 1(a)(i) and (ii) to the operation of trains include scheduled empty rolling stock vehicle movements; and
  - (iv) **Contingency Plan** means a contingency plan (as defined in Condition H of the Network Code or its equivalent in any other Relevant Network Code) implemented by and at the instigation of Network Rail or any plan implemented by and at the instigation of RfL (I) that has substantially the same effect as such a contingency plan, or such other contingency or recovery plan as RfL may agree from time to time;
- (b) the Operator or any of its agents or subcontractors is prevented or restricted by any Infrastructure Manager or any Facility Owner (other than a Facility Owner which is an Affiliate of the Operator) from entering or leaving:
  - (i) any station or part thereof (excluding, any prevention or restriction from gaining access to any section or part of track running into, through or out of a station); or
  - (ii) any depot or part thereof (including the movement of trains on tracks within any depot but excluding any prevention or restriction from gaining access to any track outside such depot running into or out of that depot);
- (c) any of the following events occurs:
  - (i) a programme of Mandatory Modifications commences;
  - (ii) any Rolling Stock Units are damaged by fire, vandalism, sabotage or a collision and are beyond repair or beyond economic repair; or

- (iii) a government authority prevents the operation of Rolling Stock Units on the grounds of safety,
- and, in each case, the greater of two Rolling Stock Units and 10 per cent. of all rolling stock vehicles used by the Operator in the provision of the Passenger Services in relation to any Service Group are unavailable for use in the provision of the Passenger Services as a result of the occurrence of such event;
- (d) the Operator prevents or restricts the operation of any train on safety grounds, provided that:
    - (i) the Operator has, either before or as soon as reasonably practicable after initiating such prevention or restriction, sought the confirmation of the ORR in exercise of its safety functions, or any relevant other body with statutory responsibility for safety in the circumstances, of the necessity of such prevention or restriction; and
    - (ii) if and to the extent that the ORR, or other relevant body with statutory responsibility for safety in the circumstances, in exercise of its safety functions indicates that such prevention or restriction is not necessary, then no Force Majeure Event under this paragraph 1(c) shall continue in respect of that restriction or prevention after the receipt of such indication from the ORR or other relevant body;
  - (e) act of God, war damage, enemy action, terrorism or suspected terrorism, riot, civil commotion, rebellion or the act of any government instrumentality (including the ORR but excluding RfL), provided that there shall be no Force Majeure Event under this paragraph 1(d) by reason of:
    - (i) the suicide or attempted suicide of any person that does not constitute an act of terrorism;
    - (ii) the activities of the police, fire service, ambulance service or other equivalent emergency service that are not in response to acts of terrorism or suspected terrorism; or
    - (iii) an act of God which results in the Operator or its agents or subcontractors being prevented or restricted by any Infrastructure Manager from gaining access to any relevant section or part of track; and
  - (f) any Industrial Action by any or all of the employees, agents or subcontractors of:
    - (i) any Infrastructure Manager; or
    - (ii) any other operator of any railway facility,

other than where that Infrastructure Manager or other operator is the Operator.

## 2. CONDITIONS TO FORCE MAJEURE EVENTS

The occurrence, and continuing existence of a Force Majeure Event shall be subject to satisfaction of the following conditions:

- (a) in relation to an event occurring under paragraph 1(a), that event has continued for more than 12 consecutive hours;
- (b) the Operator notifies RfL within two Business Days of it becoming aware or, if circumstances dictate, as soon as reasonably practicable thereafter, of:
  - (i) the occurrence or likely occurrence of the relevant event; and
  - (ii) the effect or the anticipated effect of such event on the Operator's performance of the Passenger Services;
- (c) at the same time as the Operator serves notification on RfL under paragraph 2, it informs RfL of the steps taken and/or proposed to be taken by the Operator to prevent the occurrence of, and/or to mitigate and minimise the effects of, the relevant event and to restore the provision of the Passenger Services;
- (d) the relevant event did not occur as a result of:
  - (i) any act or omission to act by the Operator or its agents or subcontractors; or
  - (ii) the Operator's own contravention of, or default under, this Agreement, any Access Agreement, Rolling Stock Related Contract, Property Lease or any other agreement;
- (e) the Operator used and continues to use all reasonable endeavours to avert or prevent the occurrence of the relevant event and/or to mitigate and minimise the effects of such event on its performance of the Passenger Services and to restore the provision of the Passenger Services as soon as reasonably practicable after the onset of the occurrence of such event; and
- (f) the Operator shall, to the extent reasonably so requested by RfL, exercise its rights and remedies under any relevant agreement to prevent the occurrence or recurrence of any such event and to obtain appropriate redress and/or compensation from any relevant person.

### **3. CONSEQUENCES OF FORCE MAJEURE EVENTS**

#### **On obligations**

3.1 The Operator shall not be responsible for any failure to perform any of its obligations under this Agreement (nor shall there be any contravention of this Agreement) if and to the extent that such failure is caused by any Force Majeure Event.

3.2 If any Force Majeure Event continues, with the effect of preventing the Operator from delivering, wholly or mainly, the Passenger Services for more than six consecutive months, it shall be a Termination Event in accordance with paragraph 3 (*Termination Event*) of Schedule 17.5 (*Events of Default, Termination Event and Voluntary Termination*).

#### **On payments**

3.3 Following the occurrence of a Force Majeure Event, the payment of Concession Payments shall continue unaffected.

**Force majeure leading to Change**

3.4 RfL may, in its absolute discretion elect at any time within two months of the occurrence of any Force Majeure Event that such event shall be treated as a Change.

3.5 A Force Majeure Event that continues with the effect of preventing the Operator from delivering, wholly or mainly, the Passenger Services or Station Services for more than two consecutive months shall be a Change.

3.6 Where either RfL elects that a Change has occurred under paragraph 3.4, then in calculating any restated amounts and values pursuant to paragraph 1 (*Financial Consequences of a Change*) of Schedule 13.1 (*Financial Consequences of Change*), the parties shall only have regard to the period commencing:

- (a) in the case of the circumstances set out in paragraph 3.4, on the date RfL notifies the Operator of such election; and
- (b) in the case of the circumstances set out in paragraph 3.5, on the date that is two months and one day after the first occurrence of the relevant Force Majeure Event.

**SCHEDULE 17.7****Liability****1. OPERATOR'S LIABILITY****General indemnity**

1.1 Subject to paragraph 1.4, the Operator shall on demand, hold the Indemnified Parties fully protected and indemnified in respect of all Losses incurred by or made on the Indemnified Parties in connection with:

- (a) any death, personal injury;
- (b) loss or damage suffered by passengers or by any third party (including loss of or damage to property); or
- (c) third party actions, claims, demands, costs, charges and expenses brought against any Indemnified Party (including legal expenses on an indemnity basis),

which, in the case of any liability pursuant to:

- (i) paragraph 1.1(a), may arise out of, or in consequence of:
  - (A) the operation of the Concession Services or the maintenance of the Concession Assets or any other assets supplied under the Transaction Documents which the Operator is obliged to maintain;
  - (B) the performance or non-performance by the Operator of its obligations under the Transaction Documents; or
  - (C) the presence on the London Overground Network of the Operator or its sub-contractors, employees or agents, in each case in connection with the Transaction Documents; and
- (ii) paragraph 1.1(b) or (c), may arise out of or in consequence of any contravention or breach of this Agreement or the other Transaction Documents by the Operator, its employees, servants, agents, subcontractors, directors or officers, with any such contravention of the other Transaction Documents constituting a breach of this Agreement.

**Operator indemnity for contraventions**

1.2 The Operator shall, subject to paragraphs 1.4, 1.8 and 1.9, indemnify each of the Indemnified Parties in full on demand against any Losses suffered or incurred by the Indemnified Parties as a result of any contravention of this Agreement by the Operator, its employees, servants, agents, Subcontractors, directors or officers, which shall include any retendering costs and increased costs incurred by RfL pursuant to paragraph 2.4 of Schedule 17.4 (*Termination And Expiry*) and any Losses incurred by or made on the Indemnified Parties where that contravention has caused any breach of statutory duty.

1.3 The Operator shall comply with the terms of the Transactions Documents (other than this Agreement) and, accordingly, any contravention or breach by the Operator, its

employees, servants, agents, subcontractors, directors or officers of any of those Transaction Documents, shall be a breach of this Agreement. Any Loss suffered or incurred by any of the Indemnified Parties under those Transaction Documents shall not be unforeseeable solely because such Loss has resulted from a contravention or breach of those Transaction Documents.

#### **No Operator liability where caused by Indemnified Party**

- 1.4 The Operator shall not be obliged pursuant to paragraph 1.1 or 1.2 to indemnify:
- (a) the Indemnified Parties to the extent that any Loss is caused by the negligence or wilful misconduct of any of the Indemnified Parties or by the breach by RfL of its obligations under the Transaction Documents;
  - (b) RfL for any loss of Ticket Revenue; or
  - (c) RfL for any ticket refunds or other compensation paid to passengers in relation to delays or cancellations of the Passenger Services,

except to the extent, that any such Losses are recoverable by the Operator under any insurance policy.

#### **Operator Industrial Action**

1.5 Without prejudice to paragraph 4 (*Performance Failures during Operator Industrial Action*) of Schedule 7.1 (*Operating Performance Regime*), paragraph 5.3 of Schedule 8.1 (*KPI Regime*), paragraph 3.7 of Schedule 8.5 (*Staff Regime (SIS)*), paragraph 4.3 of Schedule 9 (*Revenue Protection Incentive Regime*) and paragraph 4 (*Concession Payments where Operator Industrial Action*) of Schedule 11.1 (*Concession Payments*), where any strike or other Industrial Action by the Operator's employees, agents or subcontractors occurs that causes the Operator to fail to perform any of its other obligations under this Agreement, RfL may in its absolute discretion determine whether or not the Operator shall be relieved from that failure to perform.

#### **Operator responsible for RfL offence**

1.6 Where the act, omission or default of the Operator, any Affiliate or any Concession Employee, agent, contractor or sub-contractor of the Operator or any Affiliate causes RfL to commit an offence, then the Operator shall immediately take any measure necessary to ensure that that act, omission or default no longer causes RfL to commit that offence. Where RfL reasonably believes that such an act, omission or default is about to take place and will result in RfL committing an offence, then RfL may issue a Corrective Action Notice to the Operator to remedy the act, omission or default promptly and the Operator shall promptly comply with that Corrective Action Notice.

#### **No impact on other RfL rights or remedies**

1.7 The Operator's liability to RfL arising under any indemnity in this Agreement shall be without prejudice to any other right or remedy available to RfL and in particular shall not prejudice in any way the ability of RfL to enforce any bond, guarantee or other security given pursuant to this Agreement at any time and in any manner whatsoever.



### **Maximum performance liability**

1.8 Subject to paragraph 1.10, the Operator's maximum aggregate liability in respect of Capped Performance Adjustments that are payable to RfL, net of Capped Performance Adjustments payable by RfL to the Operator, in each case in any Thirteen Period Measurement Period under this Agreement shall not exceed an amount equal to the Overall Performance Cap.

### **Maximum aggregate liability**

1.9 Subject to paragraph 1.10, the Operator's maximum aggregate liability to the Indemnified Parties for all matters arising out of, under or in connection with the Transaction Documents (excluding its liability to pay Capped Performance Adjustments to RfL) shall not exceed an amount equal to the Overall Liability Cap.

### **Unlimited liability**

1.10 The Operator's liability in relation to the following shall be unlimited:

- (a) any costs or expenses which the Operator is obliged to or does expend in carrying out its obligations under the Transaction Documents;
- (b) any liability of the Operator to the Indemnified Parties arising as a result of or in connection with:
  - (i) death or personal injury;
  - (ii) fraud, fraudulent misrepresentation or corruption by the Operator or any of its Concession Employees, agents, servants, officers, contractors and subcontractors (whether direct or indirect);
  - (iii) wilful default or abandonment; or
  - (iv) otherwise arising under paragraph 1.1;
- (c) in connection with any Losses incurred by or made on the Indemnified Parties due to breach of statutory duty which arose out of or in consequence of any contravention by the Operator of the Transaction Documents;
- (d) in connection with any Losses recoverable by the Operator under any insurance policy;
- (e) payments of Pass-Through Adjustments that are due and payable by the Operator (other than any Alternative Timetable Shortfall Payment comprising part of any Alternative Timetable Adjustment);
- (f) payments of the following Other Adjustments that are due and payable by the Operator:
  - (i) under paragraph 3.2 or 3.4 of Schedule 3.2 (*Fares Selling*);
  - (ii) under paragraph 4.5 of Schedule 3.6 (*Ticket Equipment*);
  - (iii) under paragraph 6.2(c) of Schedule 8.1 (*Standards Regime (KPIs)*);

- (iv) under paragraph 2.5(b) or 4.3 of Schedule 11.4 (*Profit Share*);
- (v) under paragraph 7.4 of Schedule 13.3 (*Runs of the Model Suite*); and
- (vi) under paragraph 7.3 of Schedule 18.1 (*Continuity of Services*);
- (g) any Loss arising under or in respect of paragraphs 3.4 to 3.8 inclusive of Schedule 18.3 (*Transfer*);
- (h) the Operator's liability to pay any Taxes as expressly provided by this Agreement or as required by Applicable Requirements; or
- (i) any interest payable under this Agreement.

### **No double recovery**

1.11 Neither party to this Agreement shall be entitled to recover (by way of indemnity or otherwise) more than once in respect of the same Loss suffered by that party under this Agreement.

### **Survival**

1.12 The indemnities and the limitations on liability in this paragraph 1 shall survive, and remain in full force and effect, notwithstanding the expiration or other termination of this Agreement.

## **2. RfL'S LIABILITY**

### **No RfL liability with respect to passengers and third parties**

2.1 The Operator hereby acknowledges that RfL will not be responsible for the actions of the Operator or any Affiliate of the Operator and that, except as expressly provided in this Agreement, the Operator shall provide and operate the Concession Services without recourse to RfL or government funds or guarantees.

### **No RfL liability for negligence unless contravention**

2.2 Neither RfL nor any of its officers, agents or employees shall in any circumstances be liable to the Operator for any Loss caused by the negligent exercise of any powers reserved to RfL under this Agreement, except to the extent that such negligence also constitutes a contravention of an obligation of RfL under this Agreement. The Operator may not recover from RfL or any of its officers, agents, or employees any amount in respect of loss of profit or consequential loss.

### **No RfL liability for monitoring or exercise of functions unless contravention**

2.3 RfL may for its own purposes (whether under this Agreement or under any other arrangement or otherwise and whether before or after the date of this Agreement) monitor or review any proposals, plans or projects (or any aspect thereof) of the Operator under this Agreement, but no review, enquiry, comment, statement, report or undertaking, made or given by or on behalf of RfL during such review or monitoring (and no failure to undertake, make or give any review, enquiry, comment or statement) shall operate to exclude or relieve either party from or reduce or otherwise affect the obligations of such party under this Agreement.

2.4 The exercise by or on behalf of RfL of (or, as the case may be, any failure to exercise) any of its functions, rights or obligations in respect of any review or monitoring process shall not in any way impose any liability, express or implied, on RfL to any other party save to the extent that the exercise (or failure to exercise) of any of such functions, rights or obligations results in a contravention by RfL of an express provision of this Agreement and RfL does not make or give any representation or warranty, either express or implied, as to whether any proposal, plan or project will enable either party to comply with its obligations under this Agreement.

### **3. MITIGATION**

Where any Indemnified Party or the Operator is indemnified by, as appropriate, the Operator or RfL under this Agreement, RfL or the Operator (as the case may be) shall mitigate, or in the case of any other Indemnified Party, RfL shall procure that such Indemnified Party mitigates any Losses which it is seeking indemnification for.



**SCHEDULE 18**

**CONTINUITY, RESTRICTIONS ON DEALINGS AND TRANSFER**

**Schedule 18.1: Continuity of Services**

**Appendix 1: Handover Package**

**Appendix 2: List of Key Contracts**

**Schedule 18.2: Restrictions on dealings with Concession Assets**

**Appendix: List of Primary Concession Assets**

**Schedule 18.3: Transfer**

**Appendix 1: Form of Transfer Notice**

**Appendix 2: Form of Supplemental Agreement**



## SCHEDULE 18.1

### Continuity of Services

#### 1. ENSURING CONTINUITY OF SERVICES

1.1 Both prior to and following the selection of a Successor Operator (whether a Train Operator or otherwise and whether or not subject to the satisfaction of any conditions), the Operator shall:

- (a) co-operate with, where a Successor Operator has been appointed, that Successor Operator, or where not, RfL; and
- (b) take such steps as may reasonably be requested by RfL,

so as to ensure the continuity of, and orderly handover of control over of the Concession Services.

1.2 The steps that RfL may reasonably request the Operator to take pursuant to paragraph 1.1 include:

- (a) participating in any timetable development process that takes place during the Concession Period, but which relates to any timetable period applying wholly or partly after the expiry of the Concession Period (*Successor Operator Timetable*), including bidding for and securing any Successor Operator Timetable, whether or not:
  - (i) the Successor Operator has been identified; or
  - (ii) there is in place an Access Agreement relating to the period over which that Successor Operator Timetable is intended to be operated;
- (b) using reasonable endeavours to seek amendments to and/or extensions of Access Agreements which can be transferred to the Successor Operator on expiry of the Concession Period;
- (c) assisting RfL or the Successor Operator (as the case may be) in the preparation and negotiation of any new Access Agreement relating to any Successor Operator Timetable; and/or
- (d) entering into that Access Agreement in order to secure the relevant priority bidding rights required by the Successor Operator to operate that Successor Operator Timetable, provided that the Operator shall not be required to enter into any such Access Agreement unless RfL has first provided to it confirmation in writing that it will include that Access Agreement in any Transfer Notice pursuant to paragraph 6.1 of Schedule 18.3 (*Transfer*).

#### 2. CO-OPERATION WITH SUCCESSOR OPERATOR

2.1 Without limiting paragraph 1 (*Ensuring Continuity of Services*), in order to ensure the continuity of, and an orderly handover of control over, the Concession Services, the Operator shall co-operate with:

- (a) where a Successor Operator has been appointed, such Successor Operator; or

(b) where a Successor Operator has not been so appointed, RfL, and shall take such steps as may be reasonably requested by RfL in connection therewith.

2.2 In satisfaction of its obligations under paragraph 2.1, the Operator shall:

- (a) bid for and use reasonable efforts to secure the Timetable and the Train Plan for the railway passenger services to be operated by the Successor Operator (whether or not a Successor Operator has been identified and whether or not there is in place an Access Agreement relating to the relevant period); and
- (b) make appropriately skilled and qualified Concession Employees reasonably available to attend such meetings with RfL, the Successor Operator, any Infrastructure Manager, any Rolling Stock Maintainer, any rolling stock lessor and/or and other relevant third party as are reasonably required in order to determine:
  - (i) those actions that are required in order to facilitate such continuity and orderly handover, in particular those actions arising under, but not limited to, the following agreements:
    - (A) Access Agreements;
    - (B) Property Leases;
    - (C) Shared Facility agreements;
    - (D) Rolling Stock Leases;
    - (E) Rolling Stock Related Contracts; and
    - (F) any other Key Contract; and
  - (ii) without prejudice to RfL's rights under Schedule 18.3 (*Transfer*), those rights and liabilities as may be specified in any Transfer Notice.

### **3. HANDOVER PACKAGE**

#### **Obligation to maintain, update and make available**

3.1 The Operator shall:

- (a) maintain the Handover Package;
- (b) update it at least every three Reporting Periods;
- (c) deliver an updated version to each of RfL and the solicitor holding the Handover Package referred to in paragraph 3.2 every six months; and
- (d) make it available to RfL for inspection or audit by RfL or its representatives every six months during the Concession Period or otherwise whenever requested.

3.2 The Operator shall ensure that any Successor Operator will have immediate access to the Handover Package on the expiry of the Concession Period and shall accordingly agree with RfL from time to time a location at which such Handover Package should be kept which, unless otherwise agreed, shall be the offices of a solicitor approved by RfL.



### **Director's Certificate**

3.3 Each time the Handover Package is provided to RfL pursuant to paragraph 3.1(c), the Operator shall also provide to RfL a certificate signed by a nominated and duly authorised statutory director of the Operator, addressed to RfL, which confirms that the Handover Package contains the information and objects specified in Appendix 1 (*Form of Handover Package*) and that such information is accurate as at the date of the certificate.

### **Handover Package Information**

3.4 Without prejudice to the preceding provisions of this Schedule 18.1, the Operator shall provide to RfL the following information and letters on or prior to the Start Date, and shall supply revised information and/or letters to RfL as and when required in order to ensure that such information and letters remain accurate and up to date:

- (a) details of the location of the Handover Package, which details shall include one or more contact name, address and telephone number enabling contact during, and outside, normal office hours with persons authorised and able to release the Handover Package;
- (b) a letter in a form approved by RfL:
  - (i) from the Operator to RfL confirming that an irrevocable instruction has been given to the solicitor holding the Handover Package (or other persons authorised by RfL for such purpose) that any of RfL, a Successor Operator or its agent, is entitled at any time to require access to and delivery of the Handover Package on demand, and confirming RfL's right to audit the Handover Package at any time; and
  - (ii) from the solicitor holding the Handover Package (or other person authorised by RfL for such purpose) to RfL confirming that it or she will release the Handover Package to any of RfL, a Successor Operator or its agent, on demand, and confirming that the Handover Package will be made available for the purposes of auditing its contents when so required by RfL;
- (c) a list of all Key Contacts, as set out in Appendix 2; and
- (d) a letter in a form approved by and addressed to RfL confirming the details of any insurer providing insurance to the Operator, and authorising the insurer (and any relevant broker) to release any insurance-related information to any of RfL, a Successor Operator or its agent on demand.

## **4. KEY CONTRACTS**

### **List of Key Contracts**

4.1 The Key Contracts as at the date of this Agreement are set out in Appendix 2.

### **Designation of Key Contracts**

4.2 Where RfL considers that it is reasonably necessary for securing the continued provision of the Concession Services or the provision of services similar to the Concession

Services by a Successor Operator in accordance with this Agreement, it may make a designation pursuant to paragraph 4.3.

4.3 RfL may at any time, by serving notice on the Operator, designate as a Key Contract:

- (a) any actual or prospective agreement, contract, licence or other arrangement; and
- (b) any category of agreement, contract, licence or other arrangement, to which or under which the Operator is (or may become) a party or a beneficiary,

with effect from the date specified in such notice.

4.4 Key Contracts may include any agreement, contract, licence or other arrangement whether in written, oral or other form, whether formal or informal and whether with an Affiliate of the Operator or any other person and may include any arrangement for the storage of assets (including electronic systems or Computer Systems) or accommodation of employees.

#### **De-designation of Key Contracts**

4.5 RfL may at any time, by serving a notice on the Operator, de-designate any Key Contract from continuing to be a Key Contract with effect from the date specified in such notice.

#### **Re-designation of Key Contracts**

4.6 RfL may at any time, by serving notice on the Operator, re-designate as a Key Contract anything which has ceased to be designated as a Key Contract in accordance with paragraph 4.5 from the date specified in such notice.

#### **Designation of Key Contracts as Primary Concession Assets**

4.7 RfL shall, subject to paragraphs 1.2(b) and 4.5, be entitled to designate any Key Contract as a Primary Concession Asset at any time during the Concession Period by serving notice on the Operator. Such designation shall take effect from delivery of such notice.

#### **No Amendment**

4.8 The Operator shall not without the prior consent of RfL (which shall not be unreasonably withheld) vary, or purport to vary, the terms or conditions of any Key Contract at any time, unless directed to do so by the ORR.

#### **Replacement of Key Contracts**

4.9 The Operator shall, prior to the scheduled expiry date of any Key Contract (or, if earlier, such other date on which it is reasonably likely that such Key Contract will terminate), take all reasonable steps to enter an appropriate replacement contract (whether with the counterparty to the existing Key Contract or not) and shall comply with the reasonable instructions of RfL in relation to such replacement contract.

#### **Termination of Key Contracts**

4.10 Whether or not this Agreement is continued after the Initial Expiry Date in accordance with Schedule 19 (*Continuation of the London Overground Concession*), the

Operator shall, to the extent so requested by RfL, exercise its right to terminate any Key Contract on the Expiry Date.

## 5. EMERGENCIES

Where any emergency may arise in connection with the provision and operation of the Concession Services, the Operator:

- (a) may enter into on a short-term basis such contracts, licences or other arrangements as it considers necessary or appropriate to deal with the emergency;
- (b) need not procure that the relevant counterparty enters into a Direct Agreement in respect of such contracts or use all reasonable endeavours to assist RfL in entering into the same;
- (c) shall promptly inform RfL of any such emergency and contracts, licences or other arrangements which it proposes to enter into; and
- (d) shall take such action in relation to such emergency, contracts, licences or other arrangements as RfL may request.

## 6. ROLLING STOCK RELATED CONTRACTS AND INSURANCE ARRANGEMENTS

6.1 The Operator shall not:

- (a) execute any Rolling Stock Related Contract; or
- (b) exercise any option or other discretion in any Rolling Stock Related Contract that would result in any increased payment or delay in delivery being made by or to the Operator or the relevant counterparty or which may result in it being reasonably likely to be unable to comply with the terms of this Agreement,

without, in either case, the prior written consent of RfL (not to be unreasonably withheld) and shall supply a copy of all draft and all executed Rolling Stock Related Contracts (including any agreement amending any Rolling Stock Related Contract) to RfL.

6.2 The Operator shall not, without the prior written consent of RfL:

- (a) amend the terms of any insurance arrangements which relate to rolling stock vehicles used by it in the provision of the Passenger Services to which it is a party on the Start Date; or
- (b) enter into any new insurance arrangements after the Start Date which relate to rolling stock vehicles used or to be used by it in the provision of the Passenger Services (*New Insurance Arrangements*).

6.3 The Operator shall, in addition, if it enters into any New Insurance Arrangements, use all reasonable endeavours to ensure that the relevant insurers waive their rights of subrogation against any Train Operator which may have equivalent insurance arrangements providing for a similar waiver of rights of subrogation against the Operator, whether on a reciprocal basis or otherwise.

## **7. DIRECT AGREEMENTS**

7.1 Unless RfL otherwise agrees, or unless directed to do so by the ORR, the Operator shall not enter into any prospective Key Contract unless the counterparty to that prospective Key Contract:

- (a) is a Train Operator; or
- (b) has entered into a Direct Agreement with RfL in respect of that prospective Key Contract, providing on a basis acceptable to RfL, amongst other things, for the continued provision of the Passenger Services and/or the continued operation of the Operator Stations and Operator Depots in the event of:
  - (i) breach, termination or expiry of such Key Contract;
  - (ii) termination or expiry of this Agreement; or
  - (iii) the making of a railway administration order in respect of the Operator.

7.2 Where RfL designates or re-designates as a Key Contract:

- (a) any agreement, contract, licence or other arrangement to which the Operator is already a party; or
- (b) any category of agreement, contract, licence or other arrangement where the Operator is already a party to a contract, licence or other arrangement which, by virtue of RfL's designation or re-designation, is classified in such category,

the Operator shall use all reasonable endeavours to assist RfL in entering into a Direct Agreement as envisaged by paragraph 7.1(b).

7.3 The Operator shall pay to RfL by way of Other Adjustment an amount equal to any Losses which may be suffered or incurred by RfL under the provisions of any Direct Agreement and which may be notified to the Operator as a result of, or in connection with:

- (a) any breach by the Operator of the terms of the Key Contract to which the relevant Direct Agreement relates; or
- (b) any unsuccessful claim being brought by the Operator against the counterparty of any such Key Contract in relation to the termination of such Key Contract.

## **8. RE-LETTING OF CONCESSION**

8.1 The Operator acknowledges that RfL may wish, at or before the expiry of the Concession Period, either to invite persons (including the Operator) to tender for the right to provide all or some of the Passenger Services under a concession agreement or alternatively to enter into a concession agreement in respect of the Passenger Services without having gone through a tendering process.

8.2 The Operator further acknowledges that RfL has entered into an agreement with the Secretary of State in respect of putting in place, amongst other things, suitable contingency arrangements to secure in certain circumstances, the provision of the Passenger Services, including if no further concession agreement is entered into on the termination of this Agreement in respect of such Passenger Services.

8.3 The Operator hereby accepts and agrees to the restrictions and obligations imposed on it under Schedule 2 (*Concession Services*) and this Schedule 18.1.

## **9. PREPARATION FOR RE-LETTING**

9.1 The Operator shall, if so requested by RfL, provide RfL and its representatives and advisers with access to the Concession Employees and all books, records and other materials kept by or on behalf of the Operator in connection with the Concession Services for the purpose of assisting RfL and such representatives and advisers:

- (a) to prepare reports or other documents in connection with any invitation to potential Successor Operators to tender for the right and obligation to operate all or any of the Concession Services;
- (b) to prepare invitations to other potential operators to tender for the right and obligation to provide any other railway passenger services or operate any other additional railway asset; or
- (c) to enter into any concession agreement or other agreement relating to the Concession Services, whether or not having gone through a tendering process.

9.2 The Operator shall, without requiring RfL's advisers to enter into a confidentiality agreement with the Operator (provided RfL has complied with paragraph 2(b) of Schedule 16.2 (*Confidentiality and Freedom of Information Act Requirements*)), make available to RfL and its representatives and advisers such information (including financial and operating information) as they shall reasonably require in connection with the matters referred to in paragraph 9.1. The Operator shall prepare and present such information in such manner (including in disaggregated form) as RfL may require, and shall provide such assistance as RfL may require in connection with the verification of such information.

9.3 The Operator shall, when requested to do so, provide such confirmation in relation to the accuracy of the contents of the documents referred to in paragraph 9.1 as RfL shall require from time to time.

9.4 In connection with any proposal (whether or not yet finalised) to enter into separate concession agreements and/or other agreements with more than one Successor Operator, each relating to some only of the Concession Services (whether or not together with other railway passenger services) at or following the end of the Concession Period, the Operator agrees and acknowledges that RfL may require:

- (a) that the Operator provides RfL with additional information and reports and analysis in respect of such Service Groups as RfL may specify. This may include:
  - (i) information relating to the operating and financial performance of the Operator in relation to such Service Groups; and
  - (ii) identification of those employees, assets and liabilities which relate to such Service Groups together with an indication of the extent to which the same are shared between the operation of different Service Groups; and
- (b) that the Operator reorganises the business of providing the Concession Services in order to facilitate the transfer anticipated by this Schedule 18.1 on an ongoing basis of

the business of providing the Concession Services within each of such Service Groups to separate Successor Operators. This may include, to the extent reasonably practicable:

- (i) the re-organisation of personnel such that an appropriate number of employees (having sufficient skills, qualifications and experience) will transfer by operation of Law to each Successor Operator of each such Service Group; and/or
- (ii) entering into additional or clarificatory contractual or other arrangements so that the Successor Operator of each such Service Group will have the necessary assets and rights to operate the Concession Services within that Service Group.

9.5 RfL may disclose to any potential Successor Operator any reports and accounts delivered to it under Schedule 16 (*Information and Industry Initiatives*).

**APPENDIX 1 TO SCHEDULE 18.1****FORM OF HANDOVER PACKAGE****1. KEY CONTACTS**

A printed or electronic list (in a format acceptable to RfL) of key contacts to include all directors (statutory or otherwise) and all managers with responsibility for a department/function within the Operator's business. This list shall include operations, commercial and personnel departments (or in each case their nearest equivalents) and other direct reports to the Managing Director. This list shall also include the name, address, home, office and mobile telephone numbers, and a brief description of the person's role and responsibilities in the business.

**2. CONTRACTS**

A printed or electronic list (in a format acceptable to RfL) of all contracts (sales, purchases or otherwise including leases and licences) between the Operator and the counterparty or counterparties to each such contract, showing the name, address and telephone number of each counterparty; the contract reference number of the Operator and each counterparty (if any); and the contract price/value, term and expiry date. This requirement shall apply to all contracts unless otherwise agreed by RfL.

**3. PROPERTY**

A printed or electronic list (in a format acceptable to RfL) of all property owned, leased, operated or occupied by the Operator which shall include the address and contact telephone number of each property. Where applicable, the list will also include the name, address and telephone number of the lessor and/or the party which has granted authority to use or occupy the property, and any relevant reference numbers applicable to that lease or occupation.

**4. SYSTEMS**

A printed or electronic list (in a format acceptable to RfL) of the electronic systems in use by the Operator, together with the name, office address and telephone number of the Operator's information technology manager (or the holder of any equivalent post) who is responsible for administration of each such system.

**5. DAILY OPERATIONS**

A printed or electronic list (in a format acceptable to RfL) of all assets owned or operated by the Operator, together with their location.

**6. INSURANCE**

A printed or electronic list (in a format acceptable to RfL) of the names, addresses and telephone numbers of all insurers and any relevant broker providing insurance to the Operator, together with the relevant policy numbers and other references and details of any outstanding claims or unresolved disputes.





**APPENDIX 2 TO SCHEDULE 18.1****LIST OF KEY CONTRACTS****1. KEY CONTRACTS**

The following items have as at the date of this Agreement been designated as Key Contracts:

- (a) any Access Agreement to which the Operator is a party other than in its capacity as a Facility Owner;
- (b) any Property Lease;
- (c) any Rolling Stock Related Contract including the Rolling Stock Leases listed in Table 1 and Table 2 of the Appendix (*Trains comprising the Train Fleet*) to Schedule 5.1 (*The Train Fleet*);
- (d) any contract or arrangement for the lending, seconding, hiring, contracting out, supervision, training, assessment, or accommodation by another Train Operator of any train drivers or other train crew used by the Operator in the provision of the Passenger Services;
- (e) any contract or arrangement for the subcontracting or delegation to another Train Operator of the provision of any of the Passenger Services (whether or not the consent of RfL is required to such subcontracting or delegation under paragraph 4 (*Additional Railway Passenger Services*) of Schedule 1.2 (*Passenger Service Operating Obligations*));
- (f) any contract or arrangement with a Train Operator (other than an Access Agreement) for the provision to the Operator of train dispatch, performance or supervision of platform duties, ticket gateline management, security activities, evacuation procedures, advice or assistance to customers, assistance to disabled customers, operation of customer information systems, cash management or ticket issuing systems administration;
- (g) any contract or arrangement with a Train Operator or Infrastructure Manager for the provision of breakdown or recovery, and track call services to assist in the provision of the Passenger Services;
- (h) any contract or arrangement for the supply of spare parts or Spares;
- (i) any contract or arrangement for the maintenance of track and other related infrastructure; and
- (j) any TVM, other ticket retailing or inspection equipment maintenance contract to which the Operator is or becomes a party.



**SCHEDULE 18.2****Restrictions on dealings with Concession Assets****1. CONCESSION ASSETS**

1.1 Subject to paragraph 1.2, all property, rights and liabilities of the Operator from time to time during the Concession Period shall be designated as Concession Assets.

1.2 The rights and liabilities of the Operator in respect of the following items shall not be designated as Concession Assets:

- (a) any contracts of employment;
- (b) this Agreement and any Transfer Notice or Supplemental Agreement;
- (c) the Ticketing and Settlement Agreement;
- (d) any sums placed on deposit with a bank or other financial institution; and
- (e) such other property, rights and liabilities as the Operator and RfL may agree from time to time or as RfL may de-designate as Concession Assets under paragraph 6 (*Designation of Taxes and Discount Cards*).

**2. PRIMARY CONCESSION ASSETS**

The following property, rights and liabilities shall (to the extent that they constitute Concession Assets) be designated as Primary Concession Assets with effect from the following dates:

- (a) the property, rights and liabilities listed as such in the Appendix (which constitute Primary Concession Assets agreed between the parties as at the date of this Agreement), on the Start Date;
- (b) any additional property, rights and liabilities designated under paragraph 3 (*Designation of Additional Primary Concession Assets*) from time to time during the Concession Period, on the date of such designation;
- (c) any property or right which is vested in the Operator and used for the purpose of maintaining, replacing, repairing or renewing any property designated as Primary Concession Assets and which forms or replaces part or all of such designated property on completion of such maintenance, replacement, repair or renewal, on the date of its use for such purpose;
- (d) the rights and liabilities of the Operator under any Key Contract designated in accordance with paragraph 5 (*Emergencies*) of Schedule 18.1 (*Continuity of Services*), on the date of such designation; and
- (e) the rights and liabilities of the Operator in respect of the terms of any Fare or Discount Card designated under paragraph 6 (*Designation of Taxes and Discount Cards*), on the date of such designation.

### **3. DESIGNATION OF ADDITIONAL PRIMARY CONCESSION ASSETS**

RfL may at any time during the Concession Period, by serving notice on the Operator, designate any or all of the Concession Assets as Primary Concession Assets. Such designation shall take effect from the delivery of such notice and may refer to all or certain categories of property, rights or liabilities. Any such notice shall specify the reasons for such designation.

### **4. DESIGNATION DURING LAST 12 MONTHS OF CONCESSION PERIOD**

If RfL designates a Concession Asset as a Primary Concession Asset under paragraph 3 (*Designation of Additional Primary Concession Assets*) at any time during the last 12 months of the Concession Period then, within 28 days of such designation, RfL may de-designate such Primary Concession Asset by serving notice on the Operator. Such de-designation shall take effect upon delivery of such notice.

### **5. DESIGNATION OF KEY CONTRACTS AS PRIMARY CONCESSION ASSETS**

RfL shall, subject to paragraphs 1.2(b) and 7 (*Rights and Liabilities*), be entitled to designate any Key Contract as a Primary Concession Asset at any time during the Concession Period by serving notice on the Operator. Such designation shall take effect from delivery of such notice.

### **6. DESIGNATION OF FARES AND DISCOUNT CARDS**

RfL may designate any Fare or Discount Card as a Primary Concession Asset at any time during the Concession Period by serving a notice on the Operator. Such designation shall take effect from delivery of such notice.

### **7. RIGHTS AND LIABILITIES**

RfL, in designating the rights and liabilities of the Operator (whether under a particular contract or other arrangement) as a Primary Concession Asset may, in its discretion, elect to designate some but not all of the rights and liabilities under a particular contract or other arrangement, or to designate only those rights and liabilities arising after or otherwise relating to a period after a particular time (including the period after the expiry of the Concession Period) or to those relating only to the Concession Services or a particular part thereof.

### **8. DISPUTES OVER DESIGNATION**

8.1 The Operator may object in writing to RfL to any designation pursuant to paragraph 3 (*Designation of Additional Primary Concession Assets*) or 4 (*Designation During Last 12 Months of Concession Period*).

8.2 Such objection may be made solely on the grounds that the designation of the relevant property, rights or liabilities specified in the objection is not, in the Operator's opinion, reasonably necessary to secure the continued provision of the Concession Services by a Successor Operator on the expiry of the Concession Period on a basis reasonably acceptable to RfL or to facilitate the transfer to such Successor Operator of the provision of the Concession Services at such time.

8.3 Any such objection may only be made within 28 days of a designation made more than 12 months prior to the end of the Concession Period or 14 days of a designation made during the last 12 months of the Concession Period.

8.4 RfL shall respond to any such objection as soon as reasonably practicable and shall take account of any representations made by the Operator regarding the use of the relevant Primary Concession Asset otherwise than in the provision and operation of the Concession Services.

8.5 If the Operator's objection cannot be resolved by agreement within a period of 14 days from the date of submission of that objection, the Operator may, subject to paragraphs 8.6 and 8.7, refer the dispute for resolution in accordance with the Dispute Resolution Rules.

8.6 Any body duly appointed to resolve such dispute shall determine whether or not the designation of the relevant property, rights or liabilities was reasonably necessary for securing that the Concession Services may continue to be provided by a Successor Operator on the expiry of the Concession Period on a basis reasonably acceptable to RfL or otherwise facilitating the transfer of the provision of the Concession Services at such time, and accordingly whether or not they should cease to be so designated.

8.7 If any dispute as to any designation pursuant to paragraph 3 remains outstanding on the expiry of the Concession Period, then such dispute shall be deemed to cease immediately before the expiry of the Concession Period and the relevant Concession Assets shall continue to be designated as Primary Concession Assets on and after the expiry of the Concession Period.

## **9. PROVISION OF INFORMATION TO RfL**

9.1 The Operator shall provide such information as RfL may reasonably require in order to satisfy RfL that any Concession Assets which are to be designated as Primary Concession Assets after the Start Date under this Agreement will at the time of such designation be vested in the Operator. Such information may include details of any Security Interests over such property, rights and liabilities.

9.2 The Operator shall further provide such information as to the property, rights and liabilities of the Operator as RfL may reasonably require in connection with the designation of Primary Concession Assets. Such information shall be supplied to RfL within such timescale as RfL may reasonably require.

## **10. DE-DESIGNATION OF CONCESSION ASSETS AND PRIMARY CONCESSION ASSETS**

10.1 RfL and the Operator may agree in writing at any time during the Concession Period that a Concession Asset shall cease to be so designated as a Concession Asset or that a Primary Concession Asset shall cease to be so designated as a Primary Concession Asset, and the relevant Concession Asset or Primary Concession Asset (as the case may be) shall cease to be designated upon such agreement coming into effect.

10.2 RfL may in addition at any time during the Concession Period, by serving notice on the Operator, cause a Concession Asset which is not a Primary Concession Asset to cease to

be so designated as a Concession Asset. Such Concession Asset shall cease to be so designated on the date specified in such notice.

10.3 RfL may in addition, at any time during the Concession Period, by serving notice on the Operator, cause a particular Primary Concession Asset to cease to be designated as such. Such Primary Concession Asset shall cease to be so designated on the date specified in such notice. Such right may be exercised, in respect of any rights and liabilities in respect of a Fare or Discount Card, at any time and, in respect of any other Primary Concession Asset, no later than 12 months prior to the expiry of the Concession Term.

## **11. SPARES**

The obligation of the Operator to maintain, preserve and protect Primary Concession Assets under this Schedule 18.2 shall, in respect of Spares, include the obligation to replace any Spare which has been designated as a Primary Concession Asset, which subsequent to its designation ceases to be part of the stock of Spares available to the Operator for use in the provision of the Concession Services, with an equivalent Spare of equal or better quality than the Spare so replaced.

## **12. ASSETS NOT DESIGNATED AS PRIMARY CONCESSION ASSETS**

12.1 This paragraph 12 relates to any Concession Assets that are property or rights and are not designated as Primary Concession Assets.

12.2 Subject to paragraph 14.2, RfL consents to the Operator:

- (a) transferring or agreeing to transfer any such Concession Assets or any interests in, or right over, any such Concession Assets; and
- (b) creating or extinguishing, or agreeing to create or extinguish, any interest in, or right over, any such Concession Assets.

## **13. LIABILITIES NOT DESIGNATED AS PRIMARY CONCESSION ASSETS**

13.1 This paragraph 13 relates to any liabilities which are not designated as Primary Concession Assets.

13.2 RfL consents to the Operator entering into any agreement under which any such liability is released or discharged, or transferred to another person.

## **14. DEALING WITH CONCESSION ASSETS AND PRIMARY CONCESSION ASSETS**

14.1 This paragraph 14 relates to Concession Assets (whether or not designated as Primary Concession Assets) which are property or rights.

14.2 RfL hereby consents to the Operator creating or agreeing to create any Security Interest over any of these Concession Assets to the extent that the terms of any such Security Interest provide that:

- (a) if the relevant Concession Asset becomes the subject of a Transfer Notice, it shall be fully and automatically released from the relevant Security Interest immediately before the Transfer Date (as defined in the Transfer Notice);

- (b) if the relevant Concession Asset is assigned, novated or otherwise transferred to another person pursuant to and in accordance with this Agreement, it shall be fully and automatically released from the relevant Security Interest immediately before such assignment, novation or transfer; and
- (c) such Security Interest shall not be enforced or enforceable until the date on which such Concession Asset ceases to be designated as a Concession Asset.

14.3 The Operator shall give not less than 14 days' prior written notice to RfL of the date on which it intends to create a Security Interest over a Primary Concession Asset and shall provide RfL with such information in relation thereto as RfL may reasonably require.

## **15. SECURITY INTERESTS**

### **Prohibition on Security over Primary Concession Assets**

15.1 The Operator shall not create or agree to create a Security Interest over any Primary Concession Asset except on the terms permitted under paragraphs 14.2 and 15.2.

### **Security in favour of RfL over Primary Concession Assets**

15.2 The Operator shall, if and to the extent required by RfL in respect of a Primary Concession Asset, immediately grant in favour of RfL a first priority Security Interest over such Primary Concession Asset and shall promptly enter into such documents, and make such filings, recordings and registrations, in respect of such Security Interest, as RfL may reasonably require to ensure the validity, enforcement and priority thereof.

### **Notice**

15.3 The Operator shall promptly inform RfL of any Security Interest arising at any time over any of its property or rights and shall provide RfL with such information in relation thereto as it may reasonably require.





**APPENDIX TO SCHEDULE 18.2**

**LIST OF PRIMARY CONCESSION ASSETS**

**1. PRIMARY CONCESSION ASSETS**

No Concession Assets have as at the date of this Agreement been designated as Primary Concession Assets.



**SCHEDULE 18.3****Transfer****1. NOVATION OF ACCESS AGREEMENTS DURING THE CONCESSION PERIOD**

1.1 The Operator shall, to the extent so requested by RfL (other than on termination of this Agreement, for which the provisions of paragraph 5 (*Novation of Access Agreements on Termination of this Agreement*) apply):

- (a) following receipt of a notice purporting to terminate any Access Agreement to which it is a party, in relation to such Access Agreement; or
- (b) following receipt of a notice purporting to terminate a Station Lease or Depot Lease in whole or in part or on becoming aware of any proceedings or any other steps having or purporting to have similar effect, in relation to any Access Agreement under which it is a Facility Owner by virtue of a Property Lease,

novate its interest under any relevant Access Agreement (and any related Collateral Agreement) to RfL or as it may direct.

1.2 Such obligation to novate shall be subject to the agreement of any counterparty to such Access Agreement or Collateral Agreement and, to the extent applicable, the ORR.

1.3 Such novation shall be on such terms as RfL may reasonably require, including:

- (a) that the Operator shall not be released from any accrued but unperformed obligation, the consequences of any breach of the relevant agreement which is the subject of arbitration or litigation between the parties thereto or any liability in respect of any act or omission under or in relation to the relevant agreement prior to, or as at the date of, any such novation (except to the extent that RfL or its nominee agrees to assume responsibility for such unperformed obligation, such liability or the consequences of such breach in connection with the relevant novation); and
- (b) that neither RfL nor its nominee shall be obliged, in connection with the novation, to agree to assume responsibility for any unperformed obligation, liability or consequences of a breach referred to in paragraph 5.3(a),

but shall not, unless the Operator otherwise agrees, be on terms which release any counterparty to the relevant agreement from any liability to the Operator arising prior to the date of such novation.

1.4 The Operator shall, on the occurrence of any of the circumstances specified in paragraph 1.1 in relation to any other Train Operator who is a party to an Access Agreement to which the Operator is also party, agree to the novation of the relevant Train Operator's interest under the relevant Access Agreement to RfL or as it may direct, subject, to the extent applicable, to the consent of the ORR. The provisions of paragraph 5.3 shall apply to any such novation.

1.5 The Operator shall notify RfL on becoming aware of any circumstances which might lead to RfL being able to require the Operator to novate its interest or agree to the novation of another Train Operator's interest under paragraph 5.

## **2. ASSIGNMENT OF PROPERTY LEASES DURING THE CONCESSION PERIOD**

2.1 The Operator shall (other than on termination of this Agreement, for which the provisions of paragraph 7.7 shall apply) following receipt of a notice purporting to terminate a Property Lease or on becoming aware of any proceedings or any other steps having or purporting to have similar effect, if requested by RfL, assign its interest under all or any Property Leases to RfL or as it may direct, subject where applicable to the agreement of any other party to such Property Lease or the ORR.

2.2 Such assignment shall be on such terms as RfL may reasonably require, including:

- (a) that the Operator shall not be released from any accrued but unperformed obligation, the consequences of any antecedent breach of a covenant or obligation in the Property Leases or any liability in respect of any act or omission under or in relation to the Property Lease prior to, or as at the date of, any such assignment (except to the extent that RfL or its nominee agrees to assume responsibility for such unperformed obligation, such liability or the consequences of such breach in connection with the relevant assignment); and
- (b) that neither RfL nor its nominee shall be obliged, in connection with such assignment, to agree to assume responsibility for any unperformed obligation, liability or consequences of a breach referred to in paragraph 2.2(a), and the Operator shall indemnify RfL or its nominee, as the case may be, on an after-tax basis against any Losses suffered or incurred in relation thereto.

2.3 The Operator shall, on the occurrence of any of the circumstances specified in paragraph 2.1 in relation to any other Train Operator who is a party to a Property Lease to which the Operator is also party, agree to the assignment of such Train Operator's interest under the relevant Property Lease to RfL or as it may direct, subject, where applicable, to the consent of Network Rail. The provisions of paragraph 2.2 shall apply to any such assignment.

2.4 The Operator shall notify RfL on becoming aware of any circumstances which might lead to RfL being able to require the Operator to assign its interest or agree to the assignment of another Train Operator's interest under this paragraph 2.

## **3. CONCESSION EMPLOYEES**

### **Last 12 month period**

3.1 Where reference is made in this Agreement to the last 12 months of the Concession Period, such period shall be deemed (except where the actual date of expiry of the Concession Period is known) to commence on the earliest of the following dates:

- (a) the date which is 12 months, as the case may be, prior to the Expiry Date;
- (b) the date on which RfL notifies the Operator that such period of 12 months shall be deemed to commence on the grounds that RfL reasonably considers that an Event of Default may occur within the following 12 months; or
- (c) the date on which RfL notifies the Operator that such period of 12 months shall be deemed to commence on the grounds that RfL considers it reasonably likely that this Agreement will be terminated by agreement between the parties within such period.

3.2 Any such period (which may be longer or shorter than 12 months, as the case may be) shall expire on the Expiry Date or, if earlier, in the case of periods commencing under paragraph 3.1(b) or (c), the date falling 12 months after the date of any notice under paragraph 3.1(b) or (c) or, in each case, such earlier date as RfL may determine.

3.3 If the last 12 months of the Concession Period has commenced (or has been deemed to have commenced) and the notice referred to in paragraph 1.1 of Schedule 19 (*Continuation of London Overground*) is given, then the last 12 months of the Concession Period (as the case may be) shall not be interrupted, but shall continue to the Expiry Date.

**Terms of Employment of Existing Employees**

3.4 The Operator shall not, and shall secure that each other relevant employer shall not, without the prior consent of RfL (which shall not be unreasonably withheld), vary or purport or promise to vary the terms or conditions of employment of any Concession Employee (in particular, the Operator shall not promise to make any additional payment or provide any additional benefit or vary any term or condition relating to holiday, leave or hours to be worked) where such variation or addition:

- (a) takes effect in the last 12 months of the Concession Period unless it is in the ordinary course of business and, when aggregated with any other variation or addition which takes effect during such period, represents an increase in the remuneration of a Concession Employee of no more than the amount determined in accordance with the following formula:

$$\frac{\text{MRPI} + \text{JRPI} + \text{SRPI} + \text{DRPI}}{4}$$

where:

MRPI is the increase in the RPI Index between March in the preceding 12 months and the corresponding March one year before, expressed as a percentage;

JRPI is the increase in the RPI Index between June in the preceding 12 months and the corresponding June one year before, expressed as a percentage;

SRPI is the increase in the RPI Index between September in the preceding 12 months and the corresponding September one year before, expressed as a percentage; and

DRPI is the increase in the RPI Index between December in the preceding 12 months and the corresponding December one year before, expressed as a percentage;

- (b) wholly or partly first takes effect after the end of the Concession Period;
- (c) results in any such employment not being terminable by the Operator or other relevant employer within six months of the expiry of the Concession Period;
- (d) relates to a payment or the provision of a benefit triggered by termination of employment;

- (e) relates to the provision of a benefit (excluding base salary) which any such employee will or may have a contractual right to receive after the expiry of the Concession Period; or
- (f) prevents, restricts or hinders any such employee from working for a Successor Operator or from performing the duties which such employee performed for the Operator.

3.5 Without limiting the foregoing, the Operator shall consult RfL as soon as reasonably practicable in any circumstances in which RfL's consent under paragraph 3.4 may be required. Further, it shall always be deemed to be reasonable for RfL to withhold its consent to a variation or addition which is prohibited without such consent under paragraph 3.4(a), provided RfL:

- (a) makes an overall increase in Concession Payments equal to the amount of the direct net Losses suffered by the Operator on the days when the Passenger Services are affected by Industrial Action taken by the Concession Employees which is a consequence of a refusal by RfL to agree to the variation or addition; and
- (b) agrees that, to the extent that the Operator would otherwise be in contravention of this Agreement as a consequence of the Industrial Action referred to in this paragraph 3.5, no such contravention shall have occurred, save where such contravention relates to safety requirements.

3.6 The expression *promise to vary* when used in paragraph 3.4 includes any offer or indication of willingness to vary (whether or not such offer or willingness is made conditional upon obtaining RfL's consent).

#### **Terms of Employment of New Employees**

3.7 The Operator shall not, and shall secure that each other relevant employer shall not, without the prior consent of RfL (which shall not be unreasonably withheld), create or grant, or promise to create or grant, terms or conditions of employment for any Concession Employee where the employment of such Concession Employee by the Operator or such other relevant employer may commence on or after the Start Date if and to the extent that:

- (a) such terms or conditions are materially different from the terms or conditions of employment of equivalent or nearest equivalent Concession Employees at the date on which such employment is scheduled to commence; and
- (b) if such terms or conditions were granted to such equivalent Concession Employees already employed by the Operator by way of variation to their terms or conditions of employment, the Operator would be in contravention of paragraph 3.4.

#### **Changes in Numbers and Total Cost of Employees**

3.8 Subject to and excluding any increase in the remuneration of Concession Employees permitted under paragraph 3.4, the Operator shall not, and shall secure that each other relevant employer shall not, without the prior written consent of RfL (which shall not be unreasonably withheld) increase or decrease in the last 12 months of the Concession Period the number of Concession Employees such that:

(a) the total number of Concession Employees or the total cost per annum to the Operator and each other relevant employer of employing all Concession Employees is increased; or

(b) the total number of Concession Employees is decreased,

in each case, by more than five per cent. during such period of 12 months.

**Indemnity**

3.9 The Operator shall indemnify RfL and keep RfL indemnified against any Loss which relates to or arises out of any act or omission by the Operator or any other event or occurrence prior to the Expiry Date and which RfL may incur in relation to any contract of employment or collective agreement concerning one or more of the Concession Employees pursuant to the provisions of TUPE or otherwise including any such matter relating to or arising out of:

(a) the Operator’s rights, powers, duties and/or liabilities (including any Taxation) under or in connection with any such contract of employment or collective agreement, which rights, powers, duties and/or liabilities (as the case may be) are or will be transferred to RfL in accordance with TUPE; or

(b) anything done or omitted before the Expiry Date by or in relation to the Operator in respect of any such contract of employment or collective agreement or any Concession Employee, which is deemed by TUPE to have been done or omitted by or in relation to RfL save where the thing done or omitted to be done before the Expiry Date relates to RfL’s failure to comply with its obligations referred to in paragraph 3.10.

3.10 RfL shall, to the extent that any contract of employment or collective agreement in relation to any Concession Employee transfers to RfL in accordance with TUPE, co-operate with the Operator in the delivery to each such employee of letters in an agreed form as soon as reasonably practicable after the Expiry Date (to the extent not already delivered prior to the Expiry Date).

**4. NON-FRUSTRATION OF TRANSFER TO SUCCESSOR OPERATOR**

4.1 The Operator shall take no action or steps which is or are designed, directly or indirectly:

(a) to prevent, prejudice or frustrate the transfer as a going concern of the business of providing the Concession Services at the end of the Concession Period to a Successor Operator; or

(b) to avoid, frustrate or circumvent any provision of this Agreement (including in particular the provisions of this Schedule 18) which is included in whole or in part for the purpose of preventing any such preventive, prejudicial or frustrating action or steps.

4.2 Subject to the restrictions set out in paragraph 4.1 and the other provisions of this Agreement, the Operator may take such action as it may require for the purposes of bidding to become, or becoming, a Successor Operator.

## **5. NOVATION OF ACCESS AGREEMENTS ON TERMINATION OF THIS AGREEMENT**

5.1 The Operator shall, to the extent so requested by RfL on termination of this Agreement, in relation to any Access Agreement to which it is a party, novate its interest under any relevant Access Agreement (and any related Collateral Agreement) to RfL or as it may direct.

5.2 Such obligation to novate shall be subject to the agreement of any counterparty to such Access Agreement or Collateral Agreement and, to the extent applicable, the ORR.

5.3 Such novation shall be on such terms as RfL may reasonably require, including:

- (a) that the Operator shall not be released from any accrued but unperformed obligation, the consequences of any breach of the relevant agreement which is the subject of arbitration or litigation between the parties or any liability in respect of any act or omission under or in relation to the relevant agreement prior to, or as at the date of, any such novation (except to the extent that RfL or its nominee agrees to assume responsibility for such unperformed obligation, such liability or the consequences of such breach in connection with the relevant novation); and
- (b) that neither RfL nor its nominee shall be obliged, in connection with such novation, to agree to assume responsibility for any unperformed obligation, liability or consequences of a breach referred to in paragraph 5.3(a),

but shall not, unless the Operator otherwise agrees, be on terms which release any counterparty to the relevant agreement from any liability to the Operator arising prior to the date of such novation.

5.4 The Operator shall, on the occurrence of any of the circumstances specified in paragraph 5.1 in relation to any other Train Operator who is a party to an Access Agreement to which the Operator is also party, agree to the novation of the relevant Train Operator's interest under the relevant Access Agreement to RfL or as it may direct, subject, to the extent applicable, to the consent of the ORR. The provisions of paragraph 5.3 shall apply to any such novation.

5.5 The Operator shall notify RfL on becoming aware of any circumstances which might lead to RfL being able to require the Operator to novate its interest or agree to the novation of another Train Operator's interest under this paragraph 5.

## **6. TRANSFER OF PRIMARY CONCESSION ASSETS**

### **Transfer Notice**

6.1 RfL shall have the right to give, and the Operator shall have the right to require RfL to give, a Transfer Notice on or within 14 days before the expiry or termination of the Concession Period, and the following shall apply:

- (a) RfL may (and shall if required by the Operator) give one or more such Transfer Notices for the transfer of the Primary Concession Assets specified in any such Notice;



- (b) the Operator shall transfer to the Successor Operator the property, rights and liabilities specified in the Transfer Notice on the date specified in such Transfer Notice; and
- (c) any Primary Concession Assets which are not specified in the Transfer Notice shall cease to be designated as such 14 days after service of such Transfer Notice.

### **Supplemental Agreement**

6.2 Any Transfer Notice shall impose on the Operator and the Successor Operator an obligation to enter into an agreement substantially in the form of the Supplemental Agreement which shall provide for:

- (a) the transfer by the Operator to the Successor Operator of the Primary Concession Assets specified in the Transfer Notice; and
- (b) the determination of amounts to be paid in respect of the property, rights and liabilities which are transferred under such Supplemental Agreement.

6.3 The Operator shall enter into any such Supplemental Agreement and shall comply with its obligations thereunder.

### **Payment of Estimated Transfer Price**

6.4 RfL may require the Operator to pay to any Successor Operator, or may require any such Successor Operator to pay to the Operator, on the day specified in the Transfer Notice such sum as RfL may determine should be so paid having regard to:

- (a) RfL's estimate of the sum likely to be paid under the relevant Supplemental Agreement in respect of the Primary Concession Assets being transferred thereunder;
- (b) RfL's estimate of any other sums likely to be paid thereunder;
- (c) the financial condition of the Operator and the Successor Operator and whether any estimate so paid would be likely to be repaid, if in excess of the sums eventually payable thereunder; and
- (d) such other matters as RfL may consider appropriate.

6.5 The Operator shall pay to any such Successor Operator the sum determined by RfL in accordance with paragraph 6.4 on the day specified in the Transfer Notice.

### **Possession of Concession Assets**

6.6 On the day specified in the Transfer Notice, the Operator shall deliver up to RfL (or its nominee) possession of the Primary Concession Assets transferred to the Successor Operator under the Supplemental Agreement.

### **End of concession audit**

6.7 RfL or its representatives may carry out at RfL's cost within the last 18 months of the Concession Period, or at such earlier point as RfL shall reasonably specify, an audit of compliance by the Operator with its asset management and maintenance obligations in this Agreement (the scope of any audit and samples to be selected at RfL's absolute discretion)

and any such audit may involve the examination, inspection or testing of works, activities, processes, records, documents or assets on or off the London Overground Network.

6.8 The Operator shall promptly provide (at its own cost) all such demonstrations and assistance and access to facilities, information, records, assets and documents (including the provision of copies of documents) and personnel as RfL or its representatives may reasonably require in order to discharge their audit function in a proper manner.

6.9 RfL shall, in planning and implementing any audit contemplated by paragraph 6.7, have regard to the obligations of the Operator in providing the Concession Services.

#### **Operator's obligation to remedy defects and failures**

6.10 Where the audit by RfL referred to in paragraph 6.7 reveals:

- (a) any defects in the Primary Concession Assets such that the Primary Concession Assets cannot be handed over in the condition specified in paragraph 4 (*Operating Assets*) of Schedule 2.1 (*Obligations in relation to Concession Services*); or
- (b) reveals any other failure by the Operator to comply with its obligations in this Agreement,

then RfL will provide details of any relevant defects and failures to the Operator.

6.11 Upon receipt of such details the Operator shall, so that such matters are completed prior to the Expiry Date, at its own cost remedy all such defects and failures and undertake all such repairs or other rectification works and activities as are required to ensure that the Primary Concession Assets can be handed over on the Expiry Date in a condition which meets the requirements of paragraph 4 of Schedule 2.1 and all other failures are rectified.

6.12 If this Agreement terminates otherwise than as a result of expiry of the Concession Term, the Operator shall (regardless of whether the audit referred to in paragraph 6.7 has commenced and whether the Operator has been provided with details of any defects and failures) remedy any defects and failures and undertake all such repairs or other rectification works and activities as it is reasonably able to undertake before the Expiry Date to ensure that the Primary Concession Assets can be handed over on the Expiry Date in a condition which meets the requirements of paragraph 4 of Schedule 2.1 and all other failures are rectified.

#### **RfL right to rectify**

6.13 If at the Expiry Date, the Primary Concession Assets are not handed over in a condition which meets the requirements of this Agreement or the Operator has not complied in full with its obligations in paragraphs 6.11 and 6.12, RfL shall be entitled, without prejudice to any of its other rights or remedies, to perform itself all such repairs or other rectification works and activities as are required to put the Primary Concession Assets into the condition required by this Agreement and ensure all other failures are rectified and the Operator shall reimburse RfL for any cost it incurs in doing so.

## **7. ASSOCIATED OBLIGATIONS ON TERMINATION**

### **Assistance in Securing Continuity**

7.1 In order to facilitate the continuity of the Concession Services on expiry of the Concession Period, the Operator shall take such steps, both before and after the expiry of the Concession Period, as RfL may reasonably require, to assist and advise any Successor Operator in providing and operating the Concession Services.

7.2 In particular, the Operator shall provide any Successor Operator with such records and information relating to or connected with the Concession Services as RfL may reasonably require (other than confidential financial information but including all records relating to the Concession Employees).

### **Access**

7.3 On the expiry of the Concession Period, the Operator shall grant RfL and its representatives such access as RfL may reasonably request to any property owned, leased or operated by the Operator at such time, for the purpose of facilitating the continued provision of the Concession Services.

### **Key Contracts**

7.4 The Operator shall provide such assistance to any Successor Operator as RfL may reasonably require in ensuring that, pursuant to any Direct Agreements, such Successor Operator may enter into (or enjoy the benefit of) contracts equivalent to the relevant Key Contracts (or part thereof).

7.5 In satisfaction of its obligations under paragraph 7.4, the Operator shall terminate, surrender, cancel or undertake not to enforce its rights under any Key Contract (or part thereof) provided that nothing in this paragraph shall require the Operator to undertake not to enforce any rights under a Key Contract relating to the period prior to the expiry of the Concession Period.

### **Change of Name**

7.6 The Operator shall cease to use any trade marks which are licensed to the Operator under any of the Brand Licences forthwith upon expiry of the Concession Period and shall take all necessary steps to change any company name which incorporates any such marks as soon as practicable.

### **Property Leases**

7.7 The Operator shall, on the expiry of the Concession Period, if requested by RfL, assign its interest under all or any Property Leases to RfL or as it may direct, subject where applicable to the agreement of any other party to such Property Lease or the ORR.

7.8 Such assignment shall be on such terms as RfL may reasonably require, including:

- (a) that the Operator shall not be released from any accrued but unperformed obligation, the consequences of any antecedent breach of a covenant or obligation in the Property Leases or any liability in respect of any act or omission under or in relation to the Property Lease prior to, or as at the date of, any such assignment (except to the extent

that RfL or its nominee agrees to assume responsibility for such unperformed obligation, such liability or the consequences of such breach in connection with the relevant assignment); and

- (b) that neither RfL nor its nominee shall be obliged, in connection with such assignment, to agree to assume responsibility for any unperformed obligation, liability or consequences of a breach referred to in paragraph 7.8(a) and the Operator shall indemnify RfL or its nominee, as the case may be, on demand, on an after-tax basis against any Losses suffered or incurred in relation thereto.

7.9 The Operator shall, on the occurrence of any of the circumstances specified in paragraph 7.7 in relation to any other Train Operator who is a party to a Property Lease to which the Operator is also party, agree to the assignment of such Train Operator's interest under the relevant Property Lease to RfL or as it may direct, subject, where applicable, to the consent of Network Rail. The provisions of paragraph 7.8 shall apply to any such assignment.

7.10 The Operator shall notify RfL on becoming aware of any circumstances which might lead to RfL being able to require the Operator to assign its interest or agree to the assignment of another Train Operator's interest under this paragraph 7.

## **8. ACTIONS REQUIRED IMMEDIATELY ON HANDOVER**

8.1 The Operator shall immediately on the expiry of the Concession Period make available to RfL:

- (a) information as to the status of each purchase order or contract, including its award date, anticipated delivery date, confirmation of receipt of goods or services and the payment records for each purchase order, together with any matters in dispute with the appointed subcontractor and, to the extent that the Operator is a subcontractor to another Train Operator, equivalent information in respect of that Train Operator; and
- (b) information concerning any contract necessary for the continued operation of the Concession Services where a procurement or bidding process has been initiated.

8.2 The Operator agrees that RfL or its agents may have access to and use free of charge any information contained in any Computer System or in hard copy format as it sees fit (for the purposes of continuing the operation of the Concession Services).

## **9. MAINTENANCE RECORDS**

The Operator shall immediately on expiry of the Concession Period provide to RfL records of the status of the maintenance of any Concession Asset.

## **10. TICKETING ARRANGEMENTS**

The Operator shall provide immediately on expiry of the Concession Period a statement certifying:

- (a) all ticketing transactions with the public or credit card agencies that are in process and not yet complete, together with any allocations on multi-modal travel with other agencies or local authorities;

- (b) the extent of any outstanding claims with ticketing settlement agencies;
- (c) the refund arrangements with members of the public or other Train Operators or ticketing settlement agencies that are in process and not yet complete; and
- (d) commissions owed and/or due.

## **11. OPERATOR'S INTELLECTUAL PROPERTY**

11.1 On the expiry of the Concession Period, the Operator will grant to any Successor Operator licences of any intellectual property which:

- (a) is owned by or licensed to the Operator;
- (b) was not owned by or licensed to it immediately prior to the Start Date;
- (c) has not been designated as a Primary Concession Asset;
- (d) does not represent or constitute a Mark; and
- (e) may, in the reasonable opinion of RfL, be necessary for any Successor Operator to operate the Concession Services on an efficient and economic basis after the expiry of the Concession Period.

11.2 When agreeing the terms on which intellectual property is to be licensed to it, the Operator shall use all reasonable endeavours to ensure that such terms include the right to sub-license such intellectual property in accordance with the remainder of this paragraph 11. The Operator shall not enter into a licence that does not include such a provision without first obtaining RfL's prior written consent (such consent not to be unreasonably withheld).

11.3 Any such licence shall be granted to the relevant Successor Operator for such period as RfL may determine to be reasonably necessary for the purpose of securing continuity of the provision of the Concession Services and shall be free of charge and royalty-free for a period of one month or less.

11.4 If such licence is for a period in excess of one month, the grant of the licence shall be subject to payment of a reasonable royalty (backdated to the expiry of the Concession Period) on the basis of a willing licensor and licensee entering into a licence on comparable terms to similar licences of such intellectual property. If the Operator and the relevant Successor Operator are unable to agree such royalty, the Operator shall submit such dispute for resolution in accordance with such dispute resolution rules as RfL may require.

11.5 Any such licence shall be in such form as RfL shall reasonably determine and shall:

- (a) be non-exclusive and limited to use solely for the purposes of the provision and operation of the Concession Services and will not provide for any right to use such intellectual property for any other purpose (including its marketing or exploitation for any other purpose);
- (b) be terminable on material breach by the Successor Operator;
- (c) contain an assurance from the Operator to the effect that to the best of its knowledge and belief it owns the relevant intellectual property or has the right to license it and the licensing of it and the subsequent use of the intellectual property will not infringe

any third party intellectual property rights and an indemnity in favour of the Successor Operator where this assurance proves false and the Successor Operator is in breach of any third party intellectual property rights; and

- (d) require the Successor Operator, to the extent that it relates to any trademarks, to use such trade marks in such manner as may reasonably be required by the Operator provided that it shall not be reasonable for the Operator to require any such trade mark to be used in a manner materially different from its use during the Concession Period.

**APPENDIX 1 TO SCHEDULE 18.3**

**FORM OF TRANSFER NOTICE**

**TRANSFER NOTICE**

To: [OPERATOR] (the *Operator*)

Attn: [\_\_\_\_\_]

To: [SUCCESSOR OPERATOR] (the *Successor Operator*)

Attn: [\_\_\_\_\_]

From: Rail for London Limited  
Windsor House  
42-50 Victoria Street  
London SW1H 0TL (**RfL**)

Date: [Date]

Dear Sirs

**Concession Agreement dated [\_\_\_\_\_] between RfL and the Operator relating to the London Overground Concession (the *Concession Agreement*).**

1. Capitalised terms used and not defined in this Transfer Notice shall have the meaning given to them in the Concession Agreement.
2. Pursuant to paragraph 6.1 of Schedule 18.3 (*Transfer*) to the Concession Agreement, we hereby give you notice that we require the Operator to transfer to the Successor Operator on [\_\_\_\_\_] (the *Transfer Date*) all of the property, rights and liabilities specified in Schedule 1 to this Transfer Notice.
3. The Operator agrees to transfer to the Successor Operator on the Transfer Date the property, rights and liabilities specified in Schedule 1 to this Transfer Notice.
4. Each of the Operator and the Successor Operator hereby agrees to (a) enter, on or before the Transfer Date, into an agreement substantially in the form of the Supplemental Agreement attached as Schedule 2 to this Transfer Notice; and (b) comply with its obligations thereunder.
5. On the Transfer Date the [Operator][Successor Operator] shall pay to the [Successor Operator][Operator] the sum of £[\_\_\_\_\_] which is the estimated transfer price referred to in paragraph 6.4(a) of Schedule 18.3 (*Transfer*) to the Concession Agreement. Such amount shall be paid in accordance with clause 2.3 of the Supplemental Agreement.

Yours faithfully

By:.....

Name: [\_\_\_\_\_]

Title: [\_\_\_\_\_] [\_\_\_\_\_]

on behalf of Rail for London Limited

We hereby agree to the terms of this Transfer Notice:

By:.....

Name: [\_\_\_\_\_] [\_\_\_\_\_]

Title: [\_\_\_\_\_] [\_\_\_\_\_]

on behalf of the Operator

We hereby agree to the terms of this Transfer Notice:

By:.....

Name: [\_\_\_\_\_] [\_\_\_\_\_]

Title: [\_\_\_\_\_] [\_\_\_\_\_]

on behalf of the Successor Operator



**Schedule 1 to the Transfer Notice**

*[List Relevant Concession Assets to be transferred to the Successor Operator]*

**Schedule 2 to the Transfer Notice**  
*[Form of Supplemental Agreement]*

**APPENDIX 2 TO SCHEDULE 18.3**  
**FORM OF SUPPLEMENTAL AGREEMENT**

**Dated** \_\_\_\_\_ **20**[\_\_\_\_\_] ]

**[OUTGOING OPERATOR]**

and

**[SUCCESSOR OPERATOR]**

**SUPPLEMENTAL AGREEMENT**

to the transfer notice dated [\_\_\_\_\_] given  
by Rail for London Limited in respect of  
certain property rights and liabilities of  
**[OUTGOING OPERATOR]**

Rail for London Limited  
Windsor House  
42-50 Victoria Street  
London SW1H 0TL

**This Supplemental Agreement** is made on [\_\_\_\_\_] 20[\_\_\_]

**BETWEEN**

- (1) [**OUTGOING OPERATOR**] whose registered office is at [*registered office*] (the **Transferor**); and
- (2) [**SUCCESSOR OPERATOR**] whose registered office is at [*registered office*] (the **Transferee**).

**WHEREAS**

(A) The Transferor has been providing certain services and the carriage of passengers by railway and operating certain stations and light maintenance depots pursuant to a concession agreement with Rail for London Limited (**RfL**) dated [\_\_\_\_\_] (the **Concession Agreement**).

(B) The Concession Agreement terminated on [\_\_\_\_\_] and the Transferee has been selected by RfL to continue the provision of all or part of such services pursuant either to a concession agreement with RfL or arrangements made with RfL.

(C) The Transferor has agreed to transfer to the Transferee certain property, rights and liabilities of the Transferor.

(D) This Agreement is supplemental to the Transfer Notice and sets out the terms between the Transferor and the Transferee in relation to the transfer of such property, rights and liabilities.

**IT IS AGREED THAT**

**1. DEFINITIONS AND INTERPRETATION**

**Definitions**

1.1 The following words and expressions shall have the following meaning:

**Business** means such of the undertaking or part of the undertaking of the Transferor prior to the Transfer Date as may be continued by the Transferee after the Transfer Date;

**Completion Payment** has the meaning ascribed to that term in clause 2.3;

**Credit** has the meaning assigned to that term under the Ticketing and Settlement Agreement;

**Debit** has the meaning assigned to that term under the Ticketing and Settlement Agreement;

**Net Asset Statement** means the statement to be drawn up pursuant to clause 2.4;

**Net Asset Value** means the aggregate of the amounts of the Relevant Concession Assets, the Relevant Contract Liabilities, Relevant Debits and Credits and the Relevant Employee Liabilities as shown in the Net Asset Statement;

**Purchase Price** means an amount equal to the Net Asset Value;

**Relevant Concession Assets** means the property, rights and liabilities of the Transferor which are or are to be transferred to the Transferee in accordance with the Transfer Notice;

**Relevant Contract Liabilities** means such rights and liabilities of the Transferor as may be transferred to the Transferee on the expiry of the Concession Period in relation to any Licence, Access Agreement or Property Lease under paragraphs 5 (*Novation of Access Agreement on Termination of this Agreement*) and 7.7 of Schedule 18.3 (*Transfer*) to the Concession Agreement;

**Relevant Debits and Credits** means such Debits and Credits of the Transferor which relate to Fares sold before the Transfer Date and which may be received by the Transferee as a result of settlement by RSP pursuant to the Ticketing and Settlement Agreement;

**Relevant Employee Liabilities** means such rights and liabilities of the Transferor (or any other relevant employer or person) under any contracts of employment relating to the Relevant Employees which have been or are to be transferred to the Transferee by virtue of the operation of Law (including the Transfer Regulations);

**Relevant Employees** means all persons employed in the Business immediately before the Transfer Date (whether employed by the Transferor or otherwise) whose contract of employment has been or is to be transferred to the Transferee by virtue of the operation of Law (including the Transfer Regulations) or any other person employed in the Business in respect of whom liabilities arising from a contract of employment or employment relationship have or will be transferred by virtue of the operation of Law (including the Transfer Regulations);

**Reporting Accountants** means such firm of accountants as may be selected by agreement between the parties within four weeks of the preparation of the Net Asset Statement or, in the absence of such agreement, selected by RfL;

**Season Ticket Fare** means a Fare which entitles the purchaser to make an unlimited number of journeys in any direction during the period for which, and between the stations and/or the zones for which, such Fare is valid;

**Taxation** comprises all forms of taxation, duties, contributions and levies of the United Kingdom whenever imposed and (except in so far as attributable to the unreasonable delay or default of the Transferee) all penalties and interest relating thereto;

**TOGC** has the meaning assigned to that term in clause 6.2;

**Transfer Date** has the meaning given to it in the Transfer Notice;

**Transfer Notice** means the notice dated [\_\_\_\_\_] given by RfL to the Transferor and the Transferee;

**Transfer Regulations** means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended, replaced or substituted from time to time);

**Transferring Assets and Liabilities** has the meaning given to it in clause 2.1(a); and

**Undisclosed Employee** has the meaning assigned to that term in clause 7.1(d).

## **Construction and Interpretation**

1.2 In this Agreement, unless defined herein, terms and expressions defined in the Concession Agreement shall have the same meaning and the terms ‘contract of employment’,

'collective agreement', 'employee representatives' and 'trade union' shall have the same meanings respectively as in the Transfer Regulations.

## **2. AGREEMENT TO TRANSFER AND TRANSFER PRICE**

### **Agreement to Transfer**

2.1 As of and with effect from the Transfer Date and to the extent not transferring by virtue of the operation of Law (including the Transfer Regulations):

- (a) the Transferor transfers, assigns and conveys to the Transferee each of the Relevant Concession Assets, the Relevant Contract Liabilities, the relevant Debits and Credits and the Relevant Employee Liabilities (together, the *Transferring Assets and Liabilities*); and
- (b) the Transferee accepts such assets and assumes such rights, liabilities and obligations, in each case, on the terms set out in this Agreement.

2.2 Each of the Transferee and the Transferor agrees to enter into and execute and deliver, and procure that any relevant third party enters into and executes and delivers, with effect from the Transfer Date, such further instruments (including, without limitation, any novation agreements) and obtain such consents and approvals as shall be necessary or expedient to give effect to the transfer referred to in clause 2.1.

### **Amount and Payment**

2.3 The price for the transfer of the Transferring Assets and Liabilities shall (subject to adjustment as expressly provided in this Agreement) be an amount equal to the Net Asset Value of which the sum of £[amount], as set out in the Transfer Notice (the Completion Payment) shall be paid in immediately available funds by the Transferor to the Transferee, or by the Transferee to the Transferor, as determined under paragraph 6.2(a) of Schedule 18.3 (*Transfer*) of the Concession Agreement, on the Transfer Date and the balance (if any) shall be paid in accordance with clause 2.7.

### **Net Asset Statement**

2.4 The Transferee shall procure that, as soon as practicable and in any event not later than two months following the Transfer Date, there shall be drawn up a statement showing a true and fair view of the aggregate of the amount of each separate asset and liability of the Transferring Assets and Liabilities as at the Transfer Date.

2.5 The Net Asset Statement shall be:

- (a) drawn up in the manner described in the Schedule;
- (b) prepared on such basis as would enable the Transferee's auditors, if so requested, to give an unqualified audit report thereon to the effect that it had been drawn up in accordance with the Schedule; and
- (c) presented, initially as a draft, to the Transferor immediately following its preparation for review in conjunction with its auditors.

2.6 If the Transferor and the Transferee have failed to agree the Net Asset Statement within four weeks following such presentation, the matter shall be referred to the Reporting Accountants who shall settle and complete the Net Asset Statement as soon as practicable and shall determine the amount of the Net Asset Value as shown by the Net Asset Statement.

### **Adjustment of Price**

2.7 If the Purchase Price exceeds or is less than the Completion Payment, the Transferee shall pay to the Transferor or, as the case may be, the Transferor shall pay to the Transferee, in either case within 14 days of the agreement or determination of the Net Asset Value, an amount equal to such excess or deficiency together in either case with interest thereon calculated from the Transfer Date at the Interest Rate.

### **3. REFERENCES TO THE REPORTING ACCOUNTANTS**

Whenever any matter is referred under this Agreement to the decision of the Reporting Accountants:

- (a) the Reporting Accountants shall be engaged jointly by the parties on the terms set out in this Agreement and otherwise on such terms as shall be agreed, provided that neither party shall unreasonably (having regard, amongst other things, to the provisions of this Agreement) refuse its agreement to terms proposed by the Reporting Accountants or by the other party;
- (b) if the terms of engagement of the Reporting Accountants have not been settled within 14 days of their appointment having been determined (or such longer period as the parties may agree) then, unless one party is unreasonably refusing its agreement to those terms, such accountants shall be deemed never to have been appointed as Reporting Accountants, save that the accountants shall be entitled to their reasonable expenses under clause 3(e), and new Reporting Accountants shall be selected in accordance with the provisions of this Agreement;
- (c) if the Reporting Accountants acting or appointed to act under this Agreement resign, withdraw, refuse to act, or are disqualified for any reason from performing their duties then, except as may be agreed between the parties, the parties shall appoint a replacement in accordance with the definition of Reporting Accountants;
- (d) the Reporting Accountants shall be deemed to act as experts and not as arbitrators;
- (e) the Reporting Accountants shall have power to allocate their fees and expenses for payment in whole or in part by any party at their discretion. If not otherwise allocated they shall be paid as to half by the Transferor and as to half by the Transferee;
- (f) each of the parties shall promptly on request supply to the Reporting Accountants all such documents and information as they may require for the purpose of the reference; and
- (g) the decision of the Reporting Accountants shall (in the absence of objection on the grounds of any error discovered within 14 days of the issue of their decision) be conclusive and binding and shall not be the subject of any appeal by way of legal proceeding or arbitration or otherwise.

#### **4. WARRANTY**

The Transferor warrants and represents to the Transferee that the Relevant Contract Liabilities and the Relevant Concession Assets are, to the extent they are property or rights, transferring to the Transferee, free and clear of all Security Interests.

#### **5. INTEREST**

If the Transferor or the Transferee defaults in the payment when due of any sum payable under this Agreement (whether determined by agreement or pursuant to an order of a court or otherwise) the liability of the Transferor or the Transferee (as the case may be) shall be increased to include interest on such sum from the date when such payment is due until the date of actual payment (after as well as before judgment) at a rate equal to the Interest Rate. Such interest shall accrue from day to day.

#### **6. VALUE ADDED TAX**

6.1 All amounts under this Agreement are expressed as exclusive of Value Added Tax where Value Added Tax is applicable.

6.2 The Transferor and the Transferee shall use all reasonable endeavours to secure that the transfer of the Transferring Assets and Liabilities is treated for Value Added Tax purposes as the transfer of a business as a going concern (*TOGC*) and accordingly as neither a supply of goods nor a supply of services for the purposes of Value Added Tax.

6.3 If HM Revenue & Customs direct that the transfer of the Transferring Assets and Liabilities cannot be treated as a TOGC, the Transferor shall provide the Transferee with a copy of such direction within five days of receipt thereof by the Transferor.

6.4 The Transferee shall thereafter pay upon the receipt of a valid tax invoice the amount of any Value Added Tax which as a result of that direction may be chargeable on the transfer of the Transferring Assets and Liabilities. If the aforementioned direction was issued as a result of any action or inaction of the Transferee then the Transferee shall in addition to the Value Added Tax indemnify the Transferor for any penalties and interest that may be incurred upon receipt of such evidence from HM Revenue & Customs.

6.5 If the Transferee considers the direction issued by HM Revenue & Customs referred to in clause 6.3 to be incorrect then, without prejudice to the Transferee's obligation under clause 6.4 to pay to the Transferor the amount of any Value Added Tax which as a result such direction may be chargeable on the transfer of the Transferring Assets and Liabilities, the Transferee may, within 30 days of receipt of such direction by the Transferor, give notice to the Transferor that it requires the Transferor to appeal such direction. Upon requesting such an appeal the Transferee agrees to indemnify the Transferor for all reasonable costs that the Transferor may incur in taking such action upon receipt of evidence of those costs. If such an appeal is successful the Transferor agrees to reimburse the Transferee for such reasonable costs and penalties and interest to the extent that those costs have been reimbursed by HM Revenue & Customs.

6.6 If any amount paid by the Transferee to the Transferor in respect of Value Added Tax pursuant to this Agreement is subsequently found to have been paid in error the Transferor



shall issue a valid tax credit note for the appropriate sum to the Transferee and promptly repay such amount to the Transferee.

6.7 If any amount is payable by the Transferor to the Transferee in respect of the transfer of the Relevant Concession Assets, Relevant Contract Liabilities, the relevant Debits and Credits and Relevant Employee Liabilities pursuant to this Agreement, clauses 6.4 to 6.6 inclusive shall apply mutatis mutandis to such payment substituting Transferor for Transferee and vice versa.

6.8 The Transferor shall on the Transfer Date deliver to the Transferee such of those records referred to in Section 49 of the Value Added Tax Act 1994 as relate exclusively to the Business on condition that the Transferee undertakes to preserve those records in such manner and for such periods as may be required by law.

6.9 Subject to HM Revenue & Customs so permitting, all of the records referred to in Section 49 of the Value Added Tax Act 1994 relating to the Business (being the purchase records) shall be retained by the Transferor and the Transferor shall undertake to the Transferee to:

- (a) preserve those records in such manner and for such periods as may be required by law; and
- (b) give the Transferee as from the Transfer Date reasonable access during normal business hours to such records and to take copies of such records.

## **7. EMPLOYEES**

### **Transfer Regulations**

7.1 The parties accept that, to the extent that the undertaking or part of the undertaking of the Transferor is continued by the Transferee after the Transfer Date, this Agreement and the transfer of the Business which is effected in connection with the Transfer Notice are governed by the Transfer Regulations and the following provisions shall apply in connection therewith:

- (a) the contract of employment of each of the Relevant Employees (save insofar as such contract relates to any occupational pension scheme) shall be transferred to the Transferee with effect from the Transfer Date which shall be the 'time of transfer' under the Transfer Regulations and the Transferee shall employ each such Relevant Employee on the terms of those contracts of employment (save insofar as such contract relates to any occupational pension scheme) with effect from the Transfer Date;
- (b) the Transferor shall perform and discharge all its obligations in respect of all the Relevant Employees for its own account up to and including the Transfer Date including, without limitation, discharging all wages and salaries of the Relevant Employees, all employer's contributions to any relevant occupational pension scheme and all other costs and expenses related to their employment (including, without limitation, any Taxation, accrued holiday pay, accrued bonus, commission or other sums payable in respect of service prior to the close of business on the Transfer Date) and shall indemnify the Transferee and keep the Transferee indemnified against each and every action, proceeding, liability (including, without limitation, any Taxation),

cost, claim, expense (including, without limitation, reasonable legal fees) or demand arising from the Transferor's failure so to discharge;

- (c) the Transferor shall indemnify the Transferee and keep the Transferee indemnified against each and every action, proceeding, cost, claim, liability (including, without limitation, any Taxation), expense (including, without limitation, reasonable legal fees) or demand which relates to or arises out of any act or omission by the Transferor or any other event or occurrence prior to the Transfer Date and which the Transferee may incur in relation to any contract of employment or collective agreement concerning one or more of the Relevant Employees pursuant to the provisions of the Transfer Regulations or otherwise including, without limitation, any such matter relating to or arising out of:
- (i) the Transferor's rights, powers, duties and/or liabilities (including, without limitation, any Taxation) under or in connection with any such contract of employment or collective agreement, which rights, powers, duties and/or liabilities (as the case may be) are or will be transferred to the Transferee in accordance with the Transfer Regulations; or
  - (ii) anything done or omitted before the Transfer Date by or in relation to the Transferor in respect of any such contract of employment or collective agreement or any Relevant Employee, which is deemed by the Transfer Regulations to have been done or omitted by or in relation to the Transferee save where the thing done or omitted to be done before the Transfer Date relates to the Transferee's failure to comply with its obligations referred to in clause 7.4;
- (d) if any contract of employment or collective agreement which is neither disclosed in writing to the Transferee by the Transferor prior to the Transfer Date nor made available to RfL under Schedule 18.1 (*Continuity of Services*) of the Concession Agreement prior to the Transfer Date shall have effect as if originally made between the Transferee and any employee (the Undisclosed Employee) or a trade union or employee representatives as a result of the provisions of the Transfer Regulations (without prejudice to any other right or remedy which may be available to the Transferee):
- (i) the Transferee may, upon becoming aware of the application of the Transfer Regulations to any such contract of employment or collective agreement terminate such contract or agreement forthwith;
  - (ii) the Transferor shall indemnify the Transferee against each and every action, proceeding, cost, claim, liability (including, without limitation, any Taxation), expense (including, without limitation, reasonable legal fees) or demand relating to or arising out of such termination and reimburse the Transferee for all costs and expenses (including, without limitation, any Taxation) incurred in employing such employee in respect of his employment following the Transfer Date; and
  - (iii) the Transferor shall indemnify the Transferee in respect of any Undisclosed Employee on the same terms mutatis mutandis as the Transferor has

indemnified the Transferee in respect of a Relevant Employee pursuant to the terms of clauses 7.1(b) and (c); and

- (e) the Transferor shall indemnify the Transferee and keep the Transferee indemnified against each and every action, proceeding, cost, claim, liability (including without limitation, any Taxation) expense (including, without limitation, reasonable legal fees) or demand which relates to or arises out of any dismissal (including, without limitation, constructive dismissal) by the Transferor of any employee (not being a Relevant Employee) and which the Transferee may incur pursuant to the provisions of the Transfer Regulations.

### **Transferee's Indemnities**

7.2 The Transferee shall indemnify the Transferor and keep the Transferor indemnified against each and every action, proceeding, liability (including, without limitation, any Taxation), cost, claim, loss, expense (including reasonable legal fees) and demand arising out of or in connection with:

- (a) any substantial change in the working conditions of the Relevant Employees to their detriment or any of them occurring on or after the Transfer Date;
- (b) the change of employer occurring by virtue of the Transfer Regulations and/or this Agreement being significant and detrimental to any of the Relevant Employees;
- (c) the employment by the Transferee on or after the Transfer Date of any of the Relevant Employees other than on terms (including terms relating to any occupational pension scheme) at least as good as those enjoyed prior to the Transfer Date or the termination of the employment of any of them on or after the Transfer Date; or
- (d) any claim by any Relevant Employee (whether in contract or in tort or under statute (including the Treaty of the European Community or European Union and any Directives made under any such Treaty or any successor thereof)) for any remedy (including, without limitation, for unfair dismissal, redundancy, statutory redundancy, equal pay, sex or race discrimination) as a result of any act or omission by the Transferee after the Transfer Date.

7.3 The Transferee shall indemnify the Transferor and keep the Transferor indemnified against each and every action, proceeding, liability, cost, claim, loss, expense (including reasonable legal fees) and demand which arises as a result of it not providing or not having provided, in accordance with its obligations under the Transfer Regulations, the Transferor in writing with such information and at such time as will enable the Transferor to carry out its duties under Regulation 10(2)(d) and 10(6) of the Transfer Regulations concerning measures envisaged by the Transferee in relation to the Relevant Employees.

### **Details of Relevant Employees**

7.4 The Transferor warrants to the Transferee that it has (to the extent not made available to RfL under Schedule 18.3 (*Transfer*) of the Concession Agreement prior to the Transfer Date) provided the Transferee prior to the Transfer Date with full particulars of:

- (a) each Relevant Employee, including name, sex, and the date on which continuity of employment began for each Relevant Employee for statutory purposes;

- (b) terms and conditions of employment of each such person;
- (c) all payments, benefits or changes to terms and conditions of employment promised to any such person;
- (d) dismissals of Relevant Employees or termination of employment effected within 12 months prior to the Transfer Date including the Transfer Date;
- (e) all agreements or arrangements entered into in relation to the Relevant Employees between the Transferor, any Affiliate of the Transferor or any other relevant employer and any trade union or association of trade unions or organisation or body of employees including employee representatives and elected representatives; and
- (f) all strikes or other Industrial Action taken by any Relevant Employee within 12 months prior to the Transfer Date including the Transfer Date.

7.5 The Transferor and Transferee shall deliver to each of the Relevant Employees letters in an agreed form from the Transferor and Transferee as soon as is practicable after the execution of this Agreement (to the extent not already delivered prior to the Transfer Date).

## **8. MISCELLANEOUS PROVISIONS**

### **Variations in Writing**

8.1 No variation of this Agreement shall be effective unless in writing and signed by duly authorised representatives of the parties.

### **Partial Invalidity**

8.2 If any provision in this Agreement shall be held to be void, illegal, invalid or unenforceable, in whole or in part, under any enactment or rule of law, such provision or part shall to that extent be deemed not to form part of this Agreement but the legality, validity and enforceability of the remainder of this Agreement shall not be affected.

### **Further Assurance**

8.3 Each of the parties agrees to execute and deliver all such further instruments and do and perform all such further acts and things as shall be necessary or expedient for the carrying out of the provisions of this Agreement.

### **Notices**

8.4 Any notice or other communication requiring to be given or served under or in connection with this Agreement shall be in writing and shall be sufficiently given or served if delivered or sent to the registered office of the recipient or:

- (a) in the case of the Transferor to [name of Transferor] at:

[address]

[fax]

Attention: [name]

(b) in the case of the Transferee to [name of Transferee] at:

[address]

[fax]

Attention: [name].

8.5 Any such notice or other communication shall be delivered by hand or sent by courier, fax or prepaid first class post. If sent by courier or fax such notice or communication shall conclusively be deemed to have been given or served at the time of despatch. If sent by post such notice or communication shall conclusively be deemed to have been received two Business Days from the time of posting.

**Counterparts**

8.6 This Agreement may be executed in any number of counterparts each of which shall be deemed an original, but all the counterparts shall together constitute one and the same instrument.

**Third Parties**

8.7 This Agreement does not create any rights under the Contracts (Rights of Third Parties) Act 1999 which is enforceable by any person who is not a party to it.

**Governing Law**

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

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

SIGNED FOR AND ON  
BEHALF OF [**TRANSFEROR**]

DIRECTOR:

DIRECTOR/SECRETARY:



SIGNED FOR AND ON  
BEHALF OF [*TRANSFeree*]

DIRECTOR:

DIRECTOR/SECRETARY:



## SCHEDULE TO THE SUPPLEMENTAL AGREEMENT

### Net Asset Statement

1. The Net Asset Statement shall be drawn up (except to the extent otherwise agreed by the Transferor and the Transferee) in accordance with international accounting standards and such that the Transferring Assets and Liabilities are valued on the following basis:
2. Rights and liabilities relating to an obligation of carriage under the terms of any Fare shall be valued in accordance with the following formula:

$$\frac{(C - D) \times A}{B} + E$$

where:

- C equals the Credit (exclusive of any Valued Added Tax) received by the Transferor in respect of the Fare provided that:
- (a) such Credit shall be deemed not to include any reduction in respect of a discount allowed to the purchaser of the Fare pursuant to TfL's refund policy;
  - (b) if the Fare is a Season Ticket Fare, such Credit shall be the New Credit (as defined in the Ticketing and Settlement Agreement) relating to that Season Ticket Fare on the Transfer Date if different to the Credit that was in fact received by the Transferor in respect of such Season Ticket Fare;
  - (c) such Credit shall be net of any Private Settlement Credit (as defined in the Ticketing and Settlement Agreement) arising in respect of that Fare; and
  - (d) such Credit shall be deemed to exclude any Credit received by the Transferor in respect of any commission due to it in respect of the sale of such Fare (provided that for these purposes the amount of such commission shall not exceed the National Standard Rate of Commission (as defined in the Ticketing and Settlement Agreement) in respect of the Fare);
- D equals the Debit (exclusive of any Value Added Tax) received by the Transferor in respect of the commission due in respect of the sale of the Fare (provided that for these purposes the amount of such commission shall not exceed the National Standard Rate of Commission (as defined in the Ticketing and Settlement Agreement) in respect of the Fare);

$\frac{A}{B}$  equals:

- (a) in the case of a Season Ticket Fare, the number of journeys which the purchaser of the Fare is estimated to make from (and including) the Transfer Date to (and including) the last day on which the Fare is valid (including any extensions to its original period of validity) divided by the total number of journeys which the purchaser of the Fare is estimated to make with that Fare (as determined in each case in accordance with Schedule 28 of the Ticketing and Settlement Agreement);

(b) in the case of any other Fare which entitles the holder thereof to make more than two journeys, the number of days for which the Fare continues to be valid after the Transfer Date (including any extensions to its original period of validity) divided by the total number of days for which such Fare is valid on issue (except to the extent that it can reasonably be estimated what proportion of the journeys which could be made on issue of the Fare have not been made prior to the Transfer Date); or

(c) in the case of any other Fare, zero; and

E equals, if  $\frac{A}{B}$  is greater than zero the amount of any discount to which it can be reasonably estimated that the purchaser of the Fare would be entitled pursuant to TfL's Customer on purchasing an equivalent Fare on the expiry of the relevant Fare,

and for these purposes a Credit or Debit shall be deemed to be received when the relevant Fare is Accepted for Clearing (as defined in the Ticketing and Settlement Agreement).

3. Rights and liabilities relating to an Excess Fare, Reservation or Upgrade (as such terms are defined in the Ticketing and Settlement Agreement) shall be valued at zero unless such Excess Fare, Reservation or Upgrade involves more than two journeys, in which case they shall be valued in accordance with paragraph 1 and references to Fare in paragraph 1 shall be construed accordingly.

4. Rights and liabilities under a Discount Card shall be valued in accordance with the following formula:

$$\frac{(C - D)}{B} \times A$$

where:

C equals the Credit (exclusive of any Value Added Tax) received by the Transferor in respect of the Discount Card;

D equals the Debit (exclusive of any Value Added Tax) received by the Transferor in respect of the commission due in respect of the sale of the Discount Card (provided that for these purposes the amount of such commission shall not exceed the National Standard Rate of Commission (as defined in the Ticketing and Settlement Agreement) in respect of the Discount Card); and

$\frac{A}{B}$  equals the number of days for which the Discount Card continues to be valid after the Transfer Date (including any extensions to its original period of validity) divided by the total number of days for which such Discount Card is valid on issue, or in the case of any Discount Card listed in Schedules 12 or 39 of the Ticketing and Settlement Agreement on the Start Date, zero,

and for these purposes a Credit or Debit shall be deemed to be received when the relevant Discount Card is Accepted for Clearing (as defined in the Ticketing and Settlement Agreement).



5. Relevant Debits and Credits shall be valued at the full amount of such Debits and Credits (inclusive of any Value Added Tax) but excluding any Debits and Credits arising in respect of Adjustment Amounts (as defined in the Ticketing and Settlement Agreement) which are received by the Transferee in respect of a change to the Credit which is used to value any relevant Season Ticket Fare under paragraph 1 to the extent such Adjustment Amounts relate to a period after the Transfer Date.

6. Rights and liabilities in respect of any contract, lease, licence or other equivalent arrangement excluding rights and liabilities valued under paragraphs 2 to 0 inclusive shall be valued at nil except to the extent that the relevant rights and liabilities include matters specified in the left hand column of the following table, which shall be valued on the basis specified in the right hand column of the following table:

RIGHTS AND LIABILITIES	VALUE
Any accrued rights to receive payment	Monetary amounts so accrued, subject to any provision being made for payment not being received from any other person
Any right to receive payment in respect of goods and/or services provided by the Transferor prior to the Transfer Date where the due date for such payment is after the Transfer Date	Amount payable under such contract, lease, licence or other equivalent arrangement for the goods and/or services so provided by the Transferor, subject to any provision being made for payment not being received from any other person
Any accrued liabilities to make payment	Monetary amounts so accrued
Any liability to make payment in respect of goods and/or services provided to the Transferor prior to the Transfer Date where the due date for such payment is after the Transfer Date	Amount payable under such contract, lease, licence or other equivalent arrangement for the goods and/or services provided to the Transferor
Any rights in respect of which payment has already been made by the Transferor	Monetary amounts so paid, subject to any provision being made for such rights not being exercisable against any other person
Any liabilities in respect of which payment has already been received by the Transferor	Monetary amounts so received
Any liability resulting from any breach of or failure by the Transferor to comply with the terms of any such contract, lease, licence or other equivalent arrangement	Amount of such liability or, to the extent that such amount is not ascertained, the parties reasonable estimate of the amount of such liability

7. Any Ticket Equipment supplied by RfL under the terms of the Concession Agreement shall be valued at nil.

8. Any other property, rights or liabilities shall be valued on the basis of a willing vendor and purchaser and ongoing usage within the railway industry.



**SCHEDULE 19**

**CONTINUATION OF LONDON OVERGROUND CONCESSION**

**Schedule 19: Continuation of London Overground Concession**



## SCHEDULE 19

### Continuation of London Overground Concession

#### 1. CONTINUATION OF TERM

##### Up to two-year continuation at RfL's discretion

1.1 RfL may, in its sole discretion, not less than nine months before the Initial Expiry Date, notify the Operator that this Agreement shall continue after the Initial Expiry Date on the terms set out in this Agreement up to 26 Reporting Periods after the Initial Expiry Date.

1.2 If RfL serves such notice, this Agreement shall continue on its terms until the date specified in the notice issued pursuant to paragraph 1.1, unless otherwise terminated in accordance with its terms.

##### Continuation for Additional Seven Reporting Periods

1.3 RfL's rights pursuant to paragraph 1.4 shall apply regardless of when this Agreement is scheduled to terminate.

1.4 If RfL gives notice to the Operator not less than three months before:

- (a) the Initial Expiry Date; or
- (b) if this Agreement is continued beyond the Initial Expiry Date in accordance with paragraph 1.1, the date on which this Agreement is due to expire following such continuation,

(and RfL shall be entitled to serve such notice in either such circumstances) in which case, this Agreement shall continue after such date on the terms set out in this Agreement for not less than one and not more than seven Reporting Periods, as RfL may stipulate in such notice.

#### 2. KEY CONTRACTS

The Operator shall enter into any and all Key Contracts which are necessary for this Agreement to continue or be extended in accordance with this Schedule 19.



**SCHEDULE 20**

**OTHER PROVISIONS**

**Schedule 20:**

**Other Provisions**





## SCHEDULE 20

### Other Provisions

#### 1. RIGHTS CUMULATIVE

The rights of RfL under this Agreement are cumulative, may be exercised as often as it considers appropriate and are in addition to its rights under the general Law. The exercise of such rights shall not limit RfL's right to make payment adjustments, claim damages in respect of contraventions of this Agreement or pursue any available remedies under general Law.

#### 2. DISPUTES UNDER THIS AGREEMENT

##### Escalation procedure

2.1 RfL and the Operator shall use all reasonable endeavours to negotiate in good faith and settle any dispute or difference that may arise out of or relate to this Agreement (a *Dispute*) before taking any further action.

2.2 If the Dispute is not settled through discussion between the Concession Manager and the Contract Manager within a period of seven Business Days of the date on which the Dispute arose, the parties may refer the Dispute in writing to a director or chief executive (or equivalent) (*Senior Personnel*) of each of the parties for resolution.

2.3 If the Dispute is not resolved within 14 Business Days of referral to the Senior Personnel, either party may, subject to paragraphs 2.8 and 2.9, propose by notice (a *Dispute Notice*) to the other party that a structured mediation or negotiation be entered into with the assistance of a mediator.

##### Principles of mediation

2.4 If the Parties are unable to agree on a mediator, or if the agreed mediator is unable or unwilling to act within 28 Business Days of the service of any Dispute Notice, either party may apply to the Centre for Effective Dispute Resolution (*CEDR*) in London to appoint a mediator. The costs of that mediator shall be divided equally between the parties or as the parties may otherwise agree in writing.

2.5 Where a Dispute is referred to mediation under paragraph 2.4, the parties will attempt to settle such Dispute by mediation in accordance with the model mediation procedures published by CEDR or such other procedures as the mediator may recommend.

2.6 If the parties reach agreement on the resolution of the Dispute, such agreement shall be recorded in writing and once signed by the parties' authorised representatives, shall be final and binding on the parties.

2.7 If either party refuses at any time to participate in the mediation procedure and in any event if the parties fail to reach agreement on the Dispute within 40 Business Days of the service of the relevant Dispute Notice, either party may commence proceedings.

##### Reasonable determinations by RfL

2.8 Where this Agreement provides that RfL may reasonably determine any matter and a Dispute has arisen in relation to whether RfL has been reasonable in making any such

determination, the matter shall not be capable of referral to mediation under paragraph 2.3, but the Operator shall be entitled to challenge that determination on the basis that it is unreasonable. RfL's determination shall prevail unless and until it is agreed or found to have been unreasonable.

### **Dispute Resolution Rules**

2.9 Where either party is entitled, pursuant to the terms of this Agreement, to refer a dispute arising out of or in connection with this Agreement for resolution or determination in accordance with the Dispute Resolution Rules, then such dispute shall, unless the parties otherwise agree and subject to any duty of RfL under applicable Law, be resolved or determined by arbitration pursuant to the Dispute Resolution Rules.

2.10 The arbitrator in any dispute referred for resolution or determination under the Dispute Resolution Rules shall be a suitably qualified person chosen by agreement between the parties or, in default of agreement, chosen by the Disputes Secretary from a panel of persons agreed from time to time for such purposes between RfL and the Operator or, in default of agreement as to the arbitrator or as to such panel, selected on the application of any party by the President of the Law Society or the President of the Institute of Chartered Accountants in England and Wales from time to time (or such other person to whom they may delegate such selection).

### **Continuing obligations and rights**

2.11 The Operator and RfL shall continue to comply with their respective obligations under this Agreement without delay while any Dispute is being resolved pursuant to this paragraph 2.

2.12 Neither party shall be prevented from, or delayed in, seeking any order for specific performance or for interim or final injunctive relief as a result of the provisions of this paragraph 2, nor shall this paragraph 2 apply in respect of any circumstances where such remedies are sought.

## **3. DISPUTES UNDER OTHER AGREEMENTS**

3.1 The Operator shall notify RfL of any disputes to which it is a party under any Inter-Operator Scheme, Access Agreement, Property Lease or Rolling Stock Related Contract, or under any other agreement in circumstances where the relevant dispute could have an adverse effect on the Operator's ability to comply with its obligations under this Agreement or on the provision of the Concession Services and which have been submitted for resolution either to the courts or to any other procedure for dispute resolution provided for under such agreements.

3.2 Such notification shall be made both:

- (a) at the time of such submission (and such notification shall include reasonable details of the nature of the dispute); and
- (b) at the time of the resolution of the dispute (whether or not subject to appeal) (and such notification shall include reasonable details of the result of the dispute, any associated award and whether it is subject to appeal).

3.3 The Operator shall provide such further details of any dispute referred to in paragraph 3.1 as RfL may reasonably request from time to time.

**4. NOTICES**

**Notices**

4.1 Any notice, notification or other communication under or in connection with the matters specified in Schedule 17.4 (*Termination and Expiry*), Schedule 19 (*Continuation of London Overground Concession*) or any dispute under or in connection with this Agreement shall be in writing and shall be delivered by hand or recorded delivery or sent by pre-paid first class post to the relevant party at the address for service set out below, or to such other address in the United Kingdom as each party may specify by notice in writing to the other party.

4.2 Any other notice, notification or other communication under or in connection with this Agreement not specifically referred to in paragraph 4.1 shall be in writing and shall be delivered:

- (a) in accordance with paragraph 4.1; or
- (b) by electronic data transfer,

except that it shall be marked for the attention of the Contract Manager or the Concession Manager as appropriate.

Name: Rail for London Limited  
 Address: 42-50 Victoria Street, London SW1H 0TL  
 E-mail: To be advised to the Operator by RfL from time to time  
 Attention: Head of Concession Management  
 Care of: TfL Legal

Name: Arriva Rail London Limited  
 Address: 1 Admiral Way, Doxford International Business Park,  
 Sunderland, Tyne & Wear, SR3 3XP  
 E-mail: To be advised to RfL by the Operator from time to time  
 Attention: Managing Director

**Deemed Receipt**

4.3 Any such notice or other communication shall be deemed to have been received by the party to whom it is addressed as follows:

- (a) if sent by hand or recorded delivery, when delivered;

- (b) if sent by pre-paid first class post, from and to any place within the United Kingdom, three Business Days after posting unless otherwise proven; and
- (c) if sent by electronic data transfer, upon sending, subject to receipt by the sender of a 'delivered' confirmation (provided that the sender shall not be required to produce a 'read' confirmation).

## **5. ASSIGNMENT**

5.1 The Operator shall not without the prior written consent of RfL assign, transfer or otherwise dispose of, hold in trust for any other person, or grant a Security Interest in or over, this Agreement or any part hereof or any benefit or interest or right herein or hereunder (other than any right of the Operator to receive monies under a Supplemental Agreement).

5.2 The Operator hereby agrees that RfL may without the Operator's consent, assign, transfer or otherwise dispose of any of its rights and obligations under this Agreement to any other member of the TfL Group.

## **6. SET-OFF**

6.1 Save as otherwise expressly provided under this Agreement or required by law, all sums payable under this Agreement shall be paid in full and without any set-off or any deduction or withholding including on account of any counter-claim.

6.2 Notwithstanding paragraph 6.1, RfL may by making an Other Adjustment, set-off any amount owed to it which is due and payable by the Operator under or in relation to the Transaction Documents, against any amount owed by RfL to the Operator under or in relation to those agreements.

6.3 If an amount is unascertained or unliquidated, RfL may, acting reasonably, estimate such amount and set-off in respect of the estimated amount, in which case, when the amount is ascertained or liquidated, RfL or the Operator shall make a payment to the other (as appropriate) by way of Other Adjustment in respect of any amount by which the ascertained or liquidated amount differs from the estimated amount.

## **7. MISCELLANEOUS PROVISIONS**

### **Waivers**

7.1 Either party may at any time waive any obligation of the other party under this Agreement and the obligations of the parties hereunder shall be construed accordingly.

7.2 No waiver by either party of any default by the other party in the performance of such party's obligations under this Agreement shall operate or be construed as a waiver of any other or further such default, whether of a like or different character. A failure to exercise or delay in exercising a right or remedy under this Agreement shall not constitute a waiver of any right or remedy or a waiver of any other rights or remedies and no single or partial exercise of any right or remedy under this Agreement shall prevent any further exercise of such right or remedy or the exercise of any other right or remedy.

**Time Limits**

7.3 Where in this Agreement any obligation of a party is required to be performed within a specified time limit (including an obligation to use all reasonable endeavours or best endeavours to secure a particular result within such time limit) that obligation shall be deemed to continue after the expiry of such time limit if such party fails to comply with that obligation (or secure such result, as appropriate) within such time limit.

**Partial Invalidity**

7.4 If any provision in this Agreement is held to be void, illegal, invalid or unenforceable, in whole or in part, under any enactment or rule of Law, such provision or part shall to that extent be deemed not to form part of this Agreement but the legality, validity and enforceability of the remainder of this Agreement shall not be affected.

**Further Assurance**

7.5 Each party agrees to execute and deliver all such further instruments and do and perform all such further acts and things as shall be necessary or expedient for the carrying out of the provisions of this Agreement.

**Rights of Third Parties**

7.6 A person who is not a party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement except to the extent set out in paragraphs 7.7 to 7.10 inclusive.

7.7 Each of RfL (I), TfL and any other member of the TfL Group may, to the same extent as if it were a party, enforce and rely on any provision of this Agreement where any such member is expressed to have a right in respect of any such provision, but subject to paragraph 7.9.

7.8 Any Successor Operator or potential Successor Operator nominated by RfL and notified to the Operator for the purposes of this paragraph 7.8 may enforce and rely on the provisions of Schedule 18 (*Continuity, Restrictions on Dealings and Transfer*) to the same extent as if it were a party, but subject to paragraphs 7.9 and 7.10.

7.9 This Agreement may be terminated, and any term may be amended or waived, in each case in accordance with the terms of this Agreement, without the consent of any person nominated under paragraph 7.7 or 7.8.

7.10 Any person nominated under paragraph 7.8 shall only be entitled to enforce and rely on Schedule 18 to the extent determined by RfL (whether at the time of nomination or at any other time) and, to the extent that any such person is entitled to enforce and rely on Schedule 18, any legal proceedings in relation thereto must be commenced within one year of the expiry of the Concession Period and any such person shall not be entitled to enforce or rely on Schedule 18 to the extent that it has consented to any particular act or omission of the Operator which may constitute a contravention of Schedule 18 or has been afforded a reasonable opportunity to indicate to the Operator that it is not so consenting and has not so indicated (the extent of such reasonable opportunity to be determined by RfL unless otherwise agreed).

### **RfL's Consent or Approval**

7.11 Where any provision of this Agreement provides for any matter to be subject to the consent or approval of RfL, then (subject only to the express terms of that provision as to the basis on which that consent or approval may be given or withheld) RfL shall be entitled to give that consent or approval subject to any condition or conditions as it considers appropriate, which may include the adjustment of any of the terms of this Agreement.

### **Performance by TfL Group**

7.12 The Operator agrees that performance by any member of the TfL Group of any obligation of RfL under this Agreement shall constitute good and valid discharge of such obligation.

## **8. ENFORCEMENT COSTS**

The Operator shall compensate RfL for all reasonable costs incurred by RfL as a result of the Operator failing to perform its obligations under this Agreement in accordance with their terms in the exercise of RfL's rights under Schedule 17 (*Remedies, Termination and Expiry*).

## **9. CURRENCY**

If at any time the Bank of England or other competent monetary authority of the United Kingdom or competent organ of H. M. Government of the United Kingdom recognises any currency other than pounds Sterling as lawful currency and tender of the United Kingdom, RfL may, by reasonable notice to the Operator and the Operator may by reasonable notice to RfL, elect that all payment obligations arising under this Agreement shall be denominated and/or constituted in that other currency on the basis that all outstanding amounts and obligations previously denominated and/or constituted in pounds Sterling shall be translated into that other currency at the exchange rate applied or recognised by the United Kingdom authority or organ which granted recognition of the that other currency for the purpose of such translation on the date on which it granted recognition of the that other currency.

## **10. ARM'S LENGTH DEALINGS**

10.1 The Operator shall ensure that every contract or other arrangement or transaction to which it may become party in connection with this Agreement with any person is on bona fide arm's length terms.

10.2 Within four Reporting Periods of the end of each Concession Year, and to the extent that the Operator submits to RfL the calculations pursuant to paragraph 2.1 of Schedule 11.4 (*Profit Share*), at the same time as those calculations are submitted, the Operator shall provide RfL with details of any new, amended or replacement contracts or other arrangements to which the Operator has become party during that Concession Year with any of its Parent or Affiliates that, when aggregated with any other such contracts or arrangements to which the Operator is a party, have a value in excess of £100,000.

**SCHEDULE 21**

**LIST OF DOCUMENTS IN THE AGREED TERMS**

**Schedule 21: List of Documents in the Agreed Terms**





**SCHEDULE 21****LIST OF DOCUMENTS IN THE AGREED TERMS**

<b>Abbreviation</b>	<b>Document in the agreed terms</b>
<i>ACA</i>	Advertising Concession Agreement
<i>AMTSM</i>	Accessibility Mystery Traveller Survey Methodology
<i>AMTSQ</i>	Accessibility Mystery Traveller Survey Questionnaire
<i>ATG</i>	Alternative Timetable Guidance
<i>CL378L</i>	Class 378 Subleases
<i>CSSM</i>	Customer Satisfaction Survey Methodology
<i>CSSQ</i>	Customer Satisfaction Survey Questionnaire
<i>DL</i>	Depot Lease
<i>DoS</i>	Deed of Subleases
<i>DUA</i>	Depot Usage Agreement
<i>EDF</i>	Equality and Diversity Framework
<i>ETIBC</i>	ETI Base Code
<i>ELLTAA</i>	ELL Core Route TAA
<i>FM</i>	Financial Model
<i>MPG</i>	Marketing and Publicity Guidance
<i>MSSM</i>	Mystery Shopper Survey Methodology
<i>MSSQ</i>	Mystery Shopper Survey Questionnaire
<i>OM</i>	Operational Models
<i>OSPOA</i>	Operator Stations Power of Attorney
<i>PCM</i>	Passenger Count Methodology
<i>POA</i>	Power of Attorney
<i>ROA</i>	Record of Assumptions
<i>RSL</i>	Regulated Station Lease
<i>SISM</i>	SIS Methodology
<i>SISQ</i>	SIS Questionnaire
<i>SLC1a</i>	Service Level Commitment 1a
<i>SLC1b</i>	Service Level Commitment 1b
<i>SLC2a</i>	Service Level Commitment 2a

<b>Abbreviation</b>	<b>Document in the agreed terms</b>
<i>SLC2b</i>	Service Level Commitment 2b
<i>SLC3a</i>	Service Level Commitment 3a
<i>SCL3b</i>	Service Level Commitment 3b
<i>SLC4a</i>	Service Level Commitment 4a
<i>SLC4b</i>	Service Level Commitment 4b
<i>SLC4c</i>	Service Level Commitment 4c
<i>SLC4d</i>	Service Level Commitment 4d
<i>SLC4e</i>	Service Level Commitment 4e
<i>SLC5</i>	Service Level Commitment 5
<i>SLNTR</i>	Periodic SLNT Report
<i>SUA</i>	Station Usage Agreement
<i>SUL</i>	Station Underlease
<i>TTSM</i>	Ticketless Travel Survey Methodology
<i>TUS</i>	TfL Uniform Specification
<i>USL</i>	Unregulated Station Lease
<i>WCNA</i>	Walthamstow Central Novation Agreement
<i>WCSD</i>	Walthamstow Central Supplemental Deed
<i>WeFOC</i>	WeFOC Agreements