

**Dated 27 June 2013**

**NETWORK RAIL INFRASTRUCTURE LIMITED**  
(as *Network Rail*)

**SIEMENS PLC**  
(as the *Depot SPC*)

**FIRST CAPITAL CONNECT LIMITED**  
(as the *Operator*)

**SIEMENS PLC**  
(as the *TMM*)

**THE SECRETARY OF STATE FOR TRANSPORT**  
(as the *Secretary of State*)

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**DEPOT AGREEMENT FOR ASSET  
PROTECTION, WORKS AND GRANT OF  
LEASES IN RESPECT OF THE DEPOT AT  
HORNSEY**

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relating to:

- (1) the construction and grant of a lease of a new maintenance depot; and
- (2) the grant of a Head Lease and Underlease  
at the Hornsey new maintenance depot



**Freshfields Bruckhaus Deringer**

Freshfields Bruckhaus Deringer LLP  
65 Fleet Street  
London EC4Y 1HS

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**THIS AGREEMENT** is dated 27 June 2013 and made

**BETWEEN:**

- (1) **NETWORK RAIL INFRASTRUCTURE LIMITED**, registered in England and Wales as company number 02904587 and having its registered office at Kings Place, 90 York Way, London N1 9AG (*Network Rail*);
- (2) **SIEMENS PLC**, registered in England and Wales as company number 727817 whose registered office is at Faraday House, Sir William Siemens Square, Frimley, Camberley GU16 8QD (the *Depot SPC*);
- (3) **FIRST CAPITAL CONNECT LIMITED**, (Registered Number 05281077), a company incorporated in England and Wales whose registered office is 50 Eastbourne Terrace, Paddington, London W2 6LG and whose address for correspondence is Hertford House, 1 Cranwood Street, London EC1V 9QS (the *Operator*);
- (4) **SIEMENS PLC**, registered in England and Wales, as company number 727817 and having its registered office at Faraday House, Sir William Siemens Square, Frimley, Camberley GU16 8QD (the *TMM*);
- (5) **THE SECRETARY OF STATE FOR TRANSPORT**, (the *Secretary of State*) whose principal place of business is at 33 Horseferry Road, London SW1P 4DR.

**WHEREAS:**

- (A) The Secretary of State wishes to secure the provision of a new maintenance depot at Hornsey.
- (B) The parties have agreed to enter into this Agreement to make detailed provision for the securing of consents and for recording the terms and conditions which will regulate the carrying out of the design and construction of the New Depot.
- (C) Network Rail will grant to the Depot SPC and the Depot SPC has agreed to take a head lease of the relevant area of land upon the terms and subject to the conditions set out in this Agreement.
- (D) The Depot SPC has agreed to grant to the Operator and the Operator has agreed to take an underlease of the relevant area of the land upon the terms and subject to the conditions set out in this Agreement. Prior to the Operator Handover Date, the Operator will continue to occupy the Existing Depot under the terms of the Existing Depot Lease and in its capacity as the Depot Facility Owner. Following the Operator Handover Date the Operator will become the Depot Facility Owner in respect of the Whole Site.
- (E) The Operator has agreed to grant to the TMM a licence to occupy the maintenance shed at the New Depot upon the terms and subject to the conditions set out in clause 12 of the TSA.

**NOW THIS AGREEMENT WITNESSES** as follows:

## 1. DEFINITIONS AND INTERPRETATION

### Interpretation

1.1 In this Agreement, unless the context otherwise requires:

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

*Accepted Unit* has the meaning given to it in the MSA and the Master Definitions Agreement;

*Access Agreement* means an access contract or an access agreement as defined in the Act;

*Act* means the Railways Act 1993 (as amended from time to time including pursuant to the Transport Act 2000 and the Railways Act 2005);

[●]<sup>58</sup>;

*Actual Lease Completion Date* means the actual date of completion of the Leases;

*Additional Depot Possession* means a Depot Possession within the Existing Depot or on any part of the New Depot Land which has been Introduced into Operational Use which is not within the then current version of the Depot Possessions Programme;

*Additional Depot Isolation* means a Depot Isolation within the Existing Depot or on any part of the New Depot Land which has been Introduced into Operational Use which is not within the then current version of the Depot Isolations Programme;

[●]<sup>59</sup>;

*Adjoining Property* is the land first referred to in clause 5.2;

[●]<sup>60</sup>;

*Affected Party* means the party that is prevented from carrying out its obligations under this Agreement by a Force Majeure Event;

*Affiliate* means, in relation to any person other than the Secretary of State, a parent undertaking of such person, a subsidiary undertaking of such person or any other subsidiary undertaking of such a parent undertaking, *undertaking*, *parent undertaking* and *subsidiary undertaking* having respectively the meanings contained in the Companies Act 2006;

*Agency Costs* has the meaning given to it in Schedule 6.2;

[●]<sup>61</sup>;

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<sup>58</sup> Redaction.

<sup>59</sup> Redaction.

<sup>60</sup> Redaction.

<sup>61</sup> Redaction.

**Agreed Form** means, in relation to any draft document referred to in this Agreement, the draft in the form substantially agreed between the relevant parties thereto and initialled on behalf of the parties;

[●]<sup>62</sup>;

**Arup Form A Signalling Sketch** means Drawing no. 212936-Sig-002 version 1.2 located in Schedule 17.17 Part C within Appendix B of document reference TRSP Grip 4 – HOR Depot Signalling Interface Specification [HOR-H1];

**Authorisation to Vary** means a written authorisation issued by the Secretary of State to amend any Depot Agreement and/or enter into any new Depot Agreement in accordance with Schedule 14.3 (*Secretary of State Authorisation of Variations*), in the form of the Appendix (*Notification of Authorisation to Vary*) to Schedule 14.3;

**Blue Line Drawings** means the relevant drawing attached to the Depot Phasing Plans showing the position of the Boundaries as at the date of this Agreement;

**Booked Network Possession** means a Network Possession that is registered by Network Rail in Network Rail's Possession Planning System, subject to Network Rail's annual and quarterly planning processes and the other provisions of Part D of the Network Code;

**Boundary** means a temporary fence in respect of the Interfaces erected and maintained in accordance with the provisions of, and for the purposes of, paragraph 2 of Schedule 10.1;

**Breach** has the meaning given to it in clause 21.1;

**British Standards** means the standards produced by BSI Group under the authority of Royal Charter for the purposes of setting standards of quality for goods and services;

**Building Contract** means:

- (a) the building contract entered into between the Building Contractor and the Depot SPC for the carrying out of the Depot Works substantially and materially in the Agreed Form and in the form approved by the Secretary of State; and
- (b) any contract which the Depot SPC enters into with any supplier for the provision of equipment which the Depot SPC supplies to or intends to supply to the Building Contractor for installation in the New Depot, in the form approved by the Secretary of State;

**Building Contractor** means **VOLKERFITZPATRICK LIMITED** (a company registered in England and Wales with company number 02387700) whose registered office is at Hertford Road, Hoddesdon, Hertfordshire EN11 9BX, or such other replacement contractor, engaged by the Depot SPC to carry out the Depot Works, in each case approved by the Secretary of State following consultation with the Operator (such approval not to be unreasonably withheld or delayed);

[●]<sup>63</sup>;

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<sup>62</sup> Redaction.

<sup>63</sup> Redaction.

**Category 1 Works** means those parts of the Depot Works which Network Rail determines involve the Network or connection to the Network and notifies to the Depot SPC in writing prior to the Detailed Depot Design achieving GRIP Stage 4 or as otherwise agreed;

**Category 2 Works** means those parts of the Depot Works which Network Rail determines might reasonably affect the safety and/or operation of the Railway and notifies to the Depot SPC in writing prior to the Detailed Depot Design achieving GRIP Stage 4;

**CDM Regulations** means the Construction (Design and Management) Regulations 2007 or any remaking of them or amendment to those regulations;

**Certificate of Introduction into Operational Use** means the written statement issued by the Operator in accordance with paragraph 3.1 of the protocol set out in Schedule 20 in the form set out in the annex to Schedule 20 which may comprise either Initial Introduction into Operational Use or Final Introduction into Operational Use as the context may require;

**Certificate of Practical Completion** means the written statement issued on behalf of the Depot SPC in accordance with the requirements of the Building Contract confirming that completion of the Depot Works in whole or, as the case may be, the relevant Depot Phase of the Depot Works, has taken place and includes any Snagging List issued with or attached to such written statement or certificate;

**Certificate of Taking into Operation** means the written statement issued by the TMM in accordance with paragraph 6.1 of the protocol set out in Schedule 20 confirming that the relevant Depot Phase can be taken into operation;

**Change in Law** means the coming into effect after 21 December 2012 of:

- (a) Legislation, other than Legislation which on the date of this Agreement has been published:
  - (i) in a draft bill as part of a Government designated consultation paper;
  - (ii) in a bill;
  - (iii) in a draft statutory instrument;
  - (iv) as a proposal in the Official Journal of the European Communities;
- (b) other Legal Requirements and Group Standards that have force of law, other than any such Standard which on the date of this Agreement has been published by the relevant arbiter of that Standard;
- (c) any applicable judgment of a relevant court which changes a binding precedent; or,
- (d) change to the Depot Access Conditions required by the ORR (except where such change arises from a proposal to modify the Depot Access Conditions required solely by the Depot SPC).

**Change of Control** means if a person (or persons acting in concert) who directly or indirectly controls the Depot SPC (or any person having a direct or indirect interest in the Depot SPC)

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

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

**Chargeable Network Rail Services** means those services which Network Rail shall provide pursuant to clause 9.3 and Schedule 6.3 in respect of which Network Rail is entitled to payment of costs in accordance with Schedule 6.2;

**Checker** has the meaning ascribed to it in the Standards;

**Claim** means any and all civil, criminal, administrative, regulatory or judicial actions, suits, demands, claims, proceedings (whether civil or criminal), or orders;

**Closure** means the closure of any part of the Existing Depot as a light maintenance depot or of any part of the Network (whether within the Existing Depot or otherwise) required in connection with the Project under the provisions of ss.26 and 35 of the Railways Act 2005;

**Closure Consent** means either a closure ratification notice (as defined in s.32(8) of the Railways Act 2005) or a minor modification (as defined in s.34 of the Railways Act 2005);

**Collateral Warranties** means the warranties from the Warranting Parties in favour of Network Rail, the Depot SPC, the Operator, the TMM and the Secretary of State in the forms set out in Schedule 17.14 or in such other forms as agreed by the relevant parties to any such Collateral Warranty, and the expression Collateral Warranty shall mean one or more of the Collateral Warranties as the context shall require;

**Commercial Conditions** means the Standard Commercial Property Conditions (2nd Edition);

**Commercially Sensitive Information** means the sub-set of Confidential Information listed in Schedule 19 (Commercially Sensitive Information) which is provided by the Depot SPC, the TMM, the Owner or the Operator (as applicable) to the Secretary of State;

**Community Infrastructure Levy** has the meaning given to it by s.205(1) of the Planning Act 2008 or similar charge or tax levied at any time on the owner, the Operator or developer of the Whole Site as a result of the grant of the Planning Permission or any New Planning Permission;

**Competent Authority** means any local, national or supra-national agency, authority, department, inspectorate, minister, ministry, official, court, tribunal or public or statutory person (whether autonomous or not), whether of the United Kingdom or of the European Union, which has, in respect of this Agreement, jurisdiction over any of the parties to, or the subject matter of, this Agreement (including, for the avoidance of doubt, the ORR), provided that a Competent Authority shall not include any court, tribunal or arbitral body exercising its powers in any reference made to it pursuant to or arising out of any Access Agreement or any act or omission or fact, matter or thing associated with any such contract or the relationship created or evidenced by it;

**Completion of the Depot Works** means that the final Certificate of Practical Completion has been issued in respect of the whole of the Depot Works and Final Introduction into Operational Use has been achieved;

**Confidential Information** has the meaning given to it in clause 37.2;

**Connecting Network** has the meaning given to it in the Depot Connection Agreement;

**Consultants' Costs** has the meaning given to it in Schedule 6.2;

**Contamination** means the presence at any time of any Hazardous Substances in, on or under the Whole Site and any Working Area (to the extent that the Working Area includes any land outside the Whole Site);

**Contract Amendment Agreement** means any agreement providing for the Variation of any Related Depot Agreement, entered into by the parties to that Related Depot Agreement;

**Contract Programme** has the meaning given to it in the MSA and the Master Definitions Agreement;

**Contractor** means the Building Contractor and any person or company to whom a contract for any part or all of the Depot Works is made and whether such entity is engaged by the Depot SPC directly or as a sub-contractor or sub-consultant to any entity engaged directly by the Depot SPC;

**Contractor Conditions of Entry** means those conditions set out in Schedule 5.1;

[●]<sup>64</sup>;

[●]<sup>65</sup>;

**Critical Service** means utilities, traction power supplies, signalling and telecommunications;

**Cross Termination Event** has the meaning given to it in clause 23.1;

[●]<sup>66</sup>;

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<sup>64</sup> Redaction.

<sup>65</sup> Redaction.

**Cross Termination Event Notice** has the meaning given to it in clause 23.2;

[●]<sup>67</sup>;

[●]<sup>68</sup>;

[●]<sup>69</sup>;

**Deed of Surrender** means the deed of surrender in respect of the Existing Depot Lease to be entered into between Network Rail and the Operator substantially in the form attached in Schedule 17.13;

**Deed of Undertaking** means the deed of undertaking in relation to the New Depot dated on or about the date of this Agreement and entered into between the Secretary of State, the Depot SPC and the Operator;

**Default Interest Rate** means the rate of 3 (three) per cent. per annum over the official Bank Rate set by the Bank of England's Monetary Policy Committee;

**Defect** means any deficiency, imperfection or flaw in the design, materials and construction of the New Depot, the Depot Equipment or any other equipment therein found during an inspection or testing of the Depot Works or any Depot Phase, which requires rectification by the Building Contractor;

**Depot Access Conditions** means the depot access conditions substantially in the form of the access conditions annexed at Schedule 17.7, subject to any modifications agreed by the parties and/or required by the ORR;

**Depot Agreement** means any Related Depot Agreement or any Other Depot Agreement;

**Depot Annexes** means the annexes for the Whole Site in the form of the draft annexes annexed at Schedule 17.5 to this Agreement, completed with all necessary insertions, subject to any modifications agreed by the parties and/or required by the ORR;

**Depot Base Scheme** means the drawings provided by the Secretary of State and used for the purposes of obtaining planning permission in respect of the Depot Works;

**Depot Change** means the procedure contained in Parts B and C (as applicable) of the Existing Depot Access Conditions or the Depot Access Conditions as appropriate;

**Depot Connection Agreements** means the agreements between Network Rail, the Depot SPC and the Operator in respect of the connection of the Whole Site to the Network, and agreed between Network Rail and the Operator as attached in Schedule 17.20 hereto, subject to any modifications required by the ORR or any amendment to the specification or agreement required as agreed between the parties acting reasonably;

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<sup>66</sup> Redaction.

<sup>67</sup> Redaction.

<sup>68</sup> Redaction.

<sup>69</sup> Redaction.

**Depot Design in Principle** means the New Depot designs annexed at the CD-ROM at Schedule 17.17 consisting of 3 (three) parts - where Part A comprises the Depot SPC's Proposals, Part B comprises the Depot Drawings and Part C comprises the Form A Designs of the Interface Works;

**Depot Design in Principle Compliance References** means the table annexed at Schedule 1;

**Depot Drawings** means the drawings annexed at Schedule 17.17 B;

**Depot Equipment** means the items of depot equipment as listed under Schedule 1;

**Depot Isolation** means a planned safety arrangement isolating electrical current in the whole or such part or parts of the Existing Depot and/or the New Depot Land (as appropriate) for a pre-defined period in order to enable the completion of the Depot Works;

**Depot Isolations Programme** means the agreed programme between the Operator and the Depot SPC which shall set out the details of the necessary Depot Isolations (as supplemented by any Additional Depot Isolation approved by the Operator pursuant to the provisions of clause 16.2) a copy of the current version of which is attached at Schedule 17.8;

**Depot Licence** means the licences to be granted under s.8 of the Act permitting the Operator to be a licensed operator of the Whole Site as facility owner as defined under the Act;

[●]<sup>70</sup>;

**Depot Phase** means each phase of the Depot Works as shown on the Depot Phasing Plans;

**Depot Phasing Plans** means the depot phasing plans as defined in the Building Contract and annexed at Schedule 17.8, as the same may be varied from time to time in accordance with Schedule 12 or Schedule 14 of this Agreement;

**Depot Possessions** means planned safety arrangements controlling or preventing the normal movement of rail traffic in the Existing Depot and/or (after Introduction into Operational Use) on the New Depot Land (as appropriate) between defined locations and for a pre-defined period, in order to enable the completion of the Depot Works;

**Depot Possessions Programme** means the agreed programme between the Operator and the Depot SPC which shall set out the details of the necessary Depot Possessions (as supplemented by any Additional Depot Possession approved by the Operator pursuant to the provisions of clause 16.2) a copy of the current version of which is attached at Schedule 17.8;

**Depot Requirements** means the requirements set out in column 1 of the table at Schedule 1;

[●]<sup>71</sup>;

[●]<sup>72</sup>;

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<sup>70</sup> Redaction.

<sup>71</sup> Redaction.

<sup>72</sup> Redaction.



**Depot SPC Contamination** means any Contamination arising directly or indirectly as a result of any of the actions or matters set out in clause 11.1;

**Depot SPC Escrow Documents** has the meaning given to it in paragraph 1.1 of Schedule 14.9 (*Identity of the Depot SPC Financial Model*);

[●]<sup>73</sup>;

[●]<sup>74</sup>;

**Depot SPC's Proposals** means the document showing and describing the proposals for the design and construction of the Depot Works as set out in Part A of Schedule 17.17 prepared in response to the Depot Requirements;

[●]<sup>75</sup>;

[●]<sup>76</sup>;

[●]<sup>77</sup>;

[●]<sup>78</sup>;

**Depot Works** means the design, construction and fitting-out of the New Depot in accordance with the terms of this Agreement including any fit-out works required by the TMM;

**Detailed Depot Design** means the Depot Design in Principle as developed by the Depot SPC in accordance with clause 2 for the purposes of implementing the Depot Works in accordance with the provisions of this Agreement;

**Direction** means any direction, requirement, instruction or rule legally binding on any of the parties, and includes any modification, extension or replacement of any such direction, requirement, instruction or rule for the time being in force but shall not include the exercise of a discretion under any contract or other obligation binding on the party in question or the enforcement of any such contract or obligation;

**Discriminatory Change in Law** means a Change in Law, the terms of which apply expressly to this Agreement and/or the Depot SPC but not to other persons, which shall include any change to the Depot Access Conditions required by the ORR (except where such change arises from a proposal to modify the Depot Access Conditions as required solely by the Depot SPC);

**Dispute Resolution Rules** means the procedures for the resolution of disputes entitled “The Railway Industry Dispute Resolution Rules”, as amended from time to time;

<sup>73</sup> Redaction.

<sup>74</sup> Redaction.

<sup>75</sup> Redaction.

<sup>76</sup> Redaction.

<sup>77</sup> Redaction.

<sup>78</sup> Redaction.

***Electrification Interface*** means the interface of the electrical equipment within or serving the Whole Site with electrical equipment which is connected to or controlled by electrical equipment serving or forming part of the Network;

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

***Environmental Claim*** means any existing, pending or threatened Claims by:

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

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

***Environmental Information Regulations*** means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Authority in relation to such regulations;

***Environmental Investigation*** means any desktop or intrusive survey of the Working Area carried out either by or on behalf of the Secretary of State or the Depot SPC in preparation for or otherwise in connection with the Depot Works to:

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

***Environmental Law*** includes all or any existing or future state, national, EC or other international law, treaties, regulations, directives, common law, injunctions and codes of practice, and legally binding rules, directions, ordinances, judgments, guidance notes or requirements of any Environmental Competent Authority relating to Environmental Matters but in each case only to the extent that the above are legally binding and enforceable;

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

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

including any consequential or indirect losses;

***Environmental Matters*** means any of the following:

- (a) any generation, deposit, disposal, keeping, treatment, transportation, transmission, handling or manufacture of any Hazardous Substance;
- (b) nuisance, noise and vibration; and
- (c) pollution, conservation or protection of the Environment;

***EPC*** means an energy performance certificate and recommendation report as defined in the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 (SI991 of 2007) as amended;

[●]<sup>79</sup>;

***Estimated Costs*** means the estimate of Network Rail Costs as initially set out in paragraph 6 of Schedule 6.2;

[●]<sup>80</sup>;

***Eurocodes*** means the set of harmonised technical rules developed by the European Committee for Standardisation for the structural design of construction works in the European Union;

***Excluded Disputes*** means any dispute (whether as to liability or quantum or both) as to any obligation of any party to make any payments under this Agreement;

***Existing Depot*** means the light maintenance depot at Hornsey located on the land shown edged blue on the plan annexed at Schedule 17.15;

***Existing Depot Access Agreements*** means the Access Agreements listed in Schedule 23;

***Existing Depot Access Conditions*** means the depot access conditions and the annexes annexed at Schedule 17.6 referred to in the Existing Depot Lease;

***Existing Depot Functionality*** means the services and operations set out in Schedule 18;

***Existing Depot Lease*** means the lease in respect of the Existing Depot between the Operator and Network Rail dated 15 October 2010 and a supplemental franchise lease between the Operator and Network Rail dated 14 March 2013, and following any determination thereof any further lease of the Existing Depot granted to the Operator or Successor Operator prior to the Lease Completion Date;

***Expected Delivery Date*** has the meaning given to it in the MSA and the Master Definitions Agreement;

***Expenses and Disbursements*** has the meaning given to it in Schedule 6.2;

<sup>79</sup> Redaction.

<sup>80</sup> Redaction.

**Failure Event** has the meaning given to it in clause 21.15(b);

**Final Introduction into Operational Use** means the final Depot Phase (including any Interfaces or other site-wide systems which form part of the Depot Works) and those parts of the Depot Works as identified in clause 12.2(b)(iii) having been finally tested with a Unit by the Depot SPC and the Operator and taken into operational use in accordance with the protocol set out in Schedule 20 and the expression **Final Introducing into Operational Use** shall be construed accordingly;

**Final Warning Notice** has the meaning given to it in clause 21.16;

**Financial Statements** means the latest set of audited accounts filed at Companies House prior to the date hereof;

**Financier** means:

- (a) any financial institution which from time to time provides, or agrees to provide, financing facilities to, or for the benefit of, the Depot SPC or any person referred to in paragraph (d);
- (b) any financial institution for whose benefit any Security Interest over, or rights relating to, the Whole Site or any part thereof and/or any Related Depot Agreement is granted;
- (c) any financial institution which from time to time serves as security agent and/or trustee for one or more financial institution falling within paragraphs (a) or (b); and
- (d) with respect to the Whole Site, the owner of such Whole Site (if not the Depot SPC) and any other person (other than a person falling within paragraphs (a) to (c) inclusive) who has a leasehold, proprietary or security interest in such Whole Site (other than, in each case, Network Rail);

**First Unit** has the meaning given to it in the MSA and the Master Definitions Agreement;

**Fixed Depot Cost** has the meaning in the Payment Deed;

**FOIA** means the Freedom of Information Act 2000 and any subordinate legislation (as defined in s.84 of the Freedom of Information Act 2000) made under the Freedom of Information Act 2000 from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Authority in relation to such Act;

**Force Majeure Event** means any of the following events:

- (a) war or civil war (whether declared or undeclared);
- (b) civil unrest;
- (c) any act of terrorism or a specific threat of terrorism;
- (d) nuclear accident;
- (e) lightning, earthquake, or extraordinary storm;

- (f) fire or flooding;
- (g) the occurrence of a Force Majeure Event as defined in, and pursuant to, the Building Contract; or
- (h) any Other Force Majeure Event;

and in relation to paragraphs (e), (f) and (g) only, if and only to the extent that such event is not caused by the Affected Party and is not an event which the Affected Party could reasonably have avoided or provided against.

**Force Majeure Event Termination Notice** means any notice served by either the Depot SPC or the Secretary of State (as applicable) pursuant to clause 28.5

**Form A Designs of the Interface Works** means the documents annexed at Schedule 17.17 C;

**Formal Warning Notice** has the meaning given to it in clause 21.15(b);

**Franchise Agreement** means at any time the franchise agreement under which the Operator is the franchise operator or franchisee (as the same are respectively defined in section 23(3) of the Act) or any other agreement under which such Operator operates passenger railway services for or on behalf of the Secretary of State;

**Franchise Termination** means in respect of any Franchise Agreement the date of expiry or early termination (for any reason whatsoever) of such Franchise Agreement including an early termination following an event of default;

**Freight Access Agreement** means any agreement (excluding Track Access Agreements) entered into between Network Rail and any other party for non-passenger services and incorporating the Network Code;

**Full Replacement Cost** has the meaning given to it in the Depot Access Conditions;

[●]<sup>81</sup>;

[●]<sup>82</sup>;

[●]<sup>83</sup>;

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

**General Change in Law** means a Change in Law which is not a Discriminatory Change in Law or a Specific Change in Law;

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<sup>81</sup> Redaction.

<sup>82</sup> Redaction.

<sup>83</sup> Redaction.

**General Conditions of Entry** means the conditions set out in Schedule 5.2;

**Good Faith** means honestly with regard to the legitimate interests and reasonable expectations of the other party arising out of this Agreement or reasonably to be inferred from this Agreement and with regard also to the reasonable commercial standards of fair dealing;

**Government Authority** means:

- (a) any government (de jure or de facto) of the United Kingdom or any political subdivision of the United Kingdom or any local jurisdiction in the United Kingdom;
- (b) any governmental authority or statutory, legal, fiscal, monetary or administrative body (whether it be domestic, foreign, international, supranational, state or local and including any such authority or body or the European Union) which operates and has jurisdiction, directly or indirectly, in the United Kingdom;

**GRIP Stage 4** means Stage 4 (Single Option Selection) of the Governance for Railway Investment Projects published by Network Rail as amended from time to time;

**Ground Rent** has the meaning given to it in the Head Lease;

**Group Standards** means Railway Group Standards produced pursuant to the Railway Group Standards Code (or equivalent predecessor documents, including previous versions of the Railway Group Standards Code) defining mandatory requirements in respect of the mainline railway in each case as published by the Rail Safety and Standards Board Limited or imposed by ORR. Such standards can be accessed on the website [www.rgsonline.co.uk](http://www.rgsonline.co.uk);

**Hazardous Substance** means any substance whatsoever (whether a solid, liquid, gas or vapour and whether alone or in combination with any other substance) which is capable of causing harm to the Environment or to human health (including asbestos) or constituting a nuisance;

**Head Lease** means the lease of the Whole Site to be granted by Network Rail to the Depot SPC on the Lease Completion Date in the form of the draft annexed as Schedule 17.1;

**Head Lease Declaration** means a statutory declaration made on or before the date of this Agreement but before it was entered into in a form complying with the requirements of Schedule 2 to the Order in response to the Head Lease Notice;

**Head Lease Notice** means a notice served on or before the date of this Agreement but before the Head Lease Declaration was made in a form complying with the requirements of Schedule 1 to the Order in relation to the tenancy to be created by the Head Lease;

**Hornsey Telecoms Strategy** means the Telecommunications Strategy Conceptual Cable Route Design; Provision, Ownership and Identification of Circuits document ref. REP-HOR-20-1 Issue 1 contained in Schedule 17.17 part C;

**Hourly Rate** means the agreed rate per hour used in the calculation of Network Rail Costs and set out in Schedule 6.2;

**Information** has the meaning given under s. 84 of the FOIA;

**Information Production Programme** means the programme annexed at Schedule 17.12 showing the agreed dates for the submission of information and providing for approvals, reviews and comments in accordance with Schedules 10 and 11;

**Initial Introduction into Operational Use** means in relation to each Depot Phase (other than the final Depot Phase), it having been tested by the Depot SPC and the Operator and taken into operational use in accordance with the protocol set out in Schedule 20 and **Introducing into Operational Use** and **Introduction into Operational Use** shall be construed accordingly;

**Insolvency Event** means any of the following:

- (a) any step being taken by any person with a view to the administration of the Depot SPC under Part II of the Insolvency Act 1986;
- (b) the Depot SPC 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 s.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 s.123 shall be deemed to be deleted;
  - (ii) s.123(1)(a) of the Insolvency Act 1986 shall have effect as if for “£750” there was substituted £100,000 or such higher figure as the Secretary of State may from time to time notify in writing to the Depot SPC; and
  - (iii) the Depot SPC 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 s.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 (twenty one) days from such demand;
- (c) the directors of the Depot SPC making any proposal under s.1 of the Insolvency Act 1986, or the Depot SPC 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) 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 or the Depot SPC or the whole or a substantial part of the assets or undertaking of the Depot SPC, including the appointment of a receiver, administrative receiver, manager or similar person to enforce that security;
- (e) any step being taken by the Depot SPC with a view to its winding-up or any person presenting a winding-up petition or the Depot SPC ceasing or threatening to cease to carry on all or a material part of its business, except for the purpose of and followed by a reconstruction, amalgamation, reorganisation, merger or consolidation on terms approved by the Secretary of State before that step is taken; or

- (f) any event occurring which, under the Law of any relevant jurisdiction, has an analogous or equivalent effect to any of the events listed in paragraphs (a) to (e) above,

unless, in the case of paragraphs (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;

**Interfaces** means the Electrification Interface, the Signalling Interface (including telecommunications, if any) and the Structures and Earthworks Interface and shall include a reference to any one or more of the Interfaces;

**Interface Schedule** means the provisions set out in Schedule 10;

**Interface Works** means the relevant parts of the Depot Works that respectively relate to or are part of the Interfaces, and which for the avoidance of doubt do not include the Network Rail Depot Construction Enabling Works;

**Intellectual Property Rights** means patents, trade marks, service marks, logos, trade names, copyright (including right in computer software) and moral rights, database rights, semiconductor topography rights, utility models, rights in designs, right in get-up, rights in inventions, rights in know-how and other intellectual property rights, in each case whether registered or unregistered, and all rights or forms of protection having equivalent or similar effect anywhere in the world and **registered** includes registrations and applications for registration;

**Investor** means any person from time to time holding any share capital in the Depot SPC, or any Affiliate of such person;

[●]<sup>84</sup>;

[●]<sup>85</sup>;

**Leases** means the Head Lease and the Underlease and references to a **Lease** shall mean any one of them;

**Legal Requirement** means any rule of law including the following:

- (a) any enactment to the extent that it applies to that party;
- (b) any regulation made by the Council or the Commission of the European Union to the extent that it applies to that party or a decision taken by the Commission which is binding on that party to the extent that it is so binding; and
- (c) any interpretation of law, or finding, contained in any judgment given by a court or tribunal of competent jurisdiction in respect of which the period for making an appeal has expired which requires any legal requirement falling within paragraphs (a) or (b) above to have effect in a way which is different from that in which it previously had effect;

<sup>84</sup> Redaction.

<sup>85</sup> Redaction.



**Legislation** means:

- (a) an Act of Parliament or subordinate legislation within the meaning of s.21(1) of the Interpretation Act 1978;
- (b) any exercise of the Royal Prerogative; and
- (c) any enforceable community right within the meaning of s.2 of the European Communities Act 1972,

in each case in the United Kingdom;

**Licence to Underlet** means a licence permitting the Depot SPC to grant the Underlease in the form of the draft annexed at Schedule 17.10;

**London Hornsey Light Maintenance Depot** means the relevant depot facilities defined in the leases of depots in First Capital Connect Limited's franchise, England and Wales;

**Losses** means any losses (other than loss of profits), costs (including costs incurred in preventing, avoiding or mitigating loss), charges, expenses, interest, fees (including legal fees), payment, demands, liabilities, claims, actions, proceedings, penalties, fines, damages, adverse judgements, orders or other sanctions, but excluding taxes;

**Mandatory Variation** means any Material Variation or Minor Variation which is required to be made pursuant to any Change in Law, including any change in Group Standards;

**Master Definitions Agreement** means the agreement entered into between (1) the Secretary of State (2) the Owner (3) the Depot SPC and (4) the Operator dated the same date hereof;

**Material Defect** has the meaning given to it in clause 12.6(b)(i);

**Material Variation** means the alteration or modification of the design, quality or quantity of the Depot Design in Principle and/or the fabric of the New Depot including:

- (a) the addition, omission or substitution of any work; or
- (b) the alteration of the kind or standard of any of the materials or goods to be used in the Depot Works,

which, if implemented, would:

- (i) materially affect the Depot Requirements and/or the Depot Design in Principle, the Depot Phasing Plans, the Target Depot Completion Date, the Required Completion Date or the Information Production Programme; or
- (ii) affect the Protected Depot Functionality; or
- (iii) have a material impact on the Existing Depot Functionality; or
- (iv) reasonably be likely to cause the continuing minimum service levels at the Existing Depot to fall below the Protected Depot Functionality;

**Material Variation Implementation Cost** has the meaning given to it in paragraph 1.2(e)(ii)(A) of Schedule 14.2 (*Variation Proposals and Minor Variations*);

**Minimum Fleet** has the meaning ascribed to it in the MSA and the Master Definitions Agreement;

**Minor Defect** has the meaning given under clause 12.6(a);

**Minor Variation** means the alteration or modification of the design, quality or quantity of the Depot Design in Principle and/or the fabric of the New Depot including:

- (a) the addition, omission or substitution of any work; or
- (b) the alteration of the kind or standard of any of the materials or goods to be used in the Depot Works,

which, if implemented, would not (when taken with any other Minor Variation or Material Variation which is directly related or connected to such Minor Variation):

- (i) materially affect the Depot Requirements and/or the Depot Design in Principle, the Depot Phasing Plans, the Target Depot Completion Date, the Required Completion Date or the Information Production Programme; or
- (ii) affect the Protected Depot Functionality; or
- (iii) have a material impact on the Existing Depot Functionality; or
- (iv) reasonably be likely to cause the continuing minimum service levels at the Existing Depot to fall below the Protected Depot Functionality;

**Minor Variation Implementation Cost** has the meaning given to it in paragraph 1.2(e)(ii)(B) of Schedule 14.2 (*Variation Proposals and Minor Variations*);

**Model Changes** means any changes that the Secretary of State and the Depot SPC agree or, failing agreement within a reasonable period, and following referral to him, an independent expert determines are required to the Depot SPC Financial Model, as released to the Depot SPC pursuant to paragraph 2.1(d) of Schedule 14.9 (*Identity of the Depot SPC Financial Model*) or released by the Secretary of State pursuant to paragraph 2.2 of Schedule 14.9, as a consequence of and in order to give effect to the Revised Depot SPC Inputs;

**MSA** means the manufacture and supply agreement for the design, construction, acceptance, sale and purchase of the Units dated on or about the date of this Agreement between the TMM, the Owner and the Operator;

**MSA TMM Event of Default** has the meaning given to it in the MSA and the Master Definitions Agreement;

**Necessary Consents** means Network Change, Depot Change, Closure Consent and all other approvals, permissions, consents, licences, certificates, registrations and authorisations (whether statutory or otherwise) which are required from time to time for the purposes of carrying out the Depot Works whether required in order to comply with any Legal Requirement or as a result of any rights of any third party, but shall not include the Network Rail Consents or any consents required of the Operator;

**Network** means the railway facilities of which Network Rail, or an operator of passenger or freight trains which has entered into an Access Agreement with Network Rail, is the facility

owner (as defined in s.17(6) of the Act) and which is situated in England, Wales and Scotland;

**Network Change** has the meaning ascribed to it in the Network Code;

**Network Code** means the code setting out the rules applying to all regulated Access Agreements;

**Network Licence** means the licence relating to the Network granted to Network Rail pursuant to s. 8 of the Act;

**Network Possession** means planned safety arrangements which control or prevent the normal movement of rail traffic on the Network between defined locations and for a pre-defined period;

**Network Possessions Programme** means the programme for Network Possessions developed in accordance with clause 15;

[●]<sup>86</sup>;

**Network Rail Consents** means the comments and/or approvals required to be given by Network Rail pursuant to the Information Production Programme;

**Network Rail Contamination Liabilities** means any Environmental Liabilities arising from the presence of Hazardous Substances but excluding:

- (a) any Operator Contamination Liabilities; and
- (b) any Environmental Liabilities arising as a result of any of the actions or matters set out in clause 11.1(a) to (d) (inclusive),

and the expression **Network Rail Contamination** shall mean any Contamination giving rise to such liabilities;

**Network Rail Costs** has the meaning given to it in Schedule 6.2 insofar as such costs relate to the Chargeable Network Rail Services;

**Network Rail Direct Agreement** means the agreement in respect of the Whole Site entered into on or about the date of this Agreement between the Secretary of State and Network Rail;

**Network Rail Depot Construction Enabling Works** means the works to be carried out after the date of this Agreement by Network Rail set out in Schedule 6.4;

**Network Rail Depot Requirements** means the requirements specified by Network Rail set out in Schedule 1 and Schedule 9;

**Network Rail Issue** means:

- (a) a Safety Critical Event;
  - (b) an Operational Emergency;
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<sup>86</sup> Redaction.

- (c) a change in any Legal Requirement, regulatory requirement or requirement of the Network Licence which affects Network Rail;
- (d) a Direction of a Competent Authority which affects Network Rail; or
- (e) a contractual commitment of Network Rail under any track Access Agreement existing on or prior to the date of this Agreement,

where in each case:

- (i) Network Rail acts reasonably but in its sole discretion in respect of its non discretionary statutory obligations; and
- (ii) such issue or event affects, or arises as a consequence of, the Depot Works;

**Network Rail Remedial Plan** has the meaning given to it in clause 30.3;

**Network Rail Requirements** means the Health and Safety Management of Third Party Projects (1/12/08NR/L2/N1/CP0043), as may be updated from time to time plus the further requirements outlined in Schedule 9;

**Network Rail Standard** means a standards document (or the equivalent of such document) issued by Network Rail from time to time in relation to the Network as a whole and which applies to the performance of the Depot Works under this Agreement, as published on the website “www.uk.ihs.com”;

**Network Rail Submission Criteria** means the criteria outlined in Schedule 11.1;

**Network Rail’s Possession Planning System** means the system used by Network Rail to plan Network Possessions;

**New Depot** means the light maintenance depot (including the Depot Equipment) situated on the New Depot Land and any part of the Depot Works carried out on the land edged orange on the plan attached at Schedule 17.11 in each case following Completion of the Depot Works;

**New Depot Land** means the land (and any buildings, structures or fixtures from time to time on such land) shown edged blue (excluding the land edged orange) on the plan annexed to this Agreement as part of Schedule 17.11;

[●]<sup>87</sup>;

**New Planning Permission** means any planning consents or approvals required under Planning Laws in respect of the Depot Works in addition to, or in replacement of, the Planning Permission;

**Not Confidential Response** has the meaning given to it in clause 21.12;

**Notifying Party** has the meaning given to it in paragraph 2.1 of Schedule 14.5 (*Change in Law*);

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<sup>87</sup> Redaction.

**Nuisance Claim** means a claim made pursuant to the Land Compensation Act 1973 or any regulation made pursuant to it (including the Noise Insulation (Railways and Other Guided Transport Systems) Regulations 1996) and which is attributable the Depot Works;

[●]<sup>88</sup>;

[●]<sup>89</sup>;

**Operating Expenditure** means any expenditure which falls to be treated as operational expenditure in accordance with GAAP;

**Operational Emergency** means any situation or circumstance which Network Rail considers requires immediate and necessary action in order to:

- (a) safeguard the safety or security of persons or property on or adjacent to the Network;  
or
- (b) maintain or restore the effective operation of the Network;

**Operator** has the meaning given to it in clause 1.5(a);

**Operator Consents** means the comments and/or approvals required to be given pursuant to the Information Production Programme;

**Operator Contamination Liabilities** means any Environmental Liabilities arising from the presence of Hazardous Substances where the presence of such Hazardous Substances has arisen directly or indirectly from the action of the Operator after 1 April 2006 but excluding any Environmental Liabilities arising as a result of any of the actions or matters set out in clause 11.1(a) to (d) inclusive and the expression **Operator Contamination** shall mean any Contamination giving rise to such liabilities;

**Operator Handover Date** means the date on which all of the Lease Pre-Conditions have been satisfied in relation to the New Depot with the exception of:

- (1) those referred to in paragraphs (e), (f) and (n) of clause 33.1; and
- (2) any condition which is not satisfied due to a breach by the Operator of its obligations hereunder, provided that if one or more of any of the Lease Pre-Conditions other than (e), (f) and (n) are not satisfied following Completion of the Depot Works, the Secretary of State may waive such condition(s) if and only to the extent that any such conditions remain outstanding due to the breach by the Operator of its obligations in clause 33;

**Operator Requirements** means the requirements specified in column 1 of the Depot Design in Principle Compliance References;

**Operator Submission Criteria** means the Criteria for the preparation and submission of documentation to the Operator set out in Schedule 11.2;

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<sup>88</sup> Redaction.

<sup>89</sup> Redaction.

**ORR** means the Office of Rail Regulation established by s.15 of the Railways and Transport Safety Act 2003 and having duties and obligations as set out in the Act and includes any person or authority to whom the powers and functions of the Office of Rail Regulation may be transferred;

**ORR Approval** means written approval of the Depot Works for use as a railway facility from the ORR;

**Order** means the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003;

**Other Agreement for Leases** means the agreement for asset protection, works and grant of leases between each of the parties hereto, dated on or about the date hereof, in respect of the Other Depot;

**Other Deed of Undertaking** means the deed of undertaking in relation to the Other Depot dated on or about the date of this Agreement and entered into between the Secretary of State, the Depot SPC and the Operator;

**Other Depot** means the light maintenance depot at Three Bridges, Crawley, West Sussex;

**Other Depot Agreement** means any of the Other Agreement for Leases, the Other Deed of Undertaking or the Other Payment Deed;

**Other Force Majeure Event** means a Force Majeure Event as defined in, and pursuant to the terms of the MSA;

**Other Force Majeure Event Notice of Termination** means a notice of termination in respect of the MSA served by the Secretary of State in accordance with the terms of the MSA following the occurrence and continuation of an Other Force Majeure Event;

[●]<sup>90</sup>;

**Owner** means Cross London Trains Limited, the entity purchasing the Units and associated equipment pursuant to the terms of the MSA;

[●]<sup>91</sup>;

**Period** means the period of up to 28 (twenty eight) days (to be notified by Network Rail) commencing on the date of this Agreement and each period of 28 (twenty eight) days thereafter (provided that the length of the first and last such period in any Network Rail financial year may be varied by up to 5 (five) Working Days on reasonable prior notice from Network Rail to each of the other parties to this Agreement);

[●]<sup>92</sup>;

[●]<sup>93</sup>;

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<sup>90</sup> Redaction.

<sup>91</sup> Redaction.

<sup>92</sup> Redaction.

<sup>93</sup> Redaction.

**Persistent Breach** has the meaning given to it in clause 21.14;

**Personnel Costs** has the meaning given to it in Schedule 6.2;

[●]<sup>94</sup>;

**Planning Agreement** means:

- (a) any agreement or unilateral undertaking in respect of or affecting the New Depot Land (with or without any adjoining property) under s.106 of the Town and Country Planning Act 1990, s.33 of the Local Government (Miscellaneous Provisions) Act 1982, s.38 and/or s.278 of the Highways Act 1980, s.104 of the Water Industry Act 1991 or, in each case, any provision to similar intent;
- (b) any agreement with any appropriate company, authority or body concerning a water supply to or drainage to or from the New Depot Land;
- (c) any agreement or body relating to any other services to or from the New Depot Land; and
- (d) any other agreement with any appropriate company, authority or body which is required or desirable for the grant of any New Planning Permission or amendments to the Planning Permission;

including in each case any further agreements entered into pursuant thereto.

**Planning Laws** means Legal Requirements relating to the use, development and occupation of land and buildings, including the Town and Country Planning Act 1990, the Planning (Listed Buildings and Conservation Areas) Act 1990, the Planning (Hazardous Substances) Act 1990, the Planning and Compulsory Purchase Act 2004 and the Planning Act 2008 (each as amended from time to time);

**Planning Permission** means the planning consent granted by the London Borough of Haringey ref. HGY/2011/0612 dated 5 December 2011 in respect of the Depot Base Scheme and annexed at Schedule 17.18;

[●]<sup>95</sup>;

**Pre-Completion Period** means in respect of any Depot Phase (or any part of it) the period commencing on the later of the issue of the Certificate of Practical Completion and the date of the Certificate of Introduction into Operational Use in respect of the relevant Depot Phase and expiring on the Operator Handover Date;

**Prevent an Environmental Claim** means steps or measures (including the cessation of any activities):

- (a) to comply with any outstanding civil, criminal, administrative, regulatory or judicial notice, caution, official warning, discretionary requirement, enforcement undertaking, agreement with an Environmental Competent Authority or other outstanding express

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<sup>94</sup> Redaction.

<sup>95</sup> Redaction.

requirement of an Environmental Competent Authority in relation to Contamination where failure to take such action or cease such activities would be reasonably likely to give rise to an Environmental Claim; or

- (b) to remedy any breach of Environmental Law to the extent that such breach is identified or discovered by the Depot SPC or any Contractor, or the existence of which is otherwise notified by a third party (excluding a third party appointed by the Operator) to the Operator, Network Rail, Depot SPC or any Contractor or identified or discovered pursuant to an Environmental Investigation and where such breach would be reasonably likely to give rise to an Environmental Claim provided in each case the Operator or Network Rail (as appropriate) has used reasonable efforts to reach an agreement with the Depot SPC pursuant to clause 11.11 in relation to the matter;

**Project** means the project for the provision of all the matters covered by this Agreement, including the design, construction, maintenance and financing of the New Depot;

**Project Documents** means the Building Contract, the Depot Design in Principle and the Depot Requirements;

**Proposing Party** has the meaning given to it in paragraph 1.1 of Schedule 14.2 (*Variation Proposals and Minor Variations*);

**Protected Depot Functionality** means the service levels set out in the Depot Requirements;

**Qualifying Change in Law** means:

- (a) a Discriminatory Change in Law;
- (b) a Specific Change in Law; and/or
- (c) a General Change in Law which:
- (i) comes into effect after the date of this Agreement; and
  - (ii) involves Capital Expenditure;

**Railway** means the Network and the provision of railway services as defined in section 82 of the Act in connection with the Network;

**Reception Road 1** means the track identified as such on drawing no.2011/1527/02B contained in Schedule 17.17 part B;

**Recipient Party** has the meaning given to it in paragraph 1.2(c) of Schedule 14.2 (*Variation Proposals and Minor Variations*);

[●]<sup>96</sup>;

[●]<sup>97</sup>;

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<sup>96</sup> Redaction.

<sup>97</sup> Redaction.



**Related Depot Agreement** means this Agreement, the Deed of Undertaking and the Payment Deed;

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

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

in each case to the extent Required;

**Remedial Plan** has the meaning given to it in clause 21.1;

**Remedial Plan Notice** has the meaning given to it in clause 21.1;

**Remediation Strategy** means the steps required to carry out any Remedial Action, to be agreed with the Environmental Competent Authorities at any time.

**Replacement Copy** has the meaning given it in paragraph 2.2(a) of Schedule 14.9 (*Identity of the Depot SPC Financial Model*);

**Representative** means the representative appointed by each party pursuant to clause 43;

**Request for Information** shall have the meaning set out in the FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term “request” shall apply);

**Required** means any steps or measures required:

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

[●]<sup>98</sup>;

**Required Date** has the meaning given to it in clause 9.1(a);

[●]<sup>99</sup>;

**Rolling Stock Agreements** means the MSA, the Rolling Stock Lease, the TSA, the TSSSA and the Umbrella Agreement, and **Rolling Stock Agreement** means any one of them;

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<sup>98</sup> Redaction.

<sup>99</sup> Redaction.

**Rolling Stock Lease** means the lease agreement dated on or about the date hereof and entered into by Operator and the Owner in respect of the Units;

[●]<sup>100</sup>;

**S.106 Agreement** means the Agreement entered into between the Mayor and Burgesses of the London Borough of Haringey (1) and Network Rail Infrastructure Limited (2) and dated 5 December 2011 relating to land known as Coronation Sidings and the Stabling Site West of the Hornsey Light Maintenance Depot pursuant to s.106 of the Town and Country Planning Act 1990 and s.278 of the Highways Act 1980 annexed at Schedule 17.19;

**Safety Critical Event** means risk to the health and safety of any person(s) or risk of damage or destruction to any property or the risk of an Operational Emergency;

**Safety Termination Event** has the meaning given to it in clause 30.3;

**Safety Termination Notice** has the meaning given to it in clause 30.3;

**Secretary of State Nominee** means any nominee of the Secretary of State, the identity of which is notified by the Secretary of State to the relevant party or parties hereto;

**Secretary of State Voluntary Termination Notice** has the meaning given to it in clause 24.1;

**Sectional Completed Facility** means a part of the Whole Site in respect of which a Certificate of Practical Completion has been issued confirming that completion of the relevant Depot Phase relating to such part of the Depot Works has taken place;

**Security Interest** shall be construed as a reference to:

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

[●]<sup>101</sup>;

**Shared Remedial Plan** has the meaning given to it in clause 21.7;

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<sup>100</sup> Redaction.

<sup>101</sup> Redaction.

**Signalling Interface** means the interface (if any) of the signalling systems for the movements of rolling stock into or out of the Existing Depot and New Depot with signalling systems forming part of the Network;

**Snagging List** has the meaning given to it in clause 12.6(a);

**Snagging List Defects Correction Date** has the meaning given to it in clause 12.8(a);

**Sole Remedial Plan** has the meaning given to it in clause 21.8(b);

**Specific Change in Law** means any Change in Law which relates only to the railway industry, a particular section of the railway industry or the provision of services to the railway industry and not to other transport modes or to industries other than the railway industry;

**Specified Person** means such person (if any) to whom the Secretary of State may direct that the Operator's and/or the TMM's rights and obligations under this Agreement be transferred or novated pursuant to clause 36.1 and in the case of the rights and obligations of the Operator to whom the Underlease be granted, which expression may include the Secretary of State or another Train Operator;

**Stage Gate 4** means the approval stage reached following Network Rail's Governance for Railway Investment Projects (published by Network Rail and as amended from time to time) when approval in principle is required;

**Standards** means Group Standards and Network Rail Standards;

**Step-In Notice** has the meaning given to it in clause 25.1;

**Step-In Period** means the period between the date specified in the Step In Notice pursuant to clause 25.1(a) and the Termination Date;

**Structures and Earthworks** means works relating to any of the following:

- (a) excavations;
- (b) embankments;
- (c) bridges and bridge approaches; and
- (d) culverts,

including the foundations, supporting walls and structures relating to the same;

**Structures and Earthworks Interface** means the interface of the Structures and Earthworks within or serving the New Depot Land with the Structures and Earthworks that form part of the Network;

**Successor Operator** has the meaning given to it under the Deed of Undertaking;

**Supplier Licence** has the meaning given in the Network Rail Standards inter alia Network Rail Standard NR/L1/CPR/103;

[●]<sup>102</sup>;

[●]<sup>103</sup>;

[●]<sup>104</sup>;

[●]<sup>105</sup>;

**Track Access Agreement** means any agreement (excluding Freight Access Agreements) entered into between Network Rail and any other party incorporating the Network Code;

**Track Access Compensation Payments** means any and all sums payable by Network Rail pursuant to:

- (a) Conditions G & H of the Network Code; and/or
- (b) Schedules 4 and/or 8 of any Track Access Agreement or the equivalent provisions of any Freight Access Agreement,

where and to the extent the same arises in connection with and as a consequence of the carrying out of the Depot Works pursuant to this Agreement;

**Train Operator** means an operator of passenger or freight trains which has entered into a Track Access Agreement or Freight Access Agreement;

**TRSP Contract** means any one or more, as the context permits, of the Umbrella Agreement, the MSA, the Rolling Stock Lease, the TSA and the TSSSA and any subsequent contract during the term of the Umbrella Agreement entered into between any of two or more of the Secretary of State, the TMM, the Owner and the Operator;

**TSA** means the train service agreement in relation to the maintenance of the Units dated on or about the date hereof between the Operator, the TMM and the Owner;

**TSSSA** means the technical support and spares supply agreement in relation to the provision of technical support advice and spares, dated on or about the date hereof, to be between the Operator and the TMM;

**Umbrella Agreement** means the agreement dated on or about the date of hereof and entered into between the Secretary of State, the TMM, the Owner and the Operator in respect of, amongst other things, the regulation of the performance of certain rights and obligations under the other Rolling Stock Agreements and certain undertakings granted by the Secretary of State;

**Unauthorised Contract** has the meaning given to it in paragraph 4.2 of Schedule 14.3 (*Secretary of State Authorisation of Variations*);

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<sup>102</sup> Redaction.

<sup>103</sup> Redaction.

<sup>104</sup> Redaction.

<sup>105</sup> Redaction.

**Underlease** means the underlease of the Whole Site to be granted by the Depot SPC to the Operator or, as the case may be, to a Specified Person, on the Lease Completion Date in the form of the draft annexed at Schedule 17.2;

**Underlease Declaration** means a statutory declaration made on or before the date of this Agreement but given before it was entered into in a form complying with the requirements of Schedule 2 to the Order in response to the Underlease Notice;

**Underlease Notice** means a notice given on or before the date of this Agreement but before the Underlease Declaration was made in a form complying with the requirements of Schedule 1 to the Order in relation to the tenancy to be created by the Underlease;

**Unit Dependent Obligation** means for the purposes of Introduction into Operational Use, the carrying out of any testing and/or commissioning of the Depot Works where the carrying out of any such obligation is dependent upon having access to the First Unit or a rolling stock unit of similar characteristics to be agreed between the Depot SPC and the Operator;

**Units** has the meaning ascribed to it in the MSA and the Master Definitions Agreement;

**Up Carriage Line** means the railway track identified as UCL on Sequence 004 of Line of Route LN101 Kings Cross to Shaftholme Junction of the Network Rail Sectional Appendix;

**Up Goods Line** means the railway track identified as UG on Sequence 004 of Line of Route LN101 Kings Cross to Shaftholme Junction of the Network Rail Sectional Appendix;

**Value Added Tax or VAT** means value added tax as provided for in the Value Added Tax Act 1994 and legislation (whether delegated or otherwise) supplemental thereto, or in any primary or secondary legislation promulgated by the European Union or any official body or agency of the European Union, and any similar sales, consumption or turnover tax replacing or introduced in addition to the foregoing;

**Variation** means a variation to the terms of any Related Depot Agreement, and any Material Variation or Minor Variation;

**Variation Procedure** means the procedure for varying any Related Depot Agreement as set out in Schedule 14 (*Variations and Changes in Law*);

**Variation Proposal** means a written proposal made by any party to amend any Related Depot Agreement and/or enter into any Related Depot Agreement in accordance with Schedule 14.2 (*Variation Proposals and Minor Variations*) in the form of the Appendix (*Notification of Variation Proposal and Authorisation Notice*) to Schedule 14.3;

[●]<sup>106</sup>;

**Warranting Parties** means (a) the Building Contractor, (b) each of the Building Contractor's sub-contractors, sub-consultants and suppliers and (c) any party directly employed by the Depot SPC, undertaking both the design and build aspects of the following parts of the Depot Works:

- (a) mechanical and electrical;

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<sup>106</sup> Redaction.

- (b) structural steel;
- (c) cladding;
- (d) controlled emission toilets discharge facility;
- (e) train wash;
- (f) overhead line equipment;
- (g) electrified overhead travelling crane;
- (h) wheel lathe modification;
- (i) bogie drop;
- (j) bridge works;
- (k) electrical traction equipment;
- (l) telecommunications equipment;
- (m) depot protection system;
- (n) CCTV, security and access control systems;
- (o) permanent way; and
- (p) signalling;

**Whole Site** means the New Depot Land and the Existing Depot together but excluding the land hatched blue on the plan attached at Schedule 17.11;

**Withdrawal Notice** has the meaning given to it in paragraph 3.1 of Schedule 14.4 (*Implementation and Withdrawal of Variations*);

**Working Area** means the land on which the Depot Works are to be carried out, as shown shaded yellow on the Depot Phasing Plan from time to time together with other areas to which the Depot SPC requires access in order to carry out the Depot Works during a Depot Possession (as set out in paragraph 2.5 of Schedule 17.8) and such areas shall be Working Areas for the duration only of such Depot Possession;

**Working Day** means any weekday (other than a Saturday or Sunday) when banks are open for business in England;

**Works Programme** means the programme for the carrying out and completion of the Depot Works in accordance with this Agreement, a copy of which is annexed to this Agreement in Schedule 17.9, as amended from time to time in accordance with the terms of this Agreement;

**Yearly Rent** has the meaning given to it in the Underlease; and

**Zone of Influence** means volumes of space (whether above or below ground or otherwise covered) which are:

- (a) closer to railway than lines running 3 (three) metres horizontally from the nearest running edge, structure or foundation of any operational infrastructure, or than surfaces drawn up or down from those lines at angles of 45 degrees to the horizontal; and/or
- (b) within 1 (one) metre in any direction from the nearest edge or surface of a Critical Service.

1.2 In this Agreement unless the context otherwise requires:

- (a) references to a paragraph are to a paragraph of a schedule, and references to a clause are to a clause of this Agreement;
- (b) the singular includes the plural meaning and vice versa;
- (c) words of one gender include both other genders and words denoting natural persons include corporations and firms, and all such words are to be construed interchangeably in that manner;
- (d) the headings in this Agreement are for convenience only and do not affect its interpretation;
- (e) reference to a statute, bye-law, regulation, rule, standard, delegated legislation or order is to that statute, bye-law, regulation, rule, standard, delegated legislation or order as amended, modified or replaced from time to time and to any bye-law, regulation, rule, standard, delegated legislation or order made thereunder;
- (f) words denoting an obligation on a party to do any act, matter or thing include an obligation to procure that it be done, and words placing a party under a restriction include an obligation not to permit or allow infringement of the restriction;
- (g) where a word or expression is defined, cognate words and expressions shall be construed accordingly;
- (h) the words “other” and “otherwise” shall not be construed as being of the same kind as any foregoing words where a wider construction is possible;
- (i) references to the word “party” or “parties” means a party or parties (as applicable) to this Agreement;
- (j) the words “include”, “including” and “in particular” shall be construed as being by way of illustration and shall not limit or prejudice the generality of any foregoing words;
- (k) where this Agreement confers a power or imposes an obligation, it is implied, unless the context otherwise requires, that the power may be exercised and the obligation be performed from time to time as occasion requires; and
- (l) references to “this Agreement” includes the schedules to it, each of which forms part of this Agreement for all purposes.

1.3 Any consent or approval required under this Agreement:

- (a) is required to be obtained before the act or event to which it applies is carried out or done (save in relation to any Necessary Consent where it is reasonable for the Contractor to obtain such consent during the carrying out of the Depot Works);
- (b) is effective only if the consent or approval is given in writing; and
- (c) shall not be regarded as a representation or warranty as to the lawfulness, suitability or prudence of the subject matter of the consent or approval or otherwise.

1.4 Words and expressions defined in the Act, the Depot Access Conditions and the Network Code shall have the same meaning in this Agreement where the context so permits.

1.5 References to:

- (a) the Operator means First Capital Connect Limited or any Specified Person to whom the Operator's rights and obligations are respectively transferred or novated pursuant to clause 36.1;
- (b) the TMM includes any Specified Person to whom the TMM's rights and obligations are transferred pursuant to clause 36.1.

### **Commercial Conditions**

1.6 The Commercial Conditions, as varied by Schedule 7, shall be incorporated in this Agreement as far as they are applicable to it and are consistent with its terms.

### **Section 2 Law of Property (Miscellaneous Provisions) Act 1989**

1.7 To the extent necessary in order to satisfy the provisions of section 2 of the Law of Property (Miscellaneous Provisions) Act 1989, the Related Depot Agreements and the Network Rail Direct Agreement shall be deemed to be incorporated by reference into this Agreement.

## **2. DEPOT DESIGN IN PRINCIPLE**

### **Depot Requirements**

2.1 The Secretary of State, the Operator and the Depot SPC acknowledge and agree that the Depot Design in Principle complies with the Depot Requirements, as indicated in the Depot Design in Principle Compliance References.

2.2 Network Rail has reviewed:

- (a) the Form A Designs of the Interface Works; and
- (b) such additional drawings and designs referred to in the Depot Design in Principle Compliance References as having been reviewed by Network Rail,

and Network Rail's response to such review is set out in the Depot Design in Principle Compliance References.

2.3 The Depot SPC shall develop the Depot Design in Principle in order to produce a Detailed Depot Design which complies with the Depot Requirements and the Network Rail Depot Requirements and which can be implemented in accordance with this Agreement.



2.4 Network Rail may not object to the design and construction of the Depot Works pursuant to this Agreement where such design and construction complies with the documents and information referred to in clause 2.2 and the requirements in Schedule 9.

[●]<sup>107</sup>.

2.5 [●]<sup>108</sup>.

2.6 [●]<sup>109</sup>.

2.7 [●]<sup>110</sup>.

2.8 [●]<sup>111</sup>.

[●]<sup>112</sup>.

2.9 [●]<sup>113</sup>.

[●]<sup>114</sup>.

2.10 [●]<sup>115</sup>.

2.11 [●]<sup>116</sup>.

2.12 [●]<sup>117</sup>.

2.13 [●]<sup>118</sup>.

2.14 [●]<sup>119</sup>.

[●]<sup>120</sup>.

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<sup>107</sup> Redaction.

<sup>108</sup> Redaction.

<sup>109</sup> Redaction.

<sup>110</sup> Redaction.

<sup>111</sup> Redaction.

<sup>112</sup> Redaction.

<sup>113</sup> Redaction.

<sup>114</sup> Redaction.

<sup>115</sup> Redaction.

<sup>116</sup> Redaction.

<sup>117</sup> Redaction.

<sup>118</sup> Redaction.

<sup>119</sup> Redaction.

<sup>120</sup> Redaction.

- 2.15 [●]<sup>121</sup>.
- 2.16 [●]<sup>122</sup>.
- 2.17 [●]<sup>123</sup>.
- 2.18 [●]<sup>124</sup>.
- 2.19 [●]<sup>125</sup>.
- 2.20 [●]<sup>126</sup>.
- 2.21 [●]<sup>127</sup>.
- 2.22 [●]<sup>128</sup>.

### **The Information Production Programme**

2.23

- (a) Network Rail, the Depot SPC and the Operator shall each observe and comply with their respective obligations and responsibilities under the Information Production Programme by the dates indicated thereon;
- (b) The Depot SPC shall procure that the Building Contractor observes and complies with all of its obligations and responsibilities under the Information Production Programme by the dates indicated thereon.

### **3. CONDITIONS PRECEDENT**

#### **Depot SPC's Conditions**

3.1 All of the Depot SPC's obligations hereunder are subject to the satisfaction of each of the conditions set out in Schedule 2.1.

#### **Secretary of State's, Network Rail's, and the Operator's Conditions**

3.2 Each of the Secretary of State's, Network Rail's, and the Operator's obligations hereunder are subject to the satisfaction of each of the conditions set out in Schedule 2.2.

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<sup>121</sup> Redaction.

<sup>122</sup> Redaction.

<sup>123</sup> Redaction.

<sup>124</sup> Redaction.

<sup>125</sup> Redaction.

<sup>126</sup> Redaction.

<sup>127</sup> Redaction.

<sup>128</sup> Redaction.

#### **4. REPRESENTATIONS AND WARRANTIES**

The Depot SPC makes the representations and warranties set out in Schedule 3 as at the date hereof. The Depot SPC understands that each of the Secretary of State, Network Rail and the Operator is relying on such representations and warranties and is entering into this Agreement on the basis of them.

#### **5. ACCESS**

##### **Access under Licence**

5.1 Access under this clause 5 and clause 6 shall be as licensee on the terms of this Agreement and no relationship of landlord and tenant is thus created.

##### **Right to cross the Adjoining Property**

5.2 Subject to the Contractor Conditions of Entry and clause 8, each of Network Rail and the Operator consents and hereby grants a right of access and egress to and across such land immediately adjacent to the Working Area as is in the ownership or control of Network Rail and the Operator respectively and/or over which Network Rail and the Operator have power to grant such right (the *Adjoining Property*) as is reasonably required by the Building Contractor and those properly authorised by it (including the TMM pursuant to clause 6.3) in order to carry out the Depot Works in accordance with this Agreement and which Network Rail and the Operator (acting reasonably) shall previously have approved (such approval not to be unreasonably withheld or delayed).

##### **Third Party Consents prior to entry**

5.3 The consent of any persons (other than Network Rail and the Operator) to whom the Adjoining Property has been leased, licensed, charged or who has rights over the Adjoining Property will or may be required to gain any access to the Working Area (depending on the part of the Adjoining Property affected). No access pursuant to this clause 5 shall be permitted until the consent of each relevant third party (if any) has been obtained by Network Rail in writing and satisfactory written evidence of the same provided to, and acknowledged by, the Depot SPC. Network Rail shall liaise with any such third party with a view to procuring a right of access and use its reasonable endeavours at the request of the Contractor requiring access to obtain consent as soon as practicable and in accordance with any programme previously supplied by the relevant Contractor seeking access and agreed with Network Rail. The Depot SPC and Network Rail shall agree which third parties are required to provide such consent as far in advance of the date of this Agreement as practicable and Network Rail shall use reasonable endeavours to procure such consents. The Depot SPC shall reimburse Network Rail for all costs incurred in relation to the procurement of all third party consents sought pursuant to this clause 5.3.

##### **Use of land to the North of Coronation Sidings**

5.4 Network Rail acknowledges that the area of land to the north of the Coronation Sidings is required for use as part of the Working Area and that it shall be made available for use as reasonably required by the Building Contractor and those properly authorised by it in order to carry out the Depot Works in accordance with this Agreement. The Depot SPC acknowledges that Network Rail requires shared use of this area and therefore the proposals for such shared use shall be in accordance with the reasonable requirements of Network Rail and on terms approved by the Depot SPC (such approval not to be unreasonably withheld or delayed).

## **6. OCCUPATION OF THE WORKING AREA AND ACCESS TO THE WORKING AREA**

### **Access to the Working Area by the Depot SPC**

6.1 Subject to clause 8, to the extent that any part of the Working Area is on the Existing Depot, Network Rail and the Operator shall from the date of this Agreement until the Operator Handover Date or the termination of this Agreement in accordance with its terms, grant a licence to access the Working Area for such periods as are required from time to time, to the Depot SPC, its Contractors and its agents and employees as necessary for the purpose of carrying out the Depot Works, subject to:

- (a) such licence being limited to what is reasonably necessary for the purposes of:
  - (i) completing the relevant Depot Phases under construction at the relevant time with the access routes being in accordance with the drawings attached to the Depot Phasing Plans; and
  - (ii) after the date of the Certificate of Practical Completion in respect of the relevant Depot Phase, completing snagging items pursuant to the relevant Snagging List, remedying Defects in accordance with the Building Contract and maintenance, occupation and use pursuant to clauses 20.1 and 20.2 respectively; and
- (b) such licence being in accordance with Schedule 5.1.

6.2 The Secretary of State, the Operator and their contractors shall have access for the purpose of supervising and monitoring the Depot Works and inspecting them pursuant to clause 12 of this Agreement or otherwise, to those parts of the Working Area which are reasonably required and except in the case of an emergency, subject to giving reasonable notice to the Building Contractor and subject to complying with the General Conditions of Entry, the CDM Regulations and the Building Contractor's reasonable requirements as to site safety.

### **Access to Working Area by the TMM**

6.3 Unless the TMM's fitting-out works for the New Depot are to be carried out by the Building Contractor, as soon as reasonably practicable before the issue of the relevant Certificate of Practical Completion, the Depot SPC shall procure that, subject to clause 8, compliance with CDM Regulations, the requirements of the Building Contractor as to site safety and the General Conditions of Entry, the TMM and its chosen fitting-out contractor shall be permitted to have access to and egress from the relevant parts of the New Depot Land, the Working Area and Adjoining Property in order to commence and carry out the fitting-out works (the specification of which has been approved by the other parties as part of the Depot Works to the extent required under this Agreement or the Leases), and each of Network Rail, the Depot SPC, the Operator and the Secretary of State hereby confirm their consent to such works and access and egress subject to the TMM or relevant fitting-out Contractor carrying out such works in accordance with Schedule 5.1 (which provisions shall apply *mutatis mutandis* to such works).

## 7. VARIATIONS AND CHANGES IN LAW

### Restriction On The Right To Vary

7.1 The parties shall not vary the terms of this Agreement or any Related Depot Agreement and no such agreement purporting to vary the terms of this Agreement or any Related Depot Agreement shall be enforceable other than Variations entered into pursuant to clause 7.2.

### Variation Procedure

7.2 The procedure outlined in Schedule 14 shall apply in relation to the issuing, consideration of, authorisation and implementation of Variations to any Related Depot Agreement, including but not limited to the rights and/or obligations of the parties to this Agreement and Variations to the Depot Requirements and/or the Depot Design in Principle, the Depot Phasing Plans and the Information Production Programme.

## 8. PROTECTED DEPOT FUNCTIONALITY AND EXISTING DEPOT FUNCTIONALITY

In the performance of its obligations under this Agreement, the Depot SPC and the TMM shall not prevent the Operator from providing the continuous minimum service levels stipulated within the Protected Depot Functionality and shall indemnify the Operator on demand for any Losses incurred by the Operator directly as a result of any breach by the Depot SPC of its obligations under this clause 8. The Depot SPC shall take all reasonable steps in consultation with the Operator to mitigate and minimise any disruption caused by the Depot Works to the Existing Depot Functionality as much as reasonably practicable.

## 9. DUTIES OF NETWORK RAIL IN RESPECT OF THE DEPOT WORKS, CERTIFICATION AND SAFETY OF THE RAILWAY

### General

#### 9.1

(a) Network Rail shall:

- (i) provide the input; and
- (ii) use reasonable endeavours to procure the Network Rail Consents and other consents on reasonable terms,

shown on the Information Production Programme by the relevant dates calculated in accordance with Schedule 17.12 (each a *Required Date*).

(b) Network Rail shall carry out its obligations under this Agreement exercising the skill and care as may be expected of a properly qualified and competent person experienced and expert in carrying out services of a similar size, scope and complexity.

[●]<sup>129</sup>.

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<sup>129</sup> Redaction.

9.2 [●]<sup>130</sup>.

### **Network Rail Services**

9.3 Network Rail shall provide to the Depot SPC the services set out in Schedule 6 at such times as reasonably requested by the Depot SPC, provided that Network Rail shall have no liability to the Depot SPC under or by reason of any breach of this Agreement, in tort or otherwise howsoever arising in connection with any Network Rail Issue relating to the Depot Works.

### **Third Party Consents**

9.4 To the extent that Network Rail is required by the terms of this Agreement to obtain the consent or approval of a third party in relation to the Depot Works, then it shall in its capacity as the owner and operator of the Railway act in Good Faith and shall liaise with the relevant third party to ensure, so far as practicable, that such consents or approvals are granted on reasonable terms and as soon as practicable provided that Network Rail shall have no liability (other than as set out in this clause 9.4):

- (a) if any of the consents or approvals of such third parties are not granted or are the subject of delay by such third parties in being granted; and
- (b) for the terms upon which the consents or approvals of such third parties may be granted.

### **Network Rail Consents**

9.5 Network Rail's obligation to provide any Network Rail Consent shall be conditional upon:

- (a) Network Rail receiving in full and in accordance with Schedule 11 the documentation referred to in paragraph 1.2 of Schedule 11.2, and
- (b) compliance by the Building Contractor with the Network Rail Submission Criteria as referred to in paragraph 1.2 of Schedule 11.2.

### **Prevention of compliance with Network Rail obligations**

9.6 In the event that Network Rail becomes aware of any matter which will prevent or impede Network Rail from performing the obligations on its part in this Agreement or prevent or impede the Depot SPC from carrying out the Depot Works it shall notify the Depot SPC, the Secretary of State and the Operator in writing and shall, in Good Faith use all reasonable endeavours to take such action or assist the Depot SPC in taking such action to mitigate such matter.

### **Safety and operation of the Railway**

9.7 Nothing in this Agreement shall require Network Rail to take any step, or give or procure the giving of any consent or approval which would be contrary to the protection,

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<sup>130</sup> Redaction.

safety and efficient operation of the Railway and the safety of persons or property on or near the Railway.

#### 9.8 Depot Construction Enabling Works

Network Rail shall carry out the Network Rail Depot Construction Enabling Works in accordance with Schedule 6.4 so as to enable the Depot SPC to comply with the Depot Phasing Plan.

### 10. DUTIES OF THE DEPOT SPC IN RESPECT OF THE PROJECT AND THE DEPOT WORKS

#### General

- 10.1 (a) The Depot SPC shall:
- (i) procure the design and completion of the Depot Works and the New Depot in accordance with the Detailed Depot Design and the terms of this Agreement;
  - (ii) procure the construction of the Depot Works in accordance with the terms and the timing as set out in the Depot Phasing Plans and the Works Programme;
  - (iii) procure that the TMM shall procure the design, completion and construction of the TMM fit-out works, to the extent that such fit-out is part of the Depot Works and is not undertaken by the Building Contractor; and
  - (iv) co-operate with Network Rail in relation to the development of the Network Rail Depot Construction Enabling Works pursuant to Schedule 6.4.
- (b) Within 2 (two) Working Days of the execution of this Agreement the Depot SPC shall enter into the Building Contract with the Building Contractor. The Depot SPC shall provide the other parties to this Agreement with certified copies of the executed Building Contract within 10 (ten) Working Days of the date of this Agreement.
- (c) The Depot SPC shall not vary the terms of or waive any rights under the Building Contract in such a way as to materially affect the rights of any of the beneficiaries under any of the Collateral Warranties executed in favour of the other parties to this Agreement pursuant to clause 10.3 without, in any such case, the prior written approval of the other parties to this Agreement, such approval not to be unreasonably withheld or delayed.
- (d) The Depot SPC shall not terminate or rescind the Building Contract without the prior written approval of the Secretary of State, such approval not to be unreasonably withheld or delayed.
- (e) If the Building Contract is terminated or rescinded either pursuant to clause 10.1(d) or automatically pursuant to the terms and conditions of the Building Contract:
- (i) the Depot SPC will, if required by the Secretary of State so to do, invite tenders from, negotiate with and ultimately enter into replacement contracts with a suitably qualified and accredited replacement building contractor for the completion of the remainder of the Depot Works. The identity of the replacement building contractor and the commercial and contractual terms upon which it is appointed will be subject to prior written approval of the

Secretary of State following consultation with the Operator, such approval not to be unreasonably withheld or delayed;

- (ii) the replacement Building Contract will need to provide for collateral warranties to be executed in favour of the parties to this Agreement in similar terms to the Collateral Warranties which are to be executed pursuant to clause 10.3;
  - (iii) from the date of their execution, the replacement building contract shall become and be the Building Contract for the purposes of this Agreement and the replacement building contractor shall become and be the Building Contractor; and
  - (iv) the Depot SPC shall provide the other parties to this Agreement with certified copies of the executed replacement Building Contract within 10 (ten) Working Days of the date of its execution.
- (f) At all times during the Depot Works the Depot SPC shall make available suitable working areas in its site offices for at least 3 (three) staff of the Operator at no cost to the Operator.
- 10.2 (a) The Depot SPC shall be responsible for identifying and shall use all reasonable endeavours to procure all Necessary Consents required in connection with the Project which go beyond those procured by the Secretary of State and/or Network Rail in respect of the Depot Base Scheme.
- (b) The Depot SPC shall deliver copies of all Necessary Consents to Network Rail and the Operator as soon as reasonably practicable after obtaining the same.

#### **Provision of Collateral Warranties**

- 10.3 (a) On the later of (i) the date of this Agreement and (ii) the date of the Building Contract, the Depot SPC shall procure that the Building Contractor executes and delivers its Collateral Warranty in favour of each of the parties to this Agreement.
- (b) The Depot SPC shall procure that the balance of the Collateral Warranties which are to be executed by each of the Warranting Parties in favour of the parties to this Agreement are each executed and delivered to the relevant parties as soon as reasonably practicable, but in any event no later than 20 (twenty) Working Days, following formal appointment of each Warranting Party by the Building Contractor or the Depot SPC as the case may be.
- (c) In the event that the Building Contractor is replaced pursuant to clause 10.1(e) above, the Depot SPC shall procure collateral warranties from the replacement building contractor in similar terms to the Collateral Warranties provided by the Building Contractor whom it is replacing.

#### **Compliance with Building Contract**

- 10.4 (a) The Depot SPC shall observe and comply with all of its obligations and responsibilities under the Building Contract.
- (b) The Depot SPC shall procure that the Building Contractor observes and complies with all of its obligations and responsibilities under the Building Contract.



- (c) Without prejudice to and/or derogation from the generality of clause 10.4(b), the Depot SPC shall procure that the Building Contractor carries out and completes the Depot Works in accordance with:
- (i) the Detailed Depot Design;
  - (ii) the Network Rail Requirements and Standards listed in the Depot SPC's Proposals (or such derogations from them as Network Rail may approve or consent to in writing and by expressly referring to it being aware that its approval or consent to the matter in question constitutes a derogation from the relevant Standard) and (in relation to the Interface Works) all other relevant Standards, provided that:
    - (A) any dispute about whether a Standard is relevant shall be dealt with in accordance with clause 41; and
    - (B) the Building Contractor shall only be obliged to comply with any change in Standards after the date on which the design for the Interface Works passes Stage Gate 4 if such change is the result of a Legal Requirement determined by Network Rail (whose determination shall be final) to be applicable to the relevant parts of the Depot Works; and
  - (iii) such other conditions as Network Rail may in its opinion consider necessary to prevent, address, alleviate or comply (as applicable) with a Network Rail Issue and any condition that the Operator reasonably and properly requires in order to ensure compliance with its obligations under its safety case as Depot Facility Owner of the Existing Depot and having regard to the obligations of the parties hereunder; and
  - (iv) all Necessary Consents, and so as not to prejudice the renewal of any such Necessary Consents; and
  - (v) the Building Contract; and
  - (vi) the statutory requirements and mandatory standards applicable to the rail industry from time to time, including those of ORR; and
  - (vii) the Interface Schedule; and
  - (viii) all relevant Legal Requirements; and
  - (ix) the Planning Permission; and
  - (x) this Agreement.
- (d) The Depot SPC will procure that any submission to be made by the Building Contractor (whether on behalf of the Depot SPC or otherwise) to the Operator for review shall be in accordance with the provisions of Schedule 11.2.

## **Progress Reports**

10.5

- (a) Subject to and in accordance with Schedule 17.16, the Depot SPC shall provide monthly reports to Network Rail, the Operator and the Secretary of State detailing the progress of the Depot Works in accordance with the Depot Phasing Plans and separately shall advise the said parties as soon as reasonably practicable in the event of any material problems or material delays affecting the Depot Works.
- (b) The Depot SPC shall inform Network Rail, the Operator and the Secretary of State of any material change to the Works Programme and shall provide a copy of the amended Works Programme to each of them as soon as reasonably practicable.

### **CDM Regulations**

- 10.6 (a) For the purposes of the Project and the Depot Works under the CDM Regulations the Depot SPC is the sole client and shall fulfil all the roles and duties of such including making the necessary declaration to the Health and Safety Executive under Regulation 4 of the CDM Regulations (copied to Network Rail and the Operator) prior to the date of this Agreement.
- (b) After consulting with Network Rail and the Operator the Depot SPC shall prepare the pre-contractual "Construction Phase Plan" as defined in the CDM Regulations for the Project and the Depot Works and submit it to Network Rail and the Operator. Network Rail and the Operator shall examine and be entitled to comment to the Depot SPC on the elements of such Construction Phase Plan relating to works in the Railway environment. The Depot SPC shall amend the Construction Phase Plan to take account of any reasonable comments made by Network Rail and the Operator on the Construction Phase Plan and submit further Construction Phase Plans to Network Rail and the Operator as necessary.
- (c) The Depot SPC shall procure that the Building Contractor and the TMM's fitting out contractor (if applicable) prepare the principal contractor's "Construction Phase Plan" as defined in the CDM Regulations and a relevant data manual (including as-built drawings and such other information as Network Rail and the Operator may reasonably stipulate) for, in the case of the Building Contractor, the Project and the Depot Works and for, in the case of the TMM's fitting out contractor, the fitting out works which shall in due course form part of the "Construction Phase Plan File" as defined in the CDM Regulations. The principal contractor's Construction Phase Plan and the data manual shall be finalised and passed to Network Rail and the Operator in such format and with such number of copies as Network Rail and the Operator may reasonably require prior to the issue by the Depot SPC of the final Certificate of Practical Completion.
- (d) The Depot SPC shall indemnify Network Rail and the Operator (in the case of clauses 10.6(b) and 10.6(c)) against all costs, claims, loss, damages, expenses, liabilities or proceedings of whatever kind and howsoever arising from or in connection with (whether directly or indirectly) any breach of the CDM Regulations in respect of the Project and the Depot Works, provided that Network Rail and the Operator shall not be entitled to be indemnified under this clause 10.6 in respect of its own lack of information and plans which it is required to provide and maintain under the CDM Regulations (save in circumstances where Network Rail or the Operator has not received all information and plans to which it is entitled to under the Interface Schedule). To the extent that Network Rail and/or the Operator may be a client for the purposes of the CDM Regulations in relation to the Project and/or the Depot Works under this clause 10.6, Network Rail and the Operator agrees with the written election by the Depot SPC.

### **The Depot SPC to Make Good Property of Network Rail and the Operator**

- 10.7 (a) On or as soon as reasonably practicable following Completion of the Depot Works or (if Network Rail or the Operator so requires) during the carrying out of the Depot Works, the Depot SPC shall procure that the Building Contractor shall make good any property of Network Rail and the Operator (respectively) to the reasonable satisfaction of Network Rail or the Operator (as the case may be) which has been damaged or interfered with by the Depot SPC and the Contractors and shall remove all surplus material brought onto Network Rail's land or the Existing Depot by the Depot SPC or the Contractors.
- (b) Before the commencement of any Depot Phase the Operator and the Depot SPC shall agree a schedule of condition (prepared by and at the cost of the Depot SPC) of any assets in the relevant Working Area which will not be the subject of any Depot Works and on completion of that Depot Phase the Depot SPC shall ensure that those assets are in a state and condition no worse than that evidenced by the schedule of condition.

### **Depot Requirements**

- 10.8 (a) The Depot SPC shall ensure that the Building Contract is consistent with the Depot Requirements and Depot Design in Principle.
- (b) The Depot SPC agrees that it shall not make any changes to the Depot Requirements without first obtaining prior written consent from the Secretary of State, Network Rail, the Operator and the TMM (such consent not to be unreasonably withheld or delayed).

### **Liquidated Damages**

- 10.9 Any liquidated damages received by the Depot SPC:
- (a) from Network Rail under this Agreement; and
- (b) from the Building Contractor in respect of the Building Contract relating to the New Depot,

shall be the property of the Depot SPC.

### **Supplier Licence**

- 10.10 The Depot SPC shall procure that:
- (a) all relevant Contractors carrying out the Depot Works shall at all times from the date of this Agreement and until the making good of and completion of all Material Defects, Defects and any items on any Snagging List comply with the terms and conditions of the relevant Supplier Licence; and
- (b) whenever reasonably requested by Network Rail provide evidence of the Contractor's qualification under the Supplier Licence.

## **11. ENVIRONMENTAL CONDITION**

### **Depot SPC Environmental Indemnity**

11.1 The Depot SPC agrees (for the benefit of Network Rail, the Operator and any successor in title to the liabilities of any of them) that it shall manage and be responsible for the cost of any Remedial Action in respect of any Depot SPC Contamination and that it shall indemnify and keep Network Rail, the Operator and any such successor indemnified against all Environmental Liabilities that arise directly or indirectly as a result of:

- (a) the actions of the Depot SPC;
- (b) the actions of any Contractor (but only to the extent such Environmental Liabilities arise directly or indirectly from or in connection with the Depot Works); or
- (c) the actions, from the date hereof up to the Operator Handover Date, of any other person on the Working Area (except the Operator or Network Rail or persons under their control); or
- (d) the carrying out of the Depot Works (including where such Environmental Liabilities arise as a result of the identification or discovery of Contamination during the Depot Works or the carrying out of any Environmental Investigations or the findings of any Environmental Investigations and which would not otherwise have arisen)

PROVIDED THAT the Depot SPC shall have no liability in respect of Operator Contamination Liabilities or Network Rail Contamination Liabilities.

### **Operator responsible for Operator Contamination**

11.2 Except where otherwise agreed in writing between the parties the Operator shall manage and be responsible for the cost of any Remedial Action in respect of Operator Contamination.

### **Network Rail responsible for Network Rail Contamination**

11.3 Subject to clause 11.1, except as otherwise agreed in writing between the parties, Network Rail shall manage and be responsible for the cost of any Remedial Action in respect of Network Rail Contamination.

### **Notification, etc obligations**

11.4 If the Depot SPC or any Contractor becomes aware of any Contamination that is likely to give rise to Environmental Liabilities for either the Operator or Network Rail, the Depot SPC shall provide written notification to the Operator or Network Rail (as applicable) as soon as reasonably practicable and in any event within 10 (ten) Working Days of becoming aware of such Contamination. The Depot SPC shall provide details of the relevant Contamination and copies of relevant documentation to the Operator or Network Rail (as applicable) as soon as reasonably practicable and in any event within 10 (ten) Working Days of its receipt by the Depot SPC, or it becoming available to Depot SPC, provided that nothing in this clause 11.4 shall oblige the Depot SPC to provide information to the Operator or Network Rail (as applicable) in respect of which the Depot SPC would be entitled to withhold disclosure on the grounds of legal privilege.

11.5 Where the Depot SPC or any Contractor becomes aware of any Contamination referred to in clause 11.4, the Depot SPC shall ensure that, to the extent reasonable no action is taken by it or any Contractor which:

- (a) is reasonably likely to worsen the Contamination or increase the possibility of an Environmental Claim in respect of such Contamination against the Operator or Network Rail (as the case may be); or
- (b) would prejudice the defence of any action or proceedings commenced against the Operator or Network Rail in relation to such Contamination.

11.6 If the Depot SPC, the Contractor or its sub-contractors receives any oral or written notification that an Environmental Claim is likely to be made in respect of Operator Contamination or Network Rail Contamination, the Depot SPC shall provide written notification to the Operator or Network Rail (as the case may be) as soon as reasonably practicable and in any event within 10 (ten) Working Days of receipt of such notification. The Depot SPC shall provide all relevant information and copies of relevant written notifications to the Operator or Network Rail (as the case may be) as soon as reasonably practicable and in any event within 10 (ten) Working Days of its receipt by the Depot SPC, or it becoming available to the Depot SPC, provided that nothing in this clause 11.6 shall oblige the Depot SPC to provide information to the Operator or Network Rail in respect of which the Depot SPC would be entitled to withhold disclosure on the grounds of legal privilege.

11.7 Upon the Depot SPC, any Contractor, the Operator or Network Rail becoming aware of any Contamination which may give rise to a liability on the part of the Depot SPC pursuant to clause 11.1 but which does not require any Remedial Action pursuant to Environmental Law, the Depot SPC, the Operator or Network Rail (as applicable) shall notify the other parties of such Contamination and each of the Depot SPC, the Operator and Network Rail shall consult in Good Faith with respect to reaching an agreement on works (if any) to be carried out to prevent, avoid or mitigate loss, liability or damage which is reasonably likely to result from such Contamination.

### **Environmental investigations**

11.8 The Depot SPC shall not undertake or carry out or commission any physical investigations or excavations at the Whole Site after the Operator Handover Date except to the extent Required or as approved by the Operator and Network Rail (such approval not to be unreasonably withheld) or otherwise pursuant to the terms of the Leases.

11.9 The Depot SPC shall provide the Operator and Network Rail with copies of any draft and final reports of Environmental Investigations it obtains in relation to any part of the Whole Site and any Working Area (to the extent that the Working Area includes any land outside the Whole Site) as soon as reasonably practicable and in any event within 10 (ten) Working Days of their receipt.

### **Remedial Action**

11.10 The Depot SPC shall notify each of the Operator and Network Rail as soon as reasonably practicable and in any event within 10 (ten) Working Days of the Depot SPC becoming aware that any Remedial Action is Required.

11.11 If the Depot SPC is or becomes liable at any time to carry out any Remedial Action pursuant to this Agreement then it shall:

- (a) (to the extent reasonably practicable in the circumstances) discuss with and submit any proposed Remediation Strategy to the Operator and Network Rail for approval (such approval not to be unreasonably withheld or delayed) prior to submitting the proposed Remediation Strategy to Environmental Competent Authorities; and
- (b) carry out or select suitably qualified third parties to carry out any Remedial Action Required as a result of the Depot Works and provide each of the Operator and Network Rail with copies of any terms of appointment of any third party(ies) who are carrying out such Remedial Action as soon as reasonably practicable and in any event within 10 (ten) Working Days of agreement of the same.

11.12 The Depot SPC shall keep the Operator and Network Rail informed of the progress of the discussion and agreement of any Remediation Strategy with Environmental Competent Authorities and shall, to the extent reasonable in the circumstances, take into account the Operator's and Network Rail's reasonable requests for amendments to the Remediation Strategy, such requests by the Operator and Network Rail to be limited to the standard of Remedial Action required to comply with Environmental Law or the requirements of any Environmental Competent Authority. The Depot SPC shall, to the extent reasonable, ensure that it has obtained the written approval of the Operator and Network Rail to any Remediation Strategy (such approval not to be unreasonably withheld or delayed) prior to any Remedial Action commencing.

11.13 In carrying out any Remedial Action the Depot SPC shall, and shall procure that any Contractor shall, comply with all Environmental Laws and/or the requirements of any Environmental Competent Authority.

11.14 The Depot SPC shall ensure that any Remedial Action carried out by or on behalf of the Depot SPC is completed to the satisfaction of the Environmental Competent Authorities and that any third party carrying out Remedial Action on behalf of the Depot SPC provides a written completion statement to the Depot SPC stating that it has carried out the Remedial Action in accordance with the Remediation Strategy and Environmental Laws in force at the date at which the Remedial Action is carried out. The Depot SPC shall provide a copy of the completion statement(s) to the Operator and Network Rail as soon as reasonably practicable and in any event within 10 (ten) Working Days of its receipt.

#### **Network Rail/Operator step-in right**

11.15 If the Depot SPC fails to act in accordance with any agreement entered into with the Operator or Network Rail pursuant to clause 11.7 within any prescribed time period set out in such agreement or fails to carry out any Remedial Action for which the Depot SPC is liable hereunder within the timescale required by an Environmental Competent Authority or as may be agreed between the parties, the Operator or Network Rail shall be entitled to complete any of the Depot SPC's obligations pursuant to such agreement or in respect of such Remedial Action, in which case:

- (a) the Operator or Network Rail shall carry out such works:
  - (i) as soon as reasonably practicable;
  - (ii) in a prompt, proper and workmanlike manner in accordance with any specification and/or methodology agreed for the completion of the works;
  - (iii) in compliance with Environmental Law; and

- (iv) so as to cause as little inconvenience or interference to the Depot Works or to owners or occupiers of adjoining or neighbouring property as reasonably practicable;
- (b) the party carrying out such works shall make good any physical damage caused in the carrying out of such works as soon as reasonably practicable; and
- (c) the Depot SPC shall indemnify the Operator or Network Rail on demand for all liabilities incurred in relation to such works undertaken by the Operator or Network Rail in accordance with this clause 11.15 (including any liabilities that may be incurred as a result of any failure by the Depot SPC to carry out the relevant works).

### **Mitigation and facilitation**

11.16 Each of the Operator and Network Rail agree to use reasonable endeavours to mitigate any Environmental Liabilities incurred by Operator or Network Rail in respect of matters covered by the indemnity in clause 11.1.

11.17 Each of the Depot SPC, the Operator or Network Rail (as applicable) shall consult in Good Faith with respect to mitigating any Depot SPC Contamination, Network Rail Contamination or Operator Contamination and use reasonable endeavours to facilitate Remedial Action by any party with respect to any Depot SPC Contamination, Network Rail Contamination or Operator Contamination.

11.18 The terms of clauses 11.1, 11.2, 11.3, 11.5 and 11.15 shall survive the termination of this Agreement.

## **12. INSPECTIONS AND PRACTICAL COMPLETION**

### **Inspection of the Depot Works**

12.1 The Depot SPC shall permit each of the Operator, the Secretary of State, the TMM and Network Rail to inspect the Depot Works (with reasonable notice) for the purpose of assessing whether the Depot Works are being completed in accordance with the Depot Phasing Plans and the terms of this Agreement and shall procure that all such parties are afforded such access to the Depot Works as they may reasonably require for this purpose.

### **Provision of Units for Testing and Commissioning of the Depot Works**

12.2

- (a) The TMM shall, with reasonable notice from the Depot SPC and the Building Contractor, provide Units, units of similar characteristics to a Unit and train crews in an amount reasonably required by the Building Contractor and/or the Operator to assist the Building Contractor, the Operator and the Depot SPC with any Introduction into Operational Use, subject to the Depot SPC procuring that the TMM is indemnified by the Building Contractor in respect of consequential loss and damage to any trains so provided except where the damage is due to any act or default of any employee or person under the control of the TMM.
- (b) In accordance with the procedures required at paragraph 8 of Schedule 17.16 (Project Management Plan), within twelve (12) weeks of the date of this Agreement, the Operator and the Depot SPC shall formulate a detailed inspection, testing and commissioning programme which shall identify:

- (i) the Unit Dependent Obligations for Initial Introduction into Operational Use to be achieved in accordance with the protocol at Schedule 20;
- (ii) the parts of the Depot Works for which testing and commissioning will be undertaken with a unit of similar characteristics to a Unit and shall identify the class of train(s) which shall constitute a unit of similar characteristics; and
- (iii) the parts of the Depot Works for which testing and commissioning will be undertaken or repeated with a Unit, in order for Final Introduction into Operational Use to be achieved.

### **Notification to Network Rail, the Operator and the Secretary of State**

12.3 The Depot SPC shall give at least 15 (fifteen) Working Days' notice to all parties to this Agreement (except the TMM) of the date on which any commissioning, testing or inspecting in relation to the Depot Works (which will include any Unit Dependent Obligations) is due to take place in accordance with the inspection testing and commissioning programme and in respect of the pending issue of a Certificate of Practical Completion in respect of a Depot Phase.

12.4 If any party does not intend to attend any inspection then that party shall give notice to that effect to the Depot SPC as soon as practicable.

### **Issue of Certificate of Practical Completion**

12.5 The Depot SPC shall be required to obtain the prior written consent of the Secretary of State in accordance with clause 12.7 before it issues a Certificate of Practical Completion in respect of any Depot Phase. Where it is intended that a Certificate of Practical Completion is to be issued at the end of a Network Possession and/or a Depot Possession, in addition to obtaining the consent of the Secretary of State, the Depot SPC shall (as applicable) have received from Network Rail and the Building Contractor the applicable Forms G and from the Operator the Certificate of Introduction into Operational Use before it issues a Certificate of Practical Completion in respect of any Depot Phase.

### **Snagging List and Representations to the Secretary of State**

12.6 Each party (for the avoidance of doubt including the Secretary of State) which exercises its right to inspect the Depot Works pursuant to clause 12.3 shall be entitled, within 5 (five) Working Days of such inspection, to:

- (a) provide the Depot SPC (copied to the Secretary of State) with a list of Defects (if any) which are, in the reasonable opinion of such party, not sufficiently material to prevent the issue of the relevant Certificate of Practical Completion and, notwithstanding any such *Minor Defect*, the relevant Depot Works in respect of the relevant Depot Phase materially conform to the requirements under each Project Document. The Depot SPC shall compile a list of such Minor Defects notified to it by all parties and such list shall constitute the *Snagging List* in relation to such Depot Phase. The Depot SPC shall, within 28 (twenty eight) days of the relevant commission, testing or inspection, circulate the relevant Snagging List to each of Network Rail, the Operator, the TMM and the Secretary of State; and
- (b) make written representations to the Secretary of State (with a copy to the Depot SPC) in respect of Defects (if any) which are, in the reasonable opinion of such party, of such materiality that the relevant Depot Works in respect of such Depot Phase do not



materially conform to the requirements under each Project Document and the relevant Certificate of Practical Completion should be withheld in respect of such Depot Phase until such Defects have been corrected. If the Secretary of State:

- (i) reasonably agrees that such party is acting reasonably with respect to such Defect (following consultation with such party and the Depot SPC), such Defect shall constitute a **Material Defect** and shall not constitute a Defect which is appropriate to be added to the Snagging List: or
- (ii) reasonably believes that such Defect is not a Material Defect (following consultation with such party and the Depot SPC) and that the relevant Depot Works in respect of such Depot Phase, notwithstanding such Defect, do materially conform to the requirements of all Project Documents, the Secretary of State shall be entitled to require that such Defect is treated as a Minor Defect,

and the Secretary of State shall notify each of the Depot SPC, Network Rail, the TMM and the Operator of any Minor Defect to be added to the relevant Snagging List or any Material Defect within 14 (fourteen) days of receipt of any representation.

### **Secretary of State Consent to the Issue of Certificates of Practical Completion**

- 12.7 (a) If the Depot SPC or the Secretary of State does not receive any notice of any Minor Defects or Material Defects within the prescribed time period pursuant to clause 12.6, the Secretary of State shall forthwith, (subject to clause 12.8), provide the Depot SPC with its written consent (copied to the Operator and Network Rail) to the issue of the relevant Certificate of Practical Completion.
- (b) If the Depot SPC or the Secretary of State has received notice of any Minor Defects and the Depot SPC has been required to compile and circulate a Snagging List pursuant to clause 12.6(a), the Secretary of State shall forthwith, (subject to clause 12.8), provide the Depot SPC with its written consent to the issue of the relevant Certificate of Practical Completion as soon as reasonably practicable following its approval (not to be unreasonably withheld or delayed) of the Snagging List to be issued with the relevant Certificate of Practical Completion following consultation with respect to the Snagging List with the Operator, the TMM, Network Rail and the Depot SPC.
- (c) If the Depot SPC has been notified by the Secretary of State of any Material Defects, the Depot SPC shall be required to procure the correction of any such Material Defects to the Secretary of State's reasonable satisfaction (in consultation with the Operator, TMM, Network Rail and the Depot SPC) and following the correction of such Material Defects the Secretary of State shall forthwith, (subject to the provisions of clause 12.7(b) being satisfied and subject to clause 12.8) provide the Depot SPC with its written consent to the issue of the relevant Certificate of Practical Completion.

### **Completion of Defects on Snagging Lists**

- 12.8 (a) Subject to clause 30.7, the Depot SPC shall procure that all items on all Snagging Lists are completed to the reasonable satisfaction of both the Secretary of State and the Operator (and of Network Rail where it has requested that the relevant item is added to the Snagging List) following consultation with the relevant parties as soon as reasonably practicable following the issue of the relevant Certificate of

Practical Completion, but in any event within 6 (six) months of the date of issue of the last of the Certificates of Practical Completion in respect of the Depot Works (the *Snagging List Defects Correction Date*).

- (b) If the Depot SPC fails to comply with its obligation pursuant to clause 12.8(a) to correct all Minor Defects by the Snagging List Defects Correction Date the Operator may, upon written notice to the Depot SPC and the Secretary of State, undertake or procure the correction of all such Minor Defects in which case:
- (i) the Operator shall ensure that such works are carried out:
    - (A) as soon as reasonably practicable;
    - (B) in a prompt, proper and workmanlike manner in accordance with any applicable provisions within the Building Contract related to the standard specification and/or methodology for the completion of the Depot Works;
    - (C) in compliance with all relevant statutes and with the lawful requirements of all local or competent authorities and their officers;
    - (D) so as to cause as little inconvenience or interference as reasonably practicable to the Depot Works or to owners or occupiers of adjoining or neighbouring property; and
    - (E) any physical damage caused in the carrying out of such works shall be made good as soon as reasonably practicable;
  - (ii) the Depot SPC shall indemnify the Operator on demand for all Losses incurred in relation to such works undertaken by the Operator.
- (c) The Depot SPC shall not be considered to be in breach of the time-frames imposed under this clause 12.8 to the extent that it is not able to comply with its obligations hereunder due to the unavailability of a required Network Possession or Depot Possession. In such circumstance the Depot SPC's obligation will remain that it will procure that all items on all Snagging Lists are completed to the reasonable satisfaction of both the Secretary of State and the Operator (and of Network Rail where it has requested that the relevant item is added to the Snagging List) as soon as is possible and in a timeframe to be agreed with the Secretary of State and the Operator (and Network Rail if applicable).

#### **Completion of a Depot Phase during a Network Possession or a Depot Possession**

- 12.9 The parties acknowledge that, in some cases, a Depot Phase will be substantially completed in advance of a Network Possession and/or a Depot Possession but that Depot Phase will only be fully completed once the work due to be carried out during that possession has taken place. In such circumstances, the parties agree the following shall apply:
- (a) the process set out in clauses 12.3 to 12.7 inclusive shall only apply in relation to the works carried out before the relevant possession;

- (b) on completion of the work carried out during that possession (which is the last work relating to that Depot Phase), the provisions of clauses 12.10 and 12.11 shall apply; and
  - (c) as soon as reasonably practicable following receipt of copies of the applicable Forms G and the Certificate of Introduction Into Operational Use pursuant to clause 12.10 from the Operator and/or Network Rail (as appropriate) the Depot SPC shall issue the Certificate of Practical Completion and provide a copy of it to the Secretary of State, Network Rail and the Operator.
- 12.10 Once the procedures for carrying out Introduction into Operational Use have been carried out in accordance with Schedule 20, as soon as reasonably practicable thereafter (where appropriate in each case for the relevant Depot Phase):
- (a) Network Rail or the Depot SPC shall provide the Operator with a copy of the Network Rail Form G issued by Network Rail where appropriate; and
  - (b) the Depot SPC shall provide the Operator with a copy of the Form G issued by the Building Contractor in relation to the relevant works; and
  - (c) the Operator shall provide the Depot SPC with a copy of the Certificate of Introduction into Operational Use in relation to the relevant works.

### **Depot Connection**

12.11 Where any Depot Connection Agreement remains subject to the approval of the ORR at the date of this Agreement each of Network Rail, the Depot SPC and the Operator hereby agree to enter into the Depot Connection Agreement within 10 (ten) Working Days of such approval being granted by the ORR Provided That Network Rail, the Depot SPC and the Operator agree that notwithstanding any provision to the contrary in any Depot Connection Agreement any charges or other sums due under any Depot Connection Agreement shall only become due and be payable in respect of the period from and including the Actual Lease Completion Date.

## **13. NETWORK CHANGE, DEPOT CHANGE AND CLOSURE**

### **Network Change**

- 13.1 It is currently expected that a Network Change will be required in connection with the Depot Works in which case:
- (a) the Depot SPC shall procure that the Building Contractor will provide to Network Rail all information necessary for Network Rail to make any application for Network Change which may be required in respect of the Depot Works;
  - (b) subject to the Depot SPC complying with clause 13.1(a), Network Rail shall prepare, make and administer the application for any Network Change required for the Depot Works in accordance with the procedure set out in the Network Code and shall use all reasonable endeavours to obtain Network Change as soon as reasonably possible in respect of any Network Change required to implement the Planning Permission. Network Rail will bear the cost and all liabilities in connection therewith; and
  - (c) the Depot SPC hereby indemnifies Network Rail and the Operator for all Losses incurred by either of them as a result of the implementation of any Network Change

required in respect of the Depot Works to the extent that such Losses relate or are attributable to any New Planning Permission or any amendment to the Planning Permission but which would not have been incurred if the Planning Permission as originally granted had been implemented. Each of Network Rail and the Operator shall use all reasonable endeavours to mitigate their Losses arising out of or in relation to any Network Change.

### **Depot Change**

13.2 If at the date of this Agreement any Depot Change is required to carry out the Depot Works:

- (a) the Depot SPC shall procure that the Building Contractor shall provide the Operator with all information necessary for the Operator to make any application for any Depot Change which may be required in respect of the Depot Works for approval by Network Rail and the ORR;
- (b) the Operator shall prepare, make and administer the application for any Depot Change required for the Depot Works provided by the Depot SPC pursuant to clause 13.2(a) in accordance with the procedure set out in the Existing Depot Access Conditions (or the Depot Access Conditions, as appropriate) and shall use all reasonable endeavours to obtain any Depot Change as soon as reasonably possible (provided that this obligation does not confer on the Operator the obligation to procure that the ORR grants the relevant Depot Change); and
- (c) each of the Operator and Network Rail shall use reasonable endeavours to mitigate their Losses arising out of or in relation to any Depot Change. The Depot SPC hereby indemnifies Network Rail and the Operator against any Losses incurred by Network Rail and the Operator as a result of the application for and implementation of any further Depot Change which may be required in respect of the Depot Works (including the costs of any action to mitigate such Losses) to the extent that such Losses are attributable to the implementation of any amendment to the Planning Permission or any New Planning Permission which would not have been incurred if the Planning Permission had been implemented by the Depot SPC.

### **Closure**

13.3 If a Closure is required, the Operator shall submit and administer the application for Closure Consent in relation to the Closure required for the Depot Works in accordance with the procedure set out in ss.26-35 Railways Act 2005 and shall use all reasonable endeavours to obtain such Closure as soon as reasonably possible (provided that this obligation does not confer on the Operator the obligation to procure that the ORR or the relevant person grants or approves the Closure Consent).

### **Failure to Obtain Network Change, Depot Change or Closure Consent**

13.4 Neither Network Rail nor the Operator shall have any liability whatsoever to the Depot SPC pursuant to this clause 13 if the Network Change, Depot Change or Closure Consents are not approved or granted or are the subject of delay in being approved or granted or for the terms upon which the same may be granted provided that neither Network Rail nor the Operator shall object to the Network Change or Depot Change or Closure Consents in the formal procedure for approval of the same where Network Rail or the Operator (*as applicable*) has submitted the proposal or previously granted its approval for the purposes of this Agreement.

## **Amendments to Existing Depot Access Agreements**

13.5 The Operator shall, as soon as reasonably possible after the date hereof, prepare, make and administer an application for Depot Change in order to amend the Existing Depot Access Agreements so that with effect from the Operator Handover Date they incorporate the Depot Access Conditions to the extent applicable to the Existing Depot and where possible shall endeavour to procure that such access agreements have an expiry date on or before the date of expiry of the Underlease.

13.6 The Operator shall use all reasonable endeavours to obtain the Depot Change referred to in clause 13.5 as soon as reasonably possible and will subject to the proviso in clause 13.2(b) and the indemnity in clause 13.2(c) bear the cost and all liabilities in connection therewith.

## **14. INTRODUCTION INTO OPERATIONAL USE OF THE DEPOT WORKS**

### **Depot Works**

14.1 The Depot SPC and the Operator shall procure that the procedures for the Introduction into Operational Use of the Depot Works shall be carried out in accordance with the protocol set out in Schedule 20.

### **Use and Operation of the New Depot prior to Introduction into Operational Use**

14.2 Without prejudice to any other conditions as to the use and operation of the New Depot or the Existing Depot within a Depot Phase, no party to this Agreement shall use or operate and/or permit any third party to use or operate any part of the New Depot or the Existing Depot within a Depot Phase (or any part thereof) prior to the date that part of the New Depot or the Existing Depot within the relevant Depot Phase is Introduced into Operational Use except to the extent required for construction, testing and commissioning or under any temporary arrangement to be agreed with the Operator from time to time.

14.3 The Depot SPC and the Operator agree that the protocol set out in Schedule 20 shall apply both in relation to completion of a Depot Phase and also (mutatis mutandis) to any element of work that forms part of a Depot Phase which, following its completion, is intended to be handed back by the Depot SPC to the Operator for it to use for its operational purposes.

### **O&M Manuals**

14.4 The Depot SPC shall procure that the Building Contractor delivers the operating and maintenance manuals required by the CDM Regulations together with a complete detailed “as built” specification and final “as built” conformed drawings for the Depot Works and to the extent that they have been effected by the Depot Works, the New Depot in electronic format in accordance with NR Thameslink CAD Procedure N000/0100/NRT/PRO/EG/000005 (accepting that all detailed specification and final “as built” conformed drawings for the Depot Works shall be required to be in 2D format only) (the *As Built Documents*) to the Operator and the TMM and, in respect of the Interface Works, to Network Rail in accordance with the Building Contract. The Depot SPC shall procure that the Building Contractor delivers copies of the As Built Documents to the Operator as soon as reasonably practicable after the Operator Handover Date in relation to the New Depot if the obligation to deliver the same under the Building Contract falls prior to the Lease Completion Date.

## **15. NETWORK POSSESSIONS**

### **Programming of Works and Obtaining Network Possessions**

15.1 Network Rail, the Depot SPC and the Operator declare that each will co-operate with each other in the operation of this clause 15 by the planning and utilisation of Network Possessions and speed restrictions on the Network to facilitate the safe and efficient execution of the Depot Works and the safe and efficient operation of the Network pursuant to and in accordance with clause 30. Subject to the rest of clause 15, Network Rail shall administer any Network Possessions and the Depot SPC shall indemnify Network Rail for all reasonable costs incurred by Network Rail in relation to such, including all costs incurred by Network Rail in administering Network Possessions.

### **Carrying Out of Depot Works**

15.2 The Depot SPC shall procure that the Building Contractor shall carry out the Depot Works with all reasonable dispatch at all times and in such a way so as not to cause any interference with the traffic operating on the Network unless a Network Possession has been implemented in connection with the relevant Depot Phase at the relevant time.

### **Availability of Network Possessions**

15.3 When planning the Network Possessions Programme, the Depot SPC, Network Rail and the Operator shall consult with each other regarding the availability of Network Possessions and speed restrictions and Network Rail shall notify the Depot SPC and the Operator of the programming implications of Network Possessions and speed restrictions required to carry out the Depot Works together with the cost implications of Network Possessions and speed restrictions in respect of compensation and penalty payments payable by Network Rail under any relevant Track Access Agreement and/or Freight Access Agreement.

### **Indemnity for Network Possessions**

15.4 Subject to the provisions of clause 32 and Schedule 6 the Depot SPC agrees that it shall indemnify Network Rail and the Operator on demand against Losses arising out of or in relation to Network Possessions connected with the Depot Works provided that the Depot SPC shall not be obliged to indemnify Network Rail in respect of the cost of any Network Possessions which are already booked for works not forming part of the Depot Works. Network Rail and the Operator shall use reasonable endeavours to mitigate their Losses arising out of or in relation to any Network Possession.

### **Network Possessions Programme**

15.5

- (a) Following consultation between the Depot SPC, the Building Contractor, Network Rail and with any relevant Train Operator the Depot SPC shall submit for approval by Network Rail and the Operator (such approval not to be unreasonably withheld or delayed) a proposed Network Possessions Programme in connection with the Depot Works which shall (among other things) indicate the necessary Network Possessions and speed restrictions sought to be obtained and made available for the Depot Works and shall take account of the programme for the implementation of any of the Network Change procedures (as applicable) developed pursuant to clause 13 and

information in respect of Network Possessions and speed restrictions identified pursuant to clause 15.1.

- (b) Within 10 (ten) Working Days after receipt of the proposed Network Possessions Programme submitted pursuant to clause 15.5(a) Network Rail and the Operator shall confirm in writing to the Depot SPC whether or not the proposed Network Possessions Programme has been approved and if not so approved shall furnish the Depot SPC with details of where the Network Possessions Programme or any section of it has not been approved and an analysis of its reasons.
- (c) If the proposed Network Possessions Programme or any section of it is not approved by Network Rail and the Operator pursuant to clause 15.5(b), the Depot SPC shall consult further with Network Rail, the Operator and the Building Contractor and submit a revised proposed Network Possessions Programme for approval by Network Rail and the Operator pursuant to clause 15.5(b).

### **Obtaining Network Possessions**

15.6 Network Rail shall (subject and without prejudice to its requirements in respect of the timing of applications therefore and its obligation to implement procedures for obtaining any scheme of Network Possessions and speed restrictions approved in the Network Possessions Programme under any relevant Track Access Agreement and/or Freight Access Agreement then subsisting) use reasonable endeavours to obtain and once obtained shall, subject to clause 15.7 make available to the Depot SPC for the purposes of the Depot Works the Network Possessions and speed restrictions necessary in order that the relevant Depot Works can be carried out in accordance with the Network Possessions Programme.

### **Failure to Obtain Network Possessions**

15.7

- (a) Network Rail shall not have any liability in respect of the cancellation of any Network Possession which is not a Booked Network Possession.
- (b) Network Rail shall not have any liability under this Agreement in the event of Network Rail failing to obtain or cancelling any Network Possession, speed restriction, safety personnel or other resources or assistance where Network Rail considers it necessary in order to prevent, address, alleviate or comply with a Network Rail Issue.
- (c) If there is any risk that Network Rail may cancel or alter a Booked Network Possession or may fail to obtain a Network Possession in accordance with the terms of this Agreement, Network Rail shall take all steps as may be reasonably necessary in order to mitigate the risk and provide the Network Possession or failing that, after consultation with the Depot SPC, provide the nearest alternative Network Possession as soon as possible.
- (d) If there is a risk that Network Rail may cancel or alter a Network Possession which is a Booked Network Possession in accordance with this clause 15.7 or fail to obtain any Network Possessions in accordance with the terms of this Agreement, Network Rail shall:
  - (i) give the Depot SPC as much notice as possible in order to enable the Depot SPC and each Contractor to mitigate or minimise any added costs;

- (ii) provide the Depot SPC with the reasons for any cancellation or alterations.
- (e) If Network Rail cancels or alters a Booked Network Possession or fails to obtain a Booked Network Possession, and, as a result of such cancellation or alteration of a Booked Network Possession or failure of provision, any additional or alternative Network Possession or service is required, then:
- (i) the provisions of clauses 15.3, 15.5 and 15.6 shall have effect in relation to the availability of alternative Network Possession;
  - (ii) Network Rail shall use its reasonable endeavours to obtain such alternative Network Possessions or service where possible; and
  - (iii) throughout keep the Depot SPC informed in a timely manner of its efforts in that respect.

### **Progress of Network Possessions**

15.8 Following Network Rail's formal commencement of the procedures referred to in clause 15.6 to obtain the Network Possessions Programme and speed restrictions approved pursuant to clause 15.5 Network Rail shall keep the Depot SPC and the Operator advised of the progress of those procedures and in particular (but without prejudice to the generality of the foregoing) shall advise the Depot SPC and the Operator as soon as reasonably practicable:

- (a) of any objections to the Network Possessions Programme and speed restrictions in which any affected Train Operator persists and in the light of which the Depot SPC, the Operator and Network Rail may wish to revise their respective works specification or intended method of working or revise the Network Possessions Programme and speed restrictions in respect of which Network Rail (following submission to and approval by the Depot SPC and the Operator pursuant to clause 15.3) would be required to implement the procedures referred to in clause 15.6; and
- (b) when the relevant Network Possessions and speed restrictions have been obtained and shall provide written confirmation thereof to the Depot SPC and the Operator.

### **Restrictions on Network Possessions**

15.9 The Depot SPC acknowledges in relation to any Network Possessions considered to be necessary that:

- (a) the availability of Network Possessions is confined to periods when there is no scheduled train service, unless (by exception) longer periods can be made available; and
- (b) in the event of any Network Possessions not being available the Works Programme, and the Network Possessions Programme may require revision.

### **Progress of Depot Works Relative to Network Possessions**

15.10 If in the reasonable opinion of Network Rail the actual progress of the relevant part of the Depot Works does not conform to the agreed Network Possessions Programme or the Works Programme and/or agreed speed restriction dates then the Depot SPC shall (if Network Rail so requires) procure that the Building Contractor produces a revised Works Programme for approval in order to achieve the agreed Network Possessions Programme and/or speed



restriction dates and to ensure completion of the relevant part of the Depot Works at the relevant time, or seek a revised Network Possessions Programme in accordance with clause 15.12.

### **Weekly Reviews**

15.11 Without prejudice to clauses 15.3, 15.5 and 15.10, the Depot SPC shall procure that the Building Contractor reviews jointly with Network Rail the Network Possessions Programme on a weekly basis or such other period as may be appropriate and agreed between the Building Contractor and Network Rail (on a date to be agreed between the Building Contractor and Network Rail) and shall agree what action needs to be taken (if any) in order to achieve the agreed Network Possession dates and the completion of the relevant part of the Depot Works.

### **Consultation on Unavailability of Network Possessions**

15.12 In the event of:

- (a) the parties agreeing pursuant to clause 15.10 that the agreed Network Possession and/or speed restriction dates cannot be achieved; or
- (b) Network Rail failing to make available (or cancelling) any Network Possession and/or speed restriction pursuant to clause 15.8(b);

Network Rail shall consult with the Building Contractor regarding the availability of further Network Possessions and speed restrictions and submit a revised Network Possessions Programme for approval pursuant to clause 15.3.

15.13 Network Rail acknowledges that the granting of any Network Possession (and any consent that may be obtained from the Operator in this respect) shall not prejudice the Operator's right to recover any sums properly due to it under any Track Access Agreement.

## **16. DEPOT POSSESSIONS AND ISOLATIONS**

16.1 The Depot SPC and the Operator acknowledge that they have agreed the Depot Possessions Programme and the Depot Isolations Programme and, unless otherwise required in writing by the Depot SPC, the Operator shall make the necessary arrangements to enable each Depot Possession and each Depot Isolation referred to the Depot Possessions Programme and the Depot Isolations Programme to occur at the agreed time and date.

### **Procedure for obtaining further Depot Possessions or Depot Isolations**

16.2 Where the Depot SPC identifies that it may require either an Additional Depot Possession or an Additional Depot Isolation, the Depot SPC and the Operator shall procure that the procedures for obtaining any Additional Depot Possession or Additional Depot Isolation shall be carried out in accordance with the relevant protocol set out in Schedule 21.

16.3 The Depot SPC and the Building Contractor shall use the regular management meetings to be held in accordance with the terms of clause 34.2 to make the Operator aware of any requirement for an Additional Depot Possession or Additional Depot Isolation as far in advance as reasonably practicable in order to try and ensure that as few requests for any Additional Depot Possession or Additional Depot Isolation are declined by the Operator due to an operational clash.

16.4 The Depot SPC and the Operator declare that they will co-operate with each other in the operation of this clause 16 in relation to the planning and utilisation of Depot Possessions and Depot Isolations and the timetabling of any Additional Depot Possession or Additional Depot Isolation to facilitate the safe and efficient execution of the Depot Works in accordance with this Agreement including, for the avoidance of doubt, the provisions of clause 8.

16.5 The parties agree that the Operator shall not be in breach of the terms of this clause 16 and shall not be acting unreasonably as a result of it declining a request for an Additional Depot Possession or an Additional Depot Isolation on the basis that a Network Possession would be needed at the same time as the requested Additional Depot Possession or Additional Depot Isolation and that no such Network Possession will be available.

#### **Administration of Depot Possessions and Depot Isolations**

16.6 The Operator shall administer any Depot Possession or Depot Isolation.

#### **Indemnity for Depot Possessions and Depot Isolations**

16.7 The Depot SPC and the Operator agree that they shall each bear their own costs in relation to Depot Possessions and Depot Isolations provided that the Depot SPC shall indemnify the Operator on demand against reasonable Losses suffered by the Operator as a result of:

- (a) any failure by the Depot SPC to use any Depot Possession or Depot Isolation (save where such failure by the Depot SPC is a consequence of an event specified in the definition of Permitted Depot Delay (other than the event specified in paragraph (e) of that definition)); and/or,
- (b) the delayed hand-back of any area that is the subject of a Depot Possession or Depot Isolation,

provided that the Operator shall use reasonable endeavours to mitigate any such Losses.

#### **Cancellations or alteration of Depot Possessions or Depot Isolations**

16.8 If there is any risk that the Operator may have to cancel or alter a Depot Possession or Depot Isolation which is within the Depot Possessions Programme or the Depot Isolations Programme (as appropriate) or may fail to provide a Depot Possession or a Depot Isolation in accordance with the terms of this Agreement, the Operator shall take all reasonably practicable steps to mitigate the risk and provide the relevant Depot Possession or Depot Isolation or failing that, after consultation with the Depot SPC, provide the nearest alternative Depot Possession or Depot Isolation as soon as possible and shall:

- (i) give the Depot SPC as much notice as possible in order to enable the Depot SPC and each Contractor to mitigate or minimise any added costs;
- (ii) provide the Depot SPC with the reasons for any cancellation or alteration.

16.9 If the Operator cancels or alters a Depot Possession or Depot Isolation which is within the Depot Possessions Programme or the Depot Isolations Programme (as appropriate) and, as a result of such cancellation or alteration, an additional or alternative Depot Possession or Depot Isolation is required, then:

- (i) the Operator shall use its reasonable endeavours to obtain such additional or alternative Depot Possession or Depot Isolation where possible; and
- (ii) throughout keep the Depot SPC informed in a timely manner of its efforts in that respect.

16.10 The Depot SPC confirms and acknowledges that the cancellation or alteration of a Depot Possession or Depot Isolation pursuant to clause 16.8 shall not be treated as a breach of the terms of this Agreement where such cancellation or alteration is caused as a result of any action or inaction of Network Rail or by persons or events outside the control of the Operator or the occurrence of a Safety Critical Event.

## **17. NETWORK RAIL COSTS**

### **Payment of Network Rail's Fees**

17.1 The Depot SPC shall pay Network Rail Costs to Network Rail in accordance with this clause 17, clause 18 and Schedule 6.

### **Review of Hourly Rates**

17.2 The Hourly Rates shall be subject to annual review and adjustment in accordance with Schedule 6.2.

## **18. METHOD OF PAYMENT OF NETWORK RAIL COSTS AND OTHER SUMS PAYABLE TO NETWORK RAIL**

### **Arrangements in respect of payment of Network Rail Costs**

18.1 The following arrangements shall apply in respect of the payment of Network Rail Costs and all other payments payable to Network Rail under this Agreement:

- (a) Within 10 (ten) Working Days after the end of the Period in which the date of this Agreement falls, and within 10 (ten) Working Days after the end of each subsequent Period, Network Rail shall submit to the Depot SPC an invoice (with an attached summary of the services provided by Network Rail to which such invoice relates) and an appropriate VAT invoice in respect of Network Rail Costs applicable to that Period and any other sums payable by the Depot SPC to Network Rail under this Agreement and relating to the relevant Period and, where appropriate, to earlier Periods which have not previously been invoiced. Payment by the Depot SPC to Network Rail shall be without set-off, retention, counterclaim, abatement or any other deduction and shall be due 28 (twenty eight) Working Days after the date of the invoice.
- (b) Should any payment due from the Depot SPC under this clause 18 not be made by the due date for payment then the payment due shall bear interest at the Default Interest Rate (before and after any judgment) from and including the due date for payment to and including the date of actual payment.
- (c) Payment shall be subject to the addition of Value Added Tax at the rate currently in force at the date the application for payment is made if and where applicable on production of a Value Added Tax invoice.

- (d) The Depot SPC shall make all payments to Network Rail under this Agreement in pounds sterling.

### **Total of Network Rail Costs**

18.2 As soon as practicable following the date of the issue of the last of the Certificates of Practical Completion in respect of the Depot Works Network Rail shall calculate the total amount of Network Rail Costs and any other sums payable by the Depot SPC to Network Rail under this Agreement up to and including such date (the *Total of Network Rail Costs*) together with the total of all payments made by the Depot SPC under clause 18.1 (the *Total Payments*) and shall give notice to the Depot SPC setting out both amounts and details of how they were calculated and, if there is a difference between the Total of Network Rail Costs and the Total Payments (any such difference being a *Balancing Payment*) then, within 14 (fourteen) days of Network Rail's notice, where Network Rail Costs are greater than the Total Payments, the Depot SPC shall pay the Balancing Payment to Network Rail and, where Network Rail Costs are less than the Total Payments, Network Rail shall pay the Balancing Payment to the Depot SPC.

### **Failure to Pay Network Rail Costs**

18.3 If the Depot SPC is in material default over payments of amounts properly due in respect of Network Rail Costs or other amounts payable to Network Rail under this Agreement (which are not being contested by the Depot SPC in Good Faith), Network Rail may suspend performance of any or all of the obligations on its part in this Agreement. This right is subject to Network Rail first giving the Depot SPC, the Operator, and the Secretary of State not less than 7 (seven) days notice of such intention and stating the grounds for suspension. The right to suspend performance shall cease when the Depot SPC makes payment of the amount due.

18.4 Following service of a notice by Network Rail pursuant to clause 18.3 either of the Operator and/or the Secretary of State may elect, having previously served notice on the other parties, to make payment of Network Rail Costs upon the Depot SPC's behalf.

18.5 The Depot SPC shall indemnify the Operator and the Secretary of State on demand in respect of any payments made pursuant to clause 18.4 by any of the said parties on the Depot SPC's behalf together with interest on such payment payable in an amount equal to the Default Interest Rate for the period beginning with payment by the Operator or the Secretary of State (as applicable) and ending on the date of payment by the Depot SPC pursuant to the indemnity under this clause 18.5.

### **Disputes in relation to Network Rail Costs**

18.6 Any disputes arising under this clause 18 shall be referred for dispute resolution under clause 41.

### **General**

18.7 The provisions of Schedule 6 shall have effect.

19. [●]<sup>131</sup>

**20. OCCUPATION DURING PRE-COMPLETION PERIOD AND FROM THE OPERATOR  
HANDOVER DATE**

**Early occupation of a Sectional Completed Facility**

20.1 During the Pre-Completion Period in respect of any Sectional Completed Facility the Operator shall (to the extent necessary) have licence to use and occupy such Sectional Completed Facility for train stabling purposes and in accordance with the terms of the Underlease as if it had been granted but without payment of the Yearly Rent provided that the Depot SPC shall be allowed access to repair, maintain and rectify any defects or snagging in the Sectional Completed Facility. During such period the Operator shall be the facility owner of each such Sectional Completed Facility for the purposes of ss.17 and 18 of the Act.

**Maintenance of Sectional Completed Facility in Existing Depot**

20.2 The Depot SPC shall carry out at its own cost the maintenance obligations of the Operator in respect of each Sectional Completed Facility situated within the Existing Depot from the date of issue of the relevant Certificate of Practical Completion up to the Operator Handover Date to the standard set out in the Underlease if the facility or the relevant part of it has achieved Introduction into Operational Use or otherwise at an appropriate level to maintain it as a Sectional Completed Facility.

**Licence to Occupy the Whole Site from the Operator Handover Date**

- 20.3 (a) On and from the Operator Handover Date:
- (i) Network Rail shall permit the Depot SPC to occupy the Whole Site upon the terms of the Head Lease and as if the same had been granted [●]<sup>132</sup>; and
  - (ii) the Depot SPC shall permit the Operator to occupy the Whole Site upon the terms of the Underlease and as if the same had been granted [●]<sup>133</sup>.
- (b) The occupation referred to in clause 20.3(a) shall be as licensee of the relevant party so far as consistent with a licence to occupy and shall be terminable upon notice by the relevant licensor in accordance with the terms of the relevant Lease.

[●]<sup>134</sup>.

20.4 [●]<sup>135</sup>.

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<sup>131</sup> Redaction.

<sup>132</sup> Redaction.

<sup>133</sup> Redaction.

<sup>134</sup> Redaction.

<sup>135</sup> Redaction.

[●]<sup>136</sup>

20.5 [●]<sup>137</sup>

### **Depot Facility Owner during Licence Period**

20.6 During the period referred to in clause 20.3, the Operator shall be the facility owner of the New Depot for the purposes of ss.17 and 18 of the Act.

### **Agreement to Surrender**

20.7 Network Rail and the Operator confirm that (save where they agree to vary the term of the Existing Depot Lease following the date of this Agreement) the Existing Depot Lease shall continue in full force and effect.

20.8 Each of the Operator and Network Rail shall execute its respective counterpart of the Deed of Surrender and subject thereto complete the Deed of Surrender on the Operator Handover Date.

20.9 The Operator and Network Rail shall upon completion of the Deed of Surrender use reasonable endeavours to carry out all filings and applications necessary at the Land Registry and execute any other documents as may be reasonably required to close the title in respect to the Existing Depot Lease.

## **21. REMEDIAL PLANS AND OTHER SECRETARY OF STATE REMEDIES**

### **Remedial Plan Notices**

21.1 Without limiting the Secretary of State's other rights under this Agreement, if the Depot SPC is in breach of:

- (a) clause 10.1(a)(ii); or
- (b) any other provision of this Agreement, provided the Secretary of State has procured the prior written consent of any other party adversely affected by such breach,

(a *Breach*), then the Secretary of State may serve a notice on the Depot SPC requiring it to propose a reasonable remedial plan (a *Remedial Plan*) for the purpose of curing (progressively, if need be) the Breach in a cost effective manner (at the Depot SPC's cost) as soon as reasonably practicable (a *Remedial Plan Notice*).

### **Contents of Remedial Plan Notices**

21.2 Each Remedial Plan Notice shall specify:

- (a) the Breach; and
- (b) a reasonable time period (but not, in any event, less than 10 (ten) days from receipt of that Remedial Plan Notice) for providing the Remedial Plan.

<sup>136</sup> Redaction.

<sup>137</sup> Redaction.

### **Obligation to submit Remedial Plan**

21.3 The Depot SPC shall comply with any Remedial Plan Notice in accordance with its terms. If the Depot SPC considers that the time period for producing the Remedial Plan is not a reasonable one, it shall immediately inform the Secretary of State of its view and of the time period it considers to be reasonable. Pending any agreement on a different period, the Depot SPC shall prepare a Remedial Plan to the timescale notified by the Secretary of State.

### **Contents of Remedial Plans**

21.4 Each Remedial Plan shall set out:

- (a) the Breach to which it relates;
- (b) an explanation of the reasons for the occurrence of that Breach;
- (c) the steps that the Depot SPC proposes in order to cure that Breach, with details of the resources required and deployment proposed, sufficient to enable a reasonable assessment of the prospects of success and relevant timescales, and to enable reasonable monitoring of actions taken by the Depot SPC against actions proposed by it in the Remedial Plan;
- (d) the time period within which the Depot SPC proposes to implement those steps with milestones linked to planned outcomes;
- (e) the frequency at which the Depot SPC shall update the Secretary of State with information regarding the progress in and results to date of implementation; and
- (f) if the Breach has resulted in or is related to a Depot SPC Termination Event pursuant to Clause 22.1(a), the Depot SPC's proposed amended Required Completion Date.

### **Response to Remedial Plans**

21.5 Within 10 (ten) Working Days of receipt of a Remedial Plan, the Secretary of State shall respond in writing to the Depot SPC, specifying:

- (a) that the Secretary of State is satisfied with the contents of that Remedial Plan;
- (b) any amendments to that Remedial Plan that the Secretary of State believes necessary or appropriate in order to achieve the aims of that Remedial Plan; or
- (c) such alternative course of action as the Secretary of State believes necessary or appropriate in order to cure the Breach that is the subject of that Remedial Plan.

### **Secretary of State's Response**

21.6 If the Secretary of State responds in accordance with clause 21.5(b) or (c), the parties shall meet and discuss in Good Faith the Remedial Plan and the Secretary of State's response to it with a view to agreeing a course of remedial action within 10 (ten) Working Days of the date of the Secretary of State's response to the Remedial Plan (or such longer time period as the parties may agree).

### **Shared Remedial Plan**

21.7 If the Secretary of State responds in accordance with clause 21.5(a) or 21.6 or, following the discussions pursuant to clause 21.5(c), the parties agree a documented course of remedial action, then the provisions of the Remedial Plan or the agreed remedial action shall be treated as a shared Remedial Plan (a *Shared Remedial Plan*).

### **Failure to Agree Remedial Action**

21.8 If, following the discussions pursuant to clause 21.6, the parties do not agree a course of remedial action, then:

- (a) the Depot SPC shall provide the Secretary of State with a written, reasoned explanation of its reasons for not adopting those of the Secretary of State's proposals that it is unwilling to incorporate with the Remedial Plan; and
- (b) the provisions of the Remedial Plan (including any elements of the Secretary of State's response with which the Depot SPC agrees) shall be treated as the Depot SPC's sole Remedial Plan (a *Sole Remedial Plan*).

### **Failure to Cure a Breach Pursuant to a Shared Remedial Plan**

21.9 If the Depot SPC acts in accordance with a Shared Remedial Plan, any failure to cure the Breach to which that Shared Remedial Plan relates by the end of the time period for implementation specified in that Shared Remedial Plan, shall not in itself constitute a breach of this Agreement, provided that:

- (a) where the Breach itself constitutes a Depot SPC Termination Event, such Depot SPC Termination Event shall not be cured or waived by virtue of this clause 21.9;
- (b) the Depot SPC provides the Secretary of State with a written, reasoned explanation of why it considers the resources deployed pursuant to that Shared Remedial Plan did not produce the expected results, and proposes reasonable steps and timescales for the deployment of further resource in a cost effective manner to deliver those results; and
- (c) the provisions of this clause 21 shall apply to any written statement provided pursuant to clause 21.9(b) as if it were a Remedial Plan submitted pursuant to clause 21.3.

### **Failure to Act in Accordance with a Shared Remedial Plan**

21.10 If the Depot SPC fails to act in accordance with a Shared Remedial Plan without obtaining the Secretary of State's consent, then (if the Breach is continuing) the provisions of clause 21.9 shall apply but with the additional requirements that:

- (a) the explanation required in clause 21.9(b) shall also address the reasons for such failure; and
- (b) where the Secretary of State considers that there is no reasonable excuse for the Depot SPC's failure to act in accordance with that Shared Remedial Plan he may require the Depot SPC to remedy such failure and may further stipulate that any neglect to do so within a reasonable period shall constitute a Depot SPC Termination Event.



### **Sole Remedial Plan**

21.11 The Depot SPC shall implement any Sole Remedial Plan in accordance with its terms, provided that if the Secretary of State does not agree with the time period within which the Depot SPC proposes to implement its Sole Remedial Plan, the Secretary of State may, acting reasonably, determine a shorter time period within which the Depot SPC shall implement the Sole Remedial Plan.

### **Failure to Cure a Breach Pursuant to a Sole Remedial Plan**

21.12 If the Depot SPC acts in accordance with a Sole Remedial Plan, any failure to cure the Breach to which that Sole Remedial Plan relates by the end of the time period for implementation specified in that Sole Remedial Plan, shall not in itself constitute a breach of this Agreement, provided that:

- (a) where the Breach, itself constitutes a Depot SPC Termination Event, such Depot SPC Termination Event shall not be cured or waived by virtue of this clause 21.12;
- (b) the Depot SPC provides the Secretary of State with a written reasoned explanation of why it considers the resources deployed pursuant to that Sole Remedial Plan did not produce the expected results, and proposes reasonable steps and timescales for the deployment of further resource in a cost effective manner to deliver those results; and
- (c) the provisions of this clause 21 shall apply to any written statement provided pursuant to clause 21.12(b) as if it were a Remedial Plan submitted pursuant to clause 21.3, save that a further alternative response shall be available to the Secretary of State pursuant to clause 21.5 being:

“that the Secretary of State is not confident that the Depot SPC is able to implement a Remedial Plan that will cure that Breach within a reasonable timescale” (a *Not Confident Response*).

### **Failure to Act in Accordance with a Sole Remedial Plan**

21.13 If the Depot SPC fails to act in accordance with a Sole Remedial Plan without obtaining the Secretary of State’s consent, then (if the Breach is continuing) the provisions of clause 21.12 shall apply but with the additional requirements that:

- (a) any explanation required in clause 21.12(b) shall also address the reasons for such failure; and
- (b) where the Secretary of State considers that there is no reasonable excuse for the Depot SPC’s failure to act in accordance with that Sole Remedial Plan he may require the Depot SPC to remedy such failure and may further stipulate that any neglect to do so within a reasonable period shall constitute a Depot SPC Termination Event.

### **Designation of Breach as a Persistent Breach**

21.14 Where either:

- (a) any Breach is not cured by the end of the time period for implementation specified in the second or any subsequent Shared Remedial Plan or Sole Remedial Plan that is applied to it; or

- (b) the Secretary of State delivers a Not Confident Response following the failure of any Sole Remedial Plan to cure the Breach to which it relates by the end of the time period for implementation specified in that Sole Remedial Plan,

then the Secretary of State may by written notice to the Depot SPC designate that Breach as a persistent breach (a *Persistent Breach*), and the provisions of clause 21.15 to 21.18 shall apply.

#### **Persistent Breach by the Depot SPC**

21.15 If:

- (a) any Persistent Breach has continued for more than 10 (ten) Working Days; or
- (b) the underlying events or circumstances that gave rise to the Breach that was the subject of a Remedial Plan (the *Failure Event*) occurs more than 2 (two) times in any period of 60 (sixty) consecutive days,

then the Secretary of State may serve a notice (a *Formal Warning Notice*) on the Depot SPC:

- (i) specifying that it is a formal warning notice;
- (ii) giving reasonable details of the Persistent Breach or Failure Event; and
- (iii) stating that the occurrence of such Persistent Breach or Failure Event may, subject to clause 21.16, entitle the Secretary of State to terminate this Agreement.

#### **Final Warning Notice**

21.16 If, following service of a Formal Warning Notice, the Persistent Breach or cause of failure specified has continued beyond 10 (ten) Working Days or recurred 2 (two) times or more within a period of 60 (sixty) days of the date of service, then the Secretary of State may serve another notice (a *Final Warning Notice*) on the Depot SPC:

- (a) specifying that it is a Final Warning Notice;
- (b) stating that the Persistent Breach or Failure Event specified has already been the subject of a Formal Warning Notice served under clause 21.15; and
- (c) stating that if such Persistent Breach or Failure Event continues for a further 10 (ten) Working Days or recurs 2 (two) or more times within a period of 60 (sixty) days following the date of service of the Final Warning Notice, this Agreement may be terminated by the Secretary of State.

#### **Designation of a Persistent Breach as a Depot SPC Termination Event**

21.17 If, following service of a Final Warning Notice either of the circumstances in clause 21.16(c) occurs, the Secretary of State may by written notice to the Depot SPC designate such Persistent Breach or Failure Event as a Depot SPC Termination Event.

## No Double Counting

21.18 A Formal Warning Notice or Final Warning Notice may not be served in respect of any Breach, Persistent Breach or Failure Event which has previously been counted in the making of a separate Formal Warning Notice, Final Warning Notice or Network Rail Remedial Plan.

22. [●]<sup>138</sup>.

## 23. CROSS TERMINATION EVENTS

### Cross Termination Events

23.1 A *Cross Termination Event* means each of the following events [●]<sup>139</sup>:

#### Notice following Cross Termination Event

23.2 In the event of a Cross Termination Event which is continuing the Secretary of State may within 30 (thirty) days after the Cross Termination Event serve notice on the other parties to this Agreement notifying the other parties to this Agreement of the type and nature of the Cross Termination Event that has occurred (the *Cross Termination Event Notice*).

#### Rights of the Secretary of State Following a Cross Termination Event

23.3 Pursuant to any Cross Termination Event Notice, the Secretary of State shall notify the other parties to this Agreement of his decision to terminate this Agreement and the Other Agreement for Lease.

#### Cross Termination Event - termination

23.4 This Agreement and the Other Agreement for Lease shall terminate on the date 10 (ten) Working Days after the date of service of a Cross Termination Event Notice served in connection with a Cross Termination Event.

[●]<sup>140</sup>.

23.5 [●]<sup>141</sup>.

## 24. VOLUNTARY TERMINATION OF CONTRACTS BY THE SECRETARY OF STATE AND FUNDING TERMINATION EVENTS

### Voluntary Termination by the Secretary of State

24.1 The Secretary of State may require termination of this Agreement at any time prior to the Lease Completion Date. If the Secretary of State wishes to so terminate this Agreement

<sup>138</sup> Redaction.

<sup>139</sup> Redaction.

<sup>140</sup> Redaction.

<sup>141</sup> Redaction.

under this clause 24.1, he shall give notice to the other parties (the *Secretary of State Voluntary Termination Notice*) stating:

- (a) that the Secretary of State is terminating this Agreement under this clause 24.1; and
- (b) that this Agreement will terminate on the date specified in the notice, which shall be a date which is a reasonable period after (and not less than 30 (thirty) nor more than 90 (ninety) days following) the date of receipt of the notice.

[●]<sup>142</sup>

24.2 [●]<sup>143</sup>.

[●]<sup>144</sup>.

24.3 [●]<sup>145</sup>.

[●]<sup>146</sup>.

24.4 [●]<sup>147</sup>.

25. [●]<sup>148</sup>

26. [●]<sup>149</sup>

27. [●]<sup>150</sup>

**28. FORCE MAJEURE**

**Force Majeure Events**

28.1 Neither the Depot SPC nor Network Rail nor the Operator shall be in breach of its obligations under this Agreement to the extent that it is unable to perform its obligations in whole or in part by reason of the occurrence of a Force Majeure Event. This clause 28.1 shall not affect payment obligations.

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<sup>142</sup> Redaction.

<sup>143</sup> Redaction.

<sup>144</sup> Redaction.

<sup>145</sup> Redaction.

<sup>146</sup> Redaction.

<sup>147</sup> Redaction.

<sup>148</sup> Redaction.

<sup>149</sup> Redaction.

<sup>150</sup> Redaction.

### **Obligations on the Occurrence of a Force Majeure Event**

28.2 If the Depot SPC or Network Rail or the Operator seeks to rely on this clause 28, it shall:

- (a) immediately give notice to the other parties (other than the TMM) with full particulars of the act or matter claimed as a Force Majeure Event; and
- (b) take reasonable steps to mitigate the effect of the Force Majeure Event, including enforcing its rights under any agreement, and keep those other parties informed of those steps; and
- (c) continue to perform its other obligations under this Agreement which are not affected by the relevant Force Majeure Event; and
- (d) notify the other parties (other than the TMM) of any proposals, including any reasonable alternative means for performance of the affected obligations.

If, at the request of the Secretary of State, the Depot SPC, Network Rail or the Operator agrees to incur expenditure on any steps (other than steps to enforce its rights under any agreement) to mitigate or limit the damaging effects of a Force Majeure Event which it would not, had the Force Majeure Event not occurred, otherwise have incurred in performing its obligations under this Agreement then the Secretary of State shall pay an amount to the Depot SPC, Network Rail or the Operator (as the case may be) equal to that excess.

### **Consultation Period**

28.3 If one or more:

- (a) Force Majeure Events occur which prevent the Depot SPC from carrying out all (or substantially all) of its obligations under this Agreement; or
- (b) Other Force Majeure Events occur such that any party to the MSA is prevented from carrying out all or substantially all of its obligations under the MSA,

in either case for more than 180 (one hundred and eighty) days, the Secretary of State, the Depot SPC and the Operator shall consult with each other with a view to resolving the matter for a period of not less than 60 (sixty) days.

### **Rights and Obligations on the Occurrence of an Other Force Majeure Event**

28.4 Upon the occurrence of an Other Force Majeure Event which is continuing for more than 180 (one hundred and eighty) days, the Secretary of State or the Depot SPC may direct that the Depot Works are suspended until the expiry of any consultation period in respect of the resolution of such Other Force Majeure Event, or if earlier, any agreement which has the effect of resolving such Other Force Majeure Event.

### **Rights to Serve Force Majeure Event Termination Notice**

28.5 At any time following:

- (a) the expiration of the consultation period relating to a Force Majeure Event pursuant to clause 28.3 without the matter being resolved to the reasonable satisfaction of the Secretary of State, the Depot SPC and the Operator; or

- (b) the service by the Secretary of State of any Other Force Majeure Event Notice of Termination,

the Secretary of State or the Depot SPC may serve a Force Majeure Event Termination Notice.

[●]<sup>151</sup>

28.6 [●]<sup>152</sup>.

### **Mitigation**

28.7 Notwithstanding the provisions of this clause 28, the Depot SPC shall use at all times reasonable endeavours to mitigate the effects of the event(s) referred to in this clause 28 affecting performance.

### **Disputes**

28.8 Disputes as to whether a Force Majeure Event has prevented the performance by the Depot SPC or Network Rail or the Operator of its respective obligations shall be determined in accordance with clause 41.

29. [●]<sup>153</sup>

## **30. THE RAILWAY**

### **Liaising on Safety Matters**

30.1 Network Rail, the Operator, the Secretary of State and the Depot SPC shall liaise generally on all safety matters arising out of the Depot Works as they affect the Railway.

### **Exchange of Information**

30.2 The parties shall with reasonable diligence exchange information and otherwise cooperate with each other so far as it is necessary to enable Network Rail to review or revise its safety regime (as may be appropriate) relating to the maintenance, repair, improvement, alteration and operation of the Railway during such construction and thereafter.

### **Safeguarding the Railway**

30.3 In this clause 30 a *Safety Termination Event* means that there are persistent and serious breaches by the Depot SPC or any Contractor of the obligations in this Agreement such that the safety of the Railway or the safety of persons or property on or near the Railway is materially compromised. Network Rail shall give the Depot SPC and the Building Contractor written notice of such breaches and upon receipt of such notice the parties shall immediately enter into Good Faith discussions to discuss and agree a remedial plan (the *Network Rail Remedial Plan*) to ensure such breaches cease. If, following the agreement and implementation of the Network Rail Remedial Plan, the breaches continue, after the expiry of

<sup>151</sup> Redaction.

<sup>152</sup> Redaction.

<sup>153</sup> Redaction.

not less than one month's written notice from Network Rail to the Depot SPC identifying the breaches concerned, Network Rail may require the Depot SPC to terminate the Building Contract or procure the termination of the appointment or contract of the relevant Contractor by service of a termination notice (a *Safety Termination Notice*) on the Depot SPC. Network Rail shall send a copy of the Safety Termination Notice to the Secretary of State, the Operator at the same time as serving it on the Depot SPC, but failure to do so shall not invalidate the Safety Termination Notice. This right to terminate shall override any requirement of this Agreement or the Deed of Undertaking to obtain the consent of the Secretary of State or any other party before termination of such appointment or contract.

### **Network Rail Action**

- 30.4 (a) Notwithstanding any other provision of this Agreement, Network Rail may at any time during the construction of the Depot Works or the subsequent remedy or repair of them (whether during the defects liability period or otherwise) give reasonable notice (where practicable) to the Depot SPC (copied to the Secretary of State and the Operator) requiring it to procure that the Building Contractor takes whatever action Network Rail considers reasonably necessary to protect and maintain the safety and operation of the Railway and safety of persons or property on or near the Railway or to avoid interference with the Railway (other than that which has previously been agreed in writing between Network Rail and the Depot SPC and/or the Building Contractor) provided that Network Rail may take immediate action under this clause without giving prior notice where it considers such action is necessary to prevent, address, alleviate or comply with a Network Rail Issue, but shall notify the Depot SPC (copied to the Operator) as soon as reasonably practicable thereafter.
- (b) In the event of Network Rail properly considering the safety of persons or property on or near the Railway or the safe or continued operation of train services on the Railway to be at risk at any time during the construction of any part of the Depot Works or the defects liability period in respect of the Depot Works by reason of:
- (i) the failure of any Contractor to complete such part of the Depot Works; or
  - (ii) any other reason arising out of a breach by any Contractor in respect of the Depot Works,

then Network Rail may (at the cost of the Depot SPC and subject to giving the Operator notice in writing as soon as reasonably practicable) take (but without any obligation to the Depot SPC to do so) whatever action Network Rail properly considers immediately necessary to safeguard the Railway and prevent or alleviate such risk (whether such action involves utilising the Contractors or otherwise) including, without limitation, requiring the Depot SPC and the Contractors to suspend the carrying out of the Depot Works for such period and/or take such measures as Network Rail requires.

### **Compliance with Network Rail Requirements**

30.5 If pursuant to clause 30.4(b) Network Rail requires immediate action to be taken by any Contractor, the Depot SPC shall upon notification procure that the Contractor responsible for the relevant part of the Depot Works complies with any requirements properly made by Network Rail in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable) to the Depot SPC and which requirements (including and where appropriate temporarily to stop the relevant part of the Depot Works)

relate to keeping or rendering the Railway safe and the continuation or resumption of train services thereon as soon as reasonably practicable (and which the Depot SPC shall not overrule) provided that:

- (a) if the Depot SPC is not immediately available for any reason then Network Rail shall be entitled to issue instructions directly to the Contractor and the Depot SPC shall procure that any such direct instructions shall be treated as instructions from the Depot SPC under the relevant contract; and
- (b) Network Rail shall supply to the Depot SPC a copy of such written directions or written confirmation of oral instructions as soon as reasonably practicable following their issue.

### **Network Rail Costs**

30.6 All costs incurred by Network Rail in connection with this clause 30 shall be paid by the Depot SPC in accordance with Schedule 6.

### **Snagging List Items**

30.7 If the Snagging List items relating to the Interface Works have not been carried out and made good within 3 (three) months of the issue of the relevant Certificate of Practical Completion, then if the matter relates to the safety of the Railway or operability of an Interface Network Rail itself may subject to giving not less than 1 (one) month's prior written notice to the Depot SPC, the Operator and the Secretary of State carry out the relevant work at the proper and reasonable cost of the Depot SPC on the same terms as clause 12.8(b) (*mutatis mutandis*). The Depot SPC shall not be considered to be in breach of the time-frame imposed by this clause 30.7 to the extent that it is not able to undertake its obligations due to the unavailability of any required Network Possessions or Depot Possessions. In this circumstance the Depot SPC's obligations shall remain to carry out Snagging List items relating to the Interface Works as soon as is possible and in a time-frame to be agreed with Network Rail.

31. [●]<sup>154</sup>

32. [●]<sup>155</sup>

33. [●]<sup>156</sup>

### **34. PROJECT MANAGEMENT**

34.1 The parties agree to comply with their respective obligations as to project management set out in Schedule 17.16 (*Project Management*).

34.2 The parties shall hold meetings on a regular basis (not less than at monthly intervals) for the purpose of discussing the Depot SPC's performance and to resolve any problems in the operation of this Agreement.

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<sup>154</sup> Redaction.

<sup>155</sup> Redaction.

<sup>156</sup> Redaction.



34.3 The Depot SPC shall provide the Secretary of State, Network Rail and the Operator with monthly written reports highlighting any defects, design, maintenance or operational issues affecting the Depot Works and (subject to any relevant duty of confidentiality) where such defects, design, maintenance or operational issues may have a safety or material adverse impact on the Depot Works.

### **35. OPERATOR'S TRAINERS' TRAINING AND PROGRAMME**

#### **Agreed Training Programme**

35.1 The Depot SPC shall provide the Operator with a draft training programme no later than 1 (one) month after the date of this Agreement which shall include:

- (a) appropriate training of:
  - (i) training instructors to enable the Operator to:
    - (A) train its drivers and all relevant staff and other employees and the drivers, and other employees of other Train Operators (where any Units are to be subleased as permitted pursuant to the Rolling Stock Lease), in each case to operate the Units and the New Depot or any part of it following completion of a Depot Phase; and
    - (B) undertake its responsibilities in relation to the provision of drivers and train crew for testing under this Agreement;
  - (ii) other employees of the Operator to administer the training programme; and
- (b) the provision of the training materials referred to in clause 35.4.

35.2 The Operator, acting reasonably, shall notify the Depot SPC of any amendments to the draft training programme for the purpose of achieving the objective referred to in clause 35.1 within 30 (thirty) Working Days of receiving the draft training programme from the Depot SPC and the Depot SPC shall incorporate such amendments as are agreed between the Depot SPC and the Operator, each acting reasonably, as soon as reasonably practicable thereafter.

35.3 The Depot SPC shall provide the Operator with the final version of the training programme, incorporating only those amendments referred to in clause 35.2 (in hard copy and electronic copy form) within 14 (fourteen) days of the Operator notifying the Depot SPC of those amendments and the final version shall be the ***Agreed Training Programme***.

35.4 The Depot SPC shall in accordance with the Agreed Training Programme provide the Operator with such training materials (including handbooks, manuals and such other information as is properly required by the Operator) in both hard copy and in an electronic format specified by the Operator, and equipment, as are, in each case, reasonably necessary to permit the Operator's training instructors to undertake further training of the Operator's drivers and all relevant staff and other employees and the drivers and other employees of other Train Operators (where any Units are to be subleased pursuant to the Rolling Stock Lease), subject in the case of such further training, to the provision by the Operator of reasonable access to an Accepted Unit. The Operator shall be entitled, free of charge, to duplicate as many copies of such training materials as it reasonably requires for the purposes of training its drivers and all relevant staff and other employees and, in relation to training materials relating to the operation of the New Depot, the drivers and other employees of other

Train Operators to whom the Units are subleased as permitted pursuant to the Rolling Stock Lease.

### **Additional Training**

35.5 The Depot SPC will, at the Operator's request and cost, provide such additional training for all relevant staff of the Operator, over and above any training specified in the Agreed Training Programme, as the Operator may require from time to time. On completion of the additional training, the Depot SPC shall submit an invoice to the Operator at the address specified in Schedule 8, within 5 (five) Working Days of the last day of such additional training. The invoice shall detail the additional training carried out and shall specify the total cost of the additional training (which shall be reasonable). The Operator or the Depot SPC (as applicable) shall, subject to receipt by it of an appropriate invoice, pay to the Depot SPC or the Operator (as applicable) the amount of the invoice no later than 28 (twenty eight) days following receipt of such an invoice.

35.6 The Depot SPC confirms that it shall prepare or procure and put into effect a training programme so that the Depot SPC has sufficient suitably qualified and experienced personnel to enable it to discharge its obligations in relation to repair and maintenance under this Agreement and the Leases, as if the same had been granted:

- (a) in relation to any Sectional Completed Facility, from and including the date on which the Operator first uses the relevant Sectional Completed Facility; and
- (b) in relation to the New Depot, from and including the Operator Handover Date.

### **Simulator Suite**

35.7 The Depot SPC shall, in accordance with the Depot Phasing Plans, provide to the Operator as part of the Depot Works a train simulator suite, associated facilities and building services at the location shown on Depot Drawing No. 2011/1527/04, to support the simulator installation described in Schedule 7 of the MSA. These facilities shall include a:

- (a) simulator room;
- (b) simulator rack room;
- (c) training classroom; and
- (d) combined viewing gallery and simulator manager's office (including an instructor's workstation).

## **36. SUBSTITUTION OF PARTIES**

### **Substitution of the Operator or TMM**

36.1 Subject to the provisions of clause 36.4, if the Secretary of State directs that the rights and obligations of the Operator or the relevant rights and obligations of the TMM (in each case, subject to and following a termination of the TSA and/or the MSA or in the case of the Operator, following a Franchise Termination) under this Agreement shall be transferred or novated to a Specified Person on a date specified by the Secretary of State (*Specified Date*) then on and from the Specified Date:

- (a) the Specified Person shall be substituted for the Operator, or in the case of the TMM, substituted in whole or in part for the TMM (as applicable) under this Agreement and any further document to be entered into pursuant to this Agreement as if the Specified Person had originally been party to this Agreement instead of the Operator or the TMM (as applicable) and all references in this Agreement to the Operator, or, in the case of the TMM, the relevant references to the TMM (as applicable) are to be read and construed as if they were references to the Specified Person;
- (b) the Specified Person shall be bound by and must fulfil, comply with and observe all the provisions of this Agreement and any further document to be entered into pursuant to this Agreement, including any obligations and liabilities of the Operator or, in the case of the TMM, the relevant obligations and liabilities of the TMM (as applicable) and shall enjoy all the rights and benefits of the Operator or, in the case of the TMM, the relevant rights and benefits of the TMM or the TMM (as applicable) under this Agreement in accordance with clause 36.5; and
- (c) at any time after the Specified Date each of the parties to this Agreement and the Specified Person shall, at the request and cost of the Secretary of State, execute or procure the execution of such documents and do or procure the doing of such acts and things as the Secretary of State or the Specified Person may reasonably require for the purpose of giving the Secretary of State or Specified Person the full benefit of all the provisions of this Agreement.

#### **Substitution of Secretary of State**

36.2 If the powers and functions of the Secretary of State in relation to this Agreement are transferred to any other person or authority (each such person or authority being the *Secretary of State Successor*) then on and from the date of such transfer or each such transfer (the *Secretary of State Transfer Date*):

- (a) the Secretary of State Successor is substituted for the Secretary of State under this Agreement and any further document to be entered into pursuant to this Agreement as if the Secretary of State Successor had originally been the party to this Agreement instead of the Secretary of State and all references in this Agreement to the Secretary of State are to be read and construed as if they were references to the Secretary of State Successor;
- (b) the Secretary of State Successor shall be bound by and must fulfil, comply with and observe all the provisions of this Agreement and any further document to be entered into pursuant to this Agreement, including without limitation any obligations and liabilities of the Secretary of State which are outstanding at the Secretary of State Transfer Date, and shall enjoy all the rights and benefits of the Secretary of State under this Agreement; and
- (c) at any time after the Secretary of State Transfer Date each of the parties to this Agreement and the Secretary of State Successor shall, at the request and cost of the Secretary of State, execute or procure the execution of such documents and do or procure the doing of such acts and things the Secretary of State or the Secretary of State Successor may reasonably require for the purpose of giving to the Secretary of State or the Secretary of State Successor the full benefit of all the provisions of this Agreement.

### **Substitution of Depot SPC**

36.3 Upon exercise by the Secretary of State of its rights pursuant to clause 26 following a Depot SPC Termination Event or a Cross Termination Event and receipt by the Depot SPC of the relevant Termination Compensation, the rights (including, for the avoidance of doubt, all Intellectual Property Rights to the Depot Works to the extent that the Depot SPC is entitled to transfer the same) and obligations of the Depot SPC under this Agreement and, at the Secretary of State's discretion, the Building Contract, shall be transferred or novated to the Secretary of State or the Secretary of State Nominee on the Termination Date and if the Secretary of State so elects then on and from the Termination Date:

- (a) the Secretary of State or the Secretary of State Nominee (as the case may be) is substituted for the Depot SPC under this Agreement and, if applicable, the Building Contract, and any further document to be entered into pursuant to this Agreement as if the Secretary of State or the Secretary of State Nominee had originally been party to this Agreement instead of the Depot SPC and all references in this Agreement and, if applicable, the Building Contract, and to the Depot SPC are to be read and construed as if they were references to the Secretary of State or the Secretary of State Nominee (as the case may be);
- (b) the Secretary of State or the Secretary of State Nominee (as the case may be) shall be bound by and must, as far as practicable given the circumstances within which the Depot SPC is substituted, fulfil, comply with and observe all the provisions of this Agreement and, if applicable, the Building Contract, and any further document to be entered into pursuant to this Agreement, including without limitation obligations and liabilities of the Depot SPC and shall enjoy all the rights and benefits of the Depot SPC under this Agreement and, if applicable, the Building Contract in accordance with clause 36.5; and
- (c) at any time after the Termination Date each of the parties to this Agreement and the Secretary of State or the Secretary of State Nominee (as the case may be) shall, at the request and cost of the Secretary of State, execute or procure the execution of such documents and do or procure the doing of such acts and things as the Secretary of State may reasonably require for the purpose of giving to the Secretary of State or the Secretary of State Nominee the full benefit of all the provisions of this Agreement and, if applicable, the Building Contract.

### **Pre-Conditions to Depot SPC or Operator Substitution**

36.4 It shall be a pre-condition to the transfer or novation of the rights and obligations of the parties pursuant to clause 36.1 and/or 36.3 (as applicable) that prior to any such transfer and novation occurring:

- (a) in respect of a substitution of the Depot SPC under clause 36.3:
  - (i) Network Rail shall have served on the Secretary of State or the Secretary of State Nominee (as applicable), a notice in a form complying with the requirements of Schedule 1 to the Order in relation to the tenancy created by the Head Lease; and
  - (ii) the Secretary of State or the Secretary of State Nominee (as applicable) shall have made (and shall be obliged to make) a statutory declaration in a form complying with the requirements of Schedule 2 to the Order in response to the notice served under clause 36.4(a)(i) and Network Rail or the Depot SPC

(as applicable) and the Secretary of State or the Secretary of State Nominee (as applicable) shall have excluded (and shall be required to exclude) the provisions of ss.24 to 28 (inclusive) of the 1954 Act in relation to the tenancy to be created by the Head Lease,

- (b) in respect of a substitution of the Operator under clause 36.1:
- (i) the Depot SPC shall have served (and the Secretary of State shall be entitled to require them to serve) on the Specified Person, a notice in a form complying with the requirements of Schedule 1 to the Order in relation to the tenancy created by the Underlease; and
  - (ii) the Specified Person shall have made (and shall be obliged to make) a statutory declaration in a form complying with the requirements of Schedule 2 to the Order in response to the notice served under clause 36.4(b)(i) and the Depot SPC or the Operator (as applicable) and the Specified Person shall have excluded (and shall be required to exclude) the provisions of ss.24 to 28 (inclusive) of the 1954 Act in relation to the tenancy to be created by the Underlease.

### **Conditions to Transfer of Rights and Obligations**

36.5 On any Specified Date pursuant to clause 36.1 or Termination Date pursuant to clause 36.3, the parties hereto agree that:

- (a) the Specified Person, Secretary of State or Secretary of State Nominee (as applicable) shall assume all of the rights, benefits, interests, consents, undertakings, obligations, duties and liabilities of the Operator, TMM or Depot SPC (as applicable) under and as defined in this Agreement and any further document to be entered into pursuant to this Agreement and, if applicable, the Building Contract arising from the Specified Date or Termination Event (as applicable); and
- (b) the parties hereto agree that each party shall have the same rights and remedies against each other as each would have had under this Agreement or in respect of losses, liabilities or claims suffered or incurred by or brought against the Operator, TMM or Depot SPC (as applicable) which have accrued under this Agreement in respect of any period prior to the Specified Date or Termination Date (as applicable) as if the Operator, TMM or Depot SPC (as applicable) remained party to this Agreement.

### **37. CONFIDENTIALITY**

37.1 Other than the Secretary of State, no party shall without the other parties' prior consent in writing, such consent not to be unreasonably withheld, advertise, announce or otherwise publish the fact of the existence of this Agreement or that it is a party to, and is carrying out, this Agreement for the other parties.

37.2 In this Agreement, *Confidential Information* shall mean

- (a) any information or data related to the Project and/or furnished by or on behalf of a party to any other party or parties in relation to the Project, which has, in each case, been designated as confidential in writing by the party disclosing it or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored), including information which relates to the commercial or financial arrangements or

affairs, operations, properties, assets, trading practices, designs, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of the Depot SPC, Network Rail, the Operator, the Secretary of State and the TMM; and

(b) the Commercially Sensitive Information.

37.3 The parties agree that the provisions of this Agreement and each TRSP Contract shall, subject to clause 37.4, not be treated as Confidential Information and may be disclosed without restriction.

37.4 Clause 37.3 shall not apply to provisions of this Agreement or any TRSP Contract that is designated as Commercially Sensitive Information which shall be kept confidential in accordance with clauses 37.1 and 37.5.

37.5 Each of the parties agrees that it shall keep confidential the Confidential Information of each of the other parties supplied to it in connection with this Agreement and save as provided in clause 37.7, a party receiving Confidential Information shall not:

- (a) reveal that Confidential Information to any third party save with the prior written consent of the party who owns the Confidential Information; or
- (b) use any Confidential Information that it receives from another party otherwise than for the performance of the Project or other activities expressly contemplated or permitted by the provisions of the TRSP Contracts.

37.6 Each of the parties agrees that it shall require its employees who have access to the Confidential Information to be subject to appropriate confidentiality undertakings. The disclosing party shall be responsible to the party that owns the Confidential Information for any abuse by the recipient employee of such Confidential Information.

37.7 The restrictions in clause 37.5 shall not apply in respect of the disclosure of an item of Confidential Information referred to above:

- (a) to the ORR, the Bank of England or the Financial Conduct Authority or as required by law or any written requirements of any Government Authority;
- (b) to any member of the group of companies of which the disclosing party is a member or any financier or lawyers, accountants and others providing professional services to the Operator or the Depot SPC or any financier of the Operator or the Depot SPC any permitted subcontractor, in each case;
  - (i) only to the extent that such disclosure is necessary for the performance of the relevant recipient's role in relation to the Project; and
  - (ii) provided that (save with respect to lawyers or accountants) the party disclosing such information has obtained an undertaking of confidentiality from the relevant recipient;
- (c) in connection with obtaining or renewing any insurance required under this Agreement or the Leases;
- (d) which is in the public domain other than as a result of the breach of any obligation of confidentiality;

- (e) which is required in connection with any litigation;
- (f) which is required in connection with an assignment, transfer or other disposition of rights permitted hereunder where prior to any disclosure the proposed assignee or transferee has provided a confidentiality undertaking to the Secretary of State in the form of this clause 37;
- (g) which is required in connection with a sale or other disposition of shares in the Depot SPC, the Operator or any parent company of any party provided always that prior to any disclosure any recipient of such information has provided an undertaking of confidentiality in substantially the same form as set out in this clause 37 to the Secretary of State;
- (h) which was made available to the disclosing party on a non confidential basis; or
- (i) as permitted or required by any Legal Requirement or Standard, the rules of any recognised stock exchange or regulatory body or any written requirements of any taxation authority or as expressly permitted by this Agreement.

37.8 In fulfilling its obligations under this clause 37, each party shall be required to use a proper standard of care, which shall in no event be less than the same degree of care to prevent unauthorised disclosure of the Confidential Information as it would use to prevent the disclosure of its own commercial and financial information of the same or similar nature and which it considers proprietary or confidential.

37.9 If the Depot SPC wishes to obtain a patent, send a technical disclosure bulletin to the Science Reference Library, register a design or trade mark, or obtain other similar protection in respect of the work to be performed under this Agreement, the obligations of confidentiality referred to in this clause 37 shall not prevent the Depot SPC from disclosing the information necessary to obtain such protection.

### **Franchise Bidding Procedure**

37.10 Each of the parties to this Agreement shall, if and to the extent so reasonably requested by the Secretary of State, at his own cost provide the Secretary of State and his representatives and advisers with information extracted from the Related Depot Agreements to which the Operator is party and other information which the parties (as applicable) are required to provide under the Rolling Stock Agreements and which those representatives and advisers reasonably believe that a potential Successor Operator would require in order to tender for the right and obligation to provide or operate all or any services under the then applicable Franchise Agreement, for the purpose of such representatives and advisers preparing any reports or other documents in connection with any invitation to potential Successor Operators to tender for such right and obligation. Each of the parties will permit such information to be included in documents relating to the invitation to tender for the relevant franchise agreement including any pre-qualifying document and any associated information memorandum (whether preliminary or final).

37.11 Any information provided to the Secretary of State and his representatives and advisers pursuant to clause 37.10 may be disclosed by the Secretary of State to persons who have expressed an interest in becoming the relevant franchisee, provided that such persons have provided an undertaking regarding the confidentiality and use of such information for the benefit of the Secretary of State and the party who provided such information to the Secretary of State, in substantially the same form as this clause 37. Such disclosure of any such information by the Secretary of State will be limited to the extent the Secretary of State

considers reasonably necessary for the relevant stage of the tender process and full disclosure of the terms of any Related Depot Agreement, including detailed financial information, will, subject to any legal requirement to which the Secretary of State is or may become subject, only be made available to the successful Successor Operator.

### **Freedom of Information**

37.12 Each of the parties acknowledges that the Secretary of State is subject to the requirements of the FOIA and the Environmental Information Regulations and shall facilitate the Secretary of State's compliance with his Information disclosure requirements pursuant to the same in the manner provided for in clauses 37.13 to 37.18 inclusive.

37.13 Where the Secretary of State receives a Request for Information in relation to Information that any of the Depot SPC, the TMM and the Operator is holding on its behalf the Secretary of State may refer to the applicable Depot SPC, the TMM and the Operator such Request for Information that he receives as soon as practicable and in any event within 5 (five) Working Days of receiving a Request for Information and, if he does so, the applicable of the Depot SPC, the TMM and the Operator shall:

- (a) provide the Secretary of State with a copy of all such Information in the form that the Secretary of State requires as soon as practicable and in any event within 10 (ten) Working Days (or such other period as the Secretary of State acting reasonably may specify) of the Secretary of State's request; and
- (b) provide all necessary assistance as reasonably requested by the Secretary of State in connection with any such Information, to enable the Secretary of State to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.

37.14 Following notification under clause 37.13, and up until such time as the applicable of the Depot SPC, the TMM and the Operator has provided the Secretary of State with all the Information specified in paragraph 37.13(a), the applicable of the Depot SPC, the TMM and the Operator may make representations to the Secretary of State as to whether or not or on what basis Information requested should be disclosed, and whether further information should reasonably be provided in order to identify and locate the information requested, provided always that the Secretary of State shall be responsible for determining at his absolute discretion:

- (a) whether Information is exempt from disclosure under the FOIA and the Environmental Information Regulations; and
- (b) whether Information is to be disclosed in response to a Request for Information,

and in no event shall the Depot SPC, the TMM and the Operator respond directly, or allow its contractors to respond directly, to a Request for Information unless expressly authorised to do so by the Secretary of State.

37.15 Each of the Depot SPC, the TMM and the Operator shall ensure that all Information held on behalf of the Secretary of State is retained for disclosure for at least 15 (fifteen) years (from the date it is acquired) and shall permit the Secretary of State to inspect such Information as requested from time to time.



37.16 Each of the Depot SPC, the TMM and the Operator shall transfer to the Secretary of State any Request for Information received by it as soon as practicable and in any event within 2 (two) Working Days of receiving it.

37.17 Each of the Depot SPC, the TMM and the Operator acknowledges that any lists provided by him listing or outlining Confidential Information, are of indicative value only and that the Secretary of State may nevertheless be obliged to disclose Confidential Information in accordance with the requirements of the FOIA and the Environmental Information Regulations.

37.18 Each of the Depot SPC, the TMM and the Operator acknowledges that (notwithstanding the provisions of this clause 37) the Secretary of State may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part I of the Freedom of Information Act 2000 (the *Code*), be obliged under the FOIA, or the Environmental Information Regulations to disclose Confidential Information concerning the Depot SPC, the TMM and the Operator or the Project:

- (a) in certain circumstances without consulting with the Depot SPC; or
- (b) following consultation with the Depot SPC and having taken their views into account,

provided always that where clause 37.18(a) applies the Secretary of State shall, in accordance with the recommendations of the Code, draw this to the attention of the Depot SPC, the TMM and the Operator as applicable prior to any disclosure.

37.19 The provisions of this clause 37 are without prejudice to the application of the Official Secrets Act 1911 to 1989 to any Confidential Information.

37.20 The obligations of the parties under this clause 37 shall survive the expiry or the termination of this Agreement for whatever reason.

### **38. EXCLUSION OF SECTIONS 24 TO 28 OF THE 1954 ACT**

#### **Contracting out procedure – Head Lease**

38.1 The Depot SPC confirms that before it entered into this Agreement:

- (a) Network Rail served on the Depot SPC the Head Lease Notice; and
- (b) the Depot SPC, or a person duly authorised by the Depot SPC, made the Head Lease Declaration; and
- (c) where the Head Lease Declaration was made by a person other than the Depot SPC, the declaring was duly authorised by the Depot SPC to make the Head Lease Declaration on the Depot SPC's behalf.

#### **Contracting out agreement – Head Lease**

38.2 Network Rail and the Depot SPC agree to exclude the provisions of ss.24 to 28 (inclusive) of the 1954 Act in relation to the tenancy created by the Head Lease.

### **Contracting out procedure – Underlease**

- 38.3 The Operator confirms that before it entered into this Agreement:
- (a) The Depot SPC served on the Operator the Underlease Notice; and
  - (b) the Operator, or a person duly authorised by the Operator, made the Underlease Declaration; and
  - (c) where the Underlease Declaration was made by a person other than the Operator, the declarant was duly authorised by the Operator to make the Underlease Declaration on the Operator's behalf.

### **Contracting out agreement – Underlease**

38.4 The Depot SPC and the Operator agree to exclude the provisions of ss.24 to 28 (inclusive) of the 1954 Act in relation to the tenancy created by the Underlease.

## **39. DEALINGS WITH THIS AGREEMENT**

39.1 Save as otherwise expressly contemplated by this Agreement (including by clause 36) or required by the Deed of Undertaking or the Network Rail Direct Agreement, none of the parties to this Agreement shall be entitled to assign, transfer, charge or mortgage its rights under this Agreement.

39.2 Save as required by the Deed of Undertaking, the Depot SPC shall not be required to grant the Underlease to any person other than the Operator or any person nominated by the Secretary of State under the Deed of Undertaking.

40. [●]<sup>157</sup>

## **41. DISPUTES**

The provisions of Schedule 15 shall apply.

## **42. MISCELLANEOUS**

### **Severability**

42.1 If any provision of this Agreement shall be held to be illegal, invalid, void or unenforceable under laws of any jurisdiction, the legality, validity and enforceability of the remainder of this Agreement in that jurisdiction shall not be affected, and the legality, validity and enforceability of the whole of this Agreement shall not be affected in any other jurisdiction.

### **Governing Law and Jurisdiction**

42.2 This Agreement and any non-contractual obligations arising out of or in relation to this Agreement are governed by English law.

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<sup>157</sup> Redaction.

42.3 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 claims for set-off and counterclaims), including disputes arising out of or in connection with:

- (a) the creation, validity, effect, interpretation, performance or non-performance of, or the 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.

#### **The Contracts (Rights of Third Parties) Act 1999**

42.4 For the purposes of the Contracts (Rights of Third Parties) Act 1999 nothing in this Agreement confers or purports to confer on a third party who is not a party to this Agreement any benefits or rights to enforce a term of this Agreement.

#### **The Landlord and Tenant (Covenants) Act 1995**

42.5 For the purposes of s.3 Landlord and Tenant (Covenants) Act 1995, the obligations of Network Rail, the Depot SPC, the Operator and the TMM in this Agreement, other than the obligation to grant the relevant Lease, are personal to such parties.

#### **VAT**

42.6 All payments made or to be made under this Agreement are deemed to be exclusive of any Value Added Tax chargeable thereon or by reference thereto. If any such payment constitutes the whole or part of the consideration for a taxable or deemed taxable supply (whether that supply is taxable pursuant to the exercise of an option or otherwise), the party making the supply shall provide the party which receives it with an appropriate Value Added Tax invoice in respect thereof, and an amount shall be paid on demand by the party which receives the supply to the party making such supply in addition to that payment which is equal to the amount of Value Added Tax which is chargeable in respect of the taxable or deemed taxable supply in question.

42.7 Where under this Agreement one party has agreed to reimburse or indemnify another party in respect of any payment made or cost incurred by the other then the first party shall also reimburse the VAT paid by such other party which forms part of its payments made or cost incurred to the extent that such VAT is not available for credit (whether by way of set-off or repayment) by such other party under sections 24 to 26 (inclusive) of the Value Added Tax Act 1994 or any regulations made thereunder or any similar or equivalent legislation replacing or introduced in addition to the same.

#### **43. REPRESENTATIVES**

Each party shall appoint a representative whose identity and contact details shall be communicated in writing to the other parties to act as the first point of contact in respect of all matters relating to the design and carrying out of the Depot Works.

## **44. NOTICES**

### **Giving of Notices**

44.1 Any notice to be given under this Agreement shall be in writing and shall be duly given if signed by or on behalf of a person duly authorised to do so by the party giving such notice and delivered by hand at or by sending it by first class post to the relevant address specified in Schedule 8 and where an email address is specified in Schedule 8 by sending to the specified email address.

### **Right to amend communication details**

44.2 Any party shall be entitled to amend in any respect the communication particulars which relate to it and which are set out in Schedule 8. Any such amendment shall be made only by notice given to the other parties in accordance with this clause 44.

### **Deemed receipt**

44.3 Notices, objections or communications given under this Agreement shall be deemed to have been received as follows:

- (a) if sent by hand or by recorded delivery, at the time of delivery. For the purpose of this clause 44 delivery by hand shall include delivery by a reputable firm of couriers;
- (b) if sent by prepaid first class post, from and to any place within the United Kingdom, 3 (three) Working 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).

### **Copies**

44.4 If in Schedule 8 there is specified any person to whom copies of notices shall also be sent the party serving a notice in the manner required by this clause 44 shall send a copy of the notice in question to such person at the address for serving copies as specified in Schedule 8 or to such other person or address as may from time to time have been notified by the party to be notified to the notifying party in accordance with this clause 44. Such copy notice shall be sent contemporaneously with the original notice.

## **45. NO PARTNERSHIP**

Nothing in this Agreement shall create a partnership, association or joint venture or establish a relationship of principal and agent.

## **46. WAIVERS**

### **General**

46.1 No waiver by any party of any default or defaults by another in the observance or performance of any of the provisions of this Agreement shall operate or be construed as a waiver of any other or further default or defaults whether of a like or different character. Any waiver by any party of any right, condition or obligation in this Agreement must be in writing and a copy of such waiver shall be provided to all parties.

### **Failure to exercise rights**

46.2 No failure or delay by any party in exercising any right, power or privilege under this Agreement shall operate as a waiver thereof nor shall any single or partial exercise by that party of any right, power or privilege preclude any further exercise thereof or the exercise of any other right, power or privilege.

### **Consents and approvals**

46.3 No involvement by the Secretary of State in approving or failing to approve any plans or specifications, or in connection with any permissions, approvals or consents (or applications therefore), or in considering (or failing to consider) whether or not to grant any approvals or consents, in any way relieves or affects the duties of the Depot SPC or any Contractor under this Agreement, the Building Contract or otherwise save where expressly stated herein, and provided that the Secretary of State has acted reasonably and without delay in each case where he is required in this Agreement to do so.

### **47. COUNTERPARTS**

This Agreement may be executed in any number of counterparts, and by each party on separate counterparts. Each counterpart is an original, but all counterparts shall together constitute one and the same instrument.

### **48. NON-MERGER**

Following completion of the Leases, any outstanding obligation of the parties under this Agreement shall continue in full force and effect.

### **49. FULL NEGOTIATION**

The parties acknowledge and agree that the provisions of this Agreement have been the subject of arms length discussion and negotiation and are fair and reasonable having regard to the circumstances as at the date of this Agreement and the intended commercial relationships between the parties.

### **50. ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement between the parties relating to the subject matter of this Agreement and supersedes and extinguishes any prior drafts, undertakings, representations, warranties and arrangements of any nature whether in writing or oral relating to such subject matter.

### **51. NO REPRESENTATIONS**

Each party acknowledges that it has not been induced to enter into this Agreement by any representation, warranty or undertaking not expressly incorporated into it.

### **52. RIGHTS AND REMEDIES**

Subject to the limitations of liability set out in this Agreement and except in the case of fraud, no party shall have any right of action (whether in contract, tort or howsoever arising) against any other party arising out of or in connection with any representation, warranty, promise or arrangement of any nature whatsoever, whether or not in writing, relating to the subject matter of this Agreement made or given by any person at any time prior to the date of this

Agreement except to the extent that it is repeated in this Agreement. For the avoidance of doubt, except as expressly set out in the terms of this Agreement, no party shall be entitled to rescind or terminate this Agreement in any circumstances whatsoever. This shall not exclude any liability for (or remedy in respect of) fraud or fraudulent misrepresentation.

**53. PRECEDENCE OF REQUIREMENTS**

53.1 In the event of any conflict between any of the requirements referred to in this Agreement compliance with such requirements shall be in the following order of precedence:

- (a) Legal Requirements;
- (b) (in relation to Network Rail's obligations only) Network Rail's duties under its Network Licence and/or Network Rail's Safety Case;
- (c) Necessary Consents; and
- (d) other provisions of this Agreement.

53.2 The Depot SPC, the Operator, the TMM and the Secretary of State shall immediately notify Network Rail if it becomes aware of any conflict between any of the above and shall provide Network Rail with its proposals for overcoming such conflict as soon as reasonably practicable.

**54. EXECUTION**

This Agreement has been executed as a deed and is delivered on the date of this Agreement.

EXECUTED AS A DEED BY  
AFFIXING THE COMMON SEAL  
of NETWORK RAIL  
INFRASTRUCTURE  
LIMITED



SEAL NO. 33076

[●]<sup>159</sup>

in the presence of :-

[●]<sup>158</sup>

Signed by [●]<sup>160</sup> and  
by [●]<sup>161</sup> and thereby  
executed by FIRST CAPITAL  
CONNECT LIMITED as its deed  
(in its capacity as Operator)



DIRECTOR.....[●]<sup>162</sup>.....

.....[●]<sup>164</sup>.....

DIRECTOR/SECRETARY

.....[●]<sup>163</sup>.....

.....[●]<sup>165</sup>.....

**EXECUTED and DELIVERED as**

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<sup>158</sup> Redaction.

<sup>159</sup> Redaction.

<sup>160</sup> Redaction.

<sup>161</sup> Redaction.

<sup>162</sup> Redaction.

<sup>163</sup> Redaction.

<sup>164</sup> Redaction.

<sup>165</sup> Redaction.

**a deed** for and on behalf of **SIEMENS PLC** in its role as **Depot SPC** acting by its duly authorised attorneys:



ATTORNEY:

[●]<sup>174</sup>

.....[●]<sup>166</sup>.....

In the presence of:

Witness' Signature: [●]<sup>167</sup>

Witness' Name: [●]<sup>168</sup>

Witness' Address: [●]<sup>169</sup>

ATTORNEY:

[●]<sup>175</sup>

.....[●]<sup>170</sup>.....

In the presence of:

Witness' Signature: [●]<sup>171</sup>

Witness' Name: [●]<sup>172</sup>

Witness' Address: [●]<sup>173</sup>

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<sup>166</sup> Redaction.

<sup>167</sup> Redaction.

<sup>168</sup> Redaction.

<sup>169</sup> Redaction.

<sup>170</sup> Redaction.

<sup>171</sup> Redaction.

<sup>172</sup> Redaction.

<sup>173</sup> Redaction.

<sup>174</sup> Redaction.

<sup>175</sup> Redaction.



**EXECUTED and DELIVERED as a deed** for and on behalf of **SIEMENS PLC** in its role at the **TMM** acting by its duly authorised attorneys:



[●]<sup>184</sup>

ATTORNEY:

.....[●]<sup>176</sup>.....

In the presence of:

Witness' Signature: [●]<sup>177</sup>

Witness' Name: [●]<sup>178</sup>

Witness' Address: [●]<sup>179</sup>

ATTORNEY:

[●]<sup>185</sup>

.....[●]<sup>180</sup>.....

In the presence of:

Witness' Signature: [●]<sup>181</sup>

Witness' Name: [●]<sup>182</sup>

Witness' Address: [●]<sup>183</sup>

**THE CORPORATE SEAL OF THE SECRETARY OF STATE FOR TRANSPORT IS HEREUNTO AFFIXED**



SEAL REF No. 7631

.....[●]<sup>186</sup>.....  
Authenticated by authority of the  
Secretary of State for Transport

<sup>176</sup> Redaction.

<sup>177</sup> Redaction.

<sup>178</sup> Redaction.

<sup>179</sup> Redaction.

<sup>180</sup> Redaction.

<sup>181</sup> Redaction.

<sup>182</sup> Redaction.

<sup>183</sup> Redaction.

<sup>184</sup> Redaction.

<sup>185</sup> Redaction.

<sup>186</sup> Redaction.

**SCHEDULE 1**

[●]<sup>187</sup>

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<sup>187</sup> Redaction.

**SCHEDULE 2**

**CONDITIONS PRECEDENT**

**Schedule 2.1**                      **Depot SPC's conditions**

**Schedule 2.2:**                      **Secretary of State's, Network Rail's and Operator's conditions**

## SCHEDULE 2.1

### Depot SPC's conditions

1. On or before the date of this Agreement receipt by the Depot SPC:
  - (a) of copies certified by an officer of the Operator to be true, complete and up-to-date copies, of the Memorandum and Articles of Association of the Operator;
  - (b) of copies certified by an officer of the Operator to be true copies, and as being in full force and effect and not amended or rescinded, of resolutions of the board of directors of the Operator in form and substance satisfactory to the Depot SPC acting reasonably:
    - (i) resolving that it enters into this Agreement, the Deed of Undertaking and the Payment Deed and approving the terms of, and the transactions contemplated by, this Agreement, the Deed of Undertaking and the Payment Deed; and
    - (ii) authorising a specified person or persons to sign and deliver on behalf of the Operator this Agreement, the Deed of Undertaking and the Payment Deed.
2. [●]<sup>188</sup>

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<sup>188</sup> Redaction.

**SCHEDULE 2.2****Secretary of State's, Network Rail's and Operator's conditions**

1. On or before the date of this Agreement, receipt by each of the Secretary of State, Network Rail and the Operator of the following:
  - (a) copies, certified by an officer of the Depot SPC to be true, complete and up-to-date copies, of the Memorandum and Articles of Association of the Depot SPC;
  - (b) copies, certified by an officer of the Depot SPC to be true copies, and as being in full force and effect and not amended or rescinded, of resolutions of the board of directors of the Depot SPC in form and substance satisfactory to the relevant parties acting reasonably:
    - (i) resolving that it enters into this Agreement, the Payment Deed and the Deed of Undertaking and approving the terms of, and the transactions contemplated by, this Agreement, the Payment Deed and the Deed of Undertaking; and
    - (ii) authorising a specified person or persons to sign and deliver on behalf of the Depot SPC this Agreement, the Payment Deed and the Deed of Undertaking;
  - (c) the latest Financial Statements of the Depot SPC; and
  - (d) the provision by or on behalf of the Depot SPC's solicitors of a certificate of title in the Agreed Form in respect of the New Depot Land addressed to the Depot SPC, the Operator and the Secretary of State.
2. On or before the date of this Agreement:
  - (a) receipt by Network Rail of the Head Lease Declaration and certified copies of each of the Underlease Notice and the Underlease Declaration;
  - (b) receipt by the Depot SPC of the Head Lease Notice and the Underlease Declaration; and
  - (c) receipt by the Operator of the Underlease Notice.
3. On or before the date of this Agreement, receipt by the Secretary of State, the Operator and Network Rail of a copy of the Depot Design in Principle which complies with the Depot SPC's Proposals, the Depot Drawings and the Form A Designs of the Interface Works.

**SCHEDULE 3**  
**REPRESENTATIONS AND WARRANTIES**

**Schedule 3.1:                   Representations and Warranties**

## SCHEDULE 3.1

### Representations and Warranties

1. The Depot SPC is a company duly organised and validly existing under the laws of England and Wales as a limited liability company and has the power to:
  - (a) carry on its business as it is now being conducted; and
  - (b) enter into and perform its obligations under this Agreement and the Deed of Undertaking.
2. All necessary corporate, shareholder and other action has been taken to authorise the entry into, performance and delivery of this Agreement and the Deed of Undertaking.
3. The Depot SPC has obtained all licences, consents, approvals, permits, authorisations, exemptions and certifications required for it to enter into this Agreement and the Deed of Undertaking and has no reason to believe that it will not obtain the same in connection with the performance of its obligations under this Agreement and the Deed of Undertaking.
4. Entering into this Agreement and the Deed of Undertaking and performing its obligations under this Agreement and the Deed of Undertaking will not:
  - (a) conflict with the Depot SPC's Memorandum and Articles of Association; or
  - (b) conflict with, or result in a breach of, any existing contract or in the creation of any Security Interest over the Depot SPC or any of its property;
5. The Depot SPC is a subsidiary (within in the meaning of s1159 of the Companies Act 2006) of Siemens AG (Company Registered Number HRB6684 and HRB12300) whose registered office is at W. Helsbacher Platz 2, Munich, Germany D-803333;
6. Except as disclosed on or before the date of this Agreement, no legal proceedings are pending or, to the Depot SPC's knowledge, threatened against it which if decided against the Depot SPC would have a material adverse effect upon the Depot SPC's financial condition or business or its ability to perform its obligations under this Agreement or the Deed of Undertaking.
7. The Financial Statements of the Depot SPC supplied pursuant to paragraph 1(c) of Schedule 2.2 are the latest Financial Statements and have been prepared in accordance with International Financial Reporting Standards published by the International Accounting Standards Board from time to time and give a true and fair view of the state of affairs of the Depot SPC as at the date to which they were drawn up.
8. There has been no change in the financial position of the Depot SPC since the date to which the Financial Statements referred to in paragraph 7 were drawn up which would have a material adverse effect upon the Depot SPC's ability to perform its obligations under this Agreement or the Deed of Undertaking or on its financial condition.
9. The Depot SPC does not know of any information in existence at the date of this Agreement which would cause any of the other parties not to enter into this Agreement or the Deed of Undertaking if the other parties were aware of such information.

10. [●]<sup>189</sup>.

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<sup>189</sup> Redaction.



## SCHEDULE 4

**Schedule 4.1:** [●]<sup>190</sup>

**Schedule 4.2:** [●]<sup>191</sup>

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<sup>190</sup> Redaction.

<sup>191</sup> Redaction.

**SCHEDULE 5**  
**CONDITIONS OF ENTRY**

**Schedule 5.1: Contractor Conditions of Entry**

**Schedule 5.2: General Conditions of Entry**

## SCHEDULE 5.1

### Contractor Conditions of Entry

1. The Depot SPC shall obtain Network Rail's and the Operator's approval in writing of the date on which any Contractor wishes to enter the Working Area or Adjoining Property (such approval not to be unreasonably withheld and/or delayed).
2. The Depot SPC shall obtain Network Rail's and the Operator's approval in writing to a full method statement and programme of works detailing any works proposed which are to take place prior to commencement of the Depot Works prior to any Contractor being permitted access to the Working Area or Adjoining Property (such approval not to be unreasonably withheld and/or delayed).
3. The Depot SPC shall procure that any Contractor which requires access to the Working Area or Adjoining Property prior to the date of this Agreement shall not do any act, matter or thing which would constitute a breach of any Legal Requirement or Direction of any Competent Authority.
4. The Depot SPC shall reimburse Network Rail and the Operator on demand for all reasonable and evidenced costs properly incurred by Network Rail and the Operator in connection with:
  - (a) keeping the Adjoining Property washed down and cleaned in connection with the Contractor's access across the Adjoining Property; and
  - (b) the facilitation by Network Rail and the Operator and/or the exercise by the Contractor of the access and any reinstatement work required in connection with the Contractor's access to the Working Area or Adjoining Property.
5. The Depot SPC shall procure that the relevant Contractor:
  - (a) carries out any permitted works on the Working Area in a good and workmanlike manner causing as little damage and disruption as reasonably practicable; and
  - (b) shall as soon as reasonably practicable make good or procure to be made good to the reasonable satisfaction of Network Rail and the Operator all (if any) damage caused to the Working Area by it.
6. The Depot SPC shall procure that no Contractor shall at any time obstruct or interfere with Network Rail and the Operator and their employees, servants or agents or their operational use and ownership of the Existing Depot save as reasonably necessary to exercise the rights of access to the Working Area or Adjoining Property *provided that* in no circumstance shall the Contractor obstruct all or any part of the Adjoining Property so as materially to affect the Existing Depot Functionality.
7. The Depot SPC shall procure that any relevant Contractor shall:
  - (a) use reasonable endeavours not to exercise the rights of access to the Working Area or Adjoining Property in such a way as to cause any material nuisance, damage, disturbance, annoyance, inconvenience or interference to Network Rail, the Operator or its operations at the Existing Depot or any other adjoining owners or occupiers; and

- (b) exercise the rights of access to the Working Area or Adjoining Property in a reasonable and orderly manner; and
- (c) observe all reasonable traffic management regulations and requirements which Network Rail and the Operator may from time to time notify to the Contractor in relation to the use of the Adjoining Property.

8. The Depot SPC shall procure that any relevant Contractor shall take proper and sufficient precautions before and during the exercise of the rights of access to the Working Area or Adjoining Property so as not at any time to render unsafe the structure of the Existing Depot or any Adjoining Property nor infringe, breach, interrupt or destroy any rights, easements, privileges or services enjoyed by or over the Existing Depot or any neighbouring or adjoining premises.

9. The Depot SPC shall notify Network Rail and the Operator of the completion of all works (if any) carried out prior to the date of this Agreement as soon as reasonably practicable following such completion.

10. The Depot SPC shall supply Network Rail and the Operator with a complete copy of any reports relating to the Depot and prepared by or on behalf of the Depot SPC or pursuant to the exercise of the rights of access to the Working Area or Adjoining Property as soon as reasonably practicable upon issue of the same. The Depot SPC shall treat any such report as Confidential Information.

11. The rights of access granted to any Contractor to the Working Area or Adjoining Property may be determined in respect of any such Contractor immediately on notice given by Network Rail or the Operator at any time following any material breach by the Contractor of the terms set out in this Schedule 5.1.

12. The Depot SPC shall procure that any Contractor granted access to the Working Area or Adjoining Property shall comply with the Network Rail Requirements and any other conditions reasonably imposed by Network Rail which it considers necessary to prevent, address, alleviate, comply (as applicable) with a Network Rail Issue in relation to such access.

13. The Depot SPC shall procure that the relevant Contractor carrying out any such works shall take such security measures as Network Rail and the Operator each considers reasonably necessary to prevent such protective or enabling works or plant, equipment or materials relating thereto being used to vandalise the Railway and/or the Existing Depot.

14. The Depot SPC shall procure that any Contractor granted access to the Adjoining Property:

- (a) shall not park any vehicle on the Adjoining Property; and
- (b) shall ensure that any vehicles using the Adjoining Property are washed down and cleaned so that they do not deposit any mud or debris on the Adjoining Property.

15. The Depot SPC shall procure that the relevant Contractor seeking to store plant, equipment and materials shall obtain Network Rail's and the Operator's prior written approval to the nature and quantity of plant, equipment and materials stored (such consent not to be unreasonably withheld or delayed).

16. The storage of such plant, equipment and materials shall be at the sole risk of the relevant Contractor and neither Network Rail nor the Operator shall have any liability to such

Contractor whether under this Agreement, in tort or howsoever arising in respect of any damage, theft or vandalism of such stored plant, equipment and materials or the protection of enabling works.

17. The Depot SPC shall procure that the Contractor shall comply with any local site access conditions and safety procedures and with any arrangements to mitigate the impact of such preparatory works on the Existing Depot.

18. The Depot SPC shall procure that the Contractor maintains adequate insurance in respect of any liability of Network Rail, the Operator or any third party arising out of the grant of access and shall provide to Network Rail and the Operator on demand a copy of the policy of insurance and evidence of payment of the premium.

## SCHEDULE 5.2

### General Conditions of Entry

1. Any party, or its appointed representative, which requires access to the Working Area or Depot Works shall not do any act, matter or thing which would constitute a breach of any Legal Requirement or Direction of any Competent Authority.
2. Any party, or its appointed representative, which requires access to the Working Area or Depot Works shall not at any time obstruct or interfere with Network Rail and the Operator and their employees servants or agents or their operational use and ownership of the Existing Depot save as reasonably necessary to exercise the rights of access to the Working Area or Depot Works.
3. Any party, or its appointed representative, which requires access to the Working Area or Depot Works shall:
  - (a) use reasonable endeavours not to exercise the rights of access to the Working Area or Depot Works in such a way as to cause any material nuisance, damage, disturbance, annoyance, inconvenience or interference to Network Rail, the Operator or its operations at the Existing Depot or any other adjoining owners or occupiers; and
  - (b) exercise the rights of access to the Working Area or Depot Works in a reasonable and orderly manner.
4. Any party, or its appointed representative, which requires access to the Working Area or Depot Works shall take proper and sufficient precautions before and during the exercise of the rights of access to the Working Area or Depot Works so as not at any time to render unsafe the structure of the Existing Depot or any Adjoining Property nor infringe interrupt or destroy any rights, easements, privileges or services enjoyed by or over the Existing Depot or any neighbouring or adjoining premises.
5. The rights of access granted to any party, or its appointed representative, to the Working Area or Depot Works may be determined in respect of any such party or appointed representative immediately on notice given by Network Rail or the Operator at any time following any material breach by such party of the terms set out in this Schedule 5.2.
6. Any party, or its appointed representative, granted access to the Working Area or Depot Works shall comply with the Network Rail Requirements and any other conditions reasonably imposed by Network Rail which it considers necessary to prevent, address, alleviate, comply (as applicable) with a Network Rail Issue in relation to such access.
7. Any party shall obtain all necessary, permits consents and licences that may be necessary for rights of access and shall observe their terms of access.
8. Any party shall take such security measures applicable to on-site visitors as Network Rail and the Operator consider reasonably necessary and comply with any existing or future security measures reasonably put in place by Network Rail and the Operator from time to time for the benefit of the Working Area or Adjoining Property.

## **SCHEDULE 6**

### **NETWORK RAIL SERVICES AND PAYMENT SCHEDULE**

**Schedule 6.1:**                    **Network Rail Costs**

**Schedule 6.2:**                    [●]<sup>192</sup>

**Schedule 6.3**                    **Chargeable Services to be Provided by Network Rail**

**Schedule 6.4**                    [●]<sup>193</sup>

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<sup>192</sup> Redaction.

<sup>193</sup> Redaction.

## **SCHEDULE 6.1**

### **Network Rail Costs**

As from time to time requested by the Depot SPC (having regard to Network Rail's confidentiality and contractual obligations), Network Rail shall provide to the Depot SPC reasonable access to and evidence and records of its Network Rail Costs, Expenses and Disbursements (as defined in this Schedule), which may be reviewed and audited by or on behalf of the Depot SPC.

All other costs and expenses referred to in this **Schedule 6.1** shall not be subject to review or audit by the Depot SPC or any other party and Network Rail shall not be obliged to provide evidence of or records or access to records in respect of such amounts.



## SCHEDULE 6.2

[●]<sup>194</sup>

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<sup>194</sup> Redaction

**APPENDIX TO SCHEDULE 6.2**

[●]<sup>195</sup>

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<sup>195</sup> Redaction

## SCHEDULE 6.3

### Chargeable Services to be provided by Network Rail

#### 1. DEFINITIONS

The following terms shall have the following meanings when used in this schedule:

**Programme** means any or all of the following:

- (a) the Works Programme; or
- (b) the Depot Phasing Plan; or
- (c) the Information Production Programme; or
- (d) the Network Possessions Programme;

**GRIP** means Network Rail's Governance for Railway Investment Projects;

#### 2. CHARGEABLE SERVICES TO BE PROVIDED BY NETWORK RAIL

Network Rail shall perform the following services in respect of which the Depot SPC shall be liable to pay Network Rail Costs in accordance with Schedule 6.2:

- (a) appoint a Network Rail project manager to manage the interface between the Depot SPC and Network Rail, facilitate compliance with GRIP and all Network Rail approvals required under this Agreement and to advise on the Network Rail project team and points of contact;
- (b) appoint a Network Rail project sponsor and staff to support and provide guidance to the New Depot during the stages of the Depot Works to facilitate compliance with Network Rail investment authority guidelines and corporate governance;
- (c) appoint the Agreed Resources as may be amended from time to time in accordance with this Schedule;
- (d) advise and provide guidance on the development and agreement of functional specification(s);
- (e) advise and provide guidance on any deviations from Network Rail Standards (where they exist) and/or derogations proposed in association with those elements of the Depot Works for which the approval of Network Rail is required pursuant to this Agreement;
- (f) provide input into risk identification and mitigation in connection with the Depot Works and liaise on safety matters;
- (g) provide input into option generation and value management studies in connection with the Depot Works;

- (h) advise and provide guidance on interface/integration with other schemes known to Network Rail that do not form part of the Depot Works but may impact on the Depot Works;
- (i) co-operate, under the resourcing provisions of this Schedule, with the Depot SPC in relation to the carrying out of the Depot Works to the extent the same may be impacted by other projects being undertaken by Network Rail on nearby property, the Network or other works carried out by Network Rail pursuant to the terms of this Agreement;
- (j) appropriate design approval and or comments whether it be in accordance with Schedules 9, 10 and 11 or any other provisions of this Agreement as the context requires in line with the Works Programme and the Information Production Programme;
- (k) provide resource necessary to support the Depot SPC in the production and submission of the Safety Case to be produced in accordance with the provisions of Schedule 9, that incorporates the operation of the Depot, including engineering and technical approvals' expertise, attendance at meetings and presentation to Network Rail Panels;
- (l) provide safety support, review and acceptance of method statements and other assurance documentation and the agreement to any required safety strategy;
- (m) manage internal Network Rail procedures to consider the applications for the Network Rail Consents and/or any third party consents;
- (n) provide appropriate support resources in connection with the Depot Works as may be specifically requested by the Depot SPC provided that the parties agree to appropriate timescales for procuring such resources;
- (o) provide advice and guidance in relation to drawings, plans and other documentation in connection with the Depot Works;
- (p) review and advise on constructability and Possession strategies, as appropriate, and provide Network Rail staff to support the project for Possession planning and Possession;
- (q) assist with stakeholder consultation (as may be appropriate);
- (r) procure that the relevant Agreed Resources attend all relevant meetings and site visits;
- (s) provide advice on any pre-existing Booked Network Possessions available which could be used for the purposes of undertaking the Depot Works;
- (t) provide advice and support to the Depot SPC regarding any requirement that may arise for it to become Infrastructure Manager under the ROGS for the period during construction up to the Operator Handover Date (or the Lease Completion Date);
- (u) provide assistance and support to the Depot SPC with all applications for permissions and approvals (including any New Planning Permission, or amendments to the Planning Permission) as may be necessary for the Depot Works including but not limited to:

- (i) submitting if necessary, in the name of Network Rail and managing under the direction of the Depot SPC any applications as may be requested by the Depot SPC for:
  - (A) any approval pursuant to Part 11 of the General Permitted Development Order 1995; or
  - (B) any New Planning Permission or any amendment to the Planning Permission;
- (ii) negotiation, approval and execution of any Planning Agreements;
- (v) arrange and provide third party asset management to superintend works as deemed necessary by Network Rail, including railway possessions in line with the agreed Works Programme;
- (w) grant Network Possessions, Closures, traction power isolation and HV feeder outages and isolations in accordance with the Possession Programme and this Agreement;
- (x) undertake revisions to Network Rail documentation as a result of this scheme, to include but not limited to, electrical control room instructions, CTDs including patches, signalling room instructions, record drawings, sectional appendix and hazard directory;
- (y) provide access to records, drawings, data and information relating to existing infrastructure, as appropriate, including provision of available plans, risk registers, hazard directory information, buried services information, contamination reports, archive information, as-built information, health and safety files, surveys and environmental impact information;
- (z) issue energisation / de-energisation notices;
- (aa) publish notices in WON/SPON; and
- (bb) provide resource and support necessary to facilitate the Depot SPC's Introducing into Operational Use of the Depot or of any completed Depot Phase.

**SCHEDULE 6.4**

[●]<sup>196</sup>

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<sup>196</sup> Redaction.

**SCHEDULE 7**  
**COMMERCIAL CONDITIONS**

**Schedule 7.1: Commercial Conditions**

## SCHEDULE 7.1

### Commercial Conditions

1. For the purposes of this Agreement the Commercial Conditions are varied as follows:
  - (a) Commercial Conditions 1.1.3, 1.2, 1.3, 1.4, 1.5, 2, 3.1.4, 3.2, 3.3, 4, 5, 6.1, 6.2, 6.3, 6.4, 6.5, 6.6.4, 6.6.5, 7, 8.1, 8.3.6, 8.3.7, 8.3.8, 8.4, 8.5, 8.6, 8.7, 8.8, 9, 10, 11 and 12 shall not apply.
  - (b) In Commercial Condition 6.6.2, the following words shall be added after 'full title guarantee':
    - (i) 'save that the covenants for title implied by the Law of Property (Miscellaneous Provisions) Act 1994 (the 'Act') shall be varied so that -
      - (A) in section 2(1)(b) the words 'at his own cost' shall be deleted and the words 'at the cost of the person to whom he disposes of the property' shall be added at the end of that section;
      - (B) in section 6(1) the word 'particular' shall be deleted and the words 'or the contract for the disposition' shall be added after the words '...to which the disposition...';
      - (C) the words 'who shall be deemed to have actual knowledge of all entries made in any public register' shall be added at the end of section 6(2);
      - (D) section 4(1)(b) of the Act shall not apply to any condition or obligation on the part of the tenant contained in the registered lease or imposed by common law or otherwise relating to the repair and/or condition of the property; and
      - (E) the covenants implied on the part of the seller by sections 2, 3, 4 and 5 of the Act shall be limited so that they shall not be annexed and incident to the property pursuant to section 7 of the Act.'
  - (c) In Commercial Condition 8.3.1, the words 'subject to condition 8.3.6' shall be deleted.
  - (d) In Commercial Condition 8.3.2, all words after '(apportionment day)' is' shall be deleted and the following substituted: 'the date of actual completion'.
2. Part 2 of the Commercial Conditions are not incorporated into this Agreement.



**SCHEDULE 8**  
**NOTICE DETAILS**

**Schedule 8.1: Notice Details**

## SCHEDULE 8.1

### Notice Details

1. The address for service of notices for Network Rail is at its registered office for the time being, which at the date of this Agreement is:

Network Rail Infrastructure Limited  
Kings Place, 90 York Way, London, N1 9AG

Tel: [●]<sup>197</sup>

Email: [●]<sup>198</sup>

All written notices to be marked:

URGENT: [●]<sup>199</sup>

with a copy sent to Network Rail's representative – [●]<sup>200</sup>

2. The address for service of notices for the Depot SPC is:

Faraday House, Sir William Siemens Square, Frimley, Camberley, Surrey GU16 8QD

Tel: [●]<sup>201</sup>

All written notices to be marked:

Attention: [●]<sup>202</sup>

3. The address for service of notices for the Operator is:

First Capital Connect, Hertford House, 1 Cranwood Street, London EC1V 9QS

Tel: [●]<sup>203</sup>

All written notices to be marked:

Attention: [●]<sup>204</sup>

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<sup>197</sup> Redaction.

<sup>198</sup> Redaction.

<sup>199</sup> Redaction.

<sup>200</sup> Redaction.

<sup>201</sup> Redaction.

<sup>202</sup> Redaction.

<sup>203</sup> Redaction.

<sup>204</sup> Redaction.

4. The address for service of notices for the TMM is:

Faraday House, Sir William Siemens Square, Frimley, Camberley, Surrey GU16 8QD

Tel: [●]<sup>205</sup>

All written notices to be marked:

Attention: [●]<sup>206</sup>

5. The address for service of notices for the Secretary of State is:

[●]<sup>207</sup>

The Department of Transport  
Great Minster House  
33 Horseferry Road  
London  
SW1P 4DR

Tel: [●]<sup>208</sup>

Email: [●]<sup>209</sup>

All written notices to be marked:

Attention: [●]<sup>210</sup>

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<sup>205</sup> Redaction.

<sup>206</sup> Redaction.

<sup>207</sup> Redaction.

<sup>208</sup> Redaction.

<sup>209</sup> Redaction.

<sup>210</sup> Redaction.

## SCHEDULE 9

[●]<sup>211</sup>

**Schedule 9:** [●]<sup>212</sup>

**Appendix A** [●]<sup>213</sup>

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<sup>211</sup> Redaction.

<sup>212</sup> Redaction.

<sup>213</sup> Redaction.

## SCHEDULE 9

[●]<sup>214</sup>

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<sup>214</sup> Redaction.

**APPENDIX A TO SCHEDULE 9**

[●]<sup>215</sup>

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<sup>215</sup> Redaction.

## **SCHEDULE 10**

### **INTERFACE SCHEDULE**

- Schedule 10.1:** Interfaces
- Schedule 10.2:** Interface Works
- Schedule 10.3:** Network Rail Depot Construction Enabling Works
- Schedule 10.4:** Meetings and Processes

## SCHEDULE 10.1

### Interfaces

#### Parties

In this Schedule any reference to “the parties” shall mean only Network Rail, the Depot SPC and the Operator.

#### 1. GENERAL PROVISIONS

1.1 The Depot SPC shall or shall procure that the Building Contractor:

- (a) shall carry out the Interface Works in accordance with the terms of the Building Contract; and
- (b) is instructed to co-operate with the other parties to this Agreement to the extent necessary in order to ensure that the relevant Interface Works are carried out without delay and are satisfactory for the purpose of providing the relevant Interface between the Whole Site and the Network;
- (c) (and any replacement thereof) confirms acceptance of the terms of this Schedule and agrees to be bound by its terms;
- (d) shall prepare in accordance with the Network Rail Submission Criteria and the Operator Submission Criteria (where relevant) and any other requirements which Network Rail may have and at the appropriate times within the design and construction processes all the documentation required to enable (as appropriate) the Operator to make submissions for the Operator Consents and/or Network Rail to make submissions for the Network Rail Consents in each case in accordance with the requirements of the Standards and ROGS Regulations and the “Guide to the approval of railway works, plant and equipment” issued by the Health and Safety Executive and when necessary modify the design or construction processes to ensure that approval is obtained and provide Network Rail and/or the Operator (as appropriate) with a copy of all such relevant documents so prepared;
- (e) shall provide Network Rail promptly with all documentation and assistance which Network Rail may require in order to enable Network Rail to fulfil its obligations pursuant to clause 9.4;
- (f) shall, in relation to the Category 1 Works, Category 2 Works and Interface Works only, obtain the prior approval of Network Rail before appointing a Checker appropriate to the checking category allocated to the Depot Works by the Depot SPC; and
- (g) shall provide the Operator with copies of all documents referred to in clauses 9.4 and 9.5.

1.2 As soon as practicable after the relevant Interface Works have been completed, the Building Contractor and Network Rail shall, in consultation with the Depot SPC where required or convenient, jointly manage and perform all steps necessary in order to connect test, commission and otherwise complete the relevant Interface.



1.3 In carrying out any steps required by paragraph 1.2, the Building Contractor shall comply with any Legal Requirement and Standards.

1.4 Clauses 12 and 14 of this Agreement shall apply to the extent necessary in relation to any completed Interface Works.

## **2. BOUNDARIES**

2.1 The line of a Boundary is as shown on the Blue Line Drawings but may be amended from time to time by agreement between the parties as necessary in connection with the carrying out of the relevant Interface Works.

2.2 During the carrying out of the relevant Interface Works the Depot SPC shall procure that the relevant Contractor shall erect and maintain at its own expense a Boundary and shall move, replace or modify the Boundary at its own expense as required in order to reflect any amendments to the Boundary made in accordance with paragraph 2.1.

2.3 For the avoidance of doubt, the parties agree that any Boundary erected by the Building Contractor pursuant to paragraph 2.2 is for the purpose of indicating the site of the Interface Works only and that physical barriers around the Interface Works for the purposes of maintaining site safety will be erected and maintained in accordance with the Building Contract.

2.4 During the carrying out of the Network Rail Depot Construction Enabling Works Network Rail shall procure that the relevant contractor shall erect and maintain at its own expense a Boundary and shall move, replace or modify the Boundary at its own expense as required in order to reflect any amendments to the Boundary.

2.5 For the avoidance of doubt, the parties agree that any Boundary erected by the relevant contractor pursuant to paragraph 2.4 is for the purpose of indicating the site of the Network Rail Depot Construction Enabling Works only and that Network Rail will procure that physical barriers around the Network Rail Depot Construction Enabling Works for the purposes of maintaining site safety will be erected and maintained.

2.6 Nothing in this Schedule 10 in relation to any Boundary shall relieve the Depot SPC of its obligations in clause 10 of this Agreement.

## **3. SITE ACCESS AND RESPONSIBILITY**

3.1 Subject to paragraph 3.2, the parties agree that from and including the date the relevant Interface Works or the relevant parts thereof are approved in accordance with the terms of this Schedule, the Building Contractor shall have responsibility for and exclusive control over the relevant Interface for all purposes connected to the carrying out of the Interface Works, including safety, and no other party to this Agreement shall have any right of access to the relevant Interface without the prior written consent of the Building Contractor.

3.2 Subject to reasonable requirements as to site safety, the Building Contractor shall ensure that the parties to this Agreement and their representatives are permitted reasonable access to the relevant Interface on reasonable prior written notice to the Building Contractor to inspect the progress of the Interface Works.

#### **4. REVIEW, COMMENT AND APPROVAL PROCESS**

4.1 In order for the parties to undertake the actions as indicated by the Information Production Programme, the following terms shall have the following meanings:

- (a) Review – observations given by the party providing the review are not binding on the party required to give approval under the Information Production Programme;
- (b) Comment – the provisions of Schedules 11.1 and 11.2 shall apply provided that the party giving the comment shall not give approval, but any comment made must be taken into account by the party giving the approval under the Information Production Programme before it gives such approval, and the provisions of Schedules 11.1 and 11.2 shall be construed accordingly;
- (c) Approval – approval in accordance with the procedure set out in Schedule 11.1 for Network Rail and in Schedule 11.2 for the Operator, or approval required to be given by the Depot SPC (where appropriate).

4.2 Where the Information Production Programme identifies that the Local Authority is to either review, comment or approve, the Depot SPC shall make the relevant application to the Local Authority in accordance with the Information Production Programme.

#### **5. METHODOLOGY**

All methodology will be written in accordance with the details set out in Network Rail standard RT/LS/S/008-Contract Safety Requirements. The categorisation of all methodology will be jointly agreed between Network Rail and the Operator, where joint approval is required, at the weekly project interface meeting and all methodology approval will be subject to a 10 (ten) Working Day approval process. Methodology in general will have the following types of approval:

##### **Internal self certification**

5.1 The works being undertaken will not occur, or in the event of failure, will not come within the Zone of Influence of either Network Rail or Operator operational infrastructure.

##### **The Operator approval only**

5.2 The works being undertaken will occur, or in the event of failure, will come within the Zone of Influence of any Operator operational infrastructure. In addition the works being undertaken will not occur, or in the event of failure, will not come within the Zone of Influence of any Network Rail operational infrastructure.

##### **Network Rail and the Operator Combined Approval**

5.3 The works being undertaken will occur, or in the event of failure, will come within the Zone of Influence of both Network Rail and Operator operational infrastructure. In these circumstances, the Operator will act as lead in ensuring that Network Rail comments are jointly addressed in the response, ensuring a single point of contact is maintained except in the case of electrification works in which case Network Rail will act as lead in ensuring that comments are jointly addressed.

**Network Rail Approval Only**

5.4 The works being undertaken will occur or, in the event of failure, will come within the Zone of Influence of any Network Rail operational infrastructure. In addition, the works being undertaken will not occur or, in the event of failure, will not come within the Zone of Influence of any Operator infrastructure.

## **SCHEDULE 10.2**

### **Interface Works**

#### **1. NETWORK RAIL REVIEW, COMMENT AND APPROVAL**

1.1 The following parts of the Interface Works shall require only review by Network Rail:

(a) General:

- (i) all Maintenance Agreements (meaning signed agreements between any of the parties which provide for the inspection, upkeep, repair and renewal by way of repair, strengthening and alteration (where such may be required) of any assets (i) in order to secure the safety of the parties' respective assets and/or (ii) in order that the item being maintained should at all times be fit for its intended purpose);
- (ii) all Inspection Procedures (meaning the regular or ad-hoc procedures of inspections, examinations and site visits required for the identification of, the maintenance and renewal requirements for and the detection of any faults, defects or damage in or to specified assets, to be undertaken in accordance with the appropriate Standards);
- (iii) all Health & Safety Files (meaning records containing information relating to a project which may be needed during maintenance and any subsequent construction work to comply with the CDM Regulations); and
- (iv) all other designs;

(b) Method statements:

- (i) all methods statements relating to Electrification (meaning work that includes additions or changes to (i) distribution systems including feeder cables, switchgear and transformers (ii) contact systems including overhead line and third rail and (iii) SCADA systems);

1.2 Network Rail shall be required only to comment on the following parts of the Interface Works:

(a) General:

- (i) testing and commissioning;
- (ii) outline and detailed design submissions for the shared access roads within the New Depot Land;

(b) Telecommunications:

- (i) outline and detailed design submissions for all New Depot telecommunication systems that could affect mainline systems;

(c) Permanent Way:

- (i) outline and detailed design submissions for derailment/overrun containment/arrestor devices in area where the derailment would have an impact on operational land or structures or third party property; and
- (ii) outline and detailed design submissions for lines adjacent to passenger running lines.

1.3 The following parts of the Interface Works shall be approved by Network Rail:

(a) General:

- (i) outline and detailed design submissions for all structures and intrusions that pass over or under or across operational lines or Network Rail assets;
- (ii) outline and detailed design submissions for any structure or intrusion within the Zone of Influence;
- (iii) outline and detailed design submissions for all drainage systems that run from operational railway onto the New Depot Land;
- (iv) outline and detailed design submissions for all lighting, fencing within the New Depot areas which impact on the mainline operational railway;
- (v) outline designs of Network Rail storage;

(b) works relating to the Structures and Earthworks Interface;

(c) works relating to the Signalling Interface;

(d) Plant:

- (i) wheel lathe modification outline designs; and

(e) Electrification:

- (i) outline and detailed design submissions for HV design;
- (ii) outline and detailed design submissions for equipment;
- (iii) outline and detailed design submissions for substation bases and slabs;
- (iv) detailed SCADA Specifications (meaning specifications associated with the Supervisory Control and Data Acquisition for electromechanical and electronic supervisory control equipment for Electrical Control Rooms (“ECR”) and substations and designs); and
- (v) EMC Study (meaning a study required to demonstrate electromagnetic compatibility – the ability of electronic devices to function satisfactorily in the presence of magnetic and electric fields).

## **2. OPERATOR REVIEW, COMMENT AND APPROVAL**

- 2.1 The Operator shall:
- (a) In accordance with its obligations in the Information Production Programme approve, comment or review the design documents, submitted by the Depot SPC or the Building Contractor pursuant to this Schedule 10 in accordance with the Operator Submission Criteria including the time periods set out in paragraph 1.5 of Schedule 11.2; and
  - (b) have the right of approval over all documents submitted as evidence of compliance against the Operator Requirements contained in the Depot Requirements.

### **SCHEDULE 10.3**

#### **Network Rail Depot Construction Enabling Works**

1.1 Network Rail shall submit to the Depot SPC and the Operator all documents identified for such submission in the Information Production Programme and the Depot SPC and the Operator shall:

- (a) review all documents submitted by Network Rail pursuant to this Schedule 10 in accordance with the Depot SPC Submission Criteria including without limitation the time periods set out in paragraph 3 of Schedule 11.3; and
- (b) be required to comment on all documents submitted as evidence of compliance in accordance with the Information Production Programme. Where Network Rail does not agree with the Depot SPC's or the Operator's comments Network Rail shall advise the relevant party before proceeding to the next stage of design or implementation and the parties shall review the comments together with a view to achieving mutual agreement.

1.2 Where the agreement referred to above cannot be achieved the issue shall be resolved in accordance with clause 41 of this Agreement.

## **SCHEDULE 10.4**

### **Meetings and Processes**

#### **1. DESIGN DEVELOPMENT AND PRE-CONSTRUCTION AGREEMENTS**

1.1 Until the relevant Designs (meaning design details, drawings, specifications and bills of quantities (including specifications of articles or substances) relating to a structure and calculations prepared for the purpose of a design), work package plans and Works Programme have been issued by the Building Contractor in accordance with Schedule 10.1, the Building Contractor shall arrange meetings in relation to Interface Works for each Interface to be held as follows:

- (a) daily informal meetings daily (or as otherwise required);
- (b) weekly minuted meetings; and
- (c) monthly minuted meetings,

which representatives of the relevant parties may as and when required attend to review the development of the Designs work package plans and Works Programme.

1.2 If the Building Contractor and the parties agree that the meetings to be held in accordance with paragraph 1.1 are no longer required to be held, then the meetings may be held at intervals agreed between the Building Contractor and the parties, but no less frequently than monthly.

1.3 At each of the meetings to be held in accordance with paragraph 1.1, the Building Contractor shall provide, in order to assist discussions, the latest drafts of (at least) the following documents:

- (a) Health, Safety, Environment and Quality issues; and
- (b) detailed design and implementation programme; and
- (c) schedule of deliverables (with release dates); and
- (d) schedule of drawings (with release dates); and
- (e) work package plans and designers' risk assessments; and
- (f) such other documents and data as may be necessary.

#### **2. NOTICE OF MEETINGS**

The Building Contractor shall give the parties or their representatives at least 7 (seven) Working Days' prior notice of site and other formal meetings of the Construction Team or any of them in connection with the Interfaces, and the parties' representatives shall be entitled to attend at and participate at such meetings.



## **SCHEDULE 11**

### **CONSENTS AND SUBMISSION CRITERIA**

- Schedule 11.1:** Network Rail Submission Criteria
- Schedule 11.2:** Operator Submission Criteria
- Schedule 11.3:** Depot SPC Submission Criteria

## SCHEDULE 11.1

### Network Rail Submission Criteria

#### 1. SUBMISSION PROCEDURE AND CRITERIA

1.1 In this submission procedure the parties agree that the Building Contractor shall act on behalf of the Depot SPC.

1.2 Subject to any express provision of this Agreement, the manner, form and timing of any submission to be made by the Building Contractor to Network Rail for review under the Network Rail review procedure is a matter for the Building Contractor and Network Rail to agree. Each submission under the Network Rail review procedure shall be:

- (a) accompanied by a copy of the proposed document to be reviewed or a statement of the proposed course of action (the entire contents of a submission being referred to in this Schedule as *Submitted Item*);
- (b) accompanied by a certificate of compliance from the Building Contractor in respect of that submission;
- (c) accompanied by evidence that the relevant Accredited Entity has prepared the Submitted Item;
- (d) accompanied by a statement of its relationship to the relevant Interface; and
- (e) accompanied by a list of the Standards, law and other guidance and codes of practice the Building Contractor has complied with in preparing the Submitted Item.

1.3 Any submission under paragraph 1.1 the Building Contractor wishes to make shall:

- (a) have been notified to Network Rail not less than 10 (ten) Working Days prior to the Building Contractor making such submission, such notification to include sufficient detail of:
  - (i) the content and type of submission; and
  - (ii) the amount of documentation to be included with the submission;

for Network Rail to determine the resources required to carry out obligations under this Agreement;

- (b) be limited to (and shall include) the content stipulated in the prior notification referred to in paragraph 1.2(a) above;
- (c) contain the necessary documentary material to allow Network Rail to carry out its obligations under this Agreement; and
- (d) be made in accordance with the Information Production Programme.

1.4 The Building Contractor shall submit any further or other information, data and documents that Network Rail reasonably requires in order to determine whether it has a basis for raising comments or making objections to any Submitted Item in accordance with this

Schedule. If the Building Contractor does not submit any such information, data or documents, Network Rail shall (where the Submitted Item is one on which Network Rail is required to approve under the terms of this Agreement) be entitled to:

- (a) comment on the Submitted Item on the basis of the information, data and documents which have been provided; or
- (b) object to the Submitted Item on the grounds that insufficient information, data and documents have been provided to enable Network Rail to determine whether it has a legitimate basis for commenting or objecting in accordance with this Schedule.

1.5 In relation to each Submitted Item, the following procedure shall apply:

- (a) as soon as practicable (Network Rail acting in accordance with its obligations in this Agreement but in any event by the Required Date in accordance with clause 9.1 of this Agreement (but subject as provided in that clause) Network Rail shall return one copy of the relevant Submitted Item to the Building Contractor:
  - (i) “Level 1 – Approved, work may proceed”, which shall mean that the relevant element of design data is technically approved as defined in Group Standard GC/RT5101 and associated Network Rail Company standard NR/SP/BUS/02009;
  - (ii) “Level 2 – Approved with comments”, work may proceed subject to inclusion of comments, which shall mean that the Building Contractor shall proceed to construct (or proceed to the next level of design of) the part of the Works to which the Submitted Item relates but shall take into account any amendments required by Network Rail in its comments. The means of achieving compliance with Network Rail’s comments shall be documented and filed for later retrieval by Network Rail;
  - (iii) “Level 3 – Not approved with minor comments, resubmit”, which shall mean that the Building Contractor shall not act upon the Submitted Item but shall amend the Submitted Item in accordance with Network Rail’s comments and resubmit the same to Network Rail. Network Rail, acting reasonably, shall determine whether the comments on any element of design data (taking into account individual comments, or the cumulative number of comments) are major or minor;
  - (iv) “Level 4 – Not approved with major comments, resubmit”, which shall mean that the Building Contractor shall not act upon the Submitted Item data but shall amend the Submitted Item in accordance with Network Rail’s comments and resubmit the same to Network Rail. Network Rail, acting reasonably, shall determine whether the comments on any element of design data (taking into account individual comments, or the cumulative number of comments) are major or minor; or
  - (v) “Level 5 – Technical Approval not required”, which shall mean that the Building Contractor shall submit the next element of design data in accordance with the Information Production Programme,

as appropriate.

- (b) if Network Rail fails to return a copy of any Submitted Item duly endorsed in accordance with this Schedule by the Required Date then Network Rail shall be liable to pay liquidated damages in accordance with clause 9.2.

1.6 Network Rail shall respond in terms of paragraph 1.5(a) to the Building Contractor in respect of a Submitted Item in accordance with the relevant number of Working Days as identified in the table below:

<b>Working Days</b>					
	<b><i>Civils</i></b>	<b><i>Permanent Way</i></b>	<b><i>Signalling</i></b>	<b><i>Telecommunications</i></b>	<b><i>Electrification and Plant</i></b>
<b>Generic Method Statements</b>	10 (ten)	10 (ten)	10 (ten)	10 (ten)	10 (ten)
<b>Activity Method Statements</b>	10 (ten)	10 (ten)	10 (ten)	10 (ten)	10 (ten)
<b>Inspection and Testing Plans</b>	20 (twenty)	20 (twenty)	20 (twenty)	20 (twenty)	20 (twenty)
<b>Commissioning Plans</b>	20 (twenty)	20 (twenty)	20 (twenty)	20 (twenty)	20 (twenty)
<b>Form A/Form B or equivalent</b>	20 (twenty)	20 (twenty)	20 (twenty)	20 (twenty)	20 (twenty)
<b>Form C</b>	10 (ten)	N/A	N/A	N/A	N/A

1.7 If Network Rail raises comments on any Submitted Item in accordance with paragraph 3 it shall state the grounds upon which such comments are based and the evidence or other information necessary to substantiate that ground. To the extent that Network Rail comments on a Submitted Item other than on the basis set out in this Schedule, or fails to comply with the provisions of this paragraph, the Building Contractor may in its discretion, either:

- (a) request written clarification of the basis for such comments and, if clarification is not received within 20 (twenty) Working Days of such request by the Building Contractor, refer the matter for determination in accordance with clause 41 (*Disputes*); or
- (b) at its own risk, and without prejudice to its obligations and liabilities under this Agreement and/or the Building Contract, proceed with further design or construction disregarding such comments.

## **2. RETURN OF DESIGN DATA**

The Depot SPC shall procure that:

- (a) any element of design data which is returned by Network Rail endorsed “Level 1 - Approved, work may proceed” shall be complied with or implemented (as the case may be) by the Building Contractor. The endorsement “Level 1 - Approved, work may proceed” shall mean that the relevant element of design data is technically approved as defined in Group Standard GC/RT5101 and associated Network Rail Company Standard RT/E/P/02009; and

- (b) where Network Rail has endorsed the element of design data “Level 2 - Approved with comments, work may proceed subject to inclusion of comments”, the Building Contractor shall proceed to construct or proceed to the next level of design of the part of the Works to which the element of design data relates but shall take into account any amendments required by Network Rail in its comments. The means of achieving compliance with Network Rail’s comments shall be documented and filed for later retrieval on request by Network Rail; and
- (c) where Network Rail has endorsed the element of design data “Level 3 - Not approved with minor comments, resubmit” or “Level 4 - Not approved with major comments, resubmit”, the Building Contractor shall not act upon the design data but shall amend the element of design data in accordance with Network Rail’s comments and resubmit the same to Network Rail. Network Rail at its sole discretion shall determine whether the comments on any element of design data (taking into account individual comments, or the cumulative number of comments) are major or minor; and
- (d) where Network Rail has endorsed the element of reviewable design data “Level 5 - Technical Approval not required”, the Building Contractor shall submit the next element of design data in accordance with the Works Programme.

### **3. GROUNDS OF OBJECTION**

3.1 The expression “raise comments” in this paragraph shall be construed to mean endorsed as either “Level 2 – Approved with comments, work may proceed”, “Level 3 – Not approved with minor comments – resubmit” or “Level 4 – Not approved with major comments, resubmit unless the contrary appears from the context”. Network Rail may raise comments in relation to any Submitted Item on the ground of non-compliance with paragraph 1.2 above or on the ground that the Submitted Item would (on the balance of probabilities) breach any Legal Requirements but otherwise may raise comments in relation to a Submitted Item only as follows:

- (a) in relation to any Submitted Item which comprises a work package plan:
  - (i) that Network Rail does not believe that the work package plan contains an adequate description of the Interface Works involved to enable Network Rail to determine whether the proposed activity imposes unacceptable risk on the Railway or the personnel undertaking the work;
  - (ii) that the work package plan has not been submitted in due time to support the Depot Phasing Plans, or does not provide all of the information that Network Rail reasonably needs to comprehend the activity and its associated risks and control measures;
  - (iii) that the Category 1 Works, the Category 2 Works or the Interface Works described in the work package plan do not comply with the specification and/or safety plan and/or environment plan and/or the Detailed Depot Design;
  - (iv) that Network Rail reasonably believes that the works described in the work package plan are not such as to enable construction of the Interface Works in a manner which minimises disruption to the Network and enables future construction or maintenance to be carried out on the Network constituting the Interface Works (as far as reasonably possible) in a way which minimises costs and disruption to the Network;

- (v) that the risks to the personnel concerned and Network Rail's undertakings do not appear to have been adequately stated or adequate control measures and contingency plans specified;
  - (vi) that the work package plan does not comply with the Project specification and/or safety plan and/or environment plan;
  - (vii) that the work package plan does not comply with Network Rail's operational safety case;
  - (viii) that the work package plan has not been prepared in accordance with good industry practice;
  - (ix) that the Method Statement does not apply Rimini (meaning 'risk minimisation') correctly;
  - (x) that Network Rail reasonably believes that the methods described in the work package plan are likely to lead to any Network Possessions or other protective arrangements being extended beyond their allocated time, thereby delaying timetabled rail traffic;
  - (xi) that Network Rail does not believe that acting in accordance with the work package plan will result in compliance with the Building Contractor's obligations under clause 9 (provided that, save in relation to any matter touching or concerning safety, in any dispute under paragraph 4.4 of this schedule in relation to a comment made on this ground the Building Contractor will be entitled to establish that this ground does not exist if Network Rail does not reasonably justify holding its belief);
  - (xii) that Network Rail reasonably believes that the allocation of resources and/or plant and/or materials described in the work package plan are in any way incompatible with the stated objectives of the Interface Works or any part thereof; and
  - (xiii) that any relevant Necessary Consents have not been obtained;
- (b) in relation to any Submitted Item which comprises an inspection and testing plan:
- (i) that Network Rail believes that the inspection and testing plan does not contain an adequate description of the work involved, insofar as is necessary for Network Rail to determine whether the proposed activity imposes unacceptable risk on Network Rail or the personnel undertaking the work;
  - (ii) that the inspection and testing plan has not been submitted in due time to support the Depot Phasing Plans, or does not provide all of the information that Network Rail needs to comprehend the activity and its associated risks and control measures;
  - (iii) that Network Rail believes that the risks to Network Rail's undertaking and the personnel involved do not appear to have been adequately stated or adequate control measures and contingency plans specified;

- (iv) that the inspection and testing plan does not incorporate a sufficiently detailed and clear process for determining whether or not the inspection and testing works have been completed satisfactorily;
  - (v) that the inspection and testing plan does not comply with the relevant work package plan;
  - (vi) that the inspection and testing plan does not comply with the Project specification and/or the Standards;
  - (vii) that the inspection and testing plan does not comply with Network Rail's operational safety case;
  - (viii) that the inspection and testing plan has not been prepared in accordance with good industry practice;
  - (ix) that Network Rail reasonably believes that the allocation of inspection and testing resources and associated skill levels appears to be inappropriate to the inspection and testing works proposed, and that, where necessary, the personnel have the necessary qualification certificates and/or formal delegations issued by Network Rail;
  - (x) that Network Rail reasonably believes that the methods described in the inspection and testing plans are likely to lead to any Network Possessions or other protective arrangements being extended beyond their allocated time, thereby delaying timetabled rail traffic;
  - (xi) that Network Rail does not believe that acting in accordance with the inspection and testing plans will result in compliance with the Building Contractor's obligations under the Building Contract and/or the Building Contractor's Collateral Warranty (provided that, save in relation to any matter touching or concerning safety, in any dispute under paragraph 4.4 of this schedule in relation to a comment made on this ground the Building Contractor will be entitled to establish that this ground does not exist if Network Rail does not reasonably justify holding its belief); and
  - (xii) that the design closure list or other list of design deliverables defining the asset to be commissioned and Introduced to Operational Use set out in the inspection and testing plans is inaccurate and/or incomplete and/or inappropriate;
- (c) in relation to any Submitted Item which comprises a commissioning plan:
- (i) that the inspection and testing works in relation to that part of the Depot Works to which the commissioning plan relates have not been completed in accordance with the relevant inspection and testing plans prior to issue of the Submitted Item;
  - (ii) that Network Rail believes that the commissioning plan does not contain an adequate description of the work involved to enable Network Rail to determine whether the proposed activity imposes unacceptable risk on Network Rail or the personnel undertaking the work;

- (iii) that the commissioning plan has not been submitted in due time to support the Depot Phasing Plans, or does not provide all of the information that Network Rail needs to comprehend the activity and its associated risk and control measures;
- (iv) that the risks to Network Rail's undertaking and the personnel concerned do not appear to have been adequately stated or adequate control measures and contingency plans specified;
- (v) that the commissioning plan does not incorporate a sufficiently detailed and clear process for determining whether or not the commissioning works have been completed satisfactorily;
- (vi) that the commissioning plan does not comply with the relevant work package plan;
- (vii) that the commissioning plan does not comply with the Project specification and/or the Standards;
- (viii) that the commissioning plan does not comply with the Network Rail operational safety case;
- (ix) that the commissioning plan has not been prepared in accordance with good industry practice;
- (x) that the allocation of resources and the associated skill levels appear to Network Rail, acting reasonably, to be inappropriate to the commissioning works proposed, and that, where necessary, the personnel do not have the necessary qualification certificates and/or formal delegations issued by Network Rail;
- (xi) that Network Rail reasonably believes that the methods described in the commissioning plan are likely to lead to any Network Possessions or other protective arrangements being extended beyond their allocated time, thereby delaying timetabled rail traffic;
- (xii) that Network Rail does not believe that acting in accordance with the commissioning plan will result in compliance with the Building Contractor's obligations under the Building Contract and/or the Building Contractor's Collateral Warranty (provided that, save in relation to any matter touching or concerning safety, in any dispute under paragraph 4.4 of this Schedule in relation to a comment made on this ground the Contractor will be entitled to establish that this ground does not exist if Network Rail does not reasonably justify holding its belief);
- (xiii) that the draft certificates proposed as part of the Taking into Use are inappropriate to the commissioning activities proposed;
- (xiv) that the design closure list or other list of design deliverables defining the asset to be commissioned and Introduced to Operational Use set out in the Taking into Use is inaccurate and/or incomplete and/or inappropriate; and
- (xv) that any necessary information being required to be published to notify those that might be affected by the commissioning works has not been provided to



Network Rail in due time to be published in the Weekly Operating Notices (meaning the publication issued by Network Rail as a notice containing the engineering work for the forthcoming week and any other information train crews may require), Periodic Operating Notices (meaning the bi-monthly publication issued by Network Rail which contains all current amendments to the books of rules and regulations and certain miscellaneous notices) and special operating notices (as relevant); and

- (d) in relation to any Submitted Item which comprises an application to ORR:
- (i) that the Submitted Item does not comply with the Project specification and/or the Standards;
  - (ii) that the Submitted Item does not comply with the Network Rail's operational safety case;
  - (iii) that the Submitted Item would not comply with a Legal Requirement to control the risks arising from the design and/or Interface Works to as low a level as reasonably practicable;
  - (iv) that the assurance case (and/or contract-specific addendum related thereto) is not being complied with;
  - (v) that Network Rail does not believe that the Submitted Item which comprises an application to the ORR will result in compliance with the Building Contractor's obligations under the Building Contract and/or the Building Contractor's Collateral Warranty (provided that, save in relation to any matter touching or concerning safety, in any dispute under paragraph 4.4 of this schedule in relation to a comment made on this ground the Building Contractor will be entitled to establish that this ground does not exist if Network Rail does not reasonably justify holding its belief);
  - (vi) that the implementation of the Submitted Item which comprises an application to the ORR would limit, qualify or override or purport to limit, qualify or override any obligation, right or entitlement of Network Rail which arises by reason of:
    - (A) any Network Licence condition;
    - (B) the terms and conditions of any Track Access Agreement; or
    - (C) any statutory duty pursuant to the Railways Act;
  - (vii) that the Submitted Item is not in accordance with good industry practice;
  - (viii) that Network Rail reasonably believes that the Submitted Item means that the Works or any part thereof are unlikely to be able to be Introduced to Operational Use by Network Rail;
  - (ix) that the Submitted Item does not comply with the requirements of the design quality plan or the works quality plan; and

- (x) that the Building Contractor has not provided the necessary certificates of conformance and other documentation required in accordance with the ORR Grey Book.

3.2 It shall be a matter for Network Rail's discretion to determine if a Submitted Item is endorsed "Not Approved" whether the comments relating to that endorsement (taking into account individual comments or the cumulative number of comments) are major or minor.

#### **4. EFFECT OF REVIEW**

4.1 Any Submitted Item which is returned by Network Rail's representative endorsed as either "Level 1 – Approved, work may proceed", "Level 2 – Approved with comments, work may proceed subject to the inclusion of comments", "Level 3 – Not approved with minor comments, resubmit", or "Level 4 – Not approved with major comments - resubmit" shall be complied with or implemented (as the case may be) by the Contractor in relation to work package plans, inspection and testing plans and commissioning plans.

4.2 In issuing its acceptance, Network Rail may stipulate with the agreement of the Building Contractor hold points in the Interface Works where it intends to carry out a superimposed check or inspection.

4.3 Once acceptance of the work package plans, inspection and testing plans or commissioning plan has been achieved, the Accredited Entity can then implement the relevant Interface Works and Network Rail may carry out its own surveillance of the relevant Interface Works for compliance with the work package plans, inspection and testing plan or commissioning plan. The Building Contractor shall obtain the relevant approval from Network Rail 10 (ten) Working Days in advance of the date of this Agreement. If Network Rail finds that the Interface Works are in breach of the work package plans, inspection and testing plan or commissioning plan, it will require a cessation of the relevant Interface Works until the breach is addressed to its satisfaction (provided that, save in relation to any matter touching or concerning safety, the Building Contractor will be entitled to dispute such cessation of Interface Works if Network Rail does not reasonably justify the belief that the Interface Works are in breach of the work package plans, inspection and testing plan or commissioning plan).

4.4 In the case of any Submitted Item, if Network Rail returns the Submitted Item to the Contractor endorsed "Level 3 – Not approved with minor comments - resubmit" or "Level 4 – Not approved with major comments – resubmit", the Building Contractor shall comply with such Submitted Item after amendment in accordance with the comments and resubmission in accordance with paragraph 3.1 unless the Building Contractor disputes that any such comment is on grounds permitted by this Agreement, in which case the Depot SPC or Network Rail may refer the matter for determination in accordance with clause 41 and the Building Contractor shall not act on the Submitted Item until such matter is so determined or otherwise agreed.

#### **5. RESUBMISSION**

On receiving the comments of Network Rail on any Submitted Item pursuant to paragraph 4.4 the Building Contractor shall send a copy of the Submitted Item as amended to Network Rail and the provisions of paragraphs 1, 3, 4 and 3.1 (as appropriate) shall apply (changed according to the context) to such resubmission, save that in relation to any resubmission as a result of a Submitted Item being endorsed "Level 3 – Not approved with minor comments, resubmit" or "Level 4 – Not approved with major comments, resubmit" the time periods referred to in paragraph 1.6 shall be halved.

**6. INSUFFICIENT SUBMISSIONS**

The Depot SPC shall not be entitled to any rebate or reduction of Network Rail Costs, and Network Rail shall have no liability under this Agreement, if any submission does not comply with paragraph 1 above.

## SCHEDULE 11.2

### Operator Submission Criteria

#### 1. SUBMISSION PROCEDURE AND CRITERIA

1.1 Subject to any express provision of this Agreement, the manner, form and timing of any submission to be made by the Building Contractor to the Operator for review will be for the Building Contractor and the Operator to agree. Each submission shall be:

- (a) accompanied by a copy of the proposed document to be reviewed or a statement of the proposed course of action (the entire contents of a submission being referred to in this Schedule as *Submitted Item*);
- (b) accompanied by a certificate of compliance from the Building Contractor in respect of that submission;
- (c) accompanied by evidence that the relevant Accredited Entity has prepared the Submitted Item;
- (d) accompanied by a statement of its relationship to the relevant Operator Interface; and
- (e) accompanied by a list of the Standards, law and other guidance and codes of practice the Building Contractor has complied within preparing the Submitted Item.

1.2 Any submission under paragraph 1.1 the Building Contractor wishes to make shall:

- (a) have been notified to the Operator not less than 10 (ten) Working Days prior to the Building Contractor making such submission, such notification to include sufficient detail of:
  - (i) the content and type of submission; and
  - (ii) the amount of documentation to be included with the submission;

for the Operator to determine the resources required to carry out its obligations under this Agreement;

- (b) be limited to (and shall include) the content stipulated in the prior notification referred to in paragraph 1.2(a) above;
- (c) contain the necessary documentary material to allow the Operator to carry out its obligations under this Agreement; and
- (d) be made in accordance with the Information Production Programme.

1.3 The Building Contractor shall submit any further or other information, data and documents that the Operator reasonably requires in order to determine whether it has a basis for raising comments or making objections to any Submitted Item in accordance with this Schedule. If the Building Contractor does not submit any such information, data or documents, the Operator shall (where the Submitted Item is one on which the Operator is required to approve under the terms of this Agreement) be entitled to:

- (a) comment on the Submitted Item on the basis of the information, data and documents which have been provided; or
- (b) object to the Submitted Item on the grounds that insufficient information, data and documents have been provided to enable the Operator to determine whether it has a legitimate basis for commenting or objecting in accordance with this Schedule.

1.4 In relation to each Submitted Item the Operator shall as soon as practicable but in any event within the relevant number of Working Days set out in paragraph 1.5 of this Schedule, return one copy of the relevant Submitted Item to the Building Contractor endorsed:

- (a) “Level 1 – Approved, work may proceed”, which shall mean that the relevant element of design data is technically approved;
- (b) “Level 2 – Approved with comments, work may proceed subject to inclusion of comments”, which shall mean that the Building Contractor shall proceed to construct (or proceed to the next level of design of) the part of the Works to which the Submitted Item relates but shall take into account any amendments required by the Operator in its comments;
- (c) “Level 3 – Not approved with minor comments, resubmit”, which shall mean that the Building Contractor shall not act upon the Submitted Item but shall amend the Submitted Item in accordance with the Operator’s comments and resubmit the same to the Operator. The Operator, acting reasonably, shall determine whether the comments on any element of design data (taking into account individual comments, or the cumulative number of comments) are major or minor;
- (d) “Level 4 – Not approved with major comments, resubmit”, which shall mean that the Contractor shall not act upon the Submitted Item data but shall amend the Submitted Item in accordance with the Operator’s comments and resubmit the same to the Operator. The Operator, acting reasonably, shall determine whether the comments on any element of design data (taking into account individual comments, or the cumulative number of comments) are major or minor; or
- (e) “Level 5 – Technical Approval not required”, which shall mean that the Building Contractor shall submit the next element of design data in accordance with the Information Production Programme;

as appropriate.

1.5 The Operator shall respond in terms of paragraph 1.4(a) to the Building Contractor in respect of a Submitted Item in accordance with the relevant number of Working Days as identified in the table below:

<b>Working Days</b>					
	<b>Civils</b>	<b>Permanent Way</b>	<b>Signalling</b>	<b>Telecommunications</b>	<b>Electrification and Plant</b>
<b>Generic Method Statements</b>	10 (ten)	10 (ten)	10 (ten)	10 (ten)	10 (ten)
<b>Activity Method Statements</b>	10 (ten)	10 (ten)	10 (ten)	10 (ten)	10 (ten)
<b>Inspection and Testing Plans</b>	20 (twenty)	20 (twenty)	20 (twenty)	20 (twenty)	20 (twenty)
<b>Commissioning Plans</b>	20 (twenty)	20 (twenty)	20 (twenty)	20 (twenty)	20 (twenty)
<b>Form A/Form B or equivalent</b>	20 (twenty)	20 (twenty)	20 (twenty)	20 (twenty)	20 (twenty)
<b>Form C</b>	10 (ten)	N/A	N/A	N/A	N/A

1.6 If the Operator raises comments on any Submitted Item in accordance with paragraph 2 it shall state the grounds upon which such comments are based and the evidence or other information necessary to substantiate that ground. To the extent that the Operator comments on a Submitted Item other than on the basis set out in this Schedule, or fails to comply with the provisions of this paragraph, the Building Contractor may in its discretion, either:

- (a) request written clarification of the basis for such comments and, if clarification is not received within 20 (twenty) Working Days of such request by the Building Contractor, refer the matter for determination in accordance with clause 41 (*Disputes*); or
- (b) at its own risk, and without prejudice to its obligations and liabilities under this Agreement and/or the Building Contract, proceed with further design or construction disregarding such comments.

## **2. GROUNDS OF OBJECTION**

2.1 The expression “raise comments” in this paragraph shall be construed to mean endorsed as either “Level 2 – Approved with comments, work may proceed”, “Level 3 – Not approved with minor comments, resubmit” or “Level 4 – Not approved with major comments, resubmit” unless the contrary appears from the context. The Operator may raise comments in relation to any Submitted Item on the ground of non-compliance with paragraph 1.2 above or on the ground that the Submitted Item would (on the balance of probabilities) breach any Legal Requirements but otherwise may raise comments in relation to a Submitted Item only as follows:

- (a) in relation to any Submitted Item which comprises a Method Statement:
  - (i) that the Operator does not believe that the Method Statement contains an adequate description of the Interface Works involved to enable the Operator to determine whether the proposed activity imposes unacceptable risk on the Railway or the personnel undertaking the work;

- (ii) that the Method Statement has not been submitted in due time to support the Depot Phasing Plans, or does not provide all of the information that the Operator reasonably needs to comprehend the activity and its associated risks and control measures;
  - (iii) that the Works described in the Method Statement do not comply with the Detailed Depot Design and/or Safety Plan and/or Environment Plan and/or the approved design;
  - (iv) that the risks to the personnel concerned and the Operator's undertakings do not appear to have been adequately stated or adequate control measures and contingency plans specified;
  - (v) that the Method Statement does not comply with the Operator's operational safety case;
  - (vi) that the Method Statement does not comply with the Works Quality Plan and/or Safety Plan and/or Environment Plan;
  - (vii) that the Method Statement has not been prepared in accordance with good industry practice;
  - (viii) that the Operator reasonably believes that the methods described in the Method Statement are likely to lead to any depot possessions or other protective arrangements being extended beyond their allocated time, thereby affecting depot operations; and
  - (ix) that any relevant Necessary Consents have not been obtained;
- (b) in relation to any Submitted Item which comprises an Inspection and Testing Plan:
- (i) that the Operator believes that the Inspection and Testing Plan does not contain an adequate description of the work involved, insofar as is necessary for the Operator to determine whether the proposed activity imposes unacceptable risk on the Operator or the personnel undertaking the work;
  - (ii) that the Inspection and Testing Plan has not been submitted in due time to support the Depot Phasing Plans, or does not provide all of the information that the Operator needs to comprehend the activity and its associated risks and control measures;
  - (iii) that the Operator believes that the risks to the Operator's undertaking and the personnel involved do not appear to have been adequately stated or adequate control measures and contingency plans specified;
  - (iv) that the Inspection and Testing Plan does not incorporate a sufficiently detailed and clear process for determining whether or not the Inspection and Testing Works have been completed satisfactorily;
  - (v) that the Inspection and Testing Plan does not comply with the relevant Method Statements;
  - (vi) that the Inspection and Testing Plan does not comply with the Detailed Depot Design and/or the Standards;

- (vii) that the Inspection and Testing Plan does not comply with the Operator's operational safety case;
  - (viii) that the Inspection and Testing Plan has not been prepared in accordance with good industry practice;
  - (ix) that the Operator reasonably believes that the allocation of inspection and testing resources and associated skill levels appears to be inappropriate to the Inspection and Testing Works proposed, and that, where necessary, the personnel have the necessary qualification certificates and/or formal delegations issued by the Operator;
  - (x) that the Operator reasonably believes that the methods described in the Inspection and Testing Plans are likely to lead to any depot possessions or other protective arrangements being extended beyond their allocated time, thereby affecting depot operations;
  - (xi) that the Operator does not believe that acting in accordance with the Inspection and Testing Plans will result in non-compliance with the Building Contractor's obligations under the Building Contract and/or the Building Contractor's Collateral Warranty (provided that, save in relation to any matter touching or concerning safety, in any dispute under paragraph 3.4 of this schedule in relation to a comment made on this ground the Contractor will be entitled to establish that this ground does not exist if the Operator does not reasonably justify holding its belief); and
  - (xii) that the design closure list or other list of design deliverables defining the asset to be commissioned and Introduced into Operational Use set out in the Inspection and Testing Plans is inaccurate and/or incomplete and/or inappropriate;
- (c) in relation to any Submitted Item which comprises a Commissioning Plan:
- (i) that the Inspection and Testing Works in relation to that part of the Works to which the Commissioning Plan relates have not been completed in accordance with the relevant Inspection and Testing Plans prior to issue of the Submitted Item;
  - (ii) that the Operator believes that the Commissioning Plan does not contain an adequate description of the work involved to enable the Operator to determine whether the proposed activity imposes unacceptable risk on the Operator or the personnel undertaking the work;
  - (iii) that the Commissioning Plan has not been submitted in due time to support the Depot Phasing Plans, or does not provide all of the information that the Operator needs to comprehend the activity and its associated risk and control measures;
  - (iv) that the risks to the Operator's undertaking and the personnel concerned do not appear to have been adequately stated or adequate control measures and contingency plans specified;



- (v) that the Commissioning Plan does not incorporate a sufficiently detailed and clear process for determining whether or not the Commissioning Works have been completed satisfactorily;
  - (vi) that the Commissioning Plan does not comply with the relevant Method Statements;
  - (vii) that the Commissioning Plan does not comply with the Detailed Depot Design and/or the Standards;
  - (viii) that the Commissioning Plan does not comply with the Operator's operational safety case;
  - (ix) that the Commissioning Plan has not been prepared in accordance with good industry practice;
  - (x) that the allocation of resources and the associated skill levels appear to the Operator, acting reasonably, to be inappropriate to the Commissioning Works proposed, and that, where necessary, the personnel do not have the necessary qualification certificates and/or formal delegations issued by the Operator;
  - (xi) that the Operator reasonably believes that the methods described in the Commissioning Plan are likely to lead to any depot possessions or other protective arrangements being extended beyond their allocated time, thereby affecting depot operations;
  - (xii) that the Operator does not believe that acting in accordance with the Commissioning Plan will result in compliance with the Building Contractor's obligations under the Building Contract and/or the Building Contractor's Collateral Warranty (provided that, save in relation to any matter touching or concerning safety, in any dispute under paragraph 3.4 of this Schedule in relation to a comment made on this ground the Contractor will be entitled to establish that this ground does not exist if the Operator does not reasonably justify holding its belief);
  - (xiii) that the draft certificates proposed as part of the Taking into Use are inappropriate to the commissioning activities proposed;
  - (xiv) that the design closure list or other list of design deliverables defining the asset to be commissioned and Introduced into Operational Use set out in the Taking into Use is inaccurate and/or incomplete and/or inappropriate; and
  - (xv) that any necessary information being required to be published to notify those that might be affected by the Commissioning Works has not been provided to the Operator in due time to be published in the Weekly Operating Notices, Periodic Operating Notices and Special Operating Notices (as relevant); and
- (d) in relation to any Submitted Item which comprises an application to ORR:
- (i) that the Submitted Item does not comply with the Detailed Depot Design and/or the Standards;
  - (ii) that the Submitted Item does not comply with the Operator's operational safety case;

- (iii) that the Submitted Item would not comply with a Legal Requirement to control the risks arising from the design to as low a level as reasonably practicable;
- (iv) that the Assurance Case (and/or contract-specific addendum related thereto) is not being complied with;
- (v) that the Operator does not believe that the Submitted Item which comprises an application to the ORR will result in compliance with the Building Contractor's obligations under the Building Contract and/or the Building Contractor's Collateral Warranty (provided that, save in relation to any matter touching or concerning safety, in any dispute under paragraph 3.4 of this schedule in relation to a comment made on this ground the Building Contractor will be entitled to establish that this ground does not exist if the Operator does not reasonably justify holding its belief);
- (vi) that the Submitted Item is not in accordance with good industry practice;
- (vii) that the Submitted Item does not comply with the requirements of the Design Quality Plan or the Works Quality Plan; and
- (viii) that the Building Contractor has not provided the necessary certificates of conformance and other documentation required in accordance with the ORR Grey Book.

2.2 It shall be a matter for the Operator's discretion to determine, if a Submitted Item is endorsed "Not Approved", whether the comments relating to that endorsement (taking into account individual comments or the cumulative number of comments) are major or minor.

### **3. EFFECT OF REVIEW**

3.1 Any Submitted Item which is returned by the Operator's representative endorsed as either "Level 1 – Approved, work may proceed", "Level 2 – Approved with comments, work may proceed subject to inclusion of comments", "Level 3 – Not approved with minor comments, resubmit" or "Level 4 – Not approved with major comments, resubmit" shall be complied with or implemented (as the case may be) by the Building Contractor in relation to Method Statements, Inspection and Testing Plans and Commissioning Plans.

3.2 In issuing its acceptance, the Operator may stipulate with the agreement of the Building Contractor hold points in the Interface Works where it intends to carry out a superimposed check or inspection.

3.3 Once acceptance of the Method Statements, Inspection and Testing Plans or Commissioning Plan has been achieved, the Accredited Entity can then implement the Works and the Operator may carry out its own surveillance of the Works for compliance with the Method Statements, Inspection and Testing Plan or Commissioning Plan. The Building Contractor shall obtain the relevant approval from the Operator 10 (ten) Working Days in advance of the commencement of the Works. If the Operator finds that the Works are in breach of the Method Statements, Inspection and Testing Plan or Commissioning Plan, it may require a cessation of the relevant Works until the breach is addressed to its satisfaction (provided that, save in relation to any matter touching or concerning safety, the Building Contractor will be entitled to dispute such cessation of Works if the Operator does not reasonably justify the belief that the Works are in breach of the Method Statements, Inspection and Testing Plan or Commissioning Plan).

3.4 In the case of any Submitted Item, if the Operator returns the Submitted Item to the Contractor endorsed “Level 4 – Not approved with major comments, resubmit” or “Level 3 – Not approved with minor comments, resubmit”, the Building Contractor shall comply with such Submitted Item after amendment in accordance with the comments and resubmission in accordance with paragraph 4 unless the Building Contractor disputes that any such comment is on grounds permitted by this Agreement, in which case the Depot SPC or the Operator may refer the matter for determination in accordance with clause 41 (*Disputes*) and the Building Contractor shall not act on the Submitted Item until such matter is so determined or otherwise agreed.

#### **4. RESUBMISSION**

On receiving the comments of the Operator on any Submitted Item pursuant to paragraph 3.4 the Building Contractor shall send a copy of the Submitted Item as amended to the Operator and the provisions of paragraphs 1, 2, 3 and 4 (as appropriate) shall apply (changed according to the context) to such resubmission, save that in relation to any resubmission as a result of a Submitted Item being endorsed “Level 3 – Not approved with minor comments, resubmit” the time periods referred to in paragraph 1.5 shall be halved.

#### **5. OPERATOR DUTY**

The Operator shall act reasonably in the performance of its obligations under this Schedule 11.2.

## SCHEDULE 11.3

### Depot SPC Submission Criteria

#### 1 SUBMISSION PROCEDURE AND CRITERIA

Subject to any express provision of this Agreement, the manner, form and timing of any submission to be made by Network Rail to the Depot SPC and the Operator for review will be for Network Rail and the Depot SPC to agree. Each submission shall be:

- (a) accompanied by a copy of the proposed document to be reviewed (the entire contents of a submission being referred to in this Schedule as *Submitted Item*);
- (b) accompanied by a certificate of compliance from Network Rail in respect of that submission;
- (c) accompanied by evidence that the relevant Accredited Entity has prepared the Submitted Item;
- (d) accompanied by a statement of its relationship to the relevant Interface with the Depot SPC's works; and
- (e) accompanied by a list of the Standards, law and other guidance and codes of practice Network Rail has complied with in preparing the Submitted Item.

2 Any submission under paragraph 1 shall be made in accordance with the Information Production Programme and Network Rail shall submit any further or other information, data and documents that the Depot SPC or the Operator reasonably requires in order properly review the submission.

3. In relation to each Submitted Item the Depot SPC and the Operator shall as soon as practicable but in any event within the relevant number of Working Days set out the table below return one copy of the relevant Submitted Item to Network Rail endorsed with its comments.

<b>Working Days</b>					
	<i>Civils</i>	<i>Permanent Way</i>	<i>Signalling</i>	<i>Telecomm- unications</i>	<i>Electrification and Plant</i>
<b>Generic Method Statements</b>	10 (ten)	10 (ten)	10 (ten)	10 (ten)	10 (ten)
<b>Activity Method Statements</b>	10 (ten)	10 (ten)	10 (ten)	10 (ten)	10 (ten)
<b>Inspection and Testing Plans</b>	10 (ten)	10 (ten)	10 (ten)	10 (ten)	10 (ten)
<b>Commissioning Plans</b>	10 (ten)	10 (ten)	10 (ten)	10 (ten)	10 (ten)
<b>Form A/Form B or equivalent</b>	10 (ten)	10 (ten)	10 (ten)	10 (ten)	10 (ten)
<b>Form C</b>	10 (ten)	N/A	N/A	N/A	N/A

## SCHEDULE 12

[●]<sup>216</sup>

**Schedule 12.1:** [●]<sup>217</sup>

**Schedule 12.2:** [●]<sup>218</sup>

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<sup>216</sup> Redaction.

<sup>217</sup> Redaction.

<sup>218</sup> Redaction.

**SCHEDULE 12.1**

[●]<sup>219</sup>

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<sup>219</sup> Redaction.

**SCHEDULE 12.2**

[●]<sup>220</sup>

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<sup>220</sup> Redaction.



**APPENDIX 1 TO SCHEDULE 12.2**

[●]<sup>221</sup>

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<sup>221</sup> Redaction.

**APPENDIX 2 TO SCHEDULE 12.2**

[●]<sup>222</sup>

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<sup>222</sup> Redaction.

**APPENDIX 3 TO SCHEDULE 12.2**

[●]<sup>223</sup>

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<sup>223</sup> Redaction.

**APPENDIX 4 TO SCHEDULE 12.2**

[●]<sup>224</sup>

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<sup>224</sup> Redaction.

**APPENDIX 5 TO SCHEDULE 12.2**

[●]<sup>225</sup>

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<sup>225</sup> Redaction.

**APPENDIX 6 TO SCHEDULE 12.2**

[●]<sup>226</sup>

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<sup>226</sup> Redaction.

## SCHEDULE 13

[●]<sup>227</sup>

**Schedule 13.1:** [●]<sup>228</sup>

**Schedule 13.2:** [●]<sup>229</sup>

**Schedule 13.3:** [●]<sup>230</sup>

**Schedule 13.4:** [●]<sup>231</sup>

**Schedule 13.5:** [●]<sup>232</sup>

**Schedule 13.6:** [●]<sup>233</sup>

**Schedule 13.7:** [●]<sup>234</sup>

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<sup>227</sup> Redaction.

<sup>228</sup> Redaction.

<sup>229</sup> Redaction.

<sup>230</sup> Redaction.

<sup>231</sup> Redaction.

<sup>232</sup> Redaction.

<sup>233</sup> Redaction.

<sup>234</sup> Redaction.

**SCHEDULE 13.1**

[●]<sup>235</sup>

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<sup>235</sup> Redaction.



**SCHEDULE 13.2**

[●]<sup>236</sup>

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<sup>236</sup> Redaction.

### SCHEDULE 13.3

[●]<sup>237</sup>

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<sup>237</sup> Redaction.

## SCHEDULE 13.4

[●]<sup>238</sup>

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<sup>238</sup> Redaction.

**SCHEDULE 13.5**

[●]<sup>239</sup>

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<sup>239</sup> Redaction.

**SCHEDULE 13.6**

[●]<sup>240</sup>

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<sup>240</sup> Redaction.

**SCHEDULE 13.7**

[●]<sup>241</sup>

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<sup>241</sup> Redaction.

## SCHEDULE 14

### VARIATIONS AND CHANGES IN LAW

<b>Schedule 14.1:</b>	<b>Scope, Variation Rights and Duties and General Matters</b>
<b>Schedule 14.2:</b>	<b>Variation Proposals and Minor Variations</b>
<b>Schedule 14.3:</b>	<b>Secretary of State Authorisation of Variations</b>
	<b>Appendix: Variation Proposal and Authorisation to Vary Notice</b>
<b>Schedule 14.4:</b>	<b>Implementing and Withdrawing Variations</b>
	<b>Appendix: Notification of Withdrawal</b>
<b>Schedule 14.5:</b>	[●] <sup>242</sup>
<b>Schedule 14.6:</b>	[●] <sup>243</sup>
<b>Schedule 14.7</b>	[●] <sup>244</sup>
	[●] <sup>245</sup>
<b>Schedule 14.8:</b>	[●] <sup>246</sup>
<b>Schedule 14.9:</b>	[●] <sup>247</sup>

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<sup>242</sup> Redaction.

<sup>243</sup> Redaction.

<sup>244</sup> Redaction.

<sup>245</sup> Redaction.

<sup>246</sup> Redaction.

<sup>247</sup> Redaction.

## SCHEDULE 14.1

### Scope, Variation Rights and Duties and General Matters

#### 1. SCOPE

To the extent that any amendment is made to the terms of any Related Depot Agreement, including to the rights and/or obligations of the Depot SPC, the Operator, the Secretary of State, Network Rail or the TMM under any Related Depot Agreement to which any such party is a party it shall be made in accordance with the procedure set out in this Schedule 14 and by the issue by the Secretary of State of an Authorisation to Vary in accordance with Schedule 14.3 (*Secretary of State Authorisation of Variations*).

#### 2. VARIATION RIGHTS

2.1 Any of the parties may issue a Variation Proposal proposing a Variation to this Agreement to the other parties and (if that party considers it appropriate) proposing a Variation to any other Related Depot Agreement to which it is a party, in each case, to the other parties to the relevant Related Depot Agreement.

2.2 The Secretary of State may in accordance with this Schedule 14 issue to the parties in relation to any Related Depot Agreement:

- (a) a Variation Proposal, proposing a Variation to the terms of that Related Depot Agreement; and
- (b) an Authorisation to Vary, authorising the implementation of a Variation.

#### 3. DUTIES

3.1 In exercising any of their rights and performing any of their obligations under this Schedule 14, the parties shall use reasonable endeavours to act in such a manner so as to simplify and minimise the administrative time and costs incurred in dealing with any Variation Proposal, Authorisation to Vary or Withdrawal Notice.

3.2 Each party agrees to act reasonably and not to require any other party to undertake unnecessary and onerous work in relation to a Variation Proposal.

#### 4. RETROSPECTIVE CLAIMS

4.1 The Operator, the Secretary of State, the Depot SPC and Network Rail will not accept any retrospective claims arising from a Variation, including, in relation to this Agreement, claims in respect of a change to the Depot Requirements and/or the Depot Design in Principle, the Depot Phasing Plan, Works Programmes and/or the Information Production Programme, or relief from the Depot SPC's and/or the TMM's obligations, in each case, after an Authorisation to Vary has been issued in respect of that Variation.

4.2 The Operator, the Secretary of State and Network Rail will not accept any retrospective claims, including any claims in respect of the matters referred to in paragraph 4.1, arising from work which is being or has already been carried out by the Depot SPC or the TMM, or on behalf of the Depot SPC or the TMM and which was not the subject of an Authorisation to Vary prior to such work being commenced.



## **5. CONTRACT MANAGEMENT OF VARIATIONS**

5.1 The Depot SPC shall:

- (a) allocate a unique number to the Variation that is the subject of Variation Proposal upon the issue of any such Variation Proposal;
- (b) maintain a sequentially numbered register of all Variations that are the subject of a Variation Proposal and all Variations that are the subject of an Authorisation to Vary; and
- (c) where any such Variation Proposal or any such Authorisation to Vary relates to more than one Related Depot Agreement and/or any Related Depot Agreement and a Rolling Stock Agreement, ensure that the relevant register enables the Variation that is the subject of that Variation Proposal or Authorisation to Vary (as the case may be) to be identified as affecting more than one such agreement and enables, in the case of that Rolling Stock Agreement, reference to be made to the corresponding entry on any separate register that is maintained by the relevant party to the Rolling Stock Agreement.

5.2 Promptly following a request from the Secretary of State:

- (a) the Depot SPC shall provide him with an up-to-date copy of the relevant register; and
- (b) the relevant party shall provide him with a copy of any Variation Proposal that that party has made or received from any other party.

5.3 Each party shall procure that all correspondence it delivers in relation to any Variation subsequent to the allocation of a unique number pursuant to paragraph 5.1(a) shall bear that number.

## **6. DETERMINING THE COSTS OF AND FINANCING VARIATIONS**

6.1 The costs (in terms of Capital Expenditure) of a Variation shall be determined in accordance with the process set out in, as appropriate, Schedule 14.7 (*Additional Costs arising from Variation*) and/or Schedule 14.8 (*Runs of the Depot SPC Financial Model*).

6.2 The responsibility for funding the costs (in terms of Capital Expenditure) of a Variation that is the subject of an Authorisation to Vary, including a Mandatory Variation, is set out in Schedule 14.6 (*Funding Variations*).

6.3 [●]<sup>248</sup>

## **7. COSTS OF PROCESSING VARIATIONS**

### **Each party responsible for its own costs**

7.1 Subject to paragraphs 7.2 to 7.5 inclusive, the Proposing Party shall pay:

- (a) its own costs and expenses; and

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<sup>248</sup> Redaction.

- (b) the costs and expenses of the other parties to the extent they represent costs of an exceptional magnitude or nature

in each case of any nature whatsoever, incurred in connection with:

- (i) the preparation, issue, evaluation or negotiation of each Variation Proposal and the preparation and issue of each Withdrawal Notice;
- (ii) any acts, omissions or correspondence in connection with agreement on, or determination in accordance with, the provisions of Schedule 15 (Contract Disputes); and
- (iii) seeking funding to meet the costs of a Variation,

and such costs and expenses shall not be taken into account in pricing any Variation.

### **Costs of exceptional magnitude in preparation etc. or disputing Variations**

7.2 Each of the parties (other than the Secretary of State), shall be entitled to notify the other parties in advance where that notifying party reasonably considers that any costs or expenses of the kind referred to in paragraph 7.1(a) or 7.1(b) will, or are likely to include costs of an exceptional magnitude or nature, the parties shall use reasonable endeavours to agree a just and equitable method of apportionment of such costs and expenses between them.

### **Costs of exceptional magnitude in seeking funding for Mandatory Variations**

7.3 Where the Depot SPC is required by the Secretary of State pursuant to paragraph 2(b) of Schedule 14.6 (*Funding Variations*) to seek to borrow or otherwise raise moneys from the market to fund the costs of Capital Expenditure in relation to a Mandatory Variation that is to be made pursuant to paragraph 3 (*Agreement or Determination of Mandatory Variations*) of Schedule 14.5 (*Change in Law*), the Depot SPC shall notify the Secretary of State in advance where it believes that its costs or expenses of the kind referred to in paragraph 7.1(b)(iii) (when taken together with relevant costs or expenses of the kind referred to in paragraphs 7.1(b)(i) and 7.1(b)(ii)) will, or are likely to include costs of an exceptional magnitude or nature and in such case, the Secretary of State shall (at his option) either promptly:

- (a) undertake to meet those costs by doing so in any of the manners anticipated by paragraph 2(a) of Schedule 14.6; or
- (b) withdraw his requirement under paragraph 2(b) of Schedule 14.6 that the Depot SPC seek to borrow or otherwise raise moneys to meet those costs from the market and undertake to pay the Capital Expenditure related to that Mandatory Variation pursuant to paragraph 2(a) of Schedule 14.6, in any of the manners anticipated by that paragraph 2(a).

### **Costs of exceptional magnitude in seeking funding for Secretary of State Variations**

7.4 Where the Depot SPC is required by the Secretary of State pursuant to paragraph 3(b) of Schedule 14.6 to borrow or otherwise raise moneys from the market to fund the costs of a Variation proposed by the Secretary of State, the Depot SPC shall notify the Secretary of State in advance where any costs or expenses of the kind referred to in paragraph 7.1(b)(iii) (when taken together with the relevant costs or expenses of the kind referred to in paragraphs 7.1(b)(i) and 7.1(b)(ii)) will, or are likely to include costs of an exceptional magnitude or nature, and in such case the Secretary of State shall (at his option) either promptly:

- (a) undertake to meet those costs by doing so in any of the manners anticipated by paragraph 3(a) of Schedule 14.6;
- (b) withdraw his requirement under paragraph 3(b) of Schedule 14.6 that the Depot SPC seek to borrow or otherwise raise moneys to meet those costs from the market and undertake to pay the Capital Expenditure related to that proposed Variation pursuant to paragraph 3(a) of Schedule 14.6, in any of the manners anticipated by that paragraph 3(a); or
- (c) withdraw that Variation Proposal by issuing a Withdrawal Notice in accordance with paragraph 3.1 of Schedule 14.4 (Implementing and *Withdrawing Variations*).

### **Network Rail Costs**

7.5 If Network Rail is required to expend material amounts of management time in relation to the preparation, issue, evaluation or negotiation of a Variation Proposal which has been issued by any party hereto except Network Rail, Network Rail shall be entitled to charge the party which has issued the Variation Proposal for such management time expended, and such party shall pay for such management time, at a rate equal to the Network Rail Rates.

## **8. VARIATION PROCEDURES**

8.1 Subject always to paragraph 3 of this Schedule 14.1 the Secretary of State may (acting reasonably): issue, revise, amend or withdraw from time to time any request for information that he reasonably requires for the purposes of orderly consideration of Variations and the Depot SPC shall promptly provide any information that the Secretary of State reasonably requires for this purpose.

8.2 Any requests for information issued pursuant to paragraph 8.1 may require (amongst other things):

- (a) indicative calculations of any Material Variation Implementation Cost, Minor Variation Implementation Cost or other Variation cost, in each case, in relation to one or more Variations; and
- (b) any number of Variations to be grouped together as a single Variation for the purposes of:
  - (i) confirming the effect (if any) of any Variation Proposal on any Related Depot Agreement and/or any Rolling Stock Agreement (as the case may be), including the rights and obligations of any party thereto; and/or
  - (ii) calculating any Material Variation Implementation Cost, Minor Variation Implementation Cost or other Variation cost; and
- (c) to the extent necessary to comply with s.2 Law of Property (Miscellaneous Provisions) Act 1989, signatures by or on behalf of the relevant parties.

## SCHEDULE 14.2

### Variation Proposals and Minor Variations

#### 1. ISSUING VARIATION PROPOSALS

##### Completion of Variation Proposals

1.1 If a party to any Related Depot Agreement wishes to make a Variation of any kind to that Related Depot Agreement (including in each case, a Mandatory Variation), that party (the **Proposing Party**) shall complete the relevant sections of a Variation Proposal and send that Variation Proposal to the other parties to that Related Depot Agreement, provided that the Secretary of State shall be entitled to issue a Variation Proposal in relation to Related Depot Agreements to which he is not a party and, where he does so, for the purposes of this Schedule 14.2, he shall be deemed to be a Proposing Party in relation to the relevant Related Depot Agreements.

##### Information to be supplied when making a Variation Proposal

1.2 A Proposing Party shall ensure that any Variation Proposal contains, but is not limited to, the following information (as applicable):

- (a) the date of the proposal;
- (b) a statement as to whether that Variation Proposal is a Mandatory Variation including confirmation of the relevant Change in Law, or if not a Mandatory Variation, the reason why that Variation Proposal is being issued;
- (c) confirmation as to which and in what way the terms of the relevant Related Depot Agreement will be affected or whether a new Related Depot Agreement is proposed, and in each case, in sufficient detail (including comprehensive contractual drafting that clearly sets out the full extent of the proposed changes to that Depot Agreement) that each party that receives that Variation Proposal (each a **Recipient Party**) can evaluate the contractual, financial and other effects of implementing the Variation that is the subject of that Variation Proposal;
- (d) the proposed timescale for implementation of the proposed Variation, such timescale to be on the basis of, in the case of a Material Variation, mitigating as far as reasonably practicable any adverse impact of implementation of that Material Variation on the Existing Depot Functionality and ensuring that the continuing minimum service levels at the Existing Depot do not fall below the Protected Depot Functionality;
- (e) where the Proposing Party is the Depot SPC, the confirmation referred to in paragraph 1.2(c) shall:
  - (i) include a specification of the effect (if any) in the Depot SPC's opinion of that Variation Proposal on, as appropriate, the Depot Requirements and / or the Depot Design in Principle, the Information Production Programme, the Depot Phasing Plans, the Existing Depot Functionality and/or the Protected Depot Functionality, the Interface Works or affects the present or future operation of the New Depot (including the effect on Operating Expenditure) and/or the Railway and such opinion shall:

- (A) be given with a view to creating the least possible impact on the terms of this Agreement and the Depot Phasing Plans; and
  - (B) where it is anticipated that that Variation Proposal will have an effect on the Interface Works, how those Interface Works will be affected;
- (ii) contain a calculation of, where that Variation Proposal relates to:
- (A) a Material Variation, the cost of implementing that Material Variation (the *Material Variation Implementation Cost*) (in terms of Capital Expenditure and where applicable Operating Expenditure);
  - (B) a Minor Variation because paragraph 4.2 applies, the cost of implementing that Minor Variation (the *Minor Variation Implementation Cost*) (in terms of Capital Expenditure and where applicable Operating Expenditure); and
  - (C) any other Variation, the cost of implementing that Variation (in terms of Capital Expenditure and where applicable Operating Expenditure),
- provided that in doing so, the Depot SPC shall (with the aim of achieving value for money in the relevant circumstance) use reasonable endeavours to price the Capital Expenditure element of the Material Variation Implementation Cost, Minor Variation Implementation Cost, or cost of implementing that other Variation (as the case may be) at a price equal to the actual cost for that Material Variation, Minor Variation or other Variation (as the case may be) in accordance with Schedule 14.7; and
- (iii) contain a statement certifying that the Depot SPC will hold that Variation Proposal open for 60 (sixty) days from the date of that Variation Proposal unless the Works Programme and/or the sequence of activities in relation to the Depot Works would be adversely affected by holding the variation proposal open for 60 days in which case the period shall be such shorter period specified by the Depot SPC (acting reasonably) as may be required in order to maintain the Works Programme and/or the sequence of activities of the Depot Works and in any such case any other time periods in this Schedule 14 shall be adjusted accordingly; and
- (f) where, in the opinion of the Proposing Party acting reasonably, the terms of:
- (i) more than one Related Depot Agreement to which it is a party will be affected, the Proposing Party shall provide the confirmation described in paragraph 1.2(c) in relation to each such affected Related Depot Agreement; and
  - (ii) any Rolling Stock Agreement to which it is a party will be affected, the Proposing Party shall confirm that it has made a separate variation proposal to the parties to that Rolling Stock Agreement in accordance with the variation procedure set out in that Rolling Stock Agreement.

### **Variation Proposals to Rolling Stock Agreements**

1.3 If the TMM, the Operator or the Secretary of State makes a variation proposal under Schedule 4.2 of the Umbrella Agreement which, in their opinion, will affect any Related

Depot Agreement, they will make the relevant Variation Proposal in accordance with this Schedule 14.2.

1.4 If the TMM makes a variation proposal under Schedule 4.2 of the Umbrella Agreement, which in the opinion of the Depot SPC will affect any Related Depot Agreement, the Depot SPC will make the relevant Variation Proposal in accordance with this Schedule 14.2.

## **2. ACKNOWLEDGEMENT AND RESPONSE**

2.1 Each Recipient Party shall:

- (a) promptly acknowledge receipt to the Proposing Party in writing, and in so doing, indicate a timescale (not more than 28 (twenty eight) days from receipt of that Variation Proposal unless otherwise agreed by the relevant parties, having regard to the complexity of the Variation Proposal) within which that Recipient Party will make a full written response to that Variation Proposal; and
- (b) make that full written response within that proposed timescale to the Proposing Party and, as appropriate, each other party to the relevant Related Depot Agreement.

2.2 In responding to any Variation Proposal, each Recipient Party shall:

- (a) state the effect (if any) in its opinion of that Variation Proposal on the relevant Related Depot Agreement including on the rights and/or obligations of the parties to the relevant Related Depot Agreement;
- (b) state its opinion of the timescale for implementation of the Variation that is the subject of that Variation Proposal, such timescale to be stated (where appropriate) on the basis of mitigating as far as reasonably practicable any adverse impact of implementation of that Variation on the Existing Depot Functionality and ensuring that the continuing minimum service levels at the Existing Depot do not fall below the Protected Depot Functionality;
- (c) confirm whether in its opinion there is any other consequence of that Variation Proposal, including whether any Rolling Stock Agreement will be affected in which case, subject to the Proposing Party's right to refer that matter for resolution under the Contract Dispute procedure, the Proposing Party shall, (or, in the case of a Variation Proposal submitted by the Depot SPC or the TMM shall) promptly issue a variation proposal under the relevant Rolling Stock Agreement;
- (d) confirm, if relevant, the costs and expenses of the kind specified in paragraph 7.2 of Schedule 14.1 (*Scope, Variation Rights and Duties and General Matters*) that that Recipient Party expects to incur; and
- (e) confirm whether the contractual terms proposed by the Proposing Party, appended to that Variation Proposal, are acceptable or not to that Recipient Party and where not acceptable, propose alternate contractual terms upon which that Recipient Party would be prepared to contract.

2.3 Where the Recipient Party is the Depot SPC, the Depot SPC:

- (a) in complying with the terms of paragraph 2.2, shall specify in its response to the relevant Variation Proposal, the effect (if any) in the Depot SPC's opinion of that

Variation Proposal on, as appropriate, the Depot Requirements and / or the Depot Design in Principle, the Information Production Programme, the Depot Phasing Plans, the Existing Depot Functionality and/or the Protected Depot Functionality, the Interface Works and/or affects the present or future operation of the New Depot (including the effect on Operating Expenditure) and/or the Railway;

- (b) contain a calculation of, where that Variation Proposal relates to:
- (i) a Material Variation, the Material Variation Implementation Cost (in terms of Capital Expenditure and where applicable Operating Expenditure);
  - (ii) a Minor Variation because paragraph 4.2 applies, the Minor Variation Implementation Cost (in terms of Capital Expenditure and where applicable Operating Expenditure); and
  - (iii) any other Variation, the cost of that Variation (in terms of Capital Expenditure and where applicable Operating Expenditure),

and that opinion shall be formulated on the same basis as if the Depot SPC had made a Variation Proposal in accordance with paragraph 1.2; and

- (c) shall certify in its response to a Variation Proposal made by another Proposing Party that the Depot SPC will hold the terms of that response open for 30 (thirty) days from the date of that response.

2.4 Any response by any party to a Variation Proposal shall be made on the form on which that Variation Proposal was made and such response shall form part of that Variation Proposal upon receipt by the other parties of that response.

### **3. SETTLEMENT OF VARIATION PROPOSALS**

#### **Notification of whether Variation Proposal and response accepted or not**

3.1 Promptly and in any event within 28 (twenty eight) days of receipt of all responses to a Variation Proposal, the parties to the relevant Related Depot Agreement shall confirm to each other in writing whether the terms of that Variation Proposal and each response have been accepted as between them or not. If any Recipient Party (other than the Secretary of State) who is not a party to the relevant Related Depot Agreement has not provided a response to the Variation Proposal within such 28 (twenty eight) day period, the person shall be deemed to accept the Variation Proposal.

#### **Acceptance of Variation Proposal and responses**

3.2 If the parties to this Agreement (other than the Secretary of State) have all confirmed to each other in writing that the terms of that Variation Proposal, including any responses thereto, are accepted between them (or are deemed to have accepted them pursuant to paragraph 3.1), the Proposing Party shall apply to the Secretary of State as soon as reasonably practicable thereafter for the purpose of obtaining an Authorisation to Vary in accordance with paragraph 2 (*Seeking an Authorisation to Vary*) of Schedule 14.3 (*Secretary of State Authorisation of Variations*), provided that where the Secretary of State is the Proposing Party, paragraph 3.4 of Schedule 14.3 shall apply.

### **No acceptance of Variation Proposal made by Depot SPC and/or responses**

3.3 If in the case of a Variation Proposal issued by the Depot SPC (other than a Variation Proposal that relates to a Mandatory Variation, in which case, this paragraph 3.3 shall not apply), the Secretary of State (having considered the relevant Variation constructively and in Good Faith) may confirm in accordance with paragraph 3.1 that he does not wish that Variation Proposal to be carried out or that that Variation Proposal is not necessary, in which case, the Depot SPC shall withdraw that Variation Proposal by issuing a Withdrawal Notice to the parties to the relevant Related Depot Agreement in accordance with paragraph 3.1 of Schedule 14.4 (*Implementing and Withdrawing Variations*).

### **No acceptance of terms of Variation Proposal and/or responses**

3.4 If pursuant to paragraph 3.1, any of the parties to this Agreement confirms that it is not satisfied with the terms of that Variation Proposal, including any of the responses thereto, the parties (other than a party who is deemed to have accepted the Variation Proposal pursuant to paragraph 3.1) shall meet as soon as reasonably practicable after receipt of that confirmation, in order to seek to agree the terms of that Variation Proposal, including any responses thereto.

3.5 If the relevant parties cannot reach agreement within a period of 14 (fourteen) days from the date of the first meeting held pursuant to paragraph 3.4 (or such longer period as those parties agree), then, without limiting paragraph 3.3, within 7 (seven) further days, the Proposing Party shall, either:

- (a) withdraw that Variation Proposal by issuing a Withdrawal Notice to the parties to that Related Depot Agreement in accordance with paragraph 3.1 of Schedule 14.4; or
- (b) issue a notice to the other parties to this Agreement, informing them that a Contract Dispute has thereby arisen and that that Contract Dispute will be resolved in accordance with the provisions of Schedule 15 (*Contract Disputes*).

3.6 Where a Contract Dispute has been referred pursuant to paragraph 3.5(b), and that Contract Dispute has been resolved such that the terms of the relevant Variation Proposal are settled, the Proposing Party shall, to the extent that it has not first withdrawn that Variation Proposal by issuing a Withdrawal Notice, apply to the Secretary of State in accordance with paragraph 2 of Schedule 14.3 for the purpose of obtaining an Authorisation to Vary in order to implement that Variation Proposal, provided that where the Secretary of State is the Proposing Party, paragraph 3.4 of Schedule 14.3 shall apply.

### **Further information**

3.7 The Secretary of State, the Operator and Network Rail shall each have the right (acting reasonably) to require the Depot SPC to produce any information, including supporting documentation, in relation to the effects (if any) on this Agreement and/or on any other Related Depot Agreement to which the Depot SPC is a party and which, in each case, is the subject of a Variation Proposal which the Depot SPC has made or responded to in accordance with this Schedule 14.2, for the purpose of determining, as appropriate, his or its respective position in relation to any such response or Variation Proposal, and the Depot SPC shall comply with that request as soon as reasonably practicable thereafter.

3.8 Where the Secretary of State, the Operator or Network Rail exercise the right pursuant to paragraph 3.7 to request further information, the Secretary of State, the Operator or Network Rail (as appropriate) shall for the purpose of responding to a Variation Proposal



pursuant to paragraph 3.1, each respond to, as appropriate, the Proposing Party and the other parties to this Agreement promptly and in any event within 28 (twenty eight) days of receipt of the Depot SPC's response to any such request for further information (provided that the information provided by the Depot SPC is sufficient).

#### 4. MINOR VARIATIONS REQUIRING VARIATION PROPOSALS

4.1 Subject to paragraph 4.2, a party shall be entitled to request of the Depot SPC, and the Depot SPC may itself request of the other parties, in each case by serving notice on the other parties to this Agreement a reasonable period in advance of implementation, that a Minor Variation is implemented in accordance with the requirements of that Minor Variation without the need to issue a Variation Proposal in relation to that Minor Variation.

4.2 Where any other party has requested that the Depot SPC implements a Minor Variation and the Depot SPC is of the opinion (acting reasonably) that the associated Minor Variation Implementation Cost, whether of itself or when aggregated with the cost of any previous Minor Variation Implementation Cost of any other Minor Variation that the Depot SPC has been requested by any other party (except the TMM) to implement, would, in either case, result in a material DAFL Variable Depot Cost or a material additional Operating Expenditure then the Depot SPC shall be entitled to require a Minor Variation to be treated as a Material Variation and thereby be subject to the issue by that other party of a Variation Proposal pursuant to paragraph 1 (*Issuing Variation Proposals*) and in that case:

- (a) the party that proposed that Minor Variation, where it still requires it to be implemented by the Depot SPC, shall promptly make such a Variation Proposal; and
- (b) the other provisions of this Schedule 14 shall apply as if that Minor Variation was a Material Variation.

4.3 In pricing any Minor Variation Implementation Cost (in terms of Capital Expenditure) pursuant to paragraph 4.2, the Depot SPC shall (with the aim of achieving value for money in the relevant circumstances) use reasonable endeavours to price the related Minor Variation Implementation in accordance with Schedule 14.7.

4.4 The Depot SPC shall keep a record of all Minor Variations it implements and a transparent account of the Minor Variation Implementation Cost relating to each such Minor Variation. The Secretary of State may request that the Depot SPC provides a copy of that record to him from time to time and the Depot SPC shall promptly provide that record to him following any such request.

#### 5. [●]<sup>249</sup>

Where the Depot SPC wishes to make any Variation Proposal or is to make any response to a Variation Proposal pursuant to this Schedule 14.2, and it reasonably believes that the implementation of the Variation that is the subject of that Variation Proposal or response will give rise to a Material Variation Implementation Cost in the case of a Material Variation or a material cost in the case of any other Variation, the Depot SPC shall perform a [●]<sup>250</sup> and include the results of that exercise in that Variation Proposal or response (as appropriate).

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<sup>249</sup> Redaction.

<sup>250</sup> Redaction.

## SCHEDULE 14.3

### Secretary of State Authorisation of Variations

#### 1. REQUIREMENT FOR AN AUTHORISATION TO VARY

1.1 An Authorisation to Vary must be first issued by the Secretary of State pursuant to this Schedule 14.3 in order for the implementation of the related Variation Proposal to be authorised.

1.2 The Secretary of State shall in accordance with paragraph 3 (*Authorising or Rejecting Variations*) consider the application of any Proposing Party made pursuant to paragraph 3.2 of Schedule 14.2 (*Variation Proposals and Minor Variations*) and in accordance with paragraph 2 (*Seeking an Authorisation to Vary*) for the Secretary of State to issue an Authorisation to Vary.

#### 2. SEEKING AN AUTHORISATION TO VARY

An application made by a Proposing Party pursuant to paragraph 3.2 or 3.6 of Schedule 14.2 for the Secretary of State to issue an Authorisation to Vary shall include the following information, provided that this paragraph 2 shall not apply to the extent that the Secretary of State has already been a party to discussions in relation to the Variation that is the subject of that application and is in receipt of such information:

- (a) a copy of that Variation Proposal;
- (b) any response to that Variation Proposal by any other party to the Related Depot Agreement that is the subject of that Variation Proposal;
- (c) comprehensive contractual drafting that clearly sets out the full extent of the proposed changes to that Related Depot Agreement;
- (d) where that Variation Proposal anticipates an adjustment to any of the financial terms of that Related Depot Agreement:
  - (i) confirmation as to how and by whom the relevant Variation is intended to be funded; and
  - (ii) any [●]<sup>251</sup> performed pursuant to paragraph 5 ([●]<sup>252</sup>) of Schedule 14.2 (*Variation Proposals and Minor Variations*); and
- (e) any other supporting information.

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<sup>251</sup> Redaction.

<sup>252</sup> Redaction.

### **3. AUTHORISING OR REJECTING VARIATION PROPOSALS**

#### **Consideration by the Secretary of State**

3.1 Promptly and in any event within 28 (twenty eight) days of the receipt by the Secretary of State of any application for the Secretary of State to issue an Authorisation to Vary in relation to any Variation, the Secretary of State shall, subject to the Secretary of State exercising his right pursuant to paragraph 3.11 to seek further information, notify the parties to the Related Depot Agreement that is the subject of that application whether he is willing to issue an Authorisation to Vary.

3.2 If the Secretary of State decides to issue an Authorisation to Vary he shall do so by issuing that Authorisation to Vary in the form set out in the Appendix (*Notification of Authorisation to Vary*) to each party to the Depot Agreement that is the subject of an application for authorisation, in which case the provisions of paragraph 1 (*Implementation of Authorised Variations*) of Schedule 14.4 (*Implementing and Withdrawing Variations*) shall apply.

3.3 Subject to paragraph 3.8, the other parties to this Agreement acknowledge that the Secretary of State may not authorise any Variation Proposal that provides for the inclusion in any Related Depot Agreement of, in the reasonable opinion of the Secretary of State, any unusual or unduly onerous obligations which would impose a greater burden on the Secretary of State or the Operator than was imposed on the Secretary of State or the Operator prior to that Variation Proposal being made.

#### **Secretary of State as Proposing Party**

3.4 Where the Secretary of State is the Proposing Party and the parties to any Related Depot Agreement that is the subject of the related Variation Proposal made by him, have all confirmed to each other and him that they are satisfied with the terms of that Variation Proposal, then, unless the Secretary of State decides to withdraw that Variation Proposal in accordance with paragraph 3.1 of Schedule 14.4, he shall promptly issue an Authorisation to Vary to those parties.

#### **Secretary of State as Recipient Party**

3.5 Where the Secretary of State is a Recipient Party and the parties to any Related Depot Agreement that is the subject of a Variation Proposal and the Secretary of State have all confirmed to each other that they are satisfied with the terms of that Variation Proposal or it has been determined under Paragraph 3.6 of Schedule 14.2 that the terms of the Variation Proposal are settled pursuant to the Contract Disputes procedure, then, unless the Proposing Party decides to withdraw that Variation Proposal in accordance with paragraph 3.1 of Schedule 14.4, he shall promptly issue an Authorisation to Vary to those parties.

#### **Variations to more than one Related Depot Agreement and Rolling Stock Variations**

3.6 In giving due consideration pursuant to paragraph 3.1, the Secretary of State shall (acting reasonably) consider in his sole discretion whether the Variation to any Related Depot Agreement that is the subject of an application to him to issue an Authorisation to Vary, is related to:

- (a) any Variation to any other Related Depot Agreement that is the subject of that application; and/or

(b) any variation proposal to be made pursuant to any Rolling Stock Agreement.

3.7 Where the Secretary of State concludes pursuant to paragraph 3.6 that Variations proposed to 2 (two) or more Related Depot Agreements and/or a proposed Variation to a Related Depot Agreement and any variation proposal made to him pursuant to any Rolling Stock Agreement are related:

- (a) those proposals shall be considered and authorised or rejected concurrently;
- (b) where an application has been made in relation to Variations to 2 (two) or more Related Depot Agreements, an Authorisation to Vary shall not be issued in relation to 1 (one) such Variation alone; and
- (c) where an application has been made in relation to a Variation to a Related Depot Agreement and in relation to a variation to any Rolling Stock Agreement, an Authorisation to Vary shall not be issued in relation to that Variation unless an equivalent authorisation has also been issued by the Secretary of State in relation to the variation to that Rolling Stock Agreement.

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3.8 [●]<sup>254</sup>

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3.9 [●]<sup>256</sup>

3.10 [●]<sup>257</sup>

3.11 [●]<sup>258</sup>

**Further information**

3.12 The Secretary of State shall have the right (acting reasonably) to require any party to a Related Depot Agreement that is the subject of an application for the Secretary of State to issue an Authorisation to Vary, to produce any information reasonably required, including supporting documentation, in relation to the effects (if any) on that Related Depot Agreement, and that party shall comply with that request as soon as reasonably practicable thereafter.

3.13 Where the Secretary of State exercises the right pursuant to paragraph 3.11 to request further information, he shall, for the purpose of responding to the relevant request to issue an Authorisation to Vary pursuant to paragraph 3.1, respond to the Proposing Party and the other parties to the relevant Related Depot Agreement promptly and in any event within 28 (twenty

<sup>253</sup> Redaction.

<sup>254</sup> Redaction.

<sup>255</sup> Redaction.

<sup>256</sup> Redaction.

<sup>257</sup> Redaction.

<sup>258</sup> Redaction.

eight) days of receipt of the relevant party's response to any such request for further information.

#### **4. UNAUTHORISED VARIATIONS**

##### **Obligation not to vary without consent**

4.1 None of the Depot SPC, the TMM, the Operator or Network Rail shall enter into any Contract Amendment Agreement or new Related Depot Agreement without the prior issue by the Secretary of State of a related Authorisation to Vary and written confirmation in respect of the final draft of that Contract Amendment Agreement or new Related Depot Agreement, as the case may be, pursuant to paragraph 1.2 of Schedule 14.4 (*Implementing and Withdrawing Variations*).

##### **Failure to obtain consent**

4.2 If a Contract Amendment Agreement is made or a new Related Depot Agreement is entered into without the consent of the Secretary of State, as required under paragraph 4.1 (in either case, an *Unauthorised Contract*), then the Secretary of State may by written notice, notify the parties that have entered into any Unauthorised Contract that the Unauthorised Contract has been entered into without his consent and that, pursuant to the terms of the relevant Unauthorised Contract, the Variation that is the subject of that Unauthorised Contract is unenforceable between the parties to that Variation.

##### **Obligation to remedy where capable of remedy**

4.3 Where:

- (a) all of the actions taken pursuant to an Unauthorised Contract are remediable, the Secretary of State shall; or
- (b) only some of the actions taken pursuant to an Unauthorised Contract are remediable, the Secretary of State may in his sole discretion,

by written notice notify the parties that have entered into that Unauthorised Contract, that

- (i) he requires, within a reasonable period specified by him, those parties to:
  - (A) as appropriate, amend the Related Depot Agreement that is the subject of that Unauthorised Contract to revoke the changes made by that Unauthorised Contract and/or revoke that new Related Depot Agreement; and
  - (B) to the extent specified, put those parties into the position they were in prior to the entry into of that Unauthorised Contract, remedying all actions, or those actions that are considered to have material effect, as appropriate, that were, in each case, taken by or on behalf of any of them prior to the Secretary of State's notice that are capable of remedy;
- (ii) he authorises that Unauthorised Contract, in which case, he shall issue an Authorisation to Vary.

**Consequences where irremediable actions or failure to remedy**

4.4 Where pursuant to paragraph 4.3:

- (a) the Secretary of State requires the parties that have entered into an Unauthorised Contract to amend the relevant Related Depot Agreement, revoke any new Related Depot Agreement and/or remedy actions, and any of those amendments, that revocation or those actions are not made or remedied, as appropriate, within the reasonable period specified by the Secretary of State;
- (b) the Secretary of State does not require those parties to amend, revoke and/or remedy as referred to in paragraph 4.4(a); or
- (c) all of the actions taken pursuant to that Unauthorised Contract are irremediable,

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4.5 [●]<sup>261</sup>

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<sup>259</sup> Redaction.

<sup>260</sup> Redaction.

<sup>261</sup> Redaction.

## APPENDIX TO SCHEDULE 14.3

## VARIATION PROPOSAL AND AUTHORISATION NOTICE

VARIATION PROPOSAL	NUMBER	VP
<b>CONTRACT NO:</b>		
<b>DEPOT AGREEMENT FOR ASSET PROTECTION, WORKS AND GRANT OF LEASES IN RESPECT OF THE DEPOT AT HORNSEY (the "Contract")</b>		
<b>PART A</b> (to be completed by Proposing Party of Variation Proposal)		
<b>Description of Variation Proposal:</b>		
Quantity affected by this Variation Proposal:		
Proposed timescale for implementation of Variation Proposal:		
Signature: _____ Proposing Party	Designation:	<b>Network Rail's Representative/ Depot SPC's Contract Manager/ Operator's Contract Manager/ Secretary of State's representative TMM's Representative</b>
Date: _____		
<b>PART B</b> (to be completed by Recipient Party to the Contract)		
<b>Agreement effect(s) (including effects on rights and/or obligations of the parties to the Contract):</b>		
<b>Effects on Depot Agreements:</b>		
<b>Estimated costs and expenses to implement the Variation Proposal:</b>		
<b>Opinion on proposed timescale for implementation of Variation Proposal:</b>		
<b>Opinion on proposed contractual terms appended to the Variation Proposal:</b>		
<b>Programme for completion of actions to be carried out under this Variation Proposal:</b>		
<b>Comments on Parts A or B:</b>		

**PART C** (to be completed by each party (other than the Secretary of State) confirming no further comments on Variation Proposal)

Each of the following parties confirms, in accordance with paragraph 3.2 of *Schedule 14.2 (Variation Proposal)*, that it has no further comments on the terms of the Variation Proposal set out in Part A and Part B above:

Signature: \_\_\_\_\_  
Network Rail

Date: \_\_\_\_\_

Signature: \_\_\_\_\_  
Operator

Date: \_\_\_\_\_

Signature: \_\_\_\_\_  
Depot SPC

Date: \_\_\_\_\_

Signature: \_\_\_\_\_  
TMM

Date: \_\_\_\_\_

**PART D** (to be completed by Secretary of State)

*When complete, this form must be returned to all parties to the Contract*

The Secretary of State confirms, in accordance with paragraph 3.2 of *Schedule 14.3 (Secretary of State Authorisation of Variations)* its Authorisation to Vary in respect of the Variation Proposal set out in Part A and Part B above.

Signature: \_\_\_\_\_  
Secretary of State's Representative

Date: \_\_\_\_\_

***Note: Unless and until authorised by the Secretary of State's Representative this Variation Proposal is null and void and of no contractual effect. No party shall commence implementation of such Variation Proposal until signed by the Secretary of State's Representative.***



## SCHEDULE 14.4

### Implementing and Withdrawing Variations

#### 1. IMPLEMENTATION OF AUTHORISED VARIATIONS

##### **Obligation to enter into Contract Amendment Agreement or new Related Depot Agreement**

1.1 If the Secretary of State issues an Authorisation to Vary pursuant to paragraph 3.2 of Schedule 14.3 (*Secretary of State Authorisation of Variations*) then the parties to each Related Depot Agreement that is the subject of that Authorisation to Vary shall implement the relevant Variation specified in that Authorisation to Vary promptly and in any event within the timescale and in accordance with any key milestones or stages specified in that Authorisation to Vary by exercising their respective rights under that Related Depot Agreement to require the counterparties to that Related Depot Agreement to enter into a Contract Amendment Agreement and/or a new Related Depot Agreement (as appropriate) to give effect to the terms of the Variation Proposal.

##### **Copies of executed Contract Amendment Agreements and Related Depot Agreements**

1.2 Promptly after any Contract Amendment Agreement and/or new Related Depot Agreement is entered into pursuant to any Authorisation to Vary, the Proposing Party to the related Variation Proposal shall provide the Secretary of State with execution versions of that Contract Amendment Agreement and/or new Related Depot Agreement.

#### 2. IMPLEMENTATION OF MINOR VARIATIONS

If a party has requested that the Depot SPC (or the Depot SPC itself wishes to) implement or procure the implementation of a Minor Variation, then subject to paragraph 4 (*Minor Variations Requiring Variation Proposals*) of Schedule 14.2 (*Variation Proposals and Minor Variations*), the Depot SPC shall implement, or procure the implementation of, that Minor Variation as soon as reasonably practicable thereafter without the requirement for the Secretary of State to first issue an Authorisation to Vary or the entry into by the relevant parties of a Contract Amendment Agreement.

#### 3. WITHDRAWAL OF VARIATION PROPOSALS

3.1 A party may withdraw a Variation Proposal it has made at any time prior to the issue of an Authorisation to Vary authorising the implementation of that Variation Proposal (and thereafter only by agreement of the relevant parties) by issuing a notice to the parties that that Variation Proposal was issued to, confirming that that Variation Proposal has been withdrawn (a *Withdrawal Notice*).

3.2 A Variation Proposal shall be withdrawn on the date on which all of the parties to whom that Variation Proposal was issued are in receipt of the Withdrawal Notice confirming its withdrawal.

3.3 The provisions of paragraph 7 (*Costs of Processing Variations*) of Schedule 14.1 (*Scope, Variation Rights and Duties and General Matters*) apply in respect of any costs incurred in relation to a Variation Proposal prior to its withdrawal pursuant to a Withdrawal Notice and in relation to the preparation and issue of a Withdrawal Notice.

**APPENDIX TO SCHEDULE 14.4  
NOTIFICATION OF WITHDRAWAL**

VARIATION PROPOSAL	NUMBER	VP									
<b>CONTRACT NO:</b> <b>DEPOT AGREEMENT FOR ASSET PROTECTION, WORKS AND GRANT OF LEASES IN RESPECT OF THE DEPOT AT HORNSEY (the “Contract”)</b>											
<b>PART A</b> (to be completed by Proposing Party of Variation Proposal)											
<b>Description of Variation Proposal:</b>											
Quantity affected by this Variation Proposal:											
Confirmation of the Proposing Party’s withdrawal of the Variation Proposal:  <table border="0" style="width: 100%;"> <tr> <td style="width: 40%;">Signature: _____</td> <td style="width: 20%;">Designation:</td> <td style="width: 40%;"><b>Network Rail’s Representative/ Depot SPC’s Contract Manager/ Operator’s Contract Manager/ Secretary of State’s representative TMM’s Representative</b></td> </tr> <tr> <td>Proposing Party</td> <td></td> <td></td> </tr> <tr> <td>Date: _____</td> <td></td> <td></td> </tr> </table>			Signature: _____	Designation:	<b>Network Rail’s Representative/ Depot SPC’s Contract Manager/ Operator’s Contract Manager/ Secretary of State’s representative TMM’s Representative</b>	Proposing Party			Date: _____		
Signature: _____	Designation:	<b>Network Rail’s Representative/ Depot SPC’s Contract Manager/ Operator’s Contract Manager/ Secretary of State’s representative TMM’s Representative</b>									
Proposing Party											
Date: _____											

**SCHEDULE 14.5**

[●]<sup>262</sup>

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<sup>262</sup> Redaction.

**SCHEDULE 14.6**

[•]<sup>263</sup>

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<sup>263</sup> Redaction.

**SCHEDULE 14.7**

[●]<sup>264</sup>

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<sup>264</sup> Redaction.

**APPENDIX TO SCHEDULE 14.7**

[●]<sup>265</sup>

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<sup>265</sup> Redaction.

**Attachment 1**

[●]<sup>266</sup>

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<sup>266</sup> Redaction.

## SCHEDULE 14.8

[●]<sup>267</sup>

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<sup>267</sup> Redaction.



**SCHEDULE 14.9**

[●]<sup>268</sup>

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<sup>268</sup> Redaction.

**SCHEDULE 15**  
**CONTRACT DISPUTES**

**Schedule 15.1: Contract Disputes**

## SCHEDULE 15.1

### Contract Disputes

#### 1. DISPUTE RESOLUTION

##### Referral of a Contract Dispute

1.1 Subject to:

- (a) paragraphs 1.13 and 1.14;
- (b) where, in respect of a Contract Dispute, a Remedial Plan is being implemented in accordance with clause 21,

any dispute, controversy or claim of whatever nature between the parties arising out of, under or in connection with this Agreement (including any question of the breach, interpretation, validity, effect, performance or termination of this Agreement and any claims for set off or counterclaim and any Excluded Dispute) (a *Contract Dispute*) shall be referred by notice in writing by the referring party's representative to each other party's representative for resolution. The written notice from the referring party (the *Referral Notice*) shall identify the matter in dispute and the relief sought and shall also identify and briefly set forth the basis for claiming the relief sought (including identification of the applicable provisions in the Agreement that are relevant to the Contract Dispute in question).

##### Parties Representatives

1.2 For the purposes of this paragraph 1 the nominated representative of:

- (a) Network Rail shall be Jim Crawford;
- (b) the Depot SPC shall be David Miller;
- (c) the Operator shall be Jonathan Bridgewood;
- (d) the Secretary of State shall be the Director of Rail Projects; and
- (e) the TMM shall be David Miller,

(for the purposes of this Schedule 15, each a *Representative*, and collectively *Representatives*.)

1.3 From the date of this Agreement, to the extent that any party decides to change its Representative under this Schedule 15, it shall communicate in writing to the other parties to this Agreement details of the new incumbent Representative.

##### Attempt to resolve Contract Dispute by Representatives

1.4 When a Contract Dispute is referred to the Representatives in accordance with paragraph 1.1, the Representatives shall consider the Contract Dispute and try to reach agreement to resolve the Contract Dispute.

## **Referral to Managing Directors**

1.5 If no agreement can be reached by the Representatives within 10 (ten) Working Days of the date of the Referral Notice, the Contract Dispute shall then be referred by any party to each party's managing directors by giving written notice to each party's managing directors (the *Director Notice*).

1.6 The Director Notice shall be accompanied by a copy of the Referral Notice delivered in accordance with paragraph 1.1 and if the party delivering the Director Notice intends at the managing directors' level to raise any matter or seek any relief relating to that Contract Dispute that is additional to, or differs from, the matter and relief identified in the Referral Notice, the party delivering the Director Notice shall, at the same time as it delivers the Director Notice, provide written particulars to each party's managing director of the additional, or differing, matter and/or relief sought by that party.

1.7 When a Contract Dispute is referred to the managing directors in accordance with paragraph 1.5, the managing directors shall consider the Contract Dispute and try to reach agreement to resolve the Contract Dispute.

## **Excluded Disputes**

1.8 All Excluded Disputes not resolved by the managing directors (or their equivalents) within 28 (twenty eight) Working Days of the Director Notice shall be subject to the exclusive jurisdiction of the English courts.

## **Mediation and Arbitration (other than Excluded Disputes)**

1.9 Should the managing directors fail to resolve a Contract Dispute within 28 (twenty eight) Working Days of the date of the Director Notice, then subject to paragraph 1.13, the Contract Dispute (other than Excluded Disputes) shall be resolved by mediation at the Centre for Dispute Resolution in London in accordance with its rules for the time being, followed, if necessary, by arbitration pursuant in each case to the Dispute Resolution Rules.

1.10 The Parties agree that for the purposes of a mediation of a Contract Dispute pursuant to paragraph 1.9 and in accordance with the rules of the Centre for Dispute Resolution for the time being, they shall attempt in good faith to agree on a person (who has experience in the discipline or area of expertise that the parties agree are appropriate to the Contract Dispute in question) who should act as mediator for the Contract Dispute in question. In the event that the parties are unable within 10 (ten) Working Days of a party referring the Contract Dispute to mediation in accordance with paragraph 1.9 to agree on the person who should act as mediator, then the Centre for Dispute Resolution shall, in accordance with those rules, appoint a person to act as mediator for the Contract Dispute in question.

1.11 The Parties agree that for the purposes of an arbitration of a Contract Dispute pursuant to paragraph 1.9, and in accordance with the Dispute Resolution Rules, they shall attempt in good faith to agree on a person (who has experience in the discipline or area of expertise that the Parties agree are appropriate to the Contract Dispute in question) who should act as arbitrator for the Contract Dispute in question. In the event that the parties are unable within 10 (ten) Working Days of a party referring the Contract Dispute to arbitration in accordance with paragraph 1.9 to agree on the person who should act as arbitrator, then the Disputes Secretary appointed pursuant to the Dispute Resolution Rules shall in accordance with those rules appoint a person to act as arbitrator for the Contract Dispute in question.

**Disputes to be resolved expeditiously**

1.12 In all instances, the parties shall use their reasonable endeavours to resolve Contract Disputes expeditiously.

**Third Party Claims**

1.13 If any party to this Agreement makes a claim against a third party for contribution or indemnification in respect of a Contract Dispute or a claim is made against any party which gives rise to a Contract Dispute (collectively *Third Party Claims*), and such Third Party Claim is to be considered by the industry dispute resolution committee (the *Committee*) pursuant to the Dispute Resolution Rules, the Contract Dispute shall be considered by the Committee at the same time as the Third Party Claim instead of being referred to mediation, provided, however, that a party who is not involved in the Contract Dispute or Third Party Claim in question shall not be required to participate in the reference to the Committee of the Contract Dispute and Third Party Claim. If the Contract Dispute is not resolved at the Committee, it shall be resolved by whichever process (arbitration or expert determination) under the Dispute Resolution Rules is used for resolution of the Third Party Claim.

**Claim for indemnity or contribution from a third party**

1.14 Paragraphs 1.1 to 1.12 inclusive shall be subject to the following. If any party to a Contract Dispute asserts a claim for indemnity or contribution against a third party who does not agree to resolve such claim by initial discussions between the parties' Representatives and managing directors, and if necessary followed by resolution under the Dispute Resolution Rules, paragraphs 1.1 to 1.12 inclusive shall not apply to the Contract Dispute if paragraph 1.13 applies. In the event that paragraph 1.13 does not apply, the Contract Dispute shall be determined in accordance with the provisions of paragraphs 1.1 to 1.12 inclusive.

**Interim relief in English courts**

1.15 Nothing in this Agreement shall prevent any party seeking interim relief in any English court.

**SCHEDULE 16**

**[NOT USED]**

**SCHEDULE 16.1**

**[not used]**

**SCHEDULE 17****LEASE DOCUMENTATION [●]<sup>269</sup>**

Schedule 17.1:	Head Lease
Schedule 17.2:	Underlease
Schedule 17.3:	[●] <sup>270</sup>
Schedule 17.4:	[not used]
Schedule 17.5:	[●] <sup>271</sup>
Schedule 17.6:	Existing Depot Access Conditions
Schedule 17.7:	[●] <sup>272</sup>
Schedule 17.8:	[●] <sup>273</sup>
Schedule 17.9:	[●] <sup>274</sup>
Schedule 17.10:	Licence to Underlet
Schedule 17.11:	Headlease Plan
Schedule 17.12:	[●] <sup>275</sup>
Schedule 17.13:	[●] <sup>276</sup>
Schedule 17.14:	Form of Collateral Warranties Appendix 1: Form of Collateral Warranty – Contractor Appendix 2: Form of Collateral Warranty – Sub-Contractor Appendix 3: Form of Collateral Warranty – Consultant
Schedule 17.15:	Existing Depot Plan

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<sup>269</sup> Redaction.

<sup>270</sup> Redaction.

<sup>271</sup> Redaction.

<sup>272</sup> Redaction.

<sup>273</sup> Redaction.

<sup>274</sup> Redaction.

<sup>275</sup> Redaction.

<sup>276</sup> Redaction.



- Schedule 17.16: [●]<sup>277</sup>
- Schedule 17.17: [●]<sup>278</sup>
- Schedule 17.18: Planning Permission
- Schedule 17.19: S106 Agreement
- Schedule 17.20: [●]<sup>279</sup>

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<sup>277</sup> Redaction.

<sup>278</sup> Redaction.

<sup>279</sup> Redaction.

**SCHEDULE 17.1**

**Head Lease**

(in volume 1 of Agreed Form Documents bundle)

**SCHEDULE 17.2**

**Underlease**

(in volume 1 of Agreed Forms Documents bundle)

### SCHEDULE 17.3

[●]<sup>280</sup>

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<sup>280</sup> Redaction.

**SCHEDULE 17.4**

**[NOT USED]**

**SCHEDULE 17.5**

[●]<sup>281</sup>

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<sup>281</sup> Redaction.

**SCHEDULE 17.6**  
**Existing Depot Access Conditions**

(on attached CD-ROM)

**SCHEDULE 17.7**

[●]<sup>282</sup>

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<sup>282</sup> Redaction.



## SCHEDULE 17.8

[●]<sup>283</sup>

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<sup>283</sup> Redaction.

## SCHEDULE 17.9

[●]<sup>284</sup>

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<sup>284</sup> Redaction.

**SCHEDULE 17.10**

**Licence to Underlet**

(in volume 2 of Agreed Form Documents bundle)

**SCHEDULE 17.11**

**Headlease plan**

(on attached CD-ROM)

**SCHEDULE 17.12**

[●]<sup>285</sup>

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<sup>285</sup> Redaction.

**SCHEDULE 17.13**

[●]<sup>286</sup>

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<sup>286</sup> Redaction.

**SCHEDULE 17.14**  
**Form of Collateral Warranties**

**APPENDIX 1 TO SCHEDULE 17.14**

**FORM OF COLLATERAL WARRANTY – CONTRACTOR**

**THIS DEED** is made on [\_\_\_\_\_]

**BETWEEN:**

- (1) [\_\_\_\_], (the *Contractor*) registered in England and Wales as company number [\_\_\_\_], whose registered office is at [\_\_\_\_]; and
- (2) **[THE SECRETARY OF STATE FOR TRANSPORT]/[THE OPERATOR]/[THE DEPOT SPC]/[THE TMM]/[NETWORK RAIL]**, (the *Beneficiary*, which expression shall include its successors and permitted assigns) *[whose principal place of business is at [\_\_\_\_]/registered in England and Wales as company number [\_\_\_\_] whose registered office is at [\_\_\_\_]]*.

**RECITALS:**

*[The Depot SPC]/[The Beneficiary]* has entered into a building contract dated [\_\_\_\_], (the Building Contract as the same may be amended or varied from time to time) with the Contractor for the design and construction of a railway light maintenance depot at Hornsey (the *Depot Works*) as more particularly defined in the Building Contract.

The Beneficiary has entered into [an agreement with the Depot SPC pursuant to Section 54 of the Railway Act 1993 (as amended)/ a depot underlease/ funding arrangements/ a licence to occupy and maintenance arrangements / a head lease] for a part of or the whole of the Depot Works.

The Beneficiary has, as [the railway authority/ depot undertenant/ funder/ depot licensee and TMM/ head lessor], an interest in the Depot Works.

**NOW**, in consideration of the payment of one Pound by the Beneficiary to the Contractor (receipt of which is hereby acknowledged by the Contractor) and without prejudice to the rights and obligations of the Contractor under the Building Contract, **THIS DEED WITNESSES** as follows:

**1. DEFINITIONS AND INTERPRETATION**

1.1 Capitalised terms in this Deed shall have the same meaning as in the Building Contract, unless otherwise specified, and in the event of any conflict between the Building Contract and this Deed the meaning given in this Deed shall prevail.

1.2 In this Deed the following words and expressions shall have the following meanings attributed to them below. The masculine shall include the feminine and the singular shall include the plural.

**Commencement Date** means [\_\_\_\_\_];

**Copyright Work** means the drawings, plans, designs, diagrams, specifications, technical data, models, bills of quantities, reports, calculations or programmes, photographs (including negatives), magnetic or electronic records (including computer aided design) and other documents or recorded information of whatever description or nature, or where appropriate



any of them, prepared or to be prepared by or on behalf of the Sub-Contractor in which there are any Intellectual Property Rights;

***Intellectual Property Rights*** means the existing and future copyright, design rights, intellectual property rights and/or other rights of a similar nature in and to the Copyright Work;

***Practical Completion*** means the date when the whole of the Depot Works is certified as practically complete in accordance with the Building Contract;

***Prohibited Materials*** means any substances or materials which:

- (a) do not accord with any relevant recommendations contained in or referred to in the 1997 edition of “Good Practice in the Selection of Construction Materials” produced by Ove Arup & Partners and sponsored by the British Property Federation and the British Council for Offices;
- (b) are not in accordance with British Standards and Codes of Practice];
- (c) are generally known to be deleterious at the time of their proposed or actual use;

***Working Days*** means any weekday (other than a Saturday or Sunday) when banks are open for business in England.

## **2. CONTRACTORS WARRANTIES AND UNDERTAKINGS**

2.1 The Contractor warrants and undertakes to the Beneficiary that it has complied and shall continue to comply with the terms of the Building Contract and, without prejudice to the generality of the foregoing, the Contractor further warrants and undertakes to the Beneficiary that:

- (a) in carrying out and completing the design of the Depot Works, it has exercised and shall continue to exercise all the reasonable skill, care and diligence to be expected of a properly qualified and competent design and build contractor who is experienced in preparing and completing the design and the carrying out of work of a similar size, scope, nature and complexity and in a similar location to the Depot Works;
- (b) the Depot Works shall be carried out in a good and workmanlike manner using only suitable good quality materials which shall be used in accordance with any relevant manufacturer’s specifications;
- (c) the Depot Works, the design and each part of them shall, when completed, comply with any performance specification or requirement contained or referred to in the *Depot Requirements*;
- (d) the design and the execution of the Depot Works shall comply with the Network Rail Requirements, the Necessary Consents, the relevant Group Standards, and any other consents, licences, permissions and approvals whether of a public or a private nature, including detailed planning permission and any conditions thereto, necessary or applicable to the completion of the Depot Works; and
- (e) the Contractor shall indemnify and hold the Beneficiary harmless against any and all costs, expenses, losses (including [*Environmental Losses*]), damage, liabilities, claims and/or proceedings suffered or incurred by the Beneficiary in the same circumstances

and/or as a consequence of the same occurrences as the Contractor has undertaken to indemnify and hold the Depot SPC harmless under clauses [\_\_\_\_\_] of the Building Contract.

2.2 Without prejudice to the generality of this clause 2, the Contractor further warrants and undertakes to the Beneficiary that it has not and shall not (unless otherwise specifically instructed by the Depot SPC) specify nor knowingly authorise, cause or allow to be used within or in relation to the Depot Works any of the Prohibited Materials.

2.3 The Contractor shall immediately notify the Beneficiary if it suspects or becomes aware of any proposed or actual use of any of the Prohibited Materials in or in connection with the Depot Works.

### **3. BREACH OF WARRANTIES AND UNDERTAKING**

In the event of any breach of clause 2:

- (a) the Contractor shall be entitled in any action or proceedings by the Beneficiary to rely on any limitation in the Building Contract and to raise the equivalent rights in defence of liability (excluding any rights of set-off and/or counterclaim that the Contractor may have under the Building Contract) as it would have against the Depot SPC under the Building Contract.
- (b) the obligations and liabilities of the Contractor under or pursuant to clause 2 shall not be limited or excluded by any enquiry or inspection into any matter which may be made or carried out by the Beneficiary or by the appointment of any person, firm or company by the Beneficiary to make or carry out any enquiry or inspection, whether or not any independent liability of any such person, firm or company to the Beneficiary arises in connection therewith.

### **4. INTELLECTUAL PROPERTY RIGHTS**

4.1 The Contractor grants to the Beneficiary a royalty-free, irrevocable, perpetual and non-exclusive licence to use and to reproduce the Copyright Work for any purpose whatsoever connected with the Depot Works, including the construction, completion, maintenance, letting, advertisement, reinstatement and repair of the Depot Works.

4.2 If the beneficial ownership of any Copyright Work provided by the Contractor in connection with the Depot Works is vested in a person other than the Contractor, the Contractor shall use all reasonable endeavours to procure that the beneficial owner grants to the Beneficiary a licence in such material or similar terms and for such purposes as are referred to in clause 4.1.

4.3 Any licence referred to in clauses 4.1 and 4.2 shall include the right to grant sub-licences and shall be freely assignable by the Beneficiary. As contemplated by the Copyright, Designs and Patents Act 1988, to the extent that the Contractor is the author of the Copyright Work, the Contractor waives its rights against the Beneficiary and the Beneficiary's assignees and sub-licensees to the extent that the exercise of such rights would prevent or impede the licence described above.

4.4 The Contractor warrants and undertakes to the Beneficiary that the Intellectual Property Rights in the Copyright Work are vested or will vest in the Contractor (or, where appropriate, that the Contractor has or will obtain the benefit of a licence in respect of such Intellectual Property Rights) such that the Contractor has full right and liberty to grant the

licence and to assume and undertake the obligations contained in this clause 4 without restriction or limitation.

4.5 All royalties or other sums payable in respect of the supply and use of any Copyright Work required in connection with the Building Contract shall be paid by the Contractor and the Contractor shall indemnify the Beneficiary from and against all claims, proceedings, damages, costs and expenses suffered or incurred by the Beneficiary by reason of the Contractor infringing or being held to infringe any intellectual property rights in the course of or in connection with the Building Contract or the licence granted in clauses 4.1 or 4.2 above.

4.6 The Contractor further warrants and undertakes to the Beneficiary that the exercise by the Beneficiary of the licence granted in clause 4.1 does not and shall not infringe the Intellectual Property Rights of any third party.

## **5. INSURANCE**

5.1 The Contractor shall effect and maintain professional indemnity insurance in full force and effect from the Commencement Date until the date which is 12 (twelve) years after the date of Practical Completion, in an amount of not less than [\_\_\_\_\_] pounds (£[\_\_\_\_]) for any one occurrence and in the annual aggregate, provided that such insurance is available in the market at commercially reasonable rates and on commercially reasonable terms. Any increased or additional premium required by reason of the Contractor's own claims record or other acts, omissions, matters or things particular to the Contractor shall be deemed to fall within commercially reasonable rates.

5.2 If for any period such insurance is not available in the market at commercially reasonable rates or on commercially reasonable terms, the Contractor shall forthwith inform the Beneficiary of the circumstances and availability of the insurance in respect of such period and decide with the Beneficiary the method of best covering the Contractor's liability to the Beneficiary. The Contractor shall then put in place and maintain any replacement and/or additional protection which may be determined in all the circumstances to be appropriate.

5.3 When required to do so by the Beneficiary, the Contractor shall provide to the Beneficiary satisfactory documentary evidence that the insurance required by this clause 5 is being maintained, and the Contractor further warrants and undertakes that, if and when required in order to maintain such insurance in full force and-effect, this Deed has been or shall be disclosed to the Contractor's professional indemnity insurers.

## **6. ASSIGNMENT**

There shall be no limitation on the number of times that the benefit of this Deed and/or the rights arising hereunder (whether or not accrued) may be assigned by the Beneficiary. The benefit of this Deed may also be assigned by way of security or charged to any mortgagee of the Beneficiary or its assignees on any number of occasions. The prior consent of the Contractor shall not be required before any assignment but the Contractor shall be given written notice of each and any such assignment.

## **7. LIMITATION**

7.1 The obligations and liabilities of the Contractor under this Deed shall cease and expire upon the expiry of 12 (twelve) years after the date of Practical Completion except only in respect of any matter, claim or dispute in relation to which legal proceedings have been commenced prior to the expiry of such period.

7.2 The Contractor shall have no claim whatsoever against the Beneficiary in respect of any damage, loss or expense howsoever arising out of or in connection with the Building Contract or any amounts due to the Contractor thereunder.

## **8. GOVERNING LAW AND JURISDICTION**

This Deed shall be governed by the laws of England. The parties submit to the exclusive jurisdiction of the courts of England except for the purposes of enforcement proceedings in respect of any decision, judgement or award of such courts in another jurisdiction.

## **9. THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

Nothing in this Deed confers or purports to confer on any third party any benefit or any right to enforce any term of this Deed pursuant to the Contracts (Rights of Third Parties) Act 1999.

## **10. SEVERABILITY**

If any provision of this Deed shall be held to be illegal, invalid, void or unenforceable under the laws of any jurisdiction, the legality, validity and enforceability of the remainder of this Deed in that jurisdiction shall not be affected, and the legality, validity and enforceability of the whole of this Deed shall not be affected in any other jurisdiction.

## **11. NOTICES**

11.1 Any notice to be given under this Deed shall be in writing and shall be duly given if signed by or on behalf of a person duly authorised to do so by the party giving such notice and delivered by hand at or by sending it by prepaid first class recorded delivery post to the relevant address for service of the relevant party as stated in this Deed or such other address for service as the party to be served may have previously notified in writing to the other party.

11.2 A notice shall be deemed to have been received as follows:

- (a) if personally delivered, at the time of delivery; or
- (b) if posted, at the expiration of 3 (three) Working Days after the envelope containing the same was delivered into the custody of the postal authorities.

In proving such receipt, it shall be sufficient to prove that personal delivery was made or that the envelope containing such notice was properly addressed and delivered into the custody of the postal authorities as a prepaid first class recorded delivery letter.

**IN WITNESS** whereof the parties have executed and delivered this Deed on the date first before written.

**EXECUTED AS A DEED BY**  
[**CONTRACTOR**] ACTING BY:

DIRECTOR:

DIRECTOR/SECRETARY:



**EXECUTED AS A DEED BY  
THE SECRETARY OF STATE  
FOR TRANSPORT/ THE  
OPERATOR/THE DEPOT  
SPC/THE TMM ACTING BY:**

**/EXECUTED AS A DEED BY  
AFFIXING THE COMMON SEAL  
OF NETWORK RAIL  
INFRASTRUCTURE  
LIMITED**



**IN THE PRESENCE OF :-**

## APPENDIX 2 TO SCHEDULE 17.14

## FORM OF COLLATERAL WARRANTY – SUB-CONTRACTOR

**THIS DEED** is made on [\_\_\_\_\_]

**BETWEEN:**

- (1) [\_\_\_\_\_], (the **Sub-Contractor**) registered in England and Wales as company number [\_\_\_\_\_], whose registered office is at [\_\_\_\_\_]; and
- (2) **[THE SECRETARY OF STATE FOR TRANSPORT/THE OPERATOR/THE DEPOT SPC/THE TMM/NETWORK RAIL]**, (the **Beneficiary**, which expression shall include its successors and permitted assigns) [*whose principal place of business is at [\_\_\_\_\_] / registered in England and Wales as company number [\_\_\_\_\_] whose registered office is at [\_\_\_\_\_]*]; and
- (3) [\_\_\_\_\_], (the **Contractor**) registered in England and Wales as company number [\_\_\_\_\_], whose registered office is at [\_\_\_\_\_]<sup>287</sup>.

**RECITALS:**

[*The Depot SPC*] / [*The Beneficiary*] has entered into a building contract dated [\_\_\_\_\_], (the *Building Contract*, as the same may be amended or varied from time to time) with the Contractor for the design and construction of a light maintenance railway depot at Hornsey (the *Depot Works*) as more particularly defined in the Building Contract.

The Contractor has entered into a sub-contract (the **Sub-Contract**) with the Sub Contractor for the [*design, construction and completion*] of the Sub-Contract works referred to therein as (the **Sub-Contract Works**).

The Beneficiary has entered into [an agreement with the Contractor pursuant to Section 54 of the Railway Act 1993 (as amended)/a depot underlease/funding arrangements/a license to occupy/headlease for a part or the whole of the Depot Works.

The Beneficiary has, as [the funder/the railway authority/a depot undertenant/funder/a depot licensee/head lessor], an interest in the Depot Works.

**NOW**, in consideration of the payment of one Pound by the Beneficiary to the Sub-Contractor (receipt of which is hereby acknowledged by the Sub-Contractor) and without prejudice to the rights and obligations of the Sub-Contractor under the Sub-Contract, **THIS DEED WITNESSES** as follows:

**1. DEFINITIONS AND INTERPRETATION**

1.1 Capitalised terms in this Deed shall have the same meaning as in the Building Contract, unless otherwise specified, and in the event of any conflict between the Building Contract and this Deed the meaning given in this Deed shall prevail.

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<sup>287</sup> The Contractor is only a party to this Collateral Warranty when it is in favour of the Depot SPC.

1.2 In this Deed the following words and expressions shall have the following meanings attributed to them below. The masculine shall include the feminine and the singular shall include the plural.

**Commencement Date** means [\_\_\_\_\_];

**Copyright Work** means the drawings, plans, designs, diagrams, specifications, technical data, models, bills of quantities, reports, calculations or programmes, photographs (including negatives), magnetic or electronic records (including computer aided design) and other documents or recorded information of whatever description or nature, or where appropriate any of them, prepared or to be prepared by or on behalf of the Sub-Contractor in which there are any Intellectual Property Rights;

**Intellectual Property Rights** means the existing and future copyright, design rights, intellectual property rights and/or other rights of a similar nature in and to the Copyright Work;

**Practical Completion** means the date when the whole of the Depot Works is certified as practically complete in accordance with the Building Contract;

**Prohibited Materials** means any substances or materials which:

- (a) [do not accord with any relevant recommendations contained in or referred to in the 1997 edition of “Good Practice in the Selection of Construction Materials” produced by Ove Arup & Partners and sponsored by the British Property Federation and the British Council for Offices;
- (b) are not in-accordance with British Standards and Codes of Practice]<sup>288</sup>;
- (c) are generally known to be deleterious at the time of their proposed or actual use;

**Working Days** means any weekday (other than a Saturday or Sunday) when banks are open for business in England.

## 2. SUB-CONTRACTOR WARRANTIES AND UNDERTAKINGS

2.1 The Sub-Contractor warrants and undertakes to the Beneficiary that it has complied and shall continue to comply with the terms of the Sub-Contract, and without prejudice to the generality of the foregoing the Sub-Contractor further warrants and undertakes to the Beneficiary that:

- (a) in carrying out and completing the design of the Sub-Contract Works, he has exercised and shall continue to exercise all the reasonable skill, care and diligence to be expected of a properly qualified and competent designer [*or: design and build contractor*]<sup>289</sup> who is experienced in preparing [*and completing the*]<sup>290</sup> design [*and*

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<sup>288</sup> To be confirmed.

<sup>289</sup> Use text in square brackets for design and build subcontracts.

<sup>290</sup> Use text in square brackets for design and build subcontracts.



*the carrying out of*<sup>291</sup> work of a similar size, scope, nature and complexity and in a similar location to the Sub-Contract Works;

- (b) the Sub-Contract Works shall be carried out in a good and workmanlike manner using only suitable good quality materials which shall be used in accordance with any relevant manufacturer's specifications;
- (c) the Sub-Contract Works, the design and each part of them shall, when completed, comply with any performance specification or requirement contained or referred to in the [*Depot SPC's Requirements*];
- (d) the design and the execution of the Sub-Contract Works shall comply with [*Statutory Requirements*] and any other consents, licences, permissions and approvals whether of a public or a private nature, including detailed planning permission and any conditions thereto, necessary or applicable to the completion of the Sub-Contract Works; and
- (e) it is competent to carry out the functions required of it in relation to the Sub-Contract Works.

2.2 Without prejudice to the generality of clause 2, the Sub-Contractor further warrants and undertakes to the Beneficiary that (unless otherwise specifically instructed by the Contractor) none of the Prohibited Materials has been or will be specified for use, knowingly authorised for use or caused or allowed to be used in or in connection with the Sub-Contract Works by the Sub-Contractor.

2.3 The Sub-Contractor shall immediately notify the Beneficiary if it suspects or becomes aware of any proposed or actual use of any Prohibited Materials in or in connection with the Sub-Contract Works.

### **3. BREACH OF WARRANTIES AND UNDERTAKINGS**

In the event of any breach of clause 2:

- (a) the Sub-Contractor shall be entitled in any action or proceedings by the Beneficiary to rely on any limitation in the Sub-Contract and to raise the equivalent rights in defence of liability (excluding any rights of set-off and/or counterclaim that the Sub-Contractor may have under the Sub-Contract) as it would have against the Contractor under the Sub-Contract; and
- (b) the obligations of the Sub-Contractor under or pursuant to clause 2 shall not be limited or excluded by any enquiry or inspection into any matter which may be made or carried out by the Beneficiary or by the appointment of any person by the Beneficiary to make or carry out any enquiry or inspection, whether or not any independent liability of any such person to the Beneficiary arises in connection therewith.

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<sup>291</sup> Use text in square brackets for design and build subcontracts.

#### 4. INTELLECTUAL PROPERTY RIGHTS

4.1 The Sub-Contractor grants to the Beneficiary a royalty-free, irrevocable, perpetual and non-exclusive licence to use and to reproduce the Copyright Work for any purpose whatsoever connected with the Sub-Contract Works, including the construction, completion, maintenance, extension, letting, advertisement, reinstatement and repair of the Sub-Contract Works.

4.2 If the beneficial ownership of any Copyright Work provided by the Sub-Contractor in connection with the Sub-Contract Works is vested in a person other than the Sub-Contractor, the Sub-Contractor shall use all reasonable endeavours to procure that the beneficial owner grants to the Beneficiary a licence in such material or similar terms and for such purposes as are referred to in clause 4.1.

4.3 Any licence referred to in clauses 4.1 and 4.2 shall include the right to grant sub-licences and shall be freely assignable by the Beneficiary. As contemplated by the Copyright, Designs and Patents Act 1988, to the extent that the Sub-Contractor is the author of the Copyright Work, the Sub-Contractor waives its rights against the Beneficiary and the Beneficiary's assignees and sub-licensees to the extent that the exercise of such rights would prevent or impede the licence described above.

4.4 The Sub-Contractor warrants and undertakes to the Beneficiary that the Intellectual Property Rights in the Copyright Work are vested or will vest in the Sub-Contractor (or, where appropriate, that the Sub-Contractor has or will obtain the benefit of a licence in respect of such Intellectual Property Rights) such that the Sub-Contractor has full right and liberty to grant the licence and to assume and undertake the obligations contained in this clause 4 without restriction or limitation.

4.5 All royalties or other sums payable in respect of the supply and use of any Copyright Work required in connection with the Sub-Contract shall be paid by the Sub-Contractor and the Sub-Contractor shall indemnify the Beneficiary from and against all claims, proceedings, damages, costs and expenses suffered or incurred by the Beneficiary by reason of the Sub-Contractor infringing or being held to infringe any intellectual property rights in the course of or in connection with the Sub-Contract or the licence granted in clauses 4.1 or 4.2 above.

4.6 The Sub-Contractor further warrants and undertakes to the Beneficiary that the exercise by the Beneficiary of the licence granted in clause 4.1 does not and shall not infringe the Intellectual Property Rights of any third party.

#### 5. INSURANCE

5.1 The Sub-Contractor shall effect and maintain professional indemnity insurance in full force and effect from the Commencement Date until the date which is 12 (twelve) years after the date of Practical Completion, in an amount of not less than [[\_\_\_\_\_] Pounds (£[\_\_\_\_\_] ) in respect of each and every claim or series of claims arising out of the same originating cause]<sup>292</sup> provided that such insurance is available in the market at commercially reasonable rates and on commercially reasonable terms. Any increased or additional premium required by reason of the Sub-Contractor's own claims record or other acts, omissions, matters or things particular to the Sub-Contractor shall be deemed to fall within commercially reasonable rates.

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<sup>292</sup> Insert same PI cover as underlying contract/appointment.

5.2 If for any period such insurance is not available in the market at commercially reasonable rates or on commercially reasonable terms, the Sub-Contractor shall forthwith inform the Beneficiary of the circumstances and availability of the insurance in respect of such period and decide with the Beneficiary the method of best covering the Sub-Contractor's liability to the Beneficiary. The Sub-Contractor shall then put in place and maintain any replacement and/or additional protection which may be determined in all the circumstances to be appropriate.

5.3 When required to do so by the Beneficiary, the Sub-Contractor shall provide to the Beneficiary satisfactory documentary evidence that the insurance required by this clause 5 is being maintained, and the Sub-Contractor further warrants and undertakes that, if and when required in order to maintain such insurance in full force and effect, this Deed has been or shall be disclosed to the Sub-Contractor's professional indemnity insurers.

## **6. TERMINATION BY THE SUB-CONTRACTOR<sup>293</sup>**

6.1 The Sub-Contractor agrees that it shall not, without first giving to the Beneficiary not less than 21 (twenty one) days' prior notice in writing, exercise nor seek to exercise any right it may have to terminate its employment under the Sub-Contract or to treat the Sub-Contract as having been repudiated. Any period stipulated in the Sub-Contract for the exercise by the Sub-Contractor of a right of termination shall nevertheless be extended as may be necessary to take account of the period of notice required by this clause 6.1.

6.2 The Sub-Contractor shall give notice to the Beneficiary forthwith upon exercising any right to suspend or discontinue the performance of any of its obligations under the Sub Contract.

6.3 If, the Beneficiary or its appointee gives a notice which complies with clause 6.7 to the Sub-Contractor that the Beneficiary has become entitled under the Building Contract to carry out and complete the Project or if within the period of 21 (twenty one) days referred to in clause 6.1 above or within a period of 21 (twenty one) days of the Sub-Contractor giving notice pursuant to clause 6.2 above (but in any event prior to Practical Completion), the Beneficiary or its appointee gives the Sub-Contractor a notice which complies with clause 6.7 then:

- (a) any right of the Sub-Contractor to terminate its employment under the Sub-Contract or to treat the Sub-Contract as having been repudiated or, to suspend or discontinue the performance of any of its obligations under the Sub-Contract shall cease and the Sub-Contract shall continue in full force and effect as if such right had not arisen and, in all respects, as if the Sub-Contract had been entered into between the Sub-Contractor and the Beneficiary or its appointee in the place of the Contractor;
- (b) the Sub-Contractor shall accept the instructions of and be liable to the Beneficiary or its appointee to the exclusion of the Contractor in respect of the performance of the obligations of the Sub-Contractor in accordance with the terms and conditions of the Sub-Contract;
- (c) the Beneficiary shall become bound by the terms and conditions of the Sub-Contract in respect of all obligations and duties of the Contractor thereunder which fall to be performed after the date of such notice;

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<sup>293</sup> Only applicable for the Collateral Warranty given to the Depot SPC.

- (d) the Contractor shall be released from further performance of the duties and obligations of the Contractor under the Sub-Contract after the date of such notice, but without prejudice to any rights and remedies of the Beneficiary or the Sub-Contractor against the Contractor in respect of any matter of things done or omitted to be done by the Contractor on or before the date of such notice; and
- (e) upon the Beneficiary's request, the Contractor and the Sub-Contractor shall enter into an agreement for the novation of the Sub-Contract by the Contractor to the Beneficiary or to its appointee, such agreement to be in terms reasonably required by the Beneficiary (subject to the requirements of this clause 6.3 and clause 6.7).

6.4 The Sub-Contractor and the Contractor agree that the Sub-Contractor shall be entitled to rely on any notice given by the Beneficiary or its appointee under clause 6.3 as conclusive evidence for the purposes of this Deed of the occurrence of such event.

6.5 The Sub-Contractor shall not be acting in breach of the Sub-Contract or of this Deed by complying with any such notice under clause 6.3 or by entering into any such novation under clause 6.3.

6.6 It shall be a condition of any notice given under clause 6.3 that:

- (a) the Beneficiary or its appointee assumes all the obligations of the Contractor under the Sub-Contract from the date of such notice; and
- (b) the Beneficiary or its appointee accepts liability for payment of any amounts payable to the Sub-Contractor under the Sub-Contract including payment of any amounts properly due to the Sub-Contractor at the date of such notice (but only if the Sub-Contractor shall have immediately notified the Beneficiary of any such amounts as soon as payment of the same shall have been outstanding for a period of 30 (thirty) days).

6.7 The Beneficiary has and shall have no authority to issue any direction or instruction to the Sub-Contractor in relation to the performance of its obligations under the Sub-Contract nor any liability to the Sub-Contractor in respect of sums due under the Sub-Contract unless and until the Beneficiary has given notice under clause 6.3.]

## **7. ASSIGNMENT**

There shall be no limitation on the number of times that the benefit of this Deed and/or the rights arising hereunder (whether or not accrued) may be assigned by the Beneficiary. The benefit of this Deed may also be assigned by way of security or charged to any mortgagee of the Beneficiary or its assignees on any number of occasions. The prior consent of the Sub-Contractor shall not be required before any assignment but the Sub-Contractor shall be given written notice of each and any such assignment.

## **8. LIMITATION**

8.1 The obligations and liabilities of the Sub-Contractor under this Deed shall cease and expire upon the expiry of 12 (twelve) years after the date of Practical Completion except only in respect of any matter, claim or dispute in relation to which legal proceedings have been commenced prior to the expiry of such period.

8.2 The Sub-Contractor shall have no claim whatsoever against the Beneficiary in respect of any damage, loss or expense howsoever arising out of or in connection with the Sub-Contract or any amounts due to the Sub-Contractor thereunder.

## **9. GOVERNING LAW AND JURISDICTION**

This Deed shall be governed by the laws of England. The parties submit to the exclusive jurisdiction of the courts of England except for the purposes of enforcement proceedings in respect of any decision, judgement or award of such courts in another jurisdiction.

## **10. THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

Nothing in this Deed confers or purports to confer on any third party any benefit or any right to enforce any term of this Deed pursuant to the Contracts (Rights of Third Parties) Act 1999.

## **11. SEVERABILITY**

If any provision of this Deed shall be held to be illegal, invalid, void or unenforceable under the laws of any jurisdiction, the legality, validity and enforceability of the remainder of this Deed in that jurisdiction shall not be affected, and the legality, validity and enforceability of the whole of this Deed shall not be affected in any other jurisdiction.

## **12. NOTICES**

12.1 Any notice to be given under this Deed shall be in writing and shall be duly given if signed by or on behalf of a person duly authorised to do so by the party giving such notice and delivered by hand at or by sending it by prepaid first class recorded delivery post to the relevant address for service of the relevant party as stated in this Deed or such other address for service as the party to be served may have previously notified in writing to the other party.

12.2 A notice shall be deemed to have been received as follows:

- (a) if personally delivered, at the time of delivery; or
- (b) if posted, at the expiration of 3 (three) Working Days after the envelope containing the same was delivered into the custody of the postal authorities.

In proving such receipt, it shall be sufficient to prove that personal delivery was made or that the envelope containing such notice was properly addressed and delivered into the custody of the postal authorities as a prepaid first class recorded delivery letter.

**IN WITNESS** whereof the parties have executed and delivered this Deed on the date first before written.

**EXECUTED AS A DEED BY**  
**[SUB-CONTRACTOR]**  
ACTING BY:

DIRECTOR:

DIRECTOR/SECRETARY



**EXECUTED AS A DEED BY**  
**[THE DEPOT SPC/**  
**THE SECRETARY OF STATE**  
**FOR TRANSPORT/**  
**THE OPERATOR/**  
**THE TMM**  
ACTING BY:



/EXECUTED AS A DEED BY  
AFFIXING THE COMMON SEAL  
OF **NETWORK RAIL**  
**INFRASTRUCTURE**  
**LIMITED**

IN THE PRESENCE OF :-]

**EXECUTED AS A DEED BY**  
**[CONTRACTOR]<sup>294</sup>**  
ACTING BY:

DIRECTOR:

DIRECTOR/SECRETARY



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<sup>294</sup> Building Contractor is only a party to this Collateral Warranty when it is in favour of the Depot SPC.

## APPENDIX 3 TO SCHEDULE 17.14

## FORM OF COLLATERAL WARRANTY - CONSULTANT

**THIS DEED** is made on [\_\_\_\_\_]

**BETWEEN:**

(1) [\_\_\_\_\_], (the *Consultant*) registered in England and Wales as company number [\_\_\_\_\_] , whose registered office is at [\_\_\_\_\_];

OR

(2) The Partners in the firm of [\_\_\_\_\_] (the *Consultant*, which expression includes each and every partner in the *Consultant* jointly and severally) of [\_\_\_\_\_]; and

(3) **[THE SECRETARY OF STATE FOR TRANSPORT/THE OPERATOR/THE DEPOT SPC/THE TMM/NETWORK RAIL]**, (the *Beneficiary*, which expression shall include its successors and permitted assigns) [*whose principal place of business is at [\_\_\_\_\_] / registered in England and Wales as company number [\_\_\_\_\_] whose registered office is at [\_\_\_\_\_]*]; and

(4) [\_\_\_\_\_], (the *Contractor*) registered in England and Wales as company number [\_\_\_\_\_] , whose registered office is at [\_\_\_\_\_]<sup>295</sup>.

**RECITALS:**

[*The Depot SPC / The Beneficiary*] has entered into a contract dated [\_\_\_\_\_] (the *Building Contract*, as the same may be amended or varied from time to time) with the *Contractor* for the design and construction of a light maintenance railway depot at Hornsey (the *Project*) as more particularly defined in the *Building Contract*.

The *Contractor* has appointed the *Consultant* to provide [*insert type of services*] (the *Services*) in connection with the *Project* pursuant to an appointment dated [\_\_\_\_\_] (the *Agreement*, as the same may be amended or varied from time to time).

The *Beneficiary* has, as [the employer under the *Building Contract*/the railway authority/the depot under-tenant /funder/the depot licensee/head lessor], an interest in the *Project*.

**NOW**, in consideration of the payment of one Pound by the *Beneficiary* to the *Consultant* (receipt of which is hereby acknowledged by the *Consultant*) and without prejudice to the rights and obligations of the *Consultant* under the *Agreement*, **THIS DEED WITNESSES** as follows:

**1. DEFINITIONS AND INTERPRETATION**

1.1 Capitalised terms in this Deed shall have the same meaning as in the *Agreement* and in the event of any conflict between the *Agreement* and this Deed the meaning given in the *Agreement* shall prevail.

<sup>295</sup> The *Contractor* is only a party to this Collateral Warranty when it is in favour of the Depot SPC.

1.2 In this Deed the following words and expressions shall have the following meanings attributed to them below. The masculine shall include the feminine and the singular shall include the plural.

**Commencement Date** means [\_\_\_\_\_];

**Copyright Works** means the drawings, plans, designs, diagrams, specifications, technical data, models, bills of quantities, reports, calculations or programmes, photographs (including negatives), magnetic or electronic records (including computer aided design) and other documents or recorded information of whatever description or nature, or where appropriate any of them, prepared or to be prepared by or on behalf of the Consultant in which there are any Intellectual Property Rights;

**Intellectual Property Rights** means the existing and future copyright, design rights, intellectual property rights and/or other rights of a similar nature in and to the Copyright Work;

**Practical Completion** means the date when the whole of the Project is certified as practically complete in accordance with the Building Contract;

**Prohibited Materials** means any substances or materials which:

- (a) [do not accord with any relevant recommendations contained in or referred to in the 1997 edition of “Good Practice in the Selection of Construction Materials” produced by Ove Arup & Partners and sponsored by the British Property Federation and the British Council for Offices;]
- (b) [are not in accordance with the British Standards and Codes of Practice]; and
- (c) are generally known to be prohibited at the time of their proposed or actual use;

**Working Days** means any weekday (other than a Saturday or Sunday) when banks are open for business in England.

## 2. CONSULTANT’S WARRANTIES AND UNDERTAKINGS

2.1 The Consultant warrants and undertakes to the Beneficiary that:

- (a) in respect of the Services performed and to be performed by the Consultant under the Agreement, it has exercised and will continue to exercise all the reasonable skill, care and diligence to be expected of a prudent, competent and properly qualified professional [*insert type of consultant*] experienced in the provision of like services for a project of a size, scope, nature and complexity and in a similar location to the Project;
- (b) it has performed and shall continue to perform the Services, and has carried out and shall continue to carry out its other obligations and duties under the Agreement, in accordance with the Agreement; and
- (c) it is competent to carry out the functions requested of it in relation to the Services.

2.2 Without prejudice to the generality of this clause 2, the Consultant further warrants and undertakes to the Beneficiary that (unless otherwise specifically instructed by the Employer) none of the Prohibited Materials has been or will be specified for use in or in connection with the Project by the Consultant.



2.3 The Consultant shall immediately notify the Beneficiary if it suspects or becomes aware of any proposed or actual use of any of the Prohibited Materials in or in connection with the Project.

### **3. BREACH OF WARRANTIES AND UNDERTAKINGS**

In the event of any breach of clause 2:

- (a) the Consultant shall be entitled in any action or proceedings by the Beneficiary to rely on any limitation in the Agreement and to raise the equivalent rights in defence of liability (excluding any rights of set-off and/or counterclaim that the Consultant may have under the Agreement) as it would have against the Contractor under the Agreement; and
- (b) the obligations of the Consultant under or pursuant to clause 2 shall not be limited or excluded by any enquiry or inspection into any matter which may be made or carried out by the Beneficiary or by the appointment of any person by the Beneficiary to make or carry out any enquiry or inspection, whether or not any independent liability of any such person to the Beneficiary arises in connection therewith.

### **4. INTELLECTUAL PROPERTY RIGHTS**

4.1 The Consultant grants to the Beneficiary a royalty-free, irrevocable, perpetual and non-exclusive licence to use and to reproduce the Copyright Work for any purpose whatsoever connected with the Project, including the construction, completion, maintenance, extension, letting, advertisement, reinstatement and repair of the Project provided that the Consultant shall have no liability in respect of any use by the Beneficiary of the Copyright Work for any purpose not in the contemplation of the Parties at the time the Copyright Work was prepared.

4.2 If the beneficial ownership of any Copyright Work provided by the Consultant in connection with the Sub-Contract Works is vested in a person other than the Consultant, the Consultant shall use all reasonable endeavours to procure that the beneficial owner grants to the Beneficiary a licence in such material or similar terms and for such purposes as are referred to in clause 4.1.

4.3 Any licence referred to in clauses 4.1 and 4.2 shall include the right to grant sub-licences and shall be freely assignable by the Beneficiary. As contemplated by the Copyright, Designs and Patents Act 1988, to the extent that the Consultant is the author of the Copyright Work, the Consultant waives its rights against the Beneficiary and the Beneficiary's assignees and sub-licensees to the extent that the exercise of such rights would prevent or impede the licences described above.

4.4 The Consultant warrants and undertakes to the Beneficiary that the Intellectual Property Rights in the Copyright Work are vested or will vest in the Consultant (or, where appropriate, that the Consultant has or will obtain the benefit of a licence in respect of such Intellectual Property Rights) such that the Consultant has full right and liberty to grant the licence and to assume and undertake the obligations contained in this clause 4 without restriction or limitation.

4.5 All royalties or other sums payable in respect of the supply and use of any Copyright Work required in connection with the Agreement shall be paid by the Consultant and the Consultant shall indemnify the Beneficiary from and against all claims, proceedings, damages, costs and expenses suffered or incurred by the Beneficiary by reason of the

Consultant infringing or being held to infringe any intellectual property rights in the course of or in connection with the Agreement or the licence granted in clauses 4.1 or 4.2 above.

4.6 The Consultant further warrants and undertakes to the Beneficiary that the exercise by the Beneficiary of the licence granted in clause 4.1 does not and shall not infringe the Intellectual Property Rights of any third party.

## **5. INSURANCE**

5.1 The Consultant shall effect and maintain professional indemnity insurance in full force and effect from the Commencement Date until the date which is 12 (twelve) years after the date of Practical Completion, in an amount of not less than [[\_\_\_\_\_] Pounds (£[\_\_\_\_\_] ) *in respect of each and every claim or series of claims*]<sup>296</sup> arising out of the same originating cause, provided that such insurance is available in the market at commercially reasonable rates and on commercially reasonable-terms. Any increased or additional premium required by reason of the Consultant's own claims record or other acts, omissions, matters or things particular to the Consultant shall be deemed to fall within commercially reasonable rates.

5.2 If for any period such insurance is not available in the market at commercially reasonable rates or on commercially reasonable terms, the Consultant shall forthwith inform the Beneficiary of the circumstances and availability of the insurance in respect of such period and decide with the Beneficiary the method of best covering the Consultant's liability to the Beneficiary. The Consultant shall then put in place and maintain any replacement and/or additional protection which may be determined in all the circumstances to be appropriate.

5.3 When required to do so by the Beneficiary, the Consultant shall provide to the Beneficiary satisfactory documentary evidence that the insurance required by this clause 5 is being maintained, and the Consultant further warrants and undertakes that, if and when required in order to maintain such insurance in full force and effect, this Deed has been or shall be disclosed to the Consultant's professional indemnity insurers.

## **6. TERMINATION BY THE CONSULTANT<sup>297</sup>**

6.1 The Consultant agrees that it shall not, without first giving to the Beneficiary not less than 21 (twenty one) days' prior notice in writing, exercise nor seek to exercise any right it may have to terminate its employment under the Agreement or to treat the Agreement as having been repudiated. Any period stipulated in the Agreement for the exercise by the Consultant of a right of termination shall nevertheless be extended as may be necessary to take account of the period of notice required by this clause 6.1.

6.2 The Consultant shall give notice to the Beneficiary forthwith upon exercising any right to suspend or discontinue the performance of any of its obligations under the Agreement.

6.3 If, the Beneficiary or its appointee gives a notice which complies with clause 6.7 to the Consultant that the Beneficiary has become entitled under the Building Contract to carry out and complete the Project or if within the period of 21 (twenty one) days referred to in clause 6.1 above or within a period of 21 (twenty one) days of the Consultant giving notice

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<sup>296</sup> Insert PI Cover as per underlying appointment.

<sup>297</sup> Only applicable for the Collateral Warranty given to the Depot SPC.

pursuant to clause 6.2 above (but in any event prior to Practical Completion), the Beneficiary or its appointee gives the Consultant a notice which complies with clause 6.7 then:

- (a) any right of the Consultant to terminate its employment under the Agreement or to treat the Agreement as having been repudiated or, to suspend or discontinue the performance of any of its obligations under the Agreement shall cease and the Agreement shall continue in full force and effect as if such right had not arisen and, in all respects, as if the Agreement had been entered into between the Consultant and the Beneficiary or its appointee in the place of the Contractor;
- (b) the Consultant shall accept the instructions of and be liable to the Beneficiary or its appointee to the exclusion of the Contractor in respect of the performance of the obligations of the Consultant in accordance with the terms and conditions of the Agreement;
- (c) the Beneficiary shall become bound by the terms and conditions of the Agreement in respect of all obligations and duties of the Contractor thereunder which fall to be performed after the date of such notice;
- (d) the Contractor shall be released from further performance of the duties and obligations of the Contractor under the Agreement after the date of such notice, but without prejudice to any rights and remedies of the Beneficiary or the Consultant against the Contractor in respect of any matter of things done or omitted to be done by the Contractor on or before the date of such notice; and
- (e) upon the Beneficiary's request, the Contractor and the Consultant shall enter into an agreement for the novation of the Agreement by the Contractor to the Beneficiary or to its appointee, such agreement to be in terms reasonably required by the Beneficiary (subject to the requirements of this clause 6.3 and clause 6.7).

6.4 The Consultant and the Contractor agree that the Consultant shall be entitled to rely on any notice given by the Beneficiary or its appointee under clause 6.3 as conclusive evidence for the purposes of this Deed of the occurrence of such event.

6.5 The Consultant shall not be acting in breach of the Agreement or of this Deed by complying with any such notice under clause 6.3 or by entering into any such novation under clause 6.3.

6.6 It shall be a condition of any notice given under clause 6.3 that:

- (a) the Beneficiary or its appointee assumes all the obligations of the Contractor under the Agreement from the date of such notice; and
- (b) the Beneficiary or its appointee accepts liability for payment of any amounts payable to the Consultant under the Agreement including payment of any amounts properly due to the Consultant at the date of such notice (but only if the Consultant shall have immediately notified the Beneficiary of any such amounts as soon as payment of the same shall have been outstanding for a period of 30 (thirty) days).

6.7 The Beneficiary has and shall have no authority to issue any direction or instruction to the Consultant in relation to the performance of its obligations under the Agreement nor any liability to the Consultant in respect of sums due under the Agreement unless and until the Beneficiary has given notice under clause 6.3.

## **7. ASSIGNMENT**

There shall be no limitation on the number of times that the benefit of this Deed and/or the rights arising hereunder (whether or not accrued) may be assigned by the Beneficiary. The benefit of this Deed may also be assigned by way of security or charged to any mortgagee of the Beneficiary or its assignees on any number of occasions. The prior consent of the Consultant shall not be required before any assignment but the Consultant shall be given written notice of each and any such assignment.

## **8. LIMITATION**

8.1 The obligations and liabilities of the Consultant under this Deed shall cease and expire upon the expiry of 12 (twelve) years after the date of Practical Completion except only in respect of any matter, claim or dispute in relation to which legal proceedings have been commenced prior to the expiry of such period.

8.2 The Consultant shall have no claim whatsoever against the Beneficiary in respect of any damage, loss or expense howsoever arising out of or in connection with the Agreement or any amounts due to the Consultant thereunder.

## **9. GOVERNING LAW AND JURISDICTION**

This Deed shall be governed by the laws of England. The parties submit to the exclusive jurisdiction of the courts of England except for the purposes of enforcement proceedings in respect of any decision, judgement or award of such courts in another jurisdiction.

## **10. THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

Nothing in this Deed confers or purports to confer on any third party any benefit or any right to enforce any term of this Deed pursuant to the Contracts (Rights of Third Parties) Act 1999.

## **11. SEVERABILITY**

If any provision of this Deed shall be held to be illegal, invalid, void or unenforceable under the laws of any jurisdiction, the legality, validity and enforceability of the remainder of this Deed in that jurisdiction shall not be affected, and the legality, validity and enforceability of the whole of this Deed shall not be affected in any other jurisdiction.

## **12. NOTICES**

12.1 Any notice to be given under this Deed shall be in writing and shall be duly given if signed by or on behalf of a person duly authorised to do so by the party giving such notice and delivered by hand at or by sending it by prepaid first class recorded delivery post to the relevant address for service of the relevant party as stated in this Deed or such other address for service as the party to be served may have previously notified in writing to the other party.

12.2 A notice shall be deemed to have been received as follows:

- (a) if personally delivered, at the time of delivery; or
- (b) if posted, at the expiration of 3 (three) Working Days after the envelope containing the same was delivered into the custody of the postal authorities.

In proving such receipt, it shall be sufficient to prove that personal delivery was made or that the envelope containing such notice was properly addressed and delivered into the custody of the postal authorities as a prepaid first class recorded delivery letter.

IN WITNESS whereof the Consultant [and the Contractor] [has/have]<sup>298</sup> executed and delivered this Deed on the date first before written.

**EXECUTED AS A DEED BY**  
[CONSULTANT]  
ACTING BY:

DIRECTOR:

DIRECTOR/SECRETARY:



**EXECUTED AS A DEED ON**  
**BEHALF OF [CONSULTANT]**  
**BY:**  
PARTNER IN AND WITH  
AUTHORITY  
WITH [     ], OTHER  
PARTNERS) TO  
BIND THE FIRM OF  
[CONSULTANT]



SIGNATURE OF WITNESS:

NAME:

ADDRESS:

OCCUPATION:

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<sup>298</sup> The Contractor is only a party to this Collateral Warranty when it is in favour of the Depot SPC.

**EXECUTED AS A DEED BY  
[THE DEPOT SPC/  
THE SECRETARY OF STATE  
FOR TRANSPORT/ THE  
OPERATOR/  
THE TMM ACTING BY:**

DIRECTOR:

DIRECTOR/SECRETARY



/EXECUTED AS A DEED BY  
AFFIXING THE COMMON SEAL  
OF **NETWORK RAIL  
INFRASTRUCTURE  
LIMITED**

IN THE PRESENCE OF :-]

**EXECUTED AS A DEED BY  
[CONTRACTOR]  
AND SIGNED ACCORDINGLY  
BY:**

DIRECTOR:

DIRECTOR/SECRETARY



**SCHEDULE 17.15**

**Existing Depot Plan**

(on attached CD-ROM)

**SCHEDULE 17.16**

[●]<sup>299</sup>

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<sup>299</sup> Redaction.



**SCHEDULE 17.17**

[●]<sup>300</sup>

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<sup>300</sup> Redaction.

**SCHEDULE 17.18**

**Planning Permission**

(on attached CD-ROM)

**SCHEDULE 17.19**

**Part (a) : S.106 AGREEMENT**

**Part (b) : [●]<sup>301</sup>**

(on attached CD-ROM)

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<sup>301</sup> Redaction.

## SCHEDULE 17.20

[●]<sup>302</sup>

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<sup>302</sup> Redaction.

## SCHEDULE 18

[●]<sup>303</sup>

**Schedule 18.1:**

[●]<sup>304</sup>

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<sup>303</sup> Redaction.

<sup>304</sup> Redaction.

**SCHEDULE 18.1**

[●]<sup>305</sup>

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<sup>305</sup> Redaction.

**APPENDIX TO SCHEDULE 18**

[●]<sup>306</sup>

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<sup>306</sup> Redaction.

**SCHEDULE 19**

[●]<sup>307</sup>

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<sup>307</sup> Redaction.



**SCHEDULE 20**

[●]<sup>308</sup>

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<sup>308</sup> Redaction.

**Annex 1 to Schedule 20**

[●]<sup>309</sup>

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<sup>309</sup> Redaction.

**Annex 2 to Schedule 20**

[●]<sup>310</sup>

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<sup>310</sup> Redaction.

## SCHEDULE 21

[●]<sup>311</sup>

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<sup>311</sup> Redaction.

## SCHEDULE 22

[●]<sup>312</sup>

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<sup>312</sup> Redaction.

**SCHEDULE 23**  
**EXISTING DEPOT ACCESS AGREEMENTS**

(on attached CD-ROM)