

Dated

20th March 2019

2018



Between

NETWORK RAIL INFRASTRUCTURE LIMITED

and

RAIL FOR LONDON (INFRASTRUCTURE) LIMITED

RAIL NETWORKS CONNECTION AGREEMENT

**in respect of a connection between the Network Rail Network and the Crossrail Central
Operating Section at Westbourne Park Junction**

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THIS CONNECTION AGREEMENT is made **AS A DEED** on the 20th day of March 2018
BETWEEN:

- (1) **NETWORK RAIL INFRASTRUCTURE LIMITED**, a company registered in England under number 2904587 having its registered office at 1 Eversholt Street, London, NW1 2DN (“**Network Rail**”); and
- (2) **RAIL FOR LONDON (INFRASTRUCTURE) LIMITED** a company registered in England under number 09366341 having its registered office at 55 Broadway, London SW1H 0BD (“**RfL(I)**”).

WHEREAS:

- (A) The construction of the Central Operating Section and associated works was authorised pursuant to the Crossrail Act 2008. TfL is a joint sponsor of the Crossrail project, together with the Department for Transport.
- (B) TfL, through its wholly owned subsidiary Crossrail Limited, is responsible for the delivery of the Crossrail project. The Crossrail project forms part of the Mayor of London’s transport strategy.
- (C) Following the implementation of the Crossrail project, Crossrail services will operate on the Central Operating Section and then are expected to run onto the NR Network to Reading, Heathrow Airport (via the Heathrow spur connected to the NR Network) and Sheffield.
- (D) As part of the delivery of the Crossrail services on the Central Operating Section, TfL has appointed its wholly owned subsidiary, RfL(I) to be the facility owner and infrastructure manager of the Central Operating Section for the purposes of the Railways Regulations with effect from the Effective Date. The CCOS Infrastructure Manager is therefore interested in securing and preserving connections between the Central Operating Section and the NR Network.
- (E) Network Rail is the owner of the NR Network and, with effect from the Effective Date, the CCOS Infrastructure Manager will be the owner or controller of the Central Operating Section, relevant parts of which are shown on the Westbourne Park Plan.
- (F) Network Rail and the Secretary of State for Transport entered into the Crossrail Track Access Option, which was subsequently novated to TfL. Clause 7 of the Crossrail Track Access Option envisages that Network Rail and the facility owner of the Central Operating Section, being the CCOS Infrastructure Manager (with effect from the Effective Date), will use reasonable endeavours to agree the terms of certain connection agreements between the Central Operating Section and the NR Network.
- (G) Network Rail has been directed by the Office of Rail and Road to grant to the CCOS Infrastructure Manager permission to connect the Central Operating Section to the NR Network on the terms and conditions of this Agreement.
- (H) RfL(I) has been directed by the Office of Rail and Road to grant to Network Rail permission to connect the NR Network to the Central Operating Section on the terms and conditions of this Agreement.

IT IS AGREED AS FOLLOWS:

1 DEFINITIONS AND INTERPRETATIONS

1.1 Definitions

In this Agreement unless the context otherwise requires:

“**access contract**” has the meaning ascribed to it in section 17(6) of the Act;

“**Access Dispute Resolution Rules**” and “**ADRR**” means the rules regulating the resolution of disputes between parties to access agreements entitled “CCOS Access Dispute Resolution Rules” and annexed to the CCOS Network Code;

“**Act**” means the Railways Act 1993;

“**Affected Party**” means, in relation to a Force Majeure Event, the party claiming relief under Clause 17 by virtue of that Force Majeure Event, and “**Non-affected Party**” shall be construed accordingly;

“**Affiliate**” means, in relation to any company:

- (a) a company which is either a holding company or a subsidiary of such company;
or
- (b) a company which is a subsidiary of a holding company of which such company is also a subsidiary,

and for these purposes “holding company” and “subsidiary” have the meanings ascribed to them in section 1159 of the Companies Act 2006 and “**company**” shall include TfL;

“**Agreement**” means this rail networks connection agreement, including all Schedules and annexes to it;

“**Agreement Year**” means each yearly period commencing on the Commencement Date and subsequently on each anniversary of such date;

“**Allocation Chair**” has the meaning ascribed to it in the ADRR;

“**Applicable Procedures**” means:

- (a) any applicable procedures, timescales or arrangements which have been or are formally agreed in writing by Network Rail and the CCOS Infrastructure Manager from time to time; but
- (b) to the extent any of the matters referred to in sub-paragraph (a) include standards in respect of the NR Network set by Network Rail or standards in respect of the Central Operating Section set by the CCOS Infrastructure Manager then they shall be notified by the relevant standard-setting infrastructure manager to the other party rather than being formally agreed in writing;

“**CCOS Infrastructure Manager**” means RfL(I);

“**CCOS Infrastructure Manager Connection Point Assets**” means those assets of the CCOS Infrastructure Manager which are located in the vicinity of the Westbourne Park

Junction Connection Point as more particularly described in Part A of Schedule 1 and/or the Applicable Procedures;

“**CCOS Network Code**” means the document known as the CCOS Network Code published by the CCOS Infrastructure Manager in respect of the Central Operating Section;

“**Central Operating Section**” means the Crossrail central operating section, being the railway infrastructure and network between the boundary of the Central Operating Section and the NR Network:

- (a) to the west of Royal Oak portal;
- (b) to the east of Pudding Mill Lane portal;
- (c) to the east of Abbey Wood sidings,

of which RfL(I) is the facility owner, certain parts of the railway lines of which are coloured blue on the Westbourne Park Plan;

“**Commencement Date**” means the date written on the front page of this Agreement;

“**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 either Network Rail and/or the CCOS Infrastructure Manager and/or the subject matter of this Agreement;

“**Confidential Information**” means information relating to the affairs of one party to this Agreement or any of its Affiliates which has been provided by any such person to the other party under or for the purposes of this Agreement, or any matter or thing contemplated by this Agreement or to which this Agreement relates, the disclosure of which is likely materially to compromise or otherwise prejudice the commercial interests of any such person;

“**Connection Point Assets**” means the CCOS Infrastructure Manager Connection Point Assets and the Network Rail Connection Point Assets;

“**Crossrail Track Access Option**” means the track access option entered into between Secretary of State for Transport and Network Rail on 22 September 2008, as subsequently amended and restated on 2 September 2014 and as novated to TfL on 2 September 2014;

“**Crossrail Umbrella Property Agreement**” means the agreement dated on or after the date of this Agreement between (1) TfL and (2) Network Rail pursuant to which Network Rail is (amongst other things) to lease or transfer to TfL certain land comprising parts of the Central Operating Section as provided therein;

“**Default Interest Rate**” is two percent above the base lending rate of Barclays Bank PLC, as varied from time to time;

“**Dispute Resolution Procedure**” is the procedure for determining disputes set out in Clause 12;

“Effective Date” has the meaning ascribed to it in Clause 2;

“Emergency” means:

(a) an event or circumstance affecting the NR Network or the Central Operating Section at or in the vicinity of the Westbourne Park Junction Connection Point giving rise to an immediate apprehension of damage to property, injury to persons or Environmental Damage; or

(b) an event or circumstance which materially prevents or materially disrupts the operation of trains on the NR Network or the Central Operating Section, the alleviation of which would entail the use or non-use of the Westbourne Park Junction Connection Point;

“Environmental Damage” means any material injury or damage to persons, living organisms or property (including offence to man’s senses) or any pollution or impairment of the environment resulting from the discharge, emission, escape or migration of any substance, energy, noise or vibration;

“facility owner” has the meaning ascribed to it in section 17(6) of the Act;

“FOI Legislation” has the meaning ascribed to it in Clause 13.8.3;

“Force Majeure Event” means any of the following events (and any circumstance arising as a direct consequence of any of the following events):

- (a) an act of the public enemy or terrorists or war (declared or undeclared), threat of war, revolution, riot, insurrection, civil commotion, demonstration or sabotage;
- (b) acts of vandalism or accidental damage or destruction of machinery, equipment, track or other infrastructure;
- (c) natural disasters or phenomena, including extreme weather or environmental conditions (such as lightning, earthquake, hurricane, storm, fire, flood, drought or accumulation of snow or ice);
- (d) nuclear, chemical or biological contamination;
- (e) pressure waves caused by devices travelling at supersonic speeds;
- (f) discovery of fossils, antiquities or unexploded bombs; and
- (g) strike or other industrial action which is a single circumstance and which also is a strike or industrial action in sectors of the economy other than the railway industry;

“Force Majeure Notice” means a notice to be given by the Affected Party to the other party stating that a Force Majeure Event has occurred;

“Force Majeure Report” means a report to be given by the Affected Party to the other party following the giving of a Force Majeure Notice;

“Forum” has the meaning ascribed to it in the ADRR;

“Information” has the meaning ascribed to it in Clause 13.8.3;

“Information Request” has the meaning ascribed to it in Clause 13.8.5;

"Infrastructure Manager" has the meaning ascribed to it in the Railway Regulations;

"Innocent Party" means, in relation to a breach of an obligation under this Agreement, the party who is not in breach of that obligation;

"Liability Cap" has the meaning ascribed to it in paragraph 1 of Schedule 3;

"Longstop Date" has the meaning given to the term "Condition Subsequent Deadline" in the First Crossrail Access Agreement (as defined in the Crossrail Track Access Option) and as such date may be modified by the ORR in accordance with clause 3.5A of the First Crossrail Access Agreement;

"network" has the meaning ascribed to it under section 83(1) of the Act;

"Network Rail Connection Point Assets" means those assets of Network Rail which are located in the vicinity of the Westbourne Park Junction Connection Point as more particularly described in Part B of Schedule 1 and/or the Applicable Procedures;

"Network Rail Network Code" means the document now known as the Network Code published by Network Rail in respect of the NR Network and formerly known as the Railtrack Track Access Conditions 1995;

"NR Network" means the network of which Network Rail is the owner and which is situated in England, Wales and Scotland, certain parts of the railway lines of which are coloured red on the Westbourne Park Plan;

"Office of Rail and Road" has the meaning ascribed to it under section 15 of the Railways and Transport Safety Act 2003, and **"ORR"** shall be construed accordingly;

"Operational Control" means the safe management and direction of rolling stock;

"Performance Order" has the meaning ascribed to it in Clause 12.3.2;

"Procedure Agreement" has the meaning ascribed to it in the ADRR;

"Railway Group Standards" means:

- (a) technical standards to which railway assets or equipment used on or as part of the NR Network or the Central Operating Section (as the case may be) must conform; and
- (b) operating procedures with which the operators of railway assets must comply, in each case as issued by the Rail Safety and Standards Board Limited and authorised pursuant to the Railway Group Standards Code (and references to Railway Group Standard shall be construed accordingly);

"Railways Regulations" means The Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016;

"Relevant Dispute" means any difference between the parties arising out of or in connection with this Agreement;

"Relevant Force Majeure Event" means a Force Majeure Event in relation to which an Affected Party is claiming relief under Clause 17;

“Relevant Losses” means, in relation to:

- (a) a breach of this Agreement; or
- (b) in the case of Clause 9, any of the matters specified in Clause 9.3(a), (b) or (c) or Clause 9.4(a), (b) or (c) (each a “breach” for the purpose of this definition),

all costs, losses (including loss of profit and loss of revenue), expenses, payments, damages, liabilities, interest and the amounts by which rights or entitlements to amounts have been reduced, in each case incurred or occasioned as a result of or by such breach;

“Relevant Obligation” means an obligation under this Agreement in respect of which a Force Majeure Event has occurred and the Affected Party has claimed relief under Clause 17;

“Retail Prices Index” or **“RPI”** means the General Index of Retail Prices All Items as published in Economic Trends issued by the Office for National Statistics. If RPI shall cease to be published, or there is a material change in the base composition of RPI, then the parties may agree to such other index as they deem appropriate with the object of placing both parties in the position in which they would have been had the RPI continued to be published and there been no change in the base composition of RPI;

“rolling stock” has the meaning ascribed to it in section 83(1) of the Act;

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

“Services” means any train services operated over the Westbourne Park Junction Connection Point;

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

“Train Operator” means an operator of trains who has permission to use track under an access contract;

“Value Added Tax” means value added tax as provided for in the Value Added Tax Act 1994, and any tax similar or equivalent to value added tax or any turnover tax replacing or introduced in addition to them, and “VAT” shall be construed accordingly;

“Westbourne Park Junction Connection Point” means the points at which the railway lines of the NR Network and the Central Operating Section connect at or around the boundary of the Central Operating Section and the NR Network to the west of Royal Oak portal (and previously known as Portobello junction), as marked “CP” on the Westbourne Park Plan; and

“Westbourne Park Plan” means the plan set out in Schedule 4 to this Agreement.

1.2 Interpretation

In this Agreement, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;

- (b) any one gender includes the other;
- (c) all headings are for convenience of reference only and shall not be used in the construction of this Agreement;
- (d) reference to an item of primary or secondary legislation is to that item as amended or replaced from time to time;
- (e) reference to a contract, instrument or other document is to that contract, instrument or other document as amended, novated, supplemented or replaced from time to time;
- (f) reference to a party is to a party to this Agreement, its successors and permitted assigns;
- (g) reference to a recital, Clause, annex or Schedule is to a recital, Clause, annex or Schedule of or to this Agreement; reference in an annex or a Schedule to a Part of an annex or a Schedule is to a part of the annex or Schedule in which the reference appears; reference in a Part of an annex or a Schedule to a paragraph is to a paragraph of that part;
- (h) where a word or expression is defined, cognate words and expressions shall be construed accordingly;
- (i) references to the word “person” or “persons” or to words importing persons include individuals, firms, corporations, government agencies, committees, departments, authorities and other bodies incorporated or unincorporated, whether having separate legal personality or not;
- (j) “otherwise” and words following “other” shall not be limited by any foregoing words where a wider construction is possible;
- (k) the words “include”, “including” and “in particular” shall be construed as being by way of illustration or emphasis and shall not limit or prejudice the generality of any foregoing words;
- (l) words and expressions defined in the Act shall, unless otherwise defined in this Agreement, have the same meanings in this Agreement;
- (m) if a period of time is specified in this Agreement as being from a given day, or from the day of an act or event, it shall be calculated exclusive of that day; and
- (n) references to writing in this Agreement shall include any mode of reproducing words in any legible form.

1.3 Indemnities

Indemnities provided for in this Agreement are continuing indemnities in respect of the Relevant Losses to which they apply, and hold the indemnified party harmless on an after tax basis.

2 COMMENCEMENT AND CONDITION PRECEDENT

2.1 Commencement

The provisions of this Agreement, other than Clauses 4 – 7 shall come into force on the Commencement Date and shall continue in force thereafter.

2.2 Condition precedent to Clauses 4 – 7

Clauses 4- 7 shall take effect upon the CCOS Infrastructure Manager becoming the facility owner of the Central Operating Section (and accordingly subject to regulation by the ORR in accordance with sections 17 to 22C of the Act) and shall continue in force thereafter.

2.3 Obligation to satisfy condition precedent to Clauses 4 – 7

2.3.1 The parties acknowledge that the CCOS Infrastructure Manager shall not be able to satisfy the Condition Precedent in Clause 2.2 unless and until:

- (a) the Crossrail Umbrella Property Agreement between Network Rail and TfL is executed and delivered by all the parties to such agreement and is unconditional in all respects (save only for the fulfilment of any condition relating to this Agreement becoming unconditional); and
- (b) the CCOS Infrastructure Manager is granted an estate or interest in, or right over the Central Operating Section.

2.3.2 In relation to:

- (a) Clause 2.3.1(a), each party shall use all reasonable endeavours to ensure that the Crossrail Umbrella Property Agreement is executed and delivered by all the parties to such agreement and is unconditional in all respects (save only for the fulfilment of any condition relating to this Agreement becoming unconditional); and
- (b) Clause 2.3.1(b), the CCOS Infrastructure Manager shall use all reasonable endeavours to ensure that it is granted an estate or interest in, or right over the Central Operating Section,

in each case as soon as practicable and in any event not later than the Longstop Date. In relation to Clause 2.3.1(b), the CCOS Infrastructure Manager shall notify Network Rail as soon as practicable once the matters set out in that Clause have been satisfied.

2.4 Consequences of non-fulfilment of condition precedent to Clauses 4- 7

If the condition precedent set out in Clause 2.2 has not been satisfied in full on or before the Longstop Date:

- (a) this Agreement shall lapse save for the obligations of confidence contained in Clause 13 which shall continue in force; and
- (b) neither party shall have any liability to the other under this Agreement except in respect of any breach of its obligations under this Agreement.

3 STANDARD OF PERFORMANCE

3.1 General standard

Without prejudice to all other obligations of the parties under this Agreement, each party shall, in its dealings with the other for the purpose of, and in the course of performance of its obligations under, this Agreement, act with due efficiency and economy and in a timely manner with that degree of skill, diligence, prudence and foresight which should be exercised by a skilled and experienced:

- (a) network owner and operator; and
- (b) owner of a facility adjacent to the NR Network or the Central Operating Section (as the case may be).

3.2 Good faith

The parties to this Agreement shall, in exercising their respective rights and complying with their respective obligations under this Agreement (including when conducting any discussions or negotiations arising out of the application of any provisions of this Agreement or exercising any discretion under them), at all times act in good faith.

4 PERMISSION TO CONNECT

- 4.1 Network Rail grants the CCOS Infrastructure Manager permission to connect the Central Operating Section to the NR Network at the Westbourne Park Junction Connection Point.
- 4.2 The CCOS Infrastructure Manager grants Network Rail permission to connect the NR Network to the Central Operating Section at the Westbourne Park Junction Connection Point.

5 OBLIGATIONS IN RESPECT OF THE CONNECTION OF THE CENTRAL OPERATING SECTION TO THE NR NETWORK

5.1 Obligations of the CCOS Infrastructure Manager

- 5.1.1 The CCOS Infrastructure Manager shall not:
 - (a) sever the connection of the NR Network to the Central Operating Section at the Westbourne Park Junction Connection Point; or
 - (b) take any action or omit to take any action at or in the vicinity of the Westbourne Park Junction Connection Point which impedes and/or interferes with access to/from the Central Operating Section at or around the Westbourne Park Junction Connection Point,

18.2.3 Conformed copy of Agreement

Network Rail shall produce and send to the CCOS Infrastructure Manager and to the Office of Rail and Road a conformed copy of this Agreement within 28 days of the making of any amendment or modification to this Agreement.

18.3 Entire Agreement and exclusive remedies

18.3.1 Entire Agreement

Subject to Clause 18.3.3:

- (a) this Agreement contains the entire agreement between the parties in relation to the subject matter of this Agreement;
- (b) each party acknowledges that it has not been induced to enter into this Agreement in reliance upon, nor has it been given, any warranty, representation, statement, agreement or undertaking of any nature whatsoever other than as expressly set out in this Agreement and, to the extent that this is not the case, the relevant party unconditionally and irrevocably waives any claims, rights or remedies which it might otherwise have had in relation to any such matter; and
- (c) neither party shall have any right to rescind or terminate this Agreement either for breach of contract or for misrepresentation or otherwise, except as expressly provided for in this Agreement.

18.3.2 Exclusive remedies

Subject to Clause 18.3.3 and except as expressly provided in this Agreement:

- (a) neither party shall have any liability (including liability arising as a result of any negligence, breach of contract or breach of statutory obligation) to the other in connection with the subject matter of this Agreement; and
- (b) the remedies provided for in this Agreement shall be the sole remedies available to the parties in respect of any matters for which such remedies are available.

18.3.3 Fraud, death and personal injury

Without prejudice to the generality of this Clause 18.3, nothing in this Agreement shall exclude, restrict or limit, or purport to exclude, restrict or limit:

- (a) any liability which either party would otherwise have to the other party, or any right which either party may have to rescind this Agreement, in respect of any statement made fraudulently by the other party before the execution of this Agreement;
- (b) any right which either party may have in respect of fraudulent concealment by the other party;
- (c) any right which either party may have in respect of a statement of the kind referred to in section 146 of the Act, whether or not proceedings have been instituted in that respect; or

- (d) any liability which either party may have towards the other party for death or personal injury resulting from its negligence or the negligence of any of its officers, employees or agents.

18.4 Notices

18.4.1 Giving of notices

Any notice to be given under this Agreement:

- (a) shall be in writing; and
- (b) shall be duly given if signed by or on behalf of a person duly authorised to do so by the party giving the notice and delivered by hand at, or by sending it by prepaid first class post or by facsimile transmission or (in the case of service on Network Rail only) by Email (with, in the case of facsimile transmission or Email, confirmation copy by prepaid first class post) to, the relevant address or Email address or facsimile number set out in Schedule 2.

For the purposes of this Clause 18.4.1, delivery by hand shall include delivery by a reputable firm of couriers.

18.4.2 Right to modify communication details

A party shall be entitled to modify in any respect the communication particulars which relate to it and which are set out in Schedule 2 by giving notice of such modification:

- (a) to the other party as soon as reasonably practicable; and
- (b) to the Office of Rail and Road within 14 days of such modification.

18.4.3 Deemed receipt

A notice shall be deemed to have been given and received:

- (a) if sent by hand or recorded delivery, at the time of delivery; or
- (b) if sent by prepaid first class post from and to any place within the United Kingdom, three working days after posting unless otherwise proven; or
- (c) if sent by facsimile (subject to confirmation of uninterrupted transmission by a transmission report) before 1700 hours on a working day, on the day of transmission and, in any other case, at 0900 hours on the next following working day; or
- (d) if sent by Email (subject to confirmation of receipt of delivery) before 1700 on a Working Day, on the day of transmission and, in any other case, at 0900 on the next following Working Day.

If Schedule 2 specifies any person to whom copies of notices shall also be sent:

- (a) the party giving a notice in the manner required by this Clause 18.4 shall send a copy of the notice to such person at the address for sending copies as specified in Schedule 2, 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 under this Clause 18.4.4; and

leg situated on RfL(I) infrastructure between Turnback A and West-bound.

- Isolation switch 4810/34.

SCHEDULE 2 CONTACT DETAILS

- 1A. Network Rail's address for service of notices is:

Network Rail Infrastructure Limited
1 Eversholt Street
London
NW1 2DN

Email: notices@networkrail.co.uk

All written notices to be marked:

“URGENT: FOR THE ATTENTION OF THE COMPANY SECRETARY AND SOLICITOR”

And copied to:

The Route Managing Director

Network Rail Anglia Route
One Stratford Place, 12th Floor
Montfichet Road
West Stratford City
London
E20 1EJ

- 2A. The CCOS Infrastructure Manager's address for the service of notices is:

Rail for London (Infrastructure) Limited at its registered office from time to time, which on the date of this Agreement is:

55 Broadway
London
SW1H 0BD

All written notices to be marked:

“URGENT: ATTENTION THE COMPANY SECRETARY”

and copied to: Head of Infrastructure, RfL(I) at the same address

- 2B. The CCOS Infrastructure Manager's address for the service of invoices or other statements of amounts payable is:

Rail for London (Infrastructure) Limited
Accounts Payable, 1st Floor
PO Box 45276
Pier Walk
London
SE10 1AJ

All invoices/statements of amounts payable to be marked:

“URGENT: ATTENTION ACCOUNTS PAYABLE”

and copied to: Head of Infrastructure, RfL(I) at the address set out in 2A above

SCHEDULE 3: LIMITATION ON LIABILITY

1 Definitions

In this Schedule:

“**Liability Cap**” means:

- (a) in relation to the first Agreement Year, the sum of £6,017,220 (six million, seventeen thousand, two hundred and twenty pounds sterling); and
- (b) in relation to any subsequent Agreement Year, the sum calculated in accordance with the following formula:

$$C_n = C_1 * \left(\frac{RPI_n}{RPI_1} \right)$$

where:

- (i) C_1 is the sum of £6,017,220 (six million, seventeen thousand, two hundred and twenty pounds sterling);
- (ii) C_n is the Liability Cap in the nth subsequent Agreement Year;
- (iii) RPI_n is the Retail Prices Index published or determined with respect to the first month of the subsequent Agreement Year n; and
- (iv) RPI_1 is the Retail Prices Index published or determined with respect to the month in which this Agreement became effective under Clause 2.1.

2 Application

The limitations on liability contained in this Schedule apply in the circumstances set out in Clause 10.5.

3 Limitation on Network Rail’s liability

In relation to any claim for indemnity made by the CCOS Infrastructure Manager to which this Schedule 3 applies:

- (a) Network Rail shall not be liable to make payments in relation to such claims which are admitted in writing or finally determined in any Agreement Year to the extent that its liability for such claims exceeds the Liability Cap for such Agreement Year; and
- (b) to the extent that its liability for such claims exceeds the Liability Cap for such Agreement Year, any claim for payment of a sum which exceeds such Liability Cap shall be extinguished and Network Rail shall have no further liability for it.

4 Limitation on CCOS Infrastructure Manager’s liability

In relation to any claims for indemnity made by Network Rail to which this Schedule 3 applies:

- (a) the CCOS Infrastructure Manager shall not be liable to make payments in relation to such claims which are admitted in writing or finally determined in any Agreement Year to the extent that its liability for such claims exceeds the Liability Cap for such Agreement Year; and

- (b) to the extent its liability for such claims exceeds the Liability Cap for such Agreement Year, any claim for payment of a sum which exceeds such Liability Cap shall be extinguished and the CCOS Infrastructure Manager shall have no further liability for it.

5 Disapplication of limitation

To the extent that any Relevant Losses:

- (a) result from a conscious and intentional breach by a party; or
- (b) are in respect of obligations to compensate any person for liability for death or personal injury, whether resulting from the negligence of a party or the negligence of any of its officers, employees or agents or from a failure by a party to comply with the safety and security requirements provided in accordance with Clauses 5.1.3(g) and 5.2.3(g),

such Relevant Losses:

- (i) shall not be subject to the limitation of liability in this Schedule 3; and
- (ii) shall not be taken into account when calculating the amount of Relevant Losses in respect of claims admitted or finally determined in an Agreement Year for the purposes of the limitations of liability in this Schedule 3.

6 Exclusion of legal and other costs

The limits on the parties' liabilities provided for in paragraphs 3 and 4 shall not apply to costs incurred in recovering any amount under a relevant claim, including legal, arbitral and other professional fees and expenses.

7 Exclusion of certain Relevant Losses

A party shall have no claim for Relevant Losses to the extent that such Relevant Losses result from its own negligence or breach of this Agreement.

8 Continuing breaches

Nothing in this Schedule 3 shall prevent a party making a new claim for indemnity in respect of a continuing breach of contract which:

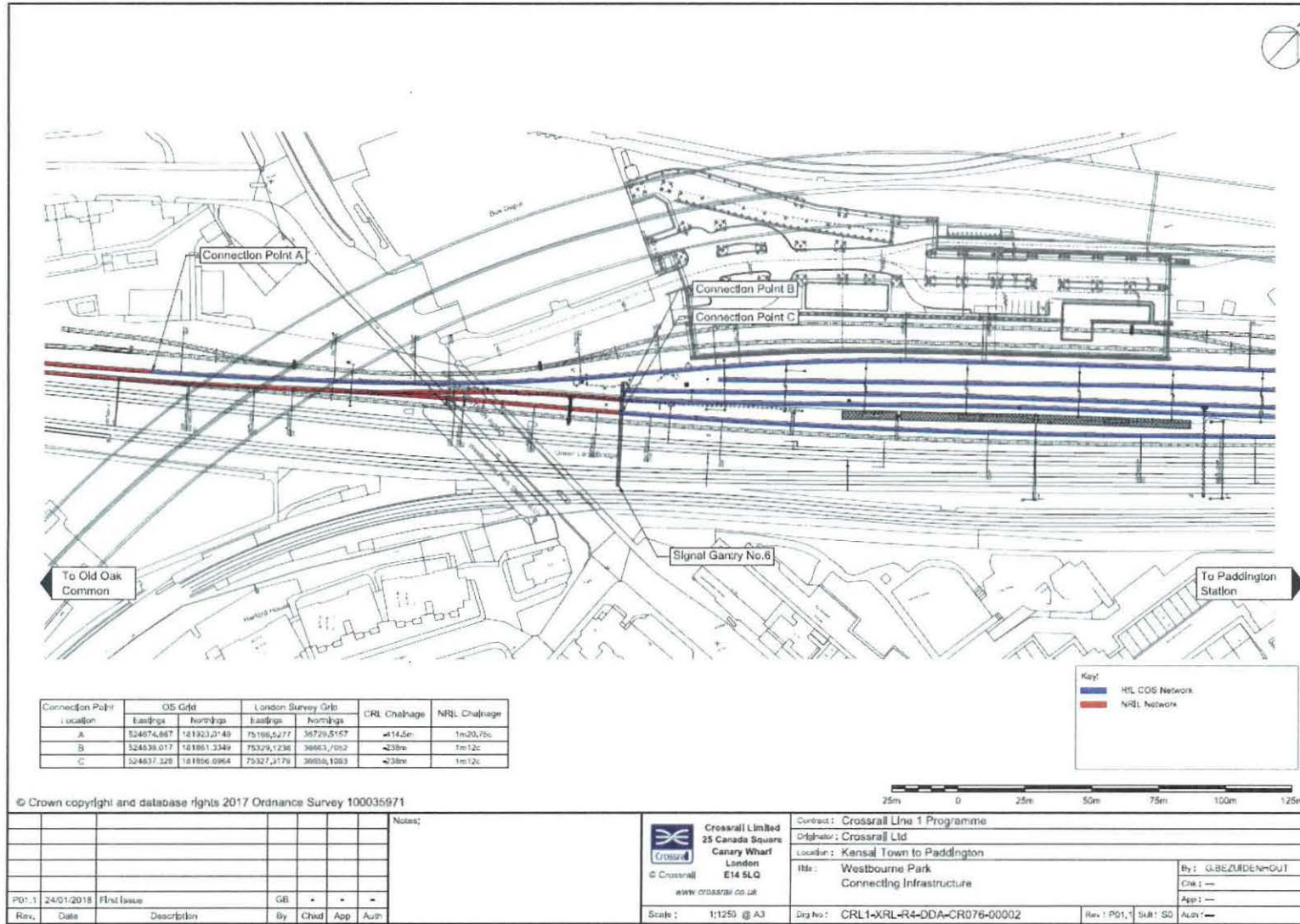
- (a) is a continuing breach of contract which continues for more than 12 months; or
- (b) is a continuing breach of contract which continues beyond a period within which it might reasonably be expected to have been remedied; or
- (c) is a breach of a Performance Order in relation to a breach of contract,

but any such new claim shall not include any sum which was the subject matter of a previous claim and was extinguished by virtue of paragraph 3(b) or 4(b).

9 Final determination of claims

For the purpose of this Schedule 3, a determination of a claim for Relevant Losses by a Court or other tribunal shall be treated as final when there is no further right of appeal or review from such determination or in respect of which any right of appeal or review has been lost, whether by expiry of time or otherwise.

SCHEDULE 4: THE PLAN





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Rev.	Date	Description	By	Chkd	App	Auth
P01.1	18/04/2018	First Issue	GB	-	-	-

Notes:


Crossrail Limited
 25 Canada Square
 Canary Wharf
 London
 E14 5LQ
 © Crossrail
 www.crossrail.co.uk

Contract: Crossrail Line 1 Programme
 Engineer: Crossrail Ltd
 Location: Kensal Town to Paddington
 Title: Westbourne Park
 Connecting Infrastructure

By: G.BEZUIDENHOUT
 Date: —
 App: —
 Auth: —

Scale: 1:1250 @ A3 Dig No: CRL1-XRL-R4-DDA-CR076-00003 Rev: P01.1 Sht: 50 Auth: —

PDF Check Slip
 RESTRICTED
 Sht 202

In witness of which this Agreement is made as a Deed and has been duly executed and delivered by Network Rail and RfL(I) (as CCOS Infrastructure Manager) as a Deed the day and year first before written.

EXECUTED as a DEED by affixing

THE COMMON SEAL of

NETWORK RAIL INFRASTRUCTURE

LIMITED

[Handwritten signature]

42180

Senior Assistant [COMMON SEAL]

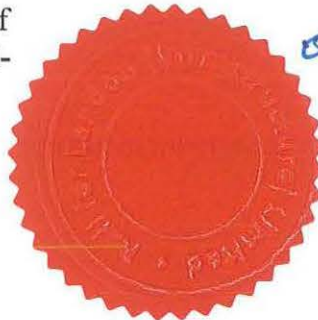
in the presence of:

Company Secretary

.....
Print Name:

EXECUTED as a deed by affixing the common seal of
**RAIL FOR LONDON (INFRASTRUCTURE) LIM-
ITED** in the presence of:

[Handwritten signature]



.....
Authorised signatory

