

TRACK ACCESS CONTRACT (FREIGHT SERVICES)

Dated

Between

RIBBLE RAIL LIMITED

- and -

COLAS RAIL LIMITED

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THIS CONTRACT is made the day of 2015

BETWEEN:

- 1) RIBBLE RAIL LIMITED, a company registered in England under number 4293655 having its registered office at 3 Lincoln Drive, Old Roan, Liverpool L10 3LJ (RRL); and
- 2) COLAS RAIL LIMITED, a company registered in England under number 2995525 having its registered office at Dacre House, 19 Dacre Street, London SW1H 0DJ (CRL).

WHEREAS:

A. RRL is the operator of the Network; and

B. RRL has been directed by the Office of Rail Regulation to grant to CRL, permission to use the Network on the terms and conditions of this contract.

IT IS AGREED AS FOLLOWS:

1. INTERPRETATION

1.1 Definitions

In this contract, unless the context otherwise requires:

“**Access Dispute Resolution Rules**” and “**ADRR**” means the set of rules regulating the resolution of disputes between Access Parties, entitled “Access Dispute Resolution Rules” and annexed to the publication entitled “The Network Code”;

“**Access Parties**” means, in respect of an access agreement, the parties to that agreement;

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

“**Additional Service**” means a Service which is additional to the Services specified in the table annexed to paragraph 5 of Schedule 5, subject to such Additional Service becoming a Service in accordance with the provisions of paragraph 2.4 of Schedule 5;

“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 736 of the Companies Act 1985;

“Ancillary Movements” means train movements which are not an express part of any Services but which are necessary or reasonably required for giving full effect to the train movements which are an express part of the Services and shall include any such train movement as is referred to in the definitions of “Services” to the extent that it is not expressly provided for in the relevant access contract for the purpose of testing the physical or operational characteristics or capabilities of any railway asset;

“Associate” has the meaning attributed to it in section 17 of the Act;

“Applicable Standards” means the standards set out in the current RRL Safety Management System;

“Applicable System” means any system which the parties may agree to use for the safe planning and operation of Train Movements over the Network;

“Bid” means a bid made by CRL to RRL for one or more Train Slots in accordance with paragraph 5 of Schedule 5;

“Change of Law” means the application to any person of any Legal Requirement which did not previously so apply or the change of any Legal Requirement applying to that person (including any such Legal Requirement ceasing to apply, being withdrawn or not being renewed) other than in relation to:

- (a) corporation tax (or any other tax of a similar nature replacing corporation tax on profits or gains); or
- (b) Value Added Tax

“Charges” means the charges payable by or on behalf of CRL under this contract as set out in Schedule 7;

“Charging Period” means each period of twenty eight days which coincides with a RRL accounting period save that:

- (a) the first such period and the last such period may be of less than 28 days if:
 - (i) the Commencement Date does not coincide with the first day of one of RRL’s accounting periods; or
 - (ii) the Expiry Date does not coincide with the last day of one of RRL’s accounting periods; and
- (b) the duration of the first and last such period in any Financial Year may be varied so as to coincide with the duration of RRL’s accounting periods by notice from RRL to CRL;

“Claims Allocation and Handling Agreement” means the agreement of that name approved by ORR;

“Commencement Date” means 10 August 2015, being the date upon which the Office of Rail Regulation, pursuant to section 18 of the Act, approved the terms of this contract and issued directions;

“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 and including the Office of Rail Regulation) whether of the United Kingdom or of the European Union, which has, in respect of an access agreement, jurisdiction over either or both of the Access Parties to, or the subject matter of, that agreement provided that “Competent Authority” shall not include Her Majesty’s Government (or any department, minister, official or nominee of it) where acting as shareholder of the Access Party in question or other than pursuant to the Crown prerogative or a statutory function or power;

“Confidential Information” means information relating to the affairs of one party to this contract or any of its Affiliates which has been provided by any such person to

the other party under or for the purposes of this contract, or any matter or thing contemplated by this contract or to which this contract relates, the disclosure of which is likely materially to compromise or otherwise prejudice the commercial interests of any such person;

“Contract” means this document including all schedules and appendices to it;

“Contract Year” means each yearly period commencing on the date of signature and subsequently on each anniversary of such date;

“Dangerous Goods” means dangerous goods as defined in the Carriage of Dangerous Goods by Rail Regulations 1996 (as amended from time to time);

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

“Destination” means, in relation to a Service:

- (a) the location on the Network at which that Service is planned to terminate; or
- (b) if the location at which that Service is Planned to terminate is not on the Network, the location on the Network which:
 - (i) will enable the train operating that Service to leave the Network; and
 - (ii) is the most appropriate location for such train to use to terminate that Service on the Network;

“Direction” means in respect of an access agreement, any direction, requirement, instruction or rule binding on either or both of the Access Parties, and includes any modification, extension or replacement of any such direction, requirement, instruction or rule of the time being in force;

“Environmental Condition” means:

- (a) any Environmental Damage; or
- (b) any event, circumstance, condition, operation or activity which it is reasonably foreseeable is likely to result in Environmental Damage;

which (in either case) in RRL's reasonable opinion could result in RRL incurring any material liability or being subject to the Direction of any Competent Authority;

“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;

“Event of Default” means an CRL Event of Default or a RRL Event of Default as the context requires;

“CRL Event of Default” has the meaning given to that term in paragraph 1.1 of Schedule 6;

“Expiry Date” means 31st December 2019;

“Financial Year” means a period of a year commencing at 0000 hours on 1 April and ending immediately before 0000 hours on the next succeeding 1 April save that:

- (a) the first such period shall commence on the date upon which all the provisions of this contract shall come into effect in accordance with Clause 2; and
- (b) the last such period shall end on the Expiry Date;

“Firm Contractual Right” means a right under this contract in respect of the quantum, timing or any other characteristic of a train movement which is not expressed to be subject to any contingency outside of the control of CRL;

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

“Insolvency Event” in relation to either of the parties, has occurred where:

- (a) any step which has a reasonable prospect of success is taken by any person with a view to its administration under Part II of the Insolvency Act 1986;
- (b) it stops or suspends or threatens to stop or suspend payment of all or a material part of its debts, or is unable to pay its debts, or is deemed unable to

pay its debts under section 123(1) or (2) of the Insolvency Act 1986 except that in the interpretation of this paragraph:

- (i) section 123(1)(a) of the Insolvency Act 1986 shall have effect as if for “£750” there were substituted “£100,000” or such higher figure as the parties may agree in writing from time to time; and
 - (ii) it shall not be deemed to be unable to pay its debts for the purposes of this paragraph if any such demand as is mentioned in section 123(1)(a) of the Insolvency Act 1986 is satisfied before the expiry of 21 days from such demand;
- (c) its directors make any proposal under section 1 of the Insolvency Act 1986, or it makes any agreement for the deferral, rescheduling or other readjustment (or makes a general assignment or an arrangement or composition with or for the benefit of the relevant creditors) of all or a material part of its debts, or a moratorium is agreed or declared in respect of or affecting all or a material part of its debts;
- (d) any step is taken to enforce security over or a distress, execution or other similar process is levied or sued out against the whole or a substantial part of its assets or undertaking, including the appointment of a receiver, administrative receiver, manager or similar person to enforce that security;
- (e) any step is taken by any person with a view to its winding up of that person or any person presents a winding-up petition which is not dismissed within 14 days, or it ceases or threatens 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 other party before that step is taken (which approval shall not be unreasonably withheld or delayed); or
- (f) any event occurs which, under the law of any relevant jurisdiction, has an analogous or equivalent effect to any of the events listed above;

unless:

- (i) in any case, a railway administration order (or application for such order) has been made or such order (or application) is made within 14 days after the occurrence of such a step, event, proposal or action (as the case may be) in relation to the party in question under section 60, 61 or 62 of the Act and for so long as any such order (or application) remains in force or pending; or
- (ii) in the case of paragraphs (a), (d) and (e), the relevant petition, proceeding or other step is being actively contested in good faith by that party with timely recourse to all appropriate measures and procedures;

“Legal Requirement” means (for the purpose of definition of Change of Law), in relation to any person, any of the following;

- (a) any enactment to the extent that it applies to that person;
- (b) any regulation made by the Council or Commission of the European Union to the extent that it applies to that person or a decision taken by the said Commission which is binding on that person to the extent that it is so binding; and
- (c) any interpretation of law, or finding, contained in any judgement given by a court or tribunal of competent jurisdiction in respect of which the period of 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 to that in which it previously had effect;

“Longstop Date” means 31st December 2019

“Method of Working” means the arrangements agreed between RRL and CRL for the safe operation of Services on the Network specified in paragraph 3 of Schedule 2;

“Network” means the network of which RRL is the network operator and which is situated between the Network Rail limit of operation at the stop board in advance of Strand Road Level Crossing on the Preston Dock Branch, and the westerly end of the Preston Dock Railway Exchange Sidings 900 metres from the aforementioned stop

board, at grid reference SD 522 294, all within the City of Preston, and includes the Operating Constraints;

“Network Code” means the document now known as the Network Code and formerly known as the Railtrack Track Access Conditions 1995;

“Network Plan” means the plan of the Network specified in paragraph 4 of Schedule 2;

“Network Rail” means Network Rail Infrastructure Limited a company registered in England having its registered office at 1 Eversholt Street London NW1 2DN;

“Nominated Location” means, in relation to a Service, any of the Origin, Destination and such other location where railway vehicles operating that Service under the control of CRL will move onto and off the Network;

“Non-Secure Services” means Services which are not listed in the table annexed to paragraph 5 of Schedule 5 in relation to which Bids have been made by CRL pursuant to paragraph 5 of Schedule 5;

“Office of Rail Regulation” has the meaning ascribed to it under Section 15 of the Railways and Transport Safety Act 2003, and “ORR” shall be construed accordingly;

“Operating Constraints” means the constraints that affect the operation of the Network or trains on the Network set out in paragraph 2 of Schedule 2 to this contract;

“Origin” means, in relation to a Service:

- (a) the location on the Network at which that Service is Planned to commence; or
- (b) if the location at which that Service is Planned to commence is not on the Network, the location on the Network which:

- (i) will enable the train operating that Service to be presented onto the Network;
 - and

- (ii) is the most appropriate location for such train to move onto the Network to reach the Destination of that Service;

“Performance Order” has the meaning ascribed to it in Clause 10.4.2;

“Planned” means in relation to a Service a Bid that has been accepted or deemed accepted by RRL pursuant to paragraph 4 of Schedule 5;

“Prospective Access Contract” means:

- (a) any proposed access contract or any amendment to an existing access contract which RRL and a third party are actively negotiating in good faith, but which has not been submitted formally and finally under section 18 and/or section 22 of the Act;
- (b) any applications for directions which a third party has submitted under section 17 of the Act;

“Railway Group Standards” means:

- (a) technical standards with which railway assets or equipment used on or as part of railway assets must conform; and
 - (b) operating procedures with which the operators of railway assets must comply
- in each case as authorised pursuant to the Railway Group Standards Code prepared pursuant to Network Rail’s network licence;

“Registered” means registered in Network Rail’s rolling stock library and which is acceptable to run on the Network;

“Registered Equipment” means the railway vehicles which are Registered, as such vehicles may be replaced, modified or added to from time to time;

“Regulated access agreement” means an access contract as that term is defined in section 83 of the Act;

“Relevant ADRR Panel” has the meaning ascribed to it in Part A of the Network Code;

“Relevant Dispute” means any difference between the parties arising out of or in connection with this contract;

“Relevant Losses” means all damage, losses, claims, proceedings, demands, liabilities, costs, damages, orders and out of pocket expenses (including costs reasonably incurred in investigating or defending any claim, proceedings, demands or orders and any expenses reasonably incurred in preventing, avoiding or mitigating loss, liability or damage);

“Restriction of Use” means any restriction of use of all or any part of the Network for the purposes of, or in connection with, inspection, maintenance, renewal or repair of the Network or any other works carried out in relation to the Network or any other railway asset or any other works in relation to it;

“RRL Event of Default” has the meaning given to that term in paragraph 1.3 of Schedule 11;

“Colas Safety Case” means the Colas Safety Case accepted from time to time by Her Majesty’s Railway Inspectorate pursuant to the Railways (Safety Case) Regulations 2000;

“RRL Safety Management System” means the safety management system put in place pursuant to the Railways and Other Guided Transport Systems (Safety) Regulations 2006

“Safety authorisation” and **“deemed safety authorisation”** have the meanings ascribed to them by regulation 2 of and Schedule 5 to the Railways and Other Guided Transport Systems (Safety) Regulations 2006;

“Safety Case” has the meaning ascribed to it in the Railways (Safety Case) Regulations 2000;

“Safety Obligations” means all applicable obligations and laws 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;

“Secure Right” means in relation to a Service a Firm Contractual Right for a Train Movement having the Service Characteristics set out in the table annexed to Schedule 5;

“Services” means the non-passenger Services which CRL is entitled to operate in accordance with this contract, including Ancillary Movements and Service shall be construed accordingly;

“Service Characteristics” means, in relation to a Service, the characteristics of that Service set out in paragraph 5 of Schedule 5 or, where not specified in paragraph 5 of Schedule 5, the characteristics of that Service specified in CRL’s Bid and accepted by RRL;

“Service Group” means the group of Services specified in the Service Group Reference;

“Service Group Reference” means the parties’ reference to a group of Services specified in paragraph 5 of Schedule 5, which is used for monitoring and general reference purposes;

“Standard Length Unit” measures 21 feet (6.4 metres);

“Stabling” means the parking or laying up of the Registered Equipment or such other railway vehicles as CRL is permitted by this contract to use on the Network, otherwise than in the course of operating the Services or carrying out of Ancillary Movements, which parking or laying up is reasonably required for giving full effect to the movements of Registered Equipment required for the provision of the Services, and *Stable* and *Stabled* shall be construed accordingly;

“Suspension Notice” means a notice served by the relevant party on the other party in accordance with paragraph 2 of Schedule 11;

“Termination Notice” means a notice served by the relevant party on the other party in accordance with paragraph 3 of Schedule 11;

“The Regulator” means the officer who was appointed by the Secretary of State under section 1 of the Act for the purpose of carrying out the functions assigned or transferred to him by or under the Act, which functions were subsequently transferred to the Office of Rail Regulation by virtue of s.16(1) of the Railways and Transport Safety Act 2003;

“Train Movements” means movements on the Network of Services comprised of railway vehicles by CRL;

“Train Slot” means a Train Movement or a series of Train Movements identified by arrival and departure times at each of the start, intermediate (where appropriate) and end points of each Train Movement;

“Unilateral Termination Notice” means a notice in writing served by CRL on RRL in accordance with Clause 3.5 of Schedule 6;

“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; and

“Varied Service” means a Service which is a variation to the Services specified in paragraph 5 of Schedule 5 subject to such Varied Service becoming a Service in accordance with the provisions of paragraph 1.4 of Schedule 5;

1.2 Interpretation

In this contract, 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 contract;
- (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 contract, its successors and permitted assigns;

- (g) reference to a recital, Clause or Schedule is to a recital, clause or schedule of or to this contract; reference to a Part of a schedule is to a Part of the Schedule in which the reference appears and reference in a Schedule to a Table is a reference to the table annexed to that Schedule;
- (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 “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) terms and expressions defined in the Act, the Railways (Safety Case) Regulations 2000 or RRL’s network licence shall have the same meanings in this contract; and
- (m) any reference to the term “possession”, either by itself or as part of any composite definition, shall be construed as a reference to a Restriction of Use;
- (n) references to “the Agreement” or “this Agreement” shall be construed as references to “the contract” or “this contract”; and
- (o) references to the Office of Rail Regulation or ORR shall, where the context so requires, be construed as references to the “Regulator”.

1.3 Indemnities

Indemnities provided for in this contract 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. CONDITIONS PRECEDENT AND DURATION

2.1 Effective date

The provisions of this contract take effect from the signature of this contract.

2.2 Conditions precedent to Clause 4

Clause 4 shall take effect when the following conditions precedent have been satisfied in full:

- (a) CRL is authorised by a licence granted under section 8 of the Act to be the operator of trains for the provision of the Services or is exempt from the requirement to be so authorised under section 7 of the Act;
- (b) RRL is authorised by a licence granted under section 8 of the Act to be the operator of the Network or is exempt from the requirement to be so authorised under section 7 of the Act;
- (c) the Safety Case of Colas is accepted under the Railways (Safety Case) Regulations 2000; and
- (d) the provisions of this contract, other than Clause 4, have taken effect in accordance with Clause 2.1.

2.3 Obligation to satisfy conditions precedent to Clause 4

Each party shall use all reasonable endeavours to secure that the following conditions precedent are satisfied as soon as practicable, and in any event not later than the Longstop Date:

- (a) in the case of RRL, the conditions precedent contained in Clause 2.2(b) and, insofar as within its control, Clauses 2.2(c) and 2.2(d); and
- (b) in the case of CRL, the conditions precedent contained in Clause 2.2(a) and, insofar as within its control, Clauses 2.2(c) and 2.2(d).

2.4 Consequences of non-fulfilment of conditions precedent to Clause 4

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

- (a) this contract shall lapse save for the obligations of confidence contained in Clause 15 which shall continue in force; and
- (b) neither party shall have any liability to the other except in respect of any breach of its obligations under this contract.

2.5 Expiry

This contract shall continue in force until the earliest of:

- (a) lapse under Clause 2.4;
- (b) termination under Schedule 6; and
- (c) 23:59hrs on the Expiry Date.

3 STANDARD OF PERFORMANCE

3.1 General standard

Without prejudice to all other obligations of the parties under this contract, each party shall, in its dealings with the other for the purpose of, and in the course of performance of its obligations under, this contract, 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 operator (in the case of RRL); and
- (b) train operator (in the case of CRL).

3.2 Good faith

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

3.3 The parties to this contract shall at all times comply with all relevant legislation, regulations and bye-laws.

4. PERMISSION TO USE

4.1 Permission to use the Network

RRL grants CRL permission to use the Network.

4.2 Meaning

References in this contract to permission to use the Network shall, except where the context otherwise requires, be construed to mean permission:

- (a) to use the track comprised in the Network for the provision of the Services in accordance with their Service Characteristics using the Registered Equipment in accordance with the Operating Constraints;
- (b) to make Ancillary Movements;
- (c) to Stable;
- (d) for CRL and its Associates or its Associates' sub-contractors to enter upon the Network, with or without vehicles; and
- (e) for CRL and its Associates to bring things other than Registered Equipment but including vehicles on the Network and keep them there,

and such permission is subject, in each case and in all respects to the Operating Constraints.

4.3 Permission under Clauses 4.2(d) and 4.2(e)

In relation to the permissions specified in Clauses 4.2(d) and 4.2(e):

- (a) CRL shall, and shall procure that its Associates or its Associates' sub-contractors shall, wherever reasonably practicable, first obtain the consent of RRL, which consent shall not be unreasonably withheld or delayed;

- (b) CRL shall remove any vehicle or other thing so brought onto any part of the Network (not being Registered Equipment which CRL is otherwise entitled to bring onto the Network) when reasonably directed to do so by RRL; and
- (c) whilst exercising any rights conferred by Clauses 4.2(d) and 4.2(e), CRL shall, and shall procure that its Associates shall, comply with such reasonable restrictions or instructions as RRL shall specify.

4.4 Stabling

Without prejudice to RRL obligations, if any, under Schedule 5 to provide Stabling, RRL shall use all reasonable endeavours to provide such Stabling facilities as are necessary or expedient for or in connection with the provision of the Services.

4.5 Rights

RRL hereby grants to CRL the Secure Rights and the right to make Bids for Non-Secure Services subject to the limitations contained in paragraph 2 of Schedule 5.

RRL hereby grants to CRL the right to make requests and to obtain Additional Services and Varied Services in accordance with and subject to the terms set out in paragraph 2 of Schedule 5.

5 OPERATIONS AND MAINTENANCE OF TRAINS AND NETWORK

5.1 General

Without prejudice to the other provisions of this contract:

- (a) CRL shall ensure that any Registered Equipment used in the operation of a Service on the Network:
 - (i) complies with Railway Group Standards and is of a type and composition which permits the provision of such Service in accordance with the Service Characteristics as Planned for such Service;
 - (ii) is kept in a condition which ensures that the maintenance and other costs of or in connection with the upkeep of the Network shall be as low as reasonably practicable; and

- (b) CRL shall ensure that adequate and suitably qualified personnel are engaged in the provision of the Services;
- (c) RRL shall ensure that:
 - (i) the Network is maintained and operated to a standard which shall permit the provision of the Services in accordance with their Service Characteristics, using the Registered Equipment in accordance with the Operating Constraints, and the making of Ancillary Movements;
 - (ii) the Network is kept in a condition which ensures that the maintenance and other costs of or connected with the operation of the Registered Equipment shall be as low as reasonably practicable;
 - (iii) adequate and suitably qualified personnel are engaged in the operation and maintenance of the Network; and
 - (iv) the Network remains connected to Network Rail's network at Preston Dock Branch to the east of Strand Road Level Crossing by means of a connection agreement entered into between RRL and Network Rail and approved by the Office of Rail Regulation.

5.2 Trespass, vandalism and animals

Without prejudice to the other provisions of this contract, CRL and RRL shall use all reasonable endeavours (including participating in such consultation and joint action as is reasonable in all the circumstances) to reduce:

- (a) trespass;
- (b) vandalism; and
- (c) intrusions on to the Network by animals,

in each case as may affect either the provision of the Services or those parts of the Network on which the Services are provided.

5.3 Safety

In relation to Safety Obligations:

- (a) CRL shall comply with any reasonable request by RRL in relation to any aspect of CRL's operations which affects or is likely to affect the performance of RRL's Safety Obligations; and
- (b) RRL shall comply with any reasonable request by CRL in relation to any aspect of RRL's operations which affects or is likely to affect the performance of CRL's Safety Obligations.

5.4 Movements of trains onto and off the Network

5.4.1 Suitable access

In order that railway vehicles under the control of CRL be promptly:

- (a) accepted off the Network; and/or
- (b) presented onto the Network,

RRL shall ensure that in respect of each Nominated Location suitable access has been granted to it in relation to such location by the party which controls the relevant facility connected to the Network at the Nominated Location.

5.4.2 Prompt presentation onto the Network

Where railway vehicles under the control of CRL will move onto and off the Network, the parties shall ensure that in respect of each Nominated Location they will facilitate (to the extent they are able) the prompt presentation of such railway vehicles onto and off the Network.

5.5 Use of Applicable Systems

5.5.1 General

The parties shall use the Applicable Systems in their dealings with each other in connection with matters provided for in this Contract.

5.5.2 Notification of movement onto and off the Network

CRL shall notify RRL of any movement onto the Network and off the Network of any railway vehicle under the control of CRL by promptly making a full and accurate train release or acceptance entry to the appropriate Applicable Systems.

6. Track Charges

Schedule 7 shall have effect.

7. LIABILITY

7.1. Performance Orders in relation to breach

In relation to any breach of this contract:

- (a) the Innocent Party shall be entitled to apply under Clause 10.4 for a Performance Order against the party in breach; and
- (b) if a Performance Order is made, the party against whom it has been made shall comply with it.

7.2 Compensation in relation to breach

In relation to any breach of this contract, the party in breach shall indemnify the Innocent Party against all Relevant Losses.

7.3 CRL indemnity

CRL shall indemnify RRL against all Relevant Losses resulting from:

- (a) a failure by CRL to comply with its Safety Obligations;
- (b) any Environmental Damage arising directly from the acts or omissions of CRL, or the proper taking by RRL of any steps to prevent, mitigate or remedy an Environmental Condition pursuant to paragraph 2 of Schedule 10, which exists as a direct result of the acts or omissions of CRL; and
- (c) any damage to the Network arising directly from CRL's negligence.

7.4 RRL indemnity

RRL shall indemnify CRL against all Relevant Losses resulting from:

- (a) a failure by RRL to comply with its Safety Obligations;
- (b) any Environmental Damage to the Network arising directly from the acts or omissions of RRL; and
- (c) any damage to the Registered Equipment or other things brought onto the Network in accordance with the permission to use granted by this contract arising directly from RRL's negligence.

8. RESTRICTIONS ON CLAIMS

8.1 Notification and mitigation

A party wishing to claim under any indemnity provided for in this contract:

- (a) shall notify the other party of the relevant circumstances giving rise to that claim as soon as reasonably practicable after first becoming aware of those circumstances (and in any event within 365 days of first becoming so aware); and
- (b) subject to Clause 8.1(c), shall take all reasonable steps to prevent, mitigate and restrict the circumstances giving rise to that claim and any Relevant Losses connected with that claim; but
- (c) shall not be required to exercise any specific remedy available to it under this contract.

8.2 Cap on liability

Save only for liabilities which cannot be limited by law governing this contract, the total cumulative liability of:

- (a) RRL to CRL shall be limited £10,000,000.00 (TEN MILLION); and
- (b) CRL to RRL shall be limited to £10,000,000.00 (TEN MILLION); .

8.3 Save as otherwise expressly stated in the contract, neither party may recover or seek to recover from the other party any amount in respect of any loss of revenue, loss of profits, goodwill, reputation or other consequential, indirect or special damages in connection with the subject matter of this contract, which is or is alleged to be caused to it by the other party, save in respect of death or injury to persons or physical damage to property.

9. GOVERNING LAW

This contract shall be governed by and construed in accordance with the laws of England and Wales.

10. DISPUTE RESOLUTION

10.1 Arbitration

10.1.1 Arbitration

A Relevant Dispute shall be referred to arbitration in England in accordance with the Access Dispute Resolution Rules in force at the time of the reference (the “**ADRR**”), as modified by this Clause 10, unless:

- (a) any Part of Schedules 7, 8 or 12 provides for an alternative dispute resolution procedure for the Relevant Dispute, in which case such alternative procedure shall apply;
- (b) Clause 10.2 applies;
- (c) the Relevant Dispute is referred to the relevant ADRR Panel or the High Court of England and Wales under Clause 10.3;
- (d) the parties otherwise agree in writing including an agreement to refer the Relevant Dispute for expert determination under Part D of the ADRR; or
- (e) the parties agree in writing to refer the Relevant Dispute for mediation under Part B of the ADRR and the Relevant Dispute is finally settled by such mediation.

10.1.2 Urgent interim relief in support of arbitration proceedings

The High Court of England and Wales has the powers set out in section 44 of the Arbitration Act 1996 (which provides amongst other things for the grant by the High Court of England and Wales of urgent interim relief in support of arbitration proceedings). Nothing in this Clause 10 constitutes any agreement to the contrary.

10.2 Unpaid sums

If either party fails to pay:

- (a) any invoice issued to it under this contract in respect of Track Charges in accordance with the provisions of Schedule 7; or
- (b) any sum which has fallen due in accordance with any other provision of this contract,

then, subject to Clause 13.1:

- (i) the amount invoiced or sum due, as referred to in Clause 10.2(a) or (b), shall immediately constitute a debt due and owing from the party who has failed to pay the invoice or sum due to the other party (and to any assignee of a party's right to payment in respect of any Track Charges or other sum due);
- (ii) such debt shall be recoverable by any means available under the laws of England and Wales; and
- (iii) the dispute resolution procedures in Clauses 10.1 and 10.3 to 10.7 shall not apply to proceedings commenced under this Clause 10.2.

10.3 Request to Change Forum

10.3.1 Request to Change Forum

Within five days of service of the notice of arbitration, either party:

- (a) may notify the other party and ORR in writing that it wishes to refer the Relevant Dispute to the relevant ADRR Panel or to the High Court of England

and Wales instead of arbitration, as the case may be (a “**Request to Change Forum**”); and

- (b) shall, in such Request to Change Forum, specify its preferred forum and the reasons for that preference.

10.3.2 Response to Request to Change Forum

Within seven days of receipt of a notice under Clause 10.3.1, the receiving party shall notify the other party and ORR in writing that:

- (a) it agrees to the specified reference, in which case the Relevant Dispute shall be referred to the specified forum; or
- (b) it objects to the specified reference and wishes the Relevant Dispute to be dealt with by arbitration, by the relevant ADRR Panel or by the High Court of England and Wales, as the case may be,

and every response under Clause 10.3.2(b) shall specify the preferred forum and the reasons for that preference.

10.3.3 Decision by the Office of Rail Regulation

If a Request to Change Forum is not agreed between the parties or the other party fails timeously to give a valid notice of objection under Clause 10.3.2(b), the Relevant Dispute shall be referred, following such consultation with the parties as ORR may determine is appropriate, in accordance with the final decision of ORR in its absolute discretion, namely whether the Relevant Dispute:

- (a) is still to be referred to arbitration;
- (b) is to be referred instead to the relevant ADRR Panel, and the arbitration reference and any pending arbitration proceedings accordingly terminated or suspended; or
- (c) is to be referred instead to the High Court of England and Wales, and the arbitration reference and any pending arbitration proceedings accordingly terminated.

10.4 Performance Orders

10.4.1 Power to order provisional relief

For the purposes of section 39 of the Arbitration Act 1996, the arbitral tribunal shall have power to order on a provisional basis any relief which it would have power to grant in a final award including Performance Orders.

10.4.2 Performance Orders

A Performance Order:

- (a) is an order made under Clause 10.4.3(b), relating to a Relevant Dispute, whether by way of interim or final relief; and
- (b) may be applied for by RRL or CRL in the circumstances set out in Clause 7.1

and an application for a Performance Order shall be without prejudice to any other remedy available to the claimant under this contract (whether final or interim and whether by way of appeal under the Network Code or otherwise).

10.4.3 Duties of arbitral tribunal in relation to Performance Orders

Without prejudice to any additional remedies that may be ordered by the arbitral tribunal under Clause 10.5, where a party has applied for a Performance Order:

- (a) the arbitral tribunal shall decide as soon as possible whether the application is well founded or not; and
- (b) if the arbitral tribunal decides that the application is well founded, it shall be required to make an interim or final declaration to that effect and, in that event, the arbitral tribunal may also make any interim or final order directing any party to do or to refrain from doing anything arising from such declaration which it considers just and reasonable in all the circumstances.

10.5 Remedies

The powers exercisable by the arbitral tribunal as regards remedies shall include:

- (a) the powers specified in sections 48(3) to (5) of the Arbitration Act 1996;

- (b) the powers specified in the ADRR;
- (c) the power to make Performance Orders; and
- (d) the power to order within the same reference to arbitration any relief specified in Clause 10.5(a), (b) and (c) consequent upon, or for the breach of, any interim or final Performance Order previously made.

10.6 Exclusion of applications on preliminary points of law

Any recourse to any Court for the determination of a preliminary point of law arising in the course of the arbitration proceedings is excluded.

10.7 ADRR Panel

10.7.1 Referrals to the relevant ADRR Panel

Any referral of a Relevant Dispute to, and determination of a Relevant Dispute by, the relevant ADRR Panel shall be conducted in accordance with Part A of the ADRR.

10.7.2 Appeal to arbitration

If either party is aggrieved with any determination of the relevant ADRR Panel in relation to a Relevant Dispute referred to it under this Clause 10, such party may refer the Relevant Dispute for resolution by arbitration in accordance with this Clause 10 (excluding Clause 10.3), and shall notify in writing the other party of its intention. Upon such reference the arbitral tribunal is not bound by the findings of the relevant ADRR Panel.

11. CONFIDENTIALITY

11.1 Confidential Information

11.1.1 General obligation

Except as permitted by Clause 11.2, all Confidential Information shall be held confidential during and after the continuance of this contract and shall not be divulged in any way to any third party without the prior written approval of the other party.

11.1.2 RRL - Affiliates

Except as permitted by Clause 11.2, RRL shall procure that its Affiliates and its and their respective officers, employees and agents shall keep confidential and not disclose to any person any Confidential Information.

11.1.3 CRL - Affiliates

Except as permitted by Clause 11.2, CRL shall procure that its Affiliates and its and their respective officers, employees and agents shall keep confidential and not disclose to any person any Confidential Information.

11.2 Entitlement to divulge

Either party, and its Affiliates, and its and their respective officers, employees and agents, shall be entitled in good faith to divulge any Confidential Information without the approval of the other party in the following circumstances:

- (a) to ORR;
- (b) to the Health and Safety Executive;
- (c) to any Affiliate of either party;
- (d) to any officer or employee of the party in question or any person engaged in the provision of goods or services to or for him if disclosure is necessary or reasonably required to enable the party in question to perform its obligations under this contract, upon obtaining an undertaking of strict confidentiality from such officer, employee or person;
- (e) to any professional advisers or consultants of such party engaged by or on behalf of such party and acting in that capacity, upon obtaining an undertaking of strict confidentiality from such advisers or consultants;
- (f) to any insurer or insurance broker from whom such party is seeking insurance or in connection with the making of any claim under any policy of insurance, upon obtaining an undertaking of strict confidentiality from the insurer or insurance broker;

- (g) to any lender, security trustee, bank or other institution from whom such party is seeking or obtaining finance or credit support for such finance, or any advisers to any such entity, or any rating agency from whom such party is seeking a rating in connection with such finance or credit support, upon obtaining an undertaking of strict confidentiality from the entity, advisers or rating agency in question;
- (h) to the extent required by the Act, any licence under section 8 of the Act held by the party in question, any other applicable law, the rules of any recognised stock exchange or regulatory body or any written request of any taxation authority;
- (i) to the extent that it has become available to the public other than as a result of a breach of confidence; and
- (j) under the order of any court or tribunal of competent jurisdiction (including any relevant ADRR Panel).

11.3 Return of Confidential Information

Each of RRL and CRL shall promptly return to the other party any Confidential Information requested by the other party if such request:

- (a) is made on or within two months after the Expiry Date or, if this contract lapses or is terminated earlier, is made within two months after the date on which this contract lapses or is terminated;
- (b) is reasonable; and
- (c) contains a sufficient description of the relevant Confidential Information to enable such information to be readily identified and located.

11.4 Retention or destruction of Confidential Information

If RRL or CRL, as the case may be, has not received a request to return any Confidential Information to the other party under and within the time limits specified in Clause 11.3, it may destroy or retain such Confidential Information.

11.5 Ownership of Confidential Information

All Confidential Information shall be and shall remain the property of the party which supplied it to the other party.

12. ASSIGNMENT

Neither party may assign, transfer, novate or create any encumbrance or other security interest over the whole or any part of its rights and obligations under this contract except to the extent approved by ORR following consultation with the other party, and subject to the conditions (if any) of ORR's approval.

13 PAYMENTS, INTEREST AND VAT

13.1 Payment

13.1.1 No deduction

All amounts due or payable by either party under this contract shall be paid free and clear of any deduction, withholding or set off, except:

- (a) as may be required by law; or
- (b) as expressly provided in this contract.

13.1.2 Delivery of invoices

All invoices or statements of amounts payable issued under any provision of this contract shall be delivered by hand at, or sent by prepaid first class post or by facsimile transmission (with confirmation copy by prepaid first class post) to, the address for service for the recipient specified in Schedule 1 and shall be deemed to have been received by the addressee in accordance with Clause 15.4.3.

13.1.3 Payment and content of invoices and other statements of amounts payable

Each invoice and statement of amounts payable shall, unless otherwise stated in this contract:

- (a) be paid within 28 days of the date of its receipt; and

- (b) contain such detail as to the constituent elements of the amounts stated to be payable as shall be necessary or expedient so as to enable the person to whom it is given to understand and check it.

13.1.4 Method of payment

All payments shall be made by direct debit mandate or standing order mandate, CHAPS transfer, BACS transfer or other electronic or telegraphic transfer to a London clearing bank or such other financial institution as may be approved by the party entitled to the payment, such approval not to be unreasonably withheld or delayed.

13.1.5 Credit notes

Where a credit note has been issued in accordance with any provision of this contract, the party in receipt of the credit note shall be entitled to apply the amount specified in it against any amount payable by it under this contract or any future invoice or statement of amounts payable it may receive under this contract.

13.2 Disputed amounts

13.2.1 Notification of a dispute

Except as otherwise provided in this contract, within 14 days of receipt of an invoice or statement of amounts payable issued under any provision of this contract, the recipient shall notify the issuer of any aspects of the invoice or statement which it disputes, giving reasons for any dispute. Except to the extent that disputes are so notified, the recipient shall be deemed to have agreed the contents of the invoice or statement.

13.2.2 Payment in full

Subject to Clause 13.2.3 and except as otherwise provided in this contract, where any amount contained in an invoice in accordance with Schedule 7 is in dispute under Clause 13.2.1:

- (a) CRL shall pay the full amount of the invoice, including the disputed amount, in accordance with the terms of the invoice;

- (b) payment of the disputed amount shall be without prejudice to the determination of whether such amount is properly due or not; and
- (c) Clause 13.3.2 shall apply.

13.2.3 Right to withhold payment of disputed amount

If:

- (a) any amount which is payable under any provision of this contract other than Schedule 7 is in dispute under Clause 13.2.1; or
- (b) an invoice or statement of amounts payable under any provision of this contract contains an error and the recipient of such invoice or statement has notified the issuer of any aspects of the invoice or statement which contain an error and which it disputes under Clause 13.2.1,

then:

- (i) the undisputed amount shall be paid in accordance with Clause 13.1.3, or as otherwise provided for in this contract;
- (ii) the disputed balance, or such part of it as has been agreed or determined to be payable, shall be paid or set off, as the case may be, within 35 days after the end of the Charging Period in which the dispute is resolved or determined; and
- (iii) Clause 13.3.1 shall apply also in respect of the disputed balance, or such part of it as has been agreed or determined to be payable.

13.3 Interest

13.3.1 Amounts not paid by due date

Without prejudice to any other rights or remedies which one party may have in respect of the failure of the other party to pay any amount on the due date, amounts payable under this contract and not paid by the due date shall carry interest (to accrue daily and to be compounded monthly) at the Default Interest Rate from the due date until the date of actual payment (as well after judgment as before), except to

the extent that late payment arises from any failure by the invoicing party to comply with Clause 13.1.2 or Clause 13.1.3(b).

13.3.2 Amounts paid which were not properly due

Where a disputed amount is paid under Clause 13.2.2 and it is subsequently determined that such amount, or part of it, was not properly due, the payee shall repay the disputed amount, or relevant part, to the payer together with interest (to accrue daily and to be compounded monthly) at the Default Interest Rate from the date of actual payment until the date of actual repayment (as well after judgment as before).

13.4 VAT

13.4.1 Payment of VAT

Where any taxable supply for VAT purposes is made under or in connection with this contract by one party to the other the payer shall, in addition to any payment required for that supply, pay such VAT as is chargeable in respect of it.

13.4.2 Reimbursement of VAT

Where under this contract one party is to reimburse or indemnify the other in respect of any payment made or cost incurred by the other, the first party shall also reimburse any VAT paid by the other which forms part of its payment made or cost incurred to the extent such VAT is not available for credit for the other party (or for any person with whom the indemnified party is treated as a member of a group for VAT purposes) under sections 25 and 26 of the Value Added Tax Act 1994.

13.4.3 VAT credit note to be issued on repayment

Where under this contract any rebate or repayment of any amount is payable by one party to the other, and the first party is entitled as a matter of law or of Customs & Excise practice to issue a valid VAT credit note, such rebate or repayment shall be paid together with an amount representing the VAT paid on that part of the consideration in respect of which the rebate or repayment is made, and the first party shall issue an appropriate VAT credit note to the other party.

14. FORCE MAJEURE EVENTS

14.1 Meaning of Force Majeure Event

In this Clause 14:

“**Affected Party**” means, in relation to a Force Majeure Event, the party claiming relief under this Clause 14 by virtue of that Force Majeure Event, and “**Non-affected Party**” shall be construed accordingly;

“**Force Majeure Event**” means, subject to Clause 14.9, 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;

“**Relevant Force Majeure Event**” means a Force Majeure Event in relation to which an Affected Party is claiming relief under this Clause 14; and

“**Relevant Obligation**” means an obligation under this contract in respect of which a Force Majeure Event has occurred and the Affected Party has claimed relief under this Clause 14.

14.2 Nature and extent of relief for force majeure

Force majeure relief under this Clause 17:

- (a) extinguishes the obligation of the Affected Party to indemnify the other party under Clause 7.2 in respect of Relevant Losses sustained as a result of the failure of the Affected Party to perform a Relevant Obligation; but
- (b) is not available in respect of:
 - (i) any obligation to pay money under Schedules 7 and 8; or
 - (ii) any other obligation to do or refrain from doing any other thing provided for in this contract.

14.3 Entitlement to force majeure relief

An Affected Party is entitled to force majeure relief if and to the extent that:

- (a) performance of the Relevant Obligation has been prevented or materially impeded by reason of a Force Majeure Event;
- (b) it has taken all reasonable steps, taking account of all relevant circumstances (including as to whether the event in question could reasonably have been anticipated):
 - (i) to avoid the occurrence of the Force Majeure Event; and
 - (ii) to minimise, and where practicable avoid, the effects of the Force Majeure Event on its ability to perform the Relevant Obligation; and
- (c) except in the case of Clause 14.1(f), none of the Affected Party, its officers, employees or agents caused the Force Majeure Event.

14.4 Procedure for claiming relief

Without prejudice to Clause 14.3, an Affected Party is only entitled to claim force majeure relief under this Clause 14 if it complies with the obligations to give Force Majeure Notices, Force Majeure Reports and provide other information under Clause 14.5 and to perform its obligations under Clause 14.6.

14.5 Force Majeure Notices and Reports

14.5.1 Force Majeure Notice

In relation to any Relevant Force Majeure Event:

- (a) as soon as reasonably practicable after the Affected Party becomes aware, or ought reasonably to have become aware, that such Force Majeure Event qualifies for relief under this Clause 14 (and, in any event, within 72 hours of becoming aware of such circumstances), the Affected Party shall give a Force Majeure Notice; and
- (b) the Force Majeure Notice shall include detailed particulars (to the extent available) of the Relevant Force Majeure Event and its consequences, its effects on the Affected Party, the Relevant Obligations, the likely duration of such consequences and effects and the remedial measures proposed by the Affected Party to avoid or remove the Relevant Force Majeure Event or to mitigate its consequences and effects.

14.5.2 Force Majeure Report

Following the giving of a Force Majeure Notice:

- (a) the Affected Party shall give a Force Majeure Report as soon as practicable, and in any event within 7 days of service of the Force Majeure Notice; and
- (b) the Force Majeure Report shall constitute a full report on the Relevant Force Majeure Event, amplifying the information provided in the Force Majeure Notice and containing such information as may reasonably be required by the Non-affected Party, including the effect which the Relevant Force Majeure Event is estimated to have on the Affected Party's performance of the Relevant Obligations.

14.5.3 Other information

The Affected Party shall promptly give the Non-affected Party all other information concerning the Relevant Force Majeure Event and the steps which could reasonably be taken, and which the Affected Party proposes to take, to avoid or remove the Relevant Force Majeure Event or to mitigate its consequences and effects as may reasonably be requested by the Non-affected Party from time to time.

14.6 Mitigation

The Affected Party shall, promptly upon becoming aware of the occurrence of a Force Majeure Event in respect of which it intends to claim relief, use all reasonable endeavours to:

- (a) minimise the effects of such Force Majeure Event on the performance of the Relevant Obligations; and
- (b) minimise the duration of such Force Majeure Event,

and shall keep the Non-affected Party fully informed of the actions which it has taken or proposes to take under this Clause 14.6.

14.7 Duration of relief for force majeure

The right of an Affected Party to relief under Clause 14.2 shall cease on the earlier of:

- (a) the date on which its performance of the Relevant Obligations is no longer prevented or materially impeded by the Relevant Force Majeure Event; and
- (b) the date on which such performance would no longer have been prevented or materially impeded if the Affected Party had complied with its obligations under Clause 14.6.

14.8 Availability of Performance Order

If, and to the extent that, a breach of this contract has been caused by a Relevant Force Majeure Event, the Non-affected Party shall not be entitled to a Performance

Order except to secure performance by the Affected Party of its obligations under this Clause 14.

15. MISCELLANEOUS

15.1 Non waiver

15.1.1 No waiver

No waiver by either party of any failure by the other to perform any obligation under this contract shall operate or be construed as a waiver of any other or further default, whether of a like or different character.

15.1.2 Failure or delay in exercising a right or remedy

The failure to exercise or delay in exercising a right or remedy under this contract shall not constitute a waiver of the right or remedy or a waiver of any other rights or remedies, and no single or partial exercise of any right or remedy under this contract shall prevent any further exercise of the right or remedy or the exercise of any other right or remedy.

15.2 Variations

15.2.1 Amendments to be in writing and to be approved

No amendment of any provision of this contract shall be effective unless:

- (a) such amendment is in writing and signed by, or on behalf of, the parties; and
- (b) if it is an amendment which
 - (i) requires ORR's approval under section 22 of the Act; or
 - (ii) is made under section 22A or 22C of the Act or Schedule 4A to the Act

the amendment has been so approved or directed by ORR, as applicable.

15.2.2 Exceptions

Clause 15.2.1(b) does not apply to amendments of the following kinds:

- (a) an amendment made by virtue of a general approval issued by ORR under section 22 of the Act; and
- (b) a modification made by virtue of Clause 15.4.2.

15.2.3 No Office of Rail Regulation approval needed

Modifications effected by virtue of any of the Schedules to this contract do not require ORR's approval under section 22 of the Act and so are not subject to Clause 15.2.1, unless the relevant provision expressly states that it requires the approval of ORR.

15.2.4 Conformed copy of contract

RRL shall produce and send to CRL and to ORR a conformed copy of this contract within 28 days of the making of any amendment or modification to it (including any modification made by virtue of Schedule 8).

15.3 Entire contract and exclusive remedies

15.3.1 Entire contract

Subject to Clause 15.3.3:

- (a) this contract contains the entire agreement between the parties in relation to the subject matter of this contract;
- (b) each party acknowledges that it has not been induced to enter into this contract 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 contract 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 contract either for breach of contract or for misrepresentation or otherwise, except as expressly provided for in this contract.

15.3.2 Exclusive remedies

Subject to Clause 15.3.3 and except as expressly provided in this contract:

- (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 contract; and
- (b) the remedies provided for in this contract shall be the sole remedies available to the parties in respect of any matters for which such remedies are available.

15.3.3 Fraud, death and personal injury

Without prejudice to the generality of this Clause 15.3, nothing in this contract 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 contract, in respect of any statement made fraudulently by the other party before the execution of this contract;
- (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.

15.4 Notices

15.4.1 Giving of notices

Any notice to be given under this contract:

- (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 (with confirmation copy by prepaid first class post) to, the relevant address or facsimile number set out in Schedule 1.

For the purposes of this Clause 15.4 and Clause 14.1.2, delivery by hand shall include delivery by a reputable firm of couriers.

15.4.2 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 1 by giving notice of such modification:

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

15.4.3 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;
- (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; and
- (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.

15.4.4 Copyees

If Schedule 1 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 15.4 shall send a copy of the notice to such person at the address for sending copies as specified in Schedule 1, 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 15.4; and

(b) such copy notice shall be sent immediately after the original notice.

15.5 Counterparts

This contract may be executed in two counterparts which, taken together, shall constitute one and the same document. Either party may enter into this contract by signing either of such counterparts.

15.6 Survival

Those provisions of this contract which by their nature or implication are required to survive expiry or termination of this contract (including the provisions of Clauses 8 (Liability), 9 (Restrictions on Claims), 10 (Governing Law), 11.2.3 (Unpaid Sums), 12 (Confidentiality), 14 (Payments, Interest and VAT), 14 (Force Majeure Events), and paragraph 4 of Schedule 6 (Consequence of Termination), shall so survive and continue in full force and effect, together with any other provisions of this contract necessary to give effect to such provisions.

15.7 Contracts (Rights of Third Parties) Act 1999

15.7.1 Application to third parties

Save as provided in this Clause 15.7 or as expressly provided elsewhere in this contract, no person who is not a party to this contract shall have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this contract.

15.7.2 Application to the Office of Rail Regulation

ORR shall have the right under the Contracts (Rights of Third Parties) Act 1999 to enforce directly such rights as have been granted to it under this contract.

15.7.3 Contract amendments

Subject to Clause 15.2, RRL and CRL shall not, after the date of signature enter into any agreement with a third party that requires the consent of any third party in order to amend this contract.

SCHEDULE 1: CONTACT PARTICULARS

1 RRL's address for service of notices is:

Ribble Rail Limited
3 Lincoln Drive
Old Roan
Liverpool
L10 3LJ

Tel: 0151 5319345

Fax: 0151 5316976

All written notices to be marked:

“URGENT: ATTENTION THE COMPANY SECRETARY AND SOLICITOR”

and copied to:

2 CRL's address for the service of notices is:

Colas Rail Limited
Dacre House, Floor 2
19 Dacre Street
London
SW1H 0DJ

Tel: 02075935333

All written notices to be marked:

“URGENT: ATTENTION THE COMPANY SECRETARY”

and copied to: The Freight Director

SCHEDULE 2:

THE NETWORK

1. DEFINITIONS

1.1 Definitions

In this Schedule 2, unless the context otherwise requires:

“Network Change” means, in relation to CRL,

- (a) any change (including any improvement or enlargement) to
 - (i) any part of the Network; or
 - (ii) the format of any operational documentation (other than Railway Group Standards) owned or used by RRL or CRL,

which is likely materially to affect the operation of the Network, or of trains operated by CRL on the Network; or

- (b) any material change to the location of any specified monitoring points; or
- (c) any change (not being a change within paragraph (a) or (b) above) to the operation of the Network (including a temporary speed restriction) or series of such changes which has lasted for more than six months (or such other period as may be specified in this Agreement) and which is likely materially to affect the operation of trains by CRL on the Network; or
- (d) any material change to a previously agreed Network Change (and for the purposes of this definition a previously agreed Network Change means any change as referred to in paragraph (a), (b) or (c) above which has not yet been implemented by RRL but in respect of which the procedure set out paragraph 5 of this Schedule has been initiated),

and shall not include any change to any System or System Interface of any System owned or used by RRL or CRL;

“**System**” means any configuration of computer hardware, software and related communications equipment, whether or not the components are located on one site; and

“**System Interface**” means that part (whether logical, electrical, mechanical or otherwise) of any System which enables that System to interface with any other System, including but not limited to interfacing for the purpose of passing data or other information between them.

2. Operating Constraints

2.1 Opening Hours

The Network shall be open between the hours of:

Monday to Sunday 06.00 to 19.00

2.2 Signalling

Signalling arrangements are as specified in the RRL current Safety Management System.

2.3 Special Arrangements and Instructions

Any special arrangements and instructions that apply to the Network are set out in the RRL current Safety Management System.

2.4 Route Availability

The Network shall be capable of accommodating Registered Equipment up to and including 25.5 tonne axle load (R.A.10) throughout with no restrictions.

2.5 Gauge

The Network shall be capable of accommodating Registered Equipment of up to W6A (W6) gauge throughout. CRL shall not knowingly cause or permit Services on the Network to exceed W6A (W6) gauge unless it shall have obtained RRL’s prior written consent such consent not to be unreasonably withheld.

2.6 Trailing Loads

Services shall not exceed the 1450 tonnes trailing load.

2.7 Length Limits

Services shall not exceed the maximum length limit of 400 metres or 62 Standard Length Units.

2.8 Speed Restrictions

The maximum permitted speed of Services on the Network is 10 mph.

2.9 Possession Opportunities

RRL is permitted to carry out essential maintenance, replacement and repair work at any time that does not prevent the operation of any Service that has been Bid for by CRL and accepted or deemed accepted by RRL pursuant to paragraph 4 of Schedule 5. RRL shall advise CRL of all Possessions, which would have a direct effect on the ability of RRL to accept Services at less than two weeks notice.

2.10 Dangerous Goods

CRL shall not knowingly cause or permit to be carried or stored any Dangerous Goods on the Network unless it shall have obtained RRL's prior written consent such consent not to be unreasonably withheld.

CRL shall take all reasonable steps to ascertain whether any of the goods or commodities consigned to it for carriage or storage on the Network are Dangerous Goods.

3. Network Plan

The Network Plan is included in the RRL current Safety Management System.

4. Method of Working

The Method of Working is referenced in the current Safety Management System.

5. Changes to the Network

5.1 If RRL wishes to make a Network Change, it shall:

- (a) give notice of its proposal for Network Change to:
 - (i) CRL;
 - (ii) the HSE; and
 - (iii) the Office of Rail Regulation.

together with particulars of the proposed Network Change which are reasonably necessary to enable that person to assess the effect of the proposed Network Change and to enable CRL to assess the effect of the proposed Network Change on the operation of its Services; and

- (b) invite the submission of comments from the persons specified in paragraph 5.1 (a) within such period as is reasonable in the circumstances having due regard to the likely impact of the proposed Network Change on those persons.

5.2 To the extent that a proposed Network Change is required to be made by RRL for safety reasons, RRL shall not be obliged to implement the procedure set out in this paragraph 5 until the change has lasted for three months. Upon expiry of the three months, RRL shall promptly commence implementing and thereafter comply with the procedure set out in this paragraph 5 as if the relevant Network Change were a Network Change proposed by RRL.

5.3 CRL shall give notice to RRL within the timescales prescribed in accordance with paragraph 5.1 above, if it considers that either

- (a) one or more of the following conditions has been satisfied:
 - (i) the implementation of the proposed change would necessarily result in RRL breaching an access contract to which CRL is a party;
 - (ii) RRL has failed, in respect of the proposed change to provide sufficient particulars to CRL under Clause 5.1; or
 - (iii) the implementation of the proposed change would result in a material deterioration in the performance of CRL's trains which cannot be adequately compensated under this Clause 5; or

- (b) it should be entitled to compensation from RRL for the consequences of the implementation of the change.

5.3.1 Any notice of the kind referred to in (a) above shall include the reasons for CRL's opinion. Any notice of the kind mentioned in (b) above shall include a statement of the amount of compensation required and the means by which the compensation should be paid, including any security or other assurances of payment which RRL should provide. Any such statement should enable RRL to assess the merits of CRL's decision.

5.4 Subject to paragraph 5.2 above, RRL shall not implement a proposed Network Change unless it has either satisfied any notice submitted by CRL in accordance with paragraph 5.3 above, or referred the matter for determination in accordance with clause 10.1 of this contract and such determination is made in RRL's favour.

5.5 CRL shall, if it wishes to implement a Network Change, submit to RRL a proposal for such change together with:

- (a) such particulars of the proposed change as are reasonably necessary to enable RRL to assess the effect of the change both on the operation by RRL of the Network and on the operation of trains on the Network, and which it is reasonable to expect CRL to provide; and
- (b) permission for RRL to consult to the extent provided for under paragraph 5.1 subject to such requirements as to confidentiality as are reasonable.

5.6 RRL shall following receipt of any proposal for Network Change from CRL:

- (a) evaluate and discuss the proposal for change with CRL for such period as is reasonable having due regard to the likely impact of the proposed Network Change on either or both of RRL and other operators of trains; and
- (b) consult with all other operators of railway assets which are likely to be materially affected by the proposed change to the extent reasonably necessary so as properly to inform them of the change and to enable them to assess the consequences for them of the change.

5.7 RRL shall, if requested to do so in writing by CRL, provide, at no cost to CRL, a preliminary response in respect of a proposed Network Change (which, unless RRL indicates otherwise, shall be binding on it) to CRL as soon as practicable and in any event within the period of 28 days commencing on:

- (a) the date of first notification to it in writing of the proposal for Network Change made by CRL; or (if later)
- (b) the date of the request for a preliminary response,

and any such preliminary response, if negative, shall include the reasons therefore.

5.8 RRL shall give notice to CRL if:

- (a) it considers that one or more of the following conditions has been satisfied:
 - (i) the implementation of the proposed Network Change would necessarily result in RRL breaching any access contract (other than an access contract to which CRL is a party);
 - (ii) CRL has failed in a material respect to comply with its obligations under paragraph 5.5 provided that RRL shall first have given CRL a reasonable opportunity to remedy that failure; or
 - (iii) the implementation of that change would result in a material adverse effect on the maintenance or operation of the Network or the operation of any train on the Network which in any such case cannot adequately be compensated under this paragraph 5.8; or
- (b) CRL shall have given notice to RRL that it considers that any of the conditions specified in paragraph (a) above has been satisfied;
- (c) it considers that it should be entitled to compensation from CRL for the consequences of the implementation of the change; or
- (d) any other operator of railway assets shall have given notice to RRL that it considers that it should be entitled to compensation from CRL for the consequences of the implementation of the change.

5.9 Any notice of the kind referred to in paragraph (a) or (b) above shall include the reasons for the opinion in question. Any notice of the kind mentioned in paragraph (c) or (d) above shall include a statement of the amount of compensation required and the means by which the compensation should be paid, including any security or other assurances of payment which CRL should provide. Any such statement shall contain such detail as is reasonable to enable CRL to assess the merits of the statement or to substantiate the claim for compensation.

5.10 If:

(a) RRL shall have given notice to CRL pursuant to paragraph 5.8 (a) or (b) and CRL shall have failed to refer the matter for determination in accordance with clause 10.1 of this contract; or

(b) RRL shall have given notice to CRL pursuant to paragraph 5.8 (c) or (d) and CRL shall have failed either:

(i) to comply with the terms upon which the compensation in question shall be payable, having been given a reasonable opportunity to remedy that failure; or

(ii) to refer the matter for determination in accordance with clause 10.1 of this contract within 14 days of the date of the notice in question,

the proposed Network Change shall not be implemented. In any other case, and subject to the other provisions of this paragraph 5, CRL shall be entitled to have the Network Change implemented by RRL.

5.11 Where RRL is required (other than at its own request or instigation) to implement a Network Change as a result of any Change of Law or any Direction of any Competent Authority other than the Office of Rail Regulation:

(a) RRL shall, except to the extent that the relevant Change of Law or Direction otherwise requires, comply with paragraph 5.1 in respect of that Network Change;

(b) CRL shall make such alterations (if any) to its railway vehicles and its Services as are reasonably necessary to accommodate that Network Change; and

(c) CRL and RRL shall bear its own costs or losses arising out of the implementation of the Network Change or the consequences thereof.

5.12 The obligation to comply with the requirements of this paragraph 5 shall be without prejudice to the obligations of the Access Parties to comply with the Railway Group Standards.

6. OPERATIONAL DISRUPTION

6.1 Definition

A Disruptive Event is any event or circumstance which materially prevents or materially disrupts the operation of trains on any part of the Network.

6.2 Notification by CRL.

CRL shall notify RRL of the occurrence of a Disruptive Event as soon as reasonably practicable after it becomes aware of it.

6.3 Notification by RRL.

RRL shall notify CRL of the occurrence of a Disruptive Event which is likely to affect the operation of trains by CRL, as soon as is reasonable practicable after it becomes aware of it.

6.4 Notification of expected Disruptive Events.

The parties shall use their reasonable endeavours to provide one another of as much notice as is reasonably practicable of any Disruptive Event which they believe is likely to occur.

6.5 Information to be provided in notices of Disruptive Events.

Each notice given pursuant to paragraphs 6.2, 6.3 and 6.4 shall, as far as reasonably practicable, include a specification of the nature and extent of the Disruptive Event in question and its likely duration, in an amount of detail as shall be reasonably

required so as to enable the person receiving the notice to inform his staff, customers and other associates of the disruption in question and minimise the inconvenience and disruption which is likely to be caused to them

6.6 Action following a Disruptive Event.

RRL shall, as soon as reasonably practicable following the occurrence of a Disruptive Event, determine the most appropriate action to be taken to restore the operation of trains on the Network and in making its determination, shall consult as fully and as regularly as reasonably practicable with CRL as to the action which RRL proposes to take in connection with that event.

CRL shall be entitled to require RRL to take such actions as CRL shall reasonably specify in relation to the restoration of the operation of the affected part of the Network so as to permit the operation of trains on that part.

SCHEDULE 3

Not Used

SCHEDULE 4

Not Used

SCHEDULE 5: SERVICES

1. Definitions

1.1 Definitions

In this Schedule 5, unless the context otherwise requires:

“**Access Right**” means in relation to an access agreement, permission to use the track for the purpose of the operation of trains on that track by a beneficiary and rights ancillary thereto which are provided or charged for in the access agreement in question;

“**Beneficiary**” has the meaning ascribed to it in section 17(7) of the Act;

“**Comments**” means any additional contract terms or qualifications as set out in paragraph 5 to this Schedule 5;

“**Customer**” means the end customer of CRL as specified in paragraph 5;

“**Description**” means the description of the Services as specified in paragraph 5;

“**Day**” means any period of 24 hours beginning at 0000 hours and ending immediately before the next succeeding 0000 hours, and any reference in this Schedule to any named day of the week shall be to such period commencing on that named day;

“**Days per Week**” means in relation to each specified Service the days of the week on which CRL has a Firm Contractual Right to a Train Slot to operate that Service, expressed as the Days on which the Service is to be Planned to commence from its Origin;

“Max Trains Per Day” means in relation to each specified Service, the maximum number of times that CRL has a Firm Contractual Right to operate that Freight Service during a day;

“Max Trains Per Week” means in relation to each specified Service, the maximum number of times that CRL has a Firm Contractual Right to operate that Service during a week;

“Quality Adjustment” means the alteration of any aspect of the Access Rights of CRL (whether in relation to performance, the quality or condition of the Network, the liability of any person to any other person, or in any other respect) other than a Quantum Adjustment in a manner, which is not consistent with this contract;

“Quantum Adjustment” means the surrender of any Access Right of CRL in question and the grant to it of any other Access Right;

“Reasonable on-going commercial need” shall be interpreted in accordance with the rules or criteria published by the Office of Rail Regulation;

“Relevant Adjustment” means a Quality Adjustment or a Quantum Adjustment and adjust shall be construed accordingly;

“Relevant Surrender” means the surrender to RRL of Access Rights possessed by CRL;

“Short Notice Bid” means a Bid made by CRL to RRL for one or more Train Slots at less than 2 weeks notice before the date of operation of such Train Slots in accordance with paragraph 4.2 of Schedule 5;

“Stanox” means a numeric reference used by RRL to describe a physical location, either part of the Network or a facility adjoining the Network;

“Third Party Counter Notice” means a notice given by CRL to RRL under paragraph 3.6;

“Third Party Notice” means a notice given by RRL to CRL under paragraph 3.2;

“Timing Flex Rights” means, in relation to each specified Service, the maximum number of minutes which the timing of the Service contained in a Bid from CRL may be adjusted by RRL in accordance with paragraph 2.5;

“Timing Specifications” means, any Service Characteristics set out at paragraph 5 which govern or provide for the timing of a Train Slot;

“Train” means each of the Services listed in the table annexed to Schedule 5;

“Working Day” means each of Monday to Friday (inclusive) excluding common law and statutory public holidays;

“Y Path” means, in relation to a specified Service, where CRL has the Firm Contractual Right to that Service to:

- (a) depart from one or more Origins to the same Destination; and/or
- (b) arrive at one or more Destinations from the same Origin,

as set out in paragraph 5 provided that CRL shall not be entitled to more than one Y Path Option within any one Y Path on any particular day;

“Y Path Option” means in relation to a Y Path, one Origin and one Destination from a combination of one or more Origins and one or more Destinations.

1.2 Days of the Week

With respect to Services, the following convention shall be used to denote days of the Week:

M - Monday;

T - Tuesday;

W - Wednesday;

Th – Thursday;

F - Friday;

S - Saturday;

SUN – Sunday;

EWD - Monday to Saturday inclusive;

O indicates Services are run on that day alone (*e.g.* MFO - Monday and Friday only);
and

X indicates Services are run on days other than the day or days shown with the exception of Sunday (*e.g.* MX – Monday excepted).

2. Rights and services

2.1 Secure Rights

2.1.1 CRL shall be entitled to the Secure Rights to Services set out in the table annexed to Schedule 5

2.2 Varied and Additional Services

2.2.1 In addition to its rights in paragraph 2.3 CRL may request Varied Services or Additional Services only if it has a reasonable on going commercial need (which shall include the facilitation of the efficient utilisation of CRL's resources). RRL shall identify and inform CRL whether such requested Varied Services or Additional Services can be accommodated. To the extent that accommodating CRL's request would or is likely to:

- (a) place RRL in breach of:
 - (i) any access contract in being at the date of CRL's request which will be in force at the time that the request by CRL would take effect; or
 - (ii) any Prospective Access Contract; or
- (b) impede RRL or its contractors from maintaining, renewing and carrying out necessary planned work on or in relation to the Network provided that if RRL can maintain, renew or carry out other necessary planned work on or in relation to the Network in an alternative manner (including the time at which such maintenance, renewal or other necessary planned work is carried out) which would permit RRL to accommodate CRL's request for the Additional

Service or Varied Service then to the extent that it is reasonable (having regard to the reasonable requirements of other parties affected by such alternative manner) RRL shall do so; provided that, for the purposes of this sub-paragraph 2.2.1(b) only, *planned work* shall mean possessions which have been planned in prior to the time of CRL's request for such Additional Service or Varied Service,

RRL shall, in either case, identify its best alternative (if any) as a Varied Service or Additional Service and CRL may accept that best alternative if it is reasonable to do so.

2.2.2 Any Varied Service or Additional Service which is accepted by RRL in accordance with this paragraph 2.2 shall, subject to the approval of the Office of Rail Regulation, become a Secure Right to a Service and shall be included the annex to Schedule 5.

2.3 *Ancillary Movements*

If CRL wishes to make an Ancillary Movement(s) which is not set out in the annex to Schedule 5 the proposed Ancillary Movement(s) shall be treated as a Non-Secure Service.

2.4 *Non-Secure Services*

2.4.1 CRL shall be entitled to make Bids for Non-Secure Services provided that the duration of any such Non-Secure Services shall not be for a period greater than six months. RRL will advise the Office of Rail Regulation where such Non-Secure Services pursuant to this paragraph 2.4.1 have been accepted.

2.4.2 For the purpose of paragraph 2.4.1, where Bids have been made for successive Non-Secure Services each having substantially the same characteristics, they shall be aggregated for the purpose of ascertaining whether the period of six months has been exceeded.

2.4.3 The Non-Secure rights referred to in paragraph 2.4.1 shall not be Firm Contractual Rights and are subject in all cases to CRL having a reasonable commercial need for such rights.

2.5 *RRL's Flexing Right*

- 2.5.1 Unless otherwise specified in paragraph 5 and subject to paragraph 2.5.3 and 5.2, the maximum number of minutes by which RRL may exercise its Timing Flex Rights in relation to any Bid for each specified Service made pursuant to paragraph 5.1, shall be plus or minus 15 minutes.
- 2.5.2 In respect of any Bid made by CRL for each Service made pursuant to paragraph 5.1, either party may request a variation in RRL's Timing Flex Rights in respect of such Service and where either party reasonably requires such a variation the other party shall not unreasonably withhold its consent to such variation.
- 2.5.3 Where associations and connections are shown as Comments in the annex to Schedule 5, RRL's Timing Flex Rights shall not be used to break such associations or connections.

3. **Use of Access Rights**

- 3.1 Without prejudice to the provisions of paragraphs 3.2 to 3.7, CRL shall voluntarily and in good faith relinquish those access rights or part or parts of such access rights with respect to the Services which are Secure Rights as described in the annex to Schedule 5 in respect of which it has no current or reasonable ongoing commercial need.
- 3.2 Without prejudice to the provisions of paragraphs 3.1 and 3.7, if RRL receives an application in writing from a third party (the *Applicant*) in which the Applicant requests firm access rights for services that is substantially similar to the existing Secure Rights of CRL then as soon as reasonably practicable following receipt of the Applicant's application, RRL shall serve a Third Party Notice on CRL and send a copy of the notice to the Office of Rail Regulation.
- 3.3 *Applicant's responsibilities*

When making an application to RRL of the type described in paragraph 3.2 above, RRL shall ensure that the Applicant shall:

- (a) at the time as submitting the application to RRL, send a copy of the application to CRL; and

- (b) specify in the application
 - (i) the date on which the Applicant requests that the Secure Rights take effect in its access contract; and
 - (ii) that the Secure Rights sought is for the provision of transport services to a third party that the Applicant will (subject, where applicable, to any competitive tendering process) replace CRL in providing.

3.4 *Contents of a Third Party Notice*

A Third Party Notice shall specify:

- (a) the Secure Rights sought by the Applicant;
- (b) the Secure Rights, which RRL requires CRL to surrender in order to accommodate the Applicant's request; and
- (c) the date on which the surrender is intended to take place.

3.5 *Acceptance of Surrender*

If CRL agrees to the surrender specified in the Third Party Notice, then:

- (a) it shall give notice in writing to that effect to RRL; and
- (b) the Secure Rights shall be surrendered on the date specified in the Third Party Notice or such other date as CRL and RRL may agree.

3.6 *Third Party Counter Notice*

CRL may, within 10 working days of receipt of a Third Party Notice, serve a Third Party Counter Notice on RRL:

- (a) specifying that it objects to the surrender of the Secure Rights because it has a reasonable on-going commercial need for all or any of the Secure Rights; and
- (b) providing evidence in support of its contentions.

3.7 If no Third Party Counter Notice is served within 10 Working Days of receipt, CRL will be deemed to have agreed to the surrender specified in the Third Party Notice.

3.8 If the Secure Rights sought by the Applicant are for the provision of transport services to a third party which are the subject of a competitive tendering process amongst other parties including CRL, then CRL:

- (a) may notify RRL in writing of this process; and
- (b) if it has done so, the period of 10 Working Days referred to in paragraph 3.7 shall be deemed to commence on the date that the third party indicates its intention to contract at the end of the relevant tendering process.

3.9 *Cessation of notice*

If CRL and RRL agree or it is determined that CRL has a reasonable on-going commercial need in respect of all or any of the Secure Rights to be surrendered, the Third Party Notice shall cease to have effect to the extent that CRL's claim has been substantiated.

3.10 *Dispute Resolution*

3.10.1 If within 5 Working Days of receipt by CRL of a Third Party Notice, CRL and RRL have:

- (a) failed to reach agreement on whether CRL has a reasonable on-going commercial need in respect of any or all of the Secure Rights to be surrendered; and
- (b) not otherwise agreed in writing to refer the matter for expert determination under Part D of the Access Dispute Resolution Rules in force at the time of the reference.

RRL shall refer the matter to arbitration in accordance with Part C of the Access Dispute Resolution Rules in force at the time of the reference.

3.11 If:

- (a) a reference to arbitration or expert determination is made under paragraph 3.10; and

(b) the arbitrator or expert determines that CRL has no reasonable on-going commercial need for all or any of the Secure Rights to be surrendered,

then the rights that are to be surrendered will be surrendered from the date specified:

- (i) in the Third Party Notice: or
- (ii) in the arbitrator's or expert's determination,

whichever is the later.

3.12 In respect of any referral to arbitration or expert determination under paragraph 3.10, any such will be between RRL and CRL, and the Applicant shall accept that the award of determination will dispose of the matter as between the Applicant and RRL.

3.13 Notification to the Office of Rail Regulation

RRL shall notify the Office of Rail Regulation of the relevant modifications to CRL's and Applicant's access contracts no more than 20 Working Days after the grant to the Applicant is effected.

3.14 Without prejudice to the provisions of paragraphs 3.1 to 3.12 where any Secure Rights have not been used by CRL, either in part or in whole, for a continuous period of 12 months commencing on or after the date of this Contract then to the extent that such Secure Rights have not been used, such rights shall be deemed to be relinquished by CRL

3.15 If CRL's rights to operate the Services as set out in the annex to Schedule 5 are reduced in accordance with this paragraph 3 then those Services shall be removed from the annex to Schedule 5 and the number of Services in respect of which CRL is entitled to Bid pursuant to the annex to Schedule 5 shall be reduced accordingly and RRL will within 14 days of the date thereof notify the Office of Rail Regulation of any such variation.

3.16 RRL hereby warrants to CRL that subject to approval by the Office of Rail Regulation, in any Contract granting access rights entered into by RRL with an Applicant it will insert provisions that are, the same as the terms set out in this paragraph 3.

4. Arbitration and expert determination under paragraph 3

In determining the matters referred to him under this paragraph 3, the arbitrator's or expert's remit shall be that he shall:

- (a) reach a decision which is fair and reasonable;
- (b) reach a decision as soon as reasonably practicable;
- (c) have due regard to:
 - (i) the matters about which duties are imposed on the Office of Rail Regulation by section 4 of the Act; and
 - (ii) any criteria which the Office of Rail Regulation has most recently published (and identified as such) in relation to the surrender or adjustment of Access Rights;
- (d) not make an award or determination which is inconsistent with any provision of this contract.
- (e) have the power:
 - (i) to give directions as to the procedure to be followed in the arbitration or expert determination, including in relation to the making of any written or oral submissions and to the extent that any evidence or other submissions made by one party to the arbitration or expert determination shall be disclosed to the other; and
 - (ii) to make such orders as he shall think fit in relation to the proportions of the costs of the arbitration or expert determination (assessed in such manner as he shall determine) which shall be borne by either or both of the parties;
- (f) issue his decision as to what modifications of the provision of the access agreement shall be required to give effect to that decision; and
- (g) give his reasons.

4.2 Provision of information etc, compliance with directions and binding nature of decision

RRL and CRL shall:

- (a) use all reasonable endeavours to procure that the arbitrator or expert is furnished with sufficient information and evidence to determine the matter in question as soon as is reasonably practicable after the date of the reference;
- (b) comply with any lawful directions of the arbitrator or expert; and
- (c) be bound by the decision of the arbitrator or expert.

4.3 Matters to be decided by the arbitrator or expert

4.3.1 If a reference to arbitration or expert determination is made, the parties shall request the arbitrator or expert to provide a reasoned award or determination covering the following matters:

- (a) whether CRL should be entitled to make any Relevant Surrender or have any Relevant Adjustment given effect;

and, if so:

- (b) what the Relevant Surrender or Relevant Adjustment should be;
- (c) what should be the amounts payable by CRL under the access agreement as a consequence of the making of the Relevant Surrender or Relevant Adjustment in question, including the sharing between RRL and CRL of the Relevant Financial Consequences;
- (d) when the Relevant Surrender or Relevant Adjustment in question should have effect; and
- (e) such other matters as he considers relevant to the proper determination of the reference.

4.3.2 If a reference to arbitration or expert determination is made on reasonable on-going commercial need, the parties shall request the arbitrator or expert to provide a reasoned award or determination covering the following matters:

- (a) whether CRL has a reasonable on-going commercial need in respect of any or all of the Rights Subject to Surrender after the date specified in the Third Party Notice, having regard to any rules or criteria published by ORR; and
- (b) such other matters as he considers relevant to the proper determination of the reference.

4.4 Miscellaneous

4.4.1 In relation to any arbitration or expert determination commenced under paragraph 3.10, RRL shall send a copy of the award or determination to the Applicant on receipt by RRL of the award or determination.

4.4.2 In relation to any arbitration or expert determination under paragraph 3.10, any reference to an arbitrator or expert shall be made as soon as reasonably practicable after RRL and CRL or the Incumbent, as applicable, have failed to reach agreement on the matters to be referred to arbitration or expert determination.

5. Bids

5.1 CRL shall make Bids to RRL for Train Slots giving at least 2 weeks notice before the day of operation of any such Train Slot.

5.2 CRL shall be able to make Short Notice Bids for Train Slots and RRL shall use reasonable endeavours to accommodate such Short Notice Bids. If any Short Notice Bids are made by CRL in respect of any Secure Rights then such Secure Rights shall be treated as Non-Secure Services for the dates and times reflected in such Short Notice Bid.

5.3 CRL shall, in making a Bid for a Train Slot, indicate, in respect of the Train Slots for which the Bid has been made, the extent of its requirements (if any) as to:

- (a) dates on which the Train Slots are intended to be used;
- (b) start and end points of the Train Movement;

- (c) intermediate calling points;
- (d) the times of arrival and departure from any point specified under paragraphs 5.3(b) and 5.3(c);
- (e) Registered Equipment to be used; and
- (f) any Ancillary Movements.

5.4 Without prejudice to paragraph 5.5, RRL shall in relation to any Bid give notice to CRL within two working days of receipt of such Bid of its acceptance, modification or rejection of the Bid. Any notice of rejection shall include a concise explanation therefor.

5.5 Where Short Notice Bids are made by CRL pursuant to paragraph 5.2 at less than two days notice RRL shall use reasonable endeavours to give notice to CRL of its acceptance, modification or rejection of the Bid as soon as reasonably practicable. Any notice of rejection shall include a concise explanation therefor.

5.6 RRL shall, where it fails to notify CRL in accordance with paragraph 5.4 or 5.5 above, be deemed to have accepted CRL's Bid.

6. SECURE RIGHTS

The table of Secure Rights is annexed to this Schedule 5.

Departures

Headcode	Dep day	Origin Location	Planned Departure Time	Destination Location	Planned Arrival Time
6M32	1	Lindsey Oil Refinery	03:XX	Preston Docks	08:12
6M32	2	Lindsey Oil Refinery	03:XX	Preston Docks	08:12
6M32	3	Lindsey Oil Refinery	03:XX	Preston Docks	08:12
6M32	4	Lindsey Oil Refinery	03:XX	Preston Docks	08:12

Arrivals

Headcode	Dep day	Origin Location	Planned Departure Time	Destination Location	Planned Arrival Time
6E32	1	Preston Docks	08:55	Lindsey Oil Refinery	14:58
6E32	2	Preston Docks	08:55	Lindsey Oil Refinery	14:58
6E32	3	Preston Docks	08:55	Lindsey Oil Refinery	14:58
6E32	4	Preston Docks	08:55	Lindsey Oil Refinery	14:58

SCHEDULE 6: EVENTS OF DEFAULT, SUSPENSION AND TERMINATION

1. Events of Default

1.1 CRL Events of Default

The following are CRL Events of Default:

- (a) CRL ceases to be authorised to be the operator of trains for the provision of the Services by a licence granted under section 8 of the Act unless it is exempt from the requirement to be so authorised under section 7 of the Act;
- (b) an Insolvency Event occurs in relation to CRL ;
- (c)
 - (i) any breach by CRL of this contract, its Safety Obligations or
 - (ii) any event or circumstance which is reasonably likely to result in any such breach,which, by itself or taken together with any other such breach, event or circumstance, RRL reasonably considers constitutes a threat to the safe operation of any part of the Network;
- (d) any Charges or other amount due by CRL to RRL under this contract remain unpaid for more than seven days after their due date;
- (e) any breach of this contract by CRL which, by itself or taken together with any other such breach, results, or is likely to result, in material financial loss to RRL; and
- (f) any breach of this contract by CRL which, by itself or taken together with any other such breach, results, or is likely to result, in material disruption to train operations of other train operators.

1.2 Notification

CRL shall notify RRL promptly on becoming aware of the occurrence of a CRL Event of Default.

1.3 RRL Events of Default

The following are RRL Events of Default:

- (a) RRL ceases to be authorised to be the operator of the Network by a licence granted under section 8 of the Act unless exempt from the requirement to be so authorised under section 7 of the Act;
- (b) an Insolvency Event occurs in relation to RRL;
- (c)
 - (i) any breach by RRL of this contract or its Safety Obligations; or
 - (ii) any event or circumstance which is reasonably likely to result in any such breach,which, by itself or taken together with any other such breach, event or circumstance CRL reasonably considers constitutes a threat to the safe operation of the Services or any Ancillary Movements; and
- (d) any breach of this contract by RRL which, by itself or taken together with any other such breach, results, or is likely to result, in material financial loss to CRL.

1.4 Notification

RRL shall notify CRL promptly on becoming aware of the occurrence of a RRL Event of Default.

2. Suspension

2.1 Right to suspend

2.1.1 RRL may serve a Suspension Notice where a CRL Event of Default has occurred and is continuing.

2.1.2 CRL may serve a Suspension Notice where a RRL Event of Default has occurred and is continuing.

2.2 Contents of Suspension Notice

A Suspension Notice shall specify:

- (a) the nature of the relevant Event of Default;
- (b) the date and time at which suspension is to take effect;
- (c) in the case of a Suspension Notice served on CRL, reasonable restrictions imposed while the Suspension Notice is in force on the permission to use the Network or any parts of it;
- (d) in the case of a Suspension Notice served on RRL, details of any necessary suspension of the Services; and
- (e) whether the party serving the Suspension Notice reasonably considers that the Event of Default is capable of remedy, and where the Event of Default is capable of remedy:
 - (i) the steps reasonably required to remedy the Event of Default; and
 - (ii) a reasonable grace period for the defaulting party to remedy it (where the Event of Default which has occurred is a failure to pay Track Charges or other amounts due, seven days shall be a reasonable grace period).

2.3 *Effect of a Suspension Notice served by RRL*

Where RRL has served a Suspension Notice on CRL:

- (a) CRL shall comply with any reasonable restrictions imposed on it by the Suspension Notice;
- (b) the Suspension Notice shall remain in full force and effect in accordance with its terms until it has been revoked either in whole or in part by notice from RRL to CRL under paragraph 2.5.4;
- (c) service of the Suspension Notice shall not affect CRL's continuing obligation to pay the Charges; and

2.4 *Effect of a Suspension Notice served by CRL*

Where CRL has served a Suspension Notice on RRL:

- (a) it shall have the effect of suspending CRL's permission to use the Network to provide the Services to the extent specified in the Suspension Notice; and
- (b) the Suspension Notice shall remain in full force and effect in accordance with its terms until it has been revoked either in whole or in part by notice from CRL to RRL under paragraph 2.5.4.

2.5 *Suspension to be proportionate to breach*

2.5.1 A Suspension Notice served under paragraph 2.3 in respect of any of CRL's Events of Default specified in paragraphs (a) and (c) to (f) (inclusive) of paragraph 1.1 shall, so far as reasonably practicable, apply only to the:

- (a) railway vehicles;
- (b) Services; and
- (c) categories of train movements or railway vehicles,

or parts or part of them, to which the relevant CRL Event of Default relates.

2.5.2 A Suspension Notice served under paragraph 2.4 in respect of any of RRL Events of Default specified in paragraphs 1.3(a), (c) and (d) shall, so far as reasonably practicable, apply only to the:

- (a) railway vehicles;
- (b) Services; and
- (c) categories of train movements or railway vehicles,

or parts or part of them, to which the relevant RRL Event of Default relates.

2.5.3 The party served with a Suspension Notice which specifies an Event of Default which is capable of remedy shall:

- (a) with all reasonable diligence, take such steps as are specified in the Suspension Notice to remedy the Event of Default; and
- (b) keep the party serving the Suspension Notice fully informed of the progress which is being made in remedying the Event of Default.

2.5.4 Where a party served with a Suspension Notice has complied with its obligations under paragraph 2.5.3, whether in whole or in part, and it is reasonable for the suspension effected by the Suspension Notice to be revoked, whether in whole or in part, the party which served the Suspension Notice shall revoke the suspension to that extent. Such revocation shall be effected as soon as practicable after the remedy in question by notice to the other party specifying the extent of the revocation and the date on which it is to have effect.

3. Termination

3.1 RRL's right to terminate

RRL may serve a Termination Notice on CRL:

- (a) where CRL fails to comply with any material restriction in a Suspension Notice;
- (b) where CRL fails to comply with its obligations under paragraph 2.5.3;
- (c) where CRL Event of Default specified in paragraph 1.1(a) has occurred and is continuing; or
- (d) where CRL Event of Default specified in a Suspension Notice served by RRL is not capable of being remedied and three months have elapsed from the service of that Suspension Notice.

3.2 CRL's right to terminate

CRL may serve a Termination Notice on RRL:

- (a) where RRL fails to comply with its obligations under paragraph 2.5.3;
- (b) where the RRL Event of Default specified in paragraph 1.3(a) has occurred and is continuing; or
- (c) where the RRL Event of Default specified in a Suspension Notice served by CRL is not capable of being remedied and three months have elapsed from the service of that Suspension Notice.

3.3 *Contents of Termination Notice*

A Termination Notice shall specify:

- (a) the nature of the relevant Event of Default;
- (b) a date and time, which shall be reasonable in the circumstances, at which termination is to take effect; and
- (c) whether the party serving the Termination Notice reasonably considers that the Event of Default is capable of remedy, and where the relevant Event of Default is capable of remedy:
 - (i) the steps which the party serving the Termination Notice believes are reasonably required to remedy the Event of Default; and
 - (ii) a reasonable grace period within which such steps may be taken (where the Event of Default is a failure of CRL to pay Charges or other amounts due, seven days is a reasonable grace period).

3.4 *Effect of Termination Notice*

Where RRL or CRL has served a Termination Notice on the other:

- (a) the service of the Termination Notice shall not affect the parties' continuing obligations under this contract up to the date of termination, which date shall be determined in accordance with paragraph 3.4(c);
- (b) the party which has served the Termination Notice shall withdraw it by notice to the other party, upon being reasonably satisfied that the relevant Event of Default has been remedied; and
- (c) this contract shall terminate on the later of:
 - (i) the date and time specified in the Termination Notice for the contract to terminate (or such later date and time as the party which served the Termination Notice notifies to the other before the date and time so specified); and
 - (ii) the date on which a copy of the Termination Notice is given to ORR.

3.5 *Unilateral right of termination*

CRL may at any time serve a notice on RRL to terminate this contract (a “**unilateral termination notice**”). In such circumstances, CRL shall send a copy of the unilateral termination notice to ORR.

3.6 *Contents of unilateral termination notice*

The unilateral termination notice shall specify a date and time on which termination of this contract is to take effect (which shall not be earlier than 12 months from the date on which the unilateral termination notice is served on RRL).

3.7 *Effect of unilateral termination notice*

Where CRL has served a unilateral termination notice on RRL:

- (a) the service of the unilateral termination notice shall not affect the parties’ continuing obligations under this contract up to the date of termination specified in the unilateral termination notice; and
- (b) the contract shall terminate under Clause 3.5 on the later of:
 - (i) the date and time specified in the unilateral termination notice; and
 - (ii) the date upon which a copy of the unilateral termination notice is sent to ORR.

4. **Consequence of termination**

4.1 *Directions regarding location of Specified Equipment*

Immediately before, upon or following termination or expiry of this contract, CRL shall comply or procure compliance with all reasonable directions given by RRL concerning the location of the Registered Equipment.

4.2 *Failure to comply with directions*

If CRL fails to comply with any directions given under paragraph 4.1, RRL shall be entitled to remove from the Network or Stable any Registered Equipment left on the

Network or to instruct a third party to do so and any reasonable costs incurred by RRL in taking such steps shall be paid promptly by CRL.

4.3 *Evidence of costs*

RRL shall provide such evidence of such costs as are referred to in paragraph 4.2 as CRL shall reasonably request.

SCHEDULE 7: TRACK CHARGES

1 Definitions

In this Schedule 7 unless the context otherwise requires:

“Commodity” means the commodity applying to each Service as shall be agreed between CRL and RRL by reference to the classes of commodity in the Track Usage Price List ;

“Fixed Charges” means £1 per annum, if demanded;

“Incremental Costs” means all reasonable additional costs properly and reasonably incurred by RRL in respect of any modification referred to in paragraph 2.2, being the additional reasonable cost (if any) to RRL in respect of its obligation to maintain and operate the Network but excluding:

- (a) any loss of income on the part of RRL;
- (b) freight specific fixed and common costs of the Network; and

“Track Usage Price List” means ORR’s track usage price list as published on 28 October 2002, and may from time to time be update by ORR.

2 Charges

2.1 The Fixed Charges and the Incremental Costs payable pursuant to this Schedule 7 shall have effect from the Commencement Date.

2.2 Incremental Costs

- (a) Where:
 - (i) CRL makes a request for an Additional Service or a Varied Service or makes a Bid for a Non-Secure Service; and
 - (ii) the operation of the Service requested or Bid for would exceed the Operating Constraints applying at the Commencement Date; and

- (iii) CRL wishes RRL to modify the Operating Constraints applying at the Commencement Date in a manner so as to permit the Service requested or Bid for to operate under this Agreement; and
- (iv) RRL is reasonably able to effect such modifications to a timescale that meets CRL's requirements

then paragraph 2.2(b) shall apply.

- (b) Where RRL incurs Incremental Costs pursuant to paragraph 2.2(a), then such Incremental Costs shall be payable to RRL by CRL in such amounts as are either:
 - (i) agreed between the parties prior to operation of the Service requested or Bid for; or
 - (ii) where the amount is not agreed in advance, as is reasonable in the circumstances.
- (c) If the parties have failed to agree the Incremental Costs in accordance with paragraphs 2.5 (a) and 2.5 (b) either party shall be entitled to refer the determination of the Incremental Costs to an arbitrator under paragraph 2.5 (d) and the Incremental Costs shall be determined by arbitration.
- (d) If a reference is made to arbitration under paragraph 2.5 (c), the arbitrator's remit shall be that he shall:
 - (i) reach a decision which is fair and reasonable;
 - (ii) have regard to;
 - (A) the duties which are imposed on the Office of Rail Regulation by virtue of section 4 of the Act;
 - (B) those matters set out in paragraph 2.5 (b) (ii); and
 - (C) the policy which the Office of Rail Regulation shall have most recently published (and identified as such) in relation to track access charges for freight train operators; and

- (iii) give his reasons.
- (e) Other than as may be expressly agreed by the parties, nothing in this paragraph shall affect or otherwise vary CRL's obligations to pay the Charges pursuant to the terms of this Schedule 7.
- (f) If either party is dissatisfied with any decision of the arbitrator in relation to any matter referred to him under paragraph 2.5 (c), that party may refer the matter to the Office of Rail Regulation for determination.
- (g) Where any party shall have made a reference to the Office of Rail Regulation under paragraph 2.5 (f), the Office of Rail Regulation shall:
 - (i) be entitled to decline to act on the reference if, having consulted all the parties concerned and considered the determination of the arbitrator, it shall determine that the reference should not proceed, including on the grounds that:
 - (A) the matter in question is not of sufficient importance to the industry;
 - (B) the reference to it is frivolous or vexatious; or
 - (C) the conduct of the party making the reference ought properly to preclude its being proceeded with;
 - (ii) not be liable in damages or otherwise for any act or omission to act on its part (including negligence) in relation to the reference.
- (h) RRL shall be the legal and beneficial owner of all modifications effected by RRL pursuant to paragraph 2.5 (a).

3. Invoice Frequency

- 3.1 RRL shall issue to CRL an invoice as soon as practicable or as otherwise agreed following the Commencement Date in respect of the Charges, and thereafter following the expiry of each Charging Period in respect of Incremental Costs which CRL is required to pay RRL pursuant to paragraph 2.2.

3.2 RRL shall provide supporting information such that CRL can verify the calculation of the invoices supplied.

SCHEDULE 8: PERFORMANCE REGIME

1. Definitions

In this Schedule 8, unless the context otherwise requires:

“Modification Notice” means a notice given to the parties by the Office of Rail Regulation, following consultation with the parties and such other persons as the Office of Rail Regulation shall consider appropriate, specifying:

- (a) those modifications, if any, which the Office of Rail Regulation considers appropriate to be made to the Performance Regime submitted to it pursuant to paragraph 4.1; and
- (b) any further modification to any part of this Contract which the Office of Rail Regulation considers appropriate to be made having regard to the Performance Regime and the modifications, if any, referred to in (a) above.

“Performance Regime” means such financial incentive regime as may be introduced by way of amendment to this Contract pursuant to paragraph 2.

2. Negotiations

2.1 The parties undertake to each other to amend this Contract so as to include provisions relating to a Performance Regime in the event that either party to this Contract gives notice in writing to the other party proposing the adoption of a Performance Regime.

2.2 The Performance Regime shall include such financial incentives as are reasonably appropriate in all the circumstances to incentivise the minimisation of delays to trains. The parties undertake to each other to negotiate in good faith with a view to agreeing the provisions of the Performance Regime within 90 days of the event giving rise to the obligation to amend this Contract as set out in paragraph 2.1.

2.3 Once the parties have agreed on the provisions to be included in relation to the Performance Regime pursuant to this paragraph 2, they shall submit such provisions to the Office of Rail Regulation for approval in accordance with the provisions of paragraph 4 below.

3. Expert Determination

3.1 Right to refer to an expert

- (a) If the parties fail to agree the Performance Regime pursuant to paragraph 2 above, either party shall be entitled to refer the matter for determination by an expert under Part D of the Access Dispute Resolution Rules.
- (b) It is the intention of the parties to refer to the expert only those issues upon which they have failed to reach agreement.

3.2 Expert's remit.

In reaching his determination, the expert's remit shall be that he shall:

- (a) reach a decision that is fair and reasonable;
- (b) base his decision on the following criteria:
 - (i) the regime is intended to:
 - (A) incentivise RRL to minimise the delay it causes to Services and to provide appropriate incentive payments where such delay increases above a benchmark level of performance; and
 - (B) incentivise CRL to minimise the delay caused by Services to trains operated on the Network by other train operators and provide incentive payments where such delay increases above a benchmark level of performance;
 - (ii) the regime will be financially neutral where CRL and RRL both cause minutes of delay equal to their respective benchmarks.
- (c) not make a determination which is inconsistent with the criteria outlined in the most recent review of freight charging policy undertaken by the Office of Rail Regulation and the latest criteria document for the approval of freight track access agreements subsequent to that review of freight charging policy.
- (d) give his reasons.

3.3 Rules.

If reference is made to an expert for the purposes of this paragraph 3, the rules shall be those contained in or referred to in Part D of the Access Dispute Resolution Rules except that paragraph 1.24 to 1.30 of those rules (which is applicable by virtue of paragraph D1.2 of those rules) shall not apply.

4. Regulatory Approval

4.1 *General*

The Performance Regime agreed or determined in accordance with paragraphs 2 or 3 shall be submitted to the Office of Rail Regulation for its approval (pursuant to Section 22 of the Act) as soon as is reasonably practicable and in any event within 14 days of it being so agreed or determined.

4.2 *Parties to encourage the Office of Rail Regulation to approve Performance Regime*

Upon submission of the Performance Regime to the Office of Rail Regulation under this paragraph 4, each party shall use all reasonable endeavours to provide the Office of Rail Regulation and the other party with all relevant information in relation to the Performance Regime, including the bases and assumptions on which calculations and any other assessments have been made.

4.3 *Obligation to execute amendment to the Contract*

The parties shall promptly execute an amendment of the Contract giving effect from the relevant date:

- (a) to the Performance Regime which has been approved by the Office of Rail Regulation following its submission to it under paragraph 4.1; and
- (b) where:
 - (i) the Office of Rail Regulation has given a Modification Notice; and
 - (ii) no notice of objection has been given by either party to the other and to the Office of Rail Regulation within 30 days of the date of the Modification Notice,

to any modifications to the Performance Regime as are specified in the Modification Notice.

4.4 Objection by either party to Regulator's modifications

If the Office of Rail Regulation has given a Modification Notice and either of the parties gives notice of objection to the other and to the Office of Rail Regulation within 30 days of the Modification Notice:

- (a) the parties shall not proceed with the execution of the amendment (as contemplated by paragraph 4.3); and
- (b) paragraphs 4.6 to 4.8 shall apply.

4.5 Office of Rail Regulation's rejection of the Performance Regime

If the Office of Rail Regulation rejects all or any part of the Performance Regime submitted to it, paragraphs 4.6 to 4.8 shall apply.

4.6 Reasons for the Office of Rail Regulation's modifications or rejection

If any objection or rejection is made as envisaged under paragraph 4.4 or 4.5, the parties shall ask the Office of Rail Regulation to specify (to the extent that it has not already done so) its reasons for such modification or rejection.

4.7 Renegotiation of Performance Regime to meet the Office of Rail Regulation's objections

Forthwith upon the Office of Rail Regulation notifying the parties of such reasons, or upon declining to do so, the parties shall:

- (a) commence renegotiations on the Performance Regime, or that part of the Performance Regime which is affected by any such modification or rejection; and
- (b) continue to conduct such renegotiations;

in good faith and with all due diligence with a view to reconciling the Performance Regime with the Office of Rail Regulation's modification or rejection and/or the

reasons (if any) given by the Office of Rail Regulation for such modification or rejection.

4.8 Expert's determination if failure to agree how to deal with the Office of Rail Regulation's objections.

If, within 28 days of commencing to renegotiate in accordance with paragraph 4.7, the parties fail to agree on such reconciliation, either party may refer the matter to an expert in accordance with paragraph 3 above.

4.9 Criteria for the expert

If a reference to an expert is made pursuant to paragraph 4.8, the expert shall be required to determine the changes to the Performance Regime which both:

- (a) most closely satisfy the criteria specified in paragraph 2.2; and
- (b) have a reasonable prospect of securing the approval of ORR.

4.10 Resubmission to the Office of Rail Regulation

The Performance Regime, incorporating such reconciliations as are agreed between the parties or determined in accordance with paragraph 4.9, shall be submitted by the parties to the Office of Rail Regulation for its approval and upon receipt of the Office of Rail Regulation's approval of the Performance Regime, the parties shall promptly execute an amendment to the Contract giving effect to the Performance Regime for submission to the Office of Rail Regulation for approval (pursuant to Section 22 of the Act).

4.11 Replacement of Schedule 8

Upon the Performance Regime being approved by the Office of Rail Regulation, the Performance Regime shall replace the provisions of this Schedule 8 and accordingly shall constitute Schedule 8 for the purposes of this Contract.

SCHEDULE 9

NOT USED

SCHEDULE 10: ENVIRONMENTAL PROTECTION

1. Definitions

In this Schedule 10, unless the context otherwise requires:

“**Relevant Liability**” means the obligation of any person to make any payment or to take or secure the taking of any action in relation to an Environmental Condition or the Direction of a Competent Authority of the kind referred to in paragraph 2.1.1 (b); and

“**Relevant Steps**” in relation to CRL means the steps of the kind referred to in paragraph 2.1.3 (e) (i)

Environmental Information Requirements

1.2 CRL's licence compliance

CRL shall provide RRL with a copy of its written environmental protection policy and operational objectives and management arrangements giving effect to that policy, as submitted to the Office of Rail Regulation pursuant to its licence authorising it to be the operator of trains.

1.3 RRL's licence exemption compliance

RRL shall, if applicable, provide CRL with a copy of its written environmental protection policy and operational objectives and management arrangements giving effect to that policy, as submitted to the Office of Rail Regulation pursuant to its network licence exemption.

1.4 Information as to materials to be transported

CRL shall from time to time, and within a reasonable time of being requested to do so by RRL, provide RRL with:

- (a) information as to any materials it proposes to transport on the Network which would by virtue of their nature or the quantity transported be likely to give rise to Environmental Damage if those materials were to be discharged or emitted or to escape or migrate;

- (b) in relation to such materials as are referred to in sub-paragraph (a) above, a copy of any licence, authorisation, consent or certificate of registration required for their carriage.

1.5 General information - CRL

CRL shall promptly notify RRL (and where such notification is given orally shall promptly confirm such notification in writing) of any circumstances of which CRL is aware and which it is reasonably foreseeable are likely to give rise to Environmental Damage as a result of or affecting the activities of CRL. CRL shall at all times exercise due diligence to inform itself of any circumstances which would require such notification.

1.6 General information – RRL

RRL shall promptly notify CRL (and where such notification is given orally shall promptly confirm such notification in writing) of any circumstances of which RRL is aware and which it is reasonably foreseeable are likely to give rise to Environmental Damage which may affect CRL. RRL shall at all times exercise due diligence to inform itself of any circumstances which would require such notification.

2. Remedial Action

2.1 Assessment as to appropriate persons to take Relevant Steps

2.1.1 RRL's assessment

Where:

- (a) RRL becomes aware that, as a direct or indirect result of the activities of CRL, an Environmental Condition exists or has occurred and RRL reasonably considers that action is required to prevent, mitigate or remedy that Environmental Condition; or
- (b) RRL is given a Direction by a Competent Authority that some action is required to prevent, mitigate or remedy an Environmental Condition resulting directly or indirectly from the activities of CRL

RRL shall make an assessment, on the best information available to it at the relevant time, as to which of RRL and CRL is or are the persons who would be the most appropriate to take any Relevant Steps, and, if more than one is appropriate, in what proportions.

2.1.2 Relevant criteria

In making an assessment under paragraph 2.1.1, RRL shall have due regard:

- (a) to the likelihood that the person in question may be liable (other than pursuant to this Schedule 10) to make any payment or to take or omit to take any action in relation to the Environmental Condition or Direction in question, whether under this Agreement or otherwise;
- (b) in relation to the steps to be taken and the objectives of those steps, to the efficiency and economy with which the steps may be taken, and the effectiveness of those steps, if that person takes those steps, irrespective of the matters referred to in sub-paragraph (a) above; and
- (c) all other relevant circumstances of the case.

2.1.3 Notice of RRL's assessment

Within 60 days of making its assessment, RRL shall give notice to CRL of:

- (a) the Environmental Condition or Direction of Competent Authority in question;
- (b) the assessment;
- (c) its reasons for reaching the assessment;
- (d) the availability for inspection by CRL of such information as RRL shall have used in making the assessment; and
- (e) the steps which RRL reasonably considers:
 - (i) will be necessary to prevent, mitigate or remedy the Environmental Condition or the events or circumstances giving rise to the Direction

of the Competent Authority in question, or to comply with the Direction in question; and

- (ii) which should be taken by CRL.

2.1.4 Compliance with CRL's request for information

RRL shall comply with any reasonable request of CRL for additional information in relation to the Relevant Liability or RRL's assessment, within a reasonable time of the request.

2.1.5 Disagreement with RRL's assessment

If CRL shall be dissatisfied with RRL's assessment or with any other statement or information provided by RRL pursuant to paragraph 2.1.3, it shall be entitled to refer the matter for resolution to the relevant ADRR Panel and thereafter to arbitration pursuant to the Access Dispute Resolution Rules. It shall lose that entitlement if it fails to make the reference within 120 days of the later of:

- (a) the date of its receipt of RRL's assessment; and
- (b) the date upon which it receives any further information to which it is entitled pursuant to this paragraph 2.1.

2.2 Requirement to take Relevant Steps

2.2.1 Obligation

Subject to paragraphs 2.1.5, 2.7 and 2.8, CRL shall:

- (a) take the steps of which RRL gives it notice pursuant to paragraph 2.1.3 (e), provided RRL shall have given it a reasonable opportunity to do so; and
- (b) bear the costs of taking those steps.

2.2.2 RRL assistance and supervision

In cases where CRL reasonably requires access to any part of the Network in order to take any Relevant Steps, RRL shall provide CRL with such assistance and co-operation as shall be reasonable in that respect.

2.3 *RRL's right to take Relevant Steps*

If:

- (a) CRL fails to take any relevant step within a reasonable time or to the reasonable satisfaction of RRL; or
- (b) in RRL's reasonable opinion, either:
 - (i) it is necessary to take any relevant step urgently; or
 - (ii) it is not reasonably practicable in the circumstances for CRL to take any relevant step,

RRL shall be entitled to take the step in question and to be reimbursed by CRL for a fair proportion of the reasonable costs of doing so. RRL shall give notice to CRL of any step taken pursuant to this paragraph 2.3.

2.4 *Liability of RRL*

Where RRL takes any steps in accordance with paragraph 2.3, it shall not be liable to CRL for any direct physical damage which is caused as a result of the taking of such steps except to the extent that RRL, or any person acting on behalf of or on the instructions of RRL, has been negligent or has failed to perform any obligation.

2.5 *Access to land*

CRL shall use all reasonable endeavours to procure that RRL shall be given such right of access to any land upon which plant, equipment, rolling stock or machinery of CRL is located as may be reasonably necessary to enable RRL to take any Relevant Steps.

2.6 *General right to restrict access to Network*

- 2.6.1 Subject to having complied with paragraph 5 of Schedule 2 and to having given to CRL as much notice as shall be reasonably practicable, RRL shall have the right to restrict permission to use the Network to the extent and for such period as is reasonably necessary to prevent, mitigate or remedy an Environmental Condition or

to comply with a relevant Direction of a Competent Authority in respect of an Environmental Condition.

2.6.2 Where permission to use the Network is restricted pursuant to paragraph 2.6.1, RRL shall use all reasonable endeavours to keep the extent and duration of such a restriction to a minimum and shall keep CRL reasonably and regularly informed of the steps being taken by RRL to remove the restriction.

2.7 *Payments to be made on without prejudice basis*

Payments by CRL under this paragraph 2 shall be made without prejudice to the right of CRL to recover the whole or any part of the amounts in question from RRL or any other person, whether under an access contract or in any other way.

2.8 *Action taken will not prejudice later claim*

No action taken by CRL in compliance with its obligations under this paragraph 2 shall prejudice the right of CRL at a later date to claim that any other person has the Relevant Liability.

SCHEDULE 11

NOT USED

SCHEDULE 12: INFORMATION

1. Information Request

1.1 If, in order for CRL to exercise its rights under this Contract to make a Bid for a Train Slot, CRL considers that it requires information in relation to the Network from RRL which is not contained in the Operating Constraints, CRL may serve a request for information (an “**Information Request**”) on RRL.

1.2 *Contents of the Information Request*

The Information Request shall contain:

- (a) a list of the specific information which CRL considers reasonably necessary in order for CRL to make an assessment about its ability to exercise its rights to Bid;
- (b) the timescale within which CRL considers it is reasonable for RRL to provide the information requested.

1.3 *Agreement of the Information Request*

RRL shall within five working days of the service of the Information Request by CRL, notify CRL of:

- (a) the specific information which it is able to provide within the suggested timescale;
- (b) any information which it is not able to provide within the suggested timescale and its alternative timescale for the provision of such information;
- (c) any information which it is not able to provide at all, together with its reasons therefor.

1.4 Following notification by RRL pursuant to paragraphs 1.3(b) or (c), CRL and RRL shall meet in good faith to agree the information which is to be provided and the timescales for the provision of such information. If the parties fail to agree the information to be provided and the timescales for the purposes of this paragraph 1.4 within 7 days of such notification by RRL, then either party shall have a right to

refer the determination of the specific information to be provided by RRL and the timescales for the provision of such information to the relevant ADRR Panel in accordance with paragraph 1.5.

1.5 The remit of the relevant ADRR Panel shall be that it shall:

- (a) reach a decision which is fair and reasonable
- (b) have regard to
 - (i) the reasonableness of CRL's request for the specific information;
 - (ii) the reasonable timescale for the provision of the specific information which it is reasonable for RRL to provide; and
- (c) give its reasons.

1.6 Following agreement or determination of the specific information and timescale for the provision of such information pursuant to paragraphs 1.4 or 1.5 (as the case may be), RRL shall provide such information to CRL within the timescale so agreed or determined.

IN WITNESS whereof the duly authorised representatives of Ribble Rail Limited and Colas Rail Limited have executed this contract on the day first above written.

Signed by

Print name

Duly authorised for and on behalf of

RIBBLE RAILWAY LIMITED

Signed by

Print name

Duly authorised for and on behalf of

COLAS RAIL LIMITED