

FACILITY TRACK ACCESS CONTRACT

Between

GOVIA THAMESLINK RAILWAY

- and -

BALFOUR BEATTY RAIL

THREE BRIDGES LMD (RH10 1HW)

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THIS CONTRACT is made on the day of 2015

BETWEEN:

- (1) **GOVIA THAMESLINK RAILWAY LIMITED (“GTR”)**, a company registered in England under number 0793406 having its registered office at 3rd Floor, 41-51 Grey Street, Newcastle Upon Tyne, NE1 6EE (the “**Facility Owner**”); and
- (2) **BALFOUR BEATTY RAIL LIMITED (“BBR”)**, a company registered in England and Wales under number 01982627 , having its registered office at 130 Wilton Road Lndon SW1V 1LQ (the “**Train Operator**”).

WHEREAS: -

- (A) GTR is the depot facility owner and operator of Three Bridges Light Maintenance Depot RH10 1HW (LMD).
- (B) BBR is a train operator that wishes to obtain permission to use the Facility in order to operate Train Services through the Facility between the Network and the BBR Depot known as Three Bridges LMD RH10 1LY.
- (C) GTR has agreed to grant the Train Operator permission to use the Facility on the terms and conditions of this contract.
- (D) This contract is entered into pursuant to directions given by the Office of Rail Regulation in the exercise of its powers under section 18 of the Act

IT IS AGREED as follows: -

1. INTERPRETATION

1.1 Definitions

In this contract, unless the context otherwise requires:

“**Access Sum**” is the amount set out in paragraph 1 of Schedule 5;

“**Access Dispute Resolution Rules**” means the set of rules entitled “Access Dispute Resolution Rules” annexed to the publication entitled “The Network Code”;

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

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

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

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

“**Ancillary Movements**” means train movements on the Facility which are not an express part of the Train Services but which are necessary or reasonably required for giving full effect to the Train Services;

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

“**BBR Lease**” means the lease dated 27th April 2006 made between Network Rail Infrastructure Limited (the Landlord) and Southern Track Renewals Company Limited (the Tenant).

“**Charges**” means the charges listed in Schedule 5;

“**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 Year**” means a calendar year commencing at 0000 hours on the Effective Date and ending immediately before 0000 hours on the same date in the next succeeding year;

“**Decision Criteria**” means the necessity of the following:

- (a) sharing the capacity in the most efficient and economical manner in the interests of all users having regard, in particular, to safety, the environment, and the proper maintenance, improvement and usage of the Facility.;
- (b) enabling the Train Operator to comply with any contracts to which it is a party, in each case to the extent that the Facility Owner has been informed of such contracts;
- (c) enabling the Facility Owner to comply with any contracts to which it is a party; and
- (d) maintaining, renewing and carrying out other necessary work on or in relation to the Facility;

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

“**Dispute**” has the meaning attributed to it in Clause 12.1;

“**Disruptive Event**” means any event or circumstance which materially prevents or materially disrupts the operation of trains on any relevant part of the Facility, but which is not a Force Majeure Event;

“**Effective Date**” means 18 July 2015;

“**Environmental Damage**” means any 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 a Train Operator Event of Default or a Facility Owner Event of Default as the context requires;

“Facility” means approximately 15 metres of plain track passing over the level crossing inside the lease area of Three Bridges LMD (RH10 1HW) used by the Specified Equipment to enter or leave Three Bridges LMD (RH10 1LY) and shown not coloured on the Plan in Schedule 2;

“Facility Operating Constraints” means the physical and operational constraints of the Facility to accommodate the operation of trains as specified in paragraph 5 of Schedule 2

“Facility Owner” has the meaning ascribed to it under section 17(6) of the Act;

“Facility Services” has the meaning attributed to it in Schedule 2 paragraph 6;

“Force Majeure Event” has the meaning attributed to it in Clause 16;

“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 “£50,000” 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 expiration of 21 days from such demand;
- (c) its directors make any proposal under Section 1 of the Insolvency Act 1986, or it makes any contract 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 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, re-organisation, 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 step, event, proposal or action (as the case may be) in relation to that party pursuant to Sections 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;

“Facility Owner Event of Default” has the meaning attributed to it in paragraph 1.3 of Schedule 4;

“Liability Cap” means the sum calculated in accordance with Clause 10.4.2;

“Method of Work” means an agreed statement of the procedures to be followed by the Facility Owner and the Train Operator in respect of the safe operation of the Facility and trains thereon;

“Network” means the network in respect of which Network Rail is the facility owner and which is situated in England, Wales and Scotland;

“Network Rail” means Network Rail Infrastructure Limited, incorporated in England and Wales under registered number 2904587;

“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.

“Plan” means the plan of the Facility, appended to Schedule 2;

“RPI” has the meaning attributed to it in Clause 9.2.7;

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

“Special Instruction” means an instruction issued by the Facility Owner to the Train Operator in respect of any short term operational or safety requirement not covered by a Method of Work or a Standing Instruction;

“Specification” means information provided to the Facility Owner by the Train Operator regarding the Train Services in accordance with Clause 7.1 and in the form appended to Schedule 3;

“Specified Equipment” means railway vehicles operated by BBR and registered for operation on the Network, which are exclusively used for, or in connection with, the carrying out of works of maintenance, renewal or repair to a network;

“Standing Instruction” means an instruction issued by the Facility Owner to the Train Operator to cover any permanent operational or safety requirement not covered by a Method of Work;

“STRC” means Southern Track Renewals Company Limited, a wholly owned subsidiary of Balfour Beatty Rail Limited.

“Suspension Notice” means a notice served by one party on the other pursuant to paragraph 2 of Schedule 4;

“Termination Notice” means a notice served by one party on the other pursuant to paragraph 3 of Schedule 4;

“Train Operator Event of Default” has the meaning attributed to it in paragraph 1.1 of Schedule 4;

“Train Services” means the train services listed and described by the Train Operator in a Specification, including both inward and outward movement of the Specified Equipment using the Facility and any Ancillary Movements, and “Train Service” shall be construed accordingly; and

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

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 ease 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 Clause or Schedule is to a clause or schedule of or to this contract; reference in a schedule to a Part of or an Appendix to a schedule is to a part of or an appendix to the schedule in which the reference appears; and reference in a Part of a Schedule to a paragraph is to a paragraph of that part;
- (h) where a word or expression is defined, cognate words and expressions shall be construed accordingly;
- (i) references to the word “person” or “persons” or to words importing persons include individuals, firms, corporations, government agencies, committees, departments, authorities and other bodies incorporated or unincorporated, whether having separate legal personality or not;
- (j) “otherwise” and words following “other” shall not be limited by any foregoing words where a wider construction is possible;
- (k) the words “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; and
- (l) words and expressions defined in the Act shall, unless otherwise defined in this contract, have the same meanings in this contract.

1.3 Schedules

The Schedules to this contract shall have effect.

2. EFFECTIVE DATE AND DURATION

2.1 Effective Date

The provisions of this contract take effect from the Effective Date.

2.2 Duration

Subject to the provisions for earlier termination in paragraph 3 of Schedule 4, this contract shall continue in force for a period of five years or until the expiry of GTR’s franchise, whichever is the earlier.

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) facility owner and operator (in the case of GTR); and
- (b) train operator (in the case of BBR).

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 Compliance with laws

The parties to this contract shall at all times comply with all relevant legislation, regulations and Safety Obligations.

4. PERMISSION TO USE THE FACILITY

4.1 Permission to use

The Facility Owner grants the Train Operator permission to use the Facility in accordance with the terms of this contract.

4.2 Meaning

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

- (a) to use the track comprised in the Facility for the provision of the Train Services using the Specified Equipment;
- (b) to make Ancillary Movements,
- (c) for the Train Operator and its Associates to enter upon and leave the Facility with or without railway vehicles,

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

4.3 Permission under Clause 4.2(c)

4.3.1 Restrictions

In relation to the permissions specified in Clause 4.2(c):

- (a) the Train Operator shall, and shall procure that its Associates shall first obtain the consent of the Facility Owner, which consent shall not be unreasonably withheld or delayed;
- (b) the Train Operator shall, and shall procure that its Associates shall, remove any railway vehicle or other thing so brought onto any part of the Facility , as soon as reasonably practicable, when reasonably directed to do so by the Facility Owner]; and
- (c) the Train Operator shall, and shall procure that its Associates shall, comply with such reasonable restrictions or instructions as the Facility Owner shall specify.

4.3.2 *Failure to comply with directions*

If the Train Operator fails to comply with any directions given under Clause 4.3.1(b), the Facility Owner shall be entitled to remove from the Facility any railway vehicle or other thing or to instruct a third party to do so and any reasonable costs incurred by the Facility Owner in taking such steps shall be paid promptly by the Train Operator.

4.3.3 *Evidence of costs*

The Facility Owner shall provide such evidence of such costs as are referred to in paragraph 4.3.2 as the Train Operator may reasonably request.

4.4 BBR Lease

- 4.4.1 This contract shall not affect BBR's existing rights of access, with or without vehicles, over the level crossing and access road granted by the BBR Lease

5. OPERATION AND MAINTENANCE

5.1 General

Without prejudice to the other provisions of this contract:

- (a) the Train Operator shall maintain and operate the Specified Equipment used on the Facility in accordance with Clause 3.1 with a view to permitting the provision of the Train Services on the Facility in accordance with the permission to use under this contract; and
- (b) The Facility Owner shall maintain and operate the Facility in accordance with Clause 3.1 with a view to permitting the provision of the Train Services on the Facility using the Specified Equipment in accordance with the permission to use under this contract.

5.2 Safety

In relation to Safety Obligations:

- (a) the Train Operator shall comply with the Facility Owner's safety standards and procedures, and any reasonable request by the Facility Owner in relation to any

aspect of the Train Operator's operations which affects or is likely to affect the performance of the Facility Owner's Safety Obligations; and

- (b) the Facility Owner shall comply with any reasonable request by the Train Operator in relation to any aspect of the Facility Owner's operations which affects or is likely to affect the performance of the Train Operator's Safety Obligations.

5.3 Movements of trains using the Facility

5.3.1 Suitable access

The parties shall use their reasonable endeavours to ensure that the Facility remains connected to the Network and to Three Bridges LMD RH10 1LY, under the terms of the relevant connection contracts.

5.3.2 Prompt presentation

Where the Train Services use the Facility, the parties shall ensure that they facilitate (to the extent they are able) the prompt presentation of such Train Services.

6. The FACILITY OWNER'S OBLIGATIONS

- 6.1 The Facility Owner shall permit the Train Operator to use the Facility at such times and for such Train Services as, in each case, the Train Operator may request in a Specification, except where and to the extent that the Facility Owner reasonably determines, having regard to the Facility Operating Constraints, the Decision Criteria and its Safety Obligations, or as a result of a Disruptive Event, it is unable to do so.
- 6.2 The Facility Owner shall, as soon as reasonably practicable, permit the Train Operator to use the Facility for any Train Service not running in accordance with a Specification, except where, and to the extent that the Facility Owner reasonably determines, having regard to the Facility Operating Constraints, the Decision Criteria and its Safety Obligations, or as a result of a Disruptive Event, it is unable to do so.
- 6.3 The Facility Owner shall give the Train Operator at least 28 days' notice of any planned restrictions of use within the Facility, that will result in no through route being available from the Network to Three Bridges LMD RH10 1LY and shall inform the Train Operator of any Disruptive Event or unplanned restrictions of use resulting in the loss of the through route as soon as reasonably practicable.

7. TRAIN OPERATOR'S OBLIGATIONS

- 7.1 The Train Operator shall provide the Facility Owner with a Specification, which shall be subject to the Facility Owner's approval, such approval not to be unreasonably withheld or delayed. The Train Operator shall ensure that any Specification provided in accordance with this Clause 7.1 conforms to the Facility Operating Constraints.
- 7.2 The Train Operator shall notify the Facility Owner promptly of any changes to a Specification and ensure that any such changes conform to the Facility Operating

Constraints.

- 7.3 The Train Operator shall inform the Facility Owner in advance of any known or suspected defects in any of the Specified Equipment which might materially affect the operation of the Train Services within the Facility or adversely affect the Facility.
- 7.4 The Train Operator shall operate the Train Services and manage any activity it carries out in connection with the Train Services at all times in such a way as to:
- (a) minimise, by taking all reasonable steps, any nuisance to or disturbance of the Facility; and
 - (b) prevent the escape of any items or substances within the possession or control of the Train Operator from the Specified Equipment while on the Facility.

8. GOODS

8.1 Risk

Risk in the items or substances (including, without limitation, all risk of theft, loss or damage) shall at all times, whilst loaded on the Specified Equipment of the Train Operator, remain with the Train Operator and the Facility Owner shall have no liability in respect of the same.

9. ACCESS CHARGES

9.1 Obligation on Train Operator to pay

The Train Operator shall pay the Charges.

9.2 Unpaid sums

If either party fails to pay:

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

then, subject to Clause 15.1.1:

- (i) the amount invoiced or sum due, as referred to in Clause 9.3(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 Charges or other sum due);
- (ii) such debt shall be recoverable by any means available under the laws of England and Wales; and
- (iii) unless both parties to this contract agree otherwise, the dispute

resolution procedures in Clause 12 shall not apply to proceedings commenced under this Clause 9.3.

10 INDEMNITIES AND LIMITATION OF LIABILITY

10.1 The Facility Owner indemnity

The Facility Owner shall (on an after tax basis) indemnify the Train Operator, and keep it indemnified, against 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, demand or order and any expenses reasonably incurred in preventing, avoiding or mitigating loss, liability or damage) incurred or suffered by it as a result of any breach by the Facility Owner of any of its obligations under this contract.

10.2 Train Operator indemnity

The Train Operator shall (on an after tax basis) indemnify the Facility Owner, and keep it indemnified, against 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, demand or order and any expenses reasonably incurred in preventing, avoiding or mitigating loss, liability or damage) incurred or suffered by it as a result of any breach by the Train Operator of any of its obligations under this contract.

10.3 Mitigation

A party wishing to claim under any indemnity provided for in this contract shall take reasonable steps to prevent, mitigate and restrict the circumstances giving rise to that claim and any losses connected with that claim.

10.4 Notification of claims, limitation on liability and restriction on claims

10.4.1 Notification of claims and limitation on liability

Save as otherwise expressly provided in this contract, neither party shall be liable in respect of any breach of this contract:

- a) unless notice of such breach is given by or on behalf of the claimant to the respondent, setting out detailed particulars of the grounds on which the relevant claim is based, within six months after the facts giving rise to the claim first became known by the claimant or could, with reasonable diligence, have become so known; and
- b) arising from any single occurrence or circumstance (or connected series of occurrences or circumstances), if the amount of the relevant claim exceeds the Liability Cap, to the extent it so exceeds this amount.

10.4.2 Liability Cap

The Liability Cap shall mean the sum of £750,000

10.4.3 Exclusion of Environmental Damage

The Liability Cap shall not limit the liabilities of the parties to one another in respect of any Environmental Damage arising directly from its negligence and/or breach of this Contract.

10.4.5 *Restriction on claims*

Save as otherwise expressly provided in this 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.

10.4.6 *Restriction on Specified Equipment*

The Facility Owner shall have no liability for any theft or loss of any Specified Equipment and shall only have any liability for any damage to any Specified Equipment in accordance with this clause 10 where the Facility Owner has not complied with its obligations under clause 3.1(a) except where such theft, loss or damage is caused by the Facility Owner's negligence, action or omission or breach of this contract.

11 GOVERNING LAW

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

12 DISPUTE RESOLUTION

12.1 All disputes or matters in difference between the parties of whatever nature arising out of or in connection with this contract ("**Disputes**") shall, except when otherwise expressly provided in this contract, be resolved in accordance with the terms of this Clause 12.

12.2 Any Dispute shall be notified by either party to the other promptly and then, in the first instance, be the subject of an extraordinary meeting between the parties. Such extraordinary meeting shall be held as soon as practicable after notification of a Dispute (and, in any event, within seven days of such notification being received). Each party agrees to nominate an authorised representative to attend an extraordinary meeting called in accordance with this Clause 12.2, and those representatives of the parties attending the extraordinary meeting shall use all reasonable endeavours to resolve the Dispute.

12.3 If the Dispute cannot be resolved at the extraordinary meeting, it shall be referred by the parties to a person of director level at each of The Facility Owner and the Train Operator who shall co-operate in good faith to resolve the Dispute as amicably as possible within seven days of its referral (or such longer period as the parties may agree).

12.4 Any Disputes not resolved under Clause 12.3 may be referred by either party to

arbitration in accordance with the Access Dispute Resolution Rules or may, if appropriate and ORR consents, be referred by either party to ORR for determination.

12.5 Each party shall bear its own costs in relation to the proceedings described in Clauses 12.2 and 12.3.

13. CONFIDENTIALITY

13.1 Confidential Information

13.1.1 General obligation

Except as permitted by Clause 13.2, 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.

13.1.2 Affiliates

Except as permitted by Clause 13.2, each party 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.

13.2 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 Secretary of State;
- (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 strictly required by the Act, any licence under section 8 of the Act or regulation 6 of the Railway (Licensing of Railway Undertakings) Regulations 2005 held by the party in question, any other applicable law, the rules of any recognised stock exchange or regulatory body;
- (i) to the extent that it has become available to the public other than as a result of a breach of confidence; or
- (j) under the order of any court or tribunal of competent jurisdiction.

13.3 Return of Confidential Information

Each of the Facility Owner and the Train Operator 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 is terminated earlier, is made within two months after the date on which this contract 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.

13.4 Retention or destruction of Confidential Information

If the Facility Owner or the Train Operator, 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 13.3, it may destroy or retain such Confidential Information provided that such information shall remain subject to the confidentiality obligations in Clause 13.2.

13.5 Ownership of Confidential Information

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

14. ASSIGNMENT AND SUB-CONTRACTING

14.1 Assignment

14.1.1 Subject to paragraph 14.1.2, 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.

14.2 Sub-contracting

14.2.1 Either party may sub-contract the performance of any of its obligations under this contract with the prior written agreement of the other party (such agreement not to be unreasonably withheld or delayed) without thereby relieving it of any such obligations to the other party.

14.2.2 Where a party has sub-contracted its rights or obligations under this contract to any third party in accordance with Clause 14.2.1, references to that party in this contract shall, with the exception of Clause 10 and without prejudice to Clause 14.2.1, include references to any sub-contractor so appointed.

15. PAYMENTS, INTEREST AND VAT

15.1 Payment

15.1.1 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.

15.1.2 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 appropriate 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 17.4.3.

15.1.3 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 so as to enable the person to whom it is given to understand and check it.

15.1.4 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.

15.2 Disputed amounts

Except as otherwise provided in this contract, within 21 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, and shall pay the undisputed amount in accordance with the terms of the invoice. Except to the extent that disputes are so notified, the recipient shall be deemed to have agreed the contents of the invoice or statement.

15.3 Interest

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 15.1.2 or Clause 15.1.3(b).

15.4 VAT

15.4.1 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.

15.4.2 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.

15.4.3 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 HM Revenue and Customs practice to issue a valid VAT credit note, such rebate or repayment shall be paid together with an amount representing the VAT paid on that part of the consideration in respect of which the rebate or repayment is made, and the first party shall issue an appropriate VAT credit note to the other party.

16. FORCE MAJEURE EVENTS

16.1 A “**Force Majeure Event**” shall be deemed to occur if and to the extent that there occurs, at the Facility or affecting the Facility, any event or circumstance or any combination of events or circumstances beyond the reasonable control of either party to this contract which is either unforeseeable or, if foreseeable, could not have been avoided by any reasonable means, and which prevents, materially impedes or materially delays that party from performing any of its obligations under this contract.

16.2 Without prejudice to the generality of Clause 16.1, a “**Force Majeure Event**” shall

include the following events (and any circumstances 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 theft, vandalism, wilful damage 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;
- (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 or port industries;
- (h) acts, restrictions, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority; and
- (i) any act of the Facility Owner, its servants or agents which, though deliberate, is reasonably necessary for the safety or preservation of persons and the Facility.

16.3 Neither party to this contract shall be responsible for any failure to fulfil an obligation under this contract if and to the extent that such failure shall be caused by, or directly or indirectly is by reason of, a Force Majeure Event which makes it impossible or impracticable for that party to comply with such obligation, and if the affected party complies with Clauses 16.4 to 16.6 below.

16.4 A party affected by a Force Majeure Event shall promptly upon becoming aware of the occurrence of a Force Majeure Event use all reasonable endeavours to:

- (a) minimise, and where practicable avoid, the effects of the Force Majeure Event on its ability to perform its obligations under this contract; and
- (b) minimise the duration of the Force Majeure Event.

16.5 As soon as reasonably practicable after the commencement of the Force Majeure Event (and, in any event, within 72 hours of becoming aware of it), the affected party shall notify the other party of the Force Majeure Event and its consequences, the effects of the Force Majeure Event on its ability to perform any obligation(s) under this contract, the likely duration of such consequences and effects, and the remedial measures it proposes to

avoid or remove the Force Majeure Event or to mitigate its consequences and effects.

- 16.6 The affected party shall promptly give the other party all other information concerning the Force Majeure Event and the steps which could reasonably be taken, and which the affected party proposes to take, to avoid or remove the Force Majeure Event or to mitigate its consequences and effects as may reasonably be requested by the other party from time to time, and promptly inform the other party of any material developments in relation to the Force Majeure Event.
- 16.7 The right of a party affected by a Force Majeure Event to relief under Clause 16.3 shall cease on the earlier of:
- (a) the date on which its performance of any obligation(s) under this contract is no longer prevented, materially impeded or materially delayed by the Force Majeure Event; and
 - (b) the date on which such performance would no longer have been prevented, materially impeded or materially delayed if that party had complied with its obligations under Clause 16.4.
- 16.8 Neither party to this contract shall be entitled to claim that a Force Majeure Event has prevented it from paying any monies which it would otherwise be liable to pay under this contract.

17. MISCELLANEOUS

17.1 Non waiver

17.1.1 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.

17.1.2 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.

17.2 Variations

17.2.1 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;
- (b) such amendment is signed by, or on behalf of, the parties; and
- (c) the amendment has been so approved or directed by ORR as applicable.

17.2.2 Exception to Clauses 17.2.1

Clause 17.2.1 does not apply to a modification made by virtue of Clause 17.4.2.

17.2.3 *Conformed copy of contract*

The Facility Owner shall produce and send to the Train Operator and to ORR a conformed copy of this contract within 28 days of:

- (a) the Effective Date; and
- (b) the making of any amendment or modification to it.

17.3 **Entire contract and exclusive remedies**

17.3.1 *Entire contract*

Subject to Clause 17.3.3:

- (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.

17.3.2 *Exclusive remedies*

Subject to Clause 17.3.3 and except as expressly provided in this contract:

- (a) neither party shall have any liability (including liability arising as a result of any 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.

17.3.3 *Fraud, death and personal injury*

Without prejudice to the generality of this Clause 17.3, 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.

17.4 Notices

17.4.1 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 or electronically (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 17.4 and Clause 15.1.2, delivery by hand shall include delivery by a reputable firm of couriers.

17.4.2 Right to modify contact details

A party shall be entitled to modify in any respect the contact details 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.

17.4.3 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 or electronically (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.

17.4.4 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 17.4 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 17.4; and

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

17.5 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.

17.6 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 9.3 (Unpaid Sums), 10 (Indemnities and Limitation of Liability), 11 (Governing Law), 13 (Confidentiality), 15 (Payments, Interest and VAT), 16 (Force Majeure Events), paragraph 4 of Schedule 4 (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.

17.7 Contracts (Rights of Third Parties) Act 1999

17.7.1 Application to third parties

Save as provided in this Clause 17.7, 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.

17.7.2 Application to ORR

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.

17.7.3 Contract amendments

Subject to Clause 17.2, The Facility Owner and the Train Operator shall not enter into any agreement with a third party that requires the consent of any third party in order to amend this contract.

IN WITNESS whereof this contract has been duly executed.

Signed on behalf of GTR

Signed on behalf of BBR

SCHEDULE 1 – CONTACT DETAILS

1. Addresses for Service

The parties shall use the following addresses for service for notification to the Train Operator or Facility Owner, as appropriate, of the following issues:

1.1 For all matters except those of a financial accounting or day-to-day operational nature:

Facility Owner: Govia Thameslink Railway Limited[
3rd Floor, 41-51 Grey Street,
NEWCASTLE UPON TYNE
NE1 6EE

Train Operator: Balfour Beatty Rail Limited
Kingsgate, 62 High Street
REDHILL
Surrey RH1 1SH

Attention: Company Secretary

1.2 For matters of a financial accounting nature:

Facility Owner:

Train Operator:

Balfour Beatty Rail Limited
Kingsgate, 62 High Street
REDHILL
Surrey RH1 1SH

Attention: Finance Manager

1.3 For matters of a day-to-day operating nature:

Facility Owner:

Train Operator:

Balfour Beatty Rail Limited
Three Bridges LMD
Haslett Avenue, Crawley

West Sussex RH10 1LY

Attention: Depot Manager

For matters regarding Access, issue and acknowledgement of Access Notices:

Facility Owner:

Train Operator:



Contract Manager

Balfour Beatty Rail Limited

Downside Yard, Colchester North Station,

Colchester, Essex CO1 1XD

**SCHEDULE 2 – THE FACILITY, FACILITY OPERATING CONSTRAINTS,
FACILITY SERVICES AND ANCILLARY SERVICES**

1. The Facility

The Facility is defined in clause 1.1 of the contract

2. The Plan

The Plan is appended to this Schedule 2.

3. Connection points

The relevant boundaries of the Facility are shown in red on the Plan

4. Opening hours

The Facility is open continuously from 0001hrs Monday to 2359hrs Sunday.

5. Facility Operating Constraints

Access to the Facility to operate Train Services between the Network and Three Bridges LMD (RH10 1LY) is available from 0001hrs Monday to 2359hrs Sunday .

Other Facility Operating Constraints will be specified in the relevant Method of Work, Standing Instructions and Special Instructions as amended from time to time, or otherwise published by the Facility Owner from time to time.

6. Facility Services

The Facility Owner shall provide the following Facility Services to the Train Operator:

- the development and provision of Safety Procedures (Methods of Work);
- the development and provision of Standing and Special Instructions;
- the consideration and approval of Specifications and the allocation of capacity;
- the control of train movements on the Facility; and
- the maintenance of the Facility.

Provision of the Facility Services is included in the Access Sum set out in paragraph 1 of Schedule 5.

7. Ancillary Services

Nil

Appendix 1 – The Plan

See Attached Drawing

SCHEDULE 3 – THE TRAIN SERVICES

1. Train Services

- 1.1 The Train Operator shall be entitled to operate up to the minimum number of Train Services listed in paragraph 1 of Appendix 1 and notified to the Facility Owner in a Specification up to seven days in advance.
- 1.2 The Train Operator shall be entitled to request to operate up to the maximum number of Train Services listed in paragraph 1 of Appendix 1, and notified to the Facility Owner in a Specification up to seven days in advance
- 1.3 The Train Operator will issue a Specification 28 days in advance of each 7 day period showing the Train Services required to operate/
- 1.4 The Train Operator may vary each Specification up to 7 days in advance.
- 1.5 The Facility Owner will immediately acknowledge receipt of each Specification and variation.
- 1.6 The Facility Owner will consider each Specification in accordance with clause 6 of this contract and within 7 days of its receipt notify the Train Operator if it is unable to agree to the Specification, together with the reason for such decision
- 1.7 The Facility Owner will consider each variation made in accordance with clause 6 of this contract and as soon as reasonably practical notify the Train Operator if it is unable to agree the variation, together with the reason for such decision
- 1.8 Any Train Services for which a Specification or a variation has not been received in accordance with paragraphs 1.3 or 1.4 will be dealt with in accordance with clause 6.2.
- 1.9 The representatives of the parties will work together and share all the necessary information required to facilitate this process and to operate the Train Services.
- 1.10 Any Disputes shall be resolved in accordance with clause 12

2. Input and information

The Train Operator shall also provide the following input and information to the Facility Owner:

- consultation during the development of Methods of Work;
- consultation during the development of Standing and Special Instructions;
- the provision of forward planning information;
- attendance at Facility operations meetings; and
- attendance of authorised personnel at specified incidents.

Appendix 1 – Form of Specification

1 Train Services

1.1 Minimum number of Train Services

Consecutive accounting periods in each accounting year	1	2	3	4	5	6	7	8	9	10	11	12	13
Number of Train Services	172	172	172	172	172	172	172	172	172	153	172	172	172

1.2. Maximum number of Train Services

Consecutive accounting periods in each accounting year	1	2	3	4	5	6	7	8	9	10	11	12	13
Number of Train Services	192	192	192	192	192	192	192	192	192	172	192	192	192

2 Weekly Specification

2.1 Arrivals

Day	0001-0200	0201-0400	0401-0600	0601-0800	0801 - 1000	1001 - 2200	2201-2359
Saturday							
Monday							
Tuesday							
Wednesday							
Thursday							
Friday							

2.2 Departures

Day	0001-0200	0201-0400	0401-0600	0601-0800	0801 - 1000	1001 - 2200	2201-2359
Saturday							
Monday							
Tuesday							
Wednesday							
Thursday							
Friday							

SCHEDULE 4 - EVENTS OF DEFAULT, SUSPENSION AND TERMINATION

1. Events of Default

1.1 Train Operator Events of Default

The following are Train Operator Events of Default:

- (a) The Train Operator ceases to be authorised to be the operator of the Specified Equipment⁵, unless it is exempt from the requirement to be so authorised;
- (b) an Insolvency Event occurs in relation to the Train Operator;
- (c) (i) any breach by the Train Operator 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, the Facility Owner reasonably considers constitutes a threat to the safe operation of any part of the Facility;
- (d) any Charges or other amount due by the Train Operator to the Facility Owner under this contract remain unpaid for more than fourteen days after their due date;
- (e) any breach of this contract by the Train Operator which, by itself or taken together with any other such breach, results, or is likely to result, in material financial loss to the Facility Owner; and
- (f) any breach of this contract by the Train Operator which, by itself or taken together with any other such breach, results, or is likely to result, in material disruption to the operation of the Facility.

1.2 Notification

The Train Operator shall notify the Facility Owner promptly on becoming aware of the occurrence of a Train Operator Event of Default.

1.3 the Facility Owner Events of Default

The following are the Facility Owner Events of Default:

- (a) the Facility Owner ceases to be authorised to be the operator of the Facility by a Depot Licence granted under section [8 of the Act, unless exempt from the requirement to be so authorised];
- (b) an Insolvency Event occurs in relation to the Facility Owner;
- (c) (i) any breach by the Facility Owner 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 the Train Operator reasonably considers constitutes a threat to the safe operation of the Train Services; and

- (d) any breach of this contract by the Facility Owner which, by itself or taken together with any other such breach, results, or is likely to result, in material financial loss to the Train Operator.

1.4 *Notification*

the Facility Owner shall notify the Train Operator promptly on becoming aware of the occurrence of a Facility Owner Event of Default.

2. Suspension

2.1 *Right to suspend*

Either party may serve a Suspension Notice on the other if an Event of Default has occurred and is continuing, provided the relevant Event of Default is reasonably capable of remedy.

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 the Train Operator, reasonable restrictions imposed on the permission to use the Facility or any parts of it while the Suspension Notice is in force;
- (d) in the case of a Suspension Notice served on the Facility Owner, details of any necessary suspension of the Train Services while the Suspension Notice is in force;
- (e) the steps reasonably required to remedy the Event of Default; and
- (f) a reasonable grace period for the defaulting party to remedy it (where the Event of Default is a failure by the Train Operator to pay any part of the Charges or other amounts due under this contract, seven days shall be a reasonable grace period).

2.3 *Effect of a Suspension Notice served by the Facility Owner*

Where the Facility Owner has served a Suspension Notice on the Train Operator:

- (a) The Train Operator 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 the Facility Owner to the Train Operator under paragraph 2.5.4; and
- (c) service of the Suspension Notice shall not affect the Train Operator's continuing obligation to pay the Charges.

2.4 *Effect of a Suspension Notice served by the Train Operator*

Where the Train Operator has served a Suspension Notice on the Facility Owner:

- (a) it shall have the effect of suspending the Train Operator's permission to use the Facility to operate the Train 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 the Train Operator to the Facility Owner under paragraph 2.5.4.

2.5 *Suspension to be proportionate to breach*

2.5.1 A Suspension Notice served under paragraph 2.1 in respect of any of the Train Operator 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) Specified Equipment; and
- (b) Train Services,

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

2.5.2 A Suspension Notice served under paragraph 2.1 in respect of any of the the Facility Owner Events of Default specified in paragraphs 1.3 (a), (c) and (d) shall, so far as reasonably practicable, apply only to the part or parts of the Facility to which the relevant the Facility Owner Event of Default relates.

2.5.3 The party served with a Suspension Notice shall, with all reasonable diligence, take such steps as are specified in the Suspension Notice to remedy the Event of Default and keep the party which served the Suspension Notice fully informed of its progress.

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 the Facility Owner's right to terminate

The Facility Owner may serve a Termination Notice on the Train Operator:

- (a) where, except during the period of a Suspension Notice relating to it, a Train Operator Event of Default has occurred and is continuing;
- (b) where the Train Operator fails to comply with any material restriction in a Suspension Notice provided that the relevant Train Operator Event of Default is continuing;
- (c) where the Train Operator fails to comply with its obligations under paragraph 2.5.3, provided that the relevant Train Operator Event of Default is continuing; or
- (d) where the Facility Owner is serving three months' notice of its intention to terminate.

3.2 The Train Operator's right to terminate

The Train Operator may serve a Termination Notice on the Facility Owner:

- (a) where, except during the period of a Suspension Notice relating to it, and the Facility Owner Event of Default has occurred and is continuing;
- (b) where the Facility Owner fails to comply with its obligations under paragraph 2.5.3, provided that the relevant the Facility Owner Event of Default is continuing; or
- (c) where the Train Operator is serving three months' notice of its intention to terminate.

3.3 Contents of Termination Notice

A Termination Notice shall specify:

- (a) the nature of the relevant Event of Default or other matter entitling termination under paragraphs 3.1 or 3.2 as the case may be;
- (b) a date and time, which shall be reasonable in the circumstances, at which termination is to take effect; and
- (c) 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 within which such steps may be taken (and

where the Event of Default is a failure by the Train Operator to pay any part of the Charges or other amounts due under this contract, seven days shall be a reasonable grace period).

3.4 *Effect of Termination Notice*

Where the Facility Owner or the Train Operator 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.

4. Consequence of termination

4.1 *Directions regarding location of Specified Equipment etc*

Immediately before, upon or following termination or expiry of this contract, the Train Operator shall comply or procure compliance with all reasonable directions given by the Facility Owner concerning the location of the Specified Equipment and other things left on the Facility.

4.2 *Failure to comply with directions*

If the Train Operator fails to comply with any directions given under paragraph 4.1, the Facility Owner shall be entitled to remove from the Facility any Specified Equipment and other things left on the Facility or to instruct a third party to do so and any reasonable costs incurred by the Facility Owner in taking such steps shall be paid promptly by the Train Operator.

4.3 *Evidence of costs*

the Facility Owner shall provide such evidence of such costs as are referred to in paragraph 4.2 as the Train Operator shall reasonably request.

SCHEDULE 5 – CHARGES

1. Access Sum

The Access Sum is one peppercorn, and includes provision of the Facility Services

2. Ancillary Charges

None

Signed in counterparts – copies:

This contract was signed by The Depot Facility Owner, Siemens PLC and the Adjacent Facility Owner as first dated above.

SIGNED BY _____

Print name _____

Duly authorised on behalf of
GOVIA THAMESLINK RAILWAY LIMITED

SIGNED BY  _____

Print name W. DORRIS

Duly authorised on behalf of
SOUTHERN TRACK RENEWALS COMPANY LIMITED

SIGNED BY _____

Print name _____

Duly authorised on behalf of
SIEMENS PLC

Annex: the Plan

IN WITNESS whereof this contract has been duly executed.

Signed on behalf of GTR 

Name..... CHARLES..... HORTON.....

Signed on behalf of BBR.....

Name.....