

Amended and restated on 2 September 2014

Dated 22nd September 2008

NETWORK RAIL INFRASTRUCTURE LIMITED
and
THE SECRETARY OF STATE FOR TRANSPORT

TRACK ACCESS OPTION

in connection with the Crossrail Project

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This Access Option is made as a Deed the _____ day of September 2008 **between:**

- (1) **NETWORK RAIL INFRASTRUCTURE LIMITED**, a company registered under the laws of England and Wales under number 2904587 having its registered office at Kings Place, 90 York Way, London N1 9AG ("**Network Rail**"); and
- (2) **THE SECRETARY OF STATE FOR TRANSPORT** of Great Minster House, 33 Horseferry Road, London SW1P 4DR (the "**Optionholder**").

Whereas:

- (A) Network Rail is the owner of the Network;
- (B) The Optionholder is promoting the Crossrail Bill and, given the large-scale and long-term investment associated with the Crossrail Project, wishes to secure an option to require Network Rail to grant permission to use its Network to enable one or more Crossrail TOCs to operate the Services on the Routes;
- (C) Network Rail has agreed to grant to the Optionholder an option to require Network Rail to grant permission to use its Network to enable one or more Crossrail TOCs to operate the Services on the Routes on the terms and conditions of this Access Option;
- (D) The ORR has approved the terms of this Access Option and Network Rail is entering into this Access Option with the Optionholder pursuant to directions given by the ORR under section 18 of the Act; and
- (E) This Access Option is intended to regulate the arrangements, and any associated liabilities, between the Parties in respect of the operational phase of the Crossrail Project.
- (F) The Parties acknowledge and agree that they will enter into and/or facilitate separate agreements which will regulate the arrangements, and any associated liabilities, between the Parties and the Crossrail TOC in respect of the construction phase and the initial operation of the Crossrail Project.

It is agreed as follows:

1 Interpretation

1.1 Definitions

1.1.1 In this Access Option, unless the context otherwise requires:

"Access Agreement" means:

- (a) any particular access contract, whether or not entered into pursuant to any directions of the ORR under the Act, incorporating the Network Code, but excluding this Access Option and any Crossrail Access Agreement; and
- (b) any BAA Access Agreement;

"Access Agreement Rights" has the meaning given to it in Part A of Schedule 11 (*Failure to use and Buy-Back*);

"access charges review" has the meaning given to it in paragraph 1(1) of schedule 4A to the Act;

"Access Option" means this document including all Schedules to it;

“**Access Rights**” means the rights, other than the Crossrail Access Rights, granted to any Operator to use certain track comprised in the Network, including the right to park or lay up any railway vehicles, pursuant to the terms of its Access Agreement with Network Rail;

“**Access Rights Assumptions**” has the meaning given to it in Clause 8.6.1(ii);

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

“**Adjacent Facility Owner**” has the meaning given to it in Clause 7.1.1;

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

- (c) a company which is either a holding company or a subsidiary of such company; or
- (d) 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 given to them in section 736 of the Companies Act 1985 and “**company**” includes the Optionholder;

“**Amended Model Assumptions**” has the meaning given to it in Clause 8.1.9(i);

“**AM Peak**” has the meaning given to it in Schedule 5 (*The Services and the Specified Equipment*);

“**Anticipated Objective Performance Measure**” has the meaning given to it in Schedule 12 (*Capability Testing and Development of the Performance Regime*);

“**Applicable Engineering Access Statement**” means the Engineering Access Statement in force in respect of the Routes on the Services Commencement Date, as from time to time amended or replaced under Part D of the Network Code;

“**Applicable Timetable Planning Rules**” means the Timetable Planning Rules in force in respect of the Routes on the Services Commencement Date, as from time to time amended or replaced under Part D of the Network Code;

“**Assistance Notice**” has the meaning given to it in Clause 5.8.1 (*Request for Optionholder assistance*);

“**associate**” has the meaning given to it in section 17 of the Act;

“**Assumed Schemes**” means the schemes included in the Initial Model Assumptions as agreed between the Parties as at the date of this Access Option, the intended Infrastructure Output Specification of each of which has been initialled by the Parties for the purposes of identification only;

“**Authorised Representatives**” has the meaning given to it in Clause 12.1.3;

“**BAA Access Agreement**” means any particular access contract entered into, or to be entered into, between Network Rail and any BAA Operator;

“BAA Group” means BAA Limited (formerly BAA plc), a company registered in England under company number 01970855 and its subsidiaries from time to time;

“BAA Operator” means any operator of passenger trains on the Heathrow Spur from time to time, other than a Crossrail TOC, being at the date of this Access Option Heathrow Express Operating Company Limited;

“Capacity Reservation Assumptions” means the model assumptions in relation to the Reserved Capacity, which as at the date of this Access Option are those identified in the Initial Model Assumption Document as assumptions (C)(2) and (C)(3) as such assumptions may be modified from time to time pursuant to Clause 8.1.8 (*ORR approval of changes to the Capacity Reservation Assumptions*);

“Central Section” means the section between, in the west, Royal Oak in the City of Westminster and, in the east, Pudding Mill Lane in the London Borough of Newham and Plumstead in the London Borough of Greenwich;

“Central Tunnel Section” means the section between, in the west, Royal Oak in the City of Westminster and, in the east, Pudding Mill Lane and Custom House both in the London Borough of Newham;

“Change of Law” means the coming into effect in the United Kingdom:

- (a) by means of any enactment, revocation, repeal, amendment, alteration or otherwise of any Act of Parliament (other than the enactment of the Crossrail Bill in the form initialled by the Parties for the purposes of identification) or subordinate legislation, any exercise of the Royal Prerogative or any enforceable community right within the meaning of section 2 of the European Communities Act 1972; or
- (b) of any applicable judgment of a relevant court of law which creates or changes a binding precedent;

“Change of Standards” means the coming into effect of a:

- (a) Group Standard or of any amendment thereto which, in either case, is related to safety and with which Network Rail is obliged to comply;
- (b) Network Rail Standard or of any amendment thereto which, in either case:
 - (i) is a consequence of the coming into effect of a Group Standard falling within paragraph (a) of this definition; and
 - (ii) is related to safety and with which Network Rail is obliged to comply; or
- (e) Network Rail Standard or of any amendment thereto which, in either case, is required by Network Rail to ensure that it complies with its obligations under law to reduce risks on the Network so far as is reasonably practicable;

“Commitment Date” means the date on which the Optionholder serves a Commitment Notice;

“Commitment Notice” means a written notice, substantially in the form set out in Part A of Schedule 14 (*Forms of Notices*), served by the Optionholder on Network Rail pursuant to Clause 6.1.3 (*Commitment Notice*):

- (a) setting out the Timetable Change Dates on which the Optionholder anticipates that the Services Commencement Date will occur;
- (b) requesting a meeting to discuss the development of the First Working Timetable and the First Crossrail Access Agreement (including details of the performance regime reflecting the principles set out in Part B of Schedule 12 (*Capability Testing and Development of the Performance Regime*)); and
- (c) setting out in reasonable detail how the Services will be introduced on a phased basis, which shall include the:
 - (i) quantum of the Services to be included in each phase;
 - (ii) Services to be included in the First Working Timetable and the First Crossrail Access Agreement;
 - (iii) date on, and Timetable Period during, which each phase of the Services will be introduced, provided that the date on which each phase of the Services will be introduced shall be a Timetable Change Date or such other date as Network Rail may agree (acting reasonably);
 - (iv) date on which the Operations Assessment Phase will end, which shall not be earlier than two Periods after the date on which the final phase of the Services will be introduced unless Network Rail (acting reasonably) agrees otherwise, and the Services to which such phase will apply; and
 - (v) process and timing for the entry into, and the terms, of any amendments or supplemental agreements to the First Crossrail Access Agreement that are required to implement the phased introduction of the Services;

“Compliant Railway System” means any set of Model Assumptions (which, for the avoidance of doubt, include the Capacity Reservation Assumptions) which comply with Clause 8 (*Change Control*) and which demonstrate, through the Railway Systems Model, that the Anticipated Objective Performance Measure will be equal to or in excess of the Performance Threshold;

“Compliant Timetable” means, as at the date of the relevant run of the Railway Systems Model, a Timetable (as defined in Schedule 12 (*Capability Testing and Development of the Performance Regime*)) that is consistent with the Relevant Timetable Planning Rules and Relevant Engineering Access Statement;

“Concurrent Rights” means all rights of either of the Parties under Clauses 6.1 (*Service Introduction*), 6.2.1(i) (*First Working Timetable*), 6.2.2 (*Delays after the Commitment Date*), 6.3 (*Capability Testing and Development of the Performance Regime*), 7.1 (*Connection Agreements*), 7.2 (*Vehicle and Route*

Acceptance), 7.3.1 (*First Crossrail Access Agreement*) and 7.3.2 (*Conditions Precedent to the First Crossrail Access Agreement*) and Schedule 12 (*Capability Testing and Development of the Performance Regime*);

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

“Confidential Reports” means each of (i) the Crossrail Existing Surface Infrastructure and Operations Reliability Modelling Input Assumptions Report, Doc Ref. NR/EE/REP/00102, version A01 May 2008 and (ii) the Crossrail Central Section Infrastructure and Operations Modelling Input Assumptions Report, Doc Ref NR/EE/REP 00101, version A01 May 2008, referenced in the Initial Model Assumptions Document and any subsequent versions or editions of those reports having substantially the same purpose;

“Contract Year” means each yearly period commencing on 1 April of each calendar year and ending on 31 March of each calendar year, other than the first such period, which shall commence on the date of this Access Option, and the last such period, which shall end on the Expiry Date;

“Crossrail Access Agreement” means the First Crossrail Access Agreement and each Replacement Crossrail Access Agreement;

“Crossrail Access Rights” means the rights granted pursuant to Clause 5.1 (*Permission to operate the Services*) and Clause 5.5 (*Stabling*), which are contained in this Access Option and all Ancillary Movements related thereto;

“Crossrail Act” means the Crossrail Act 2008, as amended from time to time;

“Crossrail Bill” means the bill to make provision for the Crossrail Project, as first introduced on 22 February 2005;

“Crossrail Connection Agreement(s)” means one or more connection agreement(s) relating to the physical connection of the Central Section to the Network and the operational interface between Network Rail and the Adjacent Facility Owner;

“Crossrail Pre-Option Access Rights” means the access rights granted or to be granted by Network Rail to the Crossrail TOC under a separate agreement or agreements to enable the Crossrail TOC to commence operation of rail services and ancillary movements on the Network prior to the Services Commencement Date

“Crossrail Project” means the project for the development, procurement and commissioning to facilitate the operation of a railway transport system that is capable of operating the Services from Maidenhead in the County of Berkshire and from Heathrow airport in the London Borough of Hillingdon through central London to Shenfield in the County of Essex and Abbey Wood in the London Borough of Greenwich;

“Crossrail Protocol” means the protocol established pursuant to Network Rail's licence from the ORR between the Secretary of State for Transport, Crossrail Limited and Network Rail relating to the Crossrail Works, as amended from time to time and which at the date of this Access Option is Version 8.0 dated 2 September 2014;

“Crossrail TOC” means such person as the Optionholder may notify to Network Rail from time to time to be the operator of all or any of the Services who has the appropriate expertise to perform the role of an operator, provided that:

- (a) such person may not be the Optionholder; and
- (b) there shall not be more than one Crossrail TOC at any time from the Services Commencement Date until the Expiry Date without the consent of Network Rail (acting reasonably);

“Crossrail Works” means the works undertaken on, or in relation to, the Network as part of the Crossrail Project;

“Default Interest Rate” means the rate which is 2 per cent above the base lending rate of Barclays Bank Plc as varied from time to time;

“Disclosing Party” has the meaning given to it in Clause 13.1.4(i);

“Diversionary Routes” has the meaning given to it in paragraph 1 of Schedule 2 (*The Routes*);

“Environmental Information Regulations” means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or the Department for Environment, Food and Rural Affairs (including in each case its successors or assigns) in relation to such regulations;

“Event of Default” means an Optionholder Event of Default or a Network Rail Event of Default, as applicable;

“Event of Default Notice” means a notice of the occurrence of an Event of Default;

“Expiry Date” has the meaning given to it in Clause 3.1 (*Duration*);

“Financial Indebtedness” means any indebtedness for or in respect of:

- (a) moneys borrowed;
- (b) any amount raised by acceptance under any acceptance credit facility or dematerialised equivalent;
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with GAAP, be treated as a finance or capital lease;
- (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);

- (f) any amount raised under any other transaction (including any forward sale or purchase agreement) having the commercial effect of a borrowing; and
- (g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the mark to market value shall be taken into account);

"Firm Right" has the meaning given to it in Schedule 5 (*The Services and the Specified Equipment*);

"First Crossrail Access Agreement" means the first track access agreement to be entered into between Network Rail and a Crossrail TOC in accordance with Clause 7.3.1 (*First Crossrail Access Agreement*), pursuant to which Network Rail grants such Crossrail TOC permission to use its Network to enable such Crossrail TOC to operate all or any of the Services on any of the Routes, as the same may be amended pursuant to Clause 7.3.3 (*Amendments to the First Crossrail Access Agreement*);

"First Working Timetable" means the Working Timetable for the Timetable Period during which it is anticipated that the Services Commencement Date will occur, as the same may be amended pursuant to Clause 6.2.1(ii)(a);

"FOIA" means the Freedom of Information Act 2000 and any subordinate legislation made under that act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or the Ministry of Justice (including in each case its successors or assigns) in relation to such act or subordinate legislation;

"FOIA Code" has the meaning given to it in Clause 14.4 (*Compliance with the FOIA Code*);

"Franchise Agreement" has the meaning given to it in section 23(3) of the Act;

"Freight Take-Up Assumptions" means the freight take-up assumptions identified as part of assumption (C)(3) of the Initial Model Assumptions Document as such may be modified from time to time, in accordance with Clause 8 (*Change Control*), to reflect the most recent available data;

"Funded" means funded as a consequence of an access charges review or any other regulatory funding mechanism in place at the relevant time;

"Funding Statement" has the meaning given to it in Clause 5.7.1 (*Funding Statement*);

"GAAP" means generally accepted accounting principles, standards and practices in the United Kingdom from time to time, including IFRS;

"Government Body" means a body or holder of any office in respect of which both the first and second conditions set out in section 4 of the Freedom of Information Act 2000 are satisfied;

"Group Standards" means:

- (a) technical standards to which railway assets or equipment used on or as part of the Network must conform; and
- (b) operating procedures with which the operators of railway assets must comply,

in each case as issued by the Rail Safety and Standards Board Limited and authorised pursuant to the Railway Group Standard Code;

“Heathrow Spur” means the railway from Heathrow airport to Heathrow Tunnel Junction as authorised by the Heathrow Express Railway Act 1991, the Heathrow Express Railway (No. 2) Act 1991 and the Heathrow Express Railway Extension Order 2002, including the railway stations and all other works, apparatus and conveniences constructed or provided by Heathrow Airport Limited in connection with, or for the purposes of, that railway;

“IFRS” means international accounting standards, within the meaning of IAS Regulation 1606/2002, to the extent applicable to the financial statements of the relevant person;

“Indemnity Claim” has the meaning given to it in Clause 9.3.2;

“Information” has the meaning given to it under section 84 of the Freedom of Information Act 2000;

“Infrastructure” has the meaning given to it in the ROGS;

“Infrastructure Output Specification” means the anticipated permanent change in the layout, configuration or condition of any part of the Routes which is expected materially to affect the operation of the Routes or the operation of trains on the Routes;

“Initial Model Assumptions” means (i) the Capacity Reservation Assumptions and (ii) such other model assumptions as are agreed between the Parties, in each case, as at the date of this Access Option and as set out in the Initial Model Assumptions Document;

“Initial Model Assumptions Document” means the document entitled “Crossrail Initial Model Assumptions Document” dated the date of this Access Option and initialled by the Parties for the purposes of identification only and published on Network Rail’s website;

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

“Insolvency Event” has occurred, in relation to either of the Parties, 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 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 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) of this definition, 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;

“Intellectual Property Rights” means intellectual property rights in any part of the world, including any patent, patent application, trade mark, trade mark

application, registered design, registered design application, utility model, trade name, discovery, invention, process, formula, specification, copyright (including rights in computer software and database and topography rights) or unregistered design right;

“**Interested Party**” means any Train Operator which has notified Network Rail that it wishes to be consulted on any changes to the Model Assumptions;

“**Interim Model Assumptions**” has the meaning given to it in Clause 8.3.2 (*Interim Model Assumptions*);

“**Interim Railway Systems Model**” has the meaning given to it in Clause 8.8.2 (*Interim Railway Systems Model*);

“**Internal Resolution Procedure**” has the meaning given to it in Clause 12.1 (*Internal Resolution Procedure*);

“**IPR Licence**” means an irrevocable and non-exclusive licence to use the relevant Intellectual Property Rights for any purposes connected with this Access Option, such licence to:

- (a) be transferable to any permitted assignee or transferee of the relevant Party;
- (b) include the right to grant sub-licences for any purposes connected with this Access Option;
- (c) be royalty free, where such licence is granted by one of the Parties,

and, in this definition, “**use**” shall include the acts of copying, modifying, adapting and translating the material in question and/or incorporating it with other materials;

“**Liability Cap**” has the meaning given to it in paragraph 1 of Schedule 9 (*Limitations on Liability*);

“**Main Routes**” has the meaning given to it in Schedule 2 (*The Routes*);

“**Mandatory Change**” means any change on the Routes which is required:

- (a) as a result of a Change of Law or Change of Standards;
- (b) under any Part of the Network Code;
- (c) because an Assumed Scheme will not have been completed prior to the Reservation Date as a result of:
 - (i) Network Rail not being Funded to undertake such Assumed Scheme by that time; or
 - (ii) a third party no longer wishing to undertake such Assumed Scheme by that time; or
- (d) as a result of any change to the Heathrow Spur;

“**Model Alteration**” has the meaning given to it in Clause 8.9.1 (*Model Alteration*);

“Model Assumptions” means the Initial Model Assumptions as the same may be revised from time to time in accordance with Clause 8 (*Change Control*);

“Model Assumptions Change Notice” has the meaning given to it in Clause 8.1.9(i);

“Model Expiry Date” has the meaning given to it in Clause 8.2.1 (*Duration*);

“Model Expert” means the expert appointed pursuant to Clause 8.13 (*Model Expert Determination*);

“Model Expert Notice” has the meaning given to it in Clause 8.13.2(i);

“Model Report” means a report in:

- (a) the form agreed between the Parties as at the date of this Access Option, a copy of which has been initialled by the Parties for the purposes of identification only; or
- (b) such other form as is agreed between the Parties (acting reasonably) from time to time,

which evidences whether or not a Compliant Railway System has been achieved and identifies the Interim Model Assumptions or Model Assumptions (as applicable) which were used to run the Railway Systems Model to produce such report;

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

“Network Licence” means the network licence granted to Network Rail by the Secretary of State for Transport pursuant to section 8 of the Act authorising Network Rail to be the operator of the Network;

“Network Rail Action Conflicting Rights” means any Access Rights on the Routes, excluding any Crossrail Pre-Option Access Rights:

- (a) which constitute Non-Reserved Rights granted by Network Rail to any Operator after the date of this Access Option, which conflict with any Crossrail Access Rights where:
 - (i) the grant of such Non-Reserved Rights has been approved by the ORR pursuant to sections 18 or 22 of the Act and, at the time at which those Non-Reserved Rights were granted, it was agreed or determined in accordance with Clause 8.6 (*Grant of Access Rights*) that the relevant Model Report showed that granting such Non-Reserved Rights would conflict with the Crossrail Access Rights; or
 - (ii) Network Rail has been directed by the ORR to grant such Non-Reserved Rights pursuant to sections 17 or 22A of the Act and either:
 - A. at the time at which those Non-Reserved Rights were granted, it was agreed or determined in accordance with Clause 8.6 (*Grant of Access Rights*)

that the relevant Model Report showed that granting such Non-Reserved Rights would conflict with the Crossrail Access Rights, Network Rail advised the ORR of such conflict but the ORR nevertheless directed Network Rail to grant such Non-Reserved Rights; or

B. the Railway Systems Model was not run in accordance with Clause 8.6 (*Grant of Access Rights*) as a direct result of the occurrence of a Railway Systems Model FM Event, Network Rail advised the ORR of the relevant circumstances but the ORR nevertheless directed Network Rail to grant such Non-Reserved Rights and, when the Railway Systems Model was run in accordance with Clause 8.6 (*Grant of Access Rights*) following the cessation of the Railway Systems Model FM Event (using the Model Assumptions which were current at that time), the relevant Model Report showed that granting such Non-Reserved Rights conflicted with the Crossrail Access Rights; or

(iii) the Railway Systems Model was not run in accordance with Clause 8.6 (*Grant of Access Rights*) other than in the circumstances referred to in paragraph (a)(ii)(B) of this definition and, when the Railway Systems Model was run in accordance with Clause 8.6 (*Grant of Access Rights*) (using the Model Assumptions which were current when those Access Rights were granted), the relevant Model Report showed that granting such Non-Reserved Rights conflicted with the Crossrail Access Rights; or

(b) which conflict with any Crossrail Access Rights:

(i) where:

(I) the Railway Systems Model was not run in accordance with Clause 8.3 (*Change which affects any Model Assumption*);

(II) prior to Network Rail taking such Relevant Action the Optionholder served a notice on Network Rail requiring it to run the Railway Systems Model in order to determine whether Network Rail taking the Relevant Action would result in one or more Crossrail Access Rights conflicting with any Access Rights and Network Rail failed to do so other than as a direct result of the occurrence of a Railway Systems Model FM Event;

(III) when the Railway Systems Model was run in accordance with Clause 8.3 (*Change which affects any Model Assumption*) (using the Model

Assumptions which were current when Network Rail commenced the relevant Mandatory Change), the relevant Model Report showed that Network Rail taking the Relevant Action would result in one or more Crossrail Access Rights conflicting with any Access Rights on the Routes;

- (IV) it was agreed or determined that such Relevant Action constituted a Mandatory Change falling within paragraph (b) of the definition of Mandatory Change; and
 - (V) the Parties (acting reasonably) agreed that if Network Rail had run the Railway Systems Model in accordance with Clause 8.3 (*Change which affects any Model Assumption*) such Mandatory Change would have been unlikely to result in one or more Crossrail Access Rights conflicting with any Access Rights on the Routes; or
- (ii) where:
- (I) Network Rail intentionally decides not to serve a Relevant Action Notification on the Optionholder pursuant to Clause 8.3.1(iii), except in the circumstances where disclosure is not required in accordance with Clause 8.3.1(b);
 - (II) as a result the Railway Systems Model was not run in accordance with Clause 8.3 (*Change which affects any Model Assumption*);
 - (III) the Relevant Action took place and when the Railway Systems Model was run in accordance with Clause 8.3 (*Change which affects any Model Assumption*) (using the Model Assumptions which were current when the Relevant Action commenced), the relevant Model Report showed that the Relevant Action would result in one or more Crossrail Access Rights conflicting with any Access Rights on the Routes; and
 - (IV) the Parties (acting reasonably) agreed that if Network Rail had served a Relevant Action Notification on the Optionholder in accordance with Clause 8.3.1(iii) prior to the Relevant Action taking place, such Relevant Action would have been unlikely to result in one or more Crossrail Access Rights conflicting with any Access Rights on the Routes;

“Network Rail Event of Default” means the events listed in paragraph 1.3 of Schedule 6 (*Events of Default and Termination*);

“Network Rail Sub-Licensee” has the meaning given to it in Clause 8.11.6(i)(b);

“Network Rail Standard” means a standards document (or the equivalent of such document) issued by Network Rail for its own use as amended by Network Rail from time to time in relation to the operation, maintenance and renewal of the Network;

“Nominated Undertaker” means the Secretary of State for Transport or any person appointed as nominated undertaker in accordance with section 46 of the Crossrail Act;

“Non-Reserved Rights” means Access Rights other than those that represent or correspond to Reserved Capacity;

“Notification” has the meaning given to it in Clause 12.1.1;

“Objective Performance Measure” has the meaning given to it in Schedule 12 (*Capability Testing and Development of the Performance Regime*);

“Office of Rail Regulation” has the meaning given to it in section 15 of the Railways and Transport Safety Act 2003, and references to the **“ORR”** shall be construed as references to the Office of Rail Regulation;

“Operations Assessment Phase” means the phase from the Services Commencement Date until the Operations Assessment Phase End Date;

“Operations Assessment Phase End Date” means the date which the Optionholder states in the Commitment Notice will be the end of the Operations Assessment Phase, as such date may be revised in accordance with Clause 6.2.2 (*Delays after the Commitment Date*);

“Operator” means:

- (a) a person, other than any Crossrail TOC or any BAA Operator, who has permission to use any track comprised in the Network pursuant to an Access Agreement with Network Rail; and
- (b) any BAA Operator;

“Option Drawdown Notice” means a written notice, substantially in the form set out in Part B of Schedule 14 (*Forms of Notices*), served by the Optionholder on Network Rail pursuant to Clause 7.3.4(ii) setting out:

- (a) how many Replacement Crossrail Access Agreements the Optionholder wishes Network Rail to enter into;
- (b) the identity of each Crossrail TOC that will enter into each replacement Crossrail Access Agreement upon the previous Crossrail Access Agreement expiring; and
- (c) the Services to be included in each Replacement Crossrail Access Agreement;

“Optionholder Action Conflicting Rights” means, other than any Network Rail Action Conflicting Rights, any Access Rights that any Operator has at any time which conflict with the Crossrail Access Rights;

“Optionholder Event of Default” means the events listed in paragraph 1.1 of Schedule 6 (*Events of Default and Termination*);

“Optionholder Optional Change” means any change, which is not a Mandatory Change, that the Optionholder wishes to make:

- (a) to the Infrastructure Output Specification of the Crossrail Works; or
- (b) to the Rolling Stock Functionality of any rolling stock brought, or intended to be brought, into service as part of the Crossrail Project;

“Optionholder Sub-Licensee” has the meaning given to it in Clause 8.11.6(i)(a);

“Payment Default Value” means:

- (a) in relation to the first Contract Year, the sum of £100,000; and
- (b) in relation to any subsequent Contract Year, the sum calculated in accordance with the following formula:

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

where:

- (i) C_1 is the sum of £100,000;
- (ii) C_n is the Liability Cap in the nth subsequent Contract Year;
- (iii) RPI_n is the Retail Prices Index published or determined with respect to the first month of the subsequent Contract Year; and
- (iv) RPI_1 is the Retail Prices Index published or determined with respect to the month in which this Access Option became effective under Clause 3.1 (*Duration*);

“Performance Order” has the meaning given to it in Clause 12.5.2 (*Performance Orders*);

“Performance Threshold” has the meaning given to it in Schedule 12 (*Capability Testing and Development of the Performance Regime*);

“Period” has the meaning given to it in Part D of Schedule 12 (*Capability Testing and Development of the Performance Regime*);

“PM Peak” has the meaning given to it in Schedule 5 (*The Services and the Specified Equipment*);

“Position Paper” has the meaning given to it in Clause 12.1.2;

“Project Debt” means any Financial Indebtedness of any person used to finance (or refinance) all or any part of the Crossrail Project;

“Protected Information” has the meaning given to it in Condition 18 of the Network Licence;

“Railway System” has the meaning given to it in Part D of Schedule 12 (*Capability Testing and Development of the Performance Regime*);

“Railway Systems Model” means the railway systems model administered by Network Rail in accordance with Clause 8.1 (*Custody of the Railway Systems Model and Model Assumptions*) as the same may be modified or replaced from time to time in accordance with Clause 8.8 (*Errors in the Railway Systems Model*) or 8.9 (*Modification or Replacement of the Railway Systems Model*), which as at the date of this Access Option includes:

- (a) the Railsys computer programme (timetable simulation tool used to assess the impact on overall performance levels as a result of the Crossrail timetable and infrastructure configurations);
- (b) the OSLO computer programme (technical simulation of railway electrification performance used for electrification capability and optioneering assessment and detailed electrification design);
- (c) the Vision computer programme (technical simulation of railway signalling performance primarily used for signalling performance assessment base build for OSLO); and
- (d) the TRAIL computer programme (technical simulation of railway infrastructure and operations reliability performance used for performance benchmarking, derivation of programme specification requirements and performance action management);

“Railway Systems Model FM Event” means any event or circumstance which is beyond the reasonable control of Network Rail, including:

- (a) where either Party (acting reasonably) believes, or a Third Party IP Owner alleges or makes a claim against either Party stating, that running the Railway Systems Model will result in a breach of any Intellectual Property Rights owned by a Third Party IP Owner;
- (b) where there is a bona fide dispute between the Parties regarding the Railway Systems Model or the Model Assumptions; or
- (c) where Network Rail is unable to enforce its contractual rights against any third party who is responsible for running the Railway Systems Model, including where any such party is insolvent;

“Receiving Party” has the meaning given to it in Clause 13.1.4(i);

“Referring Party” has the meaning given to it in Clause 8.13.2(ii);

“Relevant Action” means any change:

- (a) on the Routes which is required:
 - (i) as a result of a Change of Law or Change of Standards;
 - (ii) under any Part of the Network Code;
 - (iii) as a result of any change to the Heathrow Spur;
- (b) to the Infrastructure Output Specification of the Crossrail Works;

- (c) to the Rolling Stock Functionality of any rolling stock brought, or intended to be brought, into service as part of the Crossrail Project; or
- (d) which is required because an Assumed Scheme will not have been completed prior to the Reservation Date,

other than granting any Access Rights on the Routes listed in Schedule 2 (*The Routes*) to any Operator after the date of this Access Option;

“Relevant Action Notification” has the meaning given to it in Clause 8.3.1 (*Relevant Action Notification*);

“relevant ADRR Forum” means the Forum, having the meaning ascribed to it in the ADRR, to which a Relevant Dispute is allocated for resolution in accordance with the ADRR;

“Relevant Dispute” means any difference between the Parties arising out of or in connection with this Access Option, excluding any such difference which arises as a result of the Optionholder exercising any right or power or undertaking any function it has other than solely by virtue of being a Party;

“Relevant Losses” means, in relation to:

- (a) a breach of this Access Option; or
- (b) the matters specified in Clauses 5.8.2 (*Agreement of Optionholder to assist*), 8.11.6 (*Infringement of Intellectual Property Rights*), 9.3 (*Indemnity in respect of Optionholder Action Conflicting Rights*) and 9.4 (*Indemnity in respect of Network Rail Action Conflicting Rights*), which shall constitute a “breach” solely for the purposes of this definition,

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

“Relevant Timetable Planning Rules and Relevant Engineering Access Statement” means:

- (a) prior to the Services Commencement Date, the Timetable Planning Rules and the Engineering Access Statement as they are expected to be as at the Services Commencement Date; and
- (b) on or after the Services Commencement Date, the then current Timetable Planning Rules and Engineering Access Statement;

“Replacement Crossrail Access Agreement” means each track access agreement to be entered into between Network Rail and a Crossrail TOC in accordance with Clause 7.3.4 (*Replacement Crossrail Access Agreements*), pursuant to which Network Rail grants such Crossrail TOC permission to use its Network to enable such Crossrail TOC to operate all or any of the Services on any of the Routes;

“Request for Information” has the meaning given to it in the FOIA or any apparent request for information under the FOIA or the Environmental Information Regulations;

“Reservation Date” means Principal Change Date in 2016, as the same may be postponed in accordance with Clause 6.1.2 (*Update Notices*) or 6.1.4 (*Committed Service Commencement Date*);

“Reserved Capacity” means the capacity represented by:

- (a) the paths identified in schedule 2 to the Initial Model Assumptions Document; and
- (b) the paths identified in schedule 3 to the Initial Model Assumptions Document, as may be selected by way of the application of the Freight Take-Up Assumptions to such paths in accordance with the Take-Up Assumption Methodology,

as may be may be modified from time to time with the prior approval of the ORR;

“Responding Party” has the meaning given to it in Clause 8.13.2(ii);

“Retail Prices Index” means the general index of retail prices published by National Statistics each month in respect of all items or:

- (a) if the index for any month in any year shall not have been published on or before the last day of the third month after such month, such index for such month or months as the ORR may, after consultation with the Department for Transport, Network Rail and the Optionholder, determine to be appropriate in the circumstances; or
- (b) if there is a material change in the basis of the index, such other index as the ORR may, after consultation with the Department for Transport, Network Rail and the Optionholder, determine to be appropriate in the circumstances;

“ROGS” means The Railways and Other Guided Transport Systems (Safety) Regulations 2006;

“Rolling Stock Functionality” means the physical characteristics of rolling stock which are expected materially to affect the maintenance or operation of the Network or the operation of trains on the Network;

“Routes” means that part of the Network specified in paragraphs 3 and 4 of Schedule 2 (*The Routes*);

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

“Services” means the railway passenger services specified in Schedule 5 (*The Services and the Specified Equipment*) and **“Service”** shall mean any one of them;

“Services Commencement Date” means the Timetable Change Date immediately following the Transition Date;

“Shoulder Peak” has the meaning given to it in Schedule 5 (*The Services and the Specified Equipment*);

“Specified Equipment” means, in relation to each of the Routes, the railway vehicles which any Crossrail TOC is entitled to use in the provision of Services on that Route as specified in Schedule 5 (*The Services and the Specified Equipment*);

“Stabling” means the parking or laying up of the Specified Equipment or such other railway vehicles as any Crossrail TOC is permitted by this Access Option to use on the Network, such parking or laying up being necessary or reasonably required for giving full effect to the movements of Specified Equipment required for the provision of the Services and **“Stable”** shall be construed accordingly;

“subsidiary” has the meaning given to it in section 736 of the Companies Act 1985;

“Take-Up Assumption Methodology” means the manner in which Freight Take-Up Assumptions are applied as described in the Initial Model Assumptions Document in conjunction with assumption (C)(3) identified therein;

“Termination Notice” means a notice in writing served by the relevant Party on the other Party under paragraph 3 of Schedule 6 (*Events of Default and Termination*);

“Third Party IP Owner” has the meaning given to it in Clause 8.11.3 (*Third Party IP Owner*);

“Train” has the meaning given to it in the ROGS;

“Transition Date” has the meaning given to it in the Crossrail Protocol;

“Unamended Model Assumptions” has the meaning given to it in Clause 8.1.9(i);

“Update Notice” has the meaning given to it in Clause 6.1.2(i);

“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;

“Variation” has the meaning given to it in the Crossrail Protocol;

1.1.2 The following terms shall have the meaning given to them in the relevant Part of the Network Code:

- (i) **“Access Dispute Resolution Rules”** and **“ADRR”**;
- (ii) **“Access Proposal”**;
- (iii) **“Ancillary Movements”**;
- (iv) **“Decision Criteria”**;

- (v) **"Engineering Access Statement"**;
- (vi) **"Flexing Right"**;
- (vii) **"Funders"**;
- (viii) **"Network"**;
- (ix) **"Network Change"**;
- (x) **"Principal Change Date"**;
- (xi) **"Priority Date"**;
- (xii) **"Timetable Change Date"**;
- (xiii) **"Timetable Participant"**;
- (xiv) **"Timetable Period"**;
- (xv) **"Timetable Planning Rules"**
- (xvi) **"Train Operators"**;
- (xvii) **"Train Slot"**;
- (xviii) **"Working Day"**; and
- (xix) **"Working Timetable"**.

1.2 Interpretation

In this Access Option, unless the context otherwise requires:

- 1.2.1 the singular includes the plural and vice versa;
- 1.2.2 any one gender includes the other;
- 1.2.3 all headings are for convenience of reference only and shall not be used in the interpretation or construction of this Access Option;
- 1.2.4 any reference to an item of primary or secondary legislation is to that item as amended, extended, re-enacted or replaced from time to time;
- 1.2.5 any reference to a contract, instrument or other document (including this Access Option) is to that contract, instrument or other document as amended, varied, suspended, modified, assigned, novated, supplemented or replaced from time to time;
- 1.2.6 any reference to a **"Party"** is to either Network Rail or the Optionholder and includes its successors in title, permitted assigns and permitted transferees and **"Parties"** shall be construed accordingly;
- 1.2.7 any reference to a contract, instrument or other document (including this Access Option) includes its recitals, schedules, appendices, annexes and attachments;
- 1.2.8 any reference to a recital, Clause or Schedule is to a recital, clause or schedule of or to this Access Option; any reference in a Schedule to a paragraph, a Part or an Appendix is to a paragraph or part of, or an appendix

to, the Schedule in which the reference appears; and any reference in a Schedule to a Table is to a table included in or annexed to that Schedule;

- 1.2.9 where a word or expression is defined, cognate words and expressions shall be construed accordingly;
- 1.2.10 references to the words “**person**” or “**persons**” or to words importing persons include individuals, firms, corporations, trusts, partnerships, government agencies, committees, departments, authorities and other bodies incorporated or unincorporated, whether having separate legal personality or not;
- 1.2.11 references to the word “**otherwise**” and words following “**other**” shall not be limited by any foregoing words where a wider construction is possible;
- 1.2.12 references to the words “**include**”, “**including**” and “**in particular**” shall be construed as being by way of illustration or emphasis and shall not limit or prejudice the generality of any foregoing words;
- 1.2.13 words and expressions defined in the Act and/or the Network Licence shall, unless otherwise defined in this Access Option, have the same meanings in this Access Option;
- 1.2.14 save to the extent expressly provided otherwise, if there is any conflict of interpretation between this Access Option and the Network Code, the Network Code shall prevail;
- 1.2.15 references to the word “**writing**” shall be construed as including a facsimile transmission and any means of reproducing words in a tangible and permanent visible form;
- 1.2.16 references to sections of the Crossrail Act assume that the Crossrail Bill is enacted in the form as at the date of this Access Option. If, and to the extent that, this is not the case, a reference to any section of the Crossrail Act shall be construed to be a reference to the provision of the Crossrail Act which is equivalent to that section had the Crossrail Bill been enacted in the form as at the date of this Access Option;
- 1.2.17 any Crossrail Access Right shall be deemed to “**conflict with**” an Access Right or Reserved Capacity if:
- (i) no Compliant Timetable which includes the relevant Crossrail Access Right and the relevant Access Right and/or Reserved Capacity can be developed for inclusion in the Model Assumptions; or
 - (ii) a Model Report derived from a run of the Railway Systems Model that includes the relevant Crossrail Access Right and the relevant Access Right and/or Reserved Capacity and which is run on the basis of, the Model Assumptions indicates an Anticipated Objective Performance Measure or Objective Performance Measure (as applicable, depending on when such Model Report is produced) of less than the Performance Threshold,

and “**conflict between**” shall be construed similarly; and

1.2.18 the Parties acknowledge that the Initial Model Assumptions are not a Compliant Railway System.

1.3 Indemnities

Indemnities provided for in this Access Option are continuing indemnities in respect of the Relevant Losses to which they apply and are to hold the indemnified Party harmless on an after-tax basis.

2 Network Code

2.1 Incorporation

2.1.1 Subject to Clauses 2.1.2 and 2.1.3, the Network Code is incorporated into, and forms part of, this Access Option.

2.1.2 Schedule 11 (*Failure to use and Buy-Back*) shall have effect.

2.1.3 The Optionholder shall have no obligation under this Access Option pursuant to Condition A1.3 of the Network Code to procure that any Crossrail TOC performs any obligation it may have under any Crossrail Access Agreement pursuant to the Network Code.

2.2 Modifications to the Network Code

If the Network Code is modified at any time, Schedule 10 (*Network Code Modifications*) shall have effect.

2.3 Compliance by other Operators

Except:

2.3.1 where the ORR has directed otherwise in the exercise of its powers under the Act or the Network Code; and

2.3.2 in relation to London Underground Limited and Heathrow Express Operating Company Limited, to the extent that such persons are not party to the Network Code,

Network Rail shall ensure that all operators of trains having permission to use any track comprised in the Network agree to comply with the Network Code.

3 Duration and Termination

3.1 Duration

The provisions of this Access Option shall take effect from the date of the execution of this Access Option and shall, subject to Schedule 6 (*Events of Default and Termination*), continue in full force and effect until 23:59 hours on the 30th anniversary of the Services Commencement Date (the "**Expiry Date**").

3.2 Termination

Schedule 6 (*Events of Default and Termination*) shall have effect.

4 Standard of Performance

4.1 General standard

Without prejudice to all other obligations of the Parties under this Access Option, each Party shall, in its dealings with the other Party for the purpose of, and in the course of performance of its obligations under, this Access Option, act with due efficiency and economy and, in the case of Network Rail, in a timely manner and with that degree of skill, diligence, prudence and foresight which should be exercised by a skilled and experienced facility owner and operator of a rail network.

4.2 Good faith

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

5 Permission to Operate

5.1 Permission to operate the Services

- 5.1.1 Subject to Clause 5.1.2, Network Rail hereby grants to the Optionholder an option to require Network Rail to grant permission to use its Network to enable one or more Crossrail TOCs to operate the Services on the Routes in so far as the Routes are comprised within the Network and, under circumstances envisaged by the Network Code, on the Diversionary Routes, in each case, from the Services Commencement Date until the Expiry Date.
- 5.1.2 The Parties acknowledge and agree that the exercise of the option granted in Clause 5.1.1 will require that Network Rail and any such Crossrail TOC enter into one or more Crossrail Access Agreements in accordance with Clause 7.3 (*Negotiation of Crossrail Access Agreements*).
- 5.1.3 The Optionholder shall be entitled to exercise the option referred to in Clause 5.1.1 in whole or in part, on one or more occasions at any point on or after the Commitment Date in respect of the period commencing on the Reservation Date in respect of all or any of the Services on the Routes and expiring on the Expiry Date.
- 5.1.4 Nothing in this Access Option shall prohibit Network Rail from granting to any Operator permission to operate any services on the Routes up to but excluding the Reservation Date.
- 5.1.5 At any time when the Optionholder exercises the option granted in Clause 5.1.1 (referred to in this Clause 5.1.5 and Clause 5.1.6 as the “**Option**”) it shall notify Network Rail of:
- (i) the Access Agreement Rights to be included in the relevant Crossrail Access Agreement as a consequence of its exercise of the Option; and

- (ii) any Crossrail Access Rights in respect of which the Option is not being exercised and explain why the Option is not being exercised in respect of those Crossrail Access Rights at that time.

5.1.6 Network Rail shall maintain a record of the extent to which the Access Agreement Rights have been included in any Crossrail Access Agreement as a result of the Optionholder's exercise of the Option. This record shall include details of:

- (i) which of the Access Agreement Rights are included in a Crossrail Access Agreement and the dates when the corresponding rights in that agreement (pertaining to those Services) are due to expire;
- (ii) which of the Crossrail Access Rights are not included in a Crossrail Access Agreement; and
- (iii) which, if any, of the Crossrail Access Rights or Undrawn Access Option Rights have been Surrendered pursuant to Schedule 11 (*Failure to use and Buy-Back*) and the period of such Surrender (the terms "Undrawn Access Option Rights", "Surrendered" and "Surrender" shall have the meanings ascribed to them in Schedule 11 (*Failure to use and Buy-Back*)).

Network Rail shall provide a copy of this record to the Optionholder and to the ORR within 28 days of any change to the details which it contains.

5.2 Meaning

References in this Access Option to permission to use its Network to enable a Crossrail TOC to operate the Services on the Routes shall be construed to mean permission:

- 5.2.1** to use the track comprised in the Routes for the provision of the relevant Services using the Specified Equipment;
- 5.2.2** to use the track comprised in the Network in order to implement any plan established under Part H of the Network Code;
- 5.2.3** to make Ancillary Movements;
- 5.2.4** to Stable, which shall be treated, for the purposes of Part D of the Network Code, as the use of a Train Slot;
- 5.2.5** for a Crossrail TOC and its associates to enter upon that part of the Network comprising the Routes, with or without vehicles; and
- 5.2.6** for a Crossrail TOC and its associates to bring things on to that part of the Network comprising the Routes and keep them there,

and such permission is subject, in each case and in all respects, to:

- (i) the Network Code;
- (ii) the Applicable Engineering Access Statement; and
- (iii) the Applicable Timetable Planning Rules.

5.3 Permission under Clauses 5.2.5 and 5.2.6

In relation to the permissions specified in Clauses 5.2.5 and 5.2.6:

- 5.3.1 each Crossrail TOC shall, and shall procure that its associates shall, wherever reasonably practicable, first obtain the consent of Network Rail, which consent shall not be unreasonably withheld or delayed;
- 5.3.2 each Crossrail TOC shall remove any vehicle or other thing so brought on to any part of the Network when reasonably directed to do so by Network Rail; and
- 5.3.3 whilst exercising any rights conferred by Clauses 5.2.5 and 5.2.6, each Crossrail TOC shall, and shall procure that its associates shall, comply with such reasonable restrictions or instructions as Network Rail shall specify.

5.4 The Services and the Specified Equipment

Schedule 5 (*The Services and the Specified Equipment*) shall have effect.

5.5 Stabling

Without prejudice to Network Rail's obligations, if any, under Schedule 5 (*The Services and the Specified Equipment*) to provide Stabling, Network Rail 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 in accordance with the Working Timetable.

5.6 Optionholder Action Conflicting Rights

- 5.6.1 The Optionholder shall not take any step to procure the adjustment or surrender of any Optionholder Action Conflicting Rights pursuant to any mechanism in any Franchise Agreement, any Access Agreement or the Network Code or otherwise without having first consulted with Network Rail, the ORR, the Operator holding such Optionholder Action Conflicting Rights and, where the Optionholder is not the Secretary of State for Transport, the Secretary of State for Transport as to the Optionholder Action Conflicting Rights to be adjusted or surrendered.
- 5.6.2 Having consulted with the persons referred to in Clause 5.6.1 and having taken due account of any comments made by those persons, the Optionholder may request that Network Rail assists in procuring the adjustment or surrender of any Optionholder Action Conflicting Rights.
- 5.6.3 Subject to Clauses 5.6.4 and 5.6.5, following any request from the Optionholder in accordance with Clause 5.6.2, Network Rail shall co-operate fully with the Optionholder and the Parties shall use all reasonable endeavours to procure the adjustment or surrender of any Optionholder Action Conflicting Rights and Clause 9.3 (*Indemnity in respect of Optionholder Action Conflicting Rights*) shall apply accordingly.
- 5.6.4 If the Optionholder has a choice as to which Optionholder Action Conflicting Rights it intends to procure the adjustment or surrender of, Network Rail shall have no obligation under Clause 5.6.3 unless and until it has agreed each

Optionholder Action Conflicting Right to be adjusted or surrendered in accordance with the Decision Criteria.

- 5.6.5 Network Rail shall not be required to take any action pursuant to Clause 5.6.3 which would conflict with any direction given to Network Rail by the ORR or any enforcement order made against Network Rail by the ORR under section 55 of the Act.

5.7 Network Rail Action Conflicting Rights - Network Rail Action

5.7.1 Funding Statement

Where any Network Rail Action Conflicting Rights falling within paragraphs (a)(ii) or (a)(iii) of the definition of Network Rail Action Conflicting Rights have been granted, then the Parties shall seek a written statement from the ORR as to whether Network Rail is funded in relation to the anticipated cost of procuring the adjustment or surrender of those Network Rail Action Conflicting Rights (a "**Funding Statement**"). Neither Party shall take any steps to remove the conflict between the Crossrail Access Rights and those Network Rail Action Conflicting Rights prior to seeking a Funding Statement from the ORR. For the purposes of this Clause 5.7 (*Network Rail Action Conflicting Rights – Network Rail Action*), any Funding Statement shall be conclusive evidence of whether Network Rail is funded in relation to the anticipated cost of procuring the adjustment or surrender of any such Network Rail Action Conflicting Rights.

5.7.2 Network Rail Action

- (i) Subject to Clause 5.7.2(ii), Network Rail shall procure the adjustment or surrender of any Network Rail Action Conflicting Rights using any mechanisms available under the Network Code or the Access Agreement under which the Network Rail Action Conflicting Rights were granted or any other legally enforceable mechanisms available at that time, save to the extent that Network Rail is unable to do so using any such mechanism.
- (ii) Network Rail shall not be required to procure the adjustment or surrender of any Network Rail Action Conflicting Rights, falling within paragraph (b) of the definition of Network Rail Action Conflicting Rights, in accordance with Clause 5.7.2(i), at any time when:
 - (a) Network Rail has agreed to fund and undertake any works required to ensure that any such Network Rail Action Conflicting Rights do not conflict with one or more Crossrail Access Rights; and
 - (b) there is a reasonable prospect that such works will be completed by the relevant Reservation Date.

5.8 Network Rail Action Conflicting Rights - Optionholder Action

5.8.1 Request for Optionholder assistance

Where Network Rail Action Conflicting Rights have been granted but Network Rail is unable to procure the adjustment or surrender of any Network Rail

Action Conflicting Rights using any mechanisms available under the Network Code or the Access Agreement under which the Network Rail Action Conflicting Rights were granted or any other legally enforceable mechanisms available at that time, Network Rail shall be entitled to request the assistance of the Optionholder in procuring the adjustment or surrender of those Network Rail Action Conflicting Rights. Within 60 days of receiving any such request from Network Rail, the Optionholder shall issue a notice to Network Rail (an “**Assistance Notice**”) stating whether it agrees to assist in procuring the adjustment or surrender of those Network Rail Action Conflicting Rights.

5.8.2 Agreement of Optionholder to assist

If the Optionholder agrees to assist in procuring the adjustment or surrender of the Network Rail Action Conflicting Rights referred to in Clause 5.8.1 (*Request for Optionholder assistance*) following a request from Network Rail in accordance with Clause 5.8.1 (*Request for Optionholder assistance*), then Network Rail shall indemnify the Optionholder against all Relevant Losses which the Optionholder incurs in assisting in procuring the adjustment or surrender of those Network Rail Action Conflicting Rights falling within:

- (i) paragraphs (a)(i), (b)(i) and (b)(ii) of the definition of Network Rail Action Conflicting Rights;
- (ii) paragraph (a)(ii) of the definition of Network Rail Action Conflicting Rights, only to the extent that the Funding Statement states that Network Rail is funded in relation to the anticipated costs of procuring the adjustment or surrender of those Network Rail Action Conflicting Rights;
- (iii) paragraph (a)(iii) of the definition of Network Rail Action Conflicting Rights:
 - (a) subject to Clause 5.8.2(iii)(c), where the Funding Statement states that Network Rail is funded in relation to the anticipated costs of procuring the adjustment or surrender of those Network Rail Action Conflicting Rights, only to the extent stated in such Funding Statement; or
 - (b) subject to Clause 5.8.2(iii)(c), where the Funding Statement states that Network Rail is not funded in relation to the anticipated costs of procuring the adjustment or surrender of those Network Rail Action Conflicting Rights, subject to the application of paragraph 3 of Schedule 9 (*Limitations on Liability*); or
 - (c) where the Liability Cap does not apply in respect of such Network Rail Action Conflicting Rights in accordance with paragraph 5.2.1(ii) or 5.2.1(iii) of Schedule 9 (*Limitations on Liability*), such Relevant Losses shall not be subject to the limitations on liability in paragraphs 1 to 5 (Inclusive) of Schedule 9 (*Limitations on Liability*).

5.8.3 Optionholder does not assist

If the Optionholder:

- (i) notifies Network Rail in the Assistance Notice that it agrees to assist in procuring the adjustment or surrender of the relevant Network Rail Action Conflicting Rights, then, unless and until the Optionholder has procured the adjustment or surrender of such Network Rail Action Conflicting Rights, Network Rail shall cease to have any obligation in relation to the grant of the Crossrail Access Rights with which such Network Rail Action Conflicting Rights conflict; or
- (ii) notifies Network Rail in the Assistance Notice that it does not agree to assist in procuring the adjustment or surrender of the relevant Network Rail Action Conflicting Rights, then Network Rail shall cease to have any obligation in relation to the grant of the Crossrail Access Rights with which the relevant Network Rail Action Conflicting Rights conflict for the duration of that conflict.

5.9 Crossrail Pre-Option Access Rights – Termination of Rights

Where a Crossrail Pre-Option Access Right exists, the Parties agree that immediately prior to the coming into force of the relevant Crossrail Access Right which is drawn down under this Access Option the Optionholder shall procure that the corresponding Crossrail Pre-Option Access Right is terminated. In the event that the Optionholder fails to procure such termination the Parties agree that such Crossrail Pre-Option Access Right shall not be a Network Rail Action Conflicting Right and the Parties will work together to ensure that such Crossrail Pre-Option Access Right is surrendered or otherwise terminated as soon as reasonably practicable.

6 Service Introduction and Timetable Development

6.1 Service Introduction

6.1.1 Operation of the Services

Without prejudice to the other provisions of this Access Option, the Parties intend that the Services should be operated on, or at the earliest possible date following, the Reservation Date in respect of the operation of the Services on the Routes.

6.1.2 Update Notices

- (i) On each Principal Change Date after 30 November 2008 up to, but excluding, the Commitment Date, the Optionholder shall provide Network Rail with a written non-binding statement (with reasonable supporting detail and including a master project programme) of whether the Optionholder, acting reasonably and having regard to such master project programme, anticipates that the Services Commencement Date will occur on the Reservation Date and, if not, the Timetable Change Date on which the Optionholder anticipates the Services Commencement Date will occur (an “**Update Notice**”).
- (ii) If, in any Update Notice, the Optionholder states that the Services Commencement Date will not occur until at least one year after the Reservation Date and the Parties agree that there is no reasonable prospect of such delay being avoided, the Reservation Date shall be

postponed to the date stated in the relevant Update Notice as being the anticipated Services Commencement Date.

- (iii) At any time prior to the Commitment Date, the Optionholder may, in its absolute discretion, by written notice to Network Rail, postpone the Reservation Date to any subsequent Timetable Change Date.
- (iv) Within seven days of any postponement of the Reservation Date in accordance with either Clause 6.1.2(ii) or 6.1.2(iii), the Parties shall jointly notify the ORR in writing of the replacement Reservation Date.

6.1.3 Commitment Notice

- (i) Subject to Clause 6.1.3(ii), the Optionholder shall serve a Commitment Notice on Network Rail at least two years prior to the date of the Timetable Change Date on which the Optionholder anticipates that the Services Commencement Date will occur.
- (ii) The Optionholder may not serve a Commitment Notice:
 - (a) until after the completion of the tunnel-boring operation, and the commencement of the construction of the permanent way, both within the Central Tunnel Section; and/or
 - (b) at any time whilst an Optionholder Event of Default is continuing.

6.1.4 Committed Service Commencement Date

- (i) If, in the Commitment Notice, the Optionholder states that the Services Commencement Date will not occur until after the Reservation Date then the Reservation Date shall be postponed to the date stated in the Commitment Notice as being the anticipated Services Commencement Date.
- (ii) If, in the Commitment Notice, the Optionholder states that the Services Commencement Date will occur on or prior to the Reservation Date then the Reservation Date shall not be changed.
- (iii) Within seven days of any postponement of the Reservation Date in accordance with Clause 6.1.4(i), the Parties shall jointly notify the ORR in writing of the replacement Reservation Date.

6.2 Timetable Development

6.2.1 Working Timetable

- (i) **First Working Timetable**
 - (a) Following the issue of a Commitment Notice, Network Rail and the Optionholder and, at the option of the Optionholder, the Crossrail TOC shall meet, co-operate in full and use reasonable endeavours to agree the First Working Timetable in accordance with the provisions of Part D of the Network Code. The Services included in the First Working Timetable shall be consistent with the Commitment Notice.

- (b) If, as part of developing the First Working Timetable, Network Rail determines that any Optionholder Action Conflicting Rights exist, it shall promptly give notice of that fact to the Optionholder and the ORR.

(ii) **Subsequent Working Timetables**

- (a) Following the agreement of the First Working Timetable, Network Rail and the Optionholder and, at the option of the Optionholder, the Crossrail TOC shall meet, co-operate in full and use reasonable endeavours to agree any revisions to the First Working Timetable in accordance with the provisions of Part D of the Network Code, which may be required to introduce each phase of the Services in accordance with the Commitment Notice.
- (b) If, as part of developing any revisions to the First Working Timetable, Network Rail determines that any Optionholder Action Conflicting Rights exist, it shall promptly give notice of that fact to the Optionholder and the ORR.

6.2.2 Delays after the Commitment Date

If, at any time after the Commitment Date, the Optionholder determines that there will be a delay to the Services Commencement Date, it shall promptly give a notice to that effect to Network Rail and the ORR and the Parties shall meet as soon as possible and use reasonable endeavours to agree any adjustments (if any) that may be required in accordance with standard industry practices (including any delay to the date on which the Operations Assessment Phase will end in order to ensure that it will not be earlier than two Periods after the date on which the final phase of the Services will be introduced, unless Network Rail (acting reasonably) agrees otherwise).

6.3 Capability Testing and Development of the Performance Regime

Schedule 12 (*Capability Testing and Development of the Performance Regime*) shall have effect.

7 Access Agreements

7.1 Connection Agreements

7.1.1 If Network Rail is not the facility owner of the Central Section and, as a result, either Party believes that a connection agreement or an equivalent agreement is required, then, following a written request from that Party, Network Rail, the facility owner of the Central Section (the “**Adjacent Facility Owner**”) and, where the Adjacent Facility Owner is not the Optionholder, the Optionholder shall meet, co-operate in full and use reasonable endeavours to agree the terms of the Crossrail Connection Agreement(s) with the intention of:

- (i) submitting the Crossrail Connection Agreement(s) to the ORR for approval in accordance with section 18 of the Act; and

- (ii) obtaining the ORR's approval of the Crossrail Connection Agreement(s),

in advance of the date specified in the written request from the relevant Party (which shall allow a reasonable period of time for the completion of the relevant negotiations).

- 7.1.2 Where Clause 7.1.1 applies and the Optionholder is not the Adjacent Facility Owner, the Optionholder shall use reasonable endeavours to procure that the Adjacent Facility Owner complies with the requirements of Clause 7.1.1.
- 7.1.3 The Parties acknowledge that the Crossrail Connection Agreement(s) are likely to be bespoke agreements rather than being based on any model form of connection contract published by the ORR.

7.2 Vehicle and Route Acceptance

- 7.2.1 Network Rail acknowledges that new rolling stock will be designed, constructed, tested, commissioned and introduced into service as part of the Crossrail Project. The Parties acknowledge that the Access Rights required to test and introduce such new rolling stock into service on the Network do not form part of this Access Option.

- 7.2.2 Following a written request from the Optionholder, Network Rail and the Optionholder and, at the option of the Optionholder, the rolling stock manufacturer and/or any other person (which may or may not be a Crossrail TOC) shall meet, co-operate in full and use reasonable endeavours to agree the terms of a new Access Agreement or any amendment to any existing Access Agreement (as applicable) under which such new rolling stock may be tested and brought into reliable and lawful commercial service on the Network with the intention of:

- (i) submitting such new Access Agreement or amendment to such existing Access Agreement (as applicable) to the ORR for approval in accordance with section 18 or 22 of the Act (as applicable); and
- (ii) obtaining the ORR's approval of such new Access Agreement or amendment to such existing Access Agreement (as applicable),

in advance of the date specified in the written request from the Optionholder (which shall allow a reasonable period of time for the completion of the relevant negotiations).

- 7.2.3 Where Clause 7.2.2 applies and the Optionholder determines that the rolling stock manufacturer and/or any other person should be involved in the process contemplated by Clause 7.2.2, the Optionholder shall use reasonable endeavours to procure that such rolling stock manufacturer and/or such other person complies with the requirements of Clause 7.2.2.
- 7.2.4 The Parties acknowledge that any new Access Agreement to be agreed in accordance with Clause 7.2.2 may be based on the current version of the Model Track Access Contract (Vehicle and Route Acceptance) published by the ORR at the relevant time (if any).

7.3 Negotiation of Crossrail Access Agreements

7.3.1 First Crossrail Access Agreement

(i) Subject to Clause 7.3.2(i), following the issue of a Commitment Notice, Network Rail and the Optionholder and, at the option of the Optionholder, the Crossrail TOC shall meet, co-operate in full and use reasonable endeavours to agree the terms of the First Crossrail Access Agreement (including details of the performance regime reflecting the principles set out in Part B of Schedule 12 (*Capability Testing and Development of the Performance Regime*)) with the intention of:

- (a) submitting the First Crossrail Access Agreement to the ORR for approval in accordance with section 18 of the Act; and
- (b) obtaining the ORR's approval of the First Crossrail Access Agreement,

in advance of the Priority Date immediately prior to the Reservation Date. If the First Crossrail Access Agreement is not approved by the ORR in advance of the Priority Date immediately prior to the Reservation Date, this shall not prevent the Optionholder making any Access Proposal in accordance with Part D of the Network Code in respect of all or any of its rights under this Access Option.

(ii) The Parties acknowledge and agree that, unless otherwise agreed between the Parties and approved by the ORR, the First Crossrail Access Agreement shall:

- (a) be based on the then current version of the Model Track Access Contract (Passenger Services) published by the ORR; and
- (b) not be for a term which expires after the Expiry Date.

(iii) Schedule 13 (*First Crossrail Access Agreement*) sets out an indicative non-binding timetable for the agreement and approval of the First Crossrail Access Agreement based on the Reservation Date being the Principal Change Date in the relevant year.

(iv) Charges applicable under the First Crossrail Access Agreement shall not include the charges payable by the Optionholder under Schedule 7 (*Track Charges*) and shall be calculated in the same way as any other Access Agreement provided always that Clause 10.5 (*No Double Counting*) shall apply.

7.3.2 Conditions precedent to the First Crossrail Access Agreement

(i) The obligation on Network Rail to enter into the First Crossrail Access Agreement shall be subject to the ORR approving the First Crossrail Access Agreement.

(ii) The permission from Network Rail to the Crossrail TOC under the First Crossrail Access Agreement:

- (a) to use its Network shall be conditional upon there being no continuing Optionholder Event of Default;
- (b) to use the paths to or from Heathrow airport shall be conditional upon:
 - A. the Optionholder and/or any Crossrail TOC having agreed corresponding access over the Heathrow Spur; and
 - B. in the event that the Secretary of State for Transport uses the power under the Crossrail Act to obtain corresponding access over the Heathrow Spur for the purposes of Clause 7.3.2(ii)(b)(A), there being no reasonable prospect of any company in the BAA Group (including the BAA Operator) making a valid claim against Network Rail in respect of loss of revenue suffered by it (or any other company in the BAA Group) in relation to the Service (as defined in the Heathrow Express Track Access Agreement dated 16 August 1993 and made between British Railways Board and Heathrow Airport Limited (as modified by a Transfer Scheme made under the Railways Act 1993 dated 1 April 1994, and as further amended, modified or supplemented from time to time)), as a result of Network Rail granting the permission contemplated by this Clause 7.3.2(ii)(b) for the operation of Services (as defined herein) to or from Heathrow airport,

provided that, if the above conditions have not been met by the Commitment Date, the Parties shall use reasonable endeavours to agree alternative departure points and/or destinations on the Routes for the paths that would otherwise have run to or from Heathrow airport, which are consistent with the First Working Timetable;

- (c) to use the paths to or from Tottenham Court Road shall be conditional upon the Optionholder and/or any Crossrail TOC having agreed corresponding access over the Central Tunnel Section;
- (d) to use any Crossrail Access Right shall be conditional upon
 - (i) the capability testing referred to in Part A of Schedule 12 (*Capability Testing and Development of the Performance Regime*) demonstrating that the operation of the Railway System will enable such Crossrail Access Right to be used;
 - (ii) it being demonstrated in accordance with Part AA of Schedule 12 (*Performance Threshold – Objective Test*) that on the anticipated Services Commencement Date the Anticipated Objective Performance Measure will be equal to or in excess of the Performance Threshold where the relevant Crossrail Access Right is included in the Railway Systems Model; and
 - (iii) it being demonstrated, where that Crossrail Access Right is included in the Railway Systems

Model, that there is not otherwise any conflict between that Crossrail Access Right and any Access Right or Reserved Capacity; and

- (e) to use any Crossrail Access Rights shall be conditional upon satisfaction of the requirements of regulation 3 of the ROGS for any Train or the Infrastructure that is used for delivering the Services,

provided that, the fact that a Crossrail TOC does not have or ceases to have permission from Network Rail to use any Crossrail Access Rights under a Crossrail Access Agreement by virtue (whether wholly or partly) of non-satisfaction of the condition precedent contained in Clause 7.3.2(ii)(d) as a result of a Network Rail Action Conflicting Right conflicting with a Crossrail Access Right shall not, in and of itself, prevent Network Rail being liable to the Optionholder under any provision of this Access Option in relation to the existence of that Network Rail Action Conflicting Right, reduce the extent of any such liability or limit the remedies available to the Optionholder with respect to any such liability.

7.3.3 Amendments to the First Crossrail Access Agreement

Following the approval by the ORR of the First Crossrail Access Agreement, Network Rail and the Optionholder and, at the option of the Optionholder, the Crossrail TOC shall meet, co-operate in full and use reasonable endeavours to agree any amendment or supplemental agreement to the First Crossrail Access Agreement, which may be required to introduce each phase of the Services in accordance with the Commitment Notice, with the intention of:

- (i) submitting such amendment or supplemental agreement to the ORR for approval in accordance with section 22 of the Act; and
- (ii) obtaining the ORR's approval of such amendment or supplemental agreement,

in sufficient time to enable the relevant phase of the Services to be operated by one or more Crossrail TOCs on the date specified in the Commitment Notice.

7.3.4 Replacement Crossrail Access Agreements

- (i) Subject to Clauses 7.3.4(iii) and 7.3.4(vi), to the extent that any Crossrail Access Agreement:
 - (a) expires prior to the Expiry Date; or
 - (b) is terminated,

in each case, subject to there being no continuing Optionholder Event of Default, the Optionholder shall be entitled to require Network Rail to enter into one or more Replacement Crossrail Access Agreements with one or more Crossrail TOCs upon the previous Crossrail Access Agreement expiring or being terminated (as applicable).

- (ii) Where it is intended that one or more Replacement Crossrail Access Agreements will be entered into upon the expiry of a Crossrail Access Agreement, not later than 24 months prior to the expiry of that Crossrail Access Agreement, the Optionholder and Network Rail shall meet to discuss the process for agreeing the terms of any Replacement Crossrail Access Agreement. Prior to that meeting, or as soon as reasonably practicable thereafter, when the Optionholder has determined the information required to be included in that notice, it shall serve an Option Drawdown Notice on Network Rail.
- (iii) The Optionholder acknowledges that, if any Replacement Crossrail Access Agreement is likely to be materially different to the previous Crossrail Access Agreement, if the Optionholder does not issue an Option Drawdown Notice in respect of that Replacement Crossrail Access Agreement by the date which is 18 months prior to the expiry of the previous Crossrail Access Agreement, then there may not be sufficient time to agree the terms of any such Replacement Crossrail Access Agreement and to develop the then current Working Timetable in order to obtain the ORR's approval of any Replacement Crossrail Access Agreement to enable the relevant Services to be operated by one or more Crossrail TOCs on the expiry of the previous Crossrail Access Agreement, as contemplated in Clause 7.3.4(v).
- (iv) Subject to Clause 7.3.4(vi):
 - (a) any Replacement Crossrail Access Agreement shall be based on the then current Model Track Access Contract (Passenger Services) published by the ORR;
 - (b) the effective date of any Replacement Crossrail Access Agreement shall be the day following the day on which the previous Crossrail Access Agreement expired, terminated or ceased to be in full force and effect (as applicable);
 - (c) the term of any Replacement Crossrail Access Agreement shall be determined by the Optionholder, provided that, unless the Parties agree otherwise, any Replacement Crossrail Access Agreement may not be for a term which expires after the Expiry Date;
 - (d) any Replacement Crossrail Access Agreement shall contain such of the Crossrail Access Rights as the Optionholder may specify, provided that the Optionholder may not specify that the same Crossrail Access Rights are included in more than one Crossrail Access Agreement at the same time; and
 - (e) charges applicable under any Replacement Crossrail Access Agreement shall not include the charges paid by the Optionholder under Schedule 7 (*Track Charges*) and shall be calculated in the same way as any other Access Agreement provided always that Clause 10.5 (*No Double Counting*) shall apply.

- (v) Network Rail and the Optionholder and, at the option of the Optionholder, the relevant Crossrail TOC shall co-operate in full and use reasonable endeavours to obtain the ORR's approval of any Replacement Crossrail Access Agreement:
 - (a) in sufficient time to enable the relevant Services to be operated by one or more Crossrail TOCs on the expiry of the previous Crossrail Access Agreement; or
 - (b) prior to, or (where it is not possible to obtain the ORR's approval in advance) as soon as reasonably practicable following, the previous Crossrail Access Agreement being terminated or ceasing to be in full force and effect (as applicable).
- (vi) The obligation on Network Rail to:
 - (a) enter into one or more Replacement Crossrail Access Agreements in accordance with this Clause 7.3.4 (*Replacement Crossrail Access Agreements*) shall be subject to the ORR approving any such Replacement Crossrail Access Agreements; and
 - (b) grant permission to the Crossrail TOC under the first Replacement Crossrail Access Agreement to use any Crossrail Access Rights which conflict with any Access Rights shall, subject to Clause 7.3.5 (*Network Change*), be conditional upon the adjustment or surrender of those Optionholder Action Conflicting Rights, such that those Access Rights no longer conflict with the relevant Crossrail Access Rights.
- (vii) For the purposes of this Clause 7.3.4 (*Replacement Crossrail Access Agreements*), the term "**Replacement Crossrail Access Agreement**" shall be construed at any time to include any Replacement Crossrail Access Agreement that may have already been entered into in accordance with this Clause 7.3.4 (*Replacement Crossrail Access Agreements*).

7.3.5 Network Change

For the sole purpose of establishing the rights of the Optionholder under Condition G2.1.1(a)(i) of the Network Code, Network Rail's obligation under Clause 5.1.1 shall not be conditional upon the adjustment or surrender of any Optionholder Action Conflicting Rights or any Network Rail Action Conflicting Rights falling within paragraph (b)(i) of the definition of Network Rail Action Conflicting Rights which arise solely as a result of the implementation of a Network Change, which is not required in connection with the Crossrail Project. Network Rail's liability (if any) to the Optionholder in respect of any such Optionholder Action Conflicting Rights or any such Network Rail Action Conflicting Rights falling within paragraph (b)(iii) of the definition of Network Rail Action Conflicting Rights shall be determined in accordance with the provisions of Part G of the Network Code.

7.4 Amendments to Crossrail Access Agreements

If Network Rail proposes any amendment, or supplemental or replacement agreement, to any Crossrail Access Agreement, Network Rail shall notify the Optionholder of such proposed amendment or supplemental or replacement agreement (as applicable) as soon as reasonably practicable and in any event no later than 10 Working Days before such proposed amendment or supplemental or replacement agreement (as applicable) is submitted to the ORR.

7A Supplemental Access Charge

From the Transition Date the Optionholder shall pay to Network Rail the charges set out in Schedule 7 (*Track Charges*).

8 Change Control

8.1 Custody of the Railway Systems Model and Model Assumptions

8.1.1 Custody and operation

Network Rail shall retain custody of the Model Assumptions and shall be responsible for procuring the operation of the Railway Systems Model in accordance with this Clause 8 (*Change Control*).

8.1.2 Initial Model Assumptions

On or prior to the date of this Access Option, Network Rail has provided the Optionholder and the ORR with an electronic copy and a paper copy of the Initial Model Assumptions Document, receipt of which by the Optionholder is hereby acknowledged.

8.1.3 Provision of revised Model Assumptions

Promptly following the adoption of any revised Model Assumptions in accordance with this Clause 8 (*Change Control*), Network Rail shall provide the Optionholder and the ORR with an electronic copy and a paper copy of those Model Assumptions.

8.1.4 Optionholder right to request Railway Systems Model is run

The Optionholder shall have the right to request that the Railway Systems Model is run at any time. Following any such request, Network Rail shall procure the operation of the Railway Systems Model in accordance with the instructions of the Optionholder (acting reasonably) using the Model Assumptions notified by the Optionholder.

8.1.5 Changes to the Railway Systems Model or Model Assumptions

No changes shall be made to either the Railway Systems Model or the Model Assumptions other than in accordance with this Clause 8 (*Change Control*).

8.1.5A Changes affecting other parties

Where, following a run of the Railway System Model under Clause 8.1.4, the Optionholder wishes to propose a change which will have an effect on any party (other than the Optionholder) through the operation of the Railway

Systems Model the Optionholder shall, prior to proposing such change, consult with the Secretary of State for Transport and advise Network Rail on the outcome of the consultation.

8.1.6 Discrepancy

In the event of any discrepancy between the copy of the Model Assumptions held by the Optionholder and the copy of the Model Assumptions held by Network Rail, the Parties shall use their reasonable endeavours to establish why the discrepancy has arisen and to resolve the discrepancy. If the Parties fail to resolve the discrepancy within three months or such longer period as the Parties may agree, either Party may require that an audit be conducted to establish which copy of the Model Assumptions is correct and the costs of that audit shall be borne by the Party who retained the incorrect copy of the Model Assumptions.

8.1.7 Railway Systems Model FM Event

Network Rail shall not be in breach of any obligation it has under this Clause 8 (*Change Control*) to procure that the Railway Systems Model is run, where the Railway Systems Model cannot be run as a direct result of the occurrence of a Railway Systems Model FM Event unless Network Rail fails to procure that the Railway Systems Model is run within a reasonable period after cessation of the Railway Systems Model FM Event.

8.1.8 ORR approval of changes to the Capacity Reservation Assumptions

No changes may be made to any Capacity Reservation Assumption without the prior written approval or direction of the ORR.

8.1.9 Consultation on changes to the Model Assumptions

(i) If any proposed change to any Model Assumption is agreed by the Parties or determined by the Model Expert pursuant to this Clause 8 (*Change Control*), other than pursuant to Part AA of Schedule 12 (*Capability Testing and Development of the Performance Regime*), then Network Rail shall notify in writing the ORR and any Interested Party of the proposed change to the Model Assumption(s) giving reasons for the proposed change (a "**Model Assumptions Change Notice**") and Network Rail shall place a copy of the proposed change(s) on its website not less than 6 weeks (or such lesser period as agreed by the ORR) before it intends to make the proposed change to the Model Assumption(s) specifying a deadline not less than 15 Working Days after the giving of the Model Assumptions Change Notice for the receipt of comment by the Interested Parties on the proposed change to the Model Assumption(s) ("**Amended Model Assumptions**") or on any other Model Assumption that is not the subject of the proposed change ("**Unamended Model Assumptions**"). The Model Assumptions Change Notice notification shall be accompanied by a Model Report illustrating the effect of the Amended Model Assumptions.

(ii) Interested Parties may make representations and objections to Network Rail in writing and copied to the Optionholder and the ORR

in relation to an Amended Model Assumption or an Unamended Model Assumption not later than the deadline specified in the Model Assumptions Change Notice on the grounds that:

- (a) an Unamended Model Assumption or an Amended Model Assumption is not consistent with generally accepted modelling practice; or
 - (b) an Unamended Model Assumption or an Amended Model Assumption is not a reasonably realistic representation of the position, or forecast of the anticipated position, on the Routes when the Services are expected to operate.
- (iii) The Parties shall consider any representations or objections made by Interested Parties in accordance with Clause 8.1.9(ii) and decide whether:
- (a) in respect of an Amended Model Assumption, to proceed with that proposed change; or
 - (b) to propose a change to an Unamended Model Assumption or an Amended Model Assumption, in which case Network Rail shall repeat the procedure in this Clause 8.1.9,

and Network Rail shall notify the ORR and each Interested Party in writing of the decision of the Parties which shall include the reasons of the Parties.

- (iv) If the Parties decide that an Amended Model Assumption shall proceed or do not propose a change to an Unamended Model Assumption in accordance with Clause 8.1.9(iii)(b), any Interested Party shall be entitled, within 7 days of notification of the decision, to refer the matter to the ORR for its determination as to whether or not:
- (a) the Amended Model Assumption(s) should proceed;
 - (b) the Amended Model Assumption(s) should be changed in a particular manner different to any change proposed by the Parties; or
 - (c) an Unamended Model Assumption should be changed.

Within 15 Working Days of receipt of a referral, the ORR may decide (and shall notify the Parties and the relevant Interested Party accordingly) not to proceed with its determination on the grounds, without limitation, that the reference is frivolous or vexatious, in which case the Parties may proceed with the proposed change. Subject to Clause 8.1.8 (*ORR approval of changes to the Capacity Reservation Assumptions*), if no referral is made to the ORR pursuant to this Clause 8.1.9(iv), the Parties may proceed with the proposed change.

The grounds for reference to the ORR shall be that:

- (a) an Unamended Model Assumption or an Amended Model Assumption is not consistent with generally accepted modelling practice; or

- (b) an Unamended Model Assumption or an Amended Model Assumption is not a reasonably realistic representation of the position, or forecast of the anticipated position, on the Routes when the Services are expected to operate.
- (v) Unless otherwise agreed by the ORR, no change shall be made to any Model Assumption pending the outcome of a determination by the ORR pursuant to Clause 8.1.9(iv) above and/or, in respect of a change to any Capacity Reservation Assumption, the granting of approval by the ORR in accordance with Clause 8.1.8 (*ORR approval of changes to the Capacity Reservation Assumptions*).

8.1.10 Confidential Reports

- (i) For the purposes of the consultation provisions of Clause 8.1.9 (*Consultation on changes to the Model Assumptions*), Network Rail and the Optionholder shall have discretion, and shall be required to jointly agree, whether any Confidential Report or any part thereof which is relevant to a change to Model Assumptions shall be published to Interested Parties as part of a Model Assumptions Change Notice, or on Network Rail's website, (a failure to jointly agree such publication will result in the relevant Confidential Report, or part thereof, not being published) provided always that:
 - (a) the ORR shall be entitled to have published to it all or any part of such Confidential Reports, as required by it; and
 - (b) Network Rail and the Optionholder shall as regards Interested Parties, use reasonable endeavours to publish to them such parts of the Confidential Reports as are reasonably practicable for them to disclose to such Interested Parties.
- (ii) Network Rail and the Optionholder shall at all times have the right to disclose Protected Information or Confidential Information to the ORR in support of the relevant Model Assumptions Change Notice without such Protected Information or Confidential Information being subject to the publication requirements of Clause 8.1.9 (*Consultation on changes to the Model Assumptions*).

8.1.11 Notification of a Compliant Railway System

The Parties shall, as soon as is reasonably practical after achievement of a Compliant Railway System, provide the ORR and Interested Parties with a copy of the Model Report which reflects a Compliant Railway System. If however, a subsequent Model Report to that referred to in the preceding sentence does not evidence a Compliant Railway System, the Parties shall notify the ORR and shall provide it with a copy of such subsequent Model Report.

8.2 Duration of the Railway Systems Model

8.2.1 Duration

The obligation on Network Rail to procure the operation of the Railway Systems Model in accordance with this Clause 8 (*Change Control*) shall continue until the date on which the Parties and the ORR agree that it has been demonstrated pursuant to Part AA (*Performance Threshold – Objective Test*) of Schedule 12 (*Capability Testing and Development of the Performance Regime*) that the Objective Performance Measure is equal to or in excess of the Performance Threshold (the “**Model Expiry Date**”).

8.2.2 Effect of Model Expiry Date

Notwithstanding any other provision of this Access Option, Clauses 5.6 (*Optionholder Action Conflicting Rights*), 5.7 (*Network Rail Action Conflicting Rights – Network Rail Action*), 5.8 (*Network Rail Action Conflicting Rights – Optionholder Action*), 8 (*Change Control*), 9.3 (*Indemnity in respect of Optionholder Action Conflicting Rights*), 9.4 (*Indemnity in respect of Network Rail Action Conflicting Rights*) 10.7.1 and 17.3.2(ii) and paragraph 5.2.1 of Schedule 9 (*Limitations on Liability*) shall cease to have effect from the Model Expiry Date, except that any of the provisions of Clauses 5.8.2 (*Agreement of Optionholder to Assist*), 8.11.6 (*Infringement of Intellectual Property Rights*), 9.3.1, 9.4.1 and 9.4.2 under which a claim has arisen but not been satisfied prior to the Model Expiry Date shall survive and continue in full force and effect, together with any other provisions as are necessary to give effect to such provisions, until such claim has been satisfied in full.

8.3 Change which affects any Model Assumption

8.3.1 Relevant Action Notification

If, at any time, a Party:

- (i) wishes, or is required, to take any Relevant Action;
- (ii) has been asked to consent to any Relevant Action being taken; or
- (iii) becomes aware that a third party wishes, or is required, to take any Relevant Action,

that Party shall serve a notice on the other Party giving full details of the Relevant Action (a “**Relevant Action Notification**”), provided that:

- (a) Network Rail shall not have any liability under this Access Option for failing to serve a Relevant Action Notification on the other Party pursuant to Clause 8.3.1(iii), other than where Network Rail intentionally decides not to serve a Relevant Action Notification on the Optionholder pursuant to Clause 8.3.1(iii), except in the circumstances where disclosure is not required in accordance with Clause 8.3.1(b); and
- (b) if a third party discusses a proposal to undertake any Relevant Action with either Party, that Party shall have no obligation to serve a Relevant Action Notification on the other Party pursuant to Clause 8.3.1(iii) until such third party confirms in writing that either it is going to undertake such Relevant Action or it is going to procure that another person undertakes such Relevant Action.

8.3.2 Interim Model Assumptions

Following the issue of a Relevant Action Notification, the Parties shall promptly meet and use reasonable endeavours to agree how the Model Assumptions would have to be revised if the Relevant Action was taken (the “**Interim Model Assumptions**”). If the Parties fail to agree the Interim Model Assumptions within 10 Working Days of the issue of the Relevant Action Notification or such longer period as the Parties may agree, then either Party may refer the matter to the Model Expert in accordance with Clause 8.13 (*Model Expert Determination*).

8.3.3 Testing the Interim Model Assumptions

Upon the agreement or determination of the Interim Model Assumptions, Network Rail:

- (i) shall procure that the Railway Systems Model is run using the Interim Model Assumptions; and
- (ii) following the Railway Systems Model having been run, shall promptly deliver a copy of the Model Report to the Optionholder.

8.3.4 Revisions to the Interim Model Assumptions

If the relevant Model Report delivered by Network Rail in accordance with Clause 8.3.3 (*Testing the Interim Model Assumptions*) shows that if the Relevant Action was taken, one or more Crossrail Access Rights would conflict with any Access Rights or Reserved Capacity, then the Parties shall promptly meet and use reasonable endeavours to determine whether revisions can be made to the Interim Model Assumptions so that the Relevant Action can be taken without:

- (i) resulting in any Crossrail Access Rights conflicting with any Access Rights or Reserved Capacity; and
- (ii) either Party (other than the Party who wishes to take the Relevant Action) being required to undertake any further works on the Network,

and Network Rail shall have the same obligations as it has under Clause 8.3.3 (*Testing the Interim Model Assumptions*) in respect of any such revised Interim Model Assumptions.

8.3.5 Network Rail right to run the Railway Systems Model

Nothing in this Clause 8.3 (*Change which affects any Model Assumption*) shall prevent Network Rail from running the Railway Systems Model at any time for purposes other than those for which Network Rail is required to run the Railway Systems Model pursuant to this Clause 8 (*Change Control*), provided that the Optionholder shall not be liable under Clause 16.4.1 for any costs Network Rail incurs in running the Railway Systems Model for such other purposes where Network Rail would not have otherwise incurred those costs in performing its obligations under this Clause 8 (*Change Control*).

8.4 Model Report shows no conflict

If any Model Report delivered by Network Rail in accordance with Clause 8.3.3 (*Testing the Interim Model Assumptions*) or 8.3.4 (*Revisions to the Interim Model Assumptions*) shows that taking the Relevant Action would not result in any Crossrail Access Rights conflicting with any Access Rights or Reserved Capacity, then the relevant Party may take such Relevant Action or consent to such Relevant Action being taken and if the relevant person commits to undertake such Relevant Action, the relevant Interim Model Assumptions shall be adopted as the Model Assumptions provided that, if required, the prior approval of the ORR to the adoption of those Interim Model Assumptions as Model Assumptions has been granted pursuant to Clause 8.1.8 (*ORR approval of changes to the Capacity Reservation Assumptions*) and/or the ORR has not otherwise determined pursuant to Clause 8.1.9(iv) (as applicable).

8.5 Model Report shows conflict

8.5.1 Mandatory Change or Optionholder Optional Change

If:

- (i) the Parties agree that revisions cannot be made to the Interim Model Assumptions which satisfy the requirements of Clause 8.3.4 (*Revisions to the Interim Model Assumptions*); or
- (ii) no Model Report has been delivered by Network Rail in accordance with Clause 8.3.3 (*Testing the Interim Model Assumptions*) or 8.3.4 (*Revisions to the Interim Model Assumptions*) within three months of the Relevant Action Notification or such longer period as the Parties may agree, which shows that taking the Relevant Action would not result in any Crossrail Access Rights conflicting with any Access Rights or Reserved Capacity,

then the Parties shall promptly meet and use reasonable endeavours to agree whether the Relevant Action constitutes a Mandatory Change or an Optionholder Optional Change.

8.5.2 Dispute as to funding

If the Parties cannot agree whether Network Rail is Funded in respect of any Relevant Action which Network Rail (acting reasonably) believes falls within paragraph (c)(i) of the definition of Mandatory Change, the Parties shall seek a written statement from the ORR as to whether Network Rail is so funded and any such written statement shall be conclusive evidence of whether Network Rail is so funded.

8.5.3 Mandatory Change

If it is agreed or determined that any Relevant Action referred to in Clause 8.5.1 (*Mandatory Change or Optionholder Optional Change*) constitutes a Mandatory Change then:

- (i) in the case of a Mandatory Change falling within paragraph (b) of the definition of Mandatory Change which constitutes a Network Change, such Mandatory Change may be made if it is approved in accordance

with Part G of the Network Code and, once approved, if the relevant person commits to make such Mandatory Change, the Model Assumptions will be revised accordingly, provided that, if required, the prior approval of the ORR to the adoption of those revisions to the Model Assumptions has been granted pursuant to Clause 8.1.8 (*ORR approval of changes to the Capacity Reservation Assumptions*) and/or the ORR has not otherwise determined pursuant to Clause 8.1.9(iv); or

(ii) in the case of a Mandatory Change falling within paragraph (b) of the definition of Mandatory Change which does not constitute a Network Change, if the Network Code determines that such Mandatory Change should proceed, then:

(a) if the Network Code determines the manner in which the conflict between the relevant Crossrail Access Rights and the relevant Access Rights or Reserved Capacity is to be resolved, following the conclusion of the relevant process under the Network Code, if the relevant person commits to make such Mandatory Change the Model Assumptions shall be revised to reflect that determination, provided that, if required, the prior approval of the ORR to the adoption of those revisions to the Model Assumptions has been granted pursuant to Clause 8.1.8 (*ORR approval of changes to the Capacity Reservation Assumptions*) and/or the ORR has not otherwise determined pursuant to Clause 8.1.9(iv) (as applicable); or

(b) if the Network Code does not determine the manner in which the conflict between the relevant Crossrail Access Rights and the relevant Access Rights or Reserved Capacity is to be resolved, following the conclusion of the relevant process under the Network Code, if the relevant person commits to make such Mandatory Change Clause 8.10 (*Adjustment of Crossrail Access Rights*) shall apply; or

(iii) in the case of a Mandatory Change falling within paragraph (a) or (c) of the definition of Mandatory Change, if the Optionholder notifies Network Rail that it will fund such Mandatory Change to the extent required to ensure that no Crossrail Access Rights conflict with any Access Rights or Reserved Capacity:

(a) Clause 8.10 (*Adjustment of Crossrail Access Rights*) shall not apply;

(b) the relevant person may make such Mandatory Change; and

(c) if the relevant person commits to make such Mandatory Change, the Parties shall agree such amendments to the Model Assumptions (if any) as are required to reflect to the fact that the Optionholder has agreed to fund such Mandatory Change, which may involve accepting, rejecting or modifying the relevant Interim Model Assumptions,

provided that, if required, the prior approval of the ORR to the adoption of those Interim Model Assumptions as Model Assumptions has been granted pursuant to Clause 8.1.8 (*ORR approval of changes to the Capacity Reservation Assumptions*) and/or the ORR has not otherwise determined pursuant to Clause 8.1.9(iv) (as applicable); or

- (iv) in the case of a Mandatory Change falling within:
 - (a) paragraph (a) or (c) of the definition of Mandatory Change, if the Optionholder notifies Network Rail that it will not fund such Mandatory Change to the extent required to ensure that no Crossrail Access Rights conflict with any Access Rights or Reserved Capacity; or
 - (b) paragraph (d) of the definition of Mandatory Change, Clause 8.10 (*Adjustment of Crossrail Access Rights*) shall apply.

8.5.4 Optionholder Optional Change

If it is agreed or determined that any Relevant Action referred to in Clause 8.5.1 (*Mandatory Change or Optionholder Optional Change*) constitutes an Optionholder Optional Change, the Optionholder shall notify Network Rail of whether it will make such Optionholder Optional Change and then:

- (i) if the Optionholder notifies Network Rail that it will not make such Optionholder Optional Change, the Optionholder shall not make such Optionholder Optional Change without again going through the applicable process set out in this Clause 8 (*Change Control*) and the relevant Interim Model Assumptions shall not be adopted as the Model Assumptions; or
- (ii) if the Optionholder notifies Network Rail that it will make such Optionholder Optional Change, Clause 8.10 (*Adjustment of Crossrail Access Rights*) shall apply.

8.6 Grant of Access Rights

8.6.1 Prior to granting Access Rights

- (i) Subject to Clause 8.2.1 (*Duration*), prior to Network Rail granting any Access Rights on the Routes listed in Schedule 2 (*The Routes*) to any Operator after the date of this Access Option, Network Rail shall serve a notice on the Optionholder giving full details of the Access Rights it proposes to grant. Other than where Network Rail is otherwise required to do so by the ORR, Network Rail shall not grant any Access Rights other than in accordance with this Clause 8.6 (*Grant of Access Rights*).
- (ii) Following the service by Network Rail of a notice in accordance with Clause 8.6.1(i), the Parties shall promptly meet and use reasonable endeavours to agree how the Model Assumptions would have to be revised if Network Rail granted such Access Rights (the “**Access Rights Assumptions**”). If the Parties fail to agree the Access Rights

Assumptions within 10 Working Days of the service by Network Rail of a notice in accordance with Clause 8.6.1(i) or such longer period as the Parties may agree, then either Party may refer the matter to the Model Expert in accordance with Clause 8.13 (*Model Expert Determination*).

- (iii) Upon the agreement or determination of the Access Rights Assumptions, Network Rail:
 - (a) shall procure that the Railway Systems Model is run using the Access Rights Assumptions; and
 - (b) following the Railway Systems Model having been run, shall promptly deliver a copy of the Model Report to the Optionholder.

8.6.2 Model Report shows no conflict

If the Model Report delivered by Network Rail in accordance with Clause 8.6.1(iii)(b) shows that Network Rail granting the relevant Access Right, would not result in any Crossrail Access Rights conflicting with any Access Rights or Reserved Capacity, then:

- (i) in the case of any Non-Reserved Rights, if and when Network Rail grants such Non-Reserved Rights, the relevant Access Rights Assumptions relating to those Non-Reserved Rights shall be adopted as the Model Assumptions, provided that, if required, the prior approval of the ORR to the adoption of those Access Rights Assumptions relating to those Non-Reserved Rights as Model Assumptions has been granted pursuant to Clause 8.1.8 (*ORR approval of changes to the Capacity Reservation Assumptions*) and/or the ORR has not otherwise determined pursuant to Clause 8.1.9(iv) (as applicable); and
- (ii) subject to ORR approval, Network Rail may grant the relevant Access Rights and if Network Rail grants the relevant Access Rights Network Rail shall not be in breach of this Access Option if such Access Rights do in fact conflict with the Crossrail Access Rights.

8.6.3 Model Report shows conflict

If the Model Report delivered by Network Rail in accordance with Clause 8.6.1(iii)(b) shows that if Network Rail granted the relevant Access Right, one or more Crossrail Access Rights would conflict with any Access Rights or Reserved Capacity, then the Parties shall promptly meet and use reasonable endeavours to determine whether revisions can be made to the Model Assumptions so that Network Rail can grant the relevant Access Rights whilst ensuring that this would not result in any Crossrail Access Rights conflicting with any Access Rights or Reserved Capacity and Network Rail shall have the same obligations as it has under Clause 8.6.1(iii) in respect of any such revised Model Assumptions. Network Rail shall provide the ORR with a copy of any Model Report produced pursuant to this Clause 8.6.3 (*Model Report shows conflict*) then:

- (i) to the extent that the relevant Access Right represents or corresponds to Reserved Capacity and it is agreed or determined in accordance with Clause 8.6.4 (*Reference to Model Expert*) that revisions cannot be made to the Model Assumptions so that Network Rail can grant the relevant Access Right whilst ensuring that this would not result in any Crossrail Access Rights conflicting with any Access Rights or Reserved Capacity, Clause 8.10 (*Adjustment of Crossrail Access Rights*) shall apply; and
- (ii) to the extent that the relevant Access Right does not represent or correspond to Reserved Capacity, that Access Right shall not be granted by Network Rail unless and until such conflict is resolved.

Nothing in this Access Option shall preclude the granting of Access Rights to the extent they represent or correspond to Reserved Capacity.

8.6.4 Reference to Model Expert

If:

- (i) the Parties fail to agree any revisions to the Model Assumptions in accordance with Clause 8.6.3 (*Model Report shows conflict*) within 10 Working Days of the delivery of the relevant Model Report or such longer period as the Parties may agree; or
- (ii) no Model Report has been delivered by Network Rail in accordance with Clause 8.6.2 (*Model Report shows conflict*) within three months of the relevant notice being given in accordance with Clause 8.6.1(i) or such longer period as the Parties may agree, which shows that Network Rail granting the relevant Access Rights would not result in any Crossrail Access Rights conflicting with any Access Rights or Reserved Capacity,

then either Party may refer the matter to the Model Expert in accordance with Clause 8.13 (*Model Expert Determination*).

8.6.5 Network Rail Action Conflicting Rights

If Network Rail grants Access Rights which constitute Network Rail Action Conflicting Rights, Clauses 5.7 (*Network Rail Action Conflicting Rights – Network Rail Action*), 5.8 (*Network Rail Action Conflicting Rights - Optionholder Action*) and 9.4 (*Indemnity in respect of Network Rail Action Conflicting Rights*) shall apply.

8.7 Errors in Model Assumptions

8.7.1 Notification of error

- (i) If, at any time, either Party (acting reasonably) believes that any Model Assumption is incorrect in any material respect, other than as a result of a breach by that Party of its obligations under Clause 8.3.1 (*Relevant Action Notification*), it shall promptly give notice to the other Party of that fact, giving full details of the error and any revisions it proposes should be made to correct that error.

(ii) Promptly thereafter, the Parties shall meet and use reasonable endeavours to agree whether the Model Assumptions are incorrect in any material respect and, if so, what revisions should be made to the Model Assumptions to rectify the agreed error.

(iii) If the Parties:

(a) cannot agree whether the Model Assumptions are incorrect in any material respect; or

(b) fail to agree what revisions should be made to the Model Assumptions to rectify an agreed error,

within 10 Working Days of the service of a notice in accordance with Clause 8.7.1(i) or such longer period as the Parties may agree, then either Party may refer the matter to the Model Expert in accordance with Clause 8.13 (*Model Expert Determination*).

8.7.2 Testing the revised Model Assumptions

Upon the agreement or determination of the proposed revisions to the Model Assumptions, Network Rail:

(i) shall procure that the Railway Systems Model is run using the proposed revisions to the Model Assumptions; and

(ii) following the Railway Systems Model having been run, shall promptly deliver a copy of the Model Report to the Optionholder.

8.7.3 Model Report shows conflict

If the relevant Model Report shows that if the proposed revisions to the Model Assumptions were made, one or more Crossrail Access Rights would conflict with any Access Rights or Reserved Capacity, then the Parties shall promptly meet and use reasonable endeavours to determine whether additional proposed revisions can be made to the Model Assumptions so as to avoid such conflict and Network Rail shall have the same obligations as it has under Clause 8.7.2 (*Testing the revised Model Assumptions*) in respect of any such additional proposed revisions to the Model Assumptions.

8.7.4 Model Report shows no conflict

If any Model Report delivered by Network Rail in accordance with Clause 8.7.2 (*Testing the revised Model Assumptions*) or 8.7.3 (*Model Report shows conflict*) shows that making the proposed revisions to the Model Assumptions would not result in any Crossrail Access Rights conflicting with any Access Rights or Reserved Capacity, the proposed revisions to the Model Assumptions shall be adopted as the Model Assumptions, provided that, if required, the prior approval of the ORR to the revisions to the Model Assumptions has been granted pursuant to Clause 8.1.8 (*ORR approval of changes to the Capacity Reservation Assumptions*) and/or the ORR has not otherwise determined pursuant to Clause 8.1.9(iv) (as applicable).

8.7.5 Reference to Model Expert

If:

- (i) the Parties fail to agree any additional revisions to the Model Assumptions in accordance with Clause 8.7.3 (*Model Report shows conflict*) within 10 Working Days of the delivery of the relevant Model Report or such longer period as the Parties may agree, then either Party may refer the matter to the Model Expert in accordance with Clause 8.13 (*Model Expert Determination*); or
- (ii) no Model Report has been delivered by Network Rail in accordance with Clause 8.7.2 (*Testing the revised Model Assumptions*) or 8.7.3 (*Model Report shows conflict*) within three months of the relevant notice being given in accordance with Clause 8.7.1 (*Notification of error*) or such longer period as the Parties may agree, which shows that making the proposed revisions to the Model Assumptions would not result in any Crossrail Access Rights conflicting with any Access Rights or Reserved Capacity,

then either Party may refer the matter to the Model Expert in accordance with Clause 8.13 (*Model Expert Determination*).

8.7.6 Determination of conflict

If it is agreed or determined that the final Model Report produced pursuant to this Clause 8.7 (*Errors in the Model Assumptions*) shows that if the proposed revisions to the Model Assumptions were made, one or more Crossrail Access Rights would conflict with any Access Rights or Reserved Capacity, Clause 8.10 (*Adjustment of Crossrail Access Rights*) shall apply.

8.8 Errors in the Railway Systems Model

8.8.1 Notification of problem

- (i) If, at any time, either Party (acting reasonably) believes that:
 - (a) any Model Report does not represent a fair and reasonable simulation of the operation of the Railway System; or
 - (b) the Railway Systems Model is incorrect in any material respect,

other than as a result of a breach by that Party of its obligations under Clause 8.3.1 (*Relevant Action Notification*), it shall promptly give notice to the other Party of that fact, giving full details of the perceived problem and, in the case of a notice from Network Rail, its proposals for rectification.

- (ii) Promptly thereafter, the Parties shall meet and use reasonable endeavours to agree whether such perceived problem does exist and, if so, what appropriate action should be taken to rectify the agreed problem.
- (iii) If the Parties:
 - (a) cannot agree whether such perceived problem does exist; or
 - (b) fail to agree what appropriate action should be taken to rectify the agreed problem,

within 10 Working Days of the service of a notice in accordance with Clause 8.8.1(i) or such longer period as the Parties may agree, then either Party may refer the matter to the Model Expert in accordance with Clause 8.13 (*Model Expert Determination*).

8.8.2 Interim Railway Systems Model

Upon the agreement or determination of the action that should be taken to rectify the agreed problem, Network Rail shall procure that such action is taken and a revised version of the Railway Systems Model (the “**Interim Railway Systems Model**”) is produced. The Optionholder may require that a suitably qualified and experienced third party reviews the action which is taken and the Interim Railway Systems Model, in which case, Network Rail shall provide that third party with such assistance as is reasonably necessary to enable that third party to review the action which is taken and the Interim Railway Systems Model. Promptly thereafter, Network Rail:

- (i) shall procure that the Interim Railway Systems Model is run using the then current Model Assumptions; and
- (ii) following the Interim Railway Systems Model having been run, shall promptly deliver a copy of the Model Report to the Optionholder.

8.8.3 Model Report shows conflict

If the relevant Model Report shows that if the Interim Railway Systems Model was adopted as the Railway Systems Model, one or more Crossrail Access Rights would conflict with any Access Rights or Reserved Capacity, then the Parties shall promptly meet and use reasonable endeavours to determine whether further revisions can be made to the Interim Railway Systems Model or whether revisions can be made to the Model Assumptions so as to avoid such conflict and Network Rail shall have the same obligations as it has under Clause 8.8.2 (*Interim Railway Systems Model*) in respect of any such revised Interim Railway Systems Model and/or revised Model Assumptions.

8.8.4 Model Report shows no conflict

If any Model Report delivered by Network Rail in accordance with Clause 8.8.2 (*Interim Railway Systems Model*) or 8.8.3 (*Model Report shows conflict*) shows that adopting the Interim Railway Systems Model as the Railway Systems Model would not result in any Crossrail Access Rights conflicting with any Access Rights or Reserved Capacity:

- (i) the Interim Railway Systems Model shall be adopted as the Railway Systems Model; and
- (ii) where relevant, any revised Model Assumptions agreed in accordance with Clause 8.8.3 (*Model Report shows conflict*) shall be adopted as the Model Assumptions, provided that, if required, the prior approval of the ORR to the adoption of the revisions to the Model Assumptions has been granted pursuant to Clause 8.1.8 (*ORR approval of changes to the Capacity Reservation Assumptions*) and/or the ORR has not otherwise determined pursuant to Clause 8.1.9(iv),

provided that both Parties are of the view that such Model Report does represent a fair and reasonable simulation of the operation of the Railway System.

8.8.5 Reference to Model Expert

If:

- (i) the Parties fail to agree any further revisions to the Interim Railway Systems Model or to the Model Assumptions in accordance with Clause 8.8.3 (*Model Report shows conflict*) within 10 Working Days of the delivery of the relevant Model Report or such longer period as the Parties may agree; or
- (ii) no Model Report has been delivered by Network Rail in accordance with Clause 8.8.2 (*Interim Railway Systems Model*) or 8.8.3 (*Model Report shows conflict*) within three months of the relevant notice being given in accordance with Clause 8.8.1 (*Notification of problem*) or such longer period as the Parties may agree, which shows that:
 - (a) adopting the Interim Railway Systems Model as the Railway Systems Model; and
 - (b) adopting any revised Model Assumptions agreed in accordance with Clause 8.8.3 (*Model Report shows conflict*) as the Model Assumptions,

would not result in any Crossrail Access Rights conflicting with any Access Rights or Reserved Capacity,

then either Party may refer the matter to the Model Expert in accordance with Clause 8.13 (*Model Expert Determination*).

8.8.6 Determination of conflict

If it is agreed or determined that the final Model Report produced pursuant to this Clause 8.8 (*Errors in the Railway Systems Model*) shows that:

- (i) if the Interim Railway Systems Model was adopted as the Railway Systems Model; and
- (ii) if any revised Model Assumptions agreed in accordance with Clause 8.8.3 (*Model Report shows conflict*) were adopted as the Model Assumptions,

one or more Crossrail Access Rights would conflict with any Access Rights or Reserved Capacity, Clause 8.10 (*Adjustment of Crossrail Access Rights*) shall apply.

8.9 Modification or Replacement of the Railway Systems Model

8.9.1 Model Alteration

The Parties acknowledge that Network Rail may wish to:

- (i) modify any component of the Railway Systems Model to improve its simulation quality; and/or

- (ii) develop a new railway systems model or new elements of the Railway Systems Model for use in connection with the utilisation of the Network and the granting of access rights,

(each a “**Model Alteration**”).

8.9.2 Agreement of Model Alterations

If, at any time, Network Rail wishes to undertake a Model Alteration, it shall first give notice to the Optionholder, the ORR and the Interested Parties of that fact, giving full details of the proposed Model Alteration and the reasons why Network Rail wishes to undertake the proposed Model Alteration. Promptly thereafter, the Parties shall meet to discuss the action Network Rail proposes to take in relation to the proposed Model Alteration including, in the case of a Model Alteration falling within Clause 8.9.1(i) only, what revisions, if any, would need to be made to the Railway Systems Model and/or the Model Assumptions if the proposed Model Alteration was undertaken.

8.9.3 Third Party IP Owner

If, at any time, either Party becomes aware that any Third Party IP Owner requires a variation be made to any of the computer programmes which form part of the Railway Systems Model, it shall promptly give notice to the other Party of that fact. Promptly thereafter, the Parties shall meet and use reasonable endeavours to agree the action that should be taken in relation to the continued operation and use of the Railway Systems Model.

8.9.4 Procuring the relevant action is taken

Upon the:

- (i) agreement of the action to be taken in accordance with Clause 8.9.2 (*Agreement of Model Alterations*); or
- (ii) agreement or determination of the action to be taken in accordance with Clause 8.9.3 (*Third Party IP Owner*),

the Parties shall notify the ORR of the agreement or determination of the action to be taken and, unless the ORR has notified the Parties of an objection thereto within 6 weeks of such notification, Network Rail shall:

- (a) prior to procuring that any such action is taken, procure that the Railway Systems Model is run using the then current Model Assumptions and following the Railway Systems Model having been run, shall promptly deliver a copy of the Model Report to the Optionholder; and
- (b) following the Railway Systems Model having been run, procure that such action is taken.

The Optionholder may require that a suitably qualified and experienced third party audits such action, including any revalidation, revisions to, or replacement of, the Railway Systems Model and/or the Model Assumptions, in which case, Network Rail shall provide that third party with such assistance as is reasonably necessary to enable that third party to review the action which is taken and the Interim Railway Systems Model.

8.9.5 Procuring the revised Railway Systems Model is run

Promptly following the completion of any revalidation, revisions to, or replacement of, the Railway Systems Model and/or the Model Assumptions, Network Rail:

- (i) shall procure that the revised or replaced Railway Systems Model is run using the revised or replaced Model Assumptions; and
- (ii) following the Railway Systems Model having been run, shall promptly deliver a copy of the Model Report to the Optionholder.

8.9.6 Material Differences

- (i) Promptly thereafter, the Parties shall meet to consider if the Model Report delivered by Network Rail in accordance with Clause 8.9.5(ii) produces analogous results in relation to the Crossrail Access Rights and the Access Rights to the results produced by the Model Report delivered by Network Rail in accordance with Clause 8.9.4(a).
- (ii) If material differences are shown to exist, the Parties shall use reasonable endeavours to agree further modifications to the Railway Systems Model and/or the Model Assumptions in order to remove those differences and Network Rail shall have the same obligations as it has under Clause 8.9.5 (*Procuring the revised Railway Systems Model is run*) in respect of any further modifications to the Railway Systems Model and/or the Model Assumptions.
- (iii) The Optionholder may require that a suitably qualified and experienced third party audits such further modifications to the Railway Systems Model and/or the Model Assumptions, in which case, Network Rail shall provide that third party with such assistance as is reasonably necessary to enable that third party to review the action which is taken and the Interim Railway Systems Model.

8.9.7 Analogous Results

When a Model Report delivered by Network Rail in accordance with Clause 8.9.5(ii) or 8.9.6(ii) produces analogous results in relation to the Crossrail Access Rights and the Access Rights to the results produced by the Model Report delivered by Network Rail in accordance with Clause 8.9.4(a), the revised or replaced Railway Systems Model and the Model Assumptions that were run to produce the Model Report delivered by Network Rail in accordance with Clause 8.9.5(ii) or 8.9.6(ii) or (as applicable) shall be adopted as the Railway Systems Model and the Model Assumptions respectively, provided that, if required, the prior approval of the ORR to the adoption of the revised Model Assumptions has been granted pursuant to Clause 8.1.8 (*ORR approval of changes to the Capacity Reservation Assumptions*) and/or the ORR has not otherwise determined pursuant to Clause 8.1.9(iv) (as applicable).

8.9.8 Optionholder's and Network Rail's Costs

- (i) In circumstances where Clause 8.9.1 (*Model Alterations*) applies, Network Rail shall on demand reimburse the Optionholder for all the

costs, fees and expenses the Optionholder properly incurs in performing its obligations under this Clause 8.9 (*Modification or Replacement of the Railway Systems Model*), including the costs of any suitably qualified and experienced third party appointed pursuant to Clause 8.9.4 (*Procuring the relevant action is taken*).

- (ii) In circumstances where Clause 8.9.1 (*Model Alterations*) applies, the Optionholder shall not be liable under Clause 16.4.1 for any costs Network Rail incurs in performing its obligations under this Clause 8.9 (*Modification or Replacement of the Railway Systems Model*).

8.9.9 Final Model Report shows conflict

If the final Model Report produced as a result of the operation of Clause 8.9.3 (*Third Party IP Owner*) shows that one or more Crossrail Access Rights conflict with any Access Rights or Reserved Capacity, Clause 8.10 (*Adjustment of Crossrail Access Rights*) shall apply.

8.10 Adjustment of Crossrail Access Rights

Where any other provision of Clause 8 (*Change Control*) provides that this Clause 8.10 (*Adjustment of Crossrail Access Rights*) shall apply and the Railway Systems Model shows that one or more Crossrail Access Rights conflict with any Access Rights or Reserved Capacity, unless the ORR directs otherwise:

- (a) the Model Assumptions shall be revised to remove the relevant Crossrail Access Rights which conflict with the relevant Access Rights or Reserved Capacity, provided that, if required, the prior approval of the ORR to the removal of the relevant Crossrail Access Rights from the Model Assumptions has been granted pursuant to Clause 8.1.8 (*ORR approval of changes to the Capacity Reservation Assumptions*) and/or the ORR has not otherwise determined pursuant to Clause 8.1.9(iv) (as applicable); and
- (b) if it is determined, whether during the capability testing referred to in Part A of Schedule 12 (*Capability Testing and Development of the Performance Regime*) or the Operations Assessment Phase, that there is a conflict between any Crossrail Access Rights which were previously removed from the Model Assumptions in accordance with Clause 8.10(a) and any Access Rights or Reserved Capacity, those conflicting Crossrail Access Rights shall be cancelled and Schedule 5 (*The Services and the Specified Equipment*) shall be amended accordingly.

8.11 Intellectual Property

8.11.1 Intellectual Property Rights of the Parties

To the extent that either Party owns Intellectual Property Rights which are necessary for the operation and/or use of the Railway Systems Model, that Party shall grant to the other Party an IPR Licence.

8.11.2 Liability of the Parties

Subject to Clause 8.11.6 (*Infringement of Intellectual Property Rights*), neither Party shall have any liability in respect of the use of any Intellectual Property Rights.

8.11.3 Third Party IP Owner

- (i) To the extent that any third party owns Intellectual Property Rights which are necessary for the operation and/or use of the Railway Systems Model (a “**Third Party IP Owner**”), each Party shall use its reasonable endeavours to procure that such Third Party IP Owner grants to Network Rail and the Optionholder separate IPR Licences.
- (ii) Prior to obtaining an IPR Licence from a Third Party IP Owner pursuant to Clause 8.11.3(i), Network Rail shall inform the Optionholder of any costs associated with obtaining that IPR Licence. After reviewing such costs, the Optionholder shall decide whether the relevant Intellectual Property Rights should be the subject of an IPR Licence or whether the relevant Intellectual Property Rights should be developed independently for the purposes of this Access Option.
- (iii) If, having used their reasonable endeavours, the Parties are unable to obtain an IPR Licence from the relevant Third Party IP Owner, each Party shall use its reasonable endeavours to procure that such Third Party IP Owner grants to Network Rail and the Optionholder a licence to use the relevant Intellectual Property Rights which is on as similar terms to an IPR Licence as is possible.

8.11.4 Inability to use third party Intellectual Property Rights

- (i) If:
 - (a) either Party is unable to obtain an IPR Licence, or a licence to use the relevant Intellectual Property Rights which is on similar terms to an IPR Licence, from any relevant Third Party IP Owner; or
 - (b) either Party (acting reasonably) believes, or a Third Party IP Owner alleges, that running the Railway Systems Model will result in a breach of any Intellectual Property Rights owned by a Third Party IP Owner,

it shall promptly give notice to the other Party of that fact, giving full details of the relevant circumstances.

- (ii) Promptly following the service of a notice in accordance with Clause 8.11.4(i), the Parties shall meet and agree what steps should be taken to mitigate and restrict the circumstances that could give rise to any claim and any Relevant Losses connected with any claim in compliance with Clause 10.1.2, including whether the Parties should continue to operate the Railway Systems Model.

8.11.5 Development of Intellectual Property Rights

The Parties agree that all Intellectual Property Rights which they develop in connection with the Railway Systems Model shall be owned by Network Rail and shall be licensed to the Optionholder by Network Rail in accordance with Clause 8.11.1 (*Intellectual Property Rights of the Parties*).

8.11.6 Infringement of Intellectual Property Rights

(i) Optionholder Indemnities

- (a) The Optionholder shall indemnify Network Rail against all Relevant Losses that Network Rail incurs as a result of the Optionholder, or any person to whom the Optionholder has sub-licensed such IPR Licence in accordance with the terms of such IPR Licence (an “**Optionholder Sub-Licensee**”), breaching the terms of any IPR Licence granted by Network Rail to the Optionholder in accordance with Clause 8.11.1 (*Intellectual Property Rights of the Parties*).
- (b) The Optionholder shall indemnify Network Rail against all Relevant Losses that Network Rail, or any person to whom Network Rail has sub-licensed such IPR Licence in accordance with the terms of such IPR Licence (a “**Network Rail Sub-Licensee**”), incurs as a result of any third party making a claim against Network Rail or any Network Rail Sub-Licensee which arises out of, or in connection with, the use by Network Rail or any Network Rail Sub-Licensee of any Intellectual Property Rights in accordance with the terms of any IPR Licence granted by the Optionholder to Network Rail in accordance with Clause 8.11.1 (*Intellectual Property Rights of the Parties*).
- (c) The Optionholder shall indemnify Network Rail against all Relevant Losses that Network Rail incurs as a result of any Third Party IP Owner making a claim against Network Rail which arises out of, or in connection with, Network Rail allowing the Optionholder or any Optionholder Sub-Licensee to use any part of the Railway Systems Model that is the subject of the Intellectual Property Rights of a Third Party IP Owner, in circumstances where:
 - (I) the Optionholder or an Optionholder Sub-Licensee does not have, or has ceased to have, a valid IPR Licence from the relevant Third Party IP Owner; and
 - (II) such action constitutes a breach of the terms of Network Rail’s IPR Licence from the relevant Third Party IP Owner, provided that the Optionholder shall not be required to indemnify Network Rail against any Relevant Losses incurred by Network Rail which result from the use of Third Party IPR after Network Rail has been advised or notified of such claim by the relevant Third Party IP Owner or another person.

(ii) Network Rail Indemnities

- (a) Network Rail shall indemnify the Optionholder against all Relevant Losses that the Optionholder incurs as a result of Network Rail or any Network Rail Sub-Licensee breaching the terms of any IPR Licence granted by the Optionholder to

Network Rail in accordance with Clause 8.11.1 (*Intellectual Property Rights of the Parties*).

- (b) Network Rail shall indemnify the Optionholder against all Relevant Losses that the Optionholder or any Optionholder Sub-Licensee incurs as a result of any third party making a claim against the Optionholder or any Optionholder Sub-Licensee which arises out of, or in connection with, the use by the Optionholder or any Optionholder Sub-Licensee of any Intellectual Property Rights in accordance with the terms of any IPR Licence granted by Network Rail to the Optionholder in accordance with Clause 8.11.1 (*Intellectual Property Rights of the Parties*).
- (c) Network Rail shall indemnify the Optionholder against all Relevant Losses that the Optionholder incurs as a result of any Third Party IP Owner making a claim against the Optionholder which arises out of, or in connection with, the Optionholder allowing Network Rail or any Network Rail Sub-Licensee to use any part of the Railway Systems Model that is the subject of the Intellectual Property Rights of a Third Party IP Owner, in circumstances where:
 - (I) Network Rail or a Network Rail Sub-Licensee does not have, or has ceased to have, a valid IPR Licence from the relevant Third Party IP Owner; and
 - (II) such action constitutes a breach of the terms of the Optionholder's IPR Licence from the relevant Third Party IP Owner, provided that Network Rail shall not be required to indemnify the Optionholder against any Relevant Losses incurred by the Optionholder which result from the use of Third Party IPR after the Optionholder has been advised or notified of such claim by the relevant Third Party IP Owner or another person.

8.12 Audit Rights

In addition to its rights under Clauses 8.8.2 (*Interim Railway Systems Model*) and 8.9.4 (*Procurring the relevant action is taken*), upon giving Network Rail reasonable notice and where reasonable grounds exist for conducting such an audit, the Optionholder may require that a suitably qualified and experienced third party audits the Railway Systems Model, any Interim Model Assumptions, any Model Assumptions and/or any Model Report, in which case Network Rail shall provide that third party with such assistance as is reasonably necessary to enable that third party to undertake such audit.

8.13 Model Expert Determination

8.13.1 Reference to the Model Expert

If agreement on any matter under this Clause 8 (*Change Control*) is not reached within a reasonable period of time, either Party may refer the Relevant Dispute for resolution in accordance with Clause 12 (*Dispute Resolution*), save where this Clause 8 (*Change Control*) provides that the Relevant Dispute is to be referred to the Model Expert, in which case this Clause 8.13 (*Model Expert Determination*) shall apply.

8.13.2 Appointment of Model Expert

- (i) If either Party wishes to refer any Relevant Dispute for resolution by the Model Expert in accordance with this Clause 8.13 (*Model Expert Determination*), it shall issue a written notice to that effect to the other Party, proposing a natural person to act as the Model Expert (a “**Model Expert Notice**”).
- (ii) Within five Working Days of the receipt of any Model Expert Notice, the Party who received the Model Expert Notice (the “**Responding Party**”) shall issue a written notice to the Party who issued the Model Expert Notice (the “**Referring Party**”) stating whether or not it agrees to the appointment of the Model Expert proposed in the Model Expert Notice and, if it does not, the identity of an alternative natural person to act as the Model Expert.
- (iii) If no Model Expert is agreed by the Parties within 10 Working Days of receipt by the Responding Party of any Model Expert Notice, either Party may request that the ORR nominates a Model Expert and the Parties shall appoint the ORR’s nominee as the Model Expert.
- (iv) The date of the appointment of the Model Expert shall be the date he confirms he is ready and willing to act as the Model Expert.

8.13.3 Appointment of replacement Model Expert

- (i) If the Model Expert resigns or is unable to act, the Parties shall appoint a replacement Model Expert by agreement. If the Parties have not agreed a replacement Model Expert within 10 Working Days of the previous Model Expert resigning or becoming unable to act, either Party may request that the ORR nominates a replacement Model Expert and the Parties shall appoint the ORR’s nominee as the replacement Model Expert.
- (ii) The replacement Model Expert shall have the power to settle any Relevant Dispute that had been referred to the previous Model Expert but had not been determined at the time when the previous Model Expert resigned or became unable to act.
- (iii) The date of the appointment of the replacement Model Expert shall be the date he confirms he is ready and willing to act as the Model Expert.

8.13.4 Written Submissions

- (i) Within 10 Working Days of the date of the appointment of the Model Expert, the Referring Party shall provide the Model Expert and the Responding Party with:
 - (a) a concise written summary of the nature of, and background to, the Relevant Dispute and the issues on which the Model Expert is being asked to make a decision;
 - (b) a written statement of any matters which the Parties have already agreed in relation to the Relevant Dispute;
 - (c) its written submission on the Relevant Dispute; and
 - (d) copies of the documentation that has an important and direct bearing on the Relevant Dispute.
- (ii) Within 10 Working Days of the receipt of the information from the Referring Party in accordance with Clause 8.13.4(i), the Responding Party shall provide the Model Expert and the Referring Party with:
 - (a) any comments it has on the Referring Party's summary of the nature of, and background to, the Relevant Dispute and the issues on which the Model Expert is being asked to make a decision;
 - (b) any comments it has on the Referring Party's statement of any matters which the Parties have already agreed in relation to the Relevant Dispute;
 - (c) its written submission on the Relevant Dispute; any
 - (d) copies of any further documentation that has an important and direct bearing on the Relevant Dispute, which was not provided by the Referring Party.

8.13.5 Reference procedure

- (i) The Model Expert shall determine the procedure for the reference, so as to ensure a just, expeditious and economical determination of the Relevant Dispute, whilst affording each Party a reasonable opportunity to make its submission and to comment on the submission of the other Party, provided that the Model Expert shall adopt any procedure agreed in writing by the Parties for the determination of the Relevant Dispute, which may include variations to the procedure set out in this Clause 8.13 (*Model Expert Determination*).
- (ii) Any communication between a Party and the Model Expert shall also be communicated contemporaneously to the other Party.
- (iii) The Model Expert shall act impartially in determining the Relevant Dispute and shall reach a determination that is fair and reasonable:
 - (a) on the basis of generally accepted modelling practice; and

- (b) whilst ensuring that the relevant Model Assumptions and / or Model Report are a reasonably realistic representation or forecast of the anticipated position on the Routes on the Services Commencement Date.
- (iv) The Model Expert shall act as an expert and not as an arbitrator and the Arbitration Act 1996 and the law relating to arbitrators and arbitrations shall not apply to the Model Expert or its decision or the procedure by which it reaches its decision.
- (v) The Model Expert shall keep confidential all information of whatever nature provided to him by or on behalf of either Party and his decision.

8.13.6 Model Expert's decision

- (i) Subject to the proviso in Clause 8.13.5(i):
 - (a) the Model Expert shall give its decision on the Relevant Dispute solely on the basis of the written information provided by the Parties and there shall not be a formal hearing; and
 - (b) the Model Expert's decision on the Relevant Dispute shall be in writing and shall:
 - (I) be communicated simultaneously to both Parties;
 - (II) comprise a statement as to the Model Expert's decision on the Relevant Dispute and detailed reasons for such decision; and
 - (III) state the cumulative total of the costs the Model Expert has incurred in reaching his decision.
- (ii) Unless both Parties agree in writing, the Model Expert's decision on the Relevant Dispute shall, in the absence of fraud or manifest error, be binding on the Parties.

8.13.7 Reference costs

The Optionholder shall bear the costs of the Model Expert. If the Model Expert's decision is in favour of the submission made by the Optionholder, Network Rail shall on demand pay to the Optionholder the properly incurred costs of the Model Expert, as stated in the Model Expert's decision.

8.13.8 Intellectual Property Rights

If the Model Expert requires a licence to use any Intellectual Property Rights for the purpose of deciding any Relevant Dispute, where such Intellectual Property Rights:

- (a) are owned by either Party, that Party shall grant to the Model Expert a royalty-free and non-exclusive licence to use such Intellectual Property Rights for the purpose of deciding the Relevant Dispute; or
- (b) are owned by a third party, each Party shall use its reasonable endeavours to procure that such third grants to the Model Expert a

royalty-free and non-exclusive licence (or a licence which is on as similar terms as is possible) to use such Intellectual Property Rights for the purpose of deciding the Relevant Dispute.

9 Liability

9.1 Performance Orders in relation to breach

In relation to any breach of this Access Option:

- 9.1.1 the Innocent Party shall be entitled to apply under Clause 12.5 (*Performance Orders*) for a Performance Order against the Party in breach; and
- 9.1.2 if a Performance Order is made, the Party against whom it has been made shall comply with it.

9.2 Compensation in relation to breach

In relation to any breach of this Access Option (which, for the avoidance of doubt, shall include any Event of Default), the Party in breach shall indemnify the Innocent Party against all Relevant Losses.

9.3 Indemnity in respect of Optionholder Action Conflicting Rights

- 9.3.1 The Optionholder shall indemnify Network Rail against all Relevant Losses which Network Rail incurs as a result of any third party making any claim against Network Rail which arises out of, or in connection with, the existence of any Optionholder Action Conflicting Right.
- 9.3.2 The Optionholder shall be entitled to resist any claim made against Network Rail, in respect of which Network Rail reasonably believes it is entitled to indemnification under Clause 9.3.1 (an "**Indemnity Claim**"), in the name of Network Rail and the Optionholder shall have the right to conduct any defence, dispute, compromise or appeal of such Indemnity Claim. Network Rail shall give the Optionholder all reasonable co-operation, access and assistance for the purpose of considering and resisting such Indemnity Claim.
- 9.3.3 Where the Optionholder is responsible for conducting any Indemnity Claim pursuant to Clause 9.3.2, it shall keep Network Rail fully informed and consult with Network Rail about the conduct of such Indemnity Claim in accordance with the procedures agreed between the Parties at that time and the Optionholder shall not pay or settle such Indemnity Claim without the consent of Network Rail (such consent not to be unreasonably withheld or delayed).
- 9.3.4 Subject to the other provisions of this Access Option, Network Rail shall be entitled to pay or settle any Indemnity Claim on such terms as it considers fit without prejudice to any other right or remedy Network Rail has if:
 - (i) the Optionholder fails to notify Network Rail of its intention to resist any Indemnity Claim within 30 Working Days after receipt of the notice referred to in Clause 10.1.1;
 - (ii) the Optionholder fails to comply in any material respect with the provisions of Clause 9.3.3; or

- (iii) Network Rail irrevocably waives any liability that the Optionholder may have to Network Rail in relation to that Indemnity Claim by giving written notice of that fact to the Optionholder.

9.4 Indemnity in respect of Network Rail Action Conflicting Rights

- 9.4.1 Subject to Clause 9.4.2, the Optionholder shall indemnify Network Rail against all Relevant Losses which Network Rail incurs in procuring the adjustment or surrender of Network Rail Action Conflicting Rights.
- 9.4.2 Clause 9.4.1 shall not apply in respect of Network Rail Action Conflicting Rights falling within:
 - (i) paragraphs (a)(i), (b)(i) and (b)(ii) of the definition of Network Rail Action Conflicting Rights;
 - (ii) paragraph (a)(ii) of the definition of Network Rail Action Conflicting Rights, only to the extent that the Funding Statement states that Network Rail is funded in relation to the anticipated costs of procuring the adjustment or surrender of those Network Rail Action Conflicting Rights;
 - (iii) paragraph (a)(iii) of the definition of Network Rail Action Conflicting Rights:
 - (a) subject to Clause 9.4.2(iii)(c), where the Funding Statement states that Network Rail is funded in relation to the anticipated costs of procuring the adjustment or surrender of those Network Rail Action Conflicting Rights, only to the extent stated in such Funding Statement; or
 - (b) subject to Clause 9.4.2(iii)(c), where the Funding Statement states that Network Rail is not funded in relation to the anticipated costs of procuring the adjustment or surrender of those Network Rail Action Conflicting Rights, to the extent Network Rail is liable for Relevant Losses in accordance with paragraph 3 of Schedule 9 (*Limitations on Liability*); or
 - (c) where the Liability Cap does not apply in respect of such Network Rail Action Conflicting Rights in accordance with paragraph 5.2.1(ii) or 5.2.1(iii) of Schedule 9 (*Limitations on Liability*).
- 9.4.3 If Network Rail reasonably believes that the costs it will incur in procuring the adjustment or surrender of any Network Rail Action Conflicting Rights are likely to result in the Optionholder having to make a payment to Network Rail under the indemnity in Clause 9.4.1, prior to taking any such action, Network Rail shall inform the Optionholder of that fact, provided that any failure by Network Rail to so inform the Optionholder shall not prejudice the Optionholder's obligations under Clauses 9.4.1 and 9.4.2.

10 Restrictions on Claims

10.1 Notification and mitigation

A Party wishing to claim under any indemnity provided for in this Access Option:

- 10.1.1 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
- 10.1.2 subject to Clause 10.1.3, 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
- 10.1.3 shall not be required to exercise any specific remedy available to it under this Access Option.

10.2 Restrictions on claims by Network Rail

Any claim by Network Rail under this Access Option against the Optionholder for indemnity for Relevant Losses shall:

- 10.2.1 save in respect of any claim under Clauses 8.11.6 (*Infringement of Intellectual Property Rights*), 9.3.1, 9.4.1 and 9.4.2, include Relevant Losses only to the extent that they constitute amounts which Network Rail would not have incurred as network owner and operator but for the relevant breach; and
- 10.2.2 give credit for any savings to Network Rail which result or are likely to result from the incurring of such amounts.

10.3 Restrictions on claims by the Optionholder

Any claim by the Optionholder under this Access Option against Network Rail for indemnity for Relevant Losses shall:

- 10.3.1 save in respect of any claim under Clauses 5.8.2 (*Agreement of Optionholder to assist*) and 8.11.6 (*Infringement of Intellectual Property Rights*), include Relevant Losses only to the extent that they constitute amounts which the Optionholder would not have incurred in its capacity as an optionholder but for the relevant breach; and
- 10.3.2 give credit for any savings to the Optionholder which result or are likely to result from the incurring of such amounts.

10.4 Restriction on claims by both Parties

Any claim for indemnity for Relevant Losses under this Access Option shall exclude such Relevant Losses:

- 10.4.1 save in respect of any claim under Clauses 5.8.2 (*Agreement of Optionholder to assist*), 8.11.6 (*Infringement of Intellectual Property Rights*), 9.3.1, 9.4.1 and 9.4.2, which do not arise naturally from the breach;

10.4.2 save in respect of any claim under Clauses 5.8.2 (*Agreement of Optionholder to assist*), 8.11.6 (*Infringement of Intellectual Property Rights*), 9.3.1, 9.4.1 and 9.4.2, which were not, or may not reasonably be supposed to have been, within the contemplation of the Parties:

- (i) at the time of the entry into of this Access Option; or
- (ii) where the breach relates to a modification or amendment to this Access Option, at the time of the making of such modification or amendment,

as the probable result of the breach;

10.4.3 unless the Parties agree otherwise, to the extent that such Relevant Losses include any amounts in respect of, or in connection with, the construction of the Central Section or the works on the Network which are authorised by the Crossrail Act or the commissioning and testing of rolling stock or any other assets required in connection with the provision of the Services save, in relation to a failure of Network Rail to perform an obligation under the Network Code, only to the extent that the Network Code so provides; and

10.4.4 to the extent that such Relevant Losses include any amounts in respect of Project Debt save, in relation to a failure of Network Rail to perform an obligation under the Network Code, only to the extent that the Network Code so provides.

10.5 No Double Counting

Notwithstanding any other provision of this Access Option, neither Party shall be entitled to make any recovery or receive any payment in accordance with the terms of this Access Option, in respect of any costs or losses it has incurred, if and to the extent that it has already recovered, or been compensated, reimbursed or paid in respect of, those costs or losses under this Access Option.

10.6 Consecutive and Concurrent Liabilities to the Optionholder and any Crossrail TOC

If any Crossrail Access Agreement is (following the exercise of rights pursuant to this Access Option) in full force and effect, then:

- (a) the Optionholder's rights under this Access Option shall exclude the Concurrent Rights and Network Rail's liability to the Optionholder shall be limited accordingly; and
- (b) Network Rail's rights under this Access Option shall exclude the Concurrent Rights and the Optionholder's liability to Network Rail shall be limited accordingly.

10.7 Limitations on liability

Schedule 9 (*Limitations on Liability*) shall have effect so as to limit the liability of the Parties to one another under this Access Option but:

10.7.1 paragraphs 1 to 5 (inclusive) of Schedule 9 (*Limitations on Liability*) shall not limit any liability:

- (i) of Network Rail arising under Clauses 5.8.2(ii), 5.8.2(iii)(a) and 8.11.6(ii); and
 - (ii) of the Optionholder arising under Clauses 8.11.6(i), 9.3.1, 9.4.1 and 9.4.2;
- 10.7.2 in relation to a failure to perform an obligation under the Network Code, only to the extent (including as to time and conditions) that the Network Code so provides; and
- 10.7.3 is subject to Clause 17.3.3 (*Fraud, death and personal injury*).

11 Governing Law

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

12 Dispute Resolution

12.1 Internal Resolution Procedure

A Relevant Dispute shall first be referred for determination in accordance with the following internal resolution procedure (the “**Internal Resolution Procedure**”):

- 12.1.1 in the event of any Relevant Dispute arising, representatives of the Parties shall seek to resolve the Relevant Dispute at a meeting to be convened within three Working Days of written notification by one Party to the other Party of the Relevant Dispute (a “**Notification**”);
- 12.1.2 further meetings may follow the meeting referred to in Clause 12.1.1 but, in any event, if the Relevant Dispute is not resolved within seven Working Days of the Notification, each Party shall, before the expiry of a period of 10 Working Days from the Notification, serve a written position paper (a “**Position Paper**”) upon the other Party. Each Party’s Position Paper shall state in reasonable detail that Party’s position and objectives in relation to the Relevant Dispute, any required redress and, where possible, comment on what is understood to be the position of the other Party;
- 12.1.3 upon each Party serving a Position Paper, a senior civil servant on behalf of the Optionholder (where the Optionholder is the Secretary of State for Transport) or a senior representative of the Optionholder (where the Optionholder is any other person) and the chief executive or other senior representative of Network Rail from time to time (or, in the case of a senior civil servant on behalf of, or a senior representative of, the Optionholder, their respective deputies in the event of their unavailability but in all cases each with the relevant delegated authority to make a final binding decision on behalf of the Optionholder) (the “**Authorised Representatives**”) shall seek to resolve the Relevant Dispute by meeting in good faith without recourse to legal or other proceedings;
- 12.1.4 in the event that resolution of the Relevant Dispute is achieved in accordance with Clause 12.1.1 or 12.1.3, the terms of such resolution shall be recorded in writing and, once such record is signed by the Authorised Representatives of each of the Parties, it shall be binding on the Parties; and

12.1.5 unless and until the terms of the resolution of the Relevant Dispute are signed by the Authorised Representatives of each of the Parties in accordance with Clause 12.1.4, all discussions and negotiations connected with the Relevant Dispute during the Internal Resolution Procedure shall be conducted in confidence and without prejudice to the rights of the Parties in any future legal or other proceedings, nor may such matters be produced or relied upon in evidence in any such proceedings.

12.2 ADRR

If any Relevant Dispute is not resolved by the Internal Resolution Procedure, such Relevant Dispute shall be referred for resolution in accordance with the Access Dispute Resolution Rules in force at the time of the referral, as modified by this Clause 12 (*Dispute Resolution*), unless:

12.2.1 any Part of the Network Code provides for an alternative dispute resolution procedure for the Relevant Dispute, in which case such alternative procedure shall apply;

12.2.2 Clause 8.13 (*Model Expert Determination*) or 12.3 (*Unpaid sums*) applies;

12.2.3 not used;

12.2.4 not used;

12.2.5 not used;

12.2.6 the Relevant Dispute relates to Clauses 8.11 (*Intellectual Property*), 11 (*Governing Law*), 13 (*Confidentiality*), 14 (*Freedom of Information*), 15 (*Assignment and Novation*), 16.1 (*Payment*), 16.2 (*Interest*), 16.3 (*VAT*), 17.7 (*Contracts (Rights of Third Parties) Act 1999*), 17.10 (*Amendments to the Crossrail Protocol*) in respect of the Optionholder acting reasonably, or paragraphs 1.1(a), 1.1(d), 1.1(e), 1.1(f) or 1.3(b) of Schedule 6 (*Events of Default and Termination*), in which case the Relevant Dispute shall be referred to the High Court of England and Wales; or

12.2.7 the Relevant Dispute relates to Clause 8.5.2 (*Dispute as to funding*) in which case the Relevant Dispute shall be referred to the ORR.

12.3 Unpaid sums

If either Network Rail fails to pay any sum which has fallen due in accordance with the provisions of Clauses 8.9.8(i) or 8.13.7 (*Reference Costs*) or the Optionholder fails to pay any sum which has fallen due in accordance with the provisions of Clause 16.4.1, then:

12.3.1 the sum due shall immediately constitute a debt due and owing from the Party who has failed to pay the sum due to the other Party;

12.3.2 such debt shall be recoverable by any means available under the laws of England and Wales; and

12.3.3 the dispute resolution procedures in Clauses 12.2 (*ADRR*) and 12.5 (*Performance Orders*) to 12.7 (*Exclusion of applications on preliminary points of law*) shall not apply to proceedings commenced under this Clause 12.3 (*Unpaid sums*).

12.4 Not used

12.5 Performance Orders

12.5.1 Power to order provisional relief

For the purposes of section 39 of the Arbitration Act 1996, should any Related Dispute be allocated in accordance with the ADRR to arbitration under Chapter F of the ADRR, the arbitrator 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.

12.5.2 Performance Orders

A “**Performance Order**”:

- (i) is an order made under Clause 12.5.3(ii), relating to a Relevant Dispute, whether by way of interim or final relief; and
- (ii) may be applied for by Network Rail or the Optionholder in the circumstances set out in Clause 9.1 (*Performance Orders in relation to breach*),

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

12.5.3 Duties of arbitrator in relation to Performance Orders

Without prejudice to any additional remedies that may be ordered by the arbitrator under Clause 12.6 (*Remedies*), where a dispute is allocated in accordance with ADRR to arbitration and a Party has applied for a Performance Order, the Parties shall agree in a Procedure Agreement, as defined in the ADRR, that:

- (i) the arbitrator shall decide as soon as possible whether the application is well founded or not; and
- (ii) if the arbitrator 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 arbitrator may also make any interim or final order directing any Party to do or to refrain from doing anything arising from such declaration which he considers just and reasonable in all the circumstances.

12.6 Remedies

The powers exercisable by the arbitrator as regards remedies shall include:

- 12.6.1** the powers specified in sections 48(3) to (5) of the Arbitration Act 1996;
- 12.6.2** the powers specified in the ADRR;
- 12.6.3** the power to make Performance Orders; and

12.6.4 the power to order within the same reference to arbitration any relief specified in Clauses 12.6.1, 12.6.2 and 12.6.3 consequent upon, or for the breach of, any interim or final Performance Order previously made.

12.7 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.

12.8 Not used

13 Confidentiality

13.1 Confidential Information

13.1.1 General obligation

Except as permitted by Clause 13.2 (*Entitlement to disclose*), each Party shall keep all Confidential Information confidential during and after the continuance of this Access Option and neither Party shall divulge any Confidential Information in any way to any third party without the prior written approval of the other Party.

13.1.2 Network Rail - Affiliates

Except as permitted by Clause 13.2 (*Entitlement to disclose*), Network Rail shall procure that its Affiliates and its and their respective officers, employees and agents shall keep confidential during and after the continuance of this Access Option, and not disclose to any person, any Confidential Information without the prior written approval of the Optionholder.

13.1.3 Optionholder - Affiliates

Except as permitted by Clause 13.2 (*Entitlement to disclose*), the Optionholder shall procure that its Affiliates and its and their respective officers, employees and agents shall keep confidential during and after the continuance of this Access Option, and not disclose to any person, any Confidential Information without the prior written approval of Network Rail.

13.1.4 Scope of Confidential Information

- (i) At the same time as one Party (the "**Disclosing Party**") provides any information to the other Party (the "**Receiving Party**") under, or for the purposes of, this Access Option, the Disclosing Party may state that it believes such information to be Confidential Information.
- (ii) If the Receiving Party disagrees that such information is Confidential Information, it shall so notify the Disclosing Party, and the Disclosing Party shall, within 10 Working Days of such notification, provide the Receiving Party with reasons why it believes such information to be Confidential Information in reasonably sufficient detail to enable the Receiving Party to be able to consider the Disclosing Party's belief properly and the Receiving Party shall give due consideration to such belief.

- (iii) If, having given due consideration to such belief, the Receiving Party still disagrees that such information is Confidential Information, it shall so notify the Disclosing Party, whereupon (and within 10 Working Days of such notification) the Disclosing Party may refer the Relevant Dispute for determination in accordance with Clause 12 (*Dispute Resolution*) and, pending such determination, such information shall be deemed to be Confidential Information.
- (iv) If the Disclosing Party does not:
 - (a) provide the Receiving Party with reasons within 10 Working Days; or
 - (b) refer the Relevant Dispute for determination in accordance with Clause 12 (*Dispute Resolution*) within 10 Working Days in accordance with Clause 13.1.4(iii),such information shall be deemed not to be Confidential Information.

13.2 Entitlement to disclose

Subject to Clauses 13.3 (*Obligations upon disclosure*) and 13.4 (*Exploitation of information*), each Party and its officers, employees and agents shall be entitled in good faith to disclose any Confidential Information without the approval of the other Party:

- 13.2.1** to the ORR;
- 13.2.2** to the Parliamentary Commissioner for Administration, a Minister of the Crown or any department of the Government of the United Kingdom, the European Commission, Parliament, the Scottish Parliament, the National Assembly for Wales, the Mayor of London, the Greater London Authority or any department or officer of any of them;
- 13.2.3** to any Affiliate of either Party;
- 13.2.4** to any officer, employee or agent of the Party in question or any person engaged in the provision of goods or services to or for the Party in question solely to the extent in each case that disclosure is required to enable the Party in question to perform its obligations under this Access Option;
- 13.2.5** to any professional advisers or consultants of the Party in question engaged by or on behalf of such Party and acting in that capacity;
- 13.2.6** to any insurer, insurance broker or insurance adviser from whom the Party in question is seeking insurance or in connection with the making of any claim under any policy of insurance;
- 13.2.7** to any lender, security trustee, bank, monoline or other institution from whom the Party in question is seeking or obtaining finance (whether directly or indirectly and whether by loan, equity participation or otherwise) 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;

- 13.2.8 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 (including the FOIA and/or the Environmental Information Regulations), the rules of any recognised stock exchange or governmental or regulatory authority having the force of law or, if not having the force of law, compliance with which is in accordance with the general practice of persons subject to the stock exchange or governmental or regulatory authority concerned;
- 13.2.9 to the extent that it has become available to the public other than as a result of a breach of confidence or any breach of this Clause 13 (*Confidentiality*);
- 13.2.10 under the order of any court or tribunal of competent jurisdiction (including the Allocation Chair or any relevant ADRR Forum, each as defined in the ADRR) or to enable a determination to be made under Clauses 8.13 (*Model Expert Determination*) and 12 (*Dispute Resolution*);
- 13.2.11 to any Nominated Undertaker, any Crossrail TOC or person to whom any powers conferred by the Crossrail Act may be devolved;
- 13.2.12 for the purpose of examination or certification of any Party's accounts or finances; and
- 13.2.13 in the case of Network Rail, solely to the extent required to fulfil its Network Licence obligations or to assist in the planning or execution of other maintenance, renewal or enhancement projects.

13.3 Obligations upon disclosure

- 13.3.1 Where disclosure is permitted without the approval of the other Party in accordance with Clauses 13.2.3 to 13.2.7 (inclusive) and 13.2.11 to 13.2.13 (inclusive), the Party making such disclosure shall:
 - (i) ensure that the recipient of the information is subject to an equivalent obligation of confidentiality as that contained in this Clause 13 (*Confidentiality*); and
 - (ii) use reasonable endeavours to ensure that any such recipient complies with such obligations.
- 13.3.2 If a Party is required to disclose any Confidential Information in the circumstances contemplated by Clauses 13.2.1, 13.2.2, 13.2.8 and 13.2.10, unless the disclosing Party is prohibited from doing so under any law or by the requirements of any regulatory body with which, in each case, the disclosing Party is obliged to comply, it shall give such notice of the disclosure to the other Party as is practical in the circumstances and shall consult and co-operate with the other Party, having due regard to the other Party's views, and take such steps as the other Party may reasonably require in order to mitigate the effects of, or limit or avoid the requirements for, any such disclosure.

13.4 Exploitation of information

Subject to Clauses 13.2.1 to 13.2.11 (other than Clauses 13.2.3 and 13.2.4), neither Party shall make use of, or exploit commercially for its own purposes, any Confidential Information issued or provided to it by or on behalf of the other Party in

connection with this Access Option otherwise than for the purposes of this Access Option, except with the written consent of the Party by whom, or on whose behalf, the information was provided.

13.5 Disclosure of breach

A Party which receives any Confidential Information shall immediately inform the Party by whom, or on whose behalf, such Confidential Information was provided of the full circumstances of any breach whatsoever of its obligations in respect of such Confidential Information.

13.6 Register of Confidential Information

Each Party shall keep a record of the Confidential Information disclosed to it and shall keep such Confidential Information (and any copies thereof) secure and so that it is readily locatable and identifiable.

13.7 Return of Confidential Information

Each Party shall promptly return to the other Party any Confidential Information (and all copies thereof) then within its possession or control if requested to do so by the other Party, provided that such request:

13.7.1 is made on or within two months after the Expiry Date or, if this Access Option lapses or is terminated earlier, is made within two months after the date on which this Access Option lapses or is terminated;

13.7.2 is reasonable; and

13.7.3 contains a sufficient description of the relevant Confidential Information to enable such information to be identified.

13.8 Retention of Confidential Information

If Network Rail or the Optionholder, 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 13.7 (*Return of Confidential Information*), it shall retain such Confidential Information in accordance with the provisions of this Clause 13 (*Confidentiality*).

13.9 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 Freedom of Information

14.1 Compliance with the FOIA and the Environmental Information Regulations

Network Rail acknowledges that the Optionholder is subject to the requirements of the FOIA and the Environmental Information Regulations and Network Rail shall assist and co-operate with the Optionholder to enable the Optionholder to comply with these Information-disclosure requirements.

14.2 Request for Information

Network Rail shall, and shall procure that its Affiliates shall:

- 14.2.1 transfer any Request for Information which relates to this Access Option to the Optionholder as soon as practicable and in any event within two Working Days of receiving such a Request for Information;
- 14.2.2 provide the Optionholder with a copy of all Information in its possession or power in the form that the Optionholder requires within five Working Days (or such other period as the Optionholder may specify) of the Optionholder requesting that Information; and
- 14.2.3 provide all necessary assistance as is reasonably requested by the Optionholder to enable the Optionholder to respond to a Request for Information which relates to this Access Option within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations (as applicable).

14.3 Representations as to disclosure

- 14.3.1 The Optionholder shall be responsible for determining in its absolute discretion whether the Information:
 - (i) is exempt from disclosure under the FOIA and the Environmental Information Regulations; or
 - (ii) is to be disclosed in response to a Request for Information which relates to this Access Option, provided that, where any Request for Information relates to Confidential Information disclosed by Network Rail under or in relation to this Access Option, the Optionholder shall, where practicable, consult with Network Rail in advance of making any disclosure under the FOIA and/or the Environmental Information Regulations (as applicable) and shall, acting reasonably, take due account of all reasonable representations made by Network Rail that such Confidential Information is exempt information.
- 14.3.2 Network Rail shall not respond directly to a Request for Information which relates to this Access Option unless expressly authorised to do so by the Optionholder.

14.4 Compliance with the FOIA Code

Without prejudice to the Optionholder's obligation under the proviso in Clause 14.3.1(ii), Network Rail acknowledges that (notwithstanding the provisions of Clause 13 (*Confidentiality*)) the Optionholder may, having regard to the Department of Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part I of the Freedom of Information Act 2000 (the "**FOIA Code**"), in certain circumstances be obliged under the FOIA or the Environmental Information Regulations to disclose Information concerning Network Rail or the Crossrail Project:

- 14.4.1 without consulting with Network Rail; or
- 14.4.2 following consultation with Network Rail, having taken its views into account.

14.5 Duration of Information retention

Network Rail shall ensure that all Information relating to this Access Option is retained for disclosure and shall permit the Optionholder to inspect such records as requested from time to time.

15 Assignment and Novation

15.1 Assignment and Novation by the Optionholder

Subject to Clause 15.6 (*ORR Approval*), the Optionholder may:

15.1.1 assign, transfer or novate the whole of its rights and obligations under this Access Option to:

- (i) Transport for London;
- (ii) subject to Clause 15.2 (*Financial standing*) a subsidiary of Transport for London;
- (iii) the Greater London Authority;
- (iv) a Secretary of State of the Government of the United Kingdom;
- (v) HM Treasury; or
- (vi) subject to Clause 15.2 (*Financial standing*), any other Government Body which, in the case of a transfer or a novation, has the appropriate expertise to perform the obligations being so transferred or novated; and

15.1.2 create any encumbrance or other security interest over the whole or any part of its rights and obligations under this Access Option in favour of any person.

15.2 Financial standing

The Optionholder may only transfer or novate the whole of its rights and obligations under this Access Option to any subsidiary of Transport for London in accordance with Clause 15.1.1(ii) or to any other Government Body in accordance with Clause 15.1.1(vi):

15.2.1 if Network Rail is satisfied, acting reasonably, that such subsidiary of Transport for London or such Government Body (as the case may be) has the necessary financial standing to undertake its obligations under this Access Option; or

15.2.2 where Network Rail is not so satisfied that such subsidiary of Transport for London or such Government Body (as the case may be) has the necessary financial standing to undertake its obligations under this Access Option, if Network Rail has, acting reasonably, agreed the financial support for the relevant obligations of such subsidiary of Transport for London or such Government Body (as the case may be) with the Optionholder.

15.3 Consequences of Assignment or Novation

Unless Network Rail agrees otherwise, Network Rail shall have no greater liability under this Access Option following any assignment, transfer or novation pursuant to

Clause 15.1 (*Assignment and Novation by the Optionholder*) than it would have had under this Access Option had no such assignment, transfer or novation (as applicable) taken place.

15.4 Assignment and Novation by Network Rail

Network Rail shall not assign, transfer, novate or create any encumbrance or other security interest over the whole or any part of its rights and obligations under this Access Option without the prior written consent of the Optionholder.

15.5 Further assurance

Network Rail shall promptly execute such documents and do and perform such further acts and things as the Optionholder considers to be necessary or expedient for the purposes of effecting any assignment, transfer or novation in accordance with Clause 15.1 (*Assignment and Novation by the Optionholder*).

15.6 ORR Approval

Any transfer or novation pursuant to this Clause 15 (*Assignment and Novation*) shall be subject to the approval of the ORR and to the conditions (if any) of the ORR's approval.

16 Payments, Interest and VAT

16.1 Payment

16.1.1 No deduction

All sums due or payable by either Party under this Access Option shall be paid free and clear of any deduction, withholding or set-off except only as may be required by law or as expressly provided.

16.1.2 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.

16.2 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 Access Option 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).

16.3 VAT

16.3.1 Payment of VAT

Where any taxable supply for VAT purposes is made under or in connection with this Access Option by one Party to the other Party, the first Party shall, in

addition to any payment required for that supply, pay such VAT as is chargeable in respect of it.

16.3.2 Reimbursement of VAT

Where under this Access Option one Party is to reimburse or indemnify the other Party in respect of any payment made or cost incurred by the other Party, the first Party shall also reimburse any VAT paid by the other Party 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.

16.3.3 VAT credit note to be issued on repayment

Where under this Access Option any rebate or repayment of any amount is payable by one Party to the other Party, 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.

16.4 Network Rail's Costs

16.4.1 Subject to Clauses 8.1.6 (*Discrepancy*), 8.3.5 (*Network Rail right to run the Railway Systems Model*), 8.9.8(ii), 8.13.7 (*Reference costs*) and 16.4.2, the Optionholder shall on demand reimburse Network Rail for all the costs, fees and expenses Network Rail properly incurs in performing its obligations under this Access Option. Network Rail shall provide reasonable supporting documentation with any such demand. Upon giving Network Rail reasonable notice and where reasonable grounds existing for conducting such an audit, the Optionholder shall be permitted to audit any such costs, fees and expenses claimed by Network Rail in accordance with this Clause 16.4.1 and Network Rail shall provide the Optionholder with such assistance as is reasonably necessary to enable the Optionholder to undertake such audit.

16.4.2 Without prejudice to Clause 9.4 (*Indemnity in respect of Network Rail Action Conflicting Rights*), the Optionholder shall not be liable under Clause 16.4.1 for any costs Network Rail incurs in performing its obligations under Clauses 5.7 (*Network Rail Action Conflicting Rights – Network Rail Action*) and 5.8 (*Network Rail Action Conflicting Rights – Optionholder Action*).

16.5 Access charges review

It is acknowledged and agreed that:

16.5.1 subject to Clause 16.5.2 below, notwithstanding the fact that no amounts are payable under this Access Option in respect of access charges at the date of its execution (although charges are payable once the option is exercised), the ORR may at any time or from time to time carry out one or more access charges reviews of all or part of this Access Option if it considers it appropriate to do so; and

16.5.2 in undertaking any access charging reviews the ORR has confirmed in its February 2014 document entitled "Further Regulatory Statement on Crossrail Charging" how the payments made or to be made by the Optionholder under Schedule 7 (*Track Charges*) and the basis of the calculation of those charges payable under Schedule 7, will be taken into account and reviewed (or not) by the ORR.

17 Miscellaneous

17.1 Non waiver

17.1.1 No waiver

No waiver by either Party of any failure by the other Party to perform any obligation under this Access Option 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 Access Option 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 Access Option 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 Access Option shall be effective unless:

- (i) such amendment is in writing and signed by, or on behalf of, the Parties; and
- (ii) if it is an amendment which requires the ORR's approval under section 22 of the Act, the amendment has been approved by the ORR.

17.2.2 Exceptions

Clause 17.2.1(ii) does not apply to amendments of the following kinds:

- (i) an amendment made by virtue of a general approval issued by the ORR under section 22 of the Act; and
- (ii) a modification made by virtue of Clause 17.4.2 (*Right to modify communication details*).

17.2.3 No Office of Rail Regulation approval needed

Modifications of the following kinds do not require the ORR's approval under section 22 of the Act and so are not subject to Clause 17.2.1(ii):

- (i) modifications effected by virtue of any of the Schedules to this Access Option; and
- (ii) modifications effected by virtue of the Network Code,

unless the relevant provision expressly states that it requires the approval of the ORR.

17.2.4 Conformed copy of Access Option

Network Rail shall produce and send to the Optionholder and to the ORR a conformed copy of this Access Option within 28 days of the making of any amendment or modification to it (including any modification made by virtue of Schedule 10 (*Network Code Modifications*)).

17.3 Entire contract and exclusive remedies

17.3.1 Entire contract

Subject to Clause 17.3.3 (*Fraud, death and personal injury*):

- (i) each Party acknowledges that it has not been induced to enter into this Access Option 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 Access Option 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
- (ii) neither Party shall have any right to rescind or terminate this Access Option either for breach of contract or for misrepresentation or otherwise, except as expressly provided for in this Access Option.

17.3.2 Exclusive remedies

- (i) Subject to Clause 17.3.3 (*Fraud, death and personal injury*) and except as expressly provided in this Access Option:
 - (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 Access Option; and
 - (b) the remedies provided for in this Access Option shall be the sole remedies available to the Parties in respect of any matters for which such remedies are available.
- (ii) Subject to Clause 17.3.3 (*Fraud, death and personal injury*), the Parties agree that:
 - (a) the provisions of Clauses 5.7 (*Network Rail Action Conflicting Rights – Network Rail Action*), 5.8 (*Network Rail Action Conflicting Rights – Optionholder Action*), 9.4.1 and 9.4.2 constitute the exclusive remedies of the Parties in relation to the existence of Network Rail Action Conflicting Rights and each Party shall exercise such remedies to the exclusion of any other remedy available to it under:
 - (l) this Access Option in relation to the existence of Network Rail Action Conflicting Rights; or

- (II) the Network Code in relation to the existence of Network Rail Action Conflicting Rights, save where any of the Clauses referred to in Clause 17.3.2(ii)(a) contemplate a Party exercising remedies under the Network Code or where a change on the Routes, which is required under any Part of the Network Code, may lead to any Network Rail Action Conflicting Right conflicting with one or more Crossrail Access Rights,
- (b) to the extent that the Access Option provides any remedy to the Optionholder in relation to a breach by Network Rail of Clause 7.3 (*Negotiation of Crossrail Access Agreements*), the Optionholder shall exercise such remedy to the exclusion of any remedy available to the Optionholder under the Network Code in respect of such breach;
- (c) the exclusive remedy of the Optionholder in relation to a breach by Network Rail of Clause 8.6.1 (*Prior to granting Access Rights*) is the existence of a Network Rail Action Conflicting Right falling within paragraph (a) of the definition of Network Rail Action Conflicting Rights and the remedies referred to in Clause 17.3.2(ii)(a); and
- (d) the provisions of Clauses 5.6 (*Optionholder Action Conflicting Rights*), 9.3 (*Indemnity in respect of Optionholder Action Conflicting Rights*) and 16.4 (*Network Rail's Costs*) constitute the exclusive remedies of the Parties in relation to the existence of Optionholder Action Conflicting Rights and each Party shall exercise such remedies to the exclusion of any other remedy available to it under this Access Option in relation to the existence of Optionholder Action Conflicting Rights.

17.3.3 Fraud, death and personal injury

Without prejudice to the generality of this Clause 17.3 (*Entire contract and exclusive remedies*), nothing in this Access Option shall exclude, restrict or limit, or purport to exclude, restrict or limit:

- (i) any liability which either Party would otherwise have to the other Party, or any right which either Party may have to rescind this Access Option, in respect of any statement made fraudulently by the other Party before the execution of this Access Option;
- (ii) any right which either Party may have in respect of fraudulent concealment by the other Party;
- (iii) 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

- (iv) 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 Access Option shall be:

- (i) in writing and may be made by letter or electronic mail; and
- (ii) shall be duly given if delivered by hand or by recorded delivery at, or by sending it by prepaid first class post or electronic mail to, the relevant address, or electronic mail address set out in Schedule 1 (*Contact Particulars*),

provided that notices given under Clauses 3 (*Duration and Termination*), 5.8.1, 6.1.3, 7.3.4(ii), 8.1.11, 8.9.2, 10.1.1 and 12 (*Dispute Resolution*) and Schedules 6 (*Events of Default and Termination*) and 11 (*Failure to use and Buy-Back*) and Part AA of Schedule 12 (*Capability Testing and Development of the Performance Regime*) may not be given by electronic mail.

For the purposes of this Clause 17.4 (*Notices*), delivery by hand shall include delivery by a reputable firm of couriers.

17.4.2 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 (*Contact Particulars*) by giving notice of such modification:

- (i) to the other Party as soon as reasonably practicable; and
- (ii) to the ORR within 14 days of such modification.

17.4.3 Deemed receipt

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

- (i) if sent by hand or recorded delivery, at the time of delivery;
- (ii) 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
- (iii) if sent by electronic mail (subject to confirmation of successful delivery by a delivery receipt) before 17:00 hours on a Working Day, on the day of transmission and, in any other case, at 09:00 hours on the next following Working Day.

17.4.4 Copyees

If Schedule 1 (*Contact Particulars*) specifies any person to whom copies of notices shall also be sent:

- (i) the Party giving a notice in the manner required by this Clause 17.4 (*Notices*) shall send a copy of the notice to such person at the address for sending copies as specified in Schedule 1 (*Contact*

Particulars), 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 (*Notices*); and

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

17.5 Counterparts

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

17.6 Survival

Those provisions of this Access Option which by their nature or implication are required to survive expiry or termination of this Access Option (including the provisions of Clauses 9.2 (*Compensation in relation to breach*), 10 (*Restrictions on Claims*) to 14 (*Freedom of Information*), 16 (*Payments, Interest and VAT*), 17.3.2 (*Exclusive remedies*), 17.3.3 (*Fraud, death and personal injury*), 17.4 (*Notices*) and 17.6 (*Survival*) and Schedule 9 (*Limitations on Liability*) and any of the provisions of Clauses 5.8.2 (*Agreement of Optionholder to Assist*), 8.11.6 (*Infringement of Intellectual Property Rights*) 9.3.1, 9.4.1 and 9.4.2 under which a claim has arisen but has not been satisfied prior to the date of termination of this Access Option, which date shall be determined in accordance with paragraph 3.4(b) of Schedule 6 (*Events of Default and Termination*)), shall so survive and continue in full force and effect, together with any other provisions of this Access Option as are 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 Clause 17.7.2 (*Application to the ORR*), no person who is not a Party to this Access Option shall have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Access Option.

17.7.2 Application to the ORR

- (i) The 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 Access Option.
- (ii) The ORR shall also have a right under the Contracts (Rights of Third Parties) Act 1999 to require that the Parties, except as otherwise agreed by the ORR, comply with the processes contained in Clauses 5.6 (*Optionholder Action Conflicting Rights*), 5.7 (*Network Rail Action Conflicting Rights – Network Rail Action*) and 5.8 (*Network Rail Action Conflicting Rights – Optionholder Action*), Clause 6 (*Service Introduction and Timetable Development*), Clause 7.3 (*Negotiation of Crossrail Access Agreements*), Clause 8 (*Change Control*) and Schedules 11 (*Failure to use and Buy-Back*) and 12 (*Capability Testing and Development of the Performance Regime*).

17.8 Partial invalidity

If, at any time, any provision in this Access Option is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of this Access Option nor the legality, validity or enforceability of such provisions under the law of any other jurisdiction shall in any way be affected or impaired thereby.

17.9 Further assurance

Each Party shall, and shall use reasonable endeavours to procure that any relevant third party shall, execute such documents and do such acts and things as the requesting Party may reasonably require for the purpose of giving to the requesting Party the full benefit of all the provisions of this Access Option, provided that the Optionholder shall be under no obligation under this Access Option to exercise, or as to the manner in which it exercises, any of its functions under any enactment by virtue of the Secretary of State for Transport being the Optionholder.

17.10 Amendments to Crossrail Protocol

Network Rail acknowledges and agrees that it will not agree to any amendments to certain definitions in the Crossrail Protocol without the prior written consent of the Optionholder (such consent not to be unreasonably withheld or delayed). For the purposes of this clause, the relevant definitions are:

- 17.10.1 "Actual Final Outturn Costs";
- 17.10.2 "Adjusted Cumulative NR Programme Costs";
- 17.10.3 "CRL Financing Charges";
- 17.10.4 "NR Programme"
- 17.10.5 "NR Programme Costs";
- 17.10.6 "Overall Target Price";
- 17.10.7 "RAB";
- 17.10.8 "Regulatory Framework";
- 17.10.9 "Transition Date"; and
- 17.10.10 "Variation",

in each case, including any embedded or referred to definitions, paragraphs or clauses within those provisions as well as any amendments to other clauses or definitions in the Crossrail Protocol that would have an impact on those definitions; provided always that nothing in this clause 17.10 shall require the consent of the Optionholder to any Variation under the Crossrail Protocol which shall continue to be governed in accordance with clause 7.4 of the Crossrail Protocol and Schedule 1 to the Crossrail Protocol .

In witness whereof the parties have delivered this Access Option as a Deed the day and year first above written.

The common seal of
Network Rail Infrastructure Limited
was affixed to this Deed in the presence of:

Robin Gisby

.....

Director

Hazel Walker

.....

Director/Secretary

For and on behalf of
The Secretary of State for Transport
by:

Mike Fuhr

.....

Authorised Signatory

Schedule 1 Contact Particulars

1 Network Rail's address for the service of notices is:

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

Tel: 020 3356 9240

Email: notices@networkrail.co.uk

All written notices to be marked:

"URGENT: ATTENTION THE COMPANY SECRETARY AND GROUP GENERAL COUNSEL"

and copied to:

Patrick Hallgate
Route Managing Director
Network Rail Infrastructure Limited
Western House,
1 Holbrook Way
Swindon
Wiltshire
SN1 1BD

Email: Patrick.Hallgate@networkrail.co.uk

2 The Optionholder's address for the service of notices is:

Secretary of State for Transport
c/o Major Projects Directorate
Department for Transport
Great Minster House
33 Horseferry Road
London SW1P 4DR

Tel: 020 7944 2941

Email: allison.phillips@dft.gsi.gov.uk

All written notices to be marked:

"URGENT: CROSSRAIL"

and copied to:

General Counsel
Department for Transport
Great Minster House
33 Horseferry Road
London SW1P 4DR

Tel: 020 7944 4770

Email: nick.olley@dft.gsi.gov.uk

3 The Office of Rail Regulation address for the service of notices is:

Office of Rail Regulation
One Kemble Street
London
WC2B 4AN

Tel: 020 7282 2000

Email: track.access@orr.gsi.gov.uk

All written notices to be marked:

Head of Access and Licensing

Schedule 2 The Routes

1 Definitions

In this Schedule 2 (*The Routes*):

“**Ancillary Routes**” means the routes listed in paragraph 4 of this Schedule 2 (*The Routes*);

“**Diversiónary Routes**” means the routes listed in paragraph 5 of this Schedule 2 (*The Routes*);

“**London Paddington (High Level)**” means the main line station located in the City of Westminster that is owned and operated by Network Rail; and

“**Main Routes**” means the routes listed in paragraph 3 of this Schedule 2 (*The Routes*).

2 Routes

The routes comprise the Main Routes, the Diversiónary Routes and the Ancillary Routes.

3 Main Routes

The Main Routes are between:

- 3.1 Maidenhead and Heathrow Airport Junction (via the Relief Lines);
- 3.2 Heathrow Tunnel Junction and Heathrow Airport Junction;
- 3.3 Heathrow Airport Junction and Ladbroke Grove (via the Relief Lines);
- 3.4 Ladbroke Grove and London Paddington (High Level);
- 3.5 Ladbroke Grove and Tottenham Court Road (via the Royal Oak Portal);
- 3.6 Tottenham Court Road and Stepney Green Junction;
- 3.7 Stepney Green Junction and Abbey Wood (via the Plumstead Portal);
- 3.8 Stepney Green Junction and Stratford (via the Pudding Mill Lane Portal); and
- 3.9 Stratford and Shenfield (via the “Electric” Lines).

4 Ancillary Routes

The Ancillary Routes are between:

- 4.1 Maidenhead and the Maidenhead Turnback Sidings;
- 4.2 Maidenhead and the Maidenhead Stabling Sidings;
- 4.3 Old Oak Common Depot and either Ladbroke Grove or Portobello Junction;
- 4.4 Ilford and Ilford Stabling Sidings;
- 4.5 Ilford Stabling Sidings and Seven Kings;
- 4.6 Gidea Park Country End Junction and Gidea Park Stabling Sidings;
- 4.7 Gidea Park and Gidea Park Stabling Sidings;
- 4.8 Gidea Park and Gidea Park Turnback Siding;
- 4.9 Shenfield and the Shenfield Eastern Sidings; and

4.10 Abbey Wood and the Abbey Wood Turnback Sidings.

5 **Diversiónary Routes**

The Diversiónary Routes are between:

5.1 Maidenhead and Heathrow Airport Junction (via the Main Lines);

5.2 Heathrow Airport Junction and Ladbroke Grove (via the Main Lines); and

5.3 Stratford and Shenfield (via the Main Lines).

Schedule 3
Collateral Agreements

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Schedule 4
Engineering Access Statement, Timetable Planning Rules and
Restrictions of Use

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Schedule 5 The Services and the Specified Equipment

1 Definitions

1.1 In this Schedule 5 (*The Services and the Specified Equipment*), unless the context otherwise requires:

“**AM Peak**” means that group of Services scheduled to depart from or arrive at Tottenham Court Road station between 07:45 hours and 09:14 hours Monday to Friday (except on Public Holidays);

“**Calling Pattern**” means a list of stations related to one or more Passenger Train Slots at which stops are to be scheduled in the Working Timetable;

“**Contingent Right**” means a right under this Schedule 5 (*The Services and the Specified Equipment*) which is not a Firm Right and which is subject to the fulfilment of all Access Proposals in respect of competing Firm Rights and any additional contingency specified in this Schedule 5 (*The Services and the Specified Equipment*);

“**Day**” means any period of 24 hours beginning at 02:00 hours and ending immediately before the next succeeding 02:00 hours, and any reference in this Schedule 5 (*The Services and the Specified Equipment*) to any named day of the week shall be to such period commencing on that named day;

“**Firm Right**” means:

- (a) in the case of a Timetable Participant, a right under its regulated access agreement in respect of the number (or quantum) of Passenger Train Slots in any specified period (including rights to Passenger Train Slots in respect of additional trains or relief services), timing (including departure and arrival times, clockface requirements, first and last Passenger Train Slots, intervals between Passenger Train Slots, Journey Times and turnaround times), routing, Specified Equipment, Calling Patterns (including rights to vary them and rights to stop short of a terminal station), rights to use particular parts of railway facilities (such as dedicated platforms at stations and routes to maintenance facilities), and for ancillary services, connection requirements, rights to Stable trains and any other characteristic of a train movement; and
- (b) in the case of Network Rail, a right under the Applicable Engineering Access Statement or the Applicable Timetable Planning Rules,

which, in either case, is not expressed to be a Contingent Right or to be subject to any contingency outside the control of the holder of the right but which is, in a case within paragraph (a) above, subject to:

- (i) the Applicable Engineering Access Statement;
- (ii) the Applicable Timetable Planning Rules;
- (iii) the exercise by Network Rail of any applicable Flexing Right; and
- (iv) the operation of any other provision of the Network Code;

“Inter-Peak” comprises that group of Services scheduled to depart from or arrive at Tottenham Court Road station (a) between 10:00 hours and 15:59 hours; and (b) between 19:00 hours and 20:59 hours, Monday to Friday (except on Public Holidays);

“Journey Time” means the time in the Working Timetable to be taken by a Service in travelling between the specified departure point and specified destination for that Service (including Pathing Time, station dwell time, performance allowances, engineering recovery allowances and any other allowances as provided for in the Applicable Engineering Access Statement and/or the Applicable Timetable Planning Rules);

“London Liverpool Street (Low Level)” means the station to be constructed underneath Finsbury Circus in the City of London as part of the Crossrail Project;

“London Paddington (High Level)” means the main line station located in the City of Westminster that is owned and operated by Network Rail;

“London Paddington (Low Level)” means the station to be constructed underneath Eastbourne Terrace in the City of Westminster as part of the Crossrail Project;

“Passenger Train Slot” means a Train Slot intended by the Train Operator to be used for the provision of a Service;

“Pathing Time” means additional time in the schedule of a train between two points, or at a single location, caused by the application of margins required by the Timetable Planning Rules between trains proceeding along or across the same piece of the Network;

“Performance Monitoring System” means the recording system which Network Rail is required to operate under Part B of the Network Code;

“PM Peak” means that group of Services scheduled to depart from or arrive at Tottenham Court Road station between 16:45 hours and 18:14 hours Monday to Friday (except on Public Holidays);

“Public Holiday” means any day, other than Saturday or Sunday, on which the banks in the City of London are not open for business;

“Regular Calling Pattern” has the meaning given to it in paragraph 4.1;

“Scheduled” means, in relation to the quantum, timing or any other characteristic of a train movement, that quantum, timing or other characteristic as included in the applicable Working Timetable;

“Service Group” means any one or more (as the context may require) of the service groups described in this Schedule 5 (*The Services and the Specified Equipment*);

“Shoulder Peak” comprises that group of Services operating Monday to Friday (except on Public Holidays) scheduled to depart from or arrive at Tottenham Court Road station in one of the following time slots:

- (a) between 07:00 hours and 07:44 hours;
- (b) between 09:15 hours and 09:59 hours;
- (c) between 16:00 hours and 16:44 hours; or
- (d) between 18:15 hours and 18:59 hours;

“Start and End” comprises that group of Services scheduled to depart from or arrive at Tottenham Court Road station before 07:00 hours and after 20:59 hours Monday to Friday (except on Public Holidays);

“Train Operator” means, as the context requires, the Optionholder or any Crossrail TOC;

“Train Service Code” or **“TSC”** means the eight-character code applied in the Performance Monitoring System and used to identify Services; and

“Weekday” means any Day (excluding a Public Holiday) which is not a Saturday or Sunday.

- 1.2** Unless otherwise stated, where in this Schedule 5 (*The Services and the Specified Equipment*) a period is expressed to be between two specific times, that period shall be inclusive of both such times.
- 1.3** The Optionholder’s rights under this Schedule 5 (*The Services and the Specified Equipment*) as to numbers of Passenger Train Slots per Day are calculated by reference to departures from the Scheduled start point on the Day in question, notwithstanding that a Passenger Train Slot may not be Scheduled to arrive at its end point until the immediately succeeding Day.

2 Passenger Train Slots

Table 2.1: Passenger Train Slots

1					2										
Service Group: Maidenhead to Tottenham Court Road ¹					Passenger Train Slots										
From	To	Via	Description	TSC	Total Weekday	Peak Times						Start and End	Inter-Peak	Saturday	Sunday
						Morning Peak			Evening Peak						
						Shoulder	AM Peak	Shoulder	Shoulder	PM Peak	Shoulder				
Maidenhead	Tottenham Court Road	Direct			52	3	6	3	3	6	3	12	16	40	36
Tottenham Court Road	Maidenhead	Direct			50	3	6	3	3	6	3	10	16	38	34

1					2										
Service Group: Maidenhead to London Paddington (High Level) ²					Passenger Train Slots										
From	To	Via	Description	TSC	Total Weekday	Peak Times						Start and End	Inter-Peak	Saturday	Sunday
						Morning Peak			Evening Peak						
						Shoulder	AM Peak	Shoulder	Shoulder	PM Peak	Shoulder				
Maidenhead	London Paddington (High Level)	Direct			0	0	0	0	0	0	0	0	0	0	0
London Paddington (High Level)	Maidenhead	Direct			2	0	0	0	0	0	0	2	0	2	2

¹ The aim for this Service Group is to provide Passenger Train Slots of reasonably consistent spacing taking account of respective quantum levels.

² The aim for this Service Group is to provide Passenger Train Slots of reasonably consistent spacing taking account of respective quantum levels.

1					2										
Service Group: Heathrow to Tottenham Court Road ³															
Service description					Passenger Train Slots										
From	To	Via	Description	TSC	Total Weekday	Peak Times						Start and End	Inter-Peak	Saturday	Sunday
						Morning Peak			Evening Peak						
						Shoulder	AM Peak	Shoulder	Shoulder	PM Peak	Shoulder				
Heathrow Tunnel Junction	Tottenham Court Road	Direct			75	3	6	3	3	6	3	19	32	77	73
Tottenham Court Road	Heathrow Tunnel Junction	Direct			75	3	6	3	3	6	3	19	32	75	71

1					2										
Service Group: Heathrow to London Paddington (High Level) ⁴															
Service description					Passenger Train Slots										
From	To	Via	Description	TSC	Total Weekday	Peak Times						Start and End	Inter-Peak	Saturday	Sunday
						Morning Peak			Evening Peak						
						Shoulder	AM Peak	Shoulder	Shoulder	PM Peak	Shoulder				
Heathrow Tunnel Junction	London Paddington (High Level)	Direct			3	0	0	0	0	0	0	3	0	3	3
London Paddington (High Level)	Heathrow Tunnel Junction	Direct			5	0	0	0	0	0	0	5	0	5	5

³ The aim for this Service Group is to provide Passenger Train Slots of reasonably consistent spacing taking account of respective quantum levels.

⁴ The aim for this Service Group is to provide Passenger Train Slots of reasonably consistent spacing taking account of respective quantum levels.

1					2										
Service Group: London Paddington (Low Level) to Tottenham Court Road ⁵															
Service description					Passenger Train Slots										
From	To	Via	Description	TSC	Total Weekday	Peak Times						Start and End	Inter-Peak	Saturday	Sunday
						Morning Peak			Evening Peak						
						Shoulder	AM Peak	Shoulder	Shoulder	PM Peak	Shoulder				
London Paddington (Low Level)	Tottenham Court Road	Direct			174	11	21	5	7	23	9	34	64	147	135
Tottenham Court Road	London Paddington (Low Level)	Direct			169	8	22	12	5	17	9	29	67	151	139

Note: Service Group: London Paddington (Low Level) to Tottenham Court Road operates entirely “off network”. The number of Passenger Train Slots for this Service Group does not form part of the Access Option and may be varied to achieve a suitable service pattern for central areas.

1					2										
Service Group: West Drayton to Tottenham Court Road ⁶															
Service description					Passenger Train Slots										
From	To	Via	Description	TSC	Total Weekday	Peak Times						Start and End	Inter-Peak	Saturday	Sunday
						Morning Peak			Evening Peak						
						Shoulder	AM Peak	Shoulder	Shoulder	PM Peak	Shoulder				
West Drayton	Tottenham Court Road	Direct			6	1	3	2	0	0	0	0	0	0	0
Tottenham Court Road	West Drayton	Direct			11	2	2	0	1	3	1	2	0	0	0

⁵ The aim for this Service Group is to provide Passenger Train Slots of reasonably consistent spacing taking account of respective quantum levels.

⁶ The aim for this Service Group is to provide Passenger Train Slots of reasonably consistent spacing taking account of respective quantum levels.

1					2										
Service Group: Tottenham Court Road to Gidea Park ⁷															
Service description					Passenger Train Slots										
From	To	Via	Description	TSC	Total Weekday	Peak Times						Start and End	Inter-Peak	Saturday	Sunday
						Morning Peak			Evening Peak						
						Shoulder	AM Peak	Shoulder	Shoulder	PM Peak	Shoulder				
Tottenham Court Road	Gidea Park	Direct			3	0	3	0	0	0	0	0	0	0	0
Gidea Park	Tottenham Court Road	Direct			3	0	0	0	0	3	0	0	0	0	0

1					2										
Service Group: Tottenham Court Road to Shenfield ⁸															
Service description					Passenger Train Slots										
From	To	Via	Description	TSC	Total Weekday	Peak Times						Start and End	Inter-Peak	Saturday	Sunday
						Morning Peak			Evening Peak						
						Shoulder	AM Peak	Shoulder	Shoulder	PM Peak	Shoulder				
Tottenham Court Road	Shenfield	Direct			140	9	15	6	7	17	8	30	48	120	113
Shenfield	Tottenham Court Road	Direct			140	8	18	9	6	13	7	31	48	120	113

⁷ The aim for this Service Group is to provide Passenger Train Slots of reasonably consistent spacing taking account of respective quantum levels.

⁸ The aim for this Service Group is to provide Passenger Train Slots of reasonably consistent spacing taking account of respective quantum levels.

1					2										
Service Group: Tottenham Court Road to Abbey Wood ⁹															
Service description					Passenger Train Slots										
From	To	Via	Description	TSC	Total Weekday	Peak Times						Start and End	Inter-Peak	Saturday	Sunday
						Morning Peak			Evening Peak						
						Shoulder	AM Peak	Shoulder	Shoulder	PM Peak	Shoulder				
Tottenham Court Road	Abbey Wood	Direct			164	9	18	7	6	18	7	34	65	144	131
Abbey Wood	Tottenham Court Road	Direct			162	8	18	9	6	16	9	30	66	144	131

Note: Service Group: Tottenham Court Road to Abbey Wood operates entirely “off network”. The number of Passenger Train Slots for this Service Group does not form part of the Access Option and may be varied to achieve a suitable service pattern for central areas.

⁹ The aim for this Service Group is to provide Passenger Train Slots of reasonably consistent spacing taking account of respective quantum levels.

- 2.1** Subject to the terms of this Access Option the Optionholder has the right to have reflected in one or more Crossrail Access Agreements entered into pursuant to this Access Option the Firm Rights set out in this Schedule 5 (*The Services and the Specified Equipment*) such that those Firm Rights will be exercisable by the Crossrail TOC party to those Crossrail Access Agreements.
- 2.2** The Firm Rights referred to in paragraph 2.1 shall have the following characteristics:-
- 2.2.1** the right to the number of Passenger Train Slots in the relevant Working Timetable in respect of a Service Group as listed against each Service specified in Table 2.1 under the heading "Passenger Train Slots" and on the Days so listed.
- 2.2.2** the right to combine Passenger Train Slots at Tottenham Court Road in order to provide through Services.
- 2.2.3** the right to make Ancillary Movements of Specified Equipment to the extent necessary or reasonably required to give full effect to the other Firm Rights set out in this Schedule 5, including:
- (a) movements for the purposes of maintenance of rolling stock to and from the maintenance depots listed in Schedule 2 (*The Routes*);
 - (b) movements for driver-training purposes; and
 - (c) empty stock movements.
- 2.2.4** save with the prior written consent of Network Rail and subject to such conditions as Network Rail may reasonably impose, no Crossrail TOC shall be entitled to operate Services on the Routes on 25 and 26 December as a result of the Optionholder exercising its rights under this Access Option.
- 2.2.5** subject to paragraph 2.2.4, a Crossrail TOC has the right to operate Services in any Service Group on a Public Holiday (except for 25 and 26 December) up to the quantum specified in Table 2.1 for a Saturday for that Service Group.
- 2.3** The exercise of a Stabling right shall not count against the number of Passenger Train Slots listed in Table 2.1.

3 Intervals

Table 3.1: Service Intervals

Not used

Table 3.1a: Morning Peak Service Intervals and Frequency

Not used

Table 3.1b: Evening Peak Service Intervals and Frequency

3.1 Not used

3.2 Not used

3.3 Not used

3.4 Not used

Table 3.2: Clockface Departures

Not used

3.5 Not used

3.6 Not used

3.7 Not used

Table 3.3: Earliest and latest Passenger Train Slots

Not used

3.8 Not used

4 Calling Patterns

Table 4.1: Calling Patterns.

1					2	3
Service description						
Between	And	Via	Description	TSC	Regular Calling Pattern	Additional stations
Maidenhead	Tottenham Court Road		AM Peak & Shoulder Peak, PM Peak & Shoulder Peak		Taplow, Burnham, Slough, Langley, Iver, West Drayton, Hayes & Harlington, Southall, Hanwell, Ealing Broadway, London Paddington (Low Level), Bond Street	West Ealing, Acton Main Line
Maidenhead	Tottenham Court Road		Inter-Peak, Start and End and Weekends		Taplow, Burnham, Slough, Langley, Iver, West Drayton, Hayes & Harlington, Southall, Hanwell, Ealing Broadway, London Paddington (Low Level), Bond Street	West Ealing, Acton Main Line
Maidenhead	London Paddington (High Level)				Taplow, Burnham, Slough, Langley, Iver, West Drayton, Hayes & Harlington, Southall, Hanwell, Ealing Broadway	West Ealing, Acton Main Line
West Drayton	Tottenham Court Road				Hayes & Harlington, Southall, Hanwell, Ealing Broadway, London Paddington (Low Level), Bond Street	West Ealing, Acton Main Line
Heathrow Tunnel Junction	Tottenham Court Road				Hayes & Harlington, Southall, West Ealing, Ealing Broadway, Acton Main Line, London Paddington (Low Level), Bond Street	Hanwell
Heathrow Tunnel Junction	London Paddington (High Level)				Hayes & Harlington, Southall, West Ealing, Ealing Broadway, Acton Main Line	Hanwell

London Paddington (Low Level)	Tottenham Court Road				Bond Street	
Shenfield	Tottenham Court Road				Brentwood, Harold Wood, Gidea Park, Romford, Chadwell Heath, Goodmayes, Seven Kings, Ilford, Manor Park, Forest Gate, Maryland, Stratford, Whitechapel, London Liverpool Street (Low Level), Farringdon	
Gidea Park	Tottenham Court Road				Romford, Chadwell Heath, Goodmayes, Seven Kings, Ilford, Manor Park, Forest Gate, Maryland, Stratford, Whitechapel, London Liverpool Street (Low Level), Farringdon	
Abbey Wood	Tottenham Court Road				Woolwich, Custom House, Isle of Dogs, Whitechapel, London Liverpool Street (Low Level), Farringdon	

Regular Calling Pattern

- 4.1 In respect of each Service specified in column 1 of Table 4.1, the Train Operator has Firm Rights to the corresponding Calling Pattern listed in column 2 of that Table (the “**Regular Calling Pattern**”).

Reduced calls

- 4.2 Subject to paragraph 4.3, the Train Operator’s Access Proposal in respect of any Passenger Train Slot may contain a Calling Pattern which excludes any one or more of the stations (the “**Excluded Stations**”) listed in:

- (a) the relevant Service’s Regular Calling Pattern;
- (b) not used

- 4.3 If the Train Operator makes an Access Proposal of the kind specified in paragraph 4.2, Network Rail may insert, in respect of that Passenger Train Slot, an amount of Pathing Time up to an aggregate of:

- (a) the total of the station dwell times for the Excluded Stations; and
- (b) the time which the Specified Equipment would have required to decelerate into and accelerate out of each of the Excluded Stations.

- 4.4 Not used

Additional calls

- 4.5 The Train Operator has Contingent Rights to have Scheduled, in respect of any Passenger Train Slot, calls at one or more of the stations set out opposite the Service in column 3 of Table 4.1 being stations which do not form part of the Regular Calling Pattern.

5 Specified Equipment

Table 5.1: Specified Equipment

Not used

Standard Equipment

- 5.1** In respect of each Service specified in Tables 2.1 and 4.1, the Train Operator has Firm Rights to Passenger Train Slots matching or better than the scheduled performance characteristics of a class 341 and being capable of achieving the relevant Timetable Planning Rules.
- 5.2** Not used
- 5.3** Not used

Train Length

- 5.4** In using the Specified Equipment the Train Operator has a Firm Right to the maximum train length in metres which the Network can from time to time accommodate, subject to a right of Network Rail to vary the train length in cases where the Network cannot accommodate all Access Proposals to operate to the maximum length.
- 5.5** Nothing in paragraph 5.4 precludes the operation of trains in excess of platform lengths where appropriate measures have been taken to control, so far as is reasonably practicable, any risks introduced by the use of such longer trains.

6 Journey Times

Table 6.1 Maximum Journey Times

Not used

Journey Times

6.1 Not used

Maximum Journey Times

6.2 Not used

6.3 Not used

6.4 Not used

Table 6.2 Fastest Key Journey Times

Not used

Fastest Key Journey Times

6.5 Not used

6.6 Not used

Table 6.3 Maximum Key Journey Times

Not used

Maximum Key Journey Times

6.7 Not used

6.8 Not used

7 Provisions Applicable to Journey Time Protection

Restrictions on changes to the Engineering Access Statement and Timetable Planning Rules

7.1 Not used

Network Change

7.2 Not used

Agreement of revised Key Journey Time

7.3 Not used

Referral to mediation/arbitration

7.4 Not used

Provisions applicable to Key Journeys and Maximum Journey Times

7.5 Not used

7.6 Not used

7.7 Not used

7.8 Not used

Requirement for Office of Rail Regulation's consent

7.9 Not used

Office of Rail Regulation's Modification Notice

7.10 Not used

7.11 Not used

Office of Rail Regulation's notice for substitution of date/period

7.12 Not used

Requirements for notice under paragraph 7.12

7.13 Not used

8 Other Rights

Table 8.1: Platform Rights

Not used

Platform Rights

8.1 Not used

8.2 Not used

Table 8.2: Connections

Not used

Connections

8.3 Not used

8.4 Not used

Table 8.3: Departure Time Ranges

Not used

Departure Time Ranges

8.5 Not used

Table 8.4: Stabling Facilities

Not used

Stabling Facilities

8.6 Not used

Table 8.5: Turnaround Times

Not used

Turnaround Times

8.7 Not used

Quantum of additional calls

8.8 Not used

Table 8.6: Quantum of Additional Calls

Not used

Schedule 6

Events of Default and Termination

1 Events of Default

1.1 Optionholder Events of Default

The following are Optionholder Events of Default:

- (a) an Insolvency Event occurs in relation to the Optionholder;
- (b) any amount, which is not being disputed in good faith, that, either singly or in aggregate, exceeds the Payment Default Value is not paid by the Optionholder to Network Rail under this Access Option by the due date and remains unpaid 30 days after Network Rail has served a written notice on the Optionholder stating that:
 - (i) such amount was not paid on its due date; and
 - (ii) failure to pay such amount within 30 days of the date of service of this notice will constitute an Optionholder Event of Default under the Access Option;
- (c) any breach of this Access Option by the Optionholder which, by itself or taken together with any other breach of this Access Option by the Optionholder, results, or is likely to result, in material financial loss to Network Rail;
- (d) not used;
- (e) the Secretary of State for Transport or a senior civil servant on his behalf announcing that the Crossrail Project has been abandoned; and
- (f) not used.

1.2 Notification

The Optionholder shall notify Network Rail promptly on becoming aware of the occurrence of an Optionholder Event of Default.

1.3 Network Rail Events of Default

The following are Network Rail Events of Default:

- (a) Network Rail ceases to be authorised to be the operator of that part of the Network comprising the Routes 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 Network Rail;
- (c) any amount, which is not being disputed in good faith, that, either singly or in aggregate, exceeds the Payment Default Value is not paid by Network Rail to the Optionholder under this Access Option by the due date and remains unpaid 30 days after the Optionholder has served a written notice on Network Rail stating that:
 - (i) such amount was not paid on its due date; and

- (ii) failure to pay such amount within 30 days of the date of service of this notice will constitute a Network Rail Event of Default under the Access Option; and
- (d) any breach of this Access Option by Network Rail which, by itself or taken together with any other breach of this Access Option by Network Rail, results, or is likely to result, in material financial loss to the Optionholder.

1.4 Notification

Network Rail shall notify the Optionholder promptly on becoming aware of the occurrence of a Network Rail Event of Default.

2 Event of Default Notice

2.1 Service of an Event of Default Notice

2.1.1 Network Rail may serve an Event of Default Notice where an Optionholder Event of Default has occurred and is continuing.

2.1.2 The Optionholder may serve an Event of Default Notice where a Network Rail Event of Default has occurred and is continuing.

2.2 An Event of Default Notice

An Event of Default Notice shall specify:

- (a) the nature of the relevant Event of Default; and
- (b) whether the Party serving the Event of Default Notice (acting reasonably) considers that the Event of Default is capable of remedy, and where the Event of Default is considered to be capable of remedy:
 - (i) the steps that the Party serving the Event of Default Notice (acting reasonably) requires to remedy the Event of Default; and
 - (ii) a reasonable grace period for the defaulting Party to remedy the Event of Default.

2.3 Effect of an Event of Default Notice

2.3.1 Any Event of Default Notice shall remain in full force and effect in accordance with its terms until it has been revoked either in whole or in part in accordance with paragraph 2.3.4.

2.3.2 The service of an Event of Default Notice shall not affect the Optionholder's Firm Rights (as defined in Schedule 5 (*The Services and the Specified Equipment*)) for the purpose of making an Access Proposal.

2.3.3 If a Party is served with an Event of Default Notice which specifies an Event of Default which is capable of remedy, that Party shall:

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

- 2.3.4 Where a Party served with an Event of Default Notice has complied with its obligations under paragraph 2.3.3 (whether in whole or in part) and it is reasonable for the Event of Default Notice to be revoked (whether in whole or in part), the Party which served the Event of Default Notice shall revoke the Event of Default Notice 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 Network Rail's right to terminate

Network Rail may serve a Termination Notice on the Optionholder where:

- (a) the Optionholder fails to comply with its obligations under paragraph 2.3.3;
- (b) the Optionholder Event of Default specified in paragraph 1.1(e) has occurred; or
- (c) the Optionholder Event of Default specified in an Event of Default Notice served by Network Rail is not capable of being remedied and three months have elapsed from the service of that Event of Default Notice.

3.2 Optionholder's right to terminate

The Optionholder may serve a Termination Notice on Network Rail where:

- (a) Network Rail fails to comply with its obligations under paragraph 2.3.3;
- (b) the Network Rail Event of Default specified in paragraph 1.3(a) has occurred and is continuing; or
- (c) the Network Rail Event of Default specified in an Event of Default Notice served by the Optionholder is not capable of being remedied and three months have elapsed from the service of that Event of Default Notice.

3.3 Contents of Termination Notice

A Termination Notice shall specify a date and time, which shall be reasonable in the circumstances, at which termination is to take effect.

3.4 Effect of Termination Notice

Where one Party has served a Termination Notice on the other Party:

- (a) the service of the Termination Notice shall not affect:
 - (i) the Parties' continuing obligations under this Access Option up to the date of termination, which date shall be determined in accordance with paragraph 3.4(b);
 - (ii) any obligations which survive termination in accordance with Clause 17.6 (*Survival*); or
 - (iii) the obligations of any Crossrail TOC and Network Rail under any Crossrail Access Agreement; and

- (b) this Access Option shall terminate on the later of:
- (i) the date and time specified in the Termination Notice for the Access Option to terminate (or such later date and time as the Party which served the Termination Notice notifies to the other Party before the date and time so specified); and
 - (ii) the date on which a copy of the Termination Notice is given to the ORR.

Schedule 7 Track Charges

Part A – Supplemental Access Charge Payment

1 Payment of Supplemental Access Charge (SAC)

1.1 Obligation to pay

In any given Year, the Optionholder shall pay to Network Rail the relevant Periodic Payment in respect of the relevant Payment Period.

1.2 Payment notwithstanding no exercise of the option

1.2.1 The Periodic Payment shall, subject to paragraph 2 below, be made by the Optionholder in full whether or not the Optionholder has exercised the option granted in Clause 5.1.1 in whole or in part.

1.2.2 Where there has been a failure to use any Access Option Rights under Part A of Schedule 11 (Failure to use and Buy-Back) and there is a surrender of any such Access Option Rights, either voluntarily or through notification from the ORR, the obligation of the Optionholder to pay the Periodic Payment shall continue notwithstanding that surrender of Access Option Rights.

1.3 Calculation of Periodic Payment

The amount of the Periodic Payment shall be calculated as follows:

$$PP = \frac{APEP}{NPP \times \sqrt[1]{(1+RoR)}}.$$

where:

PP = Periodic Payment in pounds sterling

APEP = Annual Period Equivalent Payment Amount in the relevant Year;

NPP = Number of Payment Periods; and

RoR = Rate of Return in the relevant Year;

and in respect of the First Period only the Periodic Payment shall be further adjusted by multiplying by the number of actual days in the period and dividing by 28.

An example of the calculation of the Supplemental Access Charge and the Periodic Payment is set out in Appendix 1

1.4 Payment of Periodic Payment

The Optionholder shall pay or procure the payment to Network Rail of the Periodic Payment attributable to any Payment Period as invoiced by Network Rail on or after expiry of each such Payment Period within 21 days of the invoice date or 28 days after the end of the Payment Period, whichever is the later.

1.5 Disputed amounts repayment and interest rate

1.5.1 Where a party wishes to contest any invoice issued to it under this Schedule 7, it shall, within 14 days of receipt of the invoice, notify the other party in writing of the amount which is in dispute but shall pay the full amount of the

invoice, including the disputed amount, in accordance with the terms of the invoice.

1.5.2 Where a party has given notice under paragraph 1.5.1 that it disputes part of any invoiced amount:

(a) payment of such sum shall be without prejudice to the determination of whether such sum is properly due or not; and

(b) if it is subsequently determined that the disputed sum, or part of it, was not properly due the payee shall repay the disputed sum, or relevant part, to the payer together with interest (to accrue daily and be compounded monthly) at the Default Interest Rate from the date of payment until the actual date of repayment.

1.6 Additional Information

Each invoice or credit note issued by Network Rail to the Optionholder shall contain or be accompanied by the following information in respect of the period covered by the invoice or credit note:

1.6.1 amount of the Periodic Payment claimed;

1.6.2 Year and Payment Period the Periodic Payment relates to;

1.6.3 Opening Balance of SAC for that Year;

1.6.4 Closing Balance of SAC for that Year;

1.6.5 Rate of Return applicable for that Year;

1.6.6 Annual Period Equivalent Payment Amount;

1.6.7 Number of Payment Periods in the Year;

1.6.8 Whole Year Payment Amount; and

1.6.9 any SAC Buy-Back Amount relevant to the calculation,

and such other 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.

2 Effect of a Successful Buy-Back Application

In the event that there has been a successful Buy-Back Application, as from the Surrender Date the Optionholder shall only be obliged to pay Network Rail (and Network Rail shall only be entitled to invoice) the amount of the relevant Periodic Payment less the relevant SAC Buy-Back Amount. For the avoidance of doubt, any SAC Buy-Back Amount shall be a permanent reduction for the period between the relevant Surrender Date and the Expiry Date.

Part B – Supplemental Access Charge Payment

1 Definitions

In this Schedule 7 (*Track Charges*):

“**ACNR Programme Costs**” has the meaning given to it in the Crossrail Protocol;

“**Annual Adjustment**” means, in any Year, the Annual Payment Amount minus the Annual Return;

“**Annual Payment Amount**” means, in any Year, the Whole Year Payment Amount multiplied by the Length of Year divided by 365;

“**Annual Period Equivalent Payment**” means, in any Year, an amount *APEP* in pounds sterling where *APEP* is calculated using the following formula:

$$APEP = WYPA \times \frac{NPP}{13}$$

where:

WYPA = Whole Year Payment Amount in the relevant Year; and

NPP = Number of Payment Periods in the relevant Year;

“**Annual Return**” means, in any Year, the amount *AR* in pounds sterling where *AR* is calculated using the following formula:

$$AR = \frac{OB \times RoR \times LY}{365}$$

where:

OB = Opening Balance of SAC in the relevant Year;

RoR = Rate of Return in the relevant Year; and

LY = Length of Year in the relevant Year;

“**Buy-Back Application**” has the same meaning given to it in Part B of Schedule 11 (Failure to use and Buy-Back);

“**Closing Balance of SAC**” means, in any Year, an amount in pounds sterling equivalent to *CB* where *CB* is calculated using the following formula:

$$CB = [(OB - AA) \times (1 + RoI)] + (0.888 \times PCA)$$

where:

OB = Opening Balance of SAC in the relevant Year;

AA = Annual Adjustment in the relevant Year;

RoI = Rate of Inflation in the relevant Year; and

PCA = Programme Cost Adjustment in the relevant Year;

“**DfT Funding Threshold**” has the same meaning given to it in the Crossrail Protocol;

“**DfT Intervention Amount**” has the same meaning given to it in the Crossrail Protocol;

“**Final Completion**” has the same meaning given to it in the Crossrail Protocol;

“First Period” means the period equal to the length of a Railway Period or longer between the Transition Date and the end of the first whole Railway Period following the Transition Date which, for the avoidance of doubt may be between 28 days and 55 days;

“Initial Balance of SAC” means

- (a) zero point eight eight eight (0.888) multiplied by the lesser of the Adjusted Cumulative NR Programme Costs at the Transition Date and the DfT Intervention Amount;
- (b) less the amount of nineteen million three hundred thousand pounds sterling (£19,300,000);

“Length of Period” means 28 days except in the case of the First Period;

“Length of Year” means 365 days except in the first Year where the Length of Year shall be the number of days (inclusive) between the Transition Date and the 31st March next following the Transfer Date;

“Life” means, in the case where the Transition Date occurs on 1st April, initially 50 years and reducing by one at the end of each Year (but not to be reduced below zero), and in any other case initially 51 years and reducing by one at the end of each Year;

“Number of Payment Periods” means thirteen, or in the case of the first Year one more than the number of Railway Periods between the end of the First Period and the end of the Year;

“Opening Balance of SAC” means in any Year, the unamortised balance of SAC as at the beginning of the Year, being in the first Year the Initial Balance of SAC, and in subsequent Years being equal at 1st April to the Closing Balance of SAC of the previous Year;

“Payment Period” means initially the First Period and thereafter the relevant Railway Period:

“Periodic Payment” means the amount of SAC to be paid in respect of any Payment Period calculated in accordance with the formula set out in paragraph 1.3 (*Calculation of Periodic Payment*) of Part A of this Schedule 7.

“Programme Cost Adjustment” means, in any Year, the lesser of:

- (i) the Adjusted Cumulative NR Programme Costs calculated on the last day of that Year; and
- (ii) the DfT Funding Threshold;

minus the lesser of:

- (iii) the Adjusted Cumulative NR Programme Costs as calculated on the first day of that Year or, in the case of the First Year, as calculated on the Transition Date; and
- (iv) the DfT Funding Threshold

“Railway Period” means a railway period for the purposes of the railway calendar, which establishes 13 railway periods in each year where Railway Period 1 starts on 1st April of each year and ends on the last Saturday of April, Railway Periods 2 to 12 inclusive are of 4 weeks duration, with Railway Period 13 finishing on 31st March the following year;

“Rate of Return” means, in any Year, the rate, expressed as a percentage in real terms, determined by ORR in its then most recent Periodic Determination for Network Rail or its successors as ORR's assessment of the regulatory cost of debt (without the benefit of explicit credit support from the UK Government) for an efficient rail infrastructure management company;

“Rate of Inflation” means, in any Year, the rate of inflation as measured by the increase in the Retail Prices Index in the twelve months to the November which occurs during the previous Year expressed as a percentage or such other measure of price inflation as the ORR may determine should be used instead in the business of regulated railway Network Operators generally;

“Remaining Life” means, in any Year, the value of Life at the beginning of that Year;

“SAC” means the charge applied in respect of certain works undertaken by Network Rail in connection with Crossrail;

“SAC Buy-Back Amount” has the same meaning given to it in Part B of Schedule 11 (Failure to use and Buy-Back);

“Surrender Date” has the same meaning given to it in Part B of Schedule 11 (Failure to use and Buy-Back);

“Whole Year Payment Amount” means, in any Year, an amount *WYPA* in pounds sterling where *WYPA* is calculated using the following formula:

$$WYPA = \frac{(RoR \times OB)}{1 - (1+RoR)^{-RL}}$$

where:

RoR = Rate of Return in the relevant Year;

OB = Opening Balance of SAC in the relevant Year; and

RL = Remaining Life in the relevant Year;

“Year” means a period of up to 13 Railway Periods ending on 31st March and during which the value of Remaining Life is greater than zero. The first Year is to commence on the Transition Date.

Control Period 8					Control Period 9					Control Period 10					Control Period 11				
01/04/2029	01/04/2030	01/04/2031	01/04/2032	01/04/2033	01/04/2034	01/04/2035	01/04/2036	01/04/2037	01/04/2038	01/04/2039	01/04/2040	01/04/2041	01/04/2042	01/04/2043	01/04/2044	01/04/2045	01/04/2046	01/04/2047	01/04/2048
11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30
40	39	38	37	36	35	34	33	32	31	30	29	28	27	26	25	24	23	22	21
£1,267.24	£1,294.19	£1,320.95	£1,347.41	£1,373.50	£1,399.10	£1,424.12	£1,448.43	£1,471.91	£1,494.41	£1,515.78	£1,535.86	£1,554.46	£1,571.39	£1,586.44	£1,599.37	£1,609.95	£1,617.90	£1,622.92	£1,624.72
3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%
3.50%	3.50%	3.50%	3.50%	3.50%	3.50%	3.50%	3.50%	3.50%	3.50%	3.50%	3.50%	3.50%	3.50%	3.50%	3.50%	3.50%	3.50%	3.50%	3.50%
1.4106	1.4600	1.5111	1.5640	1.6187	1.6753	1.7340	1.7947	1.8575	1.9225	1.9898	2.0594	2.1315	2.2061	2.2833	2.3632	2.4460	2.5316	2.6202	2.7119
-£ 54.82	-£ 56.74	-£ 58.73	-£ 60.78	-£ 62.91	-£ 65.11	-£ 67.39	-£ 69.75	-£ 72.19	-£ 74.72	-£ 77.33	-£ 80.04	-£ 82.84	-£ 85.74	-£ 88.74	-£ 91.85	-£ 95.06	-£ 98.39	-£ 101.83	-£ 105.40
-£ 38.87	-£ 38.87	-£ 38.87	-£ 38.87	-£ 38.87	-£ 38.87	-£ 38.87	-£ 38.87	-£ 38.87	-£ 38.87	-£ 38.87	-£ 38.87	-£ 38.87	-£ 38.87	-£ 38.87	-£ 38.87	-£ 38.87	-£ 38.87	-£ 38.87	-£ 38.87
-£ 38.02	-£ 38.83	-£ 39.63	-£ 40.42	-£ 41.20	-£ 41.97	-£ 42.72	-£ 43.45	-£ 44.16	-£ 44.83	-£ 45.47	-£ 46.08	-£ 46.63	-£ 47.14	-£ 47.59	-£ 47.98	-£ 48.30	-£ 48.54	-£ 48.69	-£ 48.74
-£ 16.81	-£ 17.92	-£ 19.10	-£ 20.36	-£ 21.71	-£ 23.14	-£ 24.67	-£ 26.30	-£ 28.03	-£ 29.89	-£ 31.86	-£ 33.97	-£ 36.21	-£ 38.60	-£ 41.15	-£ 43.87	-£ 46.76	-£ 49.85	-£ 53.15	-£ 56.66
£1,250.43	£1,276.28	£1,301.85	£1,327.05	£1,351.79	£1,375.96	£1,399.45	£1,422.14	£1,443.88	£1,464.52	£1,483.92	£1,501.89	£1,518.25	£1,532.79	£1,545.29	£1,555.51	£1,563.19	£1,568.04	£1,569.78	£1,568.06
£43.77	£44.67	£45.56	£46.45	£47.31	£48.16	£48.98	£49.77	£50.54	£51.26	£51.94	£52.57	£53.14	£53.65	£54.09	£54.44	£54.71	£54.88	£54.94	£54.88
£1,294.19	£1,320.95	£1,347.41	£1,373.50	£1,399.10	£1,424.12	£1,448.43	£1,471.91	£1,494.41	£1,515.78	£1,535.86	£1,554.46	£1,571.39	£1,586.44	£1,599.37	£1,609.95	£1,617.90	£1,622.92	£1,624.72	£1,622.95
-£ 4.22	-£ 4.36	-£ 4.52	-£ 4.68	-£ 4.84	-£ 5.01	-£ 5.18	-£ 5.37	-£ 5.55	-£ 5.75	-£ 5.95	-£ 6.16	-£ 6.37	-£ 6.60	-£ 6.83	-£ 7.07	-£ 7.31	-£ 7.57	-£ 7.83	-£ 8.11
-£ 4.16	-£ 4.30	-£ 4.45	-£ 4.61	-£ 4.77	-£ 4.94	-£ 5.11	-£ 5.29	-£ 5.47	-£ 5.66	-£ 5.86	-£ 6.07	-£ 6.28	-£ 6.50	-£ 6.73	-£ 6.96	-£ 7.21	-£ 7.46	-£ 7.72	-£ 7.99

01/04/2049	01/04/2050	01/04/2051	01/04/2052	01/04/2053	01/04/2054	01/04/2055	01/04/2056	01/04/2057	01/04/2058	01/04/2059	01/04/2060	01/04/2061	01/04/2062	01/04/2063	01/04/2064	01/04/2065	01/04/2066	01/04/2067	01/04/2068
31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50
20	19	18	17	16	15	14	13	12	11	10	9	8	7	6	5	4	3	2	1
£1,622.95	£1,617.24	£1,607.20	£1,592.40	£1,572.40	£1,546.70	£1,514.76	£1,476.02	£1,429.87	£1,375.63	£1,312.62	£1,240.05	£1,157.12	£1,062.94	£956.56	£836.98	£703.11	£553.78	£387.72	£203.61
3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%
3.50%	3.50%	3.50%	3.50%	3.50%	3.50%	3.50%	3.50%	3.50%	3.50%	3.50%	3.50%	3.50%	3.50%	3.50%	3.50%	3.50%	3.50%	3.50%	3.50%
2.8068	2.9050	3.0067	3.1119	3.2209	3.3336	3.4503	3.5710	3.6960	3.8254	3.9593	4.0978	4.2413	4.3897	4.5433	4.7024	4.8669	5.0373	5.2136	5.3961
-£ 109.09	-£ 112.91	-£ 116.86	-£ 120.95	-£ 125.18	-£ 129.56	-£ 134.10	-£ 138.79	-£ 143.65	-£ 148.67	-£ 153.88	-£ 159.26	-£ 164.84	-£ 170.61	-£ 176.58	-£ 182.76	-£ 189.16	-£ 195.78	-£ 202.63	-£ 209.72
-£ 38.87	-£ 38.87	-£ 38.87	-£ 38.87	-£ 38.87	-£ 38.87	-£ 38.87	-£ 38.87	-£ 38.87	-£ 38.87	-£ 38.87	-£ 38.87	-£ 38.87	-£ 38.87	-£ 38.87	-£ 38.87	-£ 38.87	-£ 38.87	-£ 38.87	-£ 38.87
-£ 48.69	-£ 48.52	-£ 48.22	-£ 47.77	-£ 47.17	-£ 46.40	-£ 45.44	-£ 44.28	-£ 42.90	-£ 41.27	-£ 39.38	-£ 37.20	-£ 34.71	-£ 31.89	-£ 28.70	-£ 25.11	-£ 21.09	-£ 16.61	-£ 11.63	-£ 6.11
-£ 60.40	-£ 64.39	-£ 68.64	-£ 73.18	-£ 78.01	-£ 83.16	-£ 88.65	-£ 94.51	-£ 100.75	-£ 107.41	-£ 114.50	-£ 122.06	-£ 130.13	-£ 138.72	-£ 147.88	-£ 157.65	-£ 168.06	-£ 179.16	-£ 191.00	-£ 203.61
£1,562.55	£1,552.85	£1,538.56	£1,519.23	£1,494.39	£1,463.54	£1,426.11	£1,381.51	£1,329.11	£1,268.23	£1,198.12	£1,117.99	£1,026.99	£924.22	£808.68	£679.34	£535.05	£374.61	£196.73	£0.00
£54.69	£54.35	£53.85	£53.17	£52.30	£51.22	£49.91	£48.35	£46.52	£44.39	£41.93	£39.13	£35.94	£32.35	£28.30	£23.78	£18.73	£13.11	£6.89	£0.00
£1,617.24	£1,607.20	£1,592.40	£1,572.40	£1,546.70	£1,514.76	£1,476.02	£1,429.87	£1,375.63	£1,312.62	£1,240.05	£1,157.12	£1,062.94	£956.56	£836.98	£703.11	£553.78	£387.72	£203.61	£0.00
-£ 8.39	-£ 8.69	-£ 8.99	-£ 9.30	-£ 9.63	-£ 9.97	-£ 10.32	-£ 10.68	-£ 11.05	-£ 11.44	-£ 11.84	-£ 12.25	-£ 12.68	-£ 13.12	-£ 13.58	-£ 14.06	-£ 14.55	-£ 15.06	-£ 15.59	-£ 16.13
-£ 8.27	-£ 8.56	-£ 8.86	-£ 9.17	-£ 9.49	-£ 9.82	-£ 10.16	-£ 10.52	-£ 10.89	-£ 11.27	-£ 11.66	-£ 12.07	-£ 12.49	-£ 12.93	-£ 13.38	-£ 13.85	-£ 14.34	-£ 14.84	-£ 15.36	-£ 15.90

Schedule 8
Performance Regime

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Schedule 9 Limitations on Liability

1 Definitions

In this Schedule 9 (*Limitations on Liability*):

“**Liability Cap**” means:

- (a) in relation to the first Contract Year, the sum of £10,000,000 (pro rated to reflect that the first Contract Year will be less than 365 days); and
- (b) in relation to any subsequent Contract Year, the sum calculated in accordance with the following formula:

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

where:

- (i) C_1 is the sum of £10,000,000;
- (ii) C_n is the Liability Cap in the n th subsequent Contract Year (pro rated for any Contract Year of less than 365 days);
- (iii) RPI_n is the Retail Prices Index published or determined with respect to the first month of the subsequent Contract Year; and
- (iv) RPI_1 is the Retail Prices Index published or determined with respect to the month in which this Access Option became effective under Clause 3.1 (*Duration*).

2 Application

The limitations on liability contained in this Schedule 9 (*Limitations on Liability*) apply in the circumstances set out in Clause 10.7 (*Limitations on liability*).

3 Limitation on Network Rail’s liability

Subject to paragraph 5 of this Schedule 9 (*Limitations on Liability*), in relation to any claims for indemnity made by the Optionholder under this Access Option to which this Schedule 9 (*Limitations on Liability*) applies:

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

4 Limitation on the Optionholder's liability

Subject to paragraph 5 of this Schedule 9 (*Limitations on Liability*), in relation to any claims for indemnity made by Network Rail under this Access Option to which this Schedule 9 (*Limitations on Liability*) applies:

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

5 Disapplication of limitation

5.1 To the extent that any Relevant Losses:

5.1.1 result from a conscious and intentional breach by a Party; or

5.1.2 are in respect of obligations to compensate any person for liability for death or personal injury, whether resulting from the negligence of a Party or the negligence of any of its officers, employees or agents or from a failure by a Party to comply with its Safety Duties,

such Relevant Losses:

(a) shall not be subject to the limitation of liability in this Schedule 9 (*Limitations on Liability*); and

(b) shall not be taken into account when calculating the amount of Relevant Losses in respect of claims admitted or finally determined in a Contract Year for the purposes of the limitations of liability in this Schedule 9 (*Limitations on Liability*).

5.2 For the purposes of this paragraph 5 (*Disapplication of limitation*), a “conscious and intentional breach” by Network Rail:

5.2.1 shall be deemed to have occurred in relation to the grant by Network Rail of Network Rail Action Conflicting Rights, falling within:

(i) paragraphs (a)(i), (b)(i) and (b)(ii) of the definition of Network Rail Action Conflicting Rights; and

(ii) paragraph (a)(iii) of the definition of Network Rail Action Conflicting Rights if at any time prior to the grant of those Network Rail Action Conflicting Rights, the Optionholder served a notice on Network Rail requiring it to run the Railway Systems Model in order to determine whether granting such Access Rights would conflict with the Crossrail Access Rights and Network Rail failed to do so whether or not as a direct result of the subsistence of a Railway Systems Model FM Event,

but the grant by Network Rail of Network Rail Action Conflicting Rights, falling within paragraph (a)(ii) of the definition of Network Rail Action Conflicting Rights shall, in no circumstances be construed as a conscious and intentional breach by Network Rail; and

5.2.2 shall not be deemed to have occurred in relation to a failure by Network Rail to make any payment required by this Access Option, to the extent that the requirement for, or quantum of such payment, is being disputed in good faith by Network Rail, except to the extent that paragraph 5.3 applies.

5.3 For the purposes of this paragraph 5 (*Disapplication of limitation*), a “conscious and intentional breach” by Network Rail shall also be deemed to have occurred:

5.3.1 in relation to any determination made, or Performance Order issued, by an arbitrator in relation to the grant of any Crossrail Access Rights (where a Relevant Dispute is allocated in accordance with the ADRR under Chapter F of the ADRR pursuant to Clause 12 (*Dispute Resolution*)), only if Network Rail fails to comply with such determination or Performance Order within the timescales prescribed thereby or therein or, if no period is prescribed, within such period as is reasonable in the circumstances, except to the extent that compliance with such determination or Performance Order would have required Network Rail to incur any liability in excess of any limitation on Network Rail’s liability specified in this Access Option;

5.3.2 in relation to any Relevant Dispute which is referred for dispute resolution pursuant to Clause 12 (*Dispute Resolution*) to the ORR, only if Network Rail fails to comply with any determination of the ORR within the timescales prescribed thereby or therein or, if no period is prescribed by or in it, within such period as is reasonable in the circumstances, except to the extent that compliance with such determination would have required Network Rail to incur any liability in excess of any limitation on Network Rail’s liability specified in this Access Option; and

5.3.3 in relation to any direction by the ORR, if Network Rail fails to comply with such direction within the timescales prescribed thereby or therein or, only if no period is prescribed, within such period as is reasonable in the circumstances,

and in no other circumstances shall the occurrence of any event referred to in paragraphs 5.3.1 to 5.3.3 (inclusive) be construed as a conscious and intentional breach.

6 Exclusion of legal and other costs

The limits on the Parties’ liabilities provided for in paragraphs 3 (*Limitation on Network Rail’s liability*) and 4 (*Limitations on the Optionholder’s liability*) shall not apply to costs incurred in recovering any amount under a relevant claim, including legal, arbitral and other professional fees and expenses.

7 Exclusion of certain Relevant Losses

With the exception of any claim Network Rail has for Relevant Losses pursuant to Clauses 9.3.1, 9.4.1 and 9.4.2, a Party shall have no claim for Relevant Losses to the extent that such Relevant Losses result from its own negligence or breach of this Access Option.

8 Continuing breaches

Nothing in this Schedule 9 (*Limitations on Liability*) shall prevent a Party making a new claim for indemnity in respect of a continuing breach of this Access Option which:

(a) is a continuing breach of this Access Option which continues for more than 12 months;

- (b) is a continuing breach of this Access Option which continues beyond a period within which it might reasonably be expected to have been remedied; or
- (c) is a breach of a Performance Order in relation to a breach of this Access Option,

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

9 Final determination of claims

For the purpose of this Schedule 9 (*Limitations on Liability*), a determination of a claim for Relevant Losses by a Court or other tribunal shall be treated as final when there is no further right of appeal or review from such determination or in respect of which any right of appeal or review has been lost, whether by expiry of time or otherwise.

Schedule 10 Network Code Modifications

1 Automatic effect

1.1 General

This Access Option shall have effect:

- (a) with the modifications; and
- (b) from the date,

specified by the ORR in a modification notice as supplemented (where appropriate) by a notice of consent to requisite adaptations or a notice of determined requisite adaptations.

1.2 Retrospective effect

No relevant notice may have retrospective effect.

2 Modification notice

2.1 Meaning

A “**modification notice**” means a notice given by the ORR to the Parties for the purposes of this Access Option which modifies specified provisions of this Access Option (other than this Schedule 10 (*Network Code Modifications*)) by making such modifications as are consequential upon, or necessary to give full effect to, any change to the Network Code.

2.2 Contents of modification notice

A modification notice shall state:

- (a) the modifications which are to be made to this Access Option;
- (b) the date from which the specified modifications are to have effect and, if any such modifications are to have effect from different dates, the dates applicable to each modification; and
- (c) which of the specified modifications are to be subject to adaptation and the backstop date for the requisite adaptations in question.

3 Adaptation procedure

3.1 Application

This paragraph 3 (*Adaptation procedure*) applies in the case of specified modifications which are specified as being subject to adaptation.

3.2 Negotiation of adaptations

In respect of the modifications specified in each modification notice:

- (a) within 14 days of the date of service of the relevant modification notice, the Parties shall meet and in good faith negotiate and attempt to agree the requisite adaptations;

- (b) each Party shall ensure that:
 - (i) such negotiations are conducted in good faith in a timely, efficient and economical manner, with appropriate recourse to professional advice; and
 - (ii) the ORR's criteria are applied in the negotiations; and
- (c) the negotiations shall not continue after the backstop date.

3.3 Agreed adaptations - notice to the Office of Rail Regulation

If the Parties have agreed the requisite adaptations on or before the backstop date, not later than seven days after the backstop date the agreed requisite adaptations shall be sent by the Parties to the ORR for its consent, together with a statement, signed by or on behalf of both Parties:

- (a) stating the reasons for the agreed requisite adaptations;
- (b) stating the extent to which and ways in which the ORR's criteria have been applied in arriving at the agreed requisite adaptations and, in any case where they have not been applied, the reasons; and
- (c) giving such other information as the ORR may have requested.

3.4 Agreed adaptations - Office of Rail Regulation's consent

If the ORR is satisfied with the agreed requisite adaptations and it gives a notice of consent to requisite adaptations, the agreed requisite adaptations shall have effect as provided for in paragraph 3.8 (*Effect of requisite adaptations*).

3.5 Agreed requisite adaptations - Office of Rail Regulation's refusal of consent

If the ORR gives a notice to the Parties that it is not satisfied with any or all of the agreed requisite adaptations, it may:

- (a) require the Parties again to follow the procedure for negotiating requisite adaptations (with such modifications as to time limits as it specifies), in which case they shall do so; or
- (b) determine the requisite adaptations itself.

3.6 Requisite adaptations - failure to agree or submit

If the Parties have failed to submit agreed requisite adaptations to the ORR for its consent within seven days after the backstop date, the ORR may determine the requisite adaptations itself.

3.7 Notice of determined requisite adaptations

A notice of determined requisite adaptations is a notice:

- (a) given by the ORR to the Parties for the purposes of this paragraph 3 (*Adaptation procedure*) following the failure of the Parties to send to the ORR within 7 days of the backstop date requisite adaptations to which it gives its consent; and
- (b) which states the requisite adaptations which the ORR has determined should be made using its powers to do so under paragraph 3.5 (*Agreed requisite*

adaptations - Office of Rail Regulation's refusal of consent) or 3.6 (*Requisite adaptations - failure to agree or submit*).

3.8 Effect of requisite adaptations

Requisite adaptations established either:

- (a) by agreement of the Parties and in respect of which the ORR has given a notice of consent to requisite adaptations under paragraph 3.4 (*Agreed adaptations - Office of Rail Regulation's consent*); or
- (b) by the determination of the ORR under paragraph 3.5 (*Agreed requisite adaptations - Office of Rail Regulation's refusal of consent*) or 3.6 (*Requisite adaptations - failure to agree or submit*) and stated in a notice of determined requisite adaptations,

shall have effect from such date as the ORR states in the relevant notice of consent to requisite adaptations or (as the case may be) the relevant notice of determined requisite adaptations.

4 Procedural matters

4.1 More than one notice

More than one modification notice may be given.

4.2 Differences etc. as to requisite adaptations

Any difference or question as to whether any thing is a requisite adaptation shall be determined by the ORR:

- (a) on the application of either Party; and
- (b) in accordance with such procedure (including as to consultation) as the ORR may by notice to the Parties determine.

4.3 Co-operation and information

If the ORR gives notice to either or both of the Parties that it requires from either or both of them information in relation to any requisite adaptation or proposed requisite adaptation:

- (a) the Party of whom the request is made shall provide the requested information promptly and to the standard required by the ORR; and
- (b) if that Party fails in a timely manner to do so, the ORR shall be entitled to proceed with its consideration of the matter in question and to reach a decision in relation to it without the information in question and the Party in default shall have no grounds for complaint in that respect.

4.4 Office of Rail Regulation's criteria

In relation to the negotiation of any requisite adaptation, the ORR shall be entitled to:

- (a) give to the Parties any criteria which it requires to be applied in the negotiations; and
- (b) modify the criteria after consultation.

4.5 Procedural modifications

In relation to the procedure in paragraph 3 (*Adaptation procedure*) for the agreement or establishment of requisite adaptations (including the times within which any step or thing requires to be done or achieved):

- (a) such procedure may be modified by the ORR by a notice of procedural modification given by it to the Parties; but
- (b) the ORR may give a notice of procedural modification only if it is satisfied that it is necessary or expedient to do so in order to promote or achieve the objectives specified in section 4 of the Act or if such a notice is requested by both Parties.

4.6 Dates

In this Schedule 10 (*Network Code Modifications*):

- (a) where provision is made for a date to be specified or stated by the ORR it may, instead of specifying or stating a date, specify or state a method by which a date is to be determined, and references to dates shall be construed accordingly; and
- (b) any notice given by the ORR which states a date, may state different dates for different purposes.

4.7 Requirement for prior consultation

No relevant notice shall have effect unless:

- (a) the ORR has first consulted the Parties and the Secretary of State for Transport in relation to the proposed relevant notice in question;
- (b) in the consultations referred to in paragraph 4.7(a), the ORR has made available to the Parties and the Secretary of State for Transport such drafts of the proposed relevant notice as it considers are necessary so as properly to inform them of its contents;
- (c) the ORR has given each Party and the Secretary of State for Transport the opportunity to make representations in relation to the proposed relevant notice and has taken into account all such representations (other than those which are frivolous or trivial) in making its decision on the relevant notice to be given;
- (d) the ORR has notified the Parties and the Secretary of State for Transport as to its conclusions in relation to the relevant notice in question (including by providing to each such person a copy of the text of the proposed relevant notice) and its reasons for those conclusions; and
- (e) in effecting the notifications required by paragraph 4.7(d), the ORR has treated as confidential any representation (including any submission of written material) which (and to the extent that) the person making the representation, by notice in writing to the ORR or by endorsement on the representation of words indicating the confidential nature of such representation, has specified as confidential information.

4.8 Consolidated Access Option

Not later than 28 days after the giving of the last of:

- (a) a modification notice; and
- (b) a notice of determined requisite adaptations or a notice of consent to requisite adaptations (as the case may be),

Network Rail shall prepare and send to the Optionholder, the ORR and the Secretary of State for Transport a copy of this Access Option as so modified.

4.9 Saving

Nothing in this Schedule 10 (*Network Code Modifications*) affects:

- (a) the right of either Party to approach and obtain from the ORR guidance in relation to the requisite adaptations; or
- (b) the right of the ORR at any time to effect modifications to the Network Code under Condition C8 of that code.

5 Definitions

In this Schedule 10 (*Network Code Modifications*):

“backstop date” means the date (being not earlier than 28 days from the date of the modification notice) specified as such in a modification notice (or such later date as may be established under paragraph 3.5(a) or 4.6 (*Dates*));

“modification notice” has the meaning given to it in paragraph 2.1 (*Meaning*);

“notice of consent to requisite adaptations” means a notice given by the ORR under paragraph 3.4 (*Agreed adaptations - Office of Rail Regulation’s consent*);

“notice of determined requisite adaptations” has the meaning given to it in paragraph 3.7 (*Notice of determined requisite adaptations*);

“notice of procedural modification” means a notice given by the ORR to the Parties under paragraph 4.5 (*Procedural modifications*) modifying any aspect of the procedure in this Schedule 10 (*Network Code Modifications*) for the agreement or establishment of requisite adaptations;

“ORR’s criteria” means the criteria established by the ORR for the purposes of the negotiation of requisite adaptations and given to the Parties, or modified, under paragraph 4.4 (*Office of Rail Regulation’s criteria*);

“relevant notice” means a modification notice, notice of determined requisite adaptations, notice of procedural modification or notice of modification of the ORR’s criteria;

“requisite adaptations” means, in relation to specified modifications, the amendments (including the addition of information) to the provisions in question which are necessary or expedient so as to give full effect to them in the particular circumstances of the case, and “adaptation” shall be construed accordingly; and

“specified” means specified in a modification notice.

Schedule 11

Failure to use and Buy-Back

Part A

Failure to use

In this Schedule 11 (*Failure to use and Buy-Back*):

“Access Agreement Rights” means the rights granted to a Crossrail TOC pursuant to the provisions of this Access Option, which are contained in the relevant Crossrail Access Agreement and all Ancillary Movements related thereto;

“Access Option Rights” means the rights granted pursuant to Clause 5.1 (*Permission to operate the Services*), which are contained in this Access Option and all Ancillary Movements related thereto;

“Extinguished” means, in respect of any Access Agreement Right, surrendered and removed in its entirety from the relevant Crossrail Access Agreement as a result of the operation of any condition of Part J of the Network Code;

“Extinguished Access Agreement Rights” means any Access Agreement Right that has been Extinguished;

“ORR Counter Notice” has the meaning given to it in paragraph 5.3;

“ORR Surrender Notice” has the meaning given to it in paragraph 5.1;

“Reasonable Ongoing Requirement” means the Optionholder can, with reasonable supporting evidence, demonstrate:

- (a) that the utilisation by the Optionholder of the relevant Undrawn Access Option Right or Access Option Right (as applicable) is supported by a socio-economic case; and
- (b) that there is a reasonable prospect of the Optionholder utilising the relevant Undrawn Access Option Right or Access Option Right (as applicable); and
- (c) that:
 - (i) one or more Crossrail TOCs will have the necessary committed resources to; and
 - (ii) there is a reasonable prospect that any such Crossrail TOC will, make ongoing use of an Access Agreement Right which is equivalent to the relevant Undrawn Access Option Right or Access Option Right (as applicable);

“Stabilisation Period” means the period commencing on the Services Commencement Date and expiring on the earlier of:

- (a) the date the first Replacement Crossrail Access Agreement is entered into in accordance with this Access Option; and
- (b) the fifth anniversary of the Services Commencement Date;

“Surrender Counter Notice” has the meaning given to it in paragraph 3.3.2;

“Surrender Modification” has the meaning given to it in paragraph 3.4.1;

“Surrender Notice” has the meaning given to it in paragraph 3.3.1;

“Surrendered” means surrendered from the Access Option and **“Surrender”** shall be construed accordingly;

“**Undrawn Access Option Right**” has the meaning given to it in paragraph 3.1.1; and

“**Voluntary Surrender Notice**” has the meaning given to it in paragraph 3.1.1.

1 Application of the Network Code

1.1 Application of Part J to the Access Option

Any provisions of Part J of the Network Code from time to time which:

1.1.1 relate to a failure to use either:

- (i) Undrawn Access Option Rights; or
- (ii) Extinguished Access Agreement Rights; and

1.1.2 apply to railway passenger services,

being, at the date of this Access Option, Conditions J2, J4, J5 and J6 of the Network Code, are not incorporated into and do not form part of this Access Option. Save as provided in this paragraph 1.1 and subject to Clause 2.1.3, the Parties agree that in accordance with Clause 2.1 (*Incorporation*), the Network Code is incorporated into, and forms part of, this Access Option.

1.2 Application of Part J to the Crossrail Access Agreement

In accordance with Clause 7.3.1(ii)(a) and 7.3.4(iv)(a) but subject to Clause 7.3.2(i) and 7.3.4(vi)(a), it is agreed that Part J of the Network Code will be incorporated into, and will form part of, each Crossrail Access Agreement.

2 Extinguished Access Agreement Rights

If any Access Agreement Right is Extinguished at any time, the Optionholder shall not be entitled to exercise any right it has under this Access Option to procure that any Crossrail TOC is granted an Access Agreement Right which is equivalent to the Extinguished Access Agreement Right until the expiry date of the Crossrail Access Agreement from which such Access Agreement Right was Extinguished.

3 Surrender of Access Option Rights

3.1 Voluntary Surrender Notice

3.1.1 If at any time the Optionholder has not secured an Access Agreement Right in respect of each Access Option Right, which at that time is not Surrendered, by the date that the relevant Crossrail Access Agreement takes effect (an “**Undrawn Access Option Right**”), the Optionholder shall serve a written notice on Network Rail proposing that each such Undrawn Access Option Right be voluntarily Surrendered (a “**Voluntary Surrender Notice**”).

3.1.2 In a Voluntary Surrender Notice, the Optionholder shall propose a period of time for which each Undrawn Access Option Right should be Surrendered, which may be shorter than, equal to or longer than the remaining duration of the relevant Crossrail Access Agreement.

3.1.3 If, in the Voluntary Surrender Notice, the Optionholder proposes that an Undrawn Access Option Right should be Surrendered for a period which is shorter than the remaining duration of the relevant Crossrail Access

Agreement, the Optionholder shall also provide a detailed explanation as to its proposed utilisation of:

- (i) the Undrawn Access Option Right from the expiry of the period proposed in the Voluntary Surrender Notice; and
- (ii) any other Undrawn Access Option Right which the Optionholder is not proposing to Surrender in the Voluntary Surrender Notice.

3.1.4 A Voluntary Surrender Notice shall be irrevocable.

3.2 Phased introduction of Services

If the First Crossrail Access Agreement provides for a phased introduction of the Services, within five Working Days of the approval of the First Crossrail Access Agreement by the ORR, the Optionholder shall Surrender each Undrawn Access Option Right for the period up to but excluding the date from which the relevant Access Agreement Right is permitted to be used under the First Crossrail Access Agreement.

3.3 Surrender Notice

3.3.1 Network Rail shall be entitled to serve a written notice on the Optionholder in respect of any Undrawn Access Option Right proposing that such Undrawn Access Option Right should be Surrendered for a period of time, which may be shorter than, equal to or longer than the remaining duration of any relevant Crossrail Track Access Agreement, provided that:

- (i) the start of the proposed period of Surrender shall not commence prior to the expiry of the Stabilisation Period; and
- (ii) the proposed period of Surrender may not expire after the date from which a Crossrail TOC is entitled to make use of any Access Agreement Right which is equivalent to the relevant Undrawn Access Option Right under a Crossrail Access Agreement which has been approved by the ORR,

(a “**Surrender Notice**”).

3.3.2 Within 10 Working Days of the date of issue of a Surrender Notice, the Optionholder shall serve a written notice on Network Rail (a “**Surrender Counter Notice**”) stating that:

- (i) it agrees the period proposed by Network Rail in the Surrender Notice for which such Undrawn Access Option Right should be Surrendered; or
- (ii) it does not agree the period proposed by Network Rail in the Post Surrender Notice for which such Undrawn Access Option Right should be Surrendered, in which case it shall provide a detailed explanation as to the date from which it proposes to utilise the Undrawn Access Option Right and its Reasonable Ongoing Requirement from that date and the proposed period, if any, for which such Undrawn Access Option Right should be surrendered.

3.3.3 Except where the Optionholder serves a Surrender Counter Notice in accordance with paragraph 3.3.2(i), within 20 Working Days of the date of

issue of a Surrender Notice, the Parties shall meet and use reasonable endeavours to agree the period, if any, for which each Undrawn Access Option Right specified in the Surrender Notice should be Surrendered.

- 3.3.4 If the Parties have not agreed the period, if any, for which each Undrawn Access Option Right specified in the Surrender Notice should be Surrendered within 30 Working Days of the date of issue of a Surrender Notice either Party shall be entitled to refer the matter for determination by the ORR. The ORR's determination must include a determination as to whether the Optionholder has demonstrated its Reasonable Ongoing Requirement upon the expiry of the period, if any, for which the Optionholder has proposed that the relevant Undrawn Access Option Right should be Surrendered in the Surrender Counter Notice or, if not, the period for which the relevant Undrawn Access Option Right should be Surrendered.
- 3.3.5 Subject to paragraph 4 (*Error or Change*), following the agreement or determination of the period for which an Undrawn Access Option Right should be Surrendered in accordance with paragraph 3.3.2(i) or 3.3.4, Network Rail shall not be entitled to serve a Surrender Notice in respect of the same Undrawn Access Option Right until the relevant Crossrail Access Agreement ceases to be in full force and effect.

3.4 ORR Surrender Notification

- 3.4.1 Network Rail shall notify the ORR of the relevant modification to the Access Option (a "**Surrender Modification**") no more than 10 Working Days after, as the case may be:
- (i) the date on which the Optionholder serves a Voluntary Surrender Notice in accordance with paragraph 3.1 (*Voluntary Surrender Notice*); or
 - (ii) the agreement or determination of the period, if any, for which any Undrawn Access Option Right should be Surrendered in accordance with paragraph 3.3 (*Surrender Notice*).
- 3.4.2 The Surrender Modification shall have effect from the date on which notice is given to the ORR of that Surrender Modification pursuant to paragraph 3.4.1 and until the expiry of the period for which it was agreed or determined that the relevant Undrawn Access Option Right should be Surrendered:
- (i) the Optionholder shall have no right under the Access Option to require Network Rail to grant any Access Agreement Right to any Crossrail TOC in respect of the relevant Undrawn Access Option Right; and
 - (ii) Network Rail shall be entitled to grant Access Rights to any Operator, which utilise all or any part of the capacity reserved for that the relevant Undrawn Access Option Right.
- 3.4.3 No compensation shall be payable by Network Rail to the Optionholder under this Access Option as a result of any Surrender Modification taking effect.

4 Error or Change

If, at any time following any Surrender Modification taking effect or where following service of a Surrender Notice it has been agreed or determined that a Surrender Modification shall not be made, Network Rail (acting reasonably) believes that:

- (i) a material event or circumstance has arisen which was not within the contemplation of:
 - (a) Network Rail when the Surrender Modification was agreed or it was agreed that a Surrender Modification should not be made; or
 - (b) the ORR when the Surrender Modification was determined or it was determined that there should not be a Surrender Modification; or
- (ii) the information which was provided by the Optionholder in connection with any ORR determination or as part of the Surrender Notice or the Surrender Counter Notice (as applicable) was incorrect in any material respect; or
- (iii) there has been a material change to any of the factors or circumstances, which were taken into account in agreeing or determining the period for which the relevant Access Option Right should be Surrendered,

and if the correct information had been provided, or the changed event, factor or circumstance had been taken into account, at the relevant time, a longer period would have been agreed or determined for which the relevant Access Option Right should have been Surrendered, Network Rail shall be entitled to serve a further Surrender Notice in accordance with paragraph 3.3.1, and the subsequent provisions of paragraph 3.3 (*Surrender Counter Notice*) shall then apply in relation to such further Surrender Notice.

5 Determination by ORR

5.1 Pursuant to Clause 17.7.2 and notwithstanding paragraph 2, ORR shall have the right following the expiry of the Stabilisation Period, if it receives an application under Sections 17 or 22A of the Act or otherwise seeking rights in respect of any Undrawn Access Option Right, to serve a written notice on the Optionholder and Network Rail in respect of any Undrawn Access Option Right proposing that such Undrawn Access Option Right should be Surrendered (an "**ORR Surrender Notice**").

5.2 Any such ORR Surrender Notice, shall include a proposal in respect of the period of time for which each Undrawn Access Option Right should be Surrendered, which may be shorter than, equal to or longer than the remaining duration of any relevant Crossrail Track Access Agreement, provided that the proposed period of Surrender may not expire after the date from which a Crossrail TOC is entitled to make use of any Access Agreement Right which is equivalent to the relevant Undrawn Access Option Right under a Crossrail Access Agreement which has been approved by the ORR.

5.3 Within 10 Working Days of the date of issue of an ORR Surrender Notice, each Party shall serve a written notice on ORR (an "**ORR Counter Notice**") stating that:

5.3.1 it agrees the period proposed by ORR in the ORR Surrender Notice for which such Undrawn Access Option Right should be Surrendered; or

5.3.2 it does not agree the period proposed by ORR in the ORR Surrender Notice for which such Undrawn Access Option Right should be Surrendered, in

which case in the case of the Optionholder it shall provide a detailed explanation as to the date from which it proposes to utilise the Undrawn Access Option Right and its Reasonable Ongoing Requirement from that date and its proposed period, if any, for which such Undrawn Access Option Right should be Surrendered.

- 5.4** Following receipt of an ORR Counter Notice ORR shall, if it considers it has all the relevant information, be entitled to determine what, if any, Access Option Right shall be Surrendered.
- 5.5** Pursuant to Clause 17.7.2, where a matter is referred for determination by ORR pursuant to this Schedule 11 or where ORR serves an ORR Surrender Notice, the ORR shall be entitled:
 - 5.5.1** to determine, following consultation with the Parties, the procedure that it considers appropriate in the circumstances of the case; and
 - 5.5.2** to request the Parties to provide it with any information it may require to enable it to make its determination.
- 5.6** The parties acknowledge that the ORR may produce guidance setting out the procedure it would expect to follow when determining matters referred to it or where it serves an ORR Surrender Notice under this Schedule 11 (*Failure to use and Buy-Back*).

Part B Buy-Back

1.1 Definitions

In this Part B of Schedule 11 (*Failure to use and Buy-Back*):

“Applicant” has the meaning given to it in paragraph 1.2(a) of this Part B of Schedule 11 (*Failure to use and Buy-Back*);

“Base Compensation Amounts” means the amounts set out in Appendix 1 (*Compensation Amounts*) to this Part B of Schedule 11 (*Failure to use and Buy-Back*) as such amounts may be amended from time to time in accordance with paragraph 1.7;

“Baseline Costs” means £12,646 million in June 2008 prices, being the amount budgeted as the anticipated cost of construction of the Crossrail Works and the Central Section (but excluding the Depot Costs);

“Buy-Back Application” has the meaning given to it in paragraph 1.2(b) of this Part B of Schedule 11 (*Failure to use and Buy-Back*);

“Buy-Back Reimbursement Payment” means the amount(s) payable by the Applicant in accordance with its Access Agreement (as referred to in paragraph 1.6(b) or, as applicable, 1.6(c));

“Compensation Amount” means subject to the application of paragraph 1.7:

- (a) in relation to the surrender of an Access Option Right and in relation to any other Access Option Right that cannot be used at all for the provision of any other Service as a result of the surrender of any such Access Option Right, the applicable Base Compensation Amount, indexed in accordance with paragraph 1.8; or
- (b) in respect of a Modified Access Option Right, an amount determined by the ORR taking into consideration proposals submitted by the Optionholder, which shall be calculated in a manner consistent with the principles used in calculating the Base Compensation Amounts, including indexation in accordance with paragraph 1.8;

“Consultation Process” means any consultation process the ORR may conduct in connection with a Buy-Back Application;

“Crossrail Costs” means the actual and efficiently incurred outturn costs (in June 2008 prices) of constructing the Crossrail Works and the Central Section (but excluding the Outturn Depot Costs);

“Depot Costs” means the anticipated costs in June 2008 prices of construction of any maintenance depot required for the operation of the Services on the Routes together with the unavoidable costs anticipated as at the date hereof of maintenance and renewal of any such maintenance depot;

“Latest Costs Determination” means:

- (a) until such time as the ORR has determined: (i) the Crossrail Costs, the Baseline Costs; (ii) the Projected OMR Costs, the OMR Costs; or (iii) the Outturn Rolling Stock Costs, the Rolling Stock Costs; and
- (b) once the ORR has made any such determination, the amount which ORR has last determined as the amount of, as the case may be, the Crossrail Costs, the Projected OMR Costs or the Outturn Rolling Stock Costs.

“Modified Access Option Right” means any Access Option Right which has been modified as a result of the operation of this Part B of Schedule 11 (*Failure to use and Buy-Back*), including any Access Option Right which can only be used in part for the provision of any other Service as a result of the surrender or modification of any other Access Option Right;

“OMR Costs” means £5,436.7 million in June 2008 prices being the amount budgeted as at the date hereof as those elements of the anticipated costs of operation, maintenance and renewal of the Network and the Central Section which were included in the calculation of the Base Compensation Amounts, namely certain station operating costs, head office costs, Central Section and systems maintenance and renewals;

“Option Right Weights” means

- (a) the weightings set out in Column A of Appendix 2 to this Part B of Schedule 11 (*Failure to use and Buy-Back*) which are to be applied to the Baseline Costs and the OMR Costs or, as the case may be, the Crossrail Costs and the Projected OMR Costs in calculating the Base Compensation Amounts; and
- (b) the weightings set out in Column B of Appendix 2 to this Part B of Schedule 11 (*Failure to use and Buy-Back*) which are to be applied to the Rolling Stock Costs or, as the case may be, the Outturn Rolling Stock Costs in calculating the Base Compensation Amounts;

“Outturn Depot Costs” means as at any date the actual and efficiently incurred costs in June 2008 prices of construction of any maintenance depot required for the operation of the Services on the Routes together with the unavoidable costs anticipated as at that date of maintenance and renewal of any such maintenance depot;

“Outturn Rolling Stock Costs” means the actual and efficiently incurred costs in June 2008 prices of procurement of railway passenger vehicles required to operate the Services, together with the Outturn Depot Costs;

“Outturn Scheme Costs” as at any date means the aggregate of the Crossrail Costs, the Outturn Rolling Stock Costs and the Projected OMR Costs as at that date;

“Projected OMR Costs” means as at any date the anticipated efficiently incurred amounts in June 2008 prices of those elements of the costs of operation, maintenance and renewal of the Network and the Central Section as most recently determined by ORR which were included in the calculation of the OMR Costs, namely certain station operating costs, head office costs, Central Section and systems maintenance and renewals;

“Relevant Access Agreement” has the meaning given to it in paragraph 1.2(a) of this Part B of Schedule 11 (*Failure to use and Buy-Back*);

“**Response Deadline**” shall mean a date not later than 40 Working Days (or such longer period as the ORR may determine) after receipt by the Optionholder of a report from Network Rail in accordance with paragraph 1.2(c); and

“**Rolling Stock Costs**” means £2,529.8 million in June 2008 prices, being the amount budgeted as the anticipated costs of procurement of railway passenger vehicles to be used to operate the Services together with the Depot Costs;

“**SAC Buy-Back Amount**” means in any Payment Period:

for the relevant Year:

- (a) the sum of the Base Compensation Amounts allocated for that Year to each of the paths bought back (with paths at different times of the day having different Base Compensation Amounts);
- (b) divided by the sum of the Base Compensation Amounts allocated for that Year to all of the paths which are available under the Track Access Option (whether used or unused by the Optionholder); and
- (c) multiplied by the relevant Periodic Payment as defined in Part A of Schedule 7 (*Track Charges*).

“**Scheme Costs**” means the aggregate of the Baseline Costs, the OMR Costs and the Rolling Stock Costs;

“**Surrender Date**” has the meaning given to it in paragraph 1.5(b)(ii) of this Part B of Schedule 11 (*Failure to use and Buy-Back*).

1.2 Buy-Back Application

- (a) Any party seeking to obtain any Access Option Right from Network Rail which cannot be obtained other than through the operation of the Buy-Back mechanism (the “**Applicant**”) is required to make an application to Network Rail, in such form complying with such criteria and procedures as ORR may specify from time to time and with such supporting information including evidence of the Applicant’s financial standing and ability to pay the Compensation Amount as the ORR may require, not later than 36 months (or such lesser period as the ORR may agree) prior to the expiry of the then current Crossrail Access Agreement which contains the required Access Agreement Rights which correspond to the relevant Access Option Rights, providing that the expiry of such Crossrail Access Agreement occurs after the Stabilisation Period (the “**Relevant Access Agreement**”).
- (b) Network Rail shall notify the Optionholder and the ORR of its receipt of any such application (a “**Buy-Back Application**”) and provide it with a copy of such Buy-Back Application not later than 10 Working Days after Network Rail’s receipt of the Buy-Back Application.
- (c) Each Buy-Back Application shall be evaluated by Network Rail in order for Network Rail to report to the ORR, the Optionholder and the Applicant (not later than 40 Working Days after Network Rail’s receipt of the Buy-Back Application, or such longer period as the ORR may agree):
 - (i) as to whether or not Network Rail is able to accommodate such services as the Applicant wishes to operate within the existing and reasonably anticipated available capacity consistent with a level of

performance that represents a reasonable requirement of Funders or Train Operators under the Network Licence or any other relevant regulatory measure of performance determined by the ORR; and

- (ii) as to whether or not the Applicant has given due consideration to whether the Network can be further enhanced to accommodate such services as the Applicant wishes to operate at a lower cost than would be payable to the Optionholder through the Buy-Back mechanism indicating whether or not Network Rail agrees with the Applicant's conclusions; and
- (iii) on the impact on Network Rail's funding position of the requirement for it to pay any Compensation Amount and any SAC Buy-Back Amount and Network Rail's evaluation of whether, and the basis upon which, it could reasonably fund the Compensation Amount and the SAC Buy-Back Amount having regard to any entitlement of Network Rail to receive any Buy-Back Reimbursement Payment(s); and
- (iv) on any other information, evidence or comments which Network Rail may wish to provide to the ORR.

1.3 Provision of information

Network Rail and the Optionholder agree to provide to the ORR, such additional information as the ORR may reasonably require in its consideration of a Buy-Back Application.

1.4 Optionholder involvement

- (a) The Optionholder shall be entitled to take part in the Consultation Process with the ORR and other interested parties.
- (b) The Optionholder shall notify Network Rail and the ORR, not later than the Response Deadline whether or not it agrees to the terms of the Buy-Back Application (in whole or in part) and shall, in conjunction with such notification, provide the reasons for such agreement and/or disagreement.
- (c) If the Optionholder agrees (whether in whole or in part) to the terms of the Buy-Back Application, it shall be entitled, provided it does so not later than the Response Deadline to provide details of any matters which the Optionholder would like the ORR to take into account when considering whether to approve the Buy-Back Application.
- (d) If the Optionholder does not agree to any of the terms of the Buy-Back Application, it shall be entitled, provided it does so not later than the Response Deadline to provide details of any matters which the Optionholder would like the ORR to take into account when considering whether to approve the Buy-Back Application, including details of the anticipated benefits of the use of the Access Option Right which is the subject of the Buy-Back Application.
- (e) If the Optionholder does not agree to any of the terms of the Buy-Back Application, the matter shall be referred to the ORR for its evaluation of whether the proposed use for that Access Option Right proposed by the Buy-Back Application is of greater benefit than the anticipated use of the Access Option Right which is the subject of the Buy-Back Application by a Crossrail

TOC exercising Access Rights derived under this Access Option (in each case using such methods of assessment as ORR may prescribe from time to time).

1.5 ORR determination and surrender of Crossrail Access Rights

- (a) If, following its evaluation pursuant to the preceding paragraph, the ORR informs the Optionholder, Network Rail and other interested parties that:
 - (i) the ORR has rejected the Buy-Back Application, the Optionholder shall continue to retain the relevant Access Option Right in accordance with this Access Option; and/or
 - (ii) the ORR is considering whether to approve the Buy-Back Application, either in whole or in part, together with its reasons for doing so, the Optionholder and Network Rail shall be entitled to make further representations to the ORR in accordance with the procedures specified by the ORR.
- (b) If, following its consideration of any further representations, the ORR informs the Optionholder, Network Rail and other interested parties that:
 - (i) the ORR has rejected the Buy-Back Application, the Optionholder shall continue to retain the relevant Access Option Right in accordance with this Access Option; and/or
 - (ii) the ORR has approved the Buy-Back Application, whether in whole or in part, the Optionholder shall subject to the satisfaction of the conditions set out in paragraph 1.6 surrender the relevant Access Option Right or that portion of the relevant Access Option Right which the ORR has approved (as applicable) to Network Rail from the date, and otherwise in accordance with the procedures, specified by the ORR (the “**Surrender Date**”).

1.6 Conditions precedent to Crossrail Access Rights award

If, following consultation and its evaluation, the ORR informs the Applicant, Network Rail, the Optionholder and other interested parties that the ORR has approved the Buy-Back Application, the award of the relevant Access Option Right to the Applicant shall be conditional upon:

- (a) unless the Optionholder otherwise agrees, Network Rail paying to the Optionholder an amount equal to the Compensation Amount or Network Rail providing evidence in a form acceptable to the Optionholder (acting reasonably) that Network Rail will pay to the Optionholder an amount equal to the Compensation Amount; and
- (b) any existing Access Agreement between the Applicant and Network Rail being amended to incorporate, subject to paragraph 1.6(d), provisions for the payment by the Applicant to Network Rail of:
 - (i) the Buy-Back Reimbursement Payment(s) to enable Network Rail to recover the payment of the Compensation Amount; and
 - (ii) the SAC Buy-Back Amount;

together with the cost, as determined by the ORR having regard to Network Rail's actual cost of funding, of funding the Compensation Amount pending that recovery, together with such other provisions relevant to the award of the relevant Access Option Right to the Applicant as the ORR and, subject to the application of sections 17 or 22A of the Act, Network Rail require; and/or

- (c) if there is no Access Agreement then existing between the Applicant and Network Rail, the entry into an Access Agreement which includes, amongst other things, the matters referred to in paragraph 1.6(b); and
- (d) if Network Rail is to recover the Compensation Amount by a method other than by payment of the Buy Back Reimbursement Payment(s), the entry into a binding agreement, or a determination by the ORR, which provides for such recovery.

1.7 Amendment of the Compensation Amount

- (a) The Base Compensation Amounts as at the date hereof shall be consistent with the Scheme Costs and the Option Right Weights.
- (b) On or before the date which is 36 months prior to the expiry of the First Crossrail Access Agreement, the Optionholder shall notify the ORR, copied to Network Rail, of the amount of the Crossrail Costs, the Projected OMR Costs as at that date and the Outturn Rolling Stock Costs (and any proposed changes to the Base Compensation Amounts) and if any of the Crossrail Costs, the Projected OMR Costs or the Outturn Rolling Stock Costs are greater or less than the Baseline Costs, the OMR Costs or the Rolling Stock Costs respectively it shall refer the matter to the ORR for its determination as to whether, and to what extent, the Scheme Costs should be amended to reflect the Outturn Scheme Costs using the same methodology as was used to determine the Base Compensation Amounts as at the date of this Access Option together with such amendments as the ORR may determine.
- (c) If the Optionholder considers at any time that:
 - (i) the Option Right Weights or any assumption as to the rate of return which is used in the calculation of the Base Compensation Amounts should be varied; or
 - (ii) the Base Compensation Amounts should be varied as a consequence of any of the Crossrail Costs, the Outturn Rolling Stock Costs or the Projected OMR Costs as at that time being at least 5% greater or less than the Latest Costs Determination or a change to the Option Right Weights,

it shall notify the ORR, copied to Network Rail, and refer the matter to the ORR for its determination as to whether, and to what extent, any proposed change to the Option Right Weights or the Base Compensation Amounts shall be made using the same methodology as was used to determine the Base Compensation Amounts as at the date of this Access Option together with such amendments as the ORR may determine. No notification shall be made by the Optionholder under this paragraph 1.7(c) less than 12 months after any previous notification and any such notification shall include (as applicable) details of the changes proposed by the Optionholder to the Option Right Weights or the Base Compensation Amounts.

- (d) The Base Compensation Amounts may be amended by the ORR if the ORR determines that any of the Crossrail Costs, the Outturn Rolling Stock Costs or the Projected OMR Costs as of the date of the determination are at least 5% greater or less than the Latest Costs Determination using the same methodology as was used to determine the Base Compensation Amounts as at the date of this Access Option together with such amendments as the ORR may determine provided that any such amendments to the Base Compensation Amounts occur prior to the Surrender Date.
- (e) The Optionholder shall, and shall procure that the relevant Crossrail TOC shall, use reasonable endeavours to mitigate any costs included in the Base Compensation Amounts where there is the surrender of any Access Option Right in accordance with this Part B of Schedule 11 (*Failure to Use and Buy-Back*). The Base Compensation Amounts shall be reduced by such amount as the ORR may determine to reflect any costs included in the Base Compensation Amounts, which have been, or will be, avoided by the Optionholder or the relevant Crossrail TOC (or could be avoided by the use of reasonable endeavours by the Optionholder or the Crossrail TOC), taking into account any additional costs, or costs of a different nature, that the Optionholder or the relevant Crossrail TOC has incurred, or will incur, in avoiding such costs.

1.8 Indexation

For the purposes of determining a Compensation Amount, the relevant Base Compensation Amount shall be indexed in accordance with the following formula:

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

where:

- (a) C_1 is the relevant Base Compensation Amount;
- (b) C_n is the Base Compensation Amount in the nth Year subsequent to 2008 in which the relevant Surrender Date will occur;
- (c) RPI_n is the Retail Prices Index published or determined with respect to the month and Year in which the Surrender Date will occur; and
- (d) RPI_1 is the Retail Prices Index published or determined with respect to the month in 2008 in which this Access Option became effective under Clause 3.1 (*Duration*).

Appendix 1
Base Compensation Amounts

The Compensation Amount to be paid to the Optionholder in respect of a Crossrail Access Right for which a Buy-Back Application has been approved by the ORR is set out in the relevant table below.

All figures are expressed in £,000s per return train path, in 2008 prices.

The figures are subject to recalibration under the terms of paragraph 1.7 of this Part B of Schedule 11 (*Failure to use and Buy-Back*).

Table 1: Maidenhead to Tottenham Court Road/Tottenham Court Road to Maidenhead

Year from which Buy-Back is applicable	AM Peak, PM Peak and Shoulder Peak	Inter-Peak	Start and End	Saturday	Sunday
1	38,410	39,207	16,498	4,612	3,270
2	37,270	38,042	16,048	4,482	3,183
3	36,124	36,871	15,596	4,351	3,094
4	34,937	35,658	15,104	4,212	2,998
5	33,716	34,412	14,582	4,066	2,894
6	32,478	33,148	14,045	3,916	2,788
7	31,233	31,877	13,504	3,766	2,680
8	29,982	30,601	12,961	3,615	2,573
9	28,726	29,319	12,417	3,463	2,464
10	27,464	28,031	11,870	3,311	2,356
11	26,195	26,736	11,321	3,158	2,247
12	24,919	25,434	10,769	3,004	2,137
13	23,635	24,123	10,214	2,849	2,027
14	22,343	22,805	9,655	2,693	1,916
15	21,042	21,477	9,092	2,536	1,804
16	19,732	20,139	8,526	2,378	1,692
17	18,411	18,791	7,954	2,219	1,578
18	17,078	17,431	7,377	2,058	1,464
19	15,734	16,059	6,795	1,896	1,348

20	14,377	14,674	6,207	1,732	1,232
21	13,007	13,275	5,613	1,566	1,114
22	11,621	11,861	5,011	1,399	994
23	10,220	10,431	4,402	1,229	873
24	8,802	8,985	3,785	1,058	750
25	7,367	7,520	3,160	884	626
26	5,914	6,037	2,526	708	500
27	4,452	4,545	1,894	531	375
28	2,975	3,038	1,258	354	249
29	1,489	1,521	625	176	123
30	0	0	0	0	0

Table 2: West Drayton to Tottenham Court Road/Tottenham Court Road to West Drayton

Year from which Buy-Back is applicable	AM Peak, PM Peak and Shoulder Peak	Inter-Peak	Start and End	Saturday	Sunday
1	22,531	Not applicable			
2	21,862	Not applicable			
3	21,190	Not applicable			
4	20,494	Not applicable			
5	19,778	Not applicable			
6	19,051	Not applicable			
7	18,321	Not applicable			
8	17,587	Not applicable			
9	16,850	Not applicable			
10	16,110	Not applicable			
11	15,366	Not applicable			
12	14,617	Not applicable			

13	13,864	Not applicable
14	13,106	Not applicable
15	12,343	Not applicable
16	11,574	Not applicable
17	10,800	Not applicable
18	10,018	Not applicable
19	9,230	Not applicable
20	8,434	Not applicable
21	7,630	Not applicable
22	6,817	Not applicable
23	5,995	Not applicable
24	5,163	Not applicable
25	4,322	Not applicable
26	3,469	Not applicable
27	2,611	Not applicable
28	1,745	Not applicable
29	874	Not applicable
30	0	Not applicable

Table 3: Heathrow Tunnel Junction to Tottenham Court Road/Tottenham Court Road to Heathrow Tunnel Junction

Year from which Buy-Back is applicable	AM Peak, PM Peak and Shoulder Peak	Inter-Peak	Start and End	Saturday	Sunday
1	37,685	20,207	8,782	2,427	1,752
2	36,545	19,618	8,552	2,361	1,707
3	35,399	19,025	8,321	2,295	1,662
4	34,224	18,405	8,063	2,222	1,611

5	33,026	17,763	7,786	2,146	1,556
6	31,813	17,111	7,499	2,067	1,499
7	30,595	16,454	7,210	1,987	1,441
8	29,371	15,795	6,920	1,907	1,383
9	28,141	15,133	6,629	1,827	1,325
10	26,905	14,467	6,337	1,747	1,266
11	25,663	13,799	6,043	1,666	1,208
12	24,413	13,127	5,749	1,585	1,149
13	23,156	12,450	5,452	1,503	1,089
14	21,890	11,770	5,154	1,421	1,030
15	20,616	11,084	4,853	1,338	970
16	19,332	10,394	4,551	1,254	909
17	18,038	9,698	4,245	1,170	848
18	16,733	8,996	3,937	1,086	787
19	15,417	8,287	3,626	1,000	724
20	14,088	7,572	3,312	913	662
21	12,747	6,849	2,994	826	598
22	11,391	6,119	2,672	737	534
23	10,020	5,380	2,346	648	468
24	8,634	4,632	2,016	557	402
25	7,231	3,875	1,681	465	335
26	5,810	3,108	1,341	372	267
27	4,378	2,338	1,004	279	200
28	2,930	1,560	665	185	132
29	1,469	780	329	92	65
30	0	0	0	0	0

Table 4: Shenfield to Tottenham Court Road/Tottenham Court Road to Shenfield

<i>Year from which Buy-Back is applicable</i>	<i>AM Peak, PM Peak and Shoulder Peak</i>	<i>Inter-Peak</i>	<i>Start and End</i>	<i>Saturday</i>	<i>Sunday</i>
1	41,358	38,919	16,157	4,538	3,193
2	40,116	37,754	15,709	4,409	3,106
3	38,868	36,583	15,259	4,278	3,019
4	37,583	35,375	14,773	4,141	2,923
5	36,268	34,138	14,262	3,997	2,822
6	34,937	32,884	13,737	3,850	2,719
7	33,598	31,624	13,208	3,702	2,614
8	32,253	30,358	12,678	3,553	2,509
9	30,902	29,087	12,146	3,404	2,403
10	29,545	27,809	11,611	3,255	2,298
11	28,180	26,525	11,074	3,104	2,191
12	26,808	25,233	10,534	2,953	2,084
13	25,427	23,933	9,991	2,801	1,977
14	24,037	22,625	9,445	2,647	1,869
15	22,638	21,308	8,894	2,493	1,760
16	21,228	19,980	8,340	2,338	1,650
17	19,807	18,643	7,781	2,181	1,540
18	18,374	17,294	7,217	2,023	1,428
19	16,928	15,933	6,648	1,864	1,315
20	15,469	14,560	6,073	1,703	1,201
21	13,995	13,172	5,492	1,540	1,086
22	12,506	11,770	4,904	1,376	970
23	11,000	10,352	4,309	1,209	852
24	9,476	8,918	3,706	1,041	733
25	7,934	7,466	3,096	870	612

26	6,373	5,996	2,477	697	489
27	4,800	4,515	1,859	524	367
28	3,211	3,019	1,236	349	244
29	1,609	1,513	615	174	121
30	0	0	0	0	0

Table 5: Paddington Low Level to Abbey Wood/Abbey Wood to Paddington Low Level

<i>Year from which Buy-Back is applicable</i>	<i>AM Peak, PM Peak and Shoulder Peak</i>	<i>Inter-Peak</i>	<i>Start and End</i>	<i>Saturday</i>	<i>Sunday</i>
1	36,488	26,105	13,819	3,286	2,383
2	35,376	25,320	13,421	3,191	2,316
3	34,259	24,531	13,021	3,095	2,249
4	33,118	23,719	12,599	2,995	2,177
5	31,957	22,889	12,160	2,891	2,101
6	30,784	22,049	11,714	2,784	2,024
7	29,605	21,204	11,264	2,677	1,946
8	28,421	20,355	10,812	2,570	1,868
9	27,232	19,503	10,359	2,462	1,790
10	26,036	18,646	9,903	2,354	1,711
11	24,834	17,785	9,446	2,245	1,632
12	23,625	16,919	8,985	2,136	1,552
13	22,408	16,048	8,522	2,026	1,472
14	21,183	15,170	8,056	1,915	1,392
15	19,950	14,287	7,587	1,804	1,311
16	18,708	13,397	7,114	1,691	1,229
17	17,456	12,501	6,638	1,578	1,147
18	16,194	11,596	6,157	1,464	1,064
19	14,920	10,684	5,672	1,348	980
20	13,635	9,763	5,182	1,232	895
21	12,337	8,833	4,687	1,114	809
22	11,025	7,893	4,187	995	723
23	9,700	6,943	3,681	875	635
24	8,359	5,981	3,168	753	546
25	7,002	5,008	2,649	630	457

26	5,628	4,023	2,123	505	365
27	4,242	3,030	1,596	380	274
28	2,841	2,027	1,064	253	183
29	1,426	1,016	531	127	91
30	0	0	0	0	0

Notes

AM Peak, PM Peak and Shoulder Peak= This includes any services defined as AM Peak, PM Peak or Shoulder Peak and covers those services operating Monday to Friday (except on Public Holidays) scheduled to depart or arrive at Tottenham Court Road:

- (a) between 07:00 and 09:59; and
- (b) between 16:00 and 18:59

Inter-Peak = This includes any services operating Monday to Friday (except on Public Holidays) scheduled to depart or arrive at Tottenham Court Road:

- (a) between 10:00 and 15:59; and
- (b) between 19:00 and 20:59

Start and End = This includes any services operating Monday to Friday (except on Public Holidays) scheduled to depart or arrive at Tottenham Court Road:

- (a) before 07:00; or
- (b) after 21:00

Saturday = Any service scheduled to operate on a Saturday

Sunday = Any service scheduled to operate on a Sunday

Appendix 2
Option Right Weights

Crossrail Route and Time Period	Column A	Column B
	Option Right Weight for: <ul style="list-style-type: none"> • Baseline Costs • Crossrail Costs • OMR Costs • Outturn OMR Costs 	Option Right Weight for: <ul style="list-style-type: none"> • Rolling Stock Costs • Outturn Rolling Stock Costs
<i>Maidenhead to Tottenham Court Road/Tottenham Court Road to Maidenhead</i>		
AM Peak, PM Peak and Shoulder Peak	5.98%	5.56%
Inter-Peak	4.08%	3.71%
Start and End	0.96%	2.32%
Saturday	1.03%	1.90%
Sunday	0.68%	1.90%
<i>West Drayton to Tottenham Court Road/ Tottenham Court Road to West Drayton</i>		
AM Peak, PM Peak and Shoulder Peak	1.75%	1.64%
Inter-Peak	Not applicable	Not applicable
Start and End		
Saturday		
Sunday		
<i>Heathrow Tunnel Junction to Tottenham Court Road/ Tottenham Court Road to Heathrow tunnel Junction</i>		
AM Peak, PM Peak and Shoulder Peak	6.02%	3.73%
Inter-Peak	4.10%	4.97%
Start and End	0.96%	3.11%
Saturday	1.04%	2.55%
Sunday	0.69%	2.55%
<i>Shenfield to Tottenham Court Road/ Tottenham Court Road to Shenfield</i>		
AM Peak, PM Peak and Shoulder Peak	17.99%	13.31%
Inter-Peak	12.26%	9.68%
Start and End	2.87%	6.05%
Saturday	3.10%	4.98%
Sunday	2.05%	4.98%
<i>Paddington Low Level to Abbey Wood/Abbey Wood to Paddington Low Level</i>		
AM Peak, PM Peak and Shoulder Peak	16.18%	8.17%
Inter-Peak	11.03%	7.92%
Start and End	2.58%	3.71%
Saturday	2.79%	3.71%
Sunday	1.85%	3.55%

Total	100%	100%

Note: Figures may not sum to exactly 100% due to rounding.

Schedule 12
Capability Testing and Development of the Performance Regime

Part A
Capability Testing

1 Objective of Capability Testing

The joint objective of the Optionholder and Network Rail shall be to ensure that the operation of the Railway System will enable all of the Services to be operated.

2 Principles of Capability Testing

- 2.1** Prior to the Services Commencement Date, Network Rail shall measure the capability of the Railway System, monitor how the Railway System is performing and calculate whether the operation of the Railway System will enable all of the Services to be operated.
- 2.2** If, at any point during the capability testing, either Party considers it to be clear that the operation of the Railway System will not enable all of the Services to be operated, such Party shall give notice of that fact to the other Party (copied to the ORR) and the Parties shall meet and agree what action should be taken.

Part AA
Performance Threshold – Objective Test

1 Anticipated Objective Performance Measure

- 1.1** The joint objective of the Parties shall be that on the anticipated Services Commencement Date the Anticipated Objective Performance Measure will be equal to or in excess of the Performance Threshold.
- 1.2** The granting by Network Rail of permission to use its Network to enable one or more Crossrail TOCs to operate any of the Services shall be conditional upon Network Rail and the Optionholder jointly having produced evidence by way of a Compliant Model Report together with such supporting information as the ORR may require, that on the anticipated Services Commencement Date the Anticipated Objective Performance Measure will be equal to or in excess of the Performance Threshold.
- 1.3** Subject to paragraph 1.2 of this Part AA, if at any point prior to the anticipated Services Commencement Date either Party considers it to be clear that the Passenger Services will not be able to be operated at an Anticipated Objective Performance Measure on the anticipated Services Commencement Date which is equal to or in excess of the Performance Threshold, such Party shall give notice of that fact to the other Party (copied to the ORR) and such parties shall meet and agree what action should be taken, provided that any such action shall not result in any change to, reduction in or removal of any Reserved Capacity without the prior approval or direction of the ORR.

2 Objective Performance Measure after Services Commencement Date

- 2.1 The joint objective of the Parties and the parties to the First Crossrail Access Agreement shall be that the Objective Performance Measure be equal to or in excess of the Performance Threshold.
- 2.2 Network Rail shall deliver to the ORR, no later than 12 weeks after the Testing Period End Date (or such longer period as agreed by the ORR), the Actual Performance Data.
- 2.3 No later than 12 weeks (or such longer period as agreed by the ORR) after the Testing Period End Date, Network Rail shall produce evidence by way of a Compliant Model Report that takes into account the Actual Performance Data and the Capacity Reservation Assumptions, together with such supporting information as the ORR may require, of the Objective Performance Measure.
- 2.4 If the Objective Performance Measure is not equal to or in excess of the Performance Threshold, Crossrail Access Rights shall be extinguished or modified to the extent necessary to ensure that had those Crossrail Access Rights been so extinguished or modified during the Testing Period, the Objective Performance Measure would have been equal to or in excess of the Performance Threshold.
- 2.5 Where a choice exists between whether to modify or extinguish Crossrail Access Right(s) or as to what Crossrail Access Rights are to be modified or extinguished, the Parties shall meet and use reasonable endeavours to agree the action that should be taken. The prior approval of the ORR shall be sought prior to any Crossrail Access Right being modified or extinguished. If the Parties cannot agree the action that should be taken or do not reach an agreement within 13 weeks (or such longer period as agreed by the ORR) of the Testing Period End Date, the matter shall be referred to the ORR for determination. Upon agreement or determination and in conjunction with the extinguishment or modification of the applicable Crossrail Access Rights, this Access Option shall be amended accordingly.
- 2.6 If at any point prior to the Testing Period End Date, a Party considers it to be clear that the Objective Performance Measure will not be equal to or in excess of the Performance Threshold, such Party shall give notice of that fact to the other Party (copied to the ORR) and the parties to any First Crossrail Access Agreement and all such parties shall meet and agree what action should be taken, provided that any such action shall not result in any change to, reduction in or removal of any Reserved Capacity without the approval or direction of the ORR.

3 Extraordinary Event during the Testing Period

- 3.1 If either Party considers that the Objective Performance Measure will be or has been materially affected by an Extraordinary Event, it shall give notice of that fact to the other Party (copied to the ORR). Within 8 weeks (or such longer period as agreed by the ORR) of the date on which notification of an Extraordinary Event was given, the receiving Party shall respond in writing (copied to the ORR) with its agreement or disagreement (and, in respect of a disagreement, its reasons therefor) (referred to in this sub-paragraph 3.1 as the “**Response**”). If the Response indicates a disagreement as to whether an Extraordinary Event has occurred, the matter shall be referred to the ORR for determination. If the Response indicates agreement, the ORR shall have the right to object to whether an Extraordinary Event has occurred, provided that the Parties are notified of any such objection within 4 weeks (or such

longer period as agreed by the ORR) of the date on which a copy of the Response was given to the ORR.

- 3.2** Once it has been established that an Extraordinary Event has occurred, the Parties shall meet as soon as reasonably practicable to agree what action (if any) should be taken as a result of such Extraordinary Event, whether by:
- 3.2.1** maintaining the duration of the Testing Period and disregarding any performance data which was affected by the Extraordinary Event;
 - 3.2.2** subject to paragraph 3.3 of this Part AA, extending the duration of the Testing Period and disregarding any performance data which was affected by the Extraordinary Event; or
 - 3.2.3** subject to paragraph 3.3 of this Part AA, restarting the Testing Period.
- 3.3** The actions listed in paragraph 3.2 of this Part AA are in descending order of priority. Therefore, the Parties may only agree to take the action specified in:
- 3.3.1** paragraph 3.2.2 of this Part AA, if the Parties agree that taking the action specified in paragraph 3.2.1 of this Part AA; or
 - 3.3.2** paragraph 3.2.3 of this Part AA, if the Parties agree that taking the action specified in paragraph 3.2.1 and 3.2.2 of this Part AA,
- would not provide a fair and reasonable basis upon which to determine what amendments (if any) should be made to the Testing Period or the performance data collected during the Testing Period (as applicable).
- 3.4** Any action agreed between the Parties, pursuant to paragraph 3.2 of this Part AA, shall be approved by the ORR prior to such action occurring. If, pursuant to paragraph 3.2 of this Part AA, the Parties cannot agree on what action (if any) should be taken or do not agree on what action (if any) should be taken within 12 weeks (or such longer period as agreed by the ORR) of the Testing Period End Date, the matter shall be referred to the ORR for determination.
- 3.5** The Optionholder may invite the relevant Crossrail TOCs to attend and participate at any meetings of the Parties pursuant to this paragraph 3 of Part AA.

Part B

Performance Regime

The Parties agree that the performance regime, the principles of which are set out in this Part B, is an operational risk shared between the Crossrail TOC and Network Rail through the First Crossrail Access Agreement.

The Parties further agree that the First Crossrail Access Agreement to be entered into pursuant to Clause 7.3.1 (*First Crossrail Access Agreement*) shall contain provisions which reflect:

- (a) the principles set out in Part AA (*Performance Threshold – Objective Test*), which to the extent of any conflict with the other provisions of this Part B shall prevail; and
- (b) the principles set out in this Part B,

and that the detailed drafting required to implement these principles shall be agreed as part of the negotiation of the First Crossrail Access Agreement in accordance with Clause 7.3.1(i).

1 Performance Regime

The performance regime to be included in the First Crossrail Access Agreement will consist of the following three distinct sequential phases: (a) the Operations Assessment Phase; (b) the Schedule 8 Recalibration Phase; and (c) the Crossrail Performance Level Improvement Phase.

1.1 Conduct during the Operations Assessment Phase

During the Operations Assessment Phase, the parties to the First Crossrail Access Agreement shall use all reasonable endeavours to operate the relevant Crossrail Services in accordance with the Working Timetable at the Aspirational Crossrail Performance Level.

1.2 Objective of the Schedule 8 Recalibration Phase

During the Schedule 8 Recalibration Phase:

- (a) the joint objective of the parties to the First Crossrail Access Agreement shall be to operate the relevant Crossrail Services in accordance with the Working Timetable at the Aspirational Crossrail Performance Level; and
- (b) the parties to the First Crossrail Access Agreement shall determine what amendments (if any) should be made to the Recalibration Phase Performance Regime, based on the performance data collected by Network Rail in respect of the operation by each Crossrail TOC of the relevant Crossrail Services during the Schedule 8 Recalibration Phase in each case in accordance with standard industry practices (the “**Performance Data**”).

1.3 Objective of the Crossrail Performance Level Improvement Phase

During the Crossrail Performance Level Improvement Phase, the joint objective of the parties to the First Crossrail Access Agreement shall be to improve the 13-Period Crossrail Performance Level.

2 Operations Assessment Phase Principles

2.1 Measurement of Crossrail Performance Level

Prior to the Services Commencement Date, the Parties shall agree:

- 2.1.1 the points on the Routes at which the Punctuality of the Crossrail Services will be measured (the “**Crossrail Monitoring Points**”); and
- 2.1.2 the appropriate degree of accuracy of the systems that will be used to measure the Punctuality of the Crossrail Services at each of the Crossrail Monitoring Points.

2.2 Aspirational Crossrail Performance Level

- 2.2.1 No later than 20 Working Days after the end of each Period following the Services Commencement Date, Network Rail shall calculate the Period Crossrail Performance Level.
- 2.2.2 If, at any point during the Operations Assessment Phase, either of the parties to the First Crossrail Access Agreement considers it to be clear that the relevant Crossrail Services cannot be operated at a Crossrail Performance Level which is equal to or in excess of the Aspirational Crossrail Performance

Level, such party shall give notice of that fact to the other party (copied to the ORR) and the Optionholder and the parties to the First Crossrail Access Agreement shall meet and agree what action should be taken, provided that any such action shall not result in any change to, reduction in or removal of any Reserved Capacity without the approval or direction of the ORR.

- 2.2.3 If the parties to the First Crossrail Access Agreement are unable to agree the nature of the action to be taken within 20 Working Days of the notice referred to in paragraph 2.2.2 of this Part B, then any of those parties may refer the dispute for determination in accordance with the relevant provisions of the First Crossrail Access Agreement, which shall include a reference first to an internal resolution procedure equivalent to that set out in Clause 12.1 (*Internal Resolution Procedure*).

3 Schedule 8 Recalibration Phase Principles

3.1 Performance Regime under the First Crossrail Access Agreement

Part of the process of agreeing the terms of the First Crossrail Access Agreement in accordance with Clause 7.3.1 (*First Crossrail Access Agreement*) will include agreeing the relevant performance regime provisions for inclusion in Schedule 8 (*Performance Regime*) of the First Crossrail Access Agreement.

3.1.1 Phased Introduction Performance Regime

- (i) If, in the Commitment Notice, the Optionholder states that:
- (a) it proposes to operate, or to procure the operation of, a phased introduction of the Crossrail Services, the initial performance regime provisions to be included in Schedule 8 (*Performance Regime*) of the First Crossrail Access Agreement to apply up to the end of the Operations Assessment Phase shall be based on the performance regime included in Schedule 8 (*Performance Regime*) of the Access Agreements under which any services, which form part of the Initial Services, were operated prior to the Services Commencement Date, as adjusted to reflect the changes in service pattern and the quantum of services associated with the operation by any Crossrail TOC of the Initial Services (the "**Phased Introduction Performance Regime**"); or
 - (b) it does not propose to operate a phased introduction of the Crossrail Services, the initial performance regime provisions to be included in Schedule 8 (*Performance Regime*) of the First Crossrail Access Agreement shall be the Recalibration Phase Performance Regime.
- (ii) If any amendment or supplemental agreement to the First Crossrail Access Agreement is agreed in accordance with Clause 7.3.3 (*Amendments to the First Crossrail Access Agreement*) which includes a change to the Initial Services, the Phased Introduction Performance Regime may need to be amended to reflect such change to the Initial Services.

3.1.2 Performance Regime during the Schedule 8 Recalibration Phase

- (i) Prior to the Schedule 8 Recalibration Phase Start Date, irrespective of whether a Phased Introduction Performance Regime has previously been agreed, the parties to the First Crossrail Access Agreement shall agree the performance regime provisions for inclusion in Schedule 8 (*Performance Regime*) of the First Crossrail Access Agreement from the Schedule 8 Recalibration Phase Start Date (the “**Recalibration Phase Performance Regime**”).
- (ii) Subject to paragraph 3.1.2(iii) of this Part B, the Recalibration Phase Performance Regime shall be determined on the basis that all of the Crossrail Services can be operated at a Crossrail Performance Level which is equal to the Aspirational Crossrail Performance Level.
- (iii) If, during either the capability testing or the Operations Assessment Phase, it is clear that the relevant Services cannot be operated at a Crossrail Performance Level which is equal to or in excess of the Aspirational Crossrail Performance, the Recalibration Phase Performance Regime shall be determined on the basis that all of the Crossrail Services can be operated at a Crossrail Performance Level which is agreed by the parties to the First Crossrail Access Agreement having regard to:
 - (a) the performance achieved during the Operations Assessment Phase; and
 - (b) the performance regime included in Schedule 8 (*Performance Regime*) of the Access Agreements under which any services were operated prior to the Services Commencement Date.
- (iv) The parties to the First Crossrail Access Agreement shall also agree whether the Recalibration Phase Performance Regime should include a cap on any payments made in respect of that regime.
- (v) If the parties to the First Crossrail Access Agreement are unable to agree either:
 - (a) the Recalibration Phase Performance Regime for the purposes of paragraph 3.1.2(i); or
 - (b) the Crossrail Performance Level for the purposes of paragraph 3.1.2(iii); or
 - (c) the inclusion of any cap on any payments made in respect of the Recalibration Phase Performance Regime for the purposes of paragraph 3.1.2(iv),

then any of those parties may refer the dispute for determination in accordance with the relevant provisions of the First Crossrail Access Agreement, which shall include a reference first to an internal resolution procedure equivalent to that set out in Clause 12.1 (*Internal Resolution Procedure*).

3.2 Duration of the Schedule 8 Recalibration Phase

3.2.1 Subject to paragraph 3.2.2 of this Part B, the Schedule 8 Recalibration Phase shall be for a duration of 13 Periods during which the relevant Services are being operated in accordance with the Working Timetable and shall commence on the Schedule 8 Recalibration Phase Start Date.

3.2.2 The duration of the Schedule 8 Recalibration Phase shall not exceed 26 Periods from the Schedule 8 Recalibration Phase Start Date.

3.3 Schedule 8 Recalibration Phase Event

3.3.1 If either party to the First Crossrail Access Agreement considers that the Schedule 8 Recalibration Phase has been materially affected by a Schedule 8 Recalibration Phase Event, it shall give notice of that fact to the other party and the Optionholder and the parties to the First Crossrail Access Agreement shall meet as soon as reasonably practicable to agree what action (if any) should be taken as a result of such Schedule 8 Recalibration Phase Event, whether by:

- (i) maintaining the duration of the Schedule 8 Recalibration Phase and:
 - (a) disregarding any daily Performance Data applicable to any Period which was affected by the Schedule 8 Recalibration Phase Event; or
 - (b) extrapolating the Performance Data collected up to the Period prior to the Period in which the Schedule 8 Recalibration Phase Event occurred;
- (ii) subject to paragraph 3.2.2 of this Part B, extending the duration of the Schedule 8 Recalibration Phase and disregarding any Performance Data applicable to any Period which was affected by the Schedule 8 Recalibration Phase Event; or
- (iii) subject to paragraph 3.2.2 of this Part B, restarting the Schedule 8 Recalibration Phase.

3.3.2 The actions listed in paragraph 3.3.1 of this Part B are in descending order of priority. Therefore, the parties to the First Crossrail Access Agreement may only agree to take the action specified in:

- (i) paragraph 3.3.1(ii) of this Part B, if the parties to the First Crossrail Access Agreement agree that taking the action specified in paragraph 3.3.1(i) of this Part B; or
- (ii) paragraph 3.3.1(iii) of this Part B, if the parties to the First Crossrail Access Agreement agree that taking the action specified in both paragraph 3.3.1(i) and 3.3.1(ii) of this Part B,

would not provide a fair and reasonable basis upon which to determine what amendments (if any) should be made to the Recalibration Phase Performance Regime.

3.3.3 If the parties to the First Crossrail Access Agreement are unable to agree what action (if any) should be taken as a result of a Schedule 8 Recalibration Phase Event for the purposes of paragraph 3.3.1, then any of those parties

may refer the dispute for determination in accordance with the relevant provisions of the First Crossrail Access Agreement, which shall include a reference first to an internal resolution procedure equivalent to that set out in Clause 12.1 (*Internal Resolution Procedure*).

3.4 Recalibrated Performance Regime

- 3.4.1 Following the Schedule 8 Recalibration Phase End Date, the parties to the First Crossrail Access Agreement shall meet and seek to agree the scope and nature of any amendments to the Recalibration Phase Performance Regime to reflect the Performance Data (the “**Recalibrated Performance Regime**”).
- 3.4.2 If the parties to the First Crossrail Access Agreement are unable to agree the scope and nature of the amendments referred to in paragraph 3.4.1 of this Part B within 60 Working Days of the Schedule 8 Recalibration Phase End Date, then any of those parties may refer the dispute for determination in accordance with the relevant provisions of the First Crossrail Access Agreement, which shall include a reference first to an internal resolution procedure equivalent to that set out in Clause 12.1 (*Internal Resolution Procedure*).
- 3.4.3 The Recalibration Phase Performance Regime shall continue to apply unmodified until the Recalibrated Performance Regime has been agreed or determined and approved by the ORR in accordance with paragraph 3.5 (*Role of the ORR*) of this Part B.

3.5 Role of the ORR

Following the agreement or determination of any amendment to the First Crossrail Access Agreement arising out of or in connection with the Schedule 8 Recalibration Phase, such amendment shall be submitted to the ORR for its approval and such amendment shall not take effect until the ORR has given its approval.

4 Crossrail Performance Level Improvement Phase

4.1 Approach to improve the 13-Period Crossrail Performance Level

After the date upon which the ORR approves any amendment to the First Crossrail Access Agreement in accordance with paragraph 3.5 (*Role of the ORR*) of this Part B, if:

- 4.1.1 prior to that date, the quantum of Crossrail Services under the First Crossrail Access Agreement has been adjusted for whatever reason; or
- 4.1.2 where the quantum of Crossrail Services under the First Crossrail Access Agreement has not been adjusted, but the 13-Period Crossrail Performance Level over the last 13 Periods within the Schedule 8 Recalibration Phase is lower than the Aspirational Crossrail Performance Level,

the parties to the First Crossrail Access Agreement shall meet, co-operate in full and use reasonable endeavours to agree an approach to improve the 13-Period Crossrail Performance Level for future Periods, which may consist of a joint performance improvement plan (or the equivalent standard industry regime at the relevant time).

4.2 Informing the ORR

Following the agreement of any approach to improve the Period Crossrail Performance Level for future Periods in accordance with paragraph 4.1 (*Approach to improve the 13-Period Crossrail Performance Level*) of this Part B, the Parties may agree to submit such approach to the ORR for its information.

Part C Indicative Timeline

Appendix 1 (*Indicative Timeline*) to this Schedule 12 (*Capability Testing and Development of the Performance Regime*) sets out an indicative and non-binding timeline, which illustrates the anticipated relationships between the time periods and notices referred to in this Access Option. If there is any conflict between Appendix 1 (*Indicative Timeline*) to this Schedule 12 (*Capability Testing and Development of the Performance Regime*) and any other provision of this Access Option, such other provision of this Access Option shall prevail.

Part D Definitions

In this Schedule 12 (*Capability Testing and Development of the Performance Regime*):

“13-Period Crossrail Performance Level” means the average of the Period Crossrail Performance Levels for the 13 consecutive completed Periods which precede the then current Period;

“Actual Performance Data” means the ‘actuals’ data gathered during the Testing Period by Network Rail for the purposes of the Objective Performance Measure that will be used as inputs into the Railway Systems Model, excluding any data that is to be disregarded in accordance with paragraph 3 (*Extraordinary Event during the Testing Period*) of Part AA;

“Amended Timetable” means, in respect of any particular day, the Timetable for that particular day, as amended from time to time (including to reflect the following:

- (a) any amendment to the Working Timetable for the Passenger Services under the applicable Engineering Access Statement or Timetable Planning Rules; and
- (b) any amendment to the Working Timetable for the Passenger Services under Part H of the Network Code);

“Anticipated Objective Performance Measure” means the Objective Performance Measure calculated, to the extent data is not available due to the Crossrail Services having not commenced, on the basis of the Model Assumptions;

“Applicable Timetable” means, in respect of any particular day, the Timetable for such day or, if an Amended Timetable is in effect for such day, the Amended Timetable for such day;

“Aspirational Crossrail Performance Level” means the Crossrail Performance Level that:

- (a) is required in order to utilise the capability of the Railway System to deliver the Crossrail Services as derived from the Railway Systems Model; and
- (b) has been agreed or determined as being covered by an appropriate level of funding;

“Cancellation” for the purposes of the Objective Performance Measure, means a Total Cancellation or Other Cancellation and otherwise, has the meaning given to it in the National Rail Franchise Terms;

“Compliant Model Report” means a Model Report that, along with the Model Assumptions that were used to produce such Model Report, complies with the requirements of Clause 8 (*Change Control*);

“Crossrail Monitoring Points” has the meaning given to it in paragraph 2.1.1 of Part B;

“Crossrail Performance Level” means the measure (expressed as a percentage) of the number of Crossrail Services which are scheduled to be operated by any Crossrail TOC under the Plan of the Day and which arrive Punctually at the Crossrail Monitoring Points, provided that any Crossrail Service provided by any Crossrail TOC which is a Cancellation shall be regarded as not arriving Punctually;

“Crossrail Performance Level Improvement Phase” means the phase after the Schedule 8 Recalibration Phase End Date during which the parties to the First Crossrail Access Agreement attempt to improve the 13-Period Crossrail Performance Level in accordance with paragraph 4 (*Crossrail Performance Level Improvement Phase*) of Part B;

“Crossrail Services” means, for the purposes of this Schedule 12 (*Capability Testing and Development of the Performance Regime*), the railway passenger services specified in Schedule 5 (*The Services and the Specified Equipment*) and **“Crossrail Service”** shall mean any one of them;

“Extraordinary Event” means the occurrence of any event which is not reasonably likely to reoccur within the five-year period immediately following the occurrence of that event;

“Initial Services” means, at any time, those Crossrail Services which form part of the First Crossrail Access Agreement;

“National Rail Franchise Terms” means the second edition of the document of that name;

“Objective Performance Measure” means the measure of the number of trains operating scheduled Passenger Services on the Main Routes (expressed as a percentage of the number of trains which are scheduled to be provided under the Applicable Timetable during the Testing Period), which during the Testing Period arrive with OPM punctuality at the applicable Performance Measurement Point in the Applicable Timetable measured on the basis that:

- (a) for this purpose, “OPM punctuality” means within 4 minutes 59 seconds of the scheduled arrival time as shown in the Applicable Timetable;
- (b) any train which is a Cancellation will be regarded as not arriving with OPM punctuality; and
- (c) where any train is scheduled to depart from its point of origin on one day and arrive at its destination point on the following day, any failure to arrive with OPM punctuality will be treated as occurring on the day on which the train was scheduled to depart from its point of origin (and for this purpose a “day” shall be deemed to begin at 0200 and end at 0159 on the next day);

“Other Cancellation” means a train which is scheduled to be provided under the Applicable Timetable and which:

- (a) begins its journey after its scheduled departure point in the Applicable Timetable or terminates its journey before its scheduled destination point in the Applicable Timetable;
- (b) does not call at any station at which it is scheduled to call in the Applicable Timetable; or

- (c) arrives at its final destination scheduled in the Applicable Timetable more than 120 minutes late;

“Passenger Services” means, for the purposes of this Schedule 12 (*Capability Testing and Development of the Performance Regime*):

- (a) the Crossrail Services; and
- (b) the railway passenger services, other than the Crossrail Services, operated over the Main Routes, and

excludes any Heathrow Express services, and **“Passenger Service”** shall mean any one of them;

“Performance Data” has the meaning given to it in paragraph 1.2(b) of Part B;

“Performance Measurement Point” means:

- (a) in respect of the Crossrail Services:
- (i) passing through the Central Section: Tottenham Court Road;
 - (ii) that are east bound and terminate at Gidea Park: Gidea Park;
 - (iii) that are east bound and do not terminate at Gidea Park: Shenfield or Abbey Wood (as applicable);
 - (iv) that are west bound and terminate at West Drayton: West Drayton; or
 - (v) that are west bound and do not terminate at West Drayton: Maidenhead or Heathrow Terminal 4 (as applicable); and
- (b) in respect of the railway passenger services, other than the Crossrail Services, operated over the Main Routes:
- (i) that are east bound: Shenfield;
 - (ii) that are west bound: Heathrow Terminal 4, Heathrow Terminal 5 or Maidenhead (as applicable);
 - (iii) that have an origination that is west of London Paddington (High Level) and are east bound: London Paddington (High Level); or
 - (iv) that have an origination that is east of London Liverpool Street (High Level) and are west bound: London Liverpool Street (High Level);

“Performance Threshold” means 92% or such lower threshold as may be determined by the ORR from time to time;

“Period” means each consecutive period of 28 days during the term of the First Crossrail Access Agreement commencing at 00:00 hours on 1 April in each year, provided that the length of the first and last such Period in any year may be varied by up to seven days on reasonable prior notice from Network Rail to the relevant Crossrail TOC;

“Period Crossrail Performance Level” means the average of the Crossrail Performance Level for any Crossrail TOC for a Period calculated by aggregating the number of trains planned for such Crossrail TOC for such Period and dividing it by the aggregate number of trains for such Crossrail TOC which arrive Punctually for such Period;

“Phased Introduction Performance Regime” has the meaning given to it in paragraph 3.1.1(i)(a) of Part B;

“Plan of the Day” has the meaning given to it in the National Rail Franchise Terms;

“Punctually” means within the time intervals agreed for the AM Peak, the PM Peak, the Shoulder Peak, the Start and End and the Inter-Peak respectively for the scheduled arrival times which are agreed as appropriate for the relevant Crossrail Service operating at the Aspirational Crossrail Performance Level at each Crossrail Monitoring Point and as may be amended from time to time by the Parties and **“Punctuality”** shall be construed accordingly;

“Railway System” means:

- (a) any rolling stock brought into service as part of the Crossrail Project, which is compliant with the requirements of paragraph 5 of Schedule 5 (*The Services and the Specified Equipment*);
- (b) any part of the Network comprising the Routes;
- (c) the network (as such term is defined in the Act) constructed as part of the Crossrail Project in the Central Section (including fire detection and security measures);
- (d) any station included in Table 4.1 of Schedule 5 (*The Services and the Specified Equipment*);
- (e) any sub-surface station constructed as part of the Crossrail Project in the Central Section; and
- (f) any depot or Stabling facility which is constructed as part of the Crossrail Project;

“Recalibrated Performance Regime” has the meaning given to it in paragraph 3.4.1 of Part B;

“Recalibration Phase Performance Regime” has the meaning given to it in paragraph 3.1.2(i) of Part B;

“Schedule 8 Recalibration Phase” means the phase from the Schedule 8 Recalibration Phase Start Date until the Schedule 8 Recalibration Phase End Date, as described in paragraph 3 (Schedule 8 Recalibration Phase Principles) of Part B;

“Schedule 8 Recalibration Phase End Date” means the date upon which the Schedule 8 Recalibration Phase ends, taking into account any alteration of the duration of the Schedule 8 Recalibration Phase in accordance with paragraph 3.3 (*Schedule 8 Recalibration Phase Event*) of Part B;

“Schedule 8 Recalibration Phase Event” means the occurrence of any event which the parties to the First Crossrail Access Agreement agree is not reasonably likely to reoccur within the five-year period immediately following the occurrence of that event;

“Schedule 8 Recalibration Phase Start Date” means the day after the Operations Assessment Phase End Date;

“Services” means, for the purpose of this Schedule 12 (*Capability Testing and Development of the Performance Regime*):

- (a) the railway passenger services specified in Schedule 5 (*The Services and the Specified Equipment*) and any other railway passenger services operated by any Crossrail TOC; and
- (b) the services specified in Access Agreements, which grant Operators Access Rights over the Routes;

“Testing Period” means the period commencing on the Schedule 8 Recalibration Phase Start Date and ending on the Testing Period End Date;

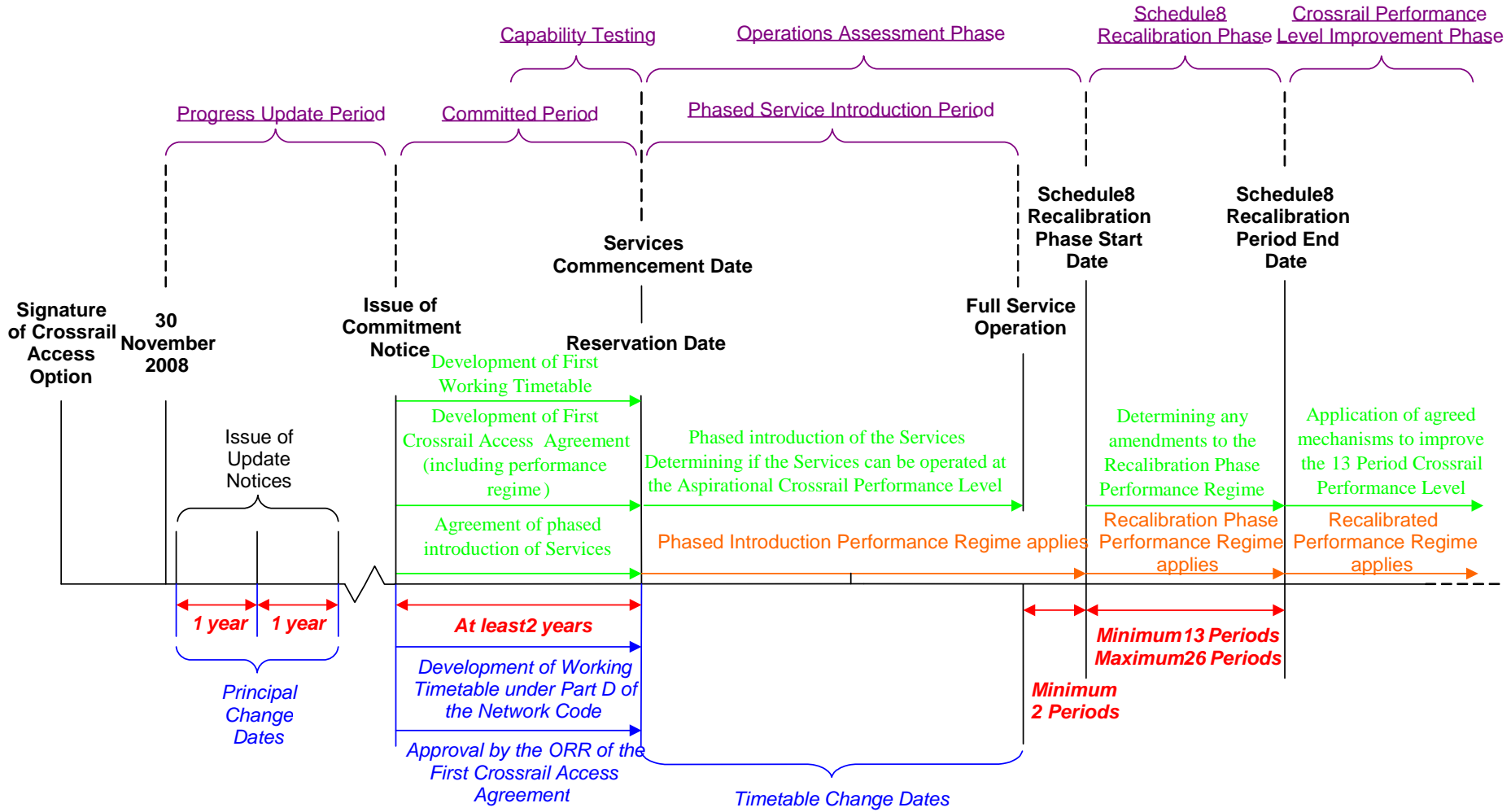
“Testing Period End Date” means the date that is one calendar year from the Schedule 8 Recalibration Phase Start Date, as such date may be altered to take account of any alteration of the duration of the Testing Period in accordance with paragraph 3 (*Extraordinary Event during the Testing Period*) of Part AA;

“Timetable” means, for a particular day, in respect of:

- (a) the Anticipated Objective Performance measure, the passenger timetable that reflects the anticipated Working Timetable for the Passenger Services, which will be used as an input into the Railway Systems Model; and
- (b) the Objective Performance Measure, the passenger timetable that reflects the Working Timetable for the Passenger Services required to be drawn up by Network Rail in accordance with the Network Code, as at 22:00 on the immediately preceding day; and

“Total Cancellation” means a train which is scheduled to be provided under the Applicable Timetable and which is cancelled or does not otherwise operate for more than half its scheduled mileage under the Applicable Timetable.

Appendix 1 Indicative Timeline



Schedule 13
First Crossrail Access Agreement

Weeks prior to the Reservation Date	Action	
104	(a) (b)	The Optionholder issues a Commitment Notice. Network Rail, the Optionholder and, at the option of the Optionholder, the Crossrail TOC meet and commence negotiating the terms of the First Crossrail Access Agreement.
66	(a) (b)	The First Crossrail Access Agreement is submitted to the ORR for approval in accordance with section 18 of the Act. The ORR follows its published criteria and procedures for the approval of passenger track access contracts.
46	(a) (b) (c)	The ORR approves the First Crossrail Access Agreement. Network Rail prepares engrossments of, and executes, the First Crossrail Access Agreement. The Priority Date immediately prior to the Reservation Date occurs, based on the Reservation Date being the Principal Change Date in the relevant year.
0	The Services Commencement Date occurs on the Reservation Date.	

Schedule 14
Forms of Notices

Part A
Form of Commitment Notice

From: [Optionholder]
To: Network Rail Infrastructure Limited
[Address]
Copied to: Office of Rail Regulation
[Address]

[Date]

Dear Sirs

Track Access Option in connection with the Crossrail Project dated [•] between [Optionholder] and Network Rail Infrastructure Limited (the “Access Option”) - Commitment Notice

We refer to the Access Option and to (a) Clause 5 (*Permission to Operate*) and (b) Clause 6.1.3 (*Commitment Notice*) thereof.

This letter constitutes (a) notice pursuant to Clause 6.1.3 (*Commitment Notice*) of the Access Option that we wish to exercise the option referred to in Clause 5.1.1 of the Access Option and (b) a Commitment Notice.

Accordingly, we hereby require you to grant permission to use your Network to enable the following [Crossrail TOC(s)] [insert details of relevant Crossrail TOC(s)] to operate the following Services [describe Services by reference to Schedule 5 (*The Services and the Specified Equipment*) of the Access Option] on the following Routes [describe Routes by reference to Schedule 2 (*The Routes*) of the Access Option] as from [insert Services Commencement Date].

[Insert or append details of the other matters required in the definition of Commitment Notice in the Access Option].

Defined terms not otherwise defined in this Commitment Notice shall have the meaning given to them in the Access Option.

Please acknowledge receipt of this Commitment Notice.

Yours faithfully

for and on behalf of [Optionholder]

We hereby acknowledge receipt of this Commitment Notice.

for and on behalf of Network Rail Infrastructure Limited

Part B
Form of Option Drawdown Notice

From: [Optionholder]
To: Network Rail Infrastructure Limited
[Address]
Copied to: Office of Rail Regulation
[Address]

[Date]

Dear Sirs

Track Access Option in connection with the Crossrail Project dated [●] between [Optionholder] and Network Rail Infrastructure Limited (the “Access Option”) - Option Drawdown Notice

We refer to the Access Option and to (a) Clause 5 (*Permission to Operate*) and (b) Clause 7.3.4 (*Replacement Crossrail Access Agreements*) thereof. This letter constitutes an Option Drawdown Notice.

Accordingly, we hereby require you to enter into the following Replacement Crossrail Access Agreement(s) [insert details of Replacement Crossrail Access Agreement(s)] with the following Crossrail TOC(s) [insert details of relevant Crossrail TOC(s)] upon the previous Crossrail Access Agreement(s) expiring.

Defined terms not otherwise defined in this Option Drawdown Notice shall have the meaning given to them in the Access Option.

Please acknowledge receipt of this Option Drawdown Notice.

Yours faithfully

for and on behalf of [Optionholder]

We hereby acknowledge receipt of this Option Drawdown Notice.

for and on behalf of Network Rail Infrastructure Limited