

# Forty-Second Supplemental Agreement

between

NETWORK RAIL INFRASTRUCTURE LIMITED

as Network Rail

and

LONDON OVERGROUND RAIL OPERATIONS LIMITED

as Train Operator

Relating to the Track Access Contract (Passenger Services) dated 9 November 2007

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	ANNEX A: REVISED VERSION OF THE ENTIRE LOROL TRACK ACCESS CONTRACT	

**THIS FORTY-SECOND SUPPLEMENTAL AGREEMENT** is dated December 2013  
and made

**BETWEEN:**

- (1) **Network Rail Infrastructure Limited** ("Network Rail"), a company registered in England under number 2904587 having its registered office at Kings Place, 90 York Way, London N1 9AG; and
- (2) **London Overground Rail Operations Limited** (the "Train Operator"), a company registered in England under number 05668786 having its registered office at Great Central House, Marylebone Station, Melcombe Place, London NW1 6JJ.

**WHEREAS:**

- (A) The Parties entered into a Track Access Contract (Passenger Services) dated 09 November 2007 in a form approved by the Office of Rail Regulation pursuant to section 18(7) of the Act (which Track Access Contract is hereafter referred to as the "Contract").
- (B) The parties now propose to amend the Contract in the manner and on the terms described below.

**IT IS HEREBY AGREED AS FOLLOWS:**

**1 INTERPRETATION**

In this Supplemental Agreement words and expressions defined in and rules of interpretation set out in the Contract shall have the same meaning and effect when used in this Supplemental Agreement except where the context requires otherwise.

**2 EFFECTIVE DATE AND TERM**

2.1 The amendments made to the Contract as set out in this Supplemental Agreement shall have effect from the Effective Date and shall cease to have effect on the Expiry Date or earlier termination of the Contract.

2.2 For the purposes of this Supplemental Agreement, "Effective Date" means the earlier of:

(A) the date upon which the Office of Rail Regulation issues its approval, pursuant to Section 22 of the Act, of the terms of this Supplemental Agreement; and

(B) 00:01hrs on Monday 31 March 2014.

### 3 AMENDMENTS TO THE CONTRACT INTERPRETATION

A number of changes to the Contract Interpretation shall be made, as follows:-

#### a) Definitions(Clause 1.1)

- (i) The definition of '**Additional Slots**' (bespoke definition) shall be deleted;
- (ii) The definition of '**Affiliate**' shall be deleted and replaced with the definition published in ORR's 'Model Passenger Contract' dated May 2012;

"**Affiliate**" means, in relation to any company:

(a) a company which is either a holding company or a subsidiary of such company; or

(b) a company which is a subsidiary of a holding company of which such company is also a subsidiary,

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

- (iii) The definition of '**Atlantic Section**' (bespoke definition) shall be deleted;
- (iv) The definition of '**Baseline Access Rights**' (bespoke definition) shall be deleted;
- (v) The definition of '**Core ELR Infrastructure**' (bespoke definition) shall be deleted and replaced with the following revised, bespoke definition;

"**Core ELR Infrastructure**" means the railway facility owned by Rail for London Limited between (i) Western Curve Connection Point and New Cross station, (ii) Canal Junction and New Cross Gate Connection Points, and (iii) Silwood Junction and Old Kent Road Junction Connection Point;"

- (vi) The definition of '**Dependent Project**' (bespoke definition) shall be deleted;
- (vii) The definition of '**European Licence**', as published in ORR's 'Model Passenger Contract' dated May 2012, shall be added;
- (viii) The definition of '**Expiry Date**' shall be deleted and replaced with;

"**Expiry Date**" means 11 December 2016 (the Principal Change Date 2016);"

- (ix) The definition of '**H & I Section**' (bespoke definition) shall be deleted and replaced with the following revised, bespoke definition;

"H&I Section" means the part of the Network connecting Highbury & ion and the Western Curve Connection Point, comprising the southernmost pair of tracks between those loci, otherwise known as the Up East London Line and the Down East London Line;"

- (x) The definition of '**NLR Access Option**' (bespoke definition) shall be deleted;
- (xi) The definition of '**NLR Infrastructure Works**' (bespoke definition) shall be deleted;
- (xii) The definition of '**NLR Option Services**' (bespoke definition) shall be deleted;
- (xiii) The definition of '**NLR Proving Period**' (bespoke definition) shall be deleted;
- (xiv) The definition of '**North London Railway**' (bespoke definition) shall be deleted and replaced with the following revised, bespoke definition:

“**North London Railway**” means a combination of the following parts of the Network:

- (a) the part of the Network between Richmond and Stratford stations via Kentish Town West station (“**North London Line**”);
- (b) the part of the Network between Watford Junction and Euston stations (DC lines);
- (c) the part of the Network between Gospel Oak and Barking stations via Wanstead Park station;
- (d) the part of the Network between Willesden Junction (High Level) and Clapham Junction stations via Mitre Bridge Junction (“**West London Line**”); and
- (e) the **H&I Section**. ”

- (xv) The definition of “**Old Kent Road Junction Connection Point**” (bespoke definition) shall be deleted and replaced with the following revised, bespoke definition;

“**Old Kent Road Junction Connection Point**” means a point between Old Kent Road Junction and Silwood Junction, adjacent to the land boundary between Network Rail and Rail for London Limited, which connects the Core ELR Infrastructure to the Network and vice versa;

- (xvi) The definition of ‘**Rail for London**’ (bespoke definition) shall be deleted and replaced with the following revised, bespoke definition;

“**Rail for London Limited**” means the wholly-owned subsidiary of Transport for London, a Company registered in England with company number 05965930 (a subsidiary company of Transport Trading Limited), which will let the Concession Agreement;”

- (xvii) The definition of ‘**Rail for London**’ (bespoke definition) shall be deleted;

- (xviii) The definition of ‘**Rectification Works**’ (bespoke definition) shall be deleted;

- (xix) The bespoke definition of ‘**Relevant Incident**’ shall be added to the definitions, as follows;

“**Relevant Incident** means an incident, wherever it so arises, which is caused directly or indirectly (whether or not the Train Operator is at fault) by, or which arises from, any act, omission or circumstance originating from, in connection with or affecting the Core ELR Infrastructure”;

- (xx) The definition of “**safety authorisation**” shall be deleted and replaced with the following, as published in ORR’s ‘Model Passenger Contract’ dated May 2012;

“**safety authorisation**” has the meaning ascribed to it by regulation 2 of the Railways and Other Guided Transport Systems (Safety) Regulations 2006;

- (xxi) The definition of “**safety certificate**” shall be deleted and replaced with the following, as published in ORR’s ‘Model Passenger Contract’ dated May 2012;

“**safety certificate**” has the meaning ascribed to it by regulation 2 of the Railways and Other Guided Transport Systems (Safety) Regulations 2006;

- (xxii) The definition of “**Safety Case**” shall be deleted;

- (xxiii) The definition of ‘**Service Implementation Date**’ (bespoke definition) shall be deleted;

- (xxiv) The definition of ‘**SNRP**’ shall be added to the definitions, as published in ORR’s ‘Model Passenger Contract’ dated May 2012;

“**SNRP**” has the meaning ascribed to it in the Railways (Licensing of Railway Undertakings) Regulations 2005;”

- (xxv) The definition of ‘**SRA**’ shall be deleted;
- (xxvi) The definition of ‘**Systems Code**’ shall be deleted and replaced with the following, as published in ORR’s ‘Model Passenger Contract’ dated May 2012;  
“**Systems Code**” means the Code of Practice relating to the management and development of Railway Code Systems, as amended from time to time in accordance with its terms;”
- (xxvii) The definition of ‘**The Regulator**’ shall be removed;
- (xxviii) The definition of ‘**West London Line**’ (bespoke definition) shall be removed;
- (xxix) The definition of “**Western Curve Connection Point**” (bespoke definition) shall be deleted and replaced with the following revised, bespoke definition;  
“**Western Curve Connection Point**” means a point on the North London Railway, approximately 100 metres to the east of Kingsbury Road bridge and adjacent to the land boundary between Network Rail and Rail for London Limited, which connects Core ELR Infrastructure to the Network and vice versa;”

#### **b) Interpretation (Clause 1.2)**

The interpretation “(p) Reference to the Office of Rail Regulation or ORR shall be construed as references to the “Regulator”” shall be deleted.

#### **4 AMENDMENTS TO CLAUSES 18 and 20 to 24**

- a) The Clause ‘18.4.2 Right to modify communication details’ shall be deleted and replaced with the following, as published in ORR’s ‘Model Passenger Contract’ dated May 2012;**

##### **“ 18.4.2 Right to modify communication details**

A party shall be entitled to modify in any respect:

- (a) the registered name and address details which relate to it and are set out one page one of this contract (provided that this modification shall not amount to or purport to be an assignment, transfer or novation of this contract); and
- (b) the communication particulars which relate to it, and which are set out in Schedule 1,  
by giving notice of such modification:
  - (i) to the other party as soon as reasonably practicable; and
  - (ii) to ORR within 14 days of such modification”

- b) The Clause (bespoke) '20 MILEAGE ACCUMULATION – CLASS 172 & 378 UNITS' shall be deleted;
- c) The Clause (bespoke), '21 PROVING PERIOD' shall be deleted;
- d) The Clause (bespoke) '22 RELEVANT SCHEDULE 8 MODIFICATIONS shall be deleted;
- e) The Clause (bespoke) '23 NLR PROVING PERIOD shall be deleted;
- f) The Clause (bespoke),<sup>24</sup> 'Retrospective Application of Changes to Schedules 4 and 8' shall be deleted;
- g) The Clause '25 INTERIM TREATMENT OF 2013 PERIODIC REVIEW shall be renumbered as 'Clause 20'.

## 5 AMENDMENTS TO SCHEDULE 1

The second address for Network Rail shall be deleted, and replaced as follows;

"Route Director  
Network Rail Anglia Route

One Stratford Place  
Montfitchet Road  
London E20 1EJ  
Tel: 07880 740567"

## 6 AMENDMENTS TO SCHEDULE 2

'**Schedule 2: The Routes**' shall be deleted in its entirety, and replaced with the following, as published in ORR's 'Model Passenger Contract' dated May 2012;

"1. In order to provide the Services, the Train Operator has permission to use the routes specified in Column 1 of Table 2.1 and Table 2.2 of Schedule 5.

2. In order to provide Services when any part of the route is unavailable, the Train Operator has permission to use any reasonable route for diversionary purposes, subject to obtaining any necessary route clearance for the Specified Equipment over the route in question.

3. In order to make Ancillary Movements, the Train Operator has permission to use any reasonable route, subject to obtaining any necessary route clearance for the Specified Equipment over the route in question.

4. In order to Stable railway vehicles, the Train Operator has permission to use any reasonable location, subject to obtaining any necessary route clearance for the Specified Equipment for the location in question.

5. Use of all routes is subject to the Network Code."

## 7 AMENDMENTS TO SCHEDULE 5

'**Schedule 5 The Services and the Specified Equipment**' shall be deleted in its entirety, and replaced as follows;

“

## 1 Definitions

1.1 In this Schedule unless the context otherwise requires:

**“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;

**“Clockface Departures”** means, in respect of any Service, a pattern whereby departures from the point of origin of that Service, or any specified intermediate point, are fixed at the same number or numbers of minutes past each hour;

**“Contingent Right”** means a right under this Schedule 5 which is not a Firm Right and which is subject to the fulfilment of all competing Exercised Firm Rights and any additional contingency specified in this Schedule 5;

**“Day”** means any period of 24 hours beginning at 0200 hours and ending immediately before the next succeeding 0200 hours, and any reference in this Schedule to any named day of the week shall be to such period commencing on that named day;

**“Exercised”** has the meaning ascribed to it in Part D of the Network Code;

**“Fastest Key Journey Time”** means, in respect of a Key Journey, the corresponding Journey Time, if any, set out in column 4 of Table 6.2;

**“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;

**“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 Timetable Planning Rules and/or the Applicable Engineering Access Statement);

**“Journey Time Review Notice”** has the meaning ascribed to it in paragraph 7.5;

**“Key Journey”** means a Passenger Train Slot with the characteristics specified in the first, second and third columns of Table 6.2 or 6.3;

**“Key Journey Time”** means a Fastest Key Journey Time or a Maximum Key Journey Time;

**“Maximum Journey Time”** means, in respect of a Passenger Train Slot, the corresponding Journey Time, if any, set out in column 4 of Table 6.1;

**“Maximum Key Journey Time”** means, in respect of a Key Journey, the corresponding Journey Time, if any, set out in column 4 of Table 6.3;

**“Modification Notice”** has the meaning ascribed to it in paragraph 7.10;

**“Network Change”** has the meaning ascribed to it in Part G of the Network Code;

**“Off-Peak Services”** means Services Scheduled on any part of a Weekday which are not “Peak Services”, and “Off-Peak” shall be construed accordingly;

**“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;

<b>“Peak Services”</b>	means Services Scheduled on any part of a Weekday (excluding Public Holidays) (i) to arrive at London Euston, Queens Road Peckham (from the direction of Denmark Hill) and New Cross Gate (from the direction of Sydenham) between 07:00 and 09:59, or (ii) to depart from London Euston, Queens Road Peckham (towards Denmark Hill) or New Cross Gate (towards Sydenham) between 16:00 and 18:59, and “Peak” shall be construed accordingly.
<b>“Period of 60 Minutes”</b>	means a period commencing at xx00 hours and ending immediately before the next succeeding xx00 hours;
<b>“Proposal”</b>	means any proposals to modify this contract made by Network Rail pursuant to paragraph 9;
<b>“Public Holiday”</b>	means any day other than Saturday or Sunday on which the banks in the City of London are not open for business;
<b>“Regular Calling Pattern”</b>	has the meaning ascribed to it in paragraph 4.1;
<b>“regulated access agreement”</b>	means an access agreement as that term is defined in section 83 of the Act;
<b>“Rolled Over Access Proposal”</b>	means a Train Slot which was obtained in the Prior Working Timetable and no variation is sought in the New Working Timetable;
<b>“Scheduled”</b>	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;
<b>“Service Group”</b>	means any one or more (as the context may require) of the service groups described in this Schedule;
<b>“Standard Specified Equipment”</b>	means, in respect of any Service, the Specified Equipment listed opposite that Service in column 2 of Table 5.1;
<b>“Timetable Period”</b>	means the period of time between (and including) one Timetable Change Date and (but excluding) the immediately succeeding Timetable Change Date;
<b>“Train Service Code” or “TSC”</b>	means the eight character code applied in the Performance Monitoring System and used to identify Services;
<b>“Weekday”</b>	means any Day (including, except for the purposes of paragraphs 6 and 7, a Public Holiday) which is not a Saturday or Sunday;

“xx20”

means, as an example of this notation, 20 minutes past the hour.

- 1.2 Unless otherwise stated, where in this Schedule a period is expressed to be between two specific times that period shall be inclusive of both such times.
- 1.3 The Train Operator's rights under this Schedule 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.
- 1.4 In this Schedule 5, any reference in the service description of a table to a service “from” or “to” New Cross Gate Connection Point means (as the context requires) a service entering onto or exiting from the Network at that point.
- 1.5 In this Schedule 5, any reference in the service description of a table to a service “from” or “to” Western Curve Connection Point means (as the context requires) a service entering onto or exiting from the Network at that point.
- 1.6 In this Schedule 5, any reference in the service description of a table to a service “from” or “to” Old Kent Road Junction Connection Point means (as the context requires) a service entering or exiting from the Network at that point.

## 2 Passenger Train Slots

Table 2.1: Passenger Train Slots

1						2					
Service description						Passenger Train Slots					
From	To	Via	Description	TSC	Timing Load	Total Weekday <sup>1</sup>	Peak times		Off-Peak times	Saturday	Sunday
							morning Peak	evening Peak			
<b>Service Group: EK01</b>											
Richmond	Stratford	Gospel Oak	All Stations	0222 1400	378	74	N/A	N/A	N/A	70	55
Richmond	Willesden Junction High Level	Acton Central	All Stations	2221 4000	378	0	N/A	N/A	N/A	1	0
Willesden Junction High Level or Willesden Junction Low Level	Stratford	Gospel Oak	All Stations	2221 4000	378	2	N/A	N/A	N/A	1	1
Willesden Junction High Level or Willesden Junction Low Level	Camden Road	Gospel Oak	All Stations	2221 4000	378	1	N/A	N/A	N/A	0	0
Stratford	Richmond	Gospel Oak	All Stations	2221 4000	378	72	N/A	N/A	N/A	72	55
Willesden Junction High Level	Richmond	Acton Central	All Stations	2221 4000	378	1	N/A	N/A	N/A	1	2

<sup>1</sup> Passenger Train Slots listed under the sub-headings “Peak times” and “Off-Peak times” are the constituent parts of, and are not in addition to, those listed under the sub-heading “Weekday”.

1						2					
Service description						Passenger Train Slots					
From	To	Via	Description	TSC	Timing Load	Total Weekday <sup>1</sup>	Peak times		Off-Peak times	Saturday	Sunday
							morning Peak	evening Peak			
Stratford	Willesden Junction High Level or Willesden Junction Low Level	Gospel Oak	All Stations	2221 4000	378	5	N/A	N/A	N/A	1	2
Camden Road	Stratford	Canonbury	All Stations	2221 4000	378	2	N/A	N/A	N/A	0	0
Stratford	Camden Road	Canonbury	All Stations	2221 4000	378	1	N/A	N/A	N/A	0	0
Clapham Junction	Stratford	Gospel Oak	All Stations	2221 4000	378	37	N/A	N/A	N/A	33	23
Stratford	Clapham Junction	Gospel Oak	All Stations	2221 4000	378	39	N/A	N/A	N/A	32	26
Clapham Junction	Willesden Junction High Level	Kensington Olympia	All Stations	2220 4000	378	33	N/A	N/A	N/A	37	32
Willesden Junction High Level	Clapham Junction	Kensington Olympia	All Stations	2220 4000	378	29	N/A	N/A	N/A	36	30
Gospel Oak	Barking	South Tottenham	All Stations	2192 1000	172	67	N/A	N/A	N/A	67	56
Barking	Gospel Oak	South Tottenham	All Stations	2192 1000	172	68	N/A	N/A	N/A	68	57

**Service Group: EK02<sup>2</sup>**

<sup>2</sup>

The rights of the Operator to operate the Services within Service Group EK02 shall expire at 01:59hrs on the Principal Change Date in December 2015.

London Euston	Watford Junction	DC Electric Lines	All Stations	2221 6000	378	53	0	9	44	53	48
Watford Junction	London Euston	DC Electric Lines	All Stations	2221 6000	378	53	9	0	44	53	47

<b>Service Group: EK03</b>											
New Cross Gate Connection Point	West Croydon	Norwood Junction	All Stations	2221 5003	378	71	0	12	59	71	55
West Croydon	New Cross Gate Connection Point	Norwood Junction	All Stations	2221 5003	378	71	12	0	59	71	55
New Cross Gate Connection Point	Crystal Palace	Sydenham	All Stations	2221 5003	378	72	0	12	60	72	55
Crystal Palace	New Cross Gate Connection Point	Sydenham	All Stations	2221 5003	378	71	12	0	59	70	54
Highbury & Islington	Western Curve Connection Point	Canonbury	All Stations	2221 5003	378	143	0	24	119	142	125
Western Curve Connection Point	Highbury & Islington	Canonbury	All Stations	2221 5003	378	140	24	0	116	138	126
Old Kent Road Junction Connection Point	Clapham Junction	Denmark Hill	All Stations	2220 6000	378	68	0	12	56	68	60
Clapham Junction	Old Kent Road Junction Connection Point	Denmark Hill	All Stations	2220 6000	378	68	12	0	56	68	60
Old Kent Road Junction Connection Point	Battersea Park	Denmark Hill	All Stations	2220 6000	378	1	0	0	1	0	0

Battersea Park	Old Kent Road Junction Connection Point	Denmark Hill	All Stations	2220 6000	378	1	0	0	1	0	0
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## **Passenger Train Slots**

- 2.1 The Train Operator has Firm Rights to the number of Passenger Train Slots in the Working Timetable in respect of a Service Group as listed against each Service specified in Table 2.1 on the Days and within the Peak and Off-Peak times so listed, using Specified Equipment that is capable of achieving the Timing Load shown.

If the Train Operator makes an Access Proposal, or relies on a Rolled Over Access Proposal, to operate any of the Services specified in Table 2.1 using Specified Equipment that is not capable of achieving the Timing Load shown, then the rights will be treated as Contingent Rights for the purposes of Part D of the Network Code.

- 2.2 In order to provide for the Scheduling of part only of Passenger Train Slots specified in Table 2.1, in respect of Service Group EK01, the Train Operator has Contingent Rights for such a Passenger Train Slot to commence from and/or terminate at Camden Road, Willesden Junction High Level or Willesden Junction Low Level (in each case to or from the Stratford direction); and Willesden Junction High Level (to or from the Richmond direction).
- 2.3 Not used.

Table 2.2: Additional Passenger Train Slots

1					2					
Service description					Additional Passenger Train Slots					
From	To	Via	Description	TSC	Total Weekday	Peak times		Off-Peak times	Saturday	Sunday
						morning Peak	evening Peak			
<b>Service Group: EK01</b>										
Woodgrange Park	Willesden Junction Low Level	South Tottenham		21921000	1	N/A	N/A	N/A	0	0
Woodgrange Park	South Tottenham	Blackhorse Road		21921000	1	N/A	N/A	N/A	0	0
<b>Service Group: EK01</b>										
Battersea Park	Clapham High Street	Wandsworth Road		22215003	1	N/A	N/A	N/A	0	0

### **Additional Passenger Train Slots**

- 2.4 The Train Operator has Contingent Rights to additional Passenger Train Slots in the Working Timetable in respect of a Service Group up to the number listed against each Service specified in Table 2.2 and on the Days so listed.
- 2.5 A Contingent Right for an additional Passenger Train Slot under paragraph 2.4 includes:
- (a) a Contingent Right to call at any station listed in Table 4.1;
  - (b) a Contingent Right to have Scheduled part only of the Passenger Train Slot in question; and
  - (c) a Contingent Right to combine Passenger Train Slots to provide a through Service.

### **Ancillary Movements**

- 2.6 The Train Operator has Firm Rights to make Ancillary Movements of Specified Equipment to the extent necessary or reasonably required to give full effect to the other Firm Rights of the Train Operator, including:
- (a) movements, for the purpose of maintenance of rolling stock, to and from maintenance depots;
  - (b) movements for driver training purposes; and
  - (c) empty stock movements.
- 2.7 For the purpose of paragraph 2.6, Ancillary Movements shall not include movements of rolling stock for the purpose of testing or driver training to the extent that:
- (a) the rolling stock concerned has not achieved vehicle and route acceptance necessary for its use in the carriage of passengers on the Route in question; or
  - (b) where the Route in question is not used by the Train Operator for carriage of passengers, the rolling stock concerned has not achieved vehicle and route acceptance necessary to operate on the Route without passengers on board.

### **Relief Passenger Train Slots**

- 2.8 The Train Operator has Contingent Rights to relief Passenger Train Slots for special or seasonal events, whenever the Train Operator believes (acting in a reasonable and proper manner) that a relief Passenger Train Slot is necessary to accommodate anticipated customer demand. These Contingent Rights are subject to:<sup>27th</sup>
- (a) the relief Passenger Train Slot being additional to a Service for which the Train Operator has access rights in Table 2.1 or 2.2; and;
  - (b) each relief Passenger Train Slot being allocated the relevant Train Service Code as shown in Schedule 7, Appendix 7C.
- 2.9 Save with the prior written consent of Network Rail, and subject to such conditions as Network Rail may reasonably impose, the Train Operator shall not be entitled to operate Services on the Routes on 25 or 26 December.
- 2.10 Subject to paragraph 2.9, the Train Operator has a Firm Right to specify a Saturday service in each of the Service Groups on Public Holidays.
- 2.11 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

1					2	3			4		
Service description					Station where interval applies	Interval (minutes)			Maximum variation (+/- minutes)		
From	To	Via	Description	TSC		Weekday	Saturday	Sunday	Weekday	Saturday	Sunday
<b>Service Group: EK01</b>											
Richmond	Stratford	Gospel Oak	All Stations	22214000	Richmond	15	15	15	3	3	3
Stratford	Richmond	Gospel Oak	All Stations	22214000	Stratford	15	15	15	3	3	3
Clapham Junction	Stratford	Gospel Oak	All Stations	22214000	Clapham Junction	15 0615-0915 30 0915-1545 15 1545-1915 30 1915-2145	30	30	3	3	3
Stratford	Clapham Junction	Gospel Oak	All Stations	22214000	Stratford	15 0605-0905 30 0905-1535 15 1535-1905 30 1905-2135	30	30	3	3	3
Willesden Junction High Level	Clapham Junction	Kensington Olympia	All Stations	22204000	Willesden Junction High Level	30 1003-1603 30 2003-2333	30	30	3	3	3
Clapham Junction	Willesden Junction High Level	Kensington Olympia	All Stations	22204000	Clapham Junction	30 0930-1530 30 2003-2333	30	30	3	3	3
Gospel Oak	Barking	South Tottenham	All Stations	21921000	Gospel Oak	15	15	15	3	3	3
Barking	Gospel Oak	South Tottenham	All Stations	21921000	Barking	15	15	30	3	3	3

1					2	3			4		
Service description					Station where interval applies	Interval (minutes)			Maximum variation (+/- minutes)		
From	To	Via	Description	TSC		Weekday	Saturday	Sunday	Weekday	Saturday	Sunday
<b>Service Group: EK03</b>											
New Cross Gate Connection Point	West Croydon	Norwood Junction	All Stations	22215003	New Cross Gate	15	15	15	3	3	3
West Croydon	New Cross Gate Connection Point	Norwood Junction	All Stations	22215003	New Cross Gate	15	15	15	3	3	3
New Cross Gate Connection Point	Crystal Palace	Sydenham Junction	All Stations	22215003	New Cross Gate	15	15	15	3	3	3
Crystal Palace	New Cross Gate Connection Point	Sydenham Junction	All Stations	22215003	New Cross Gate	15	15	15	3	3	3
Old Kent Road Junction Connection Point	Clapham Junction	Denmark Hill	All Stations	22206000	Peckham Rye	15	15	15	3	3	3
Clapham Junction	Old Kent Road Junction Connection Point	Denmark Hill	All Stations	22206000	Clapham Junction	15	15	15	3	3	3

## **Service Intervals**

- 3.1 Not Used
- 3.2 In respect of each Service specified in column 1 of Table 3.1 and subject to paragraphs 3.3 and 3.4, the Train Operator has Firm Rights to the interval between Passenger Train Slots shown in column 3 of Table 3.1 from the station shown in column 2 of that Table, being a station of origin or an intermediate station.
- 3.3 The Firm Rights specified in paragraphs 3.1 and 3.2 may only be Exercised if the Access Proposal or Rolled Over Access Proposal for each such Service complies with the Regular Calling Pattern or Reduced Regular Calling Pattern, and the Specified Equipment is capable of achieving the Timing Load specified for each such Service.
- 3.4 Network Rail shall be entitled to vary any one or more departures from the station named in column 2 of Table 3.1 by up to the number of minutes specified in column 4 of Table 3.1, with the effect that the interval between any two or more of such Passenger Train Slots may be less than or more than that specified in column 3 of Table 3.1, provided that the cumulative effect of such flexing over a period of 60 minutes shall not reduce the Train Operator's entitlement to its full quantum of Passenger Train Slots.

## 4 Calling Patterns

Table 4.1: Calling Patterns

1					2	3
Service description						
Between	And	Via	Description	TSC	Regular Calling Pattern	Additional stations
<b>Service Group: EK01</b>						
Richmond	Stratford	Gospel Oak	All Stations	22214000	All stations	N/A
Clapham Junction	Stratford	Gospel Oak	All Stations	22214000	All stations	N/A
Gospel Oak	Barking	South Tottenham	All Stations	21921000	All stations	N/A
Willesden Junction High Level	Clapham Junction	Kensington Olympia	All Stations	22204000	All stations	N/A
<b>Service Group: EK02<sup>3</sup></b>						
London Euston	Watford Junction	DC Electric Lines	All Stations	22216000	All stations	N/A
<b>Service Group: EK03</b>						
New Cross Gate Connection Point	West Croydon	Norwood Junction	All Stations	22215003	All stations	N/A
New Cross Gate Connection Point	Crystal Palace	Sydenham Junction	All Stations	22215003	All stations	N/A
Highbury & Islington	Western Curve Connection Point	Canonbury	All Stations	22215003	All stations	N/A

<sup>3</sup>

The rights of the Operator to operate the Services within Service Group EK02 shall expire at 01:59hrs on the Principal Change Date in December 2015

<b>1</b>					<b>2</b>	<b>3</b>
<b>Service description</b>						
<b>Between</b>	<b>And</b>	<b>Via</b>	<b>Description</b>	<b>TSC</b>	<b>Regular Calling Pattern</b>	<b>Additional stations</b>
Old Kent Road Junction Connection Point	Clapham Junction & Battersea Park	Denmark Hill	All Stations	22206000	All stations	N/A

## **Calling Patterns**

- 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**”) or any subset of the Calling Pattern (the “**Reduced Regular Calling Pattern**”).

## **Additional calls**

- 4.2 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

### Specified Equipment

5.1 In order to provide the Services specified in this Schedule 5, the Train Operator has:

(a) Firm Rights to operate the following railway vehicles:

(i) Class 378;

(ii) Class 172; and

(b).Contingent Rights to operate any railway vehicles registered with Network Rail's rolling stock library, subject to obtaining any necessary route clearance for the route in question.

For the purposes of this contract, the railway vehicles specified in paragraph 5.1(a) and 5.1(b) are known as the "**Specified Equipment**".

### Train length

5.2 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 and Rolled Over Access Proposals to operate to the maximum length.

5.3 Nothing in paragraph 5.2 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 Time Protection

Table 6.1: Journey Time Protection

1					2	3	4
<b>Service Group: EK01</b>							
<b>Service description</b>							
<b>From</b>	<b>To</b>	<b>Via</b>	<b>Description</b>	<b>TSC</b>	<b>Protection Type (MJT or MKJT)</b>	<b>Days of the week</b>	<b>Journey Time (in minutes)</b>
Stratford	Richmond	Gospel Oak	All Stations	22214000	MJT	Weekdays	62
Stratford	Richmond	Gospel Oak	All Stations	22214000	MJT	Saturdays	62
Stratford	Richmond	Gospel Oak	All Stations	22214000	MJT	Sundays	62
Richmond	Stratford	Gospel Oak	All Stations	22214000	MJT	Weekdays	62
Richmond	Stratford	Gospel Oak	All Stations	22214000	MJT	Saturdays	62
Richmond	Stratford	Gospel Oak	All Stations	22214000	MJT	Sundays	62
Stratford	Clapham Junction	Gospel Oak	All Stations	22214000	MJT	Weekdays	66
Stratford	Clapham Junction	Gospel Oak	All Stations	22214000	MJT	Saturdays	66
Stratford	Clapham Junction	Gospel Oak	All Stations	22214000	MJT	Sundays	66
Clapham Junction	Stratford	Gospel Oak	All Stations	22214000	MJT	Weekdays	66
Clapham Junction	Stratford	Gospel Oak	All Stations	22214000	MJT	Saturdays	66
Clapham Junction	Stratford	Gospel Oak	All Stations	22214000	MJT	Sundays	66
Gospel Oak	Barking	South Tottenham	All Stations	21921000	MJT	Weekdays	36
Gospel Oak	Barking	South Tottenham	All Stations	21921000	MJT	Saturdays	36
Gospel Oak	Barking	South Tottenham	All Stations	21921000	MJT	Sundays	36
Barking	Gospel Oak	South Tottenham	All Stations	21921000	MJT	Weekdays	36

<b>1</b>					<b>2</b>	<b>3</b>	<b>4</b>
<b>Service Group: EK01</b>							
<b>Service description</b>							
<b>From</b>	<b>To</b>	<b>Via</b>	<b>Description</b>	<b>TSC</b>	<b>Protection Type (MJT or MKJT)</b>	<b>Days of the week</b>	<b>Journey Time (in minutes)</b>
Barking	Gospel Oak	South Tottenham	All Stations	21921000	MJT	Saturdays	36
Barking	Gospel Oak	South Tottenham	All Stations	21921000	MJT	Sundays	36
Willesden Junction High Level	Clapham Junction	Kensington Olympia	All Stations	22204000	MJT	Weekdays	21
Willesden Junction High Level	Clapham Junction	Kensington Olympia	All Stations	22204000	MJT	Saturdays	21
Willesden Junction High Level	Clapham Junction	Kensington Olympia	All Stations	22204000	MJT	Sundays	21
Clapham Junction	Willesden Junction High Level	Kensington Olympia	All Stations	22204000	MJT	Weekdays	22
Clapham Junction	Willesden Junction High Level	Kensington Olympia	All Stations	22204000	MJT	Saturdays	22
Clapham Junction	Willesden Junction High Level	Kensington Olympia	All Stations	22204000	MJT	Sundays	22

1					2	3	4
<b>Service Group: EK03</b>							
<b>Service description</b>							
<b>From</b>	<b>To</b>	<b>Via</b>	<b>Description</b>	<b>TSC</b>	<b>Protection Type (MJT or MKJT)</b>	<b>Days of the week</b>	<b>Journey Time (in minutes)</b>
New Cross Gate Connection Point	West Croydon	Norwood Junction	All Stations	22215003	MJT	Weekdays	29
New Cross Gate Connection Point	West Croydon	Norwood Junction	All Stations	22215003	MJT	Saturdays	29
New Cross Gate Connection Point	West Croydon	Norwood Junction	All Stations	22215003	MJT	Sundays	29
West Croydon	New Cross Gate Connection Point	Norwood Junction	All Stations	22215003	MJT	Weekdays	29
West Croydon	New Cross Gate Connection Point	Norwood Junction	All Stations	22215003	MJT	Saturdays	29
West Croydon	New Cross Gate Connection Point	Norwood Junction	All Stations	22215003	MJT	Sundays	29
New Cross Gate Connection Point	Crystal Palace	Sydenham	All Stations	22215003	MJT	Weekdays	17
New Cross Gate Connection Point	Crystal Palace	Sydenham	All Stations	22215003	MJT	Saturdays	17
New Cross Gate Connection Point	Crystal Palace	Sydenham	All Stations	22215003	MJT	Sundays	17
Crystal Palace	New Cross Gate Connection Point	Sydenham	All Stations	22215003	MJT	Weekdays	17
Crystal Palace	New Cross Gate Connection Point	Sydenham	All Stations	22215003	MJT	Saturdays	17
Crystal Palace	New Cross Gate Connection Point	Sydenham	All Stations	22215003	MJT	Sundays	17

1					2	3	4
<b>Service Group: EK03</b>							
<b>Service description</b>							
<b>From</b>	<b>To</b>	<b>Via</b>	<b>Description</b>	<b>TSC</b>	<b>Protection Type (MJT or MKJT)</b>	<b>Days of the week</b>	<b>Journey Time (in minutes)</b>
Highbury & Islington	Western Curve Connection Point	Canonbury	All Stations	22215003	MJT	Weekdays	4
Highbury & Islington	Western Curve Connection Point	Canonbury	All Stations	22215003	MJT	Saturdays	4
Highbury & Islington	Western Curve Connection Point	Canonbury	All Stations	22215003	MJT	Sundays	4
Western Curve Connection Point	Highbury & Islington	Canonbury	All Stations	22215003	MJT	Weekdays	5
Western Curve Connection Point	Highbury & Islington	Canonbury	All Stations	22215003	MJT	Saturdays	5
Western Curve Connection Point	Highbury & Islington	Canonbury	All Stations	22215003	MJT	Sundays	5
Old Kent Road Junction Connection Point	Clapham Junction	Denmark Hill	All Stations	22206000	MJT	Weekdays	27
Old Kent Road Junction Connection Point	Clapham Junction	Denmark Hill	All Stations	22206000	MJT	Saturdays	27
Old Kent Road Junction Connection Point	Clapham Junction	Denmark Hill	All Stations	22206000	MJT	Sundays	27
Clapham Junction	Old Kent Road Junction Connection Point	Denmark Hill	All Stations	22206000	MJT	Weekdays	27
Clapham Junction	Old Kent Road Junction Connection Point	Denmark Hill	All Stations	22206000	MJT	Saturdays	27
Clapham Junction	Old Kent Road Junction Connection Point	Denmark Hill	All Stations	22206000	MJT	Sundays	27

*Journey Time protection*

- 6.1 The Train Operator has Firm Rights to Maximum Journey Times or Maximum Key Journey Times under this paragraph 6 only in relation to Passenger Train Slots which are the subject of, and comply with, Firm Rights under paragraph 2.1 and paragraph 4.1.
- 6.2 In respect of each Service listed in column 1 of Table 6.1, the Train Operator has Firm Rights to a Journey Time, being a Maximum Journey Time or Maximum Key Journey Time as specified by MJT or MKJT respectively in column 2, on the days listed in column 3, not exceeding the Journey Time listed in column 4.
- 6.3 Journey Times specified as Maximum Journey Times shall be increased or decreased (as the case may be) by an amount equal to any:
- (a) increase or decrease in the relevant sectional running times applicable as at 11 November 2007;
  - (b) increase or decrease in the relevant station dwell times applicable as at 11 November 2007; and
  - (c) increase or decrease in the relevant performance allowances, engineering recovery allowances or any other allowances,
- as such sectional running times, station dwell times or allowances are established and may change in accordance with the Applicable Engineering Access Statement and/or the Applicable Timetable Planning Rules.
- 6.4 Journey Times specified as Maximum Key Journey Times are not subject to changes to the Applicable Engineering Access Statement or the Applicable Timetable Planning Rules, otherwise than in accordance with the provisions of paragraph 7.

## **7 Provisions applicable to Journey Time protection**

### *Restriction on changes to 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 ADRR*

7.4 If the parties fail to agree such revised Key Journey Time(s) within 3 months of the request of either party for revision of the relevant Key Journey Time(s), either party may refer the matter for resolution in accordance with the ADRR. The parties shall agree in a Procedure Agreement, as defined in the ADRR, that in performing its function the relevant ADRR Forum must have regard to the following criteria:

- (a) Key Journey Times should be as short as is compatible with the development of a safe, reliable and robust timetable; and
- (b) any relevant criteria which may have been published by ORR.

### *Provisions applicable to Maximum Key Journey Times and Maximum Journey Times*

7.5 A Journey Time Review Notice is a notice given to the parties by ORR:

- (a) requiring them to enter into negotiations in good faith to vary such Journey Times set out in Tables 6.1 as are specified in the notice;
- (b) after consultation with the parties, Rail for London Limited and such other persons as it considers appropriate; and
- (c) containing its reasons for giving it.

7.6 As soon as reasonably practicable after the service of a Journey Time Review Notice, the parties shall begin, and in good faith diligently pursue, the negotiations in question.

7.7 If the parties reach agreement on the variations in question, they shall send a copy of them to ORR for its consent, together with a note of the reasons for them and an explanation of how they are consistent with its statutory duties.

7.8 If the parties fail to reach agreement on the variations in question within 45 days of the giving of a Journey Time Review Notice, either party may refer the matter for resolution in accordance with the ADRR. In such a case, the parties shall agree in a Procedure Agreement, as defined in the ADRR, that the relevant ADRR Forum shall reach a determination that is fair and reasonable, on the basis of the following criteria:

- (i) Journey Times should be as short as is compatible with the development of a safe, reliable and robust timetable;
- (ii) any relevant criteria which may have been published by ORR; and
- (iii) the reasons for the service of the Journey Time Review Notice given by ORR in that notice.

*Requirement for the Office of Rail Regulation's consent*

7.9 Subject to paragraph 7.10, a variation:

- (a) agreed under paragraph 7.3;
- (b) agreed or determined as an outcome of a referral for resolution in accordance with the ADRR under any of the provisions of this paragraph 7; or
- (c) agreed under paragraph 7.7;

shall have effect:

- (i) only if ORR has given its consent to it; and
- (ii) from such date as is specified in that consent.

*Office of Rail Regulation's Modification Notice*

7.10 A Modification Notice is a notice given to the parties by ORR:

- (a) specifying the changes which ORR requires be made to the proposed variations which have been:
  - (i) agreed under paragraph 7.3;
  - (ii) agreed or determined as an outcome of a referral for resolution in accordance with the ADRR under any of the provisions of this paragraph 7; or
  - (iii) specified in an agreement of the kind referred to in paragraph 7.7;
- (b) after consultation with the parties, Rail for London Limited and such other persons as it considers appropriate; and
- (c) containing its reasons for giving it.

7.11 If a Modification Notice is given, this contract will have effect with the variations referred to in paragraph 7.10(a) as modified in accordance with the terms of the notice.

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

7.12 ORR shall be entitled, by notice to the parties and Rail for London Limited, to substitute for any date or period specified in paragraph 7.8, a date which is not more than 180 days later, or a period which is not more than 180 days longer, than that so specified.

*Requirements for notice under paragraph 7.12*

7.13 No notice under paragraph 7.12 may be given unless:

- (a) ORR has consulted the parties and Rail for London Limited;
- (b) ORR has taken into account any representations or objections which have been made to it within such period as it has specified for the purpose; and
- (c) where the notice is given after the date or the expiry of the period to which it relates, it is given no later than 30 days after such date or expiry.

## **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.

### *Table 8.6: Quantum of Additional Calls.*

NOT USED

#### *Quantum of additional calls*

8.8 Not used.

## **9. Connections Between the Network and the Core ELR Infrastructure**

### *9.1 Application of paragraph*

This paragraph 9 shall apply in respect of all Services of the Train Operator within Service Group EK03.

### *9.2 Connection Points*

The parties agree that the Core ELR Infrastructure connects with the Network at the following loci:

- (i) Western Curve Connection Point;
- (ii) Old Kent Road Junction Connection Point; and
- (iii) New Cross Gate Connection Point.

Furthermore, the parties recognise that, at each of the aforementioned loci, a connection agreement should exist between Network Rail and Rail for London Limited.

### *9.3 Conditionality of permission to use the Routes granted in relation to all Services of the Train Operator within Service Group EK03*

- (a) Permission for Services within Service Group EK03 to use the Network is at all times conditional upon connection agreements between Network Rail and Rail for London Limited remaining in force, in relation to the Core ELR Infrastructure and the Network, at each of the three loci listed in paragraph 9.2, above.
- (b) If the termination of any such connection agreement occurs, Network Rail shall not suspend permission for Services of the Train Operator within Service Group EK03 to use the Network, if termination of such agreement was caused by:
  - (A) Network Rail terminating the agreement for a reason other than Rail for London Limited's breach or default; or
  - (B) Rail for London Limited terminating the agreement by reason of Network Rail's breach or default.

It is further agreed that permission for Services within Service Group EK03 to use the Network shall not be conditional on the continued subsistence of such connection agreements, where any such agreement is terminated in consequence of it being superseded by a new connection agreement relating to the same or similar subject matter.

In circumstances where any such connection agreement is superseded by a replacement connection agreement, this paragraph 9.3(b) shall be deemed to refer to such replacement agreement.

- (c) Where a connection agreement terminates for reasons other than those specified in paragraph 9.3(b), above, and Network Rail is not required to grant permission for Services of the Train Operator within Service Group EK03 to use the Network, then the affected Services of the Train Operator within

Service Group EK03 shall be suspended without Network Rail incurring any liability to the Train Operator whatsoever (including, for avoidance of doubt, liability under Schedule 4 and Schedule 8).

- (d) Network Rail shall have no liability to the Train Operator under the contract (including, for avoidance of doubt, liability under Schedule 4 and Schedule 8) to the extent that access rights are disrupted in any way on the H&I Section as a consequence of signalling or other infrastructure being:
  - (i) unavailable or otherwise defective; or
  - (ii) incapable of being used in accordance with the specification required to permit the Services to be operated consistently with the provisions of the contract, where such circumstances are the consequence of Rail for London Limited being in breach of its obligations to Network Rail under the terms of joint operating procedures agreed between Network Rail and Rail for London Limited from time to time.
- (e) Notwithstanding Schedule 4, Schedule 8 and/or any other provision of the contract, Network Rail shall have no liability to the Train Operator under the contract (including under Schedule 4 and Schedule 8) or otherwise, to the extent that the access rights or any other rights of the Train Operator and/or of any other train operators are delayed, disrupted, cancelled or affected in any way on the Network due to, or as a consequence, of a Relevant Incident.

#### 9.4 *ORR directions if NLR Access Option Terminates*

- (a) ORR may, by notice, direct Network Rail and the Train Operator to make such modifications as it may specify to the Services and the duration of this contract if:-
  - (i) the NLR Access Option terminates, pursuant to Clause 3.2.2 thereof;
  - (ii) ORR has consulted Network Rail, Transport for London and the Train Operator regarding the proposed modification;
  - (iii) ORR has taken into account any representations which have been made to it within such period as it has specified for the purpose; and
  - (iv) having regard to its duties under section 4 of the Act it considers it appropriate to do so.
- (b) If ORR directs any modifications described in paragraph 9.4(a), the modifications will have effect from the time specified by ORR in its notice of direction to the parties, and the terms of the contract shall be modified accordingly.
- (c) The Train Operator shall have no claim against Network Rail for compensation in relation to any loss or damage suffered by the Train Operator as a result of modifications made to this contract pursuant to this paragraph 9.4.

9.5 *Transport for London or an Affiliate of Transport for London as Facility Owner of the H&I Section*

If, during the currency of the contract, Transport for London or an Affiliate of Transport for London becomes the facility owner of the H&I Section, which is used or is intended to be used by the Train Operator, the parties agree that on and from the date that Transport for London or an Affiliate of Transport for London becomes the facility owner of the H&I Section, the Train Operator shall surrender pursuant to condition 2.1 of Part J of the Network Code any rights under this contract relating to the operation of passenger services on the H&I Section, for the duration of the period that Network Rail is not the facility owner of the H&I Section.

”

## 8 AMENDMENTS TO SCHEDULE 6

**a) ‘1.1 Train Operator Events of Default Service Intervals’ paragraph (a) shall be deleted and replaced with;**

“(a) the Train Operator ceases to be authorised to be the operator of trains for the provision of the Services in accordance with Clause 3.2(a);”

**b) The following references to the number ‘7’ shall be deleted and replaced with ‘seven’;**

**(i) Paragraph 1.1 (d);**

“any Track Charges or other amount due by the Train Operator to Network Rail under this contract remain unpaid for more than **seven** days after their due date;”

**(ii) Paragraph 2.2 (e) (ii);**

“a reasonable grace period for the defaulting party to remedy it (where the Event of Default which has occurred is a failure to pay Track Charges or other amount due, **seven** days shall be a reasonable grace period);”

**(iii) Paragraph 3.3 (c) (ii);**

“a reasonable grace period within which such steps may be taken (where the Event of Default is a failure of the Train Operator to pay Track Charges or other amounts due, **seven** days is a reasonable grace period).”

## 9 AMENDMENTS TO SCHEDULE 7

- a) In Schedule 7 Part 1, the definition '**Schedule of Fixed Charges**' shall be deleted and replaced as follows;

“

**“Schedule of Fixed Charges”** means the document entitled “Fixed Track Charges Schedule” published by Network Rail on or about 18 December 2008;

“

- b) In Schedule 7 Part 2, paragraph 7.5 shall be deleted and replaced with the following;

“

Paragraphs 3.2.4 and 3.2.5 shall apply to a payment of Network Rail Rebate in the same way as they apply in relation to a payment of an Efficiency Benefit Share, as if references in paragraphs 3.2.4 and 3.2.5 to “Efficiency Benefit Share” and “EBS payment” were instead references to, respectively, “Network Rail Rebate” and “Network Rail Rebate payment.”

”

- c) In Schedule 7 Part 5, paragraph 3.2 shall be deleted and replaced with the following;

“

3.2 For the purposes of paragraph 3.1:

- (a) the Variable Track Usage Charge per Vehicle Mile applicable to Class 378 vehicles shall be as follows (including any indexation of that Variable Track Usage Charge pursuant to Schedule 7):

<b>Vehicle Type</b>	<b>Vehicle Description</b>	<b>Pence per Vehicle Mile (2013/2014 prices)</b>
Class 378	Dual Voltage AC/DC (Motor Coach)	5.93
Class 378	Dual Voltage AC/DC (Trailer Coach)	5.16

(b) the Traction Electricity Consumption Rate applicable to Class 378 vehicles shall be as follows:

<b>Vehicle Type</b>	<b>Vehicle Formation</b>	<b>Traction electricity consumption rate (KwH / mile)</b>
Class 378	Dual Voltage AC/DC (Motor Coach) 3 car	13.246
Class 378	Dual Voltage AC/DC (Motor Coach) 4 car	17.617
	Applies to all Train Service Codes apart from 22206000	
Class 378	Dual Voltage AC/DC (Motor Coach) 4 car	20.000
	Applies to train Service Code 22206000.	

“

d) In Schedule 7 Part 7, paragraph 3 (c) shall be deleted and replaced with the following;

“

(c) “**net interest payable**” is:

(i) interest, issuance costs and financing fees payable by Network Rail; less

(ii) interest receivable by Network Rail,

in each case, on an accruals basis,

and for these purposes, any calculation of interest

(iii) shall treat all amounts payable and receivable under interest rate and foreign exchange derivative transactions as though such transactions fully qualified for hedge accounting whether or not they in fact do so

but:

(iv) shall not include:

(A) capital accretion on index-linked debt; or

(B) interest that is payable but rolled-up under intercompany loan arrangements;

“

In Appendix 7C, a footnote shall be added to the table as follows:

“ The rights of the Operator to operate the Services within Service Group EK02 shall expire at 01.59hrs on the Principal Change date in 2015”

## 10 AMENDMENTS TO SCHEDULE 8

a) A footnote shall be added to paragraph 1.1 'Definitions', as follows:

“ The rights of the Operator to operate the Services within Service Group EK02 shall expire at 01.59hrs on the Principal Change date in 2015”

b) A footnote shall be added to Appendix 1, as follows:

“ The rights of the Operator to operate the Services within Service Group EK02 shall expire at 01.59hrs on the Principal Change date in 2015”

## 11 AMENDMENTS TO SCHEDULE 11

Schedule 11, '*East London Line Proving Period*' shall be deleted in its entirety.

## 12 AMENDMENTS TO SCHEDULE 12

Schedule 12, '*Class 378 Mileage Accumulation*' shall be deleted in its entirety.

## 13 AMENDMENTS TO SCHEDULE 13

Schedule 13, '*Relevant Schedule 8 modifications*' shall be deleted in its entirety, and replaced with the following;

“

### SCHEDULE 13: RELEVANT SCHEDULE 8 MODIFICATIONS<sup>29th</sup>

#### 1. Automatic effect

##### 1.1 General

This contract shall have effect:

(a) with the Relevant Schedule 8 Modifications; and

(b) from the date,

specified by ORR in a Notice of Consent or Notice of Determined Relevant Schedule 8 Modifications.

##### 1.2 Retrospective effect

A Notice of Consent or Notice of Determined Relevant Schedule 8 Modifications may have retrospective effect.

## **2. Procedures governing Relevant Schedule 8 Modifications**

### *2.1 Negotiation of Relevant Schedule 8 Modifications*

In respect of the Relevant Schedule 8 Modifications:

- (a) the parties shall, within 28 days from the Start Date, meet and negotiate and use reasonable endeavours to agree the Relevant Schedule 8 Modifications;
- (b) each party shall ensure that:
  - (i) such negotiations are conducted in a timely, efficient and economical manner, with appropriate recourse to professional advice; and
  - (ii) ORR's Criteria are applied in the negotiations; and
- (c) the negotiations shall not continue after the Backstop Date.

### *2.2 Relevant Schedule 8 Modifications - failure to agree*

If the parties fail to agree the Relevant Schedule 8 Modifications on or before the Backstop Date:

- (a) the matter shall be submitted to arbitration in accordance with Part C, Access Dispute Resolution Rules; and
- (b) Network Rail shall within five Working Days notify ORR in writing of such submission to arbitration.

### *2.3 Use of the Office of Rail Regulation's Criteria in arbitration*

If a matter is referred to arbitration under paragraph 2.2, the arbitrator shall be required by the parties to:

- (a) determine the Relevant Schedule 8 Modifications in accordance with ORR's Criteria and make such orders in his award as he considers necessary to establish the requisite Relevant Schedule 8 Modifications;
- (b) provide reasons for his award; and
- (c) state the extent to which and ways in which ORR's Criteria have been applied in determining the Relevant Schedule 8 Modifications and, in any case where they have not been applied, give the reasons.

### *2.4 Relevant Schedule 8 Modifications – notice to the Office of Rail Regulation*

Not later than seven days after the Backstop Date or the conclusion of arbitration, as the case may be, the Relevant Schedule 8 Modifications shall be sent by the parties to ORR for its consent, together with a statement, signed by or on behalf of both parties:

- (a) stating the reasons for the Relevant Schedule 8 Modifications;

- (b) stating the extent to which and ways in which ORR's Criteria have been applied indetermining the Relevant Schedule 8 Modifications and, in any case where they have not been applied, the reasons; and
- (c) giving such other information as ORR may have requested.

#### 2.5 *Relevant Schedule 8 Modifications – the Office of Rail Regulation's consent*

If ORR is satisfied with the Relevant Schedule 8 Modifications submitted to it pursuant to paragraph 2.4, and it gives a notice to that effect, such modifications shall have effect as provided for in paragraph 1.1.

#### 2.6 *Relevant Schedule 8 Modifications – the Office of Rail Regulation's refusal of consent*

If:

- (a) the parties fail to submit to ORR for its consent the Relevant Schedule 8 Modifications in accordance with paragraph 2.4; or
- (b) ORR gives notice to the parties that it is not satisfied with any or all of the proposed Relevant Schedule 8 Modifications,

ORR may:

- (i) require the parties again to follow the procedure or any part of the procedure set out in paragraphs 2.1 to 2.4 for agreeing Relevant Schedule 8 Modifications (with such modifications as to time limits as it specifies), in which case they shall do so; or
- (ii) following such consultation with the parties as it considers necessary, determine the Relevant Schedule 8 Modifications itself and give a notice specifying such Relevant Schedule 8 Modifications.

#### 2.7 *Payment adjustments*

- (a) Within ten Working Days of the date of any notice referred to in paragraph 1.1, and in order to give effect to the Relevant Schedule 8 Modifications specified in such notice, Network Rail shall issue to the Train Operator a statement showing the necessary adjustments to the payments already made under Schedule 8; and
- (b) any statement issued by Network Rail under paragraph 2.7(a) shall be accompanied by an adjusting invoice or credit note.

### **3. Procedural matters**

#### 3.1 *Co-operation and information*

If ORR gives notice to either or both of the parties that it requires from either or both of them information in relation to the Relevant Schedule 8 Modifications or proposed Relevant Schedule 8 Modifications:

- (a) the party of whom the request is made shall provide the requested information promptly and to the standard required by ORR; and

- (b) if that party fails timeously to do so, 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.

### 3.2 *The Office of Rail Regulation's Criteria*

Any Relevant Schedule 8 Modifications shall:

- (a) ensure that Schedule 8 will maintain appropriate financial incentives on both parties in relation to Services, such that both parties are encouraged to maintain and improve operational performance, seeking to minimise lateness and cancellations;
- (b) be drafted to meet a high standard of simplicity, clarity and legal precision;
- (c) use definitions, terminology and numbering, including any bespoke provisions based on previous track access contracts, which are consistent with the defined terms, terminology and numbering used in this contract;
- (d) take account, where relevant, of ORR's latest policy statements on the performance regime; and
- (e) take account of the duties of ORR under section 4 of the Act.

### 3.3 *Procedural modifications*

In relation to the procedure in paragraph 2 for the Relevant Schedule 8 Modifications (including the times within which any step or thing requires to be done or achieved):

- (a) such procedure may be modified by ORR by a Notice of Procedural Modifications; but
- (b) ORR may only give a Notice of Procedural Modifications 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 it is requested by both parties.

### 3.4 *Dates*

In this Schedule:

- (a) where provision is made for a date to be specified or stated by 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 ORR which states a date may state different dates for different purposes.

### 3.5 *Consolidated contract*

Not later than 28 days after the giving of a Notice of Consent or Notice of Determined Relevant Schedule 8 Modifications, Network Rail shall prepare and send to the Train Operator and ORR a copy of this contract as so modified.

### 3.6 *Saving*

Nothing in this Schedule affects the right of either party to approach and obtain from ORR guidance in relation to Relevant Schedule 8 Modifications.

## 4. **Definitions**

In this Schedule 13:

**“Backstop Date”** means:

- (a) not used;
- (b) (for the purposes of Relevant Schedule 8 Modifications falling within paragraph (c) or (d) of the definition of “Relevant Schedule 8 Modifications”) 31 July 2014 (or such later date as may be established under paragraph 2.6 or 3.3);

**“Notice of Consent”** means a notice given by ORR to the parties under paragraph 2.5;

**“Notice of Determined Relevant Schedule 8 Modifications”** means a notice given by ORR to the parties under paragraph 2.6 (b);

**“Notice of Procedural Modifications”** means a notice given by ORR to the parties under paragraph 3.3 modifying any aspect of the procedures in this Schedule;

**“ORR’s Criteria”** means the criteria set out in paragraph 3.2;

**“Relevant Schedule 8 Modifications”** means:

- (a) not used;
- (b) not used;
- (c) any modifications to Appendix 1 and/or Appendix 3 of Schedule 8 to reflect the introduction of the Services in Service Group EK03 from the Principal Change Date in 2012 which are necessary or desirable to achieve the objectives set out in ORR’s Criteria in the most efficient and economic manner; and
- (d) any modifications to any other part of Schedule 8 of this Contract which are necessary as a consequence of any modifications under paragraph (c); and

**“Start Date”** means:

- (a) not used;
- (b) (for the purposes of Relevant Schedule 8 Modifications falling within paragraph (c) or (d) of the definition of “Relevant Schedule 8 Modifications”), 09 December 2013.”

## 14 AMENDMENTS TO SCHEDULE 14

Schedule 14, '**North London Railway Proving Period**' shall be deleted in its entirety.

## 15 NEW SCHEDULE 11

A new Schedule 11 '**Use of Railway Infrastructure re-opener**' shall be introduced, as follows:

“

### **SCHEDULE 11 : USE OF RAILWAYS INFRASTRUCTURE REOPENER**

#### **1 Automatic effect**

##### *1.1 General*

This contract shall have effect—

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

specified by ORR in a Schedule 11 notice.

##### *1.2 Retrospective effect*

No relevant notice may have retrospective effect.

#### **2 Schedule 11 notice**

##### *2.1 Meaning*

A Schedule 11 notice is a notice given by ORR to the parties for the purposes of this contract which modifies this Schedule 11 by replacing this Schedule 11 with the specified provisions arising from the requirements of paragraph 18(5) of the Railways Infrastructure (Access and Management) Regulations 2005.

##### *2.2 Contents of Schedule 11 notice*

A Schedule 11 notice shall state—

- (a) the modifications which are to be made to this Schedule 11; and
- (b) the date from which specified modifications are to have effect.

#### **3 Definitions**

In this Schedule 11—

“ **Schedule 11 notice**” has the meaning ascribed to it in paragraph 2.1; and

“**specified**” means specified in a Schedule [xx] notice.

”

## **16 EFFECT OF THIS SUPPLEMENTAL AGREEMENT ON THE CONTRACT**

The Contract, as amended by this Supplemental Agreement, shall remain in full force and effect in accordance with its terms. During the period in which the amendments made by this Supplemental Agreement are to have effect, all references in the Contract to “the contract”, “herein”, “hereof”, “hereunder” and other similar expressions shall, unless the context requires otherwise, be read and construed as a reference to the Contract as amended by this Supplemental Agreement.

## **17 THIRD PARTY RIGHTS**

No person who is not a party to this Supplemental Agreement shall have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Supplemental Agreement.

## **18 LAW**

This Supplemental Agreement shall be governed by, construed and given effect to, in all respects in accordance with, English Law.

## **19 COUNTERPARTS**

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

**IN WITNESS** whereof the duly authorised representatives of Network Rail and the Train Operator have executed this Supplemental Agreement on the date first above written.

**SIGNED** by.....

Print name: **Richard Schofield**

Duly authorised for and on behalf of

**NETWORK RAIL INFRASTRUCTURE LIMITED**

**SIGNED** by.....

Print name: **Peter Austin**

Duly authorised for and on behalf of

**LONDON OVERGROUND RAIL OPERATIONS LIMITED**