



Franchise Agreement

Docklands Light Railway Limited

and

Keolis Amey Docklands Limited

relating to the Docklands Light Railway

17 July 2014

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THIS AGREEMENT is made on the seventeenth day of July 2014

BETWEEN:

- (1) **DOCKLANDS LIGHT RAILWAY LIMITED** (Company number: 2052677) with its registered office at 42-50 Victoria Street, London, SW1H 0TL ("**DLRL**"); and
- (2) **KEOLIS AMEY DOCKLANDS LIMITED** (Company number: 09113304) with its registered office at Evergreen House North, 160 Euston Road, London, NW1 2DX (the "**Franchisee**").

RECITALS

- (A) DLRL is the owner and operator of the Railway.
- (B) On 9 January 2013 DLRL commenced a competition for the award of the Franchise.
- (C) As a result of the competition referred to in Recital (B) the Franchisee was awarded the right to operate the Franchise on the terms set out herein.

THE PARTIES AGREE AS FOLLOWS:

PART I: DEFINITIONS

1. **DEFINITIONS/INTERPRETATION**

1.1 **Definitions**

In this Agreement (including the recitals, Schedules and Appendices), except where the context otherwise requires, the following words and expressions shall have the meanings given to them below:

"Actual Profit" has the meaning given to it in paragraph 3.2 of Part 4 of Schedule 14 (Profit Share);

"Additional DLR Contract" means any contract (which is not either in a category of agreements already treated as DLR Contracts or a replacement for or renewal of an existing DLR Contract on the same or substantially similar terms) which DLRL requires the Franchisee to treat as a DLR Contract pursuant to paragraph 3 of Part 1 of Schedule 9;

"Additional Pension Costs" means an amount equal to the contributions provided in respect of each eligible jobholder (as defined in the Automatic Enrolment Legislation) in order to ensure compliance with the Automatic Enrolment Legislation which are paid by the Franchisee in respect of each eligible jobholder who is shown in the First Employee List as not participating in any pension arrangement;

"Ad Hoc Safety Audit" has the meaning given to it in paragraph 9.1 of Part 1 of Schedule 7;

"Adjustment Payment" means an amount determined as such in accordance with paragraph 1.3 of Part 1 of Schedule 14;

"Affiliate" means, in respect of any person, the person by which that person is Controlled or which is Controlled by that person, or any person which is Controlled by any other Affiliate of that person, including (in the case of the Franchisee) the Shareholders;

"Agreement" means this agreement, as amended from time to time;

"All Risks Property Insurance" means the insurances described in paragraph 2.1 of Part 3 of Schedule 14;

"AMS Gap Analysis" has the meaning given to it in clause 9.5;

"Ancillary Agreements" means the Rolling Stock Lease, the Deeds of Assignment, the Deed of Adherence and the Deed of Cessation;

"Annual Asset Management Plan" means the annual asset management plan referred to in clause 9 and any other annual asset management plan prepared by the Franchisee pursuant to Part 4 of Schedule 4;

"Annual Audited Accounts" means the accounts of the Franchisee which:

- (a) comply with paragraph 3 of Schedule 10 (Provision of Information); and
- (b) are delivered to DLRL by the Franchisee in accordance with paragraph 3 of Schedule 10 and certified by the Franchisee's auditors as true and fair;

"Annual Cumulative Profit Share Amount" has the meaning given to it in paragraph 3.1 of Part 4 of Schedule 14;

"Annual Customer Service Plan" has the meaning given in paragraph 2 of Part 2 of Schedule 3;

"Annual Environmental Improvement Plan" has the meaning given in paragraph 5 of Part 4 of Schedule 7;

"Annual Management Accounts" means, in relation to any Fee Period, the Franchisee's management accounts which:

- (a) comply with paragraph 3.5 of Schedule 10; and
- (b) are delivered to DLRL by the Franchisee in accordance with paragraph 3.2 of Schedule 10;

"Annual Revenue Protection Plan" means the annual revenue protection plan referred to in paragraph 3.1 of Part 2 of Schedule 5 and any subsequent annual revenue protection plan prepared by the Franchisee in accordance with paragraph 3.1 of Part 2 of Schedule 5;

"Annual Safety Improvement Plan" means the annual safety improvement plan referred to in Part 1 of Schedule 7 and any subsequent annual safety improvement plan prepared by the Franchisee in accordance with paragraph 4.1 of Part 1 of Schedule 7;

"Annual Safety Report" has the meaning given in paragraph 5.1 of Part 1 of Schedule 7;

"Annual Security Plan" has the meaning given in paragraph 3.1 of Part 3 of Schedule 7;

"APC" means automatic passenger counter, which records passenger movements into and out of Stations;

"Applicable Requirements" means, depending on the context, all or any Laws and standards at any time or from time to time in force in the United Kingdom and which are or may become applicable to this Agreement and the Ancillary Agreements, any agreement or document referred to in this Agreement and the Ancillary Agreements or the carrying out of the Services including, without prejudice to the generality of the foregoing, Industry Standards, the requirements of the Regulator, HSWA and ROGS;

"Asset Condition Assessment" has the meaning given in clause 9.5;

"Asset Damage Incident" means an incident of material damage to or loss of one of the Franchise Assets between the date of this Agreement and the Franchise Commencement Date, provided always that an incident of material damage to or loss of any of the Franchise Assets shall not be treated as an Asset Damage Incident if:

- (a) it would not have occurred but for a breach by the Franchisee of the terms of this Agreement;
- (b) it could have been prevented through the exercise of proper foresight and due diligence of the Franchisee Parties; or
- (c) its occurrence could reasonably have been anticipated and appropriate anticipatory mitigation measures could reasonably have been undertaken;

"Asset Management Performance Notice" means a performance notice issued by DLRL to the Franchisee in accordance with paragraph 3.3 of Schedule 13;

"Asset Management Policy" means the asset management policy set out in Part 1 of Schedule 4, as amended in accordance with clause 9.2;

"Asset Management Strategy" means the asset management strategy set out in Part 2 of Schedule 4, as amended in accordance with clause 9.2;

"Asset Management System" means as at the date of this Agreement the computerised asset management system "SAP ECC5" specified by DLRL and, following the completion of the Franchisee's obligation pursuant to paragraph 4.6 of Part 1 of Schedule 12, [●]¹;

"Assumed Contracts" means:

- (a) for the purposes of Part 2 of Schedule 17, the contracts set out in Appendix 2 to Schedule 17 (to the extent that the contract in question remains in force and effect as at the Franchise Commencement Date), excluding the Excluded Contracts; and
- (b) for the purposes of Part 3 of Schedule 17, the contracts assigned to the Franchisee pursuant to Part 2 of Schedule 17 and any other contracts entered into by the Franchisee in connection with the Franchise (to the extent, in either case, that the contract in question remains in force and effect as at the Franchise Termination Date) including the Key Contracts but excluding the Excluded Contracts;

"Assumed Creditors" means those of the Creditors which have been identified and agreed in writing as such between the parties prior to the Franchise Termination Date;

"Assumed Employees" means:

- (a) for the purposes of Part 2 of Schedule 17, all employees engaged by the Predecessor Franchisee in the Franchise as at the Franchise Commencement Date; and
- (b) for the purposes of Part 3 of Schedule 17, all employees engaged by the Franchisee in the Franchise whose names are provided by the Franchisee pursuant to paragraph 8.3 of Part 3 of Schedule 17, as updated during the Pre-Handback Period pursuant to such paragraph;

¹ Redacted.

"Automatic Enrolment Legislation" has the meaning given to it in paragraph 6.5(c)(ii) of Part 2 of Schedule 17;

"Authorised Functions" means the functions for which the Franchisee is authorised to act as DLRL's agent under clause 16.2 (Authorised Functions);

"Average Earnings Index" means the average earnings index for the whole economy as published from time to time by the Office of National Statistics or, if such index shall cease to be published or if there is a material change in the basis of the index, such other average earnings index as DLRL may, after consultation with the Franchisee, determine (acting reasonably) to be appropriate in the circumstances;

"Base Service Change" means an instruction given by DLRL to the Franchisee to operate a Base Service Plan other than the prevailing Base Service Plan in accordance with paragraph 2.2 of Schedule 1;

"Base Service Hours" means the hours set out in paragraph 4 of Schedule 1 (as adjusted or amended from time to time in accordance with the terms of this Agreement);

"Base Service Plan" means the prevailing service plan to be operated by the Franchisee in accordance with paragraph 2 of Schedule 1 which includes without limitation:

- (a) the Lines on which the Franchisee must operate the Passenger Services;
- (b) the maximum Interval for the Passenger Services in both directions on each Line; and
- (c) the minimum length of each Train,

as set out in Appendix 1 of Schedule 1, as amended from time to time by any Marginal Base Service Change;

"Base Time Period" means the time periods headed "Timeband" in the tables set out in Appendix 1 of Schedule 1;

"BCP" or "Business Critical Processes" means the documents entitled "Business Critical Processes" included in the Data Room Documents, as may be amended in accordance with clause 21;

"Bond Provider" means a bond provider domiciled in the European Union and having the Required Rating;

"Business Day" means any day (excluding Saturday or Sunday) when banks are generally open for business in the City of London;

"Business Plan" means the Initial Business Plan or any Updated Business Plan, as the context requires, to be delivered in accordance with paragraphs 2.1 to 2.4 of Schedule 10;

"Capital Expenditure" means expenditure which is treated as capital expenditure in accordance with international accounting standards;

"Capital Replacement" means the replacement with new or overhaul of major infrastructure and/or major equipment;

"Capital Replacement Budget" means the following:

Fee	Year							
Ending	31	2015	2016	2017	2018	2019	2020	2021

March							
Capital Replacement Budget (£ million)	9	9	8	8	6	5	5

For the avoidance of doubt the figures above are not to be Indexed;

"Capital Replacement Threshold" means £35,000 (Indexed);

"Category A Stations" means London City Airport, Stratford and Canary Wharf;

"CDM Regulations" means the Construction (Design and Management) Regulations 2007;

"Certificate of Franchise Commencement" means the certificate issued by DLRL pursuant to clause 3.3 (Certificate of Franchise Commencement);

"Cessation Plan" means a plan agreed between the Parties or determined by DLRL pursuant to clause 36 to give effect to a Declaration of Ineffectiveness;

"CFR Adjustment" means the amount calculated in accordance with paragraph 5 of Part 1 of Schedule 3;

"CFR Audit Programme" has the meaning given in paragraph 6.2 of Part 1 of Schedule 3;

"Change in Costs" means in respect of any Variation, the effect of that Variation (whether of a one-off or recurring nature, and whether positive or negative) upon the actual or anticipated costs, losses, revenues, assets or liabilities of the Franchisee, including, as relevant, the following:

- (a) the costs of continued employment of, or making redundant, staff who are no longer required;
- (b) the costs of employing additional staff;
- (c) reasonable professional fees;
- (d) the effects of costs on implementation of any insurance reinstatement in accordance with this Agreement, including any adverse effect on the insurance proceeds payable to the Franchisee (whether arising from physical damage insurance (or its equivalent)) in respect of that insurance reinstatement and any extension of the period of implementation of the insurance reinstatement;
- (e) operating costs, or life cycle maintenance or replacement costs;
- (f) Capital Expenditure;
- (g) any deductible or increase in the level of deductible, or any increase in premium under or in respect of any insurance policy; and
- (h) the margin to be earned by the Franchisee,

all to be calculated in accordance with the principles set out in Appendix 1 (Calculation of Change in Costs) of Part 1 of Schedule 15 (Variation Procedure);

"CIS Regulations" means the Income Tax (Construction Industry Scheme) Regulations 2005 (No. 2045) or any amendment or remaking thereof and references to any individual regulation shall be construed accordingly;

"Commercial Director" means the individual appointed by the Franchisee in accordance with clause 14.2;

"Commercially Sensitive Information" means the information listed in Schedule 23;

"Committed Obligations" means the Franchisee's obligations listed in Schedule 12 (Committed Obligations);

"Committed Obligation Payment Adjustment" means a payment deduction made to the Franchisee pursuant to Part 3 (Late/Non Completion of Committed Obligations) of Schedule 12 (Committed Obligations);

"Competency Management System" has the meaning given in paragraph 11.1 of Part 1 of Schedule 7;

"Competent Authority" means any national, supra-national (including the European Union), state or local government, any political subdivision thereof or any governmental, quasi-governmental, judicial, public or statutory instrumentality, agency, department, authority, body or regulatory, self-regulatory or other authority or organisation or other similar entity which has rule-making power or whose directions, instructions, rulings, laws or regulations are directly enforceable against a Party or a Sub-Contractor in connection with the performance of this Agreement in each case to the extent acting in its capacity as a relevant authority under Applicable Requirements;

"Comptroller and Auditor General" means the head of the National Audit Office from time to time as defined in the National Audit Act 1983, and includes any successor to all or any of his functions;

"Computer System" means computer hardware and computer software, including licensed third party software and data protocols;

"Concession Agreement" means the Lewisham Concession Agreement;

"Concessionaire" means the Lewisham Concessionaire;

"Confidential Information" means information of a technical, commercial or financial nature received from a Party to this Agreement or its agents, representatives or advisers including information received by the Franchisee from DLRL or TfL;

"Consent" means any consent, notice, endorsement, approval, certificate or determination;

"Contract Information" means (a) this Agreement in its entirety (including agreed changes to this Agreement from time to time); (b) data extracted from the invoices submitted in accordance with clause 25; and (c) any other document, contract or data relating to this Agreement which is required to be published pursuant to the Transparency Commitment from time to time;

"Control" means in respect of one person by another, that other person (whether alone or with others and whether directly or indirectly and whether by the ownership of share capital, the possession of voting power, contract or otherwise):

- (a) having the power to appoint and/or remove all or the majority of the members of the board of directors or other governing body of that person or of any other person which Controls that person; or
- (b) controlling or having the power to control the affairs and policies of that person or of any other person which Controls that person; or

- (c) being the parent undertaking of that person or of any other person which Controls that person; or
- (d) possessing or being, or being at a future date, entitled to acquire:
 - (i) 30 per cent. or more of the share capital or issued share capital of, or of the voting power in, that person or any other person which Controls that person; or
 - (ii) such part of the issued share capital of that person or any other person which Controls that person as would, if the whole of the income of such person were in fact distributed, entitle him to receive 30 per cent. or more of the amount so distributed; or
 - (iii) such rights as would, in the event of the winding-up of that person or any other person which Controls that person or in any other circumstances, entitle him to receive 30 per cent. or more of the assets of such person which would then be available for distribution,

and, for these purposes, there shall be attributed to any person the rights or powers of any nominee of his and the rights and powers of any one or more persons which he, or he and associates of his, Controls and of any one or more associates of his (and for these purposes an associate of a person shall mean a relative of his (as defined in section 417(4) of the Income and Corporation Taxes Act 1988), a partner of his or a trustee of a settlement (as defined in section 660(G) of the Income and Corporation Taxes Act 1988) of which he is a beneficiary) and cognate expressions of Control shall be construed accordingly;

"Control Centre" means the main central control and signalling facility for the Railway located at the Depot at Beckton or the back-up facility at Poplar;

"Controlled Documents" means:

- (a) the Business Critical Processes;
- (b) the DLR Maintenance Standards;
- (c) the Working on the Railway Manual; and
- (d) the DLR Contracts;

"CSS Adjustment" means the amount calculated in accordance with paragraph 3 of Part 2 of Schedule 3;

"CSS Contractor" has the meaning given in paragraph 1.1 of Part 2 of Schedule 3;

"CSS Score" has the meaning given in paragraph 3.2 of Part 2 of Schedule 3;

"CSS Target" has the meaning given in paragraph 3.2 of Part 2 of Schedule 3;

"Customer Action Team" shall have the meaning given in paragraph 10.5 of Schedule 1;

"Customer Facing Performance Regime" means the customer facing performance regime set out in Schedule 3;

"Customer Facing Requirements" means the requirements set out in Appendix 1 to Part 1 of Schedule 3;

"Customer Facing System" has the meaning given in paragraph 2.1 of Part 1 of Schedule 3;

"Customer Satisfaction Survey" means the customer satisfaction survey carried out by DLRL, TFL or any CSS Contractor as described in Part 2 of Schedule 3 in order to monitor customer perception of the DLR;

"Customer Satisfaction Survey Data" has the meaning given in paragraph 1.5 of Part 2 of Schedule 3;

"Customer Services Performance Notice" means a performance notice issued by DLRL to the Franchisee in accordance with paragraph 3.2 of Schedule 13;

"Creditors" means all debts and other monies owed by the Franchisee in respect of the period up to the Franchise Termination Date;

"Data Room Documents" the documents listed or referred to in Schedule 20;

"Debtors" means:

- (a) for the purposes of Part 2 of Schedule 17, all debts and other monies owed to DLRL or the Predecessor Franchisee from time to time relating to the Franchise which were incurred prior to the Franchise Commencement Date;
- (b) for the purposes of Part 3 of Schedule 17, all debts and other monies owed to the Franchisee from time to time;

"Declaration of Ineffectiveness" a declaration of ineffectiveness in relation to this Agreement made by a court of competent jurisdiction pursuant to Regulation 47J of the Public Contracts Regulations 2006 or Regulation 45J of the Utilities Contracts Regulations 2006;

"Deed of Adherence" means the deed of adherence in respect of the DLR Pension Scheme in the form required by DLRL;

"Deed of Assignment" means the deed(s) of assignment in the form specified by DLRL;

"Deed of Cessation" means the deed of release in respect of the DLR Pension Scheme in the form required by DLRL;

"Depot" means the DLR depots at Beckton and Poplar;

"Direct Agreements" means the direct agreements referred to in paragraph 1.1(b) of Part 1 of Schedule 8;

"Disclosed Data" means the materials, documents and data made available by DLRL to the Franchisee prior to the date hereof in relation to the Railway, including the operation and maintenance of the Railway, and other matters which are or may be relevant to the Franchise and the obligations undertaken by the Franchisee under this Agreement or any Ancillary Agreement, including information contained in the Invitation to Tender, the Data Room Documents or any other information made available to the Franchisee or its Affiliates during the procurement process for the Franchise;

"Dispute" means a dispute or difference of whatsoever nature between DLRL and the Franchisee in relation to the operation or interpretation of, or otherwise in connection with or arising out of, this Agreement or any Ancillary Agreement;

"Dispute Resolution Procedure" means the procedure set out in Schedule 18 (Dispute Resolution);

"Disruption Management Plan" has the meaning given in paragraph 13 of Schedule 1;

"DLR Contracts" means those contracts to which DLRL is or may become party in respect of which the Franchisee is required under the terms of this Agreement to undertake, perform or discharge liabilities, obligations and/or other responsibilities on behalf of DLRL as listed in paragraph 2 of Part 1 of Schedule 9, including any replacement for or renewal of such contracts;

"DLR Maintenance Standards" means the maintenance standards and other documentation set out in Part 6A of Schedule 4;

"DLR Pension Scheme" means the Docklands Light Railway Pension Scheme and any reference to the rules of the DLR Pension Scheme are to the governing documentation of that scheme as at the date of this Agreement taking into account any subsequent amendments;

"DLRL Capital Replacement" means any Individual Item of Capital Replacement the Works Cost of which is in excess of the Capital Replacement Threshold;

"DLRL Default" means any of the defaults listed in clause 33.1 (DLRL Default);

"DLRL Direct Investment" means any Capital Replacement carried out in relation to the Railway by DLRL and any other capital investment made in the Railway by or on behalf of DLRL;

"DLRL IPR" means all IPR owned by DLRL subsisting in:

- (a) any knowhow or confidential information owned by DLRL relating to the Services, including but not limited to all unpatented techniques, operating instructions, machinery designs, raw material, production specifications, drawings, blueprints and any other technical information relating to the Services; and
- (b) all Improvements owned by DLRL;

"DLRL IS Rights" means the DLRL IPR and the DLRL Software;

"DLRL Manager" means the manager appointed by DLRL pursuant to clause 14.1;

"DLRL Party" and **"DLRL Parties"** means DLRL and its servants, agents, officers, employees, contractors and sub-contractors of any tier, but excluding the Franchisee Parties;

"DLRL Possessions" means any Possession required by DLRL in accordance with paragraph 15 of Schedule 1;

"DLRL Project" has the meaning given in clause 10.4.1;

"DLRL Project Contract" means a contract between DLRL and a contractor or consultant contracted to carry out the whole or any part of a DLRL Project;

"DLRL Property Documents" means all of the leases and other documents listed in Part 5 of Schedule 9 and which shall include any renewal or replacement of such agreements on the same terms;

"DLRL Software" means the software required to operate and maintain the following: LLPA, radio, CCTV, help points, VOBCs/VCCs, ESUBs, DAISY, TVMs, APC, Telecode 80, OTN 2500, OTN 150, CISCO MAN, SCADA, lift and escalator controls, Oyster machines, fire alarms, PIDs, flight information (at LCA), HV switch gear, lighting controls and BMI in BCC, and any other software designated as such by DLRL;

"DLRL Superior Property Documents" means all those documents regulating or authorising DLRL's use, occupation and maintenance of land and property as listed in Part 4 of Schedule 9 and which shall include any renewal or replacement agreements on the same terms;

"DLRL Ten Year Plan" means the document entitled "Ten-Year Asset Investment Requirements Plan" with reference "DLR-IMS-ENMS-PLN-00002 Final (July 2013)";

"DORIS" means DLRL's document management system;

"DPA" means the Data Protection Act 1998 (as amended from time to time);

"Emergency Substitute Services" shall have the meaning given in paragraph 16.5 of Schedule 1;

"Emergency Variation" has the meaning given in paragraph 1.4 of Part 2 of Schedule 15;

"Emergency Variation Interim Payment" has the meaning given in paragraph 1.5 of Part 2 of Schedule 15;

"Employer's Liability Insurance" means the insurances described in paragraph 4 of Part 3 of Schedule 14;

"Enforcement Notice" means any notice issued by DLRL pursuant to paragraph 4 of Schedule 13;

"Engagement Survey" means a questionnaire-based survey (in a format agreed with DLRL) to be completed by the Franchisee Employees in accordance with clause 14.8 in order to establish how satisfied and engaged the Franchisee Employees feel in relevant areas of the Franchisee's business;

"Engineering Hours" shall have the meaning given in paragraph 7.1 of Schedule 1 (as adjusted or amended from time to time in accordance with the terms of this Agreement);

"Environment" means all gases, air, vapours, liquids, water (whether above or below surface), land, property, surface and sub-surface soils, rock, flora, fauna and all other living organisms supported by such media including man, wetlands, ecosystems and all other natural resources or part thereof including artificial or manmade buildings, structures or enclosures and electricity and human health;

"Environmental Law" means any Applicable Requirement which relates to or is for the purpose of protecting the Environment or a part of the Environment;

"Environmental Losses" means any losses, damages, liabilities, costs and expenses arising from or relating to (i) any liability under Environmental Laws and (ii) any reasonable action taken to prevent, reduce, limit or mitigate any such liability;

"Environmental Management System" has the meaning given in paragraph 3 of Part 4 of Schedule 7;

"Environmental Report" has the meaning given in paragraph 6 of Part 4 of Schedule 7;

"Estate Plans" means the plans set out in Schedule 25;

"Evening Peak" means 1600 to 1930 on any Weekday;

"Excluded Contracts" means any contracts designated as such by DLRL;

"Excluded Payment Obligations" means the payment obligations set out in Schedule 1 of each of the following Third Party Maintenance Agreements: the "North Route Maintenance Agreement", the "West Route Maintenance Agreement" and the "Woolwich Arsenal Maintenance Agreement";

"Existing Members" means those Assumed Employees who are active members of the DLR Pension Scheme as at the Franchise Commencement Date together with any Assumed Employees who as at the Franchise Commencement Date are not Existing Members but who immediately before that date had a right to join the DLR Pension Scheme at some future date but such Assumed Employee shall only be Existing Members from the date on which they join the DLR Pension Scheme in exercise of their right to do so;

"Expiry Date" means the earlier of:

- (a) 0300 hours on 1 April 2021, or any extended period notified by DLRL in accordance with clause 4.2; and
- (b) the date upon which this Agreement is terminated in accordance with the provisions hereof;

"Extension" means the Lewisham Extension edged red and shaded brown on the Estate Plans;

"Fee Certificate" has the meaning given in clause 25.1;

"Fee Period" means a period of 28 days during the Franchise Term, provided that:

- (a) the first such period shall commence on the Franchise Commencement Date and expire on such date as DLRL shall after consultation with the Franchisee notify to the Franchisee;
- (b) each such period shall thereafter start on the day following the last day of the preceding such period;
- (c) the first and last such period in any Fee Year may be varied by up to 28 days by notice from DLRL to the Franchisee; and
- (d) the last such period shall end on the expiry of the Franchise Term;

"Fee Year" means a period comprising 13 consecutive Fee Periods commencing on 1 April in a calendar year which commences and/or expires during the Franchise Term, provided that:

- (a) the first such period shall commence on the Franchise Commencement Date and end on the next occurring 31 March; and
- (b) the last such period shall end on the expiry of the Franchise Term;

"Final Employee List" means a list of those employees of the Predecessor Franchisee, who were employed in relation to the Franchise whose contracts of employment have in fact transferred to the Franchisee on or around the Franchise Commencement Date by operation of TUPE, to contain equivalent information as set out on the First Employee List regarding such employees;

"Financial Model" means the financial model on the CD attached at Schedule 21, as may be replaced in accordance with Appendix 2 of Part 2 of Schedule 15 of this Agreement only;

"Financing Agreements" means the Guarantee and the Performance Bond;

"First Employee List" means the information contained in Schedule 27 regarding those employees of the Predecessor Franchisee who are employed in relation to the Franchise whose contracts of employment are expected to transfer to the Franchisee by operation of TUPE if they remain in the employment of the Predecessor Franchisee until immediately before the Franchise Commencement Date;

"First Train" means, in respect of any Station, the first Train in Passenger Service on any Service Day to depart from that Station;

"Fixed Fee" means the amount calculated in accordance with paragraph 2 of Part 1 of Schedule 14 or as otherwise adjusted in accordance with this Agreement;

"Fixed Price Quotation" means a fixed price provided by the Franchisee to DLRL for any Change in Costs which may consist of a single lump sum payment, a number of payments or ongoing periodic payments;

"FOI Information Request" means a request under the FOI Legislation for information recorded in any form held by DLRL or held by the Franchisee on behalf of DLRL;

"FOI Legislation" means the Freedom of Information Act 2000, all regulations made under it and the Environmental Information Regulations 2004 and any amendment or re-enactment of any of them and any guidance issued by the Information Commissioner in relation to such Legislation;

"Force Majeure Event" has the meaning given in clause 30.1 (Meaning of Force Majeure Event);

"Franchise" means the undertaking comprising the provision of the Services subject to the terms and conditions of this Agreement;

"Franchise Assets" means:

- (a) all of the assets of the Railway (excluding the Extension) including, without limitation:
 - (i) all the principal assets and subsystems set out in columns 1 and 2 of the maintenance activity table in Part 5 of Schedule 4;
 - (ii) all Stations, depots, land, buildings, offices, control centres, infrastructure, track, substations, equipment rooms, lifts, escalators, structures (including all Structures), tunnels, viaducts, bridges, cuttings, embankments, fences, gates, walls, signalling equipment, communication equipment, high voltage equipment, traction power equipment, electrical and mechanical equipment, radio masts, car parks, footpaths and any other assets within the redline on the Estate Plans but excluding Oyster validators and retail units let by DLRL to third parties;
 - (iii) all assets described as being the responsibility of DLRL to maintain under the Third Party Maintenance Agreements, the DLRL Superior Property Documents and the DLRL Property Documents;
 - (iv) all Vehicles;
 - (v) all Moveable Assets;
 - (vi) all Spares;

- (vii) all Software used in connection with the Railway;
 - (viii) the Thales System, including all related Software; and
- (b) those assets not on the Site listed in Part 11 of Schedule 4;

"Franchise Commencement" means commencement of the Franchise in accordance with clause 3 (Franchise Commencement);

"Franchise Commencement Date" means the date and time for commencement of the Franchise as stated in the Certificate of Franchise Commencement;

"Franchise IS Rights" means the Franchisee IPR and the Franchisee Software;

"Franchise Payment" means the amount calculated in accordance with paragraph 1.1 of Schedule 14;

"Franchise Performance Meeting" means a meeting between DLRL and the Franchisee to be held in each Fee Period in accordance with clause 22.4;

"Franchise Performance Report" has the meaning given in clause 22.4;

"Franchise Term" means the period commencing on the Franchise Commencement Date and ending on the Expiry Date;

"Franchise Termination Date" means the date of expiry or termination of this Agreement (for whatever reason and howsoever caused);

"Franchisee Cost Proposal" means the Fixed Price Quotation (if applicable) and/or the Schedule of Payments proposed by the Franchisee in any Initial Variation Appraisal (where applicable, as amended in accordance with paragraph 5 of Part 2 of Schedule 15) or Variation Appraisal;

"Franchisee Default" has the meaning given in clause 32.1 (Franchisee Default);

"Franchisee Employees" means the employees of the Franchisee from time to time and any other person employed by the Franchisee or any of its Affiliates or any sub-contractor or delegate engaged in the performance of any of the Services in each case whose contract of employment may be transferred to a Successor Franchisee at the end of the Franchise Term by virtue of the operation of Law (including TUPE as amended, replaced or substituted from time to time) or in respect of whom liabilities arising from the contract of employment or employment relationship may be transferred as described above;

"Franchisee's Group" means the Franchisee and its Affiliates;

"Franchisee IPR" means such IPR other than the DLRL IPR and the Third Party IPR which is owned or licensed by the Franchisee and is used in the carrying out of its obligations under this Agreement;

"Franchisee Parties" means the Franchisee and its servants, agents, officers, employees, contractors and sub-contractors of any tier;

"Franchisee Possessions" means any Possession granted to the Franchisee in accordance with paragraph 14 of Schedule 1;

"Franchisee Software" means software, other than the DLRL Software and the Third Party Software which is used by the Franchisee in the performance of its obligations under this Agreement;

"Franchisee Spares Inventory" has the meaning given to it in paragraph 5.2 of Part 7 of Schedule 4;

"General Change of Law" means the coming into effect after the date of this Agreement of:

- (a) Applicable Requirements; or
- (b) any applicable judgment of a court of Law which changes a binding precedent,

excluding any changes which were foreseeable at the date of this Agreement, and for this purpose, but without limitation, any Legislation shall be regarded as foreseeable which on the date of this Agreement has been published:

- (i) in a draft parliamentary bill as part of a government departmental consultation paper;
- (ii) in a parliamentary bill;
- (iii) in a draft statutory instrument; or
- (iv) as a proposal in the Official Journal of the European Communities except to the extent that such proposal is intended to apply solely within member states other than the United Kingdom,

to the extent that the same is subsequently enacted in substantially the same form as the form in which it was previously so published;

"General Performance Notice" means a performance notice issued by DLRL to the Franchisee in accordance with paragraph 3.4 of Schedule 13;

"GLA" means the Greater London Authority, the body set up under the Greater London Authority Act 1999 and any body or bodies which succeed to its statutory powers;

"Good Industry Practice" means the exercise of that degree of skill, diligence, prudence, foresight and practice which would reasonably and ordinarily be expected from a skilled and experienced person engaged in the railway industry;

"Guarantee" means the guarantee to be provided to DLRL in the form set out in Schedule 16;

"Guarantor" means any person or persons who may provide or be an obligor under the Guarantee from time to time;

"Handback Information" means the information required to be maintained and kept up to date in two sets pursuant to clause 37.2 (Handback Information) and Appendix 1 to Part 3 of Schedule 17;

"Handback Procedures" means the outline description of handback procedures set out in Part 3 of Schedule 17;

"Handover Procedures" means the procedures for handover of the Franchise set out in Part 2 of Schedule 17;

"Hazardous Material" means any biological or chemical substance or other material which may cause a hazard to passengers (including vomit or other bodily substances and broken glass);

"**HSE**" means the Health and Safety Executive and any body or bodies which succeed to its statutory functions;

"**HSWA**" means the Health and Safety at Work etc Act 1974;

"**Identified Assets**" means any of the assets leased or otherwise made available to the Franchisee pursuant to this Agreement and the Rolling Stock Lease;

"**Immediately Effective Clauses**" means clauses 1 to 6, 14.1, 14.2, 26, 27, 32, 34.7, 35, 42, 43, 45 and 46;

"**Indemnified Party or Parties**" means DLRL and TfL and, in each case, all or any of their respective Affiliates, servants, agents, officers, employees, contractors and sub-contractors;

"**Indexed**" means indexed in accordance with Part 2 of Schedule 14;

"**Individual Item**" means (1) a single item of infrastructure or equipment; or (2) a series of items of infrastructure or equipment which objectively and reasonably comprise a single project;

"**Industrial Action**" means any official or unofficial strike, lockout, go-slow or other industrial action by any of the Franchisee Employees or the employees of any Sub-Contractor which affects the ability of the Franchisee to operate the Passenger Services;

"**Industrial All Risks Form**" has the meaning given in paragraph 6 of Part 3 of Schedule 14;

"**Industrial Disease**" means any of pneumoconiosis (including but not limited to asbestosis), mesothelioma, hand-arm vibration syndrome (HAVS) (including vibratory white finger), deafness (including any form of hearing impairment), and any other disease, damage or condition, including any injury or trauma attributable to a single event or incident suffered or contracted by a Franchisee Employee while acting in the course of his employment with DLRL or the Predecessor Franchisee or any other predecessor franchisee prior to the Franchise Commencement Date;

"**Industry Standards**" means all the laws, rules, regulations, guidance, directions, recommendations and instructions, including codes of practice and conduct which have the force of law or with which it is generally accepted within the rail industry in the United Kingdom that it is good practice to comply, relating to the performance of this Agreement which are or have been issued by the Regulator, the Railway Safety Directorate, HSE or the Rail Safety and Standards Board or any other Competent Authority or other person from time to time legally authorised to set standards in respect of the rail industry;

"**Information**" has the meaning given in clause 42.5;

"**Infrastructure Manager**" has the meaning given to such term under ROGS;

"**Initial Business Plan**" means the business plan in the agreed terms, including any adjusted version of such plan resubmitted to DLRL in accordance with paragraph 2 of Schedule 10;

"**Initial Variation Appraisal**" has the meaning given to it in paragraph 2.1 of Part 2 of Schedule 15;

"**Insolvency Event**" means any of the following (or any procedures or proceedings which are analogous thereto):

- (a) a court order is made or a resolution passed for the winding-up of a body (other than a winding-up whilst solvent for the purpose of amalgamation or reconstruction);
- (b) an administrator is appointed over any part of the material assets of a body or an administration order is made in respect of a body;
- (c) any receiver or manager in respect of a body is appointed or possession is taken by or on behalf of any creditor of any property that is the subject of a charge; or
- (d) a voluntary arrangement is made for a composition of debts or a scheme of arrangement is approved under the Insolvency Act 1986 or Companies Act 2006 respectively in respect of a body;

"Insured Assets" has the meaning given in paragraph 2.1 of Part 3 of Schedule 14;

"Integrated Systems" means the Control Centre, the Power Supply System and the Thales System and any other system as notified by DLRL from time to time;

"Inter-Group Company Adjustment" has the meaning given to it paragraph 3.3 of this Part 4 of Schedule 14;

"Interface Stations" means the following Stations: Bank, Canary Wharf, Canning Town, Custom House, Greenwich, Heron Quays, Lewisham, London City Airport, Limehouse, Royal Victoria, Shadwell, Stratford, Stratford International, West Ham and Woolwich Arsenal;

"Interim Bond Expiry Date" has the meaning given to it in clause 26.1;

"Interval" means the time interval between Trains available for passengers departing from any Station travelling in the same direction on the same Line;

"Invitation to Tender" means the invitation to tender issued by DLRL as part of the competition referred to in Recital (B) and any subsequent best and final offer instructions;

"IPR" means any or all patents, trade marks, rights in designs, get-up, trade, business or domain names, copyrights, rights in databases, topography rights (whether registered or not and any applications to register or right to apply for registration of any of the foregoing), moral rights, rights in inventions, know-how, and all other intellectual property rights of a similar, corresponding or neighbouring character which may now or in future subsist in any part of the world;

"IS Rights" means IPR and any Software;

"Key Contracts" means the agreements and contracts listed in Part 2 of Schedule 8 and any other agreement, contract, licence or other arrangement (whether in written, oral or other form) to which the Franchisee may be party or under which the Franchisee may be the beneficiary from time to time and which is designated as such pursuant to paragraph 5 of Part 1 of Schedule 8;

"Key Staff" has the meaning given in clause 14.3;

"Last Train" means, in respect of any Station, the last Train in Passenger Service on any Service Day to depart from that Station;

"Law" means any Legislation or common law of the United Kingdom, any exercise of the Royal Prerogative, and any enforceable community right within the meaning of section 2 of the European Communities Act 1972 in each case enforceable in the United Kingdom or any other principles of law or equity established by the Courts;

"Leg" means any of the following sections of the Railway:

- (a) BAN/TOG – POP platforms 1 and 4 inclusive ('West Route');
- (b) WIQ – MUD not including the Extension ('South Route');
- (c) STR – POP platforms 2 and 3 inclusive ('North Route');
- (d) BEC – POP platforms 1 and 4 inclusive ('East Route');
- (e) CAT junction – WOA ('Woolwich Arsenal Extension');
- (f) CAT platforms 1 and 2 – STI inclusive ('Stratford International Extension'); and
- (g) POP platforms 2 and 3 / Westferry platforms 2 – Canary Wharf exclusive ('Central Area');

"Legislation" means any Act of Parliament or subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, any exercise of the Royal Prerogative, and any enforceable community right within the meaning of section 2 of the European Communities Act 1972 in each case enforceable in the United Kingdom (and including any modification, amendment or re-enactment of such Legislation from time to time and any instruments, orders or regulations made pursuant thereto);

"Lewisham Concession Agreement" means the agreement dated 1st October 1996 and made between DLRL and the Lewisham Concessionaire, together with the Project Documents as defined therein;

"Lewisham Concessionaire" means City Greenwich Lewisham Rail Link plc;

"Lewisham Extension" means the permanent works constituting the extension of the DLR from the Isle of Dogs, in the docklands area of East London, under the River Thames to Greenwich and Lewisham, constructed and maintained in accordance with the Lewisham Concession Agreement;

"Liability Cap" means £60,000,000;

"Line" means any route between two Terminal Stations set out in the Timetable;

"London Boroughs Concessionary Travel Scheme" means the agreements (Annual and Framework) dated 22 December 2004 between TTL and the Association of London Government Transport and Environment Committee (ALGTEC) relating to the provision of concessionary travel for elderly and disabled London residents, including any modifications, renewals or replacements thereof from time to time;

"Long Stop Date" means 7 December 2014 (or such later date as DLRL and the Franchisee may agree);

"Loss" means any claims, demands, damages, proceedings, losses, liabilities, suits, judgments, actions, costs, charges, expenses, taxes, penalties or fines howsoever arising (including without limitation arising under statute, contract or at common law);

"LTIG" means London Transport Insurance (Guernsey) Limited;

"LUL" means London Underground Limited;

"LUL Services" means the scheduled railway passenger services of LUL (or any successor thereto) from time to time;

"Maintenance and Engineering Director" has the meaning given in clause 14.3;

"Maintenance Documents" means the DLR Maintenance Standards, the Maintenance Procedures and the Maintenance Task Instructions;

"Maintenance Procedures" means the maintenance procedures set out in Part 6B of Schedule 4, as updated and supplemented by the Franchisee in accordance with the process set out in clause 9.4;

"Maintenance Task Instructions" means the maintenance task instructions and other maintenance documentation set out in Part 6C of Schedule 4, as updated and supplemented by the Franchisee in accordance with the process set out in clause 9.4;

"Management Accounts" means, in relation to any Fee Period, the Franchisee's management accounts which:

(a) comply with paragraph 3.5 of Schedule 10; and

(b) are required to be delivered to DLRL by the Franchisee in accordance with paragraph 3.2 of Schedule 10;

"Managing Director" has the meaning given in clause 14.3;

"Marginal Base Service Change" has the meaning given in paragraph 5 of Schedule 1;

"Matrix" means the matrix of rights and obligations relating to the Extension contained in Part 3 of Schedule 9;

"Morning Peak" means 0630 to 1000 on any Weekday;

"Motor Vehicle Insurance" means the insurances described in paragraph 5 of Part 3 of Schedule 14;

"Moveable Assets" means the moveable assets listed in the Appendix to Part 8 of Schedule 4 and any additional moveable assets used wholly or mainly by the Franchisee for performing its obligations under this Agreement;

"Normal Loss Expectancy" has the meaning given in paragraph 2.4(b) of Part 3 of Schedule 14;

"Operating Procedures" means the operating rules, procedures and instructions referred to or contained in the documents entitled "Operations Manual" and "Emergency Preparedness Planning Manual" included in the Data Room Documents, as updated and supplemented by the Franchisee in accordance with paragraph 6 of Schedule 1;

"Operational Performance Regime" means the operational performance regime set out in Schedule 2;

"Operational Performance Regime Adjustment" has the meaning given in Schedule 2;

"Operational Response" means an initial response to any failure of, damage to or other incident occurring on the Railway at any time (including for the avoidance of doubt the Extension) including without limitation where such failure, damage or incident actually or potentially affects passengers on the Railway (including access to and egress from) or otherwise interrupts or delays Passenger Services or affects the Railway, including but not limited to the following activities:

- (a) initial reporting of the occurrence of a failure, damage or other incident to the Control Centre and the subsequent command control and communication of the failure, damage or other incident;
- (b) attendance at the site of the occurrence of the failure, damage or other incident by competent staff to assess the cause of the problem;
- (c) determination of the appropriate course of action;
- (d) where possible and safe, rectification of the problem in situ;
- (e) implementation of measures to overcome and/or mitigate the disruption to Passenger Services;
- (f) where possible and safe, implementation of temporary repairs;
- (g) response to environmental incidents (including without limitation spills in the Depot), fire alarms, burglar alarms or other similar incidents;
- (h) direction of passengers to alternative transport services or relevant Substitute Services; and
- (i) recording of all activities required by this definition of Operational Response in the Asset Management System, including (without limitation) logging of the duration of the impact of and timings of response to the failure, damage or incident;

"Operations Director" has the meaning given in clause 14.3;

"Operations Performance Notice" means a performance notice issued by DLRL to the Franchisee in accordance with paragraph 3.1 of Schedule 13;

"OMC" means the Operation and Maintenance Centre, Castor Lane, Poplar London E14 0DX;

"Parties" means the parties to this Agreement and **"Party"** means each of them or any of them as the context requires;

"Parts" means all consumable appliances, parts, instruments, appurtenances, accessories furnishings and other equipment or components of whatever nature which are from time to time incorporated or installed in or attached to the Railway;

"Passenger Services" means the train services and any other services provided to the public (including passengers on the Railway) by the Franchisee in accordance with and pursuant to Schedule 1;

"Pay as You Go Agreement" means the agreement between TTL and certain of the TOCs setting out the arrangements for acceptance of Oyster Pay As You Go on main line train services;

"PCI DSS" means the payment card industry data security standard as stipulated by the PCI Security Standards Council from time to time;

"Peak Period" means 0630 to 1000 and 1600 to 1930 on any Weekday;

"Penalty Fare" means a penalty fare issued in accordance with schedule 17 of the Greater London Authority Act 1999 or such other regulation, order or instrument issued by TfL, the Mayor or any other relevant authority;

"Performance Bond" means an on-demand bond issued by a Bond Provider with the Required Rating in the form set out in Schedule 16;

"Performance Bond Longstop Date" has the meaning given to it in clause 26.1;

"Performance Notice" means an Operations Performance Notice, a Customer Services Performance Notice, an Asset Management Performance Notice or a General Performance Notice;

"Permit" means a permit whereby the Franchisee authorises DLRL or a DLRL Party to have access to so much of the Railway as shall be required from time to time for the carrying out of works or activities on or in connection with DLRL Projects;

"Permitted Party" has the meaning given in clause 46.3;

"Personal Data" has the meaning given by section 1(1) of the DPA;

"Phase 2 Investigation" means an investigation following a reference by the Competition and Markets Authority to its chair pursuant to section 33 of the Enterprise Act 2002 for the constitution of a group under Schedule 4 to the Enterprise and Regulatory Reform Act 2013;

"PID" means passenger information display;

"Possession" means possession of any part of the Railway which prevents, impairs or otherwise affects the ability of Passenger Services to operate on all or part of the Railway;

"Power" means all electricity used on the Railway for both traction and non-traction (i.e. domestic) supplies;

"Power Supply System" means the connection, transmission, metering and conduction equipment relating to the internal Power distribution system of the Railway, including all substitutions, reinstatements, replacements, renewals thereof and modifications thereto;

"Predecessor Franchisee" means Serco Limited;

"Predecessor Franchise Agreement" means the franchise agreement made between the Predecessor Franchisee and DLRL dated 7 March 2006;

"Pre-Handback Period" has the meaning given in clause 39.2 (Pre-Handback Period);

"Pre-Priced Variation" means a Base Service Change or a Marginal Base Service Change;

"Prescribed Rate" means the rate of 1 per cent. above the Bank of England base rate;

"Principal Asset Strategies" means the Principal Asset Strategies developed by the Franchisee based on the principles set out in Part 3 of Schedule 4 and accepted by DLRL in accordance with the process set out in clause 9.3, and "Principal Asset Strategy" shall mean any one of them;

"Process Agreement" means the process agreement signed by Keolis (UK) Limited, Amey Rail Limited, Keolis S.A., Amey UK plc and DLRL prior to the execution of this Agreement;

"Processing" has the meaning given by section 1(1) of the DPA and **"Process"** and **"Processed"** will be construed accordingly;

"Profit Share Payment" has the meaning given to it in paragraph 4.2(b) of Part 4 of Schedule 14;

"Profit Share Reconciliation Payment" has the meaning given to it in paragraph 4.2(c) of Part 4 of Schedule 14;

"Prohibited Act" means:

- (a) offering, giving or agreeing to give to any servant, agent, contractor or representative of a Public Sector Body any gift or consideration of any kind as an inducement or reward:
 - (i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other contract with a Public Sector Body; or
 - (ii) for showing or not showing favour or disfavour to any person in relation to this Agreement or any other contract with a Public Sector Body;
- (b) entering into this Agreement or any other agreement with a Public Sector Body in connection with which commission has been paid or has been agreed to be paid by the Franchisee or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and the terms and conditions of any such contract for the payment thereof have been disclosed in writing to DLRL;
- (c) committing any offence:
 - (i) under the Bribery Act 2010;
 - (ii) under Law created in respect of fraudulent acts; or
 - (iii) at common law in respect of fraudulent acts in relation to this Agreement or any other contract with a Public Sector Body; or

defrauding or attempting to defraud or conspiring to defraud a Public Sector Body;

"Public Sector Body" means all Ministers of the Crown, government departments, Crown agencies and authorities, local authorities or similar public sector bodies and any body corporate owned or controlled by any of them (including for the avoidance of doubt DLRL and TfL);

"Published Customer Information" has the meaning given to it in paragraph 4.3 of Schedule 6;

"Published Train Services" means the Passenger Services published by the Franchisee in accordance with the requirements of Schedule 6;

"Pulse Survey" means a survey (in a format agreed with DLRL) carried out pursuant to clause 14.8, targeted at relevant groups of Franchisee Employees and focussed on a specific subset of issues highlighted by the Engagement Survey;

"Qualifying Change of Law" means the coming into effect after the date of this Agreement of:

- (a) Legislation; or
- (b) any applicable judgment of a court of Law which changes a binding precedent,

the terms of which apply only to the railway industry, a particular section of the railway industry or the provision of services to the railway industry and not to other transport modes or to industries other than the railway industry, and without limitation:

- (a) excluding any changes in Taxation;
- (b) excluding any changes which were foreseeable at the date of this Agreement, and for this purpose, but without limitation, any Legislation shall be regarded as foreseeable which on the date of this Agreement has been published:
 - (i) in a draft parliamentary bill as part of a government departmental consultation paper;
 - (ii) in a parliamentary bill;
 - (iii) in a draft statutory instrument; or
 - (iv) as a proposal in the Official Journal of the European Union except to the extent that such proposal is intended to apply solely within member states other than the United Kingdom,

to the extent that the same is subsequently enacted in substantially the same form as the form in which it was previously so published,

provided that a Qualifying Change of Law (1) includes any Legislation, which only applies to the railway industry, which is made under the Health and Safety at Work etc. Act 1974 and which is not excluded under (i) and (ii) (a "**Specifically Included Change of Law**"), but (2) excludes any Legislation (other than a Specifically Included Change of Law) which is made with the intention or effect of specifically applying to (or disapplying in relation to) the railway industry any other Legislation which does not apply only to the railway industry;

"Qualifying DLRL Direct Investment" means any DLRL Direct Investment which either Party believes (acting reasonably) is likely to have (either singly or in aggregate with any other DLRL Direct Investment which has not previously been taken into account for such purposes) a financial effect on the Franchisee in excess of:

- (a) £200,000 (Indexed) in any Fee Year; and/or
- (b) £750,000 (Indexed) over the Franchise Term (excluding any extension instructed by DLRL pursuant to clause 4.2),

provided that Capital Replacement financed from the Capital Replacement Budget (as agreed or determined by DLRL pursuant to paragraph 2(b) of Part 4 of Schedule 4) shall not constitute or be counted towards Qualifying DLRL Direct Investment;

"Quality Exclusion" means any event which constitutes a Quality Exclusion as defined in paragraph 12 of Schedule 2;

"Quality Management System" has the meaning given in paragraph 1.1 of Part 2 of Schedule 7;

"Quality Plan" has the meaning given in paragraph 2.1 of Part 2 of Schedule 7;

"Quarter" means the portion of a Fee Year, the duration of which is determined as follows:

- (a) first Quarter: Fee Periods 1 to 3 in each Fee Year;

- (b) second Quarter: Fee Periods 4 to 6 in each Fee Year;
- (c) third Quarter: Fee Periods 7 to 10 in each Fee Year; and
- (d) fourth Quarter: Fee Periods 11 to 13 in each Fee Year,

with the first Quarter of each Fee Year beginning in April and **"Quarterly"** being construed accordingly;

"Railway" means the Docklands Light Railway (including all extensions and all retail units and other retained estates let or to be let by DLRL) and any other extension, enhancement or modification on the date of its completion;

"Record of Assumptions" means the record of assumptions on the CD attached at Schedule 21, as may be replaced in accordance with Appendix 2 of Part 2 of Schedule 15 of this Agreement only;

"Regulator" means the Office of Rail Regulation from time to time established under the Railways and Transport Safety Act 2003 and includes any successor to all or any of its functions;

"Reinstatement Plan" has the meaning given in clause 29.11.1(b);

"Reinstatement Works" has the meaning given in clause 29.11.1(b);

"Relevant Incident" has the meaning given in clause 29.11.1;

"Relevant Proceeds" has the meaning given in clause 29.11.1(a);

"Relief Event" means:

- (a) fire, explosion, lightning, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, ionising radiation, earthquakes, riot and civil commotion or protest (to the extent that it does not constitute a Force Majeure Event);
- (b) any accidental loss or damage to any assets comprised in the Railway necessary for the provision of the Services;
- (c) any blockade or embargo;
- (d) the Regulator withdrawing its acceptance of DLRL's Safety Authorisation or suspending or preventing the operation of the Railway due to the acts or omissions of DLRL or the Concessionaire, their employees or persons acting on their behalf or at their direction;
- (e) a failure by a contractor to comply with its obligations under a DLRL Project Contract which materially affects the Franchisee's ability to comply with its obligations under this Agreement;
- (f) any official or unofficial strike, lockout, go-slow or other industrial action by any persons other than the Franchisee Employees or the employees of any Sub-Contractor (unless the Franchisee Employees or the employees of any Sub-Contractor are acting as part of a general or national strike) which affects the ability of the Franchisee to operate the Passenger Services;
- (g) any Quality Exclusion,

unless any of the events listed above arises (directly or indirectly) as a result of any act, omission or default of the Franchisee, its employees or persons acting on its behalf or at its direction;

"Remedial Plan" has the meaning given to it in paragraph 3.5 of Schedule 13;

"Remuneration Costs" means the salary, employer national insurance contributions and employer pension contributions for those on the First Employee List or the Agreed Final Employee List (as applicable);

"Repair Works" means the items on the document titled "ENG-REFR-RPT-0002 Rev 9-Tranche 1.xls" contained in the Data Room Documents;

"Required Period" has the meaning given in clause 14.3.3;

"Required Rating" means a long term credit rating of:

- (a) A+ or better from Standard & Poor's; or
- (b) A1 or better from Moody's;

"Retained Creditors" means:

- (a) for the purposes of Part 2 of Schedule 17, all debts and other monies owed by DLRL in respect of the period prior to the Franchise Commencement Date relating to the Franchise;
- (b) for the purposes of Part 3 of Schedule 17, the Creditors other than the Assumed Creditors in respect of the period prior to the Franchise Termination Date;

"Retained Employees" means:

- (a) for the purposes of Part 2 of Schedule 17, any employees of the Predecessor Franchisee as at the Franchise Commencement Date who are not engaged in the Franchise;
- (b) for the purposes of Part 3 of Schedule 17, any employees of the Franchisee as at the Franchise Termination Date who are not engaged in the Franchise;

"Revenue Collection IT" means the hardware, processes and technology within the APC and/or TVM systems and associated interfaces including communications links within the control of the Franchisee;

"Rolling Stock Lease" means the rolling stock lease made between DLRL and the Franchisee on or about the date of this Agreement to be in the form set out in Schedule 22;

"ROGS" means the Railways and Other Guided Transport Systems (Safety) Regulations 2006 (as amended);

"RPI Index" means

- (a) the RP02 Retail Prices Index (RPI All Items); or
- (b) on cessation/modification of the index referred to in (a) above, an appropriate equivalent index agreed by the Parties at the time;

"Safety Authorisation" has the meaning given to such term under ROGS;

"Safety Certificate" has the meaning given to such term under ROGS;

"Safety Culture Survey" has the meaning given to it in paragraph 6.1 of Part 1 of Schedule 7;

"Safety Director" has the meaning given in clause 14.3;

"Safety Management System" has the meaning given to such term under ROGS;

"Safety Performance Index" means the single, quantitative, and top-level measure of the Railway's safety performance;

"Schedule of Costs" means the schedule of costs set out in paragraph 1 of Appendix 1 of Part 2 of Schedule 15;

"Schedule of Payments" means the schedule of payments in respect of a Variation to be provided by the Franchisee in accordance with Part 2 of Schedule 15 containing the Franchisee's proposed Variation Payments to reflect the aggregate cost (or saving) of implementing the proposed Variation, to be determined pursuant to Appendix 1 of Schedule 15 (and containing the information specified in paragraph 7 of Part 2 of Schedule 15);

"Security Interest" means any mortgage, charge (whether fixed or floating), encumbrance, pledge, lien, trust arrangement or other third party right or interest (legal or equitable) over or in respect of the relevant asset, security or right;

"Service Day" means any day that the Franchisee is required to provide Passenger Services pursuant to this Agreement commencing at the earliest opening of any Station to the public on that day and ending at the latest closing of any Station to the public on that day (or, as applicable, the early hours of the next day);

"Services" means any services, works and/or other activities to be provided, carried out and/or undertaken by the Franchisee under or pursuant to this Agreement;

"Shareholders" means the shareholders of the Franchisee from time to time;

"Site" means the area shown within the redline on the Estate Plans (excluding the Extension);

"Small Works Instruction" means an instruction issued by DLRL to the Franchisee to carry out a Small Works Variation in accordance with paragraph 1(a) of Part 3 of Schedule 15;

"Small Works Variation" means any Variation having an individual cost not exceeding £20,000 (Indexed);

"SMS Audit" has the meaning given to it in paragraph 8.1 of Part 1 of Schedule 7;

"Software" means any computer programme;

"Spares" means all materials, spares, parts, stocks and consumables used to manage and maintain the Railway;

"Spares Inventory" means the spares listed in the Appendix to Part 7 of Schedule 4;

"Special Service Requirement" means the meaning given in paragraph 5.4 of Schedule 1;

"Station" means any of the stations on the Railway;

"Station Block" means the revenue protection activities carried out at a Station, which shall include checking that each passenger exiting a Station has a valid Ticket;

"Station Management Plan" means the management plan for each Station as required by paragraph 9 of Schedule 1;

"Station Opening Hours" means, in respect of any Station on any Service Day, the period of time beginning 15 minutes before the First Train and ending 15 minutes after the Last Train;

"Structure" has the meaning given to such term in the Structures Rolling Programme;

"Structures Rolling Programme" means the rolling programme of inspections referred to in Part 6A of Schedule 4;

"Sub-Contractor" means any sub-contractor (of any tier) of the Franchisee;

"Substitute Services" means substitute services provided when some or all of the Passenger Services are unavailable to the public by a properly licensed carrier or a combination of such carriers to transport passengers between the Stations of the Railway approximately following the Lines of the Published Train Services;

"Successor Franchisees" means any persons succeeding, either directly or indirectly, the Franchisee in the provision of all or any of the Services, which shall include DLRL in DLRL's absolute discretion;

"Superior Right Holders" means a third party which has any rights under a DLRL Superior Property Documents;

"Supplier and Contractor Management System" has the meaning given in paragraph 11.3 of Part 1 of Schedule 7;

"Taxes" means all income and other taxes, levies, assessments, imposts, deductions, charges, duties, compulsory loans and withholdings (wherever imposed) together with interest thereon and penalties and fines in relation thereto, if any, and any payments made on or in relation thereof and **"Taxation"** and **"Tax"** shall be construed accordingly;

"Technical Records" means the documents data and records relating to the Integrated Systems and all additions and revisions to them from time to time and all entries on any database relating to such Integrated Systems;

"Terminal Station" means either the first or last Station of any Line (as the context requires);

"TfL" means Transport for London, the statutory body set up under the Greater London Authority Act 1999 which is accountable to the Mayor of London and which has the statutory power to provide or secure the provision of public passenger transport services in London and any body or bodies which succeed to its statutory powers;

"TfL Group" means TfL and its Affiliates;

"TfL Policies" means the policies listed in Schedule 24 as may be amended from time to time, copies of which shall be provided to the Franchisee on request;

"TfL Ticketing Policies" means the TfL ticketing policies (as notified to the Franchisee by DLRL from time to time) containing the general terms and conditions which apply to all Tickets entitling passengers to use Passenger Services;

"Thales System" means the automatic train control and signalling system for the Railway including any vehicle control, computer hardware and software whether located in the Control Centre, trackside or on vehicles and including all substitutions, reinstatements, replacements and renewals thereof and modifications or additions thereto;

"Third Party Development" means any development, works or like activity carried out during the Franchise Term by or on behalf of any third party (other than DLRL or the Franchisee) adjacent to, or which otherwise affects or may potentially affect, any part of the Railway;

"Third Party Insurance Form" has the meaning given in paragraph 6 of Part 3 of Schedule 14;

"Third Party IPR" means all IPR, whether existing at the date of this Agreement or arising hereafter, other than the DLRL IPR and the Franchisee IPR;

"Third Party IS Rights" means the Third Party IPR and the Third Party Software;

"Third Party Liability Insurance" means the insurances described in paragraph 3 of Part 3 of Schedule 14;

"Third Party Maintenance Agreements" means the documents listed in Part 6 of Schedule 9 and which shall include any renewal or replacement of such agreements on the same terms;

"Third Party Software" means any Software other than the DLRL Software and the Franchisee Software;

"Third Party Warranty" means any warranty, representation, condition or guarantee (including without limitation any guarantee or performance or service life policy) express or implied relating to the design, manufacture, condition, performance, merchantability or fitness for any use or purpose made by a manufacturer or any relevant seller supplier, sub-contractor, maintenance performer or repairer other than DLRL;

"Through Ticketing Agreement" means the agreement between TTL and DLRL relating to arrangements for sale, use and reimbursement of through tickets, including any modifications, renewals or replacements thereof from time to time;

"Ticket" means any ticket, permit or travelcard including Oyster cards or any other smartcard, device or other media which may be issued by or on behalf of DLRL or accepted by DLRL from time to time for travel on the Railway;

"Ticket Sales Revenue" in respect of any Fee Period shall mean the aggregate of the fares received during that Fee Period by DLRL from sale of Tickets by Franchisee Parties including ticket vending machines receipts (net of commission), third party vending outlets receipts (net of commission) but not including any money collected by way of Penalty Fares;

"Ticketing Schemes" means the Travelcard Agreement, the TTL/TOC Ticketing Agreements, the Through Ticketing Agreement, the London Boroughs Concessionary Travel Scheme, the Pay As You Go Agreements as amended from time to time and any other agreements relating to the provision of Passenger Services entered into by DLRL and notified to the Franchisee;

"Ticketless Amount" has the meaning given to it in paragraph 3.5 of Part 2 of Schedule 5;

"Timetable" means the schedule of Passenger Services developed by the Franchisee in accordance with paragraph 3 of Schedule 1;

"TOC" means any passenger train operating company;

"Train" means one or more Vehicles used in the provision of Passenger Services on the Railway;

"Train Kilometres" means the aggregate distance in kilometres travelled by Trains while operating Passenger Services;

"Train Service Hours" means all hours which are not Engineering Hours;

"Transaction Documents" has the meaning given in clause 46.1;

"Transparency Commitment" means the transparency commitment stipulated by the UK Government in May 2010 in accordance with which DLRL must publish its contracts, tender documents and data from invoices received, as the same may be amended from time to time;

"Transport Undertaking" has the meaning given to such term under ROGS;

"Transferred Rights and Obligations" means those rights, obligations, liabilities and other responsibilities which are listed as such in paragraph 2 of Part 1 of Schedule 9, together with any obligations or functions which are ancillary to, or otherwise required to perform or discharge, those obligations, liabilities and other responsibilities;

"Travelcard Agreement" means the agreement between TTL and DLRL relating to the arrangements for sale, use and reimbursement of travelcards, including any modifications, renewals or replacements thereof from time to time;

"TTL" means Transport Trading Limited, (a wholly owned subsidiary of TfL) which has DLRL amongst its wholly owned subsidiaries;

"TTL/TOC Ticketing Agreements" means the agreements between TTL and certain of the TOCs relating to arrangements for providing and marketing combined tickets which are valid on certain railway services provided by those TOCs and on certain railway services provided by TfL;

"TUPE Information" means the information in relation to the Franchisee Employees specified in paragraph 6 of Appendix 1 to Part 3 of Schedule 17;

"TUPE" means the Transfer of Undertakings (Protection of Employment) Regulations 2006 or any other regulations enacted for the purpose of implementing the EC Acquired Rights Directive into English Law;

"TVM" means ticket vending machine;

"Uninsurable" means in relation to a risk:

- (a) that in respect of that risk insurance is not available from insurers of good repute and standing in the leading insurance markets worldwide; or
- (b) the premium levels, deductibles, limits of indemnities and/or scope of cover are at levels that the risk is not generally being insured against in the leading insurance markets worldwide by prudent contractors in the rail industry,

provided that for the purposes of this Agreement the parties agree that LTIG is an insurer of good repute and standing;

"Updated Business Plan" means the revised business plan to be provided prior to the start of each Fee Year (other than the first Fee Year) in accordance with paragraph 2.2 of Schedule 10;

"Variation" means any variation (whether by addition, amendment, substitution, omission or otherwise) of whatever nature to this Agreement;

"Variation Appraisal" means any written report delivered by the Franchisee in accordance with paragraph 4.1 of Part 2 of Schedule 15 and containing the information specified in paragraph 4.2 of Part 2 of Schedule 15;

"Variation Appraisal Instruction" means a written notification provided by DLRL pursuant to paragraph 3.3 of Part 2 of Schedule 15 and containing the information specified in paragraph 3.4 of Part 2 of Schedule 15;

"Variation Confirmation Notice" means a notice issued (and counter-signed as appropriate) by DLRL to the Franchisee pursuant to paragraph 5.4(a) of Part 2 of Schedule 15 instructing the Franchisee to proceed with the implementation of a Variation or part of a Variation;

"Variation Notice" has the meaning given in paragraph 1.3 of Part 2 of Schedule 15;

"Variation Payment" means a positive or negative amount determined as such in accordance with Schedule 15 or otherwise agreed between the Parties;

"Variation Procedure" means the provisions set out in Schedule 15;

"VAT" means any value added taxes;

"Vehicle" has the meaning given in the Rolling Stock Lease;

"Vehicle Kilometres" means the aggregate distance in kilometres travelled by Vehicles while operating Passenger Services;

"Warning Notice" means any notice issued by DLRL pursuant to paragraph 6 of Schedule 13;

"Weekday" means any day of the week, excluding Saturdays, Sundays, bank holidays and Christmas Day;

"Wilful Misconduct" means fraud (including fraudulent misrepresentation), wilful default or an intentional disregard of any material provision of this Agreement;

"Working on the Railway Manual" means the working on the railway manual included in the Data Room Documents, as amended from time to time;

"Work Bank" means the system for recording, managing and prioritising maintenance activities established by the Franchisee in accordance with Part 9 of Schedule 4;

"Works Cost" means the capital cost of the physical works of Capital Replacement but shall not include overhead costs, project management costs or other internal costs relevant to the Capital Replacement; and

"Zone 1 Station" means Tower Gateway or Bank.

1.2 Interpretation

In this Agreement (including the recitals, Schedules and Appendices), except where the context otherwise requires:

- 1.2.1 references to:
- (a) a "part" or "parts", a "clause" or "clauses", a "sub-clause" or "sub-clauses", a "Schedule" or "Schedules" and an "Appendix" or "Appendices" are to a part or parts, a clause or clauses, a sub-clause or sub-clauses, a Schedule or Schedules or an Appendix or Appendices to this Agreement; and
 - (b) a "paragraph" in a Schedule are to a paragraph in that Schedule;
- 1.2.2 the headings to clauses, sub-clauses, paragraphs, Schedules and Appendices are for convenience only and shall not affect the interpretation of this Agreement;
- 1.2.3 reference to a statutory provision shall include a reference to:
- (a) the statutory provision as modified or re-enacted or consolidated from time to time whether before or after the date of this Agreement; and
 - (b) any subordinate legislation made under the statutory provision whether before or after the date of this Agreement;
- 1.2.4 reference to a "person" or "persons" includes bodies corporate, unincorporated associations and partnerships and that person's or those persons' legal personal representatives, successors and permitted assigns;
- 1.2.5 reference to this Agreement or any other agreement or document includes this Agreement or, as the case may be, such other agreement or document as the same may from time to time be amended, supplemented or replaced;
- 1.2.6 a reference to an agreement or other document "in the agreed form" is to that agreement or document in the form which has been accepted by DLRL and initialled on its behalf and on behalf of the Franchisee for the purposes of identification;
- 1.2.7 words importing the singular number only shall include the plural number and vice versa;
- 1.2.8 words importing one gender shall include any other gender;
- 1.2.9 any obligation on the Franchisee to do or not to do any thing shall be deemed to include an obligation to procure or not to permit or suffer such things to be done by the Franchisee's agents, servants and contractors or sub-contractors of any tier;
- 1.2.10 the words "include" and "including" are to be construed without limitation;
- 1.2.11 references to any period of seven days or less shall exclude any days which are not Business Days falling within any such period;
- 1.2.12 references to materials, information, data or other records shall be to materials, information, data or other records whether stored in electronic, written or other form;

- 1.2.13 times of the day are expressed in "0000" format on the basis of a 24 hour clock;
- 1.2.14 in carrying out any calculation under this Agreement, the Franchisee will round to the number of decimal places as specified by DLRL;
- 1.2.15 the words "subsidiary", "holding company", "wholly owned subsidiary" and "parent undertaking" shall have the same meaning in this Agreement as in sections 1159 and 1160 of the Companies Act 2006;
- 1.2.16 references to this Agreement include the recitals, Schedules and Appendices hereto;
- 1.2.17 references to due diligence by the Franchisee and/or the Franchisee Parties shall include due diligence on behalf of the Franchisee by the Franchisee Parties and the Shareholders;
- 1.2.18 each of the following Stations may be identified by the three letter abbreviation following its name:

Abbey Road (ABR), All Saints (ALS), Bank (BAN), Beckton (BEC), Beckton Depot (BED), Beckton Park (BEP), Blackwall (BLA), Bow Church (BOC), Canning Town (CAT), Canary Wharf (CAW), Crossharbour (CRO), Custom House (CUH), Cutty Sark (CUS), Cyprus (CYP), Deptford Bridge (DEB), Devons Road (DER), East India (EAI), Elverson Road (ELR), Gallions Reach (GAR), Greenwich (GRE), Heron Quays (HEQ), Island Gardens (ISG), King George V (KGV), Langdon Park (LAP), London City Airport (LCA), Lewisham (LEW), Limehouse (LIM), Mudchute (MUD), Operations & Maintenance Centre, Poplar (OMC), Pontoon Dock (PDK), Poplar Depot (POD), Poplar (POP), Pudding Mill Lane (PML), Prince Regent (PRR), Royal Albert (ROA), Royal Victoria (ROV), Shadwell (SHA), Stratford High Street (SHS), South Quay (SOQ), Stratford International (STI), Star Lane (STL), Stratford Regional (STR), Tower Gateway (TOG), West Ham (WEH), Westferry (WES), West India Quay (WIQ), Woolwich Arsenal (WOA) and West Silvertown (WST).

1.3 **Consents in writing**

Wherever in this Agreement provision is made for the giving or issue of any Consent by any person, unless otherwise specified such Consent shall be in writing and the words "consent", "notify", "endorse", "approve", "certify" or "determine" shall be construed accordingly.

1.4 **Consents reasonably withheld or delayed**

Where this Agreement expressly states that any Consent is not to be unreasonably withheld or delayed the Franchisee agrees that the Consent shall be treated as being reasonably withheld or delayed where a similar Consent is required to be obtained by DLRL under the terms of any of the DLR Contracts before DLRL may prudently and properly give any Consent under the terms of this Agreement and such Consent has been withheld or delayed for any reason whatsoever unless directly attributable to the negligence or default of DLRL and provided that DLRL has used reasonable endeavours to obtain such Consent.

1.5 **DLRL reviews**

No review, enquiry, comment, statement, report or undertaking, made or given by or on behalf of DLRL (and no failure to undertake, make or give any review, enquiry, comment or statement) shall operate to exclude or relieve the Franchisee from or reduce or

otherwise affect the obligations of the Franchisee under this Agreement or the Ancillary Agreements.

PART II: GRANT OF FRANCHISE

2. GRANT OF THE FRANCHISE

2.1 Appointment of Franchisee

DLRL hereby appoints the Franchisee with effect from the Franchise Commencement Date to provide the Services and to comply with its other obligations under this Agreement and the Ancillary Agreements, including:

- 2.1.1 provision of the Passenger Services;
- 2.1.2 management and maintenance of the Franchise Assets;
- 2.1.3 observance and performance of its obligations under the Ancillary Agreements;
- 2.1.4 handback of the Franchise upon expiry or termination of this Agreement; and
- 2.1.5 fulfilment of the Committed Obligations,

in each case in accordance with and subject to the terms and conditions of this Agreement and the Ancillary Agreements and the Franchisee hereby accepts such appointment.

2.2 Franchisee's general obligations

2.2.1 In performing and carrying out the Services and its other obligations under this Agreement and the Ancillary Agreements the Franchisee shall at all times observe and comply with:

- (a) Good Industry Practice;
- (b) ROGS and associated Safety Authorisation and Safety Certificates;
- (c) all Applicable Requirements;
- (d) the obligations of DLRL under the Concession Agreement as set out in the Matrix; and
- (e) the DLR Contracts,

and if at any time the Franchisee becomes aware of any divergence between any of the above and the Franchisee's other obligations under this Agreement and the Ancillary Agreements, it shall as soon as reasonably practicable give DLRL notice specifying the divergence and shall as soon as reasonably practicable notify DLRL of the Franchisee's proposals for overcoming the same. Unless, within 14 days of the Franchisee's notice, DLRL notifies the Franchisee to resolve the divergence in a different manner, the Franchisee shall resolve the divergence in the manner proposed by it (subject always to that manner of resolving the divergence being in compliance with all Applicable Requirements). Where DLRL notifies the Franchisee that the divergence should be resolved in a different manner the Franchisee shall resolve the divergence in the manner required by DLRL. For the avoidance of doubt, all costs incurred by the Franchisee in complying with this clause 2.2.1 shall be borne by the Franchisee.

2.2.2 The Franchisee shall co-operate with DLRL and act reasonably and in good faith in and about the performance of its obligations and the exercise of its rights pursuant to this Agreement and the Ancillary Agreements.

- 2.2.3 The Franchisee shall perform its obligations under this Agreement and the Ancillary Agreements in a manner:
- (a) that facilitates DLRL's compliance with its obligations and duties, and the exercise of its rights, functions and powers under all Applicable Requirements and the DLR Contracts; and
 - (b) that ensures that DLRL is not put in breach of its obligations under any Applicable Requirement and the DLR Contracts.

2.3 **Franchisee's Risk**

- 2.3.1 The Franchisee shall perform and carry out the Services and comply with its other obligations under this Agreement and the Ancillary Agreements entirely at its own cost and risk in consideration of the receipt of the fees and/or other payments expressly specified in this Agreement.
- 2.3.2 The Franchisee agrees that the Franchise Assets have been made available to the Franchisee pursuant to this Agreement on an "as is, where is and with all faults" basis.
- 2.3.3 The Franchisee enters into this Agreement entirely at its own risk in relation to, and has made full provision for all risks arising from, the condition of the Franchise Assets and no warranty is given or representations made by DLRL as to the condition of any Franchise Asset or their fitness or adequacy for any particular purpose, including for the purpose of enabling the Franchisee to perform its obligations under this Agreement.

2.4 **Franchisee's Due Diligence**

The Franchisee hereby warrants that it has carried out all necessary due diligence in relation to the Franchise and the Franchise Assets and the performance of its obligations under this Agreement and the Ancillary Agreements and has obtained for itself all necessary information so as to assess to its own satisfaction:

- 2.4.1 the risks, contingencies and all other circumstances which may influence or affect its obligation to carry out the Services and its other obligations under this Agreement and the Ancillary Agreements; and
- 2.4.2 any other factors which would affect its decision to enter into this Agreement or any Ancillary Agreement or the terms on which it would do so.

2.5 **Disclosed Data**

Without prejudice to clause 2.6 (DLRL Disclaimer) and save in the case of fraud or as expressly provided in clause 6 (DLRL's Warranties), the Franchisee shall not be relieved from complying with any of its obligations in this Agreement and DLRL shall not be liable to any of the Franchisee Parties (whether in contract, tort or otherwise howsoever and whether or not arising out of any negligence on the part of any of the DLRL Parties) as a result of:

- 2.5.1 the condition of the Franchise Assets; and/or
- 2.5.2 any inaccuracy, error, unfitness for purpose, defect or inadequacy of any kind whatsoever in the Disclosed Data or any omission from the Disclosed Data.

2.6 **DLRL Disclaimer**

This Agreement and the Ancillary Agreements are exhaustive as to the duties, obligations and liabilities of DLRL to the Franchisee and neither DLRL nor any of its officers, employees or agents shall be liable to the Franchisee whether in contract, tort or otherwise except as expressly provided in this Agreement and the Ancillary Agreements or for fraud or death or personal injury caused by DLRL's negligence.

2.7 **No liability for review and approval**

The Franchisee acknowledges that it must rely entirely on its own skill and judgement in the performance of its duties and obligations under this Agreement and the Ancillary Agreements. Accordingly, subject as expressly provided in this Agreement and save in the case of Wilful Misconduct or death or personal injury caused by DLRL's negligence:

2.7.1 the duties, obligations and liabilities of the Franchisee shall not be released, diminished or in any other way affected by any instruction, direction, admission, consent, approval, confirmation, comment, sanction, acknowledgement or advice made or given by or on behalf of DLRL or by any independent enquiry into any relevant matter which may be made or carried out by or on behalf of DLRL nor by any act or omission of any person carrying out such enquiry, whether or not such act or omission might give rise to an independent liability of such person to DLRL; and

2.7.2 the Franchisee shall not be entitled to make any claim against DLRL or to seek any relief or remedy of any nature by reason of any such action by or on behalf of DLRL.

2.8 **DLRL's general obligation**

DLRL shall act reasonably and in good faith in and about the performance of its obligations and the exercise of its rights pursuant to this Agreement and the Ancillary Agreements.

3. **FRANCHISE COMMENCEMENT**

3.1 **Entry into Effect**

The provisions of the Immediately Effective Clauses shall take effect and be binding upon DLRL and the Franchisee immediately upon signature of this Agreement. The provisions of this Agreement (other than the Immediately Effective Clauses) shall enter into effect and become binding upon DLRL and the Franchisee on the Franchise Commencement Date.

3.2 **Conditions Precedent**

Following signature of this Agreement the Franchisee shall (with the reasonable assistance of DLRL) procure the satisfaction as soon as reasonably practicable, and in any event by the Long Stop Date, of the conditions precedent contained in Part 1 of Schedule 17.

3.3 **Certificate of Franchise Commencement**

As soon as DLRL is satisfied that each of the conditions precedent in Part 1 of Schedule 17 have been satisfied (except to the extent waived by DLRL), then DLRL shall issue to the Franchisee a Certificate of Franchise Commencement, which shall state the Franchise Commencement Date. If any conditions precedent set out in Part 1 of Schedule 17 have not been satisfied before the issue of the Certificate of Franchise Commencement, the Franchisee shall procure their satisfaction as soon as reasonably practicable thereafter notwithstanding any waiver by DLRL for the purposes of issue of the Certificate of Franchise Commencement.

3.4 **Termination on non-fulfilment of Conditions Precedent**

DLRL may give notice to the Franchisee terminating this Agreement if the Certificate of Franchise Commencement has not been issued on or before the Long Stop Date. If such notice is given, this Agreement shall immediately terminate on the date specified in such notice.

4. **DURATION OF FRANCHISE**

4.1 **Expiry Date**

Subject to clause 4.2, this Agreement shall terminate on the Expiry Date.

4.2 **Extension of the Franchise Term**

4.2.1 If DLRL gives notice to the Franchisee not less than two months before the date on which the Franchise Term would have otherwise expired in accordance with clause 4.1 (Expiry Date), the Franchise Term shall, subject to early termination otherwise in accordance with this Agreement, expire at 0300 hours on such date as may be specified by DLRL in such notice. The date specified in such notice shall be not less than one and not more than twenty six Fee Periods after the date on which the Franchise Term would have otherwise expired in accordance with clause 4.1 (Expiry Date).

4.2.2 DLRL may serve a subsequent notice not less than two months before the date on which the extended Franchise Term would have otherwise expired in accordance with clause 4.2.1, further extending the extended Franchise Term. The date specified in such subsequent notice shall be not less than one and not more than seven Fee Periods after the date on which the Franchise Term would have otherwise expired in accordance with clause 4.2.1 and, subject to early termination otherwise in accordance with this Agreement, the Franchise Term shall expire at 0300 hours on the date specified in such subsequent notice.

4.3 **Financial arrangements for extension**

Unless otherwise agreed by DLRL, in respect of any period of extension pursuant to clause 4.2.1 or 4.2.2, the terms of this Agreement (including without limitation Schedule 14 in respect of payment) will continue to apply for such extended period.

4.4 **Key Contracts**

The Franchisee shall ensure that all Key Contracts reflect the provisions of clause 4.2.

5. **FRANCHISEE'S WARRANTIES/COVENANTS**

5.1 **Franchisee's representations and warranties**

The Franchisee represents and warrants to DLRL that:

5.1.1 the Franchisee or its Affiliates have not acted in breach of any of the terms of the Process Agreement and/or the confidentiality undertakings signed by any one of them as part of the pre-qualification for the Franchise and/or as part of the competition for award of the Franchise;

5.1.2 all of the information, representations and other matters of fact communicated in writing to DLRL and/or its advisers by the Franchisee or its Affiliates, or the directors, officers, employees, servants or agents of the Franchisee or its Affiliates in connection with or arising out of the Franchisee's application to pre-qualify or the Franchisee's formal tender for the Franchise were (at the

dates submitted to DLRL) and remain, in all material respects, true, accurate and not misleading;

- 5.1.3 the Franchisee is a corporation duly organised and validly existing under the laws of England and has the corporate power to own its assets and carry on its business as it is being conducted and has obtained all necessary licences, consents, approvals, permits, authorisations, exemptions and certifications required for that purpose;
- 5.1.4 the Franchisee has the corporate power to enter into and perform, and has taken all necessary corporate and other action to authorise the entry into and performance and delivery of, this Agreement and the Ancillary Agreements and the transactions contemplated by this Agreement and the Ancillary Agreements;
- 5.1.5 the obligations on the Franchisee in this Agreement and the Ancillary Agreements constitute legal, valid and binding obligations on the Franchisee;
- 5.1.6 the entry into, and performance by the Franchisee of its obligations under this Agreement and the Ancillary Agreements, do not and will not conflict with its Memorandum and Articles of Association or conflict with or result in default under any document which is binding upon it nor result in the creation of any Security Interest over it or any of its assets;
- 5.1.7 the execution by it of this Agreement and the Ancillary Agreements and the transactions contemplated by this Agreement and the Ancillary Agreements to which it is a party does not contravene any provision of:
 - (a) any existing law, treaty or regulation in force and binding on the Franchisee or any Affiliate, Shareholder or sub-contractor;
 - (b) any order or decree of any court or arbitrator existing as at the date of this Agreement and binding on the Franchisee or any Shareholder or sub-contractor; or
 - (c) any obligation which is binding upon the Franchisee or any Shareholder or sub-contractor or upon any of its or their assets or revenues;
- 5.1.8 it has obtained all necessary Shareholder and board approvals in respect of the execution of this Agreement and the Ancillary Agreements and the transactions contemplated by this Agreement and the Ancillary Agreements to which it is a party;
- 5.1.9 no litigation, arbitration or administrative proceeding is current, pending or threatened to restrain the entry into, exercise of any of its rights under and/or performance or enforcement of or compliance with any of its obligations under this Agreement and the transactions contemplated by this Agreement and the Ancillary Agreements;
- 5.1.10 no meeting has been convened or is intended to be convened and/or no petition, application or the like is outstanding with a view to its winding-up;
- 5.1.11 the entering into or performance of its obligations or exercising of its rights under this Agreement and the Ancillary Agreements and the transactions contemplated by this Agreement and the Ancillary Agreements to which it is a party or any related document will not be in breach of, or cause to be breached, any restriction (whether arising in contract or otherwise) binding on the Franchisee, any Shareholder, or any sub-contractor or any of their respective assets or undertakings; and

5.1.12 in entering into this Agreement it has not committed any Prohibited Act.

5.2 **Updating of warranties**

5.2.1 The Franchisee further undertakes to DLRL that:

- (a) the representations and warranties contained in clause 5.1 (Franchisee's representations and warranties) will be in all material respects, as at the Franchise Commencement Date, true, accurate and not misleading as if they had been given on the Franchise Commencement Date;
- (b) if after the signing of this Agreement and before the Franchise Commencement Date any event shall occur or matter arise which results or may result in any of the representations and warranties in clause 5.1 (Franchisee's representations and warranties) being unfulfilled, untrue, misleading or incorrect in any material respect at the Franchise Commencement Date, the Franchisee shall as soon as reasonably practicable notify DLRL in writing thereof and the Franchisee shall provide such information concerning the event or matter as DLRL may require.

5.2.2 If DLRL considers that the circumstances described in clause 5.2.1(b) are such that had they been known to DLRL before the signature of this Agreement it would, in DLRL's reasonable opinion, have resulted in DLRL not entering into this Agreement with the Franchisee or entering into this Agreement on materially different terms, then DLRL may give notice to the Franchisee terminating this Agreement. If such notice is given, this Agreement shall immediately terminate on the date specified in such notice.

5.3 **Franchisee's Covenants**

Without prejudice to its other obligations under this Agreement and the Ancillary Agreements, the Franchisee covenants with DLRL that from the Franchise Commencement Date until the termination or expiry of this Agreement:

- 5.3.1 it will maintain in full force and effect (and will ensure that its Affiliates will do likewise) all relevant authorisations (governmental and otherwise) and will promptly obtain any further authorisation which may become necessary to enable it to perform any of the transactions contemplated by this Agreement and the Ancillary Agreements and/or to carry out the Services and/or comply with its obligations under this Agreement and the Ancillary Agreements and/or to generally carry on its business;
- 5.3.2 it will not sell, transfer, lease, lend or otherwise dispose of or cease to exercise direct control over the Franchise including any assets or revenues and whether by one or a series of transactions whether related or not, save that the restriction contained in this clause 5.3.2 shall not apply:
 - (a) to the disposal of stock-in-trade in the ordinary course of trading (but the Franchisee shall not be entitled to dispose of any stock-in-trade (including Spares) which is required in order to comply with its obligations under this Agreement and the Ancillary Agreements);
 - (b) to the application of cash in the purchase or acquisition of goods and services in the ordinary course of trading;
 - (c) to the exchange of assets for other assets of a similar nature and value, or the sale of assets on normal commercial terms for cash which is

payable in full on the completion of the sale and is to be, and is, applied in or towards the purchase of similar assets within six months; or

(d) to the payment of cash dividends to the Shareholders.

- 5.3.3 it will notify DLRL forthwith upon the occurrence of any event which could reasonably be expected materially and adversely to affect its ability to perform its obligations under this Agreement and the Ancillary Agreements;
- 5.3.4 it will not allot, issue or purchase, or register any transfer of any of its share capital in favour of any person, firm or company which would result in a Franchisee Default under clause 32.1.2 (Franchisee Default);
- 5.3.5 it will (promptly upon becoming aware that the same is threatened or pending and in any case immediately after the commencement thereof) give to DLRL notice in writing of any litigation, arbitration or administrative proceedings or any dispute affecting the Franchisee or any of its assets, rights or revenues which if determined against it might have a material adverse effect on the ability of the Franchisee duly to perform and observe its obligations under this Agreement and the Ancillary Agreements;
- 5.3.6 it will promptly pay all taxes, imposts or other duties to which it may become subject during the Franchise Term, subject to the right of the Franchisee reasonably and properly to dispute the amount or application to the Franchisee of any such taxes, imposts or other duties.

5.4 **Restrictions on Activities**

The Franchisee shall not, without the prior written consent of DLRL, carry on any business or activity other than the provision of the Franchise and the compliance with its obligations under this Agreement and the Ancillary Agreements.

6. **DLRL'S WARRANTIES**

DLRL warrants to the Franchisee that:

- 6.1 it is a corporation duly organised and validly existing under the laws of England and Wales and has the corporate power to enter into and perform, and has taken all necessary corporate and other action to authorise the entry into, performance and delivery of, this Agreement and the Ancillary Agreements and the transactions contemplated by this Agreement and the Ancillary Agreements;
- 6.2 the obligations on DLRL in this Agreement and the Ancillary Agreements constitute legal, valid and binding obligations on DLRL;
- 6.3 the entry into, and performance by it of its obligations under, this Agreement and the Ancillary Agreements, do not and will not conflict with its Memorandum and Articles of Association;
- 6.4 it has the corporate power to enter into and perform, and has taken all necessary corporate and other action to authorise the entry into performance and delivery of this Agreement and the Ancillary Agreements and the transactions contemplated by the this Agreement and the Ancillary Agreements.

PART III: THE FRANCHISE

7. OPERATIONAL REQUIREMENTS

The Franchisee shall comply with the operational requirements set out in Schedule 1 and the Operational Performance Regime.

8. TICKETING

The Franchisee shall comply with its obligations in Schedule 5, including but not limited to its obligations in relation to ticket sales, revenue collection and ticket machines.

9. ASSET MANAGEMENT

9.1 General Asset Management Obligations

The Franchisee shall manage, maintain, service, inspect, repair, replace and protect the Franchise Assets for the duration of the Franchise Term, which shall include but not be limited to:

- 9.1.1 ensuring that the Franchise Assets are in such a condition so as to allow the Franchisee to comply with its obligations to provide Passenger Services in accordance with this Agreement;
- 9.1.2 carrying out all planned and unplanned maintenance activities required by this Agreement, including without limitation the requirements set out in Part 5 of Schedule 4;
- 9.1.3 repairing and rectifying all defects and failures in, and damage caused to, the Franchise Assets, howsoever caused or arising;
- 9.1.4 recording, managing and prioritising all unplanned maintenance activities in the Work Bank in accordance with clause 9.6 and Part 9 of Schedule 4;
- 9.1.5 subject to clause 29, replacing and reinstating any Franchise Assets which are destroyed or lost for any reason whatsoever or, subject to clause 10.6, that are obsolete;
- 9.1.6 complying with the Asset Management Policy, the Asset Management Strategy and the Principal Asset Strategies;
- 9.1.7 carrying out all activities set out in the current Annual Asset Management Plan (or which should have been included in the Annual Asset Management Plan in accordance with Part 4 of Schedule 4);
- 9.1.8 carrying out all audits required in accordance with clause 9.7 below;
- 9.1.9 optimising the life of the Franchise Assets and minimising their associated whole life costs, including without limitation as set out in the Asset Management Policy, Asset Management Strategy and the Principal Asset Strategies;
- 9.1.10 without prejudice to clause 28, modifying any Franchise Assets as required by any Applicable Requirements;
- 9.1.11 complying with the Franchisee's obligations set out in this Agreement including, without limitation:
 - (a) Schedule 4 (Asset Management);

- (b) Schedule 7 (Safety, Quality, Security and Environment);
 - (c) Schedule 9 (DLR Contracts and Undertakings);
 - (d) Schedule 17 (Handover and Handback of Franchise);
- 9.1.12 complying with the Franchisee's obligations set out in the Rolling Stock Lease;
- 9.1.13 complying with the Maintenance Documents;
- 9.1.14 complying with Good Industry Practice; and
- 9.1.15 complying with all Applicable Requirements including, without limitation ROGS.

9.2 Asset Management Policy and Asset Management Strategy

- 9.2.1 The Franchisee shall ensure that the Asset Management Policy is signed by the Managing Director and displayed at a suitable location.
- 9.2.2 The Franchisee shall at all times comply with the Asset Management Policy and the Asset Management Strategy.
- 9.2.3 The Franchisee shall annually review the Asset Management Policy and the Asset Management Strategy and submit any proposed amendments to DLRL for acceptance as part of the proposed Annual Asset Management Plan submitted to DLRL in accordance with Part 4 of Schedule 4.
- 9.2.4 DLRL shall be entitled to accept or reject any proposed amendments to the Asset Management Policy and the Asset Management Strategy in its absolute discretion, and for the avoidance of doubt the Franchisee shall not be entitled to any increase in the Franchise Payment as a result of such acceptance or rejection.
- 9.2.5 The Franchisee shall ensure that its Asset Management Policy and Asset Management Strategy are PAS 55 (ISO 55000) compliant.

9.3 Principal Asset Strategies

- 9.3.1 Prior to the Franchise Commencement Date, the Franchisee shall prepare and submit to DLRL for acceptance a proposed Principal Asset Strategy for each principal asset category listed in column 1 of the maintenance activity table in Part 5 of Schedule 4. The Principal Asset Strategies shall be based on the principles set out in Part 3 of Schedule 4.
- 9.3.2 The Franchisee and DLRL shall consult with each other on the contents of each Principal Asset Strategy for a period of 30 days, and the Franchisee shall take into account any amendments required by DLRL on the grounds that any proposed Principal Asset Strategy does not comply with or is inconsistent with:
- (a) the Asset Management Policy;
 - (b) the Asset Management Strategy;
 - (c) the Principal Asset Strategy principles set out in Part 3 of Schedule 4;
 - (d) the Maintenance Documents;
 - (e) Good Industry Practice;

- (f) any Applicable Requirements; or
 - (g) any other provision of this Agreement.
- 9.3.3 The Franchisee and DLRL shall continue to consult with each other on the contents of each Principal Asset Strategy until DLRL has accepted the final version of each Principal Asset Strategy or, in the absence of any agreement within the 30 day time period, until the Principal Asset Strategies are determined by DLRL.
- 9.3.4 Once accepted or determined by DLRL, the Franchisee shall comply with the contents of the Principal Asset Strategies in undertaking its asset management and maintenance obligations in this Agreement.
- 9.3.5 The Franchisee shall annually review the Principal Asset Strategies and submit any amendments to DLRL for acceptance as part of the proposed Annual Asset Management Plan submitted to DLRL in accordance with Part 4 of Schedule 4.
- 9.3.6 DLRL shall be entitled to accept or reject any proposed amendments to the Principal Asset Strategies in its absolute discretion, and for the avoidance of doubt the Franchisee shall not be entitled to any increase in the Franchise Payment as a result of any such acceptance or rejection.

9.4 **Maintenance Documents**

- 9.4.1 The Franchisee shall comply with the DLR Maintenance Standards.
- 9.4.2 The Franchisee shall within 12 months of the date of this Agreement review each of the Maintenance Procedures and the Maintenance Task Instructions and (where necessary):
- (a) update the Maintenance Procedures and the Maintenance Task Instructions; and
 - (b) create new Maintenance Procedures and Maintenance Task Instructions,
 - (c) to ensure that the Maintenance Procedures and the Maintenance Task Instructions:
 - (i) reflect the Principal Asset Strategies accepted by DLRL in accordance with clause 9.3;
 - (ii) cover the procedures and instructions for maintaining each of the principal asset categories listed in column 1 of the maintenance activity table in Part 5 of Schedule 4;
 - (iii) reflect any operating and maintenance manuals and original equipment manufacturer manuals where appropriate; and
 - (iv) comply with the DLR Maintenance Standards, all Applicable Requirements, Good Industry Practice and the Franchisee's obligations under this Agreement.
- 9.4.3 The Franchisee shall:
- (a) submit any new or updated Maintenance Procedures and Maintenance Task Instructions to DLRL; and

- (b) take into account any amendments required by DLRL on the grounds that any updated Maintenance Procedure or Maintenance Task Instruction does not comply with or is inconsistent with:
 - (i) the Asset Management Policy;
 - (ii) the Asset Management Strategy;
 - (iii) the Principal Asset Strategies;
 - (iv) the DLR Maintenance Standards;
 - (v) Good Industry Practice;
 - (vi) any Applicable Requirements; or
 - (vii) any other provision of this Agreement.

9.4.4 The Franchisee shall review the Maintenance Procedures and the Maintenance Task Instructions as often as is required (but at least annually) throughout the Franchise Term to ensure they reflect:

- (a) any changes to the Franchisee's maintenance practices;
- (b) Good Industry Practice and all Applicable Requirements; and
- (c) any modification, alteration, replacement or addition to any of the Franchise Assets,

and the Franchisee shall submit any updates to DLRL for acceptance in accordance with the procedure in clause 9.4.3 which, in the case of any annual review, shall be submitted as part of the proposed Annual Asset Management Plan submitted to DLRL in accordance with Part 4 of Schedule 4.

9.4.5 The Franchisee shall at all times comply with the current versions of the Maintenance Procedures and the Maintenance Task Instructions.

9.5 **Computerised Asset Management System**

The Franchisee shall implement a new asset management system [●]² as specified in the Committed Obligation in paragraph 4.6 of Part 1 of Schedule 12. The Franchisee will comply with the requirements of this Agreement relating to the Asset Management System to the extent that the functionality of the current SAP ECC5 asset management system will allow, without modification, until the full implementation of [●]³ in accordance with the Committed Obligation in paragraph 4.6 of Part 1 of Schedule 12. Thereafter the Franchisee shall comply in full with the requirements of this Agreement relating to the Asset Management System.

9.5.1 The Franchisee shall:

- (a) review and undertake an analysis of the Franchise Assets to identify any divergence between the contents of the Asset Management System and the Franchise Assets; and
- (b) update and populate the Asset Management System to ensure that it contains a complete and comprehensive list of all Franchise Assets,

² Redacted

³ Redacted

(the "**AMS Gap Analysis**") as soon as reasonably practicable but in any event within 12 months of the Franchise Commencement Date.

9.5.2 The Franchisee shall (in accordance with a methodology to be agreed with DLRL) review and undertake an analysis of the Franchise Assets to determine the current asset condition of all Franchise Assets where either:

- (a) the current asset condition of such Franchise Asset is not included on the Asset Management System as at the date of this Agreement; or
- (b) such Franchise Asset is not included on the Asset Management System as at the date hereof but is or should have been identified and included on the Asset Management System by the AMS Gap Analysis,

(the "**Asset Condition Assessment**").

9.5.3 Following the Asset Condition Assessment, the Franchisee shall throughout the Franchise Term maintain the Asset Management System so that:

- (a) it contains a complete and comprehensive list of all Franchise Assets (including any modifications, alterations, replacements or additions to the Franchise Assets);
- (b) it is updated to reflect the current asset condition of any Franchise Assets following any inspections or other planned or unplanned maintenance activities carried out by the Franchisee pursuant to this Agreement (including without limitation the requirements set out in Part 5 of Schedule 4);
- (c) it meets the requirements and functionality required by, and contains all the asset information and activities specified in, Part 10 of Schedule 4;
- (d) DLRL and the Franchisee can at any time remotely access detailed information on all of the Franchise Assets; and
- (e) incidents and failures are recorded as required by paragraph 17 of Schedule 1.

9.5.4 The Franchisee acknowledges and agrees that the AMS Gap Analysis and the Asset Condition Assessment are undertaken entirely at its own cost and risk and neither:

- (a) the identification of any divergence between the contents of the Asset Management System and the Franchise Assets pursuant to the AMS Gap Analysis; nor
- (b) the determination of the current asset condition of the Franchise Assets pursuant to the Asset Condition Assessment,

shall entitle the Franchisee to any additional payment or increase to the Franchise Payment.

9.6 **Work Bank**

The Franchisee shall establish a Work Bank in accordance with Part 9 of Schedule 4 and use that Work Bank to record, manage and prioritise the rectification all items contained therein.

9.7 Franchisee Asset Management Audits

- 9.7.1 The Franchisee shall develop an asset management audit programme to:
- (a) regularly audit its compliance with its asset management obligations in this Agreement, which shall include without limitation ensuring that:
 - (i) the Railway is safe to provide Passenger Services;
 - (ii) all of the Franchisee's policies and strategies referred to in this clause 9 remain correct and appropriate; and
 - (iii) all relevant activities are being correctly recorded in the Asset Management System and the Asset Management System is being maintained as required by clause 9.5;
 - (b) regularly audit the systems and processes it has in place to ensure compliance with its obligations in this Agreement;
 - (c) regularly audit the performance of its sub-contractors and any suppliers; and
 - (d) assist in the continual self improvement of its asset management activities.

- 9.7.2 The Franchisee shall ensure that the asset management audit programme provides for:
- (a) an appropriate range of audits to be undertaken across all categories of Franchise Assets to reasonably determine whether the Franchisee is complying with its asset management obligations in this Agreement; and
 - (b) the frequency of audits in relation to all Franchise Assets to reflect the risk associated with the failure of such asset,

and the Franchisee shall annually submit the asset management audit programme to DLRL for acceptance as part of the proposed Annual Asset Management Plan submitted to DLRL in accordance with Part 4 of Schedule 4.

- 9.7.3 The Franchisee shall carry out or procure the carrying out of the audits as set out in the asset management audit programme. The Franchisee shall ensure that any external auditors which it engages are competent to carry out such audits and have sufficient skill, knowledge, experience, training and personal attributes in relation to the area or systems being audited. The Franchisee shall give DLRL reasonable notice of any such audits and shall allow DLRL or its nominee to attend such audits.

- 9.7.4 The Franchisee shall promptly report the results of any audits referred to in this clause 9.7 to DLRL (provided that the Franchisee shall be required to alert DLRL to any material safety issues immediately upon becoming aware). Without prejudice to any of DLRL's rights under this Agreement, if an audit reveals any failure or deficiency in relation to any Franchise Asset the Franchisee shall prepare and comply with action plans to remedy any failures and deficiencies which are found as soon as practicable and shall give DLRL notice of such action plan and keep DLRL updated as to the status of any remedial action.

9.7.5 In order to ensure that the appropriate levels of assurance are provided in relation to the Thales System, the Franchisee shall at its own cost ensure that it sends a technically competent signalling engineer or other representative to attend any joint technical audits of the Thales System which are arranged and carried out in Canada up to three times per annum.

9.8 **DLRL Asset Management Audits**

9.8.1 DLRL shall provide the Franchisee with an indicative annual schedule of asset management audits which it intends to carry out, and will share such schedule with the Franchisee. Notwithstanding the contents of such schedule, DLRL or its representatives may at any time carry out any condition audits in relation to the Franchise Assets or audits of compliance by the Franchisee with its obligations in relation to management and maintenance of the Franchise Assets.

9.8.2 Any such audit may involve the examination, inspection or testing of works, activities or assets on or off the Railway, including without limitation the right to audit the Franchisee's holding of Spares. In particular DLRL may, at the approximate mid point of the Franchise, undertake a mid-Franchise audit to determine if the Franchisee's asset management processes, procedures, documentation and systems are suitable and sufficient to ensure that it is complying with its asset management obligations in this Agreement. The mid-Franchise audit may also include an audit of the condition of the Franchise Assets.

9.8.3 DLRL shall notify the Franchisee at least 30 days prior to commencement of any audit, except where DLRL reasonably considers that an audit is required within a shorter timeframe as a result of an incident, emergency or other safety issue. In such cases DLRL shall give the Franchisee as much notice as is reasonably practicable in the circumstances.

9.8.4 The Franchisee shall (at its own cost) procure that the representatives of DLRL conducting any audit shall be provided with all assistance and access to facilities, records and Franchise Assets (including the provision of copies of documents) and personnel as they may reasonably require in order to discharge their audit function in a proper and reasonable manner.

9.8.5 Without prejudice to the generality of this clause 9.8, at the request of DLRL the Franchisee shall provide DLRL with reasonable evidence that it has a satisfactory programme for, and will be capable of, compliance with this clause 9 during the remainder of the Franchise Term.

9.8.6 DLRL shall, in planning and implementing any audit, have regard to the obligations of the Franchisee in operating the Railway and providing the Services.

9.9 **Command and Control**

The Franchisee shall be responsible for implementing an appropriate command and control structure within the Control Centre (to be agreed with DLRL acting reasonably) to ensure that asset management functions are integrated with operations to ensure effective delivery of both asset management and operations, including without limitation:

9.9.1 planning and controlling Vehicle maintenance and diagramming to ensure an efficient spread of maintenance activities; and

9.9.2 making available sufficient skilled resources to provide technical advice to undertake all required Operational Response.

9.10 Meetings and Reports

- 9.10.1 The Franchisee shall provide to DLRL all such asset management and maintenance information as is required by DLRL for the purposes of the Franchise Performance Meeting.
- 9.10.2 The Franchisee shall provide all other reports and attend all other meetings reasonably required by DLRL for the purposes of reviewing the Franchisee's compliance with its asset management and maintenance obligations contained in this Agreement.
- 9.10.3 If there is a material degradation in the condition of an asset on the Railway at any point in a Fee Year which either:
- (a) the Franchisee previously proposed as requiring Capital Replacement pursuant to paragraph 1.5 of Part 4 of Schedule 4; or
 - (b) which was reasonably unforeseeable,
- the Parties may discuss and propose additional or alternative items of DLRL Capital Replacement for inclusion on the current Annual Asset Management Plan, and paragraph 2(b) of Part 4 of Schedule 4 shall apply to such proposals.

9.11 Handback

- 9.11.1 The Franchisee shall hand back the Franchise Assets to DLRL on termination or expiry of this Agreement in a condition which meets all of the following requirements (and none of the following shall be construed as limiting the others):
- (a) is in accordance with the condition requirements specified in Part 5 of Schedule 4;
 - (b) materially the same as upon Franchise Commencement (fair wear and tear and the age of the Franchise Asset excepted and reflecting the current location of each Franchise Asset in the maintenance cycle); and
 - (c) enables the Railway to continue to be operated for the provision of passenger services in accordance with the provisions of this Agreement,
- and the Franchisee shall at its own cost provide evidence to DLRL's reasonable satisfaction that the requirements in this clause 9.11.1 have been met.
- 9.11.2 The assessment of the condition described in clause 9.11.1(b) above shall be undertaken in accordance with the relevant DLR Maintenance Standard, provided that DLRL will use the age of the assets at the Franchise Commencement Date for the element of the assessment that takes into account the age of the asset.
- 9.11.3 On termination or expiry of this Agreement the Franchisee shall ensure there are no maintenance activities in the Work Bank which require remedial action within 6 months of termination or expiry of this Agreement.

9.12 Discrepancies in Maintenance Documents

- 9.12.1 The Franchisee confirms that it has studied in detail the Maintenance Documents and each document comprised therein and has satisfied itself that no discrepancies, contradictions or errors ("**Discrepancies**") exist within or between each such document. The Franchisee acknowledges that it accepts all

risks arising from Discrepancies that subsequently appear within or between such documents and that it shall not be entitled to make any claim against DLRL for any payment, relief or otherwise in respect of any Discrepancies.

- 9.12.2 The Franchisee agrees that where a Discrepancy appears within or between the Maintenance Documents the Franchisee shall provide DLRL with a notice of such Discrepancy and with such notice, or as soon as practicable thereafter the Franchisee will provide an explanation of the manner in which the Franchisee believes the Discrepancy can be resolved. Unless, within 28 days of the Franchisee's notice, DLRL notifies the Franchisee to resolve the Discrepancy in a different manner, the Franchisee shall resolve the Discrepancy in the manner proposed by it (subject always to that manner of resolving the Discrepancy being in compliance with all Applicable Requirements). Where DLRL notifies the Franchisee that the Discrepancy should be resolved in a different manner the Franchisee shall implement the method recommended by DLRL. All costs incurred by the Franchisee in complying with this clause 9.12.2 shall be borne by the Franchisee.
- 9.12.3 DLRL may notify the Franchisee upon becoming aware of any Discrepancy within or between the Maintenance Documents and within such notice, or as soon as practicable thereafter, DLRL will either:
- (a) provide instructions on the manner in which the Discrepancy will be resolved (subject always to that manner of resolving the Discrepancy being in compliance with all Applicable Requirements); or
 - (b) require the Franchisee to provide DLRL with advice as to the manner in which the Franchisee believes the Discrepancy can be resolved, such advice to be provided within 28 Business Days.
- 9.12.4 Without prejudice to the provisions of this clause 9.12, whenever a Discrepancy appears within or between the Maintenance Documents, the parties shall endeavour to consult with each other over the manner in which the Discrepancy should be resolved.

9.13 **Monitoring Third Party Maintenance**

The Franchisee shall monitor:

- 9.13.1 the electronic service update boards ("**ESUBs**") maintenance contractor's (the "**ESUBs Maintenance Contractor**") compliance with its obligations to undertake maintenance of the ESUBs in accordance with its obligations under its contract with DLRL or TfL (as applicable);
- 9.13.2 the Oyster validators maintenance contractor's (the "**Oyster Validator Maintenance Contractor**") compliance with its obligations to undertake maintenance of the Oyster validators in accordance with its obligations under its contract with DLRL or TfL (as applicable),

and in both cases shall promptly report any non-compliances to the ESUBs Maintenance Contractor or the Oyster Validator Maintenance Contractor (as relevant) and DLRL.

10. **WORKING ON THE RAILWAY**

10.1 **Working on the Railway Manual**

The Franchisee shall comply with the requirements of the Working on the Railway Manual.

10.2 Access to the Railway

The Franchisee shall be responsible for planning and managing all access to the Railway (excluding the Extension) in accordance with the Working on the Railway Manual and the provision of all equipment and resources required to facilitate safe access.

10.3 Operational Response

10.3.1 The Franchisee shall promptly undertake all Operational Response in relation to the whole of the Railway at all times (24 hours a day 365 days a year).

10.3.2 The Franchisee shall:

- (a) initiate a response to an operational incident, any failure or damage requiring Operational Response as soon as reasonably practicable and in any event within 15 minutes of DLRL, the Concessionaire or any third party notifying the Franchisee of such failure, damage or incident; and
- (b) undertake all Operational Response on the same basis and to the same standards wherever any failure, damage or incident occurs on the Railway.

10.3.3 Except where DLRL or the Concessionaire has notified the Franchisee in accordance with clause 10.3.2(a) above, the Franchisee shall notify:

- (a) the Concessionaire, in relation to any failure, damage or other incident affecting the Extension requiring Operational Response; and
- (b) DLRL, in relation to any failure, damage or other incident affecting any part of the Railway requiring Operational Response (including on the Extension),

by an appropriate communication method (as agreed with DLRL) immediately following a report to the Control Centre of its occurrence.

10.3.4 Representatives of DLRL and (where appropriate) the Concessionaire shall be entitled to attend the site of any failure, damage or other incident in order to consult on the appropriate measures to be taken to restore normal Passenger Services and to observe any actions taken by the Franchisee. For the avoidance of doubt, the Franchisee shall not be required to wait for the attendance of representatives of DLRL or the Concessionaire prior to undertaking any Operational Response.

10.3.5 As soon as possible following the incident, the Franchisee shall issue a written report which is in format and content commensurate with the significance of the incident to DLRL and (where appropriate) the Concessionaire describing the incident, its cause (so far as known), its duration, its location, the action taken and any follow-up actions required. The obligations under this clause 10.3.5 are in addition to any requirements under BCP-01.

10.4 Projects

10.4.1 The Franchisee shall provide DLRL or its contractors with such access as is required by DLRL or its contractors to undertake project work (each a "**DLRL Project**") on the Railway in accordance with the Working on the Railway Manual, provided that:

- (a) where DLRL provides at least four weeks' notice of such required access to the Franchisee, the Franchisee shall grant such access as required by DLRL in DLRL's absolute discretion; and
 - (b) where DLRL provides less than four weeks' notice of such required access to the Franchisee, the Franchisee shall grant such access as is reasonably practicable in the circumstances.
- 10.4.2 The Franchisee shall employ and make available sufficient personnel and resources to allow the Franchisee to comply with its obligations in the Working on the Railway Manual and allow DLRL to undertake the projects specified in Schedule 26 and the DLRL Ten Year Plan (or any alternative projects of a reasonably comparable scale and nature). For the avoidance of doubt, the DLRL Ten Year Plan has no other contractual purpose within this Agreement and its reference in this clause shall not provide any indication, commitment, warranty or representation (whether express or implied) that DLRL will undertake the projects specified in the DLRL Ten Year Plan.
- 10.4.3 In complying with its obligations in clause 10.4.2 above, the Franchisee shall provide all assistance reasonably requested by DLRL or its contractors in relation to DLRL Projects, which shall include without limitation:
- (a) undertaking reviews of method statements provided to the Franchisee by DLRL or its contractors within such time periods as may be specified by DLRL (acting reasonably);
 - (b) complying with the requirements of BCP 03 Joint Change and Assurance Framework, BCP 12 Assurance of Signalling Assets and BCP 14 Assurance of Non-Signalling Assets;
 - (c) checking that Passenger Services can safely be resumed on the Railway following the undertaking of any DLRL Project work, in accordance with the Working on the Railway Manual; and
 - (d) due to the fundamental and special nature of the signalling system, employing a suitably resourced and competent team of signalling engineers.
- 10.4.4 The Franchisee shall ensure that sufficient 'Designated Competent Persons' are available across each principal asset category (listed in column 1 of the maintenance activity table in Part 5 of Schedule 4) in order to meet the competence requirements specified in BCP 03 Joint Change and Assurance Framework and which reflect the volume and nature of upcoming project activity.
- 10.4.5 Without prejudice to clause 10.4.1, DLRL requires three Vehicles specified by DLRL to be made available to DLRL at all times during the Franchise Term for the carrying out of DLRL Projects. For such purposes the Franchisee shall make sidings X and Z, the maintenance workshop referred to as the BN shed, two portacabin offices and the four existing containers at Beckton Depot and sidings SA and SB at the Poplar Depot available for DLRL's exclusive use. The Franchisee shall provide (at its own cost) all utilities and maintenance and reasonable cleaning of such facilities. The Franchisee shall provide such assistance and training as is reasonably required by DLRL in relation to the use of equipment inside the buildings for any DLRL Projects. This training shall include the use of the electrical shore supply.

- 10.4.6 DLRL will carry out and complete the DLRL Projects identified in Schedule 26 by the dates specified therein. Any material increase or decrease in the Franchisee's obligations and/or costs under this Agreement which result from DLRL not completing the DLRL Projects identified in Schedule 26 by the dates specified therein shall be a Variation for the purposes of this Agreement.
- 10.4.7 When undertaking a DLRL Project, DLRL shall take out or shall cause to be taken out, and shall be responsible for any premium in relation to, project insurances with insurance companies of good repute and standing to cover the risk of loss of or damage to the Railway arising from the relevant DLRL Project works. DLRL shall ensure that the Franchisee is a named party on such insurances and clauses 29.8 to 29.11 shall apply to such insurances on the occurrence of an event giving rise to (or likely to give rise to) a claim under such insurances. Amounts unpaid by insurers by reason of the application of any deductible will be for the account of DLRL, provided any relevant loss of or damage to the Railway was not caused by the Franchisee or any claim under such insurances would not have occurred but for a breach by the Franchisee of the terms of this Agreement or could have been reasonably prevented by the Franchisee.

10.5 **Training**

- 10.5.1 The Franchisee shall provide any required training to its own staff and the staff of DLRL or any third party contractors to allow such staff to conduct work (including DLRL Projects) in relation to the Railway, which shall include without limitation all training required by the Working on the Railway Manual, track awareness training and any other training required for any staff to access the Railway.
- 10.5.2 The Franchisee shall maintain and update as appropriate all required training materials to allow the Franchisee to carry out all relevant training courses specified in the Working on the Railway Manual.
- 10.5.3 The Franchisee shall provide the training and provide and update the materials required by clauses 10.5.1 and 10.5.2 at its own cost, provided that the Franchisee shall be entitled to charge its properly incurred direct costs for each attendee of DLRL or any third party contractor which it is required to train.

10.6 **Capital Replacement**

- 10.6.1 Subject to clauses 10.6.3 and 10.6.4, DLRL shall be responsible for the carrying out of any DLRL Capital Replacement which is contained within the current Annual Asset Management Plan and which has either been agreed between the parties or determined by DLRL in accordance with the provisions of paragraph 2(b) of Part 4 of Schedule 4. Where DLRL carries out or procures the carrying out of any DLRL Capital Replacement it shall ensure it is carried out in accordance with Good Industry Practice and in accordance with all Applicable Requirements.
- 10.6.2 Subject to clause 10.6.3(a), DLRL shall spend a minimum of the Capital Replacement Budget on DLRL Capital Replacement on the Railway. The projects on which the Capital Replacement Budget will be spent shall be determined in accordance with paragraph 2 of Part 4 of Schedule 4.
- 10.6.3 (a) If DLRL does not spend the Capital Replacement Budget on DLRL Capital Replacement on the Railway then there shall be a Variation for the purposes of this Agreement. Such Variation shall be the

Franchisee's sole remedy for DLRL not spending the Capital Replacement Budget on DLRL Capital Replacement on the Railway.

- (b) DLRL may determine in its absolute discretion whether and when to carry out any other DLRL Capital Replacement, provided that if DLRL does not carry out any other DLRL Capital Replacement which is contained in the Annual Asset Management Plan then clause 10.6.5 shall apply (which shall be the Franchisee's sole remedy for DLRL not carrying out any such other DLRL Capital Replacement contained in the Annual Asset Management Plan).

10.6.4 The Franchisee shall be responsible for:

- (a) the carrying out and full cost of any Capital Replacement which is included in Part 5 of Schedule 4 or which is stated to be the responsibility of the Franchisee in any other provision of this Agreement (irrespective of whether the cost of such Capital Replacement is in excess of the Capital Replacement Threshold);
- (b) the carrying out and full cost of any Individual Item of Capital Replacement the Works Cost of which is below the Capital Replacement Threshold,
- (c) the carrying out and full cost of all Capital Replacement if and to the extent that such Capital Replacement is required as a result of any breach or failure by the Franchisee to comply with its obligations under this Agreement (including but not limited to the Franchisee failing to carry out any planned or unplanned maintenance which is required by this Agreement or the Franchisee's failure to carry out its obligations in relation to DLRL Projects as required by clause 10) or as a result of a fault or defect caused by, or manifest in, any asset or part thereof procured, obtained, specified or delivered by the Franchisee;
- (d) if required by DLRL pursuant to clause 29.11 (Reinstatement), the carrying out and full cost of all Capital Replacement required as a consequence of accidental damage or vandalism or for which insurance proceeds are recoverable under the insurances required to be taken out under this Agreement or which would have been recoverable but for any act, omission or default of the Franchisee;
- (e) the carrying out and full cost of any other Capital Replacement which is not the responsibility of DLRL pursuant to clause 10.6.1; and
- (f) carrying out any Capital Replacement instructed by DLRL in accordance with the Variation Procedure.

10.6.5 In the event that:

- (a) the current Annual Asset Management Plan states that (in the Franchisee's opinion) DLRL should carry out specific items of Capital Replacement which have been proposed by the Franchisee in compliance with paragraph 1.5 of Part 4 of Schedule 4;
- (b) DLRL is responsible for such Capital Replacement pursuant to clause 10.6.1; and
- (c) DLRL does not carry out or procure the carrying out of such Capital Replacement in accordance with the Annual Asset Management Plan which results in:

- (i) non-compliance with an Applicable Requirement; or
- (ii) material degradation in the performance of the Railway,

then provided that:

- (A) such effects were set out in detail in the Annual Asset Management Plan in accordance with the requirements of paragraph 1.5 of Part 4 of Schedule 4;
- (B) the Franchisee has complied with all its obligations contained in this Agreement relating to the relevant asset, including complying with clause 9 and Schedule 4 and any applicable manufacturer's manuals and has demonstrated such compliance to DLRL's reasonable satisfaction; and
- (C) the Franchisee can provide detailed analysis to DLRL's reasonable satisfaction of:
 - (AA) the condition of the relevant asset or assets;
 - (BB) the causes of the degradation that warrants the need for Capital Replacement; and
 - (CC) the likely future effects of a failure to carry out the Capital Replacement,

then the Franchisee shall be entitled to a Quality Exclusion in accordance with paragraph 12.3(b) of Schedule 2.

11. COMMITTED OBLIGATIONS

The Franchisee shall deliver the Committed Obligations set out in Schedule 12 (Committed Obligations) in accordance with the terms of that Schedule.

12. CUSTOMER INFORMATION

The Franchisee shall comply with its obligations in Schedule 6.

13. SITE

13.1 Grant of licence

DLRL shall during the Franchise Term permit the Franchisee and its Sub-Contractors to:

- 13.1.1 use or access (in common with DLRL and all other persons permitted by DLRL, in accordance with the Working on the Railway Manual (where applicable)):
 - (a) the Site in accordance with this Agreement; and
 - (b) those areas of the Extension that are required in order for the Franchisee to perform its obligations under this Agreement; and
- 13.1.2 access (in common with DLRL and all other persons permitted by DLRL), in accordance with the Working on the Railway Manual (where applicable) the areas hatched yellow on the Estate Plans.

13.2 **General provisions in respect of land and the licence**

The Franchisee shall, and shall procure that its Sub-Contractors shall, at all times during the Franchise Term:

- 13.2.1 allow the Superior Right Holders and other contractual counterparties to act in accordance with their rights under the DLRL Superior Property Documents, Third Party Maintenance Agreements and DLRL Property Documents;
- 13.2.2 not do or permit to suffer anything whereby the DLRL Superior Property Documents, DLRL Property Documents or Third Party Maintenance Agreements may be avoided or forfeited or cause any liability for DLRL under any of them;
- 13.2.3 comply with DLRL's obligations under the:
 - (a) DLRL Superior Property Documents;
 - (b) the Third Party Maintenance Agreements, other than the Excluded Payment Obligations; and
 - (c) the DLRL Property Documents;
- 13.2.4 not use the Railway or the Site for any purposes other than the performance of its obligations under this Agreement without prior written consent from DLRL;
- 13.2.5 pay all Taxes, assessments, outgoings and impositions whatsoever (other than business rates) payable in respect of the Site (or any related equipment located at the Site) or assessed upon the owner or occupier in respect thereof (other than those payments which shall arise by virtue of any disposition of or dealing with or the ownership of any estate or interest expectant in the reversion) in either case from the Franchise Commencement Date;
- 13.2.6 procure, be responsible for the costs of and maintain as necessary for the duration of the Franchise Term all gas, water and other utilities (other than the cost of Power as described in clause 13.5) at the Site, arranging this directly with the utilities supplier;
- 13.2.7 implement all necessary security systems in accordance with Good Industry Practice to prevent unauthorised access, theft, damage and vandalism to the Site; and
- 13.2.8 allow passengers and customers to access the public areas of the Site.

13.3 **Exercise of rights**

- 13.3.1 At the reasonable request of the Franchisee, DLRL shall enforce its rights under the DLRL Superior Property Documents, the Third Party Maintenance Agreements and the DLRL Property Documents to the extent that it is reasonably able and where to do so would not prejudice DLRL's position and to the extent reasonably necessary to allow the Franchisee to comply with and carry out its obligations pursuant to this Agreement.
- 13.3.2 The Franchisee shall indemnify DLRL for any costs incurred by DLRL or a Superior Right Holders by reason of the action taken by DLRL pursuant to clause 13.3.1.

13.4 **Change to Relevant Documents**

Any material amendment or variation to the DLRL Superior Property Documents, the Third Party Maintenance Agreements and the DLRL Property Documents from the versions contained in the Data Room Documents which directly causes a change in the requirements or obligations of the Franchisee under this Agreement shall be a Variation for the purposes of this Agreement.

13.5 **Power**

13.5.1 DLRL shall procure and be responsible for the cost of all Power used on the Railway from the Franchise Commencement Date.

13.5.2 The Franchisee shall ensure that it performs its obligations under this Agreement and uses Power in relation to the Railway:

(a) in a way which minimises as far as reasonably practicable the consumption of Power; and

(b) efficiently so as not to waste or unnecessarily use Power,

at all times in accordance with Good Industry Practice.

13.5.3 DLRL shall be required to maintain or procure the maintenance of all Power meters and associated equipment required under the Balancing and Settlement Code and/or by DLRL's licenced electricity supplier. The Franchisee shall:

(a) maintain or procure the maintenance of all other Power meters and associated equipment installed to record electricity on the Railway (i.e. not required under the Balancing and Settlement Code or by DLRL's licenced electricity supplier);

(b) read all Power meters on the Railway (where remote electronic reading is not available); and

(c) maintain a list of all Power meters on the Railway and which 'Distribution Network Operator' each Power meter is connected to.

13.5.4 The Franchisee will be required to provide Power meter readings to DLRL or its nominee on a regular basis to such level of disaggregation (whether by time period, location or traction and non-traction) as DLRL may reasonably require, including as may be required by DLRL to comply with any Applicable Requirements.

13.5.5 The Franchisee shall report overall Power consumption on the Railway to DLRL on a Quarterly basis.

13.5.6 The Franchisee shall undertake all required maintenance of, or shall procure all required maintenance of, the Power Supply System.

13.6 **Safeguarding the Railway**

The Franchisee shall at its own cost monitor and take all such actions as a prudent railway operator would undertake in order to safeguard the Railway against the impact or likely impact of any Third Party Development, including reviewing planning applications and making suggestions to DLRL on appropriate objections to such planning applications. Where the Franchisee becomes aware during the Franchise Term of any Third Party Development or proposed Third Party Development, the Franchisee shall advise DLRL as soon as reasonably possible. The Franchisee will at its own cost take all reasonable actions as required under the Applicable Requirements to safeguard the Railway. Where there is any effect or likely effect on the operation of the Railway, the Franchisee will

promptly notify DLRL and at its own cost take into account any reasonable requests of DLRL regarding any such actions.

13.7 **Environmental and Industrial Disease Indemnity**

13.7.1 DLRL shall indemnify the Franchisee in respect of any Environmental Losses incurred by the Franchisee which may arise out of:

- (a) the Franchisee's operation of Passenger Services or maintenance of the Franchise Assets; or
- (b) the presence on the Railway of the Franchisee or its Sub-Contractors, employees or agents, in each case in connection with this Agreement,

except to the extent that such Environmental Losses are recoverable by the Franchisee under any insurance policy, and provided that DLRL shall not be liable under this clause in respect of any Environmental Losses to the extent such Environmental Losses are caused or exacerbated by any act, omission or breach by the Franchisee of this Agreement.

13.7.2 DLRL shall indemnify the Franchisee in respect of any Loss incurred by the Franchisee in connection with Industrial Disease.

13.7.3 If the Franchisee receives any claim from which it appears that the Franchisee is or may become entitled to indemnification under clauses 13.7.1 or 13.7.2 the Franchisee shall give notice in writing to DLRL as soon as reasonably practicable giving all reasonable details.

13.7.4 On receipt of a notice pursuant to clause 13.7.3 DLRL shall be entitled to have conduct of and to resist any relevant claim in the name of the Franchisee at DLRL's own expense and, if DLRL so elects, to have the conduct of any defence, dispute, compromise or appeal of such claim and of any incidental negotiations, and the Franchisee will give DLRL all reasonable co-operation, access and assistance for the purposes of considering and resisting any such claims.

14. **PERSONNEL**

14.1 **DLRL Manager**

14.1.1 DLRL shall appoint a competent DLRL Manager, whose principal responsibilities shall be, amongst other things:

- (a) to manage this Agreement on behalf of DLRL;
- (b) to monitor the Franchisee's performance of its obligations under this Agreement;
- (c) to ensure that the necessary resources within DLRL are made available for the performance of DLRL's obligations under this Agreement; and
- (d) to facilitate DLRL in fulfilling its obligations to the Franchisee under this Agreement.

14.1.2 The DLRL Manager may from time to time delegate any of his powers, functions and authorities to an identified substitute and may at any time revoke any such delegation. Notice of any such delegation or revocation shall be provided to the Commercial Director.

14.1.3 Except in cases of emergency, or as a consequence of the proper exercise of disciplinary procedures of DLRL, DLRL shall give the Commercial Director reasonable notice of a proposal to replace the DLRL Manager.

14.2 **Franchisee's Commercial Director**

14.2.1 The Franchisee shall appoint a competent Commercial Director who shall have power and authority delegated to him by the Franchisee to act and to make decisions on behalf of the Franchisee in relation to this Agreement. The principal responsibilities of the Commercial Director shall be, amongst other things:

- (a) to manage this Agreement on behalf of the Franchisee;
- (b) to ensure that the necessary resources within the Franchisee's organisation are made available expeditiously for the performance of the Franchisee's obligations under this Agreement;
- (c) to ensure that any necessary sub-contracts are placed and managed so that the requirements of this Agreement are fully met;
- (d) to facilitate the Franchisee in fulfilling its obligations to DLRL under this Agreement; and
- (e) to ensure timely information is provided on the Franchisee's performance against the requirements of this Agreement.

14.2.2 The Commercial Director may from time to time delegate any of his powers, functions and authorities to an identified substitute and may at any time revoke any such delegation. Notice of any such delegation or revocation shall be provided in writing signed by the Commercial Director in advance to the DLRL Manager for approval (not to be unreasonably withheld or delayed) and shall state which power, function or authority is to be delegated or revoked and the person to whom or from whom the same are delegated or revoked respectively and the times within which that delegation is active. No such delegation or revocation shall have effect until approved by DLRL in accordance with this clause.

14.3 **Key Staff**

14.3.1 The Franchisee shall directly employ the following persons in the performance of this Agreement:

- (a) a managing director, who will have overall responsibility for the Franchise (the "**Managing Director**");
- (b) an operations director, who will be responsible for the general supervision and direction of the Passenger Services (the "**Operations Director**");
- (c) a maintenance and engineering director, who shall be responsible for the general supervision and direction of the Franchisee's maintenance obligations and engineering support for projects undertaken by DLRL, including compliance with clause 9 and Schedule 4 (the "**Maintenance and Engineering Director**"); and
- (d) a safety director, who shall be the professional head of safety responsible for the management of the Franchisee's safety management system and whose role will include responsibility for

ensuring that the Franchisee complies with its legal obligations in relation to the Passenger Services including its Safety Certificate and Safety Authorisation (the "**Safety Director**"),

(together with the Commercial Director, the "**Key Staff**").

14.3.2 The Franchisee shall ensure that the Key Staff have suitable experience and qualifications to carry out their roles. The use of the term "director" in clause 14.3.1 is for convenience only and it shall remain at the absolute discretion of the Franchisee as to whether any Key Staff are appointed as directors for the purposes of the Companies Act 2006.

14.3.3 The Franchisee shall procure that, provided they remain in the employment of the Franchisee or any member of the Franchisee's Group, the Managing Director, the Operations Director, the Maintenance and Engineering Director and the Safety Director shall, unless DLRL otherwise agrees (acting in its absolute discretion):

- (a) devote substantially all of their working time to performing the duties required by those posts;
- (b) be primarily based at the Franchisee's DLR offices; and
- (c) remain in such posts for at least the periods set out below:
 - (i) the initial Managing Director approved in accordance with the procedure in clause 14.3.3A below until three years after the Franchise Commencement Date, and each subsequent Managing Director shall remain in the post for the shorter of three years and the period until the end of the Franchise Term;
 - (ii) the initial Operations Director approved in accordance with the procedure in clause 14.3.3A below until three years after the Franchise Commencement Date, and each subsequent Operations Director shall remain in the post for the shorter of three years and the period until the end of the Franchise Term;
 - (iii) the initial Maintenance and Engineering Director approved in accordance with the procedure in clause 14.3.3A below until three years after the Franchise Commencement Date, and each subsequent Maintenance and Engineering Director shall remain in the post for the shorter of three years and the period until the end of the Franchise Term; and
 - (iv) the initial Safety Director approved in accordance with the procedure in clause 14.3.3A below until three years after the Franchise Commencement Date, and each subsequent Safety Director shall remain in the post for the shorter of three years and the period until the end of the Franchise Term,

each such period being a "**Required Period**".

14.3.3A The Franchisee shall propose the names of the initial Managing Director, the Operations Director, the Maintenance and Engineering Director and the Safety Director to DLRL within 4 weeks of the date of this Agreement and the parties shall seek to agree such appointments within 12 weeks of the date of this Agreement. Thereafter clause 14.3.4 shall apply to such appointed individuals.

14.3.4 Subject to clauses 14.3.5, 14.3.6 and 14.3.7, if any individual in the roles listed in clause 14.3.3(c):

- (a) does not remain in the required post for the Required Period; or
- (b) does not fulfil the requirements of clause 14.3.3(a) or (b) during the Required Period,

then the Franchisee shall pay to DLRL a fee of:

- (i) £5,000 (Indexed) for the Managing Director; and
- (ii) £3,000 (Indexed) for all the other individuals set out in clause 14.3.3,

for each Fee Period or part thereof that such individual is not in the required post during the Required Period or does not fulfil the requirements of clauses 14.3.3(a) or (b) during the Required Period.

14.3.5 The Franchisee shall not be required to make any payment under clause 14.3.4 in the case of any individual who is absent from their post due to maternity leave, paternity leave, adoption leave, parental leave and time off to perform statutory duties.

14.3.6 If an individual is unable to fully perform their obligations due to illness or injury and the absence is reasonably expected to be no longer than 60 consecutive Business Days then the Franchisee shall not be required to make any payments under clause 14.3.4 provided the Franchisee puts reasonable temporary cover in place during the period of absence.

14.3.7 If an absence due to illness or injury is expected to be permanent, the Franchisee will not be required to make any payments under clause 14.3.4 for a period of 80 consecutive Business Days (starting from the date the Franchisee could reasonably have been expected to know the absence was likely to be permanent) provided the Franchisee is using all reasonable endeavours to provide a replacement.

14.3.8 Unless otherwise agreed by DLRL, each post in clause 14.3.3 must be filled by a separate individual and no individual can fill more than one post.

14.3.9 With the exception of any person who transfers into the posts described in clause 14.3.1 by operation of TUPE, the Franchisee shall not appoint any of the Key Staff without the prior written consent of DLRL (such consent not to be unreasonably withheld or delayed). If DLRL does not consent to the proposed appointment, the Franchisee shall propose alternatives until DLRL does provide its written consent (such consent not to be unreasonably withheld or delayed).

14.3.10 Except in cases of emergency, or as a consequence of the proper exercise of disciplinary procedures of the Franchisee, a minimum of three month's notice must be given to DLRL of a proposal to replace any of the Key Staff.

14.3.11 The Franchisee shall provide DLRL with an organisation chart detailing the responsibilities and reporting lines of each of the Key Staff on or prior to the Franchise Commencement Date. Thereafter the Franchisee shall advise DLRL in advance of any material changes to its management structure and shall update such chart (and provide a copy to DLRL promptly thereafter) as and when any changes occur.

14.4 **Franchisee's responsibility**

The Franchisee shall be responsible for employing at its own cost all personnel required for the purposes of carrying out its obligations under this Agreement and shall be responsible for all relevant employment benefits of such personnel. The Franchisee shall be responsible for the hiring, assigning and supervising of its personnel (including the obtaining, maintaining and, where necessary, renewing of work permits and any other necessary permissions, registrations, authorisations, licences and permits in relation to such personnel).

14.5 **Qualified personnel**

The Franchisee shall employ and shall ensure that its contractors and their sub-contractors of any tier employ only such persons as are properly qualified, experienced, and competent to perform the work assigned to them and, where appropriate, duly licensed. If so requested by DLRL, the Franchisee shall provide DLRL with evidence (in a form reasonably satisfactory to DLRL) of the competency of such persons.

14.6 **Safety critical work**

The Franchisee shall ensure compliance with all Applicable Requirements (including without limitation ROGS) and any replacement thereof in respect of carrying out its obligations under this Agreement (including safety critical work). If so requested by DLRL, the Franchisee shall provide to DLRL evidence that its personnel and that of its contractors and their sub-contractors of any tier have been properly assessed as competent to perform their safety critical duties and, where appropriate, are duly licensed.

14.7 **Training**

14.7.1 The Franchisee shall undertake to regularly train and assess the Franchisee Employees. The training shall include such training as is necessary for initial qualification and assessment of new Franchisee Employees and for periodic re-assessment of proficiency for current Franchisee Employees. The training courses shall cover all tasks which are required to perform duties assigned to Franchisee Employees and appropriate actions in any emergency that may be encountered while performing such duties.

14.7.2 The Franchisee shall adopt and maintain a scheme for documenting and recording the training status and proficiency of all Franchisee Employees in accordance with any Applicable Requirements (including ROGS).

14.8 **Franchisee Staff Surveys**

The Franchisee shall conduct an annual Engagement Survey with at least one Pulse Survey during each Fee Year. The results of all Engagement Surveys and Pulse Surveys shall be provided to DLRL within one month of receipt by the Franchisee.

15. **PENSIONS**

15.1 **Participation in the DLR Pension Scheme**

The Franchisee shall throughout the Franchise Term participate in the DLR Pension Scheme for the benefit of Existing Members and shall observe and perform all such provisions of the DLR Pension Scheme as are relevant to it as a participating employer including the punctual payment of employer's contributions as required under legislation and under the rules of the DLR Pension Scheme, but subject to the terms of this Agreement.

15.2 **Other Assumed Employees**

The Franchisee shall throughout the Franchise Term provide and fund pension benefits and benefits on death in service or leaving service due to incapacity to those Assumed Employees who are not Existing Members which are at least equal in value to those provided under the arrangements operated by the Predecessor Franchisee for the benefit of those employees immediately prior to the Franchise Commencement Date.

15.3 **New Employees**

The Franchisee will fund and offer any persons employed by the Franchisee for the purposes of the Franchise during the Franchise Term who are not Assumed Employees, pension benefits and benefits on death in service or leaving service due to incapacity which shall be no more favourable than the pension benefits under the DLR Pension Scheme.

15.4 **Automatic Enrolment**

The Franchisee shall throughout the Franchise Term comply with its obligations under Part 1 of the Pensions Act 2008 (Pension scheme membership for jobholders).

15.5 **Variations to the DLR Pension Scheme**

15.5.1 Save as may be required by law, DLRL shall not during the Franchise Term consent to any change to the terms of the DLR Pension Scheme relating to benefits of the Existing Members without the prior agreement of the Franchisee (which shall not be unreasonably withheld or delayed).

15.5.2 Save as may be required by law, the Franchisee shall not during the Franchise Term consent to any change to the terms of the DLR Pension Scheme relating to benefits of the Existing Members without the prior agreement of DLRL (which shall not be unreasonably withheld or delayed).

15.6 **Franchisee's nominee**

The Franchisee shall be entitled to nominate one individual to be a trustee of the DLR Pension Scheme during the Franchise Term and to request the removal and/or replacement of such nominee. The appointment of any such nominee shall be on terms that such nominee (including any replacement) ceases to be a trustee on the termination of the Franchise for whatever reason. Any such nominee must be acceptable to the other trustees of the DLR Pension Scheme and shall comply with the terms of any trustees' policy and/or practice in relation to the management of conflicts of interest from time to time and, subject to such acceptability, DLRL will use all reasonable endeavours to procure that any such nominee shall be appointed as trustee of the DLR Pension Scheme.

15.7 **Contributions to the DLR Pension Scheme**

15.7.1 The Franchisee shall pay contributions to the DLR Pension Scheme during the Franchise Term at a fixed rate of 35.7% per annum of the Pensionable Salary (as defined in the rules of the DLR Pension Scheme) of each Existing Member.

15.7.2 As at the end of each Fee Year DLRL shall request the trustees to instruct the scheme actuary to the DLR Pension Scheme to calculate the value of the increase (if any) in the total liabilities of the scheme caused by aggregate salary increases awarded to the Existing Members since the Franchise Commencement Date exceeding the RPI Index plus 1.5% per annum over that period. Any such increase in the liabilities of the DLR Pension Scheme will be calculated on a basis consistent with the most recent valuation of that scheme under Part 3 of the Pensions Act 2004.

- 15.7.3 In addition to calculating the increase in liabilities under clause 15.7.2 above DLRL will request the trustees to instruct the scheme actuary to the DLR Pension Scheme to calculate the amount by which that increase in liabilities exceeds the then current value of any previous sums paid by the Franchisee to the DLR Pension Scheme under this Clause 15 (the "**Excess Salary Amount**"). On receipt of the calculation by the scheme actuary, DLR shall give written notice to the Franchisee of the Excess Salary Amount. The Franchisee shall then make one or more payments to the DLR Pension Scheme equal in aggregate to the Excess Salary Amount within three months of being notified by DLRL or such longer period as DLRL may agree.
- 15.7.4 The Franchisee shall meet the full cost, as determined by the trustees of the DLR Pension Scheme, of any augmentation of the benefits of any Existing Member (subject to agreement of DLRL and the trustees) which the Franchisee agrees to during the Franchise Term.
- 15.7.5 For the avoidance of doubt, the obligation of the Franchisee to pay the Excess Salary Amount applies to the Fee Year ending on the Expiry Date and the Franchisee shall be obliged to pay any sum due under clause 15.7.3 notwithstanding the end of the Franchise, such payment to be made within 30 calendar days of being notified by DLRL or such longer period as DLRL may agree.

15.8 **Other benefits under the DLR Pension Scheme**

- 15.8.1 The Franchisee shall not take any direct or indirect action which might reasonably be viewed as encouraging Existing Members to take early retirement under the rules of the DLR Pension Scheme without the prior written consent of DLRL.
- 15.8.2 If any Existing Member is paying contributions to the DLR Pension Scheme based on a reduced pensionable salary under Rule 5.4 (Maternity, Adoption, Paternity and Parental Leave) of the rules of the DLR Pension Scheme, the Franchisee shall pay to the DLR Pension Scheme an amount equal to the resulting reduction in the contributions of that Existing Member compared to the amount which that member would have paid if they had been receiving their full pensionable salary.
- 15.8.3 If any Existing Member has their contributions to the DLR Pension Scheme waived by virtue of Rule 5.5 (Sickness absence) of the rules of the DLR Pension Scheme, the Franchisee shall pay to the DLR Pension Scheme an amount equal to the waived contributions of that Existing Member.

15.9 **Pension Protection Fund levy**

- 15.9.1 During the Franchise Term the Franchisee will meet in full the levy payable by the DLR Pension Scheme to the Pension Protection Fund in accordance with a determination under Section 175 of the Pensions Act 2004.
- 15.9.2 In the event that the Franchise Termination Date occurs after the start of any period relating to, any levy referred to in clause 15.9.1 above but before the levy for that period has been paid under clause 15.9.1 above, the Franchisee shall pay to the DLR Pension Scheme within 30 days of calculation an amount reasonably calculated by the trustee of the DLR Pension Scheme as being equal to the expected amount of that levy for the relevant period.

15.10 **Termination of the Franchise**

15.10.1 Other than amounts outstanding or due under clauses 15.7, 15.8 and 15.9 the Franchisee shall not have any further liabilities to the DLR Pension Scheme after the Expiry Date.

15.10.2 With effect from the Expiry Date the Franchisee assigns all rights or powers relating to the DLR Pension Scheme to DLRL and shall if requested by DLRL execute a power of attorney to authorise DLRL to exercise any such rights or powers. DLRL will have the power to assign or delegate those rights or powers following the Expiry Date.

15.11 **Pensions Indemnity**

Apart from those payments due and payable by the Franchisee under the terms of this agreement:

15.11.1 DLRL shall indemnify and keep indemnified the Franchisee against any liability to make payments to the DLR Pension Scheme on or following cessation of participation of the Franchisee in the DLR Pension Scheme including any amount payable under the provisions of section 75 of the Pensions Act 1995 and the Occupational Pension Scheme (Employer Debt) Regulations 2005 SI 678/2005 (as amended).

15.11.2 DLRL shall indemnify and keep indemnified the Franchisee against any liability to make payments to the DLR Pension Scheme which are in excess of the amount required to be paid under this Agreement.

15.12 **Deed of Adherence**

The Franchisee shall enter into the Deed of Adherence in respect of the DLR Pension Scheme on or before the Franchise Commencement Date.

16. **TRANSFERRED OBLIGATIONS, FUNCTIONS AND CONSENTS**

16.1 **DLR Contracts**

The Franchisee shall comply with its obligations set out in Schedule 9.

16.2 **Authorised Functions**

The Franchisee shall be authorised to act as DLRL's agent for the functions set out in paragraph 1 of Part 1 of Schedule 5 and Part 2 of Schedule 9 (subject only as provided therein).

16.3 **Indemnity by Franchisee**

Without prejudice to the generality of clause 27 (Liability and Indemnities), the Franchisee shall be responsible for, and shall indemnify DLRL, its servants, agents, officers, employees, contractors and sub-contractors from and against all liabilities, losses, costs and expenses suffered or incurred by such persons arising from any acts or omissions of the Franchisee acting as agent for DLRL pursuant to clauses 16.1 or 16.2.

16.4 **No holding out**

Save as expressly permitted in this Agreement or the Ancillary Agreements, the Franchisee shall not in any circumstances hold itself out as being the servant or agent of DLRL or as being authorised to enter into any contract on behalf of DLRL or in any other way to bind DLRL to the performance, variation, release or discharge of any obligations.

16.5 **Franchisee to obtain consents, licences etc.**

The Franchisee shall be responsible at its own expense for obtaining (prior to the Franchise Commencement Date) and maintaining in full force and effect all necessary or appropriate consents, licences, approvals and permissions required for provision of the Services and operation of the Franchise and compliance with its obligations under this Agreement and the Ancillary Agreements. Where such consents, licences, approvals and permissions are required by DLRL for the performance of its functions under this Agreement or by a Successor Franchisee for continuing operation of the Franchise, the Franchisee shall use all reasonable endeavours to ensure that such items are obtained on a basis that will ensure that DLRL and (as appropriate) Successor Franchisees enjoy the benefits thereof for such purposes, provided that this obligation on the part of the Franchisee shall not apply in respect of those items which, in accordance with Applicable Requirements, can only be granted to the Franchisee on a personal basis.

16.6 Franchisee's obligation to give notices, pay fees, etc.

Save as otherwise provided in this Agreement or the Ancillary Agreements, the Franchisee shall, in undertaking the Franchise, give all notices, pay all fees, expenses, compensation and other outgoings and do all other acts or things which are or may be required to be given, paid or done under the Applicable Requirements.

17. SAFETY

17.1 Safety Management

17.1.1 The Franchisee, its directors, management and staff shall be wholly responsible and accountable for all safety matters related to the performance of the Services and the Franchisee shall:

- (a) take all measures to ensure the control and safe operation and maintenance of the railway infrastructure, train operations and station operations;
- (b) comply with all Applicable Requirements in respect of safety, health and welfare, including but not limited to its obligations under ROGS and HSWA
- (c) take care for the safety of all persons entitled to be in the places where the Services are being performed;
- (d) exercise co-operation with DLRL, TfL, the Concessionaire and any applicable third parties on all matters affecting safety;
- (e) be aware of and where appropriate comply with DLRL's and the Concessionaire's Safety Management System;
- (f) employ suitably qualified, trained and experienced personnel to be responsible for all safety matters and to ensure the safe operation of the Railway; and
- (g) without prejudice to clause 14, allocate sufficient resources (including appropriate management resources) to implement and fulfil the requirements of this clause 17.

17.1.2 Without prejudice to the generality of clause 17.1, the Franchisee shall comply with its obligations as set out in Part 1 of Schedule 7.

17.2 ROGS

- 17.2.1 The Franchisee acknowledges that the Regulator has confirmed that for the purposes of ROGS the Franchisee is the Transport Undertaking and Infrastructure Manager for Stations and DLRL is the Infrastructure Manager for infrastructure other than Stations.
- 17.2.2 Without limitation to the generality of clause 17.1, the Franchisee shall discharge its obligations contained in ROGS, which shall include but not be limited to:
- (a) preparing, gaining and maintaining the Regulator's acceptance of and complying with its Safety Authorisation and Safety Certificate in accordance with ROGS; and
 - (b) complying with its general obligation to co-operate pursuant to regulation 22 of ROGS.
- 17.2.3 The Franchisee agrees that in respect of the performance of its obligations under this Agreement it will be a "controller of safety critical work" as defined under regulation 23 of ROGS and shall comply with its obligations under regulations 24, 25 and 26 in relation to such safety critical work.
- 17.2.4 Without prejudice to clause 28, if ROGS is amended or updated at any point during the Franchise Term the Franchisee shall comply with ROGS as amended or updated and the Franchisee shall implement all alterations and improvements to the Services and its documentation and processes as required by such amendments or updates.

18. **QUALITY MANAGEMENT**

The Franchisee shall establish, document, implement and maintain a quality management system in accordance with Part 2 of Schedule 7 and comply with its other obligations in Part 2 of Schedule 7.

19. **SECURITY**

The Franchisee shall comply with its obligations in Part 3 of Schedule 7.

20. **SUSTAINABILITY**

20.1 **Environment**

The Franchisee shall comply with its obligations in Part 4 of Schedule 7.

20.2 **Responsible Procurement**

The Franchisee shall comply with the provisions of Schedule 19 (Responsible Procurement).

21. **BUSINESS CRITICAL PROCESSES**

21.1 The Franchisee shall comply with all the requirements applicable to the Franchisee under the Business Critical Processes including but not limited to:

- 21.1.1 implementing any requirements therein applicable to the Franchisee within the timescales set out therein; and
- 21.1.2 the prompt provision of information required under the BCPs.

21.2 The Franchisee shall develop and maintain a process for regularly reviewing and updating its safety management and other documentation (including its Safety Management System) to ensure they are integrated with and reflect the requirements of the BCPs.

22. **PROVISION OF INFORMATION AND MEETINGS**

22.1 **Franchisee reporting obligations**

22.1.1 The Franchisee shall maintain records and provide information in accordance with the requirements set out in Schedule 10 (Provision of Information) as such requirements may reasonably be amended by DLRL.

22.1.2 The Franchisee shall make available, and if requested by DLRL, provide copies of, on reasonable notice by DLRL and at reasonable times, the records and accounts referred to in Schedule 10 for inspection by DLRL. DLRL shall be entitled to appoint one or more suitable representatives to check, verify and take copies of any such records and accounts.

22.1.3 All records and accounts required to be maintained in accordance with this clause 22.1 for any period shall be held until twenty four months or as required by Law (whichever is the later) after the expiry of the Franchise Term.

22.2 **Inspection of records**

22.2.1 Without prejudice to the provisions of clause 22.1 (Franchisee reporting obligations) DLRL and its representatives shall be permitted to inspect at any reasonable time the books, records, data and information systems/methodologies and other material kept by or on behalf of the Franchisee in order to check or audit any information supplied to it under this Agreement, to monitor compliance with the Franchisee's obligations under this Agreement or to prepare DLRL's accounts (including statutory accounts).

22.2.2 The Franchisee shall make available to DLRL and its representatives such information (including copies of documents) and grant such access or procure the grant of such access (including to or from third parties) as DLRL or its representatives shall reasonably require in connection therewith. In the event that any such inspection reveals that information previously supplied to DLRL or its representatives was in any material respect inaccurate on the basis of information available to the Franchisee at the time, the Franchisee shall be required to rectify any such inaccuracy and the cost incurred by DLRL in respect of any such inspection shall be borne by the Franchisee.

22.3 **Access to records and employees**

The Franchisee shall, where so requested by DLRL, use all reasonable endeavours to ensure that DLRL may have direct access to:

22.3.1 such information, data or records relating to the Franchisee which is maintained by direct Sub-Contractors and which DLRL is entitled to have access to, or have copies of, from the Franchisee under this Agreement; and

22.3.2 the Franchisee Employees and/or other personnel or contractors employed or engaged by the Franchisee or its Affiliates to assist DLRL in connection with the Railway and the Franchisee shall ensure that DLRL is given reasonable assistance by such persons.

22.4 **Franchise Performance Meetings**

- 22.4.1 The Parties shall hold a Franchise Performance Meeting to review the financial, operational and contractual performance of the Franchisee once in each Fee Period at a time and location to be notified to the Franchisee by DLRL.
- 22.4.2 Each Franchise Performance Meeting shall:
- (a) be chaired by the DLRL Manager or such other person as determined by DLRL; and
 - (b) be minuted and the minutes shall be circulated within seven Business Days of each such meeting or such other timescale as determined by DLRL.
- 22.4.3 Regarding attendance at each Franchise Performance Meeting:
- (a) the Franchisee shall ensure that such representatives as required by DLRL attend each such meeting and each such representative shall have full power and authority delegated to him by the Franchisee to act and make binding decisions on behalf of the Franchisee; and
 - (b) in addition to the representatives of DLRL, representatives of other members of the Tfl Group may attend any such meeting.
- 22.4.4 Each Franchise Performance Meeting shall, unless otherwise directed by DLRL, include as a minimum the following agenda items:
- (a) confirmation of the accuracy of the minutes of the previous Franchise Performance Meeting;
 - (b) the Ticketless Amount from the previous Fee Period and the Franchisee's implementation of its Annual Revenue Protection Plan;
 - (c) performance by the Franchisee by reference to Schedule 2 (Operational Performance);
 - (d) performance by the Franchisee by reference to Schedule 3 (Customer Facing Performance Regime);
 - (e) compliance by the Franchisee with its obligations under Schedule 10 (Provision of Information and Meetings);
 - (f) any Remedial Plans, Performance Notices, Enforcement Notices or Warning Notices issued by DLRL;
 - (g) the Franchise Payments and any other amounts owing by DLRL or the Franchisee to the other (including the financial performance of the Franchisee);
 - (h) outstanding correspondence and identification of matters in dispute and actions towards resolution;
 - (i) any obligations of the Franchisee which DLRL is monitoring following a contravention of this Agreement;
 - (j) a review of progress of Variations and any new or proposed Variations;
 - (k) any outstanding actions identified in previous Franchise Performance Meetings;

- (l) safety performance by reference to Schedule 7; and
- (m) such other matters as may from time to time be determined to be necessary by the Franchisee or DLRL.

22.4.5 No later than the third Business Day prior to each Franchise Performance Meeting, the Franchisee shall provide to DLRL, in the format agreed between DLRL and the Franchisee, a report (the "**Franchise Performance Report**") detailing the Franchisee's performance with respect to the items referred to in clause 22.4.4.

22.4.6 The Franchisee shall prepare and present such additional reports to each Franchise Performance Meeting as DLRL may reasonably request.

22.4.7 No comment or failure to comment nor any agreement or approval, implicit or explicit, by DLRL or any other member of the TfL Group at such meetings will relieve the Franchisee of any of its obligations under this Agreement.

23. **ENFORCEMENT**

The Parties shall comply with their obligations in Schedule 13 (Enforcement Regime).

PART IV: FINANCE

24. FRANCHISE PAYMENTS

With effect from the Franchise Commencement Date, DLRL shall pay to the Franchisee in respect of each Fee Period a Franchise Payment calculated in accordance with paragraph 1 of Schedule 14.

25. ADMINISTRATION OF PAYMENTS

25.1 Delivery of certificate and due dates for payment

Within 3 days following the end of each Fee Period (and for the purposes of this clause 25.1 the first Fee Period shall be deemed to end no later than 40 days after the Franchise Commencement Date) the Franchisee shall deliver to DLRL a certificate (a "**Fee Certificate**") providing its proposed figures for the calculation in paragraph 1 of Schedule 14 (to the extent they can be reasonably determined at such time) in relation to that Fee Period. Any such information which cannot be reasonably determined by the Franchisee at such time and which is not included in the certificate shall be delivered to DLRL by the Franchisee as soon as reasonably practicable thereafter. The due date for payment in respect of fees for any Fee Period shall be the date upon which DLRL receives the Fee Certificate from the Franchisee in respect of that Fee Period.

25.2 Estimates by DLRL

If any of the information or data required for the purpose of the calculation of any element of the Franchise Payment is not available to DLRL or provided by the Franchisee, DLRL shall, in its absolute discretion, estimate such information or data for the purposes of calculation of the Franchise Payment (including without limitation any Operational Performance Regime Adjustment). Any element of the Franchise Payment calculated on the basis of information or data so estimated shall be the subject of an Adjustment Payment in accordance with paragraph 1.3 of Schedule 14. The Franchisee shall not be entitled to raise any disagreement or dispute in connection with any information or data so estimated, save by reference to any Adjustment Payment payable in relation thereto in accordance with paragraph 1.3 of Schedule 14.

25.3 Approval of calculations

Within 5 days of receipt of any Fee Certificate, DLRL shall notify the Franchisee whether or not it agrees with the calculations contained in the Fee Certificate. If DLRL disagrees with anything contained in the Fee Certificate it shall with its notice give reasons for such disagreement and state what it considers to be the correct amount of any Franchise Payment and the basis upon which sum is calculated. If there is a dispute as to the amount of a Franchise Payment, the parties shall use all reasonable endeavours to resolve such dispute within 28 days following the date of DLRL's notification under this clause. If any such dispute cannot be resolved within such 28 day period, then clause 25.9 (Disputed Payments) shall apply to any dispute as to the amount of any Franchise Payment.

25.4 Invoicing for Franchise Payments

The Franchisee shall submit an invoice for the Franchise Payments set out in the notice given by DLRL pursuant to clause 25.3 above (or such other sum as may have been agreed between the parties prior to submission of such invoice) notwithstanding any dispute as to the amount of any such Franchise Payment.

25.5 **Method of payment**

Any payment of a Franchise Payment shall be made by automatic electronic funds transfer in pounds sterling to such bank account in the United Kingdom as the payee of such payment may have previously specified to the payer in writing and shall be made so that cleared funds are received in that account on or before the date such payment becomes payable under this Agreement.

25.6 **Time for payment and interest**

- 25.6.1 All amounts properly included in an invoice submitted pursuant to clause 25.4 (Invoicing for Franchise Payments) shall be paid within 15 days of receipt by the paying party of the relevant invoice, notwithstanding any dispute as to the amount of any such Franchise Payment. The end of such 15 day period shall constitute the final date for payment for the purposes of the Housing Grants, Construction and Regeneration Act 1996. Not later than 2 days before the final date for payment (pursuant to this clause 25.6.1), DLRL may give a notice to the Franchisee which shall specify any amount that DLRL proposes to pay and the basis upon which sum is calculated and any amount proposed to be withheld or deducted from the amount due, the grounds for such withholding or deduction and the amount of withholding or deduction attributable to each ground.
- 25.6.2 Subject as provided in clause 25.6.3, any amount properly due from one party to the other pursuant to this Agreement and which shall remain unpaid after the final date for payment shall bear interest at the Prescribed Rate, such interest to accrue from day to day and be compounded monthly from and including the final date for payment but excluding the date of actual payment.
- 25.6.3 Interest at the Prescribed Rate shall accrue in respect of amounts invoiced following a decision in accordance with clause 25.9 (Disputed Payments) from the due date of the original underpayment or overpayment as the case may be.

25.7 **Set off**

- 25.7.1 The Franchisee shall not be entitled to retain or set off from any amount due to DLRL by it, but DLRL may retain or set off any amount owed to it by the Franchisee under this Agreement and the Ancillary Agreements which has fallen due and payable against any amount due to the Franchisee under this Agreement.
- 25.7.2 If the payment or deduction of any amount referred to in this Agreement is disputed then any undisputed element of that amount shall be paid and the disputed element shall be dealt with in accordance with the Dispute Resolution Procedure.
- 25.7.3 Where DLRL is entitled to net off or set off any amount due to the Franchisee under this Agreement in respect of supplies made by the Franchisee or in respect of the Franchise Payment, the Franchisee shall ensure that the full value of the supplies is recognised for the purpose of accounting for any VAT due (i.e. the value before any related payments are offset under this clause 25.7).

25.8 **Ticket Sales Revenue**

In accordance with Part 1 of Schedule 5, Ticket Sales Revenue collected by the Franchisee shall be paid by the Franchisee as soon as reasonably practicable into an account nominated by DLRL.

25.9 **Disputed payments**

In the event that there is a dispute as to the amount of a Franchise Payment (which, if applicable, is not resolved pursuant to clause 25.3 (Approval of calculations)), such dispute shall be resolved in accordance with the Dispute Resolution Procedure but shall not affect the obligation of any party to pay any Franchise Payment for which invoices have been submitted in accordance with clause 25.4 (Invoicing for Franchise Payments). The amount of any Franchise Payment may not be disputed by the Franchisee unless it has notified DLRL of such dispute within 28 days of notification of the proposed amount of the Franchise Payment under clause 25.1 (Delivery of Certificate).

25.10 **Payment following Dispute resolution**

If following resolution of a dispute as to the amount of a Franchise Payment under the Dispute Resolution Procedure, any amounts are required to be paid by any party, such amounts shall become payable on the next day a Franchise Payment becomes payable under this clause which falls no less than 30 days after such resolution or, if there is no such day, 14 days after the date of such resolution. Where the resolved dispute related to a withholding of a Franchise Payment, any amounts required to be paid by any party shall become payable on the final date for payment of the disputed Franchise Payment (as set out in clause 25.6.1) or 7 days after the date of such resolution, whichever is the later.

25.11 **Time for payment and interest**

In the event of an entitlement to payment arising under the terms of this Agreement, the following provisions shall apply in the absence of any express provision or written agreement to the contrary:

- 25.11.1 the person entitled to payment ("**payee**") shall deliver an invoice setting out adequate details of the payment required or the cost, expense or liability incurred or assumed (and any value added tax applicable thereto) and identifying the clause or other basis upon which entitlement to such payment is claimed;
- 25.11.2 the person receiving the invoice ("**payer**") shall settle the said invoice or any undisputed part within 28 days of the date of receipt thereof and the balance (if any) upon resolution of the Dispute;
- 25.11.3 without prejudice to the payee's right to receive payment on the due date, interest shall accrue on any sum due and owing to the payee at the Prescribed Rate calculated on a daily basis and on the basis of a 365 day year if and to the extent that payment is not received by the final date for payment unless the payee failed to supply an invoice in accordance with clause 25.11.1 in which case interest at the Prescribed Rate calculated as aforesaid will accrue from 28 days after the date such information is made available; and
- 25.11.4 where a payment falls to be made on a day which is not a Business Day, it shall be paid on the next Business Day.

25.12 **Value Added Tax**

- 25.12.1 Save as the context requires or as otherwise stated all references to payments made under this Agreement are references to such payments exclusive of VAT chargeable in respect of the supply of goods or services for which the payment is consideration and insofar as such payments fall to be made under this Agreement the amount of such VAT shall be paid in addition thereto.

- 25.12.2 Without prejudice to and save as mentioned earlier in this clause 25.12 where any supply is made pursuant to this Agreement the recipient of the supply shall pay to the supplier the amount of any VAT chargeable in respect thereof.
- 25.12.3 To the extent that any payment made pursuant to this Agreement constitutes an indemnity or reimbursement to the recipient of any expense disbursed by the recipient it shall be for an amount sufficient to cover the cost to the recipient of any VAT comprised in that expense which is not recoverable by the recipient as input tax under section 25 of the Value Added Tax Act 1994.

25.13 **Construction Industry Scheme**

To comply with the provisions of the CIS Regulations the Franchisee shall immediately following the Franchise Commencement Date provide its unique tax reference and accounts office reference to DLRL to allow DLRL to verify the Franchisee's registration status with Her Majesty's Revenue & Customs ("**HMRC**") and following notification to DLRL by HMRC of the Franchisee's registration status DLRL's obligations under the CIS Regulations in connection with the payment of the monies due (if any) to the Franchisee shall be as follows:

- 25.13.1 if HMRC notifies DLRL that the Franchisee is registered for gross payment DLRL shall pay the monies due to the Franchisee from DLRL in accordance with the terms of this Agreement without any deduction or withholding on account of tax under the CIS Regulations;
- 25.13.2 if HMRC notifies DLRL that the Franchisee is either registered for deduction of tax for the purposes of the CIS Regulations or is unregistered DLRL shall be entitled to deduct and withhold from the monies due to the Franchisee under this Agreement a sum equal to the appropriate relevant percentage (as specified by the relevant order in force at the date of payment) of so much of the monies due to the Franchisee under this Agreement as is required under section 61(1) of the Finance Act 2004 and any statutory amendment or modification thereof and, if any such deduction is required, the Franchisee shall only be entitled to payment of the balance of the monies due to it from DLRL under this Agreement;
- 25.13.3 if the Franchisee is either registered for deduction of tax for the purposes of the CIS Regulations or is unregistered, the Franchisee shall prior to the due date for any contract payment (as defined in section 60 of the Finance Act 2004) to the Franchisee under this Agreement, notify DLRL of the amount of such contract payment as represents the direct cost to the Franchisee and any other persons or materials used or to be used in carrying out any construction operations (as defined in section 74 of the Finance Act 2004) to which this Agreement relates. If and to the extent that the Franchisee does not notify DLRL of such amount, DLRL shall be entitled to make a fair estimate of the amount of such direct cost in determining the amount required to be deducted under the Construction Industry Scheme;
- 25.13.4 the Franchisee shall indemnify the Indemnified Parties (on an after-Tax basis) from and against all Losses suffered or incurred by any of the Indemnified Parties arising from any incorrect statement of the amount of the direct cost of materials referred to in clause 25.13.3 or the inaccuracy of information furnished to DLRL under this clause; and
- 25.13.5 the Franchisee agrees to notify DLRL immediately of any change in its status for the purposes of the CIS Regulations.

26. FINANCIAL COVENANTS

26.1 Performance Bonds and Guarantee

- 26.1.1 The Franchisee shall provide to DLRL a fully executed:
- (a) Performance Bond with a value of £15,000,000; and
 - (b) Guarantee,
- on or prior to the date of this Agreement.
- 26.1.2 The Performance Bond is security to DLRL for the payment of all sums that the Franchisee may be liable from time to time to pay to DLRL under this Agreement including (without limitation) any liability arising under clause 35.2, and DLRL shall be entitled to make a demand under the Performance Bond in all such circumstances.
- 26.1.3 The Franchisee shall maintain the continuing validity and effectiveness of the Guarantee and the Performance Bond (including any replacement thereof):
- (a) from the date of this Agreement for the period of the Franchise Term; and
 - (b) following the end of the Franchise Term, for the period that obligations or liabilities of the Franchisee in connection with this Agreement remain outstanding or underperformed provided that, in the case of the Performance Bond, such period shall expire one year after the end of the Franchise Term (as may be extended or further extended in accordance with this Agreement) (the "**Performance Bond Longstop Date**").
- 26.1.4 The Franchisee shall replace, renew or extend the Performance Bond with a replacement Performance Bond issued by a Bond Provider with the Required Rating and that otherwise complies with this clause 26.1:
- (a) within 15 Business Days of the Bond Provider's rating falling below the Required Rating; and
 - (b) if the Performance Bond is due to expire prior to the Performance Bond Longstop Date (the "**Interim Bond Expiry Date**"), on or before the date falling 15 Business Days prior to any Interim Bond Expiry Date.
- 26.1.5 In the event that the Franchisee does not provide a replacement, renewed or extended Performance Bond in the circumstances described in clause 26.1.4 DLRL may make a demand upon the full amount (or permitted balance thereof if a demand or demands have already been made) of the Performance Bond, which amount shall be paid into an interest bearing account with a clearing bank in London and held on trust for DLRL and the Franchisee for application in or towards amounts in respect of which DLRL would have been entitled to make any demand under the Performance Bond. Any interest accruing in such account and any balance remaining at the Performance Bond Longstop Date shall, subject to DLRL's rights of set-off in clause 25.7, belong to the Franchisee. If the Franchisee subsequently delivers a replacement, renewed or extended Performance Bond complying with the provisions of this Agreement, the balance standing to the credit of the account (including any amount in respect of interest accrued) shall belong to the Franchisee and DLRL shall promptly take such steps as are reasonably requested by the Franchisee to ensure release of such balance to the Franchisee.

26.1.6 Any reference in this Agreement and the Ancillary Agreements to circumstances in which DLRL may issue a demand notice or take any other action under the Financing Agreements shall be without prejudice to the generality of clause 26.1.2.

26.1.7 DLRL shall not be entitled to recover twice for the same Loss under both the Performance Bond and the Guarantee.

26.2 **Loans and Security Interests**

Except to the extent DLRL may otherwise agree from time to time, the Franchisee shall not in respect of the Franchise:

26.2.1 make any loan or grant any credit, or have or permit to subsist any loan or any credit, to any person (other than in the ordinary course of the business of providing the Franchise); or

26.2.2 create or permit to subsist any Security Interest over any of the Franchise and property or give any guarantee or indemnity to or for the benefit of any person or otherwise assume liability or become obliged (actually or contingently) in respect of any obligation of any other person, in each case other than in the ordinary course of the business of providing the Services.

26.3 **Funding of the Franchise**

26.3.1 Save as expressly provided in this Agreement, the Franchisee shall be solely responsible for raising all funding required to allow it to comply with its obligations in this Agreement and the Ancillary Agreements.

26.3.2 The Franchisee will exclusively use a specific bank account for all monies derived from the Franchise.

27. **LIABILITY AND INDEMNITIES**

27.1 **General Indemnity**

Subject to clause 27.3.1, the Franchisee indemnifies each of the Indemnified Parties in full on demand in respect of any Loss incurred by the Indemnified Parties in connection with:

27.1.1 any death or personal injury;

27.1.2 loss or damage suffered by passengers or by any other third party (including loss of or damage to property);

27.1.3 third party actions, claims, demands, costs, charges and expenses brought against DLRL or any Indemnified Party (including legal expenses on an indemnity basis); or

27.1.4 breach of statutory duty,

which may arise out of, or in consequence of:

(a) the operation of Passenger Services or the maintenance of the Franchise Assets;

(b) the performance or non-performance by the Franchisee of its obligations under this Agreement; or

- (c) the presence on the Railway of the Franchisee or its Sub-Contractors, employees or agents, in each case in connection with this Agreement.

27.2 Indemnity for Contravention

27.2.1 Subject to clause 27.3.1, the Franchisee shall indemnify each of the Indemnified Parties in full on demand in respect of any Loss suffered or incurred by the Indemnified Parties as a result of any contravention or breach of this Agreement by the Franchisee, its employees, servants, agents, Sub-Contractors, directors or officers, which shall include, without limitation any retendering costs and increased costs incurred by DLRL pursuant to clause 35.2, provided that DLRL shall not be entitled to recover twice for the same Loss under clause 27.1 and this clause 27.2.1.

27.2.2 The Franchisee shall comply with the terms of the Ancillary Agreements and, accordingly, any contravention or breach by the Franchisee, its employees, servants, agents, Sub-Contractors, directors or officers of any of the Ancillary Agreements, shall be a breach of this Agreement. Any Loss suffered or incurred by any of the Indemnified Parties under the Ancillary Agreements shall not be unforeseeable solely because such Loss has resulted from a contravention or breach of the Ancillary Agreements.

27.3 Miscellaneous

27.3.1 The Franchisee shall not be responsible or be obliged to indemnify the Indemnified Parties pursuant to clauses 27.1 or 27.2:

- (a) to the extent that any Loss is caused by the negligence or wilful misconduct of any of the Indemnified Parties or by the breach by DLRL of its obligations under this Agreement;
- (b) for any loss of Ticket Sales Revenue suffered by any of the Indemnified Parties; or
- (c) for any ticket refunds or other compensation paid to passengers in relation to delays or cancellations of the Passenger Services,

except to the extent that such Losses are recoverable by the Franchisee under any insurance policy.

27.3.2 Where the act, omission or default of the Franchisee, any Affiliate of the Franchisee, or any employee, agent, contractor or sub-contractor of the Franchisee or of any Affiliate of the Franchisee, causes DLRL to commit an offence the Franchisee shall immediately take any measure necessary to ensure that that act, omission or default no longer causes DLRL to commit that offence. Where DLRL reasonably suspects that such an act, omission or default is about to take place and it reasonably believes that this will result in DLRL committing an offence DLRL may issue an instruction to the Franchisee to remedy the act, omission or default forthwith and the Franchisee shall immediately comply with the said instruction.

27.3.3 The Franchisee's liability to DLRL arising under any indemnity in this Agreement shall be without prejudice to any other right or remedy available to DLRL and in particular shall not prejudice in any way the ability of DLRL to enforce any bond, guarantee or other security given pursuant to this Agreement at any time and in any manner whatsoever.

27.3.4 An indemnity by the Franchisee under a provision of this Agreement and the Ancillary Agreements shall be without limitation to any indemnity by the

Franchisee under any other provision of this Agreement and the Ancillary Agreements.

27.3.5 The indemnities in this clause 27 shall survive, and remain in full force and effect, notwithstanding the expiration or other termination of this Agreement.

27.3.6 The Franchisee hereby acknowledges that DLRL will not be responsible for the actions of the Franchisee, any Franchisee Parties or any Affiliate of the Franchisee and that, except as expressly provided in this Agreement, the Franchisee shall provide and operate the Services without recourse to DLRL or TfL or government funds or guarantees.

27.4 **Liability of DLRL**

27.4.1 Neither DLRL nor any of its officers, agents or employees shall in any circumstances be liable to the Franchisee for any loss or damage caused by the negligent exercise of any powers reserved to DLRL under this Agreement, except to the extent that such negligence also constitutes a contravention of an obligation of DLRL under this Agreement.

27.4.2 The Franchisee may not recover from DLRL or any of its officers, agents, or employees any amount in respect of loss of profit or consequential loss.

27.5 **Liability Cap**

27.5.1 Subject to clause 27.5.2, the Franchisee's maximum aggregate liability to DLRL for all matters arising out of, under or in connection with this Agreement and the Ancillary Agreements shall not exceed an amount equal to the Liability Cap.

27.5.2 Clause 27.5.1 will not apply to:

- (a) any costs or expenses which the Franchisee is obliged or does expend in carrying out its obligations under this Agreement;
- (b) any liability of the Franchisee to the Indemnified Parties arising as a result of or in connection with:
 - (i) death or personal injury;
 - (ii) fraud, fraudulent misrepresentation or corruption by the Franchisee or any Franchisee Party;
 - (iii) wilful default or abandonment; or
 - (iv) otherwise arising under clause 27.1;
- (c) in connection with any Losses recoverable by the Franchisee under any insurance policy;
- (d) Operational Performance Regime Adjustments, CFR Adjustments or CSS Adjustments;
- (e) the Franchisee's liability to refund or reimburse as expressly provided in clauses 32.4, 39.11, paragraph 3.2 of Part 7 of Schedule 4 and paragraph 7 of Schedule 13 of this Agreement;
- (f) any Loss arising pursuant to paragraph 5 of Schedule 11 (Intellectual Property);

- (g) any Loss arising under or in respect of clause 15 (Pensions);
- (h) any Loss arising under or in respect of clauses 39.4 to 39.7 or paragraphs 8 to 10 of Part 3 of Schedule 17;
- (i) the Franchisee's liability to pay any Taxes as expressly provided by this Agreement or as required by Applicable Requirements; or
- (j) any interest payable under this Agreement.

28. CHANGE OF LAW

- 28.1 The Franchisee must comply with all changes to any Applicable Requirements at its own expense except to the extent that this Agreement or the Ancillary Agreements expressly provide for DLRL to bear some or all of the costs of complying with a General Change of Law or a Qualifying Change of Law.
- 28.2 On the occurrence of a Qualifying Change of Law DLRL shall be required to implement a Variation to deal with the effects of such Qualifying Change of Law and any Variation Payment due to the Franchisee shall be determined in accordance with the Variation Procedure.
- 28.3 Without double counting with clause 28.2, where the Franchisee incurs Capital Expenditure as a result of a General Change of Law, DLRL shall be required to implement a Variation to deal with the cost of such Capital Expenditure and the Variation Payment due to the Franchisee shall be determined in accordance with the Variation Procedure.
- 28.4 Without prejudice to clauses 28.1 to 28.3, the Franchisee shall at its own cost:
- 28.4.1 provide all assistance as reasonably requested by DLRL in making any proposal to change, abolish or derogate from any Applicable Requirements and shall suggest any proposals for such change, abolition or derogation; and
 - 28.4.2 in the event of any proposed Qualifying Change of Law or General Change of Law, explore with any relevant Competent Authority steps to mitigate the effects of such Qualifying Change of Law or General Change of Law.

29. INSURANCE

29.1 Insurance obligations

- 29.1.1 DLRL shall take out and maintain or shall cause to be taken out and maintained the insurances set out in paragraphs 2 and 3 of Part 3 of Schedule 14 in accordance with the provisions set out therein.
- 29.1.2 The Franchisee shall take out and maintain or shall cause to be taken out and maintained the insurances set out in paragraphs 4 and 5 of Part 3 of Schedule 14 in accordance with the provisions set out therein.
- 29.1.3 Any policy evidencing the insurances required pursuant to paragraphs 2 and 3 of Part 3 of Schedule 14 shall contain a provision whereby insurance continues in force after termination of this Agreement for the remainder of the period of insurance, but not less than sixty (60) days, for the benefit of either party retaining an insurable interest, provided that the premium for continuation of cover for the balance of the said sixty (60) days remaining after the policy renewal date shall be for the account of DLRL.

29.2 DLRL's insurance – additional property and interests

DLRL reserves the right to incorporate in the insurances taken out and maintained in accordance with clause 29.1.1 any additional property and interests at DLRL's absolute discretion (including without limitation any addition to or extension to the Railway).

29.3 **Terms of insurances to be approved**

All insurances required by clause 29.1 (Insurance obligations) shall be with insurance companies of good repute and standing for the amounts and subject to the deductibles and/or waiting periods set out in Part 3 of Schedule 14 or as agreed by DLRL and the Franchisee from time to time and for the purposes of this Agreement the parties agree that London Transport Insurance (Guernsey) Ltd shall be an insurer of good repute and standing.

29.4 **Insurances to be in joint names and maintenance of insurance**

29.4.1 Each insurance described in paragraphs 2 and 3 of Part 3 of Schedule 14 shall:

- (a) include as additional insureds no other party, except such insurances may include the following:
 - (i) any party with whom the Franchisee has entered into a contract or agreement in respect of the Franchise under which the Franchisee is required to indemnify or hold harmless or provide or procure the provision of insurance, but only to the extent required by the said contract or agreement;
 - (ii) any Concessionaire, which term for this purpose shall extend to include any counterparty to DLRL under any future concession agreement with DLRL;
 - (iii) any party with whom DLRL has entered into a contract or agreement under which it is required to indemnify or hold harmless or provide or procure the provision of insurance, but only to the extent required by the said contract or agreement; or
 - (iv) such other party or entity as DLRL and the Franchisee shall from time to time agree;
- (b) name DLRL and the Franchisee as joint and several insureds, and notwithstanding such severability shall contain provisions whereby the insurers waive rights of recourse or subrogation against DLRL and the Franchisee and whereby the insurers may not avoid liability on the grounds of breach of any term or condition of the policy in respect of the party not in breach;
- (c) under paragraph 3 of Part 3 of Schedule 14 only indemnify the directors, servants and agents of DLRL and the Franchisee as though insured;
- (d) provide that:
 - (i) claims notified to claims handling agents appointed by insurers shall be deemed to have been notified to insurers; and
 - (ii) any requirement of the claims handling agent that the insured parties, or any one of them, do and concur such as is, in its opinion, necessary for the proper control and conduct of claims shall be deemed to be a requirement of the insurers; and

- (iii) the due observance of a requirement under sub-paragraph (ii) of this paragraph (d) shall not, in circumstances where the judgement of the claims handling agent is subsequently questioned, be deemed to be a breach of policy conditions.
- (e) not entitle the insurers to cancel without having given ninety (90) days notice to both the Franchisee and DLRL by recorded or special delivery at the last known address of each party.

29.5 Evidence of Insurance

29.5.1 DLRL shall produce to the Franchisee:

- (a) at the Franchise Commencement Date documentary evidence in sufficient detail and of appropriate provenance to satisfy the Franchisee, acting reasonably, that the insurances required by clause 29.1.1 have been taken out;
- (b) within a reasonable time before any renewal date and provided DLRL is aware of the same notice of material changes from each of the expiry year insurances. DLRL shall consider in good faith any comments made by the Franchisee in respect of such changes having regard to the risk profile of the Franchisee;
- (c) not more than 90 days after the Franchise Commencement Date and each anniversary thereof (or such other date subsequently agreed by DLRL and the Franchisee) copies of a broker's cover note or letter of confirmation;
- (d) at each anniversary of the Franchise Commencement Date (or such other date subsequently agreed by DLRL and the Franchisee) independent documentary evidence of maintenance in force of the said insurances for a period, unless otherwise agreed by the Franchisee and DLRL, of not less than twelve months together with advice of any material changes from the expiring year insurances.

29.5.2 The Franchisee shall produce to DLRL:

- (a) documentary evidence in sufficient detail and of appropriate provenance to satisfy DLRL, acting reasonably, that the insurances required by clause 29.1.2 have been taken out;
- (b) within 60 days thereafter suitable documentary evidence such as detailed cover notes or confirmatory letter issued by a reputable firm of insurance brokers;
- (c) at each anniversary of the Franchise or as otherwise agreed between DLRL and the Franchisee independent documentary evidence of maintenance in force of the said insurances for a period, unless otherwise agreed by the Franchisee and DLRL, of not less than twelve months together with advice of any material changes from the expiring year insurances.

29.6 Compliance with Requirements of Insurers

The Franchisee and DLRL shall comply or use their respective best endeavours to procure compliance with all requirements of the insurers subscribing to the insurances taken out and maintained or caused to be taken out and maintained in accordance with clause 29.1 (Insurance obligations) and shall not do or permit anything which might render void or

voidable such insurance or as a result of which payment of insurance monies might be withheld in whole or in part.

29.7 Right to insure

If DLRL fails or refuses for any reason to take out and maintain any insurance required by clause 29.1 or, upon request, fails or refuses for any reason to provide the Franchisee with the evidence required under clause 29.5 (Evidence of Insurance) then in relation to the insurances under paragraph 2 and 3 of Part 3 of Schedule 14, the Franchisee shall have the right to arrange alternative insurances, such right to be without prejudice to any other rights under or pursuant to this Agreement. DLRL shall indemnify the Franchisee against all premiums and other third party costs payable by the Franchisee in exercising its rights under this clause, interest at the Prescribed Rate from the date on which premiums are paid or other costs incurred until the date of payment.

29.8 Notification of claims - Franchisee to DLRL

On the occurrence of an event likely to give rise to a claim under any of the insurances taken out or maintained under clause 29.1 the Franchisee shall:

29.8.1 as soon as reasonably practicable inform DLRL and the insurers subscribing to the relevant policy or policies or their appointed claims handling agents and shall do and concur such as shall be required of them by insurers or on their behalf by the said claims handling agents in their conduct and control of any subsequent claim;

29.8.2 as soon as reasonably practicable inform DLRL upon the occurrence of:

- (a) any event resulting in injury or death of any person not being an employee of the Franchisee; or
- (b) loss of or damage to the Insured Assets for which, on reasonable estimation, the cost of repair or replacement will exceed £25,000;

29.8.3 within seven days after the occurrence of any loss of or damage to the Insured Assets, whether or not such is required to be notified under clause 29.8 inform DLRL of any consequent interruption of business or likely inability of the Franchisee to comply with any of its obligations under this Agreement; and

29.8.4 at three-monthly intervals report to DLRL giving date nature and current status of claims costing in excess of £25,000.

29.9 Insurance claims - presentation and mutual assistance

Each party shall afford the other such assistance as may be reasonably required for the preparation, presentation and negotiation of insurance claims and shall pursue such with all due diligence.

29.10 Application of proceeds

29.10.1 All insurances maintained or required under clause 29.1 shall provide that claim proceeds, whether interim or final:

- (a) in respect of loss or damage to the Franchise Assets shall be applied in accordance with clause 29.11;
- (b) in respect of insurance against loss of or damage to other property, shall be paid to DLRL and, subject to the prior approval of DLRL, other parties; and

- (c) in respect of insurances against liabilities to third parties, shall be paid to the aggrieved party against a discharge in full and final settlement of all claims against the insured parties or, where the insured parties have properly discharged their liabilities to such aggrieved party, as in clause 29.10.1(a) above.

29.11 Reinstatement

29.11.1 Unless otherwise agreed by DLRL, on each and every occasion when any part or the whole of any Franchise Asset is destroyed or damaged) (the "**Relevant Incident**"):

- (a) the Franchisee and DLRL shall (and shall procure that the sub-contractors shall) pay all proceeds in respect of loss or damage to the Franchise Assets relating to the Relevant Incident received under any insurance maintained or required under clause 29.1 (the "**Relevant Proceeds**") into an account in the name of DLRL, and (unless DLRL elects to undertake the Reinstatement Works) DLRL shall pay such proceeds to the Franchisee as required to enable the Franchisee to make payments and to meet any other reasonable costs and expenses of the Franchisee (provided that such costs and expenses are recoverable or have been recovered from insurers) for the sole purpose of funding the Reinstatement Works. The Franchisee shall provide to DLRL from time to time such information as it may reasonably require in relation to the payment of funds pursuant to this clause 29.11.1(a);
- (b) in any case where the Relevant Proceeds are, or are likely to be, greater than £100,000, the Franchisee shall deliver as soon as practicable a plan prepared by the Franchisee for the carrying out of the works necessary (the "**Reinstatement Works**") to repair, reinstate or replace the assets which are the subject of the relevant claim or claims in accordance with clause 29.11.2 (the "**Reinstatement Plan**"). The Reinstatement Plan shall set out:
 - (i) the identity of the person proposed to effect the Reinstatement Works, which shall be subject to the prior written approval of DLRL (such approval not to be unreasonably withheld or delayed); and
 - (ii) the proposed terms and timetable upon which the Reinstatement Works are to be effected, the final terms of which shall be subject to the prior written approval of DLRL (such approval not to be unreasonably withheld or delayed);
- (c) provided that DLRL is satisfied (acting reasonably) with the Reinstatement Plan:
 - (i) the Reinstatement Plan will be adopted;
 - (ii) the Franchisee shall enter into contractual arrangements to effect the Reinstatement Works with the person identified in the approved Reinstatement Plan approved by DLRL;
 - (iii) DLRL undertakes to use reasonable endeavours to assist the Franchisee in the carrying out of the Reinstatement Plan; and
 - (iv) after the Reinstatement Plan has been implemented to the reasonable satisfaction of DLRL and in accordance with clause 29.11.2 DLRL shall make payment to the Franchisee of any

Relevant Proceeds then held in the account referred to in clause 29.11.1(a) above that have not been paid under that paragraph in respect of the Relevant Incident, together with any interest accrued.

29.11.2 Where insurance proceeds are to be used, in accordance with this Agreement, to repair, reinstate or replace the Franchise Assets, the Franchisee shall carry out the work or procure that the work is carried out in a good and workmanlike manner to the reasonable satisfaction of DLRL.

29.12 **Uninsurable Risks**

29.12.1 If a risk covered by the insurances required under paragraphs 2 and 3 of Part 3 of Schedule 14 evidenced by the policy wordings agreed before the Franchise Commencement Date (or subsequently in accordance with this clause 29) becomes Uninsurable after the date of this Agreement then:

- (a) each party will notify the other within three Business Days of it becoming aware of the risk becoming Uninsurable; and
- (b) if both parties agree, or it is determined in accordance with the Dispute Resolution Procedure that the risk is Uninsurable and that the risk being Uninsurable is not caused by the actions of the Franchisee and/or its sub-contractors,

then the provisions of clause 29.13 shall have effect.

29.13 **Proposal for dealing with Uninsurable Risks**

If the requirements of clause 29.12 are satisfied:

29.13.1 DLRL shall not be required to take out any insurance to the extent that the insurance covers a risk which is Uninsurable;

29.13.2 DLRL may elect to:

- (a) assume the risk itself; or
- (b) terminate this Agreement with immediate effect.

29.14 **Deductibles**

29.14.1 The deductibles applicable to each of the insurances set out in paragraphs 2 and 3 of Part 3 of Schedule 14 shall be as stated in paragraphs 2.2 and 3.2 of Part 3 of Schedule 14.

29.14.2 Subject to clause 29.17, notwithstanding which party is responsible for taking out and maintaining insurances but without prejudice to the other provisions of this Agreement, amounts unpaid by insurers by reason of the application of the deductibles will be for the account of the Franchisee.

29.14.3 Any increase in the amount or duration of the deductibles after the Franchise Commencement Date shall be for the account of the Franchisee to the extent that it has been caused by the poor claims record of the Franchisee in respect of the Franchise.

29.15 **Change in Cost of Insurance**

29.15.1 Any change in the rate of premium for any of the insurances specified in paragraph 2 and 3 of Part 3 of Schedule 14 shall be for the account of the Franchisee, if and to the extent that it has been caused by the poor claims record of the Franchisee in respect of the Franchise.

29.15.2 Any change in the rate of premium for any of the insurances specified in paragraphs 4 and 5 of Part 3 of Schedule 14 shall be for the account of the Franchisee.

29.16 Saving provision

Neither failure to comply nor full compliance with the insurance provisions of this Agreement shall limit or relieve either party of its liabilities and obligations under this Agreement.

29.17 DLRL Indemnity

DLRL shall be responsible for and shall indemnify the Franchisee from and against:

- (a) any amount unpaid by insurers by reason of the application of the deductibles referred to in clause 29.14.1 suffered or incurred by the Franchisee as a result of damage to persons or property resulting from default or the negligent acts or omissions of any DLRL Party or a licensee or tenant of DLRL (other than the Franchisee);
- (b) any proceeds which would have been payable by LTIG under any insurances taken out pursuant to clause 29.1.1 but which have not been paid as a consequence of the occurrence of any act of insolvency in respect of LTIG provided that DLRL shall not be required to indemnify the Franchisee under this clause 29.17(a) unless and until the Franchisee has used all reasonable endeavours to recover any such proceeds from the reinsurers of LTIG pursuant to its rights under paragraph 2.5 of Part 3 of Schedule 14 (provided that the parties acknowledge that the Franchisee shall not be required to seek to recover such proceeds from reinsurers in respect of a claim relating to terrorism).

PART V: SUPERVENING EVENTS AND TERMINATION

30. FORCE MAJEURE

30.1 Meaning of Force Majeure Event

In this Agreement "**Force Majeure Event**" shall mean the occurrence after the Franchise Commencement Date of:

- 30.1.1 war, civil war, armed conflict or terrorism;
- 30.1.2 nuclear, chemical or biological contamination unless the source or cause of the contamination is the result of the act or omission of the Franchisee;
- 30.1.3 pressure waves caused by devices travelling at supersonic speeds;
- 30.1.4 any expropriation, sequestration or requisition of a material part of the Franchise Assets by DLRL or other government authority; or
- 30.1.5 civil commotion, unrest or rebellion,

which directly causes either party to be unable to comply with all or a material part of its obligations under this Agreement.

30.2 Notification of Force Majeure Event

If either party is prevented from performing or is hindered in the performance of one or more of its obligations under this Agreement by an event or circumstance which the party so prevented or hindered considers to be a Force Majeure Event it shall as soon as reasonably practicable but in any event not later than 5 days after the date when such event became known to it give notice to the other party identifying:

- 30.2.1 the Force Majeure Event or (if more than one) each such event that has occurred;
- 30.2.2 the date from which the Force Majeure Event has prevented or hindered the party affected in the performance of its obligations;
- 30.2.3 the obligations affected; and
- 30.2.4 its best estimate of the date or dates upon which it will be able to resume the performance of each of its obligations so affected.

Thereafter, until resumption of the performance of its obligations, the party affected by the Force Majeure Event shall keep the other party fully informed of all developments and the steps taken to mitigate or remove the effects of the Force Majeure Event.

30.3 Notice of cessation of Force Majeure Event

A party who is prevented from performing or is hindered in the performance of its obligations under this Agreement by a Force Majeure Event shall give notice to the other party forthwith upon the event ending or being removed or its existence no longer preventing performance of an obligation and the party affected by the Force Majeure Event shall resume the full performance of those of its obligations no longer affected as soon as possible thereafter.

30.4 Disputing notice of Force Majeure

If the recipient of a notice given under clause 30.2 (Notification of Force Majeure Event) disputes that a Force Majeure Event has occurred or the effect of such Force Majeure Event, it shall give written notice to the other party within 10 Business Days of the notice given under clause 30.2 (Notification of Force Majeure Event) stating the grounds on which it disputes such claim and, if neither the notice under clause 30.2 (Notification of Force Majeure Event) nor the notice of dispute under this clause 30.4 (Disputing notice of Force Majeure) has been withdrawn within 10 Business Days of the date of the notice under this clause 30.4 (Disputing notice of Force Majeure), the parties shall deal with the matter as a Dispute in accordance with the Dispute Resolution Procedure.

30.5 **Relief from liability**

Where a party is affected by an event which is (or which that party considers to be) a Force Majeure Event, it shall take all reasonable steps not to be in breach of its obligations under this Agreement and shall take all reasonable steps to mitigate or remove the effects of such event. A party shall not be in breach of its obligations under this Agreement and, subject to clause 30.6, shall have no liability to pay damages or other compensation under this Agreement and the Ancillary Agreements to the extent that it is prevented from complying with its obligations hereunder by reason of a Force Majeure Event affecting that party.

30.6 **Payments**

Following the occurrence of a Force Majeure Event, the payment of the Franchise Payment shall continue unaffected and for the duration of such Force Majeure Event and no Operational Performance Regime Adjustments or Customer Facing Performance Regime Adjustments shall be applied in relation to the particular area of the Railway affected.

30.7 **Rectification of damage to Franchise Assets**

It shall be the responsibility of DLRL to undertake all repairs, replacements and rectification works required to make good any damage to any Franchise Assets resulting from a Force Majeure Event.

30.8 **Termination for Force Majeure**

30.8.1 As soon as practicable following notification, in accordance with clause 30.2, the parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and facilitate the continued performance of this Agreement.

30.8.2 If no such terms are agreed on or before the date falling 120 days after the date of the commencement of the Force Majeure Event and such Force Majeure Event is continuing or its consequence remains such that the affected party is unable to a material extent to comply with its obligations under this Agreement for a period of more than 180 days, then, subject to paragraph 30.8.3 below, either party may terminate this Agreement pursuant to clause 34.2.

30.8.3 If the Franchisee gives notice to DLRL under clause 30.8.2 that it wishes to terminate this Agreement, then DLRL has the option either to accept such notice or to respond in writing on or before the date falling ten Business Days after the date of its receipt stating that it requires this Agreement to continue (a "**Continuation Notice**"). If DLRL gives the Franchisee a Continuation Notice then:

- (a) DLRL shall for so long as the Force Majeure Event (or its consequences) continues pay to the Franchisee the Franchise Payment from the date on which this Agreement would have terminated under clause 30.8.1 as if the Franchisee was complying in full with its obligations under this

Agreement less an amount equal to those costs saved by the Franchisee, or which the Franchisee should be able to mitigate (using all reasonable endeavours to do so), as a result of the Franchisee being prevented from carrying out its obligations by the Force Majeure Event and/or its consequences;

- (b) this Agreement will not terminate until the earlier of:
 - (i) expiry of written notice (of at least 20 (twenty) Business Days) from DLRL to the Franchisee served at any time whilst the Force Majeure Event (or its consequences) are continuing that it wishes this Agreement to terminate;
 - (ii) the second anniversary of the occurrence of the relevant Force Majeure Event provided such Force Majeure Event (or its consequences) are continuing as at such date; or
 - (iii) this Agreement is terminated in accordance with the other provisions of this Agreement; and
- (c) if DLRL fails to respond to the notice given by the Franchisee pursuant to clause 30.8.3 within the specified ten Business Day period then DLRL shall be deemed to have served notice requiring this Agreement to continue.

31. RELIEF EVENTS

31.1 Occurrence of a Relief Event

If and to the extent that a Relief Event adversely affects the ability of the Franchisee to perform any of its obligations under this Agreement, to the extent that it may result in a Franchisee Default occurring, then the Franchisee is entitled to apply for relief from any rights of DLRL arising under clause 32.1 (Franchisee Default) in accordance with this clause 31.

31.2 Requirements for Obtaining Relief

To obtain relief, the Franchisee must:

- 31.2.1 as soon as practicable, and in any event within 14 days after it became aware that the Relief Event has adversely affected the ability of the Franchisee to perform its obligations, give to DLRL a notice of the full details of the nature of the Relief Event, the date of occurrence and its likely duration; and
- 31.2.2 demonstrate to the reasonable satisfaction of DLRL that:
 - (a) the Franchisee and its Sub-Contractors could not have avoided such occurrence or consequences by steps which they might reasonably be expected to have taken acting in accordance with Good Industry Practice;
 - (b) the Relief Event directly caused the need for relief from the provisions of clause 32.1 (Franchisee Default) under this Agreement; and
 - (c) the Franchisee is using reasonable endeavours to perform its obligations under this Agreement.

31.3 Relief

- 31.3.1 In the event that the Franchisee has complied with its obligations under clause 31.2 above, then DLRL shall not be entitled to exercise its rights to terminate this Agreement under clause 32.1.
- 31.3.2 Nothing in clause 31.3.1 above shall affect any entitlement of DLRL to make deductions from the Franchise Payment under Schedule 2 (but without prejudice to the Quality Exclusions) and Schedule 3 in accordance with the terms of this Agreement during the period in which the Relief Event is subsisting.
- 31.3.3 In the event that information required by clause 31.2 above is provided after the dates referred to in that clause, then the Franchisee shall not be entitled to any relief during the period for which the information is delayed.
- 31.3.4 The Franchisee shall notify DLRL if at any time it receives or becomes aware of any further information relating to the Relief Event, giving details of that information to the extent that such information is new or renders information previously submitted materially inaccurate or misleading.

32. FRANCHISEE DEFAULT

32.1 Franchisee Default

Any of the following shall be a Franchisee Default:

- 32.1.1 the occurrence of an Insolvency Event in relation to the Franchisee or the Guarantor;
- 32.1.2 the Franchisee being Controlled by a person or persons other than Keolis S.A. or Amey UK plc (provided that changes in the shareholders of Keolis S.A. or Amey UK plc (or their parent undertakings) shall not constitute a Franchisee Default for the purposes of this limb), or the Shareholders holding shares in the Franchisee which are different from their respective shareholding proportions as at the date of this Agreement;
- 32.1.3 the Franchisee or any of its Affiliates sells, transfers, leases or otherwise disposes of the whole or any part (which is material in the context of the performance of its obligations in this Agreement) of its undertakings, properties or assets by a single transaction or a number of transactions (whether related or not and whether at the same time or over a period of time) without prior consent of DLRL, but in the case of an Affiliate, only if the disposal would have, in the reasonable opinion of DLRL, a material effect on the ability of the Franchisee to perform its obligations in this Agreement;
- 32.1.4 the occurrence of an event of default under any of the Ancillary Agreements;
- 32.1.5 Wilful Misconduct on the part of the Franchisee;
- 32.1.6 it becoming unlawful for the Franchisee to provide all or a material part of its obligations in this Agreement, including the revocation of any licence required to be held by the Franchisee in order to comply with its obligations under this Agreement and/or required by any Applicable Requirements;
- 32.1.7 the Franchisee or any of the directors or senior managers of the Franchisee being convicted of manslaughter, fraud or other indictable criminal offence in each case relating directly to the provision and operation of the Services;
- 32.1.8 any Safety Certificate and/or Safety Authorisation of the Franchisee being withdrawn or terminated;

- 32.1.9 the Franchisee receiving three or more Warning Notices in any thirteen consecutive Fee Periods;
- 32.1.10 the Franchisee committing a breach of any of its obligations under this Agreement which materially and adversely affects the performance of the Services;
- 32.1.11 any of the representations and warranties in clause 5.1 proving to be untrue or incorrect which:
 - (a) materially and adversely affects the performance of the Services; or
 - (b) would have materially and adversely affected DLRL's decision to enter into this Agreement on the terms hereof;
- 32.1.12 any of the Key Contracts:
 - (a) ceasing to be in full force and effect or no longer constituting the valid, binding and enforceable obligations of the parties thereto (except where a substitute agreement has been entered into in accordance with paragraph 2 of Part 1 of Schedule 8); or
 - (b) being materially amended, varied or departed from (other than in accordance with paragraph 2 of Part 1 of Schedule 8),

where this does or would materially adversely affect the ability of the Franchisee to perform its obligations in this Agreement and the Ancillary Agreements or the rights of DLRL under this Agreement or its ability to enforce its rights or to perform its obligations under this Agreement and the Ancillary Agreements or to perform its statutory duties or impacts on the ability of DLRL to re-let the Franchise to a Successor Franchisee;
- 32.1.13 any of the Financing Agreements ceasing to be legal, valid and binding or it otherwise becoming unlawful or impossible for the counterparties to the Financing Agreements to perform their respective obligations thereunder, including, for the avoidance of doubt, any frustration or repudiation of the Guarantee by the Guarantor;
- 32.1.14 the Franchisee failing to pay any sum due to DLRL under this Agreement and the Ancillary Agreements (which sum is not in dispute) and such failure continuing for 30 days after the Franchisee has been notified in writing by DLRL that such sum has not been received;
- 32.1.15 the Franchisee does not replace, renew or extend the Performance Bond with a replacement Performance Bond issued by a Bond Provider with the Required Rating that complies with clause 26.1:
 - (a) within 15 Business Days of the Bond Provider's rating falling below the Required Rating; or
 - (b) if the Performance Bond is due to expire prior to the Performance Bond Longstop Date, on or before the date falling 15 Business Days prior to any Interim Bond Expiry Date;
- 32.1.16 the Franchisee's liability to DLRL under this Agreement reaches or exceeds eighty per cent. (80%) of the Liability Cap; or
- 32.1.17 where, following receipt of a notice given pursuant to paragraph 8.1(a) of Schedule 19, the Franchisee fails to remedy a Diversity Infraction to the

satisfaction of DLRL or in the case of paragraph 8.1(b) of Schedule 19, fails to terminate the engagement of its direct sub-contractor under its contract with a defaulting sub-contractor and procure performance by another person on the terms specified in paragraph 8.2 of Schedule 19.

32.2 Notification of Franchisee Default

As soon as reasonably practicable and in any event within two days of it becoming aware of the occurrence of a Franchisee Default or an event which is likely to result in the occurrence of a Franchisee Default, the Franchisee shall notify DLRL of such Franchisee Default or potential Franchisee Default and will provide DLRL with full details of any steps which it is taking, or is considering taking, in order to remedy or mitigate the effect of such Franchisee Default or potential Franchisee Default. The Franchisee shall take such action or steps as DLRL may reasonably require in order to remedy or mitigate the effect of any Franchisee Default or potential Franchisee Default.

32.3 Remedies

Upon the occurrence of a Franchisee Default, DLRL may at its option and without prejudice to any of its other rights or remedies and to any rights of action which shall accrue or shall have already accrued to DLRL and following service of notice of such default on the Franchisee do any or all of the following:

- 32.3.1 without terminating this Agreement, by notice in writing having immediate effect, suspend performance by the Franchisee of part of the functions to be performed by it under this Agreement and the Ancillary Agreements until such time as the Franchisee shall have demonstrated to the reasonable satisfaction of DLRL that it will perform and is capable of performing its obligations in this Agreement and DLRL may thereafter itself perform or procure a third party to perform such part of the functions for such period, and in such event the provisions of clause 32.4 (Suspension of performance and payment) shall apply;
- 32.3.2 in the case of the Franchisee Defaults referred to in clauses 32.1.1 to 32.1.9 (inclusive) and 32.1.17, terminate this Agreement in its entirety by notice in writing having immediate effect;
- 32.3.3 in the case of the Franchisee Defaults referred to in clauses 32.1.10 to 32.1.16 (inclusive), if the relevant Franchisee Default is not in the reasonable opinion of DLRL capable of remedy, terminate this Agreement in its entirety by notice in writing having immediate effect; and
- 32.3.4 in the case of any Franchisee Defaults referred to in clauses 32.1.10 to 32.1.16 (inclusive), if the relevant Franchisee Default is in the reasonable opinion of DLRL capable of remedy, serve notice of default on the Franchisee requiring the Franchisee to remedy the breach or breaches referred to in such notice of default within 28 days of receipt of such notice (or such longer period as may be agreed by DLRL in its absolute discretion) and, if the Franchisee fails to remedy such breach or breaches with the period specified in such notice, terminate this Agreement in its entirety by notice in writing which shall have immediate effect.

32.4 Suspension of performance and payment

- 32.4.1 In the case of a partial suspension of the performance by the Franchisee under this Agreement and the Ancillary Agreements in accordance with clause 32.3.1, the Franchisee shall reimburse DLRL for all costs properly incurred by DLRL in performing or engaging others to perform the functions of the Franchisee

which are suspended (including, without limitation, the relevant proper administrative expenses of DLRL, including an appropriate sum in respect of general staff costs and overheads) (the "**Relevant Costs**").

32.4.2 If and for so long as the Franchisee performs some but not all of its obligations in this Agreement, DLRL shall pay to the Franchisee an amount equal to such proportion of the Franchise Payment as equates to the proportion (as determined by DLRL acting reasonably) which the actual amount of its obligations in this Agreement performed by the Franchisee bears to the full amount of its obligations in this Agreement falling due to be performed by it during such period, subject to prior deduction of the Relevant Costs.

33. **DLRL DEFAULT**

33.1 **DLRL Default**

It shall be a DLRL Default if:

33.1.1 DLRL fails to pay any sum or sums due to the Franchisee hereunder (which sum is not in dispute) and which either singly or in aggregate exceeds £7,000,000 (Indexed) and such failure continues for 60 days after DLRL has been notified in writing by the Franchisee that such sum has not been received; or

33.1.2 DLRL assigns, novates or otherwise transfers its rights and obligations under this Agreement to an entity other than a Permitted Party.

33.2 **Termination by Franchisee**

Upon the occurrence of a DLRL Default and so long as such DLRL Default is subsisting, the Franchisee may at its option serve notice on DLRL of the occurrence of such DLRL Default. If the relevant matter or circumstance has not been rectified or remedied by DLRL or otherwise within 30 days of such notice, the Franchisee may serve a further notice on DLRL terminating this Agreement with immediate effect.

33.3 **Compensation on Termination for DLRL Default**

33.3.1 Where this Agreement is terminated by the Franchisee pursuant to clause 33.2 or by DLRL pursuant to clauses 34.5 or 34.6, then the Franchisee shall be entitled to recover from DLRL:

- (a) its reasonable cost of demobilisation;
- (b) any Loss incurred under agreements with third parties provided that such agreements have been entered into in the ordinary course of business and on reasonable commercial terms; and
- (c) an amount in respect of the Franchisee's loss of profit for the twelve months from the date of termination, which shall not exceed the profit modelled to be made by the Franchisee under this Agreement in accordance with the Financial Model in an average Fee Year.

33.3.2 The Franchisee shall use its reasonable endeavours to mitigate all costs and/or losses referred to in clause 33.3.1 above (other than in clause 33.3.1(c)).

34. **TERMINATION**

34.1 **Expiry of Franchise Term**

This Agreement shall terminate automatically upon the expiry of the Franchise Term unless it shall have previously been terminated in accordance with the provisions of this Agreement.

34.2 Termination for Force Majeure

In the circumstances referred to in clause 30.8 (Termination for Force Majeure) and for so long as such circumstances continue, either DLRL or the Franchisee may terminate this Agreement in accordance with clause 30.8 (Termination for Force Majeure) by giving 30 days written notice to the other.

34.3 Termination for General Change of Law

If a General Change of Law comes into effect which renders illegal or impossible (but not merely more expensive) performance of all or substantially all of the Franchisee's obligations then, following consultation (for not less than 90 days) to reach a solution acceptable to both parties, either party may terminate this Agreement by notice to the other having immediate effect.

34.4 Termination for expropriation

If Her Majesty's Government sequesters, requisitions, expropriates or otherwise seizes the Railway or any material part thereof then either party may terminate this Agreement by notice to the other having immediate effect.

34.5 Voluntary Termination

34.5.1 DLRL may terminate this Agreement at any time on or before the last day of the Franchise Term by complying with its obligations under this clause 34.5.

34.5.2 If DLRL wishes to terminate this Agreement under this clause 34.5, it must give notice to the Franchisee stating:

- (a) that DLRL is terminating this Agreement under this clause 34.5; and
- (b) that this Agreement will terminate on the date specified in the notice which shall be no less than 60 days after the date of such notice.

34.5.3 This Agreement will terminate on the date specified in the notice referred to in clause 34.5.2(b) above.

34.6 Termination following Uninsurability

In the circumstances referred to in clause 29.13, DLRL may terminate this Agreement by notice in accordance with that clause.

34.7 Termination on non-fulfilment of Conditions Precedent

In the circumstance referred to in clause 3.4, DLRL may terminate this Agreement by notice in accordance with that clause and for the purposes of clause 27.2 termination shall be treated as though it occurred in accordance with clause 32 (Franchisee Default).

34.8 Termination on updating of Representations and Warranties

In the circumstance referred to in clause 5.2.2, DLRL may terminate this Agreement by notice in accordance with that clause and for the purposes of clause 27.2 termination shall be treated as though it occurred in accordance with clause 32 (Franchisee Default).

35. **CONSEQUENCES OF TERMINATION**

35.1 **Savings**

35.1.1 Save as otherwise expressly provided in this Agreement and the Ancillary Agreements:

- (a) termination of this Agreement shall be without prejudice to any accrued rights and obligations under this Agreement as at the date of termination;
- (b) termination of this Agreement shall not affect the continuing rights and obligations of the Franchisee and DLRL under clauses 1, 15, 16.3, 22, 26, 27, 33.3, 35.1, 37.2, 37.3, 37.4, 38, 45, 46.10 and 46.11 or under any other clause which is expressed to survive termination or which is required to give effect to such termination or the consequences of such termination; and
- (c) all rights and obligations of DLRL and the Franchisee under this Agreement shall cease and be of no further force and effect upon termination or expiry of this Agreement.

35.1.2 The rights of DLRL under this clause 35 are in addition and without prejudice to any other right DLRL may have to obtain redress or relief available at law (whether by way of damages, specific performance or otherwise) on account of the acts or omissions of the Franchisee, whether pursuant to any of this Agreement, the Ancillary Agreements or Financing Agreements or otherwise.

35.1.3 The Franchisee shall have no claim for compensation or otherwise as a result of termination of this Agreement except in accordance with the express provisions of this Agreement.

35.1.4 Neither party shall be entitled to terminate this Agreement for any reason whatsoever except as expressly set out in this Agreement.

35.1.5 Subject as required by any Applicable Requirements or as otherwise set out in this Agreement, the parties shall continue to perform their obligations under this Agreement notwithstanding the giving of any notice of default or notice of termination until the termination of this Agreement becomes final in accordance with this Agreement.

35.2 **Retendering**

35.2.1 Subject to 35.2.2, upon termination of this Agreement by DLRL pursuant to clause 32, the Franchisee shall be liable to DLRL for any retendering costs incurred by DLRL in retendering the Franchise together with the increased costs of appointing a Successor Franchisee to carry out the Franchisee's obligations under this Agreement following termination until the end of the Franchise Term.

35.2.2 If the terms and conditions of any new franchise offered by DLRL in the retendering process (including the basis upon which payment is made) are materially different from the terms and conditions contained in this Agreement and the Ancillary Agreements then an adjustment shall be made to the amount calculated in accordance with clause 35.2.1 which reasonably reflects how the increased costs of a Successor Franchisee would have been different (whether greater or lesser) had the new franchise been let on substantially the same terms and conditions.

36. **INEFFECTIVENESS**

36.1 In the event that a court makes a Declaration of Ineffectiveness, DLRL shall promptly notify the Franchisee. The Parties agree that the provisions of clause 35 (Consequences of Termination) and this clause 36 shall apply as from the date of receipt by the Franchisee of the notification of the Declaration of Ineffectiveness. Where there is any conflict or discrepancy between the provisions of clause 35 (Consequences of Termination) and this clause 36 or the Cessation Plan, the provisions of this clause 36 and the Cessation Plan shall prevail.

36.2 The Declaration of Ineffectiveness shall not prejudice or affect any right, liability or remedy which has accrued or shall accrue to either Party prior to or after such Declaration of Ineffectiveness.

36.3 As from the date of receipt by the Franchisee of the notification of the Declaration of Ineffectiveness, the Parties (acting reasonably and in good faith) shall agree or, in the absence of such agreement, DLRL shall reasonably determine an appropriate Cessation Plan with the object of achieving:

36.3.1 an orderly and efficient cessation of the Services or (at DLRL's request) a transition of the Services (as applicable) to DLRL or such other entity as DLRL may specify; and

36.3.2 minimal disruption or inconvenience to DLRL or to public passenger transport services or facilities,

in accordance with the provisions of this clause 36 and to give effect to the terms of the Declaration of Ineffectiveness.

36.4 Upon agreement, or determination by DLRL, of the Cessation Plan the Parties will comply with their respective obligations under the Cessation Plan.

36.5 DLRL shall pay the Franchisee's reasonable costs in assisting DLRL in preparing, agreeing and complying with the Cessation Plan. Such costs shall be based on any comparable costs agreed as part of this Agreement (including in the Financial Model) or as otherwise reasonably determined by DLRL.

36.6 In addition to the costs payable under clause 36.5 DLRL shall pay:

36.6.1 such sum as represents the cost of labour and materials reasonably and properly incurred or committed on arm's length terms by the Franchisee as at the termination date relating to the provision of the Services; and

36.6.2 the Franchisee its reasonable cost of demobilisation.

PART VI: FRANCHISE PRESERVATION AND HANDBACK

37. PRESERVATION OF FRANCHISE

37.1 Maintenance as going concern

37.1.1 The Franchisee shall maintain and manage the Franchise with the intent that a Successor Franchisee would be able to take over the Franchise immediately at any time. The Franchisee shall use all reasonable endeavours to ensure that such Successor Franchisee would have immediate access to all Franchisee Employees, Franchise Assets and Spares for such purpose.

37.1.2 The Franchisee shall operate, maintain and manage the Franchise on the basis that, to the extent possible and practicable, the Franchise will be transferred, in the manner contemplated under this Agreement, as a going concern at the end of the Franchise Term to, and continued immediately thereafter by, a Successor Franchisee. The Franchisee shall accordingly use all reasonable endeavours to ensure that an appropriate number of employees (having sufficient skills, qualifications and experience) will transfer by operation of Law (or otherwise) to any Successor Franchisee at the end of the Franchise Term.

37.1.3 The Franchisee shall continue to perform its activities under this Agreement as normal up to the Franchise Termination Date as though it were responsible for continuing such activities thereafter.

37.2 Handback Information

37.2.1 For the purposes of facilitating the transfer of the Franchise to any Successor Franchisee at the end of the Franchise Term, the Franchisee shall at all times maintain and keep up to date two sets of Handback Information, each of which shall contain the information set out in Appendix 1 to Part 3 of Schedule 17 and such other information as DLRL may reasonably specify from time to time.

37.2.2 The Franchisee shall ensure that any Successor Franchisee will have immediate access to the Handback Information at the end of the Franchise Term or at any other time as specified by DLRL and shall accordingly agree with DLRL from time to time two separate locations at which such sets of information should be kept.

37.2.3 If so requested by DLRL (but no more than once in each Fee Year), the Franchisee shall provide a report from its auditors addressed to DLRL which confirms that the sets of Handback Information maintained by the Franchisee pursuant to clause 37.2.1 contain the information required thereunder. The Franchisee shall make such sets of Handback Information available for inspection to DLRL or its representative whenever so reasonably requested.

37.3 Preparation for retendering

37.3.1 The Franchisee, if and to the extent so requested by DLRL, shall provide DLRL and its representatives and advisers with reasonable access to the employees of the Franchisee or its Sub-Contractors and the books, records and other material kept by or on behalf of the Franchisee or its Sub-Contractors in connection with the Franchise for the purpose of preparing any reports or other documents in connection with any invitation to potential Successor Franchisees to tender for the right and obligation to provide or operate all or part of the Franchise.

37.3.2 The Franchisee shall make available to DLRL and its representatives and advisers such information (and DLRL shall be entitled to use such information

to populate any data room in relation to such procurement or due diligence exercise) and shall assist in the verification of such information (including the provision of answers to verification questions), as DLRL, its representatives and advisers shall reasonably require in connection with such exercise.

- 37.3.3 The Franchisee shall provide access for DLRL and its representatives and advisers and for any potential Successor Franchisees to one of the sets of Handback Information (as updated from time to time) and such access shall be under the control of DLRL. In addition, the Franchisee shall cooperate with any potential Successor Franchisees and allow them reasonable access to the Railway for the purposes of due diligence.

37.4 Non-frustration of transfer

The Franchisee shall take no action or steps which is or are designed, directly or indirectly, to prejudice or frustrate the transfer as a going concern of the Franchise at the end of the Franchise Term to a Successor Franchisee. In particular the Franchisee shall not take or omit to take any action which act or omission is designed, directly or indirectly, to avoid, frustrate or circumvent any provision of this Agreement which is included in whole or in part for the purpose of preventing any such prejudicial or frustrating acts or omissions (including those contained in this Part VI of this Agreement). Subject to such restrictions and the other provisions of this Agreement, the Franchisee shall be entitled to take such action as it may require for the purposes of bidding to become, or becoming, such a Successor Franchisee.

37.5 Arrangements with Affiliates

- 37.5.1 The Franchisee shall ensure that every contract or other arrangement or transaction to which it may be party with any Affiliate for the supply of goods, the provision of services (including the licensing of any IPR) or otherwise, is on arm's length terms.
- 37.5.2 For the avoidance of doubt, in the event that any such arrangement is a Key Contract and is not on arm's length terms, DLRL may require the Franchisee to procure a substitute Key Contract in accordance with paragraph 2 of Part 1 of Schedule 8 and to terminate (at the Franchisee's own cost) such arrangement and the Franchisee shall comply with any such requirement.
- 37.5.3 Within four Fee Periods of the end of each Fee Year, and to the extent that the Franchisee submits to DLRL the calculations pursuant to paragraph 2.1 of Part 4 of Schedule 14, at the same time as those calculations are submitted, the Franchisee shall provide DLRL with details of any new, amended or replacement contracts or other arrangements to which the Franchisee has become a party during that Fee Year with any of its Affiliates that, when aggregated with any other such contracts or arrangements to which the Franchisee is a party, have a value in excess of £100,000 (Indexed).

37.6 Spares

The Franchisee shall ensure that its Spares are maintained at the levels and in the condition required by Part 7 of Schedule 4.

37.7 Moveable Assets

The Franchisee shall ensure that the Moveable Assets are maintained to the condition required by Part 8 of Schedule 4.

38. OBLIGATIONS ON TERMINATION OR EXPIRY

38.1 Assistance in securing continuity

Without prejudice to the Franchisee's obligations in clause 39, in order to facilitate the continuity of the Franchise on expiry of the Franchise Term the Franchisee shall take such steps, both before and after the expiry of the Franchise Term, as DLRL may reasonably require to assist and advise any Successor Franchisee in providing and operating the Franchise. In particular, the Franchisee shall use reasonable endeavours to provide any Successor Franchisee with such records and information relating to or connected with the Franchise as DLRL may reasonably request (including all relevant records relating to the Franchisee Employees).

38.2 Access

The Franchisee hereby authorises DLRL and its representatives and nominees to have such access as it may reasonably request on the expiry of the Franchise Term to such property as it may own, lease or operate at such time, for the purpose of facilitating the continuity of the Franchise.

38.3 Key Contracts

The Franchisee shall provide such assistance to any Successor Franchisee as DLRL may reasonably require in ensuring that any such Successor Franchisee may enter into (or enjoy the benefit of) contracts equivalent to the Key Contracts with the relevant counterparties.

38.4 Intellectual property

The Franchisee shall cease to use any trade marks or other intellectual property relating to the Franchise forthwith upon expiry of the Franchise Term and shall take all necessary steps to change any company name which incorporates any such marks as soon as practicable.

38.5 DLR Pension Scheme

On the expiry of the Franchise Term the Franchisee shall cease to participate in the DLR Pension Scheme and shall give due notice thereof to the trustees of the DLR Pension Scheme, and shall execute a Deed of Cessation substantially in the agreed form and such other documents as DLRL may reasonably require in connection with such cessation, which shall be without prejudice to any obligations of the Franchisee in respect of the DLR Pension Scheme which relate to the Franchise Term or any part of it.

38.6 Co-operation

The Franchisee shall also give full co-operation to DLRL, its representatives and nominees to ensure a smooth and trouble free transition of such activities with no degradation of the standard of performance of such activities.

38.7 Ancillary Agreements

The Franchisee shall, prior to the Franchise Termination Date, complete all outstanding activities under the Ancillary Agreements, Key Contracts and Assumed Contracts, failing which the Franchisee shall indemnify DLRL against any Loss which DLRL may incur as a result of the non or partial performance of such activities by the Franchisee.

38.8 **Continued technical support**

For a period of two years after the Franchise Termination Date the Franchisee shall, to the extent that it lies within the Franchisee's power to do so, provide the Successor Franchisee, at the Successor Franchisee's cost, with such access as it may reasonably require to persons having the appropriate knowledge and experience of the history of the Franchise and associated technical matters for the following purposes:

- 38.8.1 general technical advice on subjects for which the Franchisee was responsible during the Franchise Term; and
- 38.8.2 interpretation of operational and maintenance data, drawing modifications, regulations and the like.

39. **HANDBACK OF FRANCHISE**

39.1 **Franchisee acknowledgement**

The Franchisee acknowledges that DLRL may wish, at or at any time before the expiry of the Franchise Term, to invite persons, who may include the Franchisee, to tender for the right to provide or operate all or part of the Franchise. The Franchisee further acknowledges that DLRL may wish, upon termination or expiry of the Franchise Term, itself to resume the undertaking comprised in the Franchise. The Franchisee accordingly accepts and agrees to the restrictions and obligations imposed on it under this Part VI of this Agreement.

39.2 **Pre-Handback Period**

The Pre-Handback Period shall be deemed to commence on the earlier of the following dates:

- 39.2.1 the date which is a year prior to the date of expiry of the Franchise Term;
- 39.2.2 the date any notice of termination is given by the Franchisee under clause 33 (DLRL Default) or clause 34 (Termination); and
- 39.2.3 the date on which DLRL notifies the Franchisee that the Pre-Handback Period shall be deemed to commence.

Any such period shall expire on the date of termination of this Agreement or, if earlier, in the case of periods commencing under clause 39.2.3, the date falling a year after the date of any notice under clause 39.2.3 or, in any case, such earlier date as DLRL may determine.

39.3 **Handback Procedures**

At least 18 months prior to the expiry of the Franchise Term, or at any earlier date specified by DLRL, the parties shall establish a committee comprising two appropriately qualified and experienced representatives of each party who shall be responsible for agreeing procedures and programmes to ensure that the Franchise is handed over to the Successor Franchisee in accordance with the requirements of this Agreement with the least inconvenience and disruption to the Passenger Services. The procedures and programmes for handing the Franchise over to DLRL shall include as a minimum the following activities:

- 39.3.1 examination of the Handback Information by DLRL;
- 39.3.2 the carrying out of an audit by DLRL pursuant to clause 39.9 (End-Franchise Audit);

- 39.3.3 remedy of defects by the Franchisee pursuant to clause 39.10 (Franchisee's obligation to remedy defects/failures);
- 39.3.4 audit by DLRL of the Franchisee's compliance with clause 39.10 (Franchisee's obligation to remedy defects/failures);
- 39.3.5 audit by DLRL of the Franchisee's compliance with clause 37.6 (Spares) and 37.7 (Moveable Assets);
- 39.3.6 activities required for compliance with Part 3 of Schedule 17; and
- 39.3.7 any other matters referred to in the Handback Procedures.

39.4 No variations to employee terms

The Franchisee shall not, and shall procure that any relevant Sub-Contractor shall not, without the prior consent of DLRL (which shall not be unreasonably withheld) vary, or purport or promise to vary, the terms or conditions (as amended from time to time) of employment of any Franchisee Employee (including any promise to make any additional payment or provide any additional benefit) where such variation or addition:

- 39.4.1 takes effect in the Pre-Handback Period, unless it is in the ordinary course of business and, when aggregated with any other variation or addition which takes effect during such period, represents an increase in the remuneration of the Franchisee Employee of no more than the percentage increase in the level of the Average Earnings Index between the month for which such index was last published at the time the variation or addition is made or proposed and the month falling twelve months before such month;
- 39.4.2 takes effect (in whole or in part) after the end of the Franchise Term;
- 39.4.3 results in any such employment not being terminable by the employer of the Franchisee Employee within six months of the expiry of the Franchise Term;
- 39.4.4 relates to a payment, the provision of a benefit or the provisions governing the termination of the Franchisee Employee's employment triggered by termination of the Franchisee Employee's employment or termination of this Agreement;
- 39.4.5 relates to the provision of a benefit (but excluding base salary) which any such employee will or may have a contractual right to receive after the expiry of the Franchise Term; or
- 39.4.6 prevents, restricts or hinders any such employee from working for a Successor Franchisee or from performing the duties such Franchisee Employee performed for the Franchisee.

39.5 No new terms of employment

Subject to clause 39.6, during the Pre-Handback Period the Franchisee shall not, and shall procure that any relevant Sub-Contractor shall not, without the prior consent of DLRL (which shall not be unreasonably withheld), employ or engage or promise to employ or engage any new Franchisee Employee where such employment commences during the Pre-Handback Period or on or after the Franchise Termination Date if and to the extent that:

- 39.5.1 the terms or conditions of employment of any such new Franchisee Employee are materially different to the terms or conditions of employment of equivalent or nearest equivalent Franchisee Employees at the date of commencement of employment of such new Franchisee Employee; and

39.5.2 if such terms or conditions were granted to such equivalent Franchisee Employees already employed by the Franchisee by way of variation to their terms or conditions of employment, the Franchisee would be in breach of clause 39.4.

39.6 Restriction on numbers and total cost of employees

Subject to and excluding any increase in the remuneration of Franchisee Employees permitted under clause 39.4, the Franchisee shall not, and shall procure that any relevant Sub-Contractor shall not, without the prior consent of DLRL (which shall not be unreasonably withheld) increase or decrease in the Pre-Handback Period the number of Franchisee Employees either such that the total number of Franchisee Employees or the total cost per annum to the Franchisee and each relevant Sub-Contractor of employing all of the Franchisee Employees is increased or such that the total number of Franchisee Employees is decreased, in each case, by more than 5 per cent. during the Pre-Handback Period.

39.7 Provision of TUPE Information

The Franchisee shall and shall procure that any relevant Sub-Contractor shall at the request of DLRL in the Pre-Handback Period provide the TUPE Information within 28 days of such request and thereafter update such information in accordance with the reasonable requests of DLRL.

39.8 Ticket Sales and Data Collection

During the Pre-Handback Period, the Franchisee shall not reduce or diminish its efforts, resources or measures in respect of selling Tickets, data collection or revenue collection and protection as compared with the previous Fee Years.

39.9 End-Franchise Audit

39.9.1 DLRL or its representatives may carry out at DLRL's cost within the last 18 months of the Franchise Term, or at such earlier point as DLRL shall reasonably specify, an audit of compliance by the Franchisee with its asset management and maintenance obligations in this Agreement (the scope of any audit and samples to be selected at DLRL's absolute discretion) and any such audit may involve the examination, inspection or testing of works, activities, processes, records, documents or assets on or off the Railway.

39.9.2 The Franchisee shall promptly provide (at its own cost) all such demonstrations and assistance and access to facilities, information, records, assets and documents (including the provision of copies of documents) and personnel as DLRL or its representatives may reasonably require in order to discharge their audit function in a proper manner.

39.9.3 DLRL shall, in planning and implementing such an audit, have regard to the obligations of the Franchisee in operating the Railway and providing the Services.

39.9.4 The audit activities described in Part 5 of Schedule 4 (Asset Management) are indicative only and shall not restrict or limit in any way DLRL's rights of audit.

39.10 Franchisee's obligation to remedy defects/failures

39.10.1 Where the audit by DLRL referred to in clause 39.9 (End-Franchise Audit) reveals:

- (a) any defects in the Franchise Assets such that the Franchise Assets cannot be handed over to DLRL in the condition specified in clause 9 (Asset Management); or
- (b) reveals any other failure by the Franchisee to comply with its obligations in this Agreement,

DLRL will provide details of any relevant defects and failures to the Franchisee.

39.10.2 Upon receipt of such details the Franchisee shall, so that such matters are completed prior to the Franchise Termination Date, at its own cost remedy all such defects and failures and undertake all such repairs or other rectification works and activities as are required to ensure that the Franchise Assets can be handed over on the Franchise Termination Date in a condition which meets the requirements of this Agreement and all other failures are rectified.

39.10.3 If this Agreement terminates otherwise than as a result of expiry of the Franchise Term, the Franchisee shall (regardless of whether the audit referred to in clause 39.9 (End-Franchise Audit) has commenced and whether the Franchisee has been provided with details of any defects and failures) at its own cost remedy any defects and failures and undertake all such repairs or other rectification works and activities as it is reasonably able before the Franchise Termination Date to ensure that the Franchise Assets can be handed over on the Franchise Termination Date in a condition which meets the requirements of this Agreement and all other failures are rectified.

39.11 **DLRL's right to rectify**

If at the Franchise Termination Date the Franchise Assets are not handed over in a condition which meets the requirements of this Agreement or the Franchisee has not complied in full with its obligations in clause 39.10 DLRL shall be entitled, without prejudice to any of its other rights or remedies, to perform itself all such repairs or other rectification works and activities as are required to put the Franchise Assets into the condition required by this Agreement and ensure all other failures are rectified and the Franchisee shall reimburse DLRL for any cost it incurs in doing so.

PART VII: MISCELLANEOUS

40. TFL POLICIES

The Franchisee (at no additional cost to DLRL or TfL) shall and shall procure that all the Franchisee's Employees and Sub-contractors shall, comply with all of TfL's policies and standards that are relevant to the performance of the Services, including (without limitation) the TfL Policies.

41. SUB-CONTRACTING

41.1 Permitted sub-contracting

Subject to clauses 41.2 to 41.5 and Schedule 8, the Franchisee shall be entitled to sub-contract or delegate all or part of the Franchise, provided that any sub-contracting or delegation by the Franchisee shall not relieve the Franchisee from any of its obligations in respect of such Services under this Agreement nor result in the Franchisee undertaking its obligations in a less efficient manner or taking longer to provide any information or carry out any obligation under this Agreement than would be the case were the Franchisee undertaking the relevant obligation by its own staff.

41.2 Franchisee to remain responsible

The Franchisee shall retain full responsibility and liability for the work of sub-contractors. The Franchisee shall ensure that all sub-contractors' personnel are suitably qualified, trained and experienced and have been fully familiarised with the Franchisee's working methods and safety procedures. The requirements of clause 14 (Personnel) apply equally to sub-contractor's staff.

41.3 Competitive Tenders

Except in the case of the contracts referred to in paragraph 2.1 of Part 2 of Schedule 17, if any work for which DLRL is obliged to reimburse the Franchisee pursuant to this Agreement shall be in respect of goods, equipment or services to be provided by a third party supplier or contractor, the Franchisee shall obtain competitive tenders (using appropriate European Union procurement procedures) wherever practicable in respect thereof in accordance with any procedures with which DLRL is required by TfL to comply as notified to the Franchisee from time to time and shall provide DLRL with copies of any bid documentation and evidence that competitive tenders have been requested.

41.4 Sub-contracting requirements

The Franchisee shall ensure, with respect to each contract or sub-contract for all or part of the Franchise, that:

41.4.1 the contract or sub-contract is capable of being freely assigned to:

- (a) any Successor Franchisee; or
- (b) in the event there is no Successor Franchisee, to DLRL;

41.4.2 the Franchisee is entitled to recover on behalf of DLRL the full amount of:

- (a) any loss, damage, injury or expense caused to the Successor Franchisee by any tort of or breach of such contract or sub-contract by the third parties thereto; and
- (b) any right of indemnity contained therein,

subject to the express defences, limitations and exclusions of liability applicable to the relevant contract or sub-contract; and

41.4.3 the contract or sub-contract is entered by the Franchisee as principal and DLRL has no obligations pursuant thereto.

41.5 **Safety and Maintenance**

The Franchisee shall not without the prior written approval of DLRL sub-contract any obligation which DLRL considers (acting reasonably) relates (in whole or part) to safety or safety related maintenance save that, in the case of an emergency, the Franchisee shall not be required to obtain prior written approval where it would be impractical or impossible to obtain the same but the Franchisee shall use all reasonable endeavours to ensure that any subcontractor so appointed is of good standing and repute.

42. **CONFIDENTIALITY**

42.1 **Franchisee's obligations as to confidentiality**

Subject to clause 42.3 and except as otherwise provided in this Agreement, the Franchisee shall keep confidential all matters relating to this Agreement and the Ancillary Agreements and shall use all reasonable endeavours to prevent its employees, agents and sub-contractors from making any disclosure to any person of any matter relating to this Agreement and the Ancillary Agreements.

42.2 **DLRL obligations as to confidentiality**

42.2.1 Subject to clause 42.3, DLRL shall have the same obligations in respect of Commercially Sensitive Information as those imposed on the Franchisee under clause 42.1. Without prejudice to the foregoing and clause 42.3, DLRL shall be entitled to:

- (a) disclose Commercially Sensitive Information where DLRL considers that it is obliged to do so under any Applicable Requirements;
- (b) use Commercially Sensitive Information to the extent necessary to obtain the benefit of the Franchisee's performance under this Agreement and the Ancillary Agreements;
- (c) disclose such Commercially Sensitive Information as may be required to be published in the Official Journal of the European Union;
- (d) disclose such Commercially Sensitive Information as may be required pursuant to a valid FOI Information Request; and
- (e) publish any Commercially Sensitive Information to the general public pursuant to the requirements of the Transparency Commitment.

42.2.2 For the purposes of clause 42.2.1(d) and (e), DLRL may in its absolute discretion prior to publication:

- (a) redact all or part of the Contract Information to take account of the exemptions that would be available in relation to information requested under the FOI Legislation; and
- (b) consult with the Franchisee regarding any redactions to the Contract Information to be published,

provided that in all cases DLRL shall make the final decision regarding publication and/or redaction of the Contract Information.

42.3 **Permitted disclosures**

42.3.1 Clauses 42.1 and 42.2 shall not apply to:

- (a) any disclosure of information that is reasonably required by persons engaged in the performance of obligations set out in this Agreement and the Ancillary Agreements;
- (b) any matter which a Party can demonstrate is already generally available and in the public domain otherwise than as a result of a breach of this clause;
- (c) any disclosure to enable a determination to be made under the Dispute Resolution Procedure;
- (d) any disclosure which is required by any Law (including any order of a court of competent jurisdiction), any Parliamentary obligation or the rules of any stock exchange or governmental or regulatory authority having the force of Law;
- (e) any disclosure of information which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;
- (f) any disclosure by DLRL of information relating to the Franchise to any potential Successor Franchisee and its advisers which shall include without limitation:
 - (i) such information as may be reasonably required for the purpose of conducting a procurement or due diligence exercise; and
 - (ii) the population of any data room in relation to such procurement or due diligence exercise;
- (g) any registration or recording of any consents and property registration required;
- (h) any disclosure of information by DLRL in accordance with clause 42.3.3;
- (i) any disclosure by DLRL of any document related to this Agreement and the Ancillary Agreements to which it is a party and which the Franchisee (acting reasonably) has agreed with DLRL contains no commercially sensitive information;
- (j) any disclosure for the purpose of:
 - (i) the examination and certification of DLRL's or the Franchisee's accounts; or
 - (ii) any examination pursuant to section 6(1) of the National Audit Act 1983; and
- (k) any insurers.

- 42.3.2 Where disclosure is permitted under clause 42.3.1, other than sub-clauses (b), (d), (e), (f), (g), (h), (i) and (j), the discloser of such information shall procure that the recipient of the information shall be subject to the same obligations of confidentiality as those contained in this Agreement.
- 42.3.3 For the purposes of the National Audit Act 1983, the Comptroller and Auditor General may examine such documents as he may reasonably require which are owned, held or otherwise within the control of the Franchisee and any sub-contractor and may require the Franchisee and any sub-contractor to produce such oral or written explanations as he considers necessary. For the avoidance of doubt it is hereby declared that the carrying out of an examination under section 6(3)(d) of the National Audit Act 1983 in relation to the Franchisee is not a function exercisable under this Agreement.
- 42.3.4 Nothing in this Agreement shall prevent the disclosure by DLRL of any Confidential Information to TfL or any other subsidiaries of TfL, the Mayor, DLRL's sub-contractors, all respective advisers or any other person or body that DLRL from time to time is required to consult with or provide information to. The Parties acknowledge that the National Audit Office has the right to publish details of this Agreement (including Commercially Sensitive Information) in its relevant report to Parliament.
- 42.3.5 The Franchisee shall not make use of this Agreement and the Ancillary Agreements or any information issued or provided by or on behalf of DLRL in connection with this Agreement and the Ancillary Agreements otherwise than for the purpose of complying with this Agreement, except with the written consent of DLRL.
- 42.3.6 Where the Franchisee, in carrying out its obligations under this Agreement and the Ancillary Agreements, is provided with information relating to users of the DLR, the Franchisee shall not disclose or make use of any such information otherwise than for the purpose for which it was provided, unless the Franchisee has sought the prior written consent of the user and has obtained the prior written consent of DLRL.

42.4 **Data protection**

- 42.4.1 In relation to all Personal Data, the Franchisee shall at all times comply (to the extent that the same is applicable) with the DPA as a data controller if necessary, including maintaining a valid and up-to-date registration or notification under the DPA covering the data processing to be performed in connection with this Agreement and the Ancillary Agreements.
- 42.4.2 The Franchisee shall, and shall procure that all of its sub-contractors shall, only undertake fair and lawful processing of Personal Data reasonably required in connection with this Agreement and the Ancillary Agreements and shall not transfer any Personal Data to any country or territory outside the European Economic Area.
- 42.4.3 The Franchisee shall not disclose Personal Data to any third parties other than:
- (a) to employees and sub-contractors to whom such disclosure is reasonably necessary in order for the Franchisee to carry out its obligations under this Agreement and the Ancillary Agreements; or
 - (b) to the extent required under a court order or by any Applicable Requirement; or

provided that disclosure under clause 42.4.3(a) is made subject to written terms substantially the same as, and no less stringent than, the terms contained in this clause and that the Franchisee shall give notice in writing to DLRL of any disclosure of Personal Data it or a sub-contractor is required to make under clause 42.4.3(a) as soon as it is aware of such a requirement.

- 42.4.4 The Franchisee shall bring into effect and maintain all technical and organisational measures to prevent unauthorised or unlawful processing of or access to Personal Data and accidental loss or destruction of, or damage to, Personal Data including but not limited to take reasonable steps to ensure the reliability of staff having access to the Personal Data.
- 42.4.5 DLRL may, at reasonable intervals, request a written description of the technical and organisational methods employed by the Franchisee and the sub-contractors. Within 30 days of such a request, the Franchisee shall supply written particulars of all such measures detailed to a reasonable level such that DLRL can determine whether or not, in connection with the Personal Data, it is compliant with the DPA.
- 42.4.6 The Franchisee shall indemnify and keep indemnified the Indemnified Parties against all Losses incurred by any of the Indemnified Parties in respect of any breach of this clause by the Franchisee and/or any sub-contractor.

42.5 **Freedom of Information**

- 42.5.1 For the purposes of this clause, "**Information**" means information recorded in any form held by DLRL or held by the Franchisee on behalf of DLRL.
- 42.5.2 The Franchisee acknowledges that DLRL is subject to the FOI Legislation and agrees to assist and co-operate with DLRL to enable DLRL to comply with its obligations under the FOI Legislation. The foregoing shall not preclude the Franchisee from objecting to a disclosure of Information.
- 42.5.3 Without prejudice to the generality of clause 42.5.2, the Franchisee shall and shall procure that its sub-contractors shall:
 - (a) transfer to the company secretary of DLRL (or such other person as may be notified by DLRL to the Franchisee) all FOI Information Requests that they receive as soon as practicable and in any event within two Business Days of receiving an FOI Information Request; and
 - (b) in relation to Information held by the Franchisee on behalf of DLRL, provide DLRL with details about and/or a copy of all such Information that DLRL requests and such Information shall be provided within five Business Days of receipt of a copy of the FOI Information Request from DLRL (or such other period as DLRL may reasonably specify), and in such form as DLRL may reasonably specify.
- 42.5.4 DLRL shall be responsible for determining whether Information is exempt information under the FOI Legislation and for determining what Information will be disclosed in response to an FOI Information Request in accordance with the FOI Legislation. The Franchisee shall not itself respond to any person making an FOI Information Request, save to acknowledge receipt, unless expressly authorised to do so by DLRL.
- 42.5.5 The Franchisee acknowledges that DLRL may be obliged under the FOI Legislation to disclose Information without consulting or obtaining consent from the Franchisee.

42.6 **Return of Confidential Information**

Save to the extent that the same may reasonably be required in respect of any current or anticipated litigation, on termination or expiry of this Agreement howsoever occurring, the Franchisee shall return to DLRL or permanently delete and destroy any Confidential Information (including all copies thereof) supplied to it at any time (including at a time before the date of this Agreement) by DLRL or any other person with the knowledge and consent of DLRL, except where retention of any such Confidential Information is required by Law or pursuant to any applicable stock exchange listing requirements (in which case the provisions of clause 42.1 shall continue to apply to such information).

42.7 **Continuing obligation following termination of Agreement**

The obligations of the Parties under this clause 42 shall continue in full force and effect notwithstanding termination or expiry of this Agreement.

43. **DOCUMENTS, DUTIES AND FEES**

43.1 **Supply of documents**

The following provisions shall apply where the Franchisee is obliged under this Agreement and the Ancillary Agreements to supply documents and drawings to DLRL:

43.1.1 all paper based documents and drawings shall be of a suitable quality for reproduction, microfilming or scanning into electronic databases;

43.1.2 documents and drawings may be supplied on suitable electronic media provided such media are in a format which is compatible with the relevant DLRL systems; and

43.1.3 the Franchisee shall ensure that secure back-ups or archive copies of originals and revisions are maintained in respect of all data, information and records required to be kept under this Agreement and the Ancillary Agreements.

43.2 **Stamp duty and other costs**

The Franchisee shall be responsible for and shall forthwith discharge (and shall fully indemnify DLRL against) any stamp duties and land registration fees on or for the registration of this Agreement or any Ancillary Agreement or any of them and any deed or document to which DLRL and the Franchisee or the Franchisee shall be a party following exchange of this Agreement which relates to the Franchisee.

44. **INTELLECTUAL PROPERTY**

The Franchisee shall comply with the provisions of Schedule 11 (Intellectual Property).

45. **NOTICES**

45.1 **Service of notices**

Save as otherwise expressly provided in this Agreement any notice, notification or other communication under or in connection with this Agreement shall be in writing and shall be delivered by hand or sent by prepaid first class post or by facsimile transmission to the party to be served at or to that party's address or to its facsimile number given below or to such other address or numbers in England as the party to be served may from time to time select by prior notice to the other party:

DLRL

Address: Operations and Maintenance Centre,
Castor Lane, Poplar, London E14 0DX
Facsimile No: 020 7363 9708
Attention: Company Secretary
Docklands Light Railway Limited

Franchisee

Address: Evergreen House North
160 Euston Road
London
NW1 2DX
Attention: Company Secretary

45.2 Time of service

Any such notice or other communication shall be deemed to have been received by the party to whom it is addressed as follows:

- 45.2.1 if delivered by hand, at the time when the notice is left at the address of the party to be served;
- 45.2.2 if sent by prepaid first class post, from and to any place within the United Kingdom, on the Business Day next following the day of posting or, if the day of posting was not a Business Day, the Business Day next following the Business Day after the day of posting; and
- 45.2.3 if sent by facsimile transmission, at the time of transmission,

and in proving service it will be sufficient to prove, if sent by prepaid first class post, that the envelope containing the notice or other communication was properly stamped or franked with the appropriate first class postage, addressed to the recipient and placed in the post and, if sent by facsimile transmission, a printed record is given of all pages of the transmission having been received at the correct number.

46. GENERAL PROVISIONS**46.1 Entire agreement**

Each party on behalf of itself and as agent for each of its Affiliates acknowledges and agrees with the other party that:

- 46.1.1 this Agreement and the Ancillary Agreements together with any other documents referred to in this Agreement and the Ancillary Agreements (together the "**Transaction Documents**") constitute the entire and only agreement between the parties and their respective Affiliates relating to the subject matter of the Transaction Documents;
- 46.1.2 neither it nor any of its Affiliates has been induced to enter into any Transaction Document in reliance upon, nor has any such party been given, any warranty, representation, statement, assurance, covenant, agreement, undertaking, indemnity or commitment of any nature whatsoever other than as are expressly set out in the Transaction Documents and, to the extent that any of them has been, it (acting on behalf of itself and as agent on behalf of each of its Affiliates) unconditionally and irrevocably waives any claims, rights or remedies which any of them might otherwise have had in relation thereto;

- 46.1.3 for the avoidance of doubt, neither it (nor its Affiliates, where appropriate) has any right to rescind or terminate any Transaction Documents for negligent or innocent misrepresentation;

provided that the provisions of this clause 46.1 shall not exclude any liability which any of the parties or, where appropriate, their Affiliates would otherwise have to any other party or, where appropriate, to any other party's Affiliates or any right which any of them may have in respect of any statements made fraudulently by any of them prior to the execution of this Agreement or any rights which any of them may have in respect of fraudulent concealment by any of them.

46.2 **Waiver**

- 46.2.1 A waiver of any term, provision or condition of, or consent granted under, this Agreement shall be effective only if given in writing and signed by the waiving or consenting party and then only in the instance and for the purpose for which it is given.
- 46.2.2 No failure or delay on the part of any party in exercising any right, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.
- 46.2.3 No breach of any provision of this Agreement shall be waived or discharged except with the express written consent of the parties.
- 46.2.4 The rights and remedies herein provided are cumulative with and not exclusive of any rights or remedies provided by law.

46.3 **Assignment**

- 46.3.1 The Franchisee shall not, without the prior written consent of DLRL, assign, novate, transfer or declare a trust of any benefit arising under or out of this Agreement.
- 46.3.2 DLRL may at any time elect to assign, novate or otherwise transfer its rights and obligations under this Agreement to:
- (a) a Minister of the Crown; or
 - (b) a member of the TfL Group,
- each, a "**Permitted Party**".
- 46.3.3 If DLRL wishes to exercise its right under clause 46.3.2, it shall give the Franchisee no less than 28 days prior notice.
- 46.3.4 The Franchisee shall, within 14 days of a notice from DLRL pursuant to clause 46.3.3 enter such documentation (including but not limited to a deed of novation with DLRL and the relevant Permitted Party) as is reasonably required by DLRL in relation to such assignment, novation or other transfer.

46.4 **Invalidity and severability**

- 46.4.1 If any provision of this Agreement is or becomes (whether or not pursuant to any judgment or otherwise) invalid, illegal or unenforceable in any respect under the law of any jurisdiction:

- (a) the validity, legality and enforceability under the law of that jurisdiction of any other provision; and
- (b) the validity, legality and enforceability under the law of any other jurisdiction of that or any other provision,

shall not be affected or impaired in any way thereby.

46.4.2 If any provision of this Agreement shall be held to be void or declared illegal, invalid or unenforceable for any reason whatsoever, such provision shall be divisible from this Agreement and shall be deemed to be deleted from this Agreement and the validity, legality and enforceability of the remaining provisions shall not be affected. In the event that any such deletion materially affects the interpretation of this Agreement then the parties shall negotiate in good faith with a view to agreeing a substitute provision which as closely as possible reflects the commercial intention of the parties. If the parties fail to agree a substitute provision within 30 days of commencing negotiations, the matter shall be referred to the Dispute Resolution Procedure for resolution.

46.5 No partnership

Nothing in this Agreement and no action taken by the parties pursuant to this Agreement shall constitute, or be deemed to constitute, the parties a partnership, association, joint venture or other co-operative entity.

46.6 Further assurance

The Franchisee shall from time to time forthwith upon request from DLRL at its own expense do or procure the doing of all such acts and/or execute or procure the execution of all such documents in a form reasonably satisfactory to DLRL for the purpose of giving full effect to and giving DLRL the full benefit of this Agreement, subject to any restriction or limitation in this Agreement on the extent of any party's obligations under this Agreement.

46.7 Costs

Save as expressly otherwise provided in this Agreement each of the parties shall bear its own legal, accountancy and other costs, charges and expenses connected with the negotiation, preparation and implementation of this Agreement and any other Agreement incidental to or referred to in this Agreement.

46.8 Counterparts

This Agreement may be executed in any number of counterparts which together shall constitute one Agreement. Any party may enter into this Agreement by executing a counterpart and this Agreement shall not take effect until it has been executed by all parties.

46.9 Governing language

The official text of this Agreement and any Schedules attached hereto and any notices given hereunder shall be English.

46.10 Dispute resolution

Any Dispute will be resolved in accordance with the Dispute Resolution Procedure.

46.11 Governing law

This Agreement, and any dispute, controversy, proceedings or claim of whatever nature arising out of or in any way relating to this Agreement or its formation (including any non-contractual disputes or claims), shall be governed by and construed in accordance with English law.

46.12 **Third party rights**

No third party may enforce any rights or benefits conferred on it by this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999.

46.13 **Jurisdiction**

Subject to clause 46.10, each party to this Agreement irrevocably agrees that the courts of England shall have exclusive jurisdiction to hear and decide any suit, action or proceedings, and/or to settle any disputes, which may arise out of or in any way relate to this Agreement or its formation and, for these purposes, subject to clause 46.10, each party irrevocably submits to the jurisdiction of the courts of England.

IN WITNESS whereof this deed has been executed and delivered on the date first above written.

Executed as a deed by **DOCKLANDS**)
LIGHT RAILWAY LIMITED acting by a)
director and its secretary/two directors:)

Director Jonathan Fox

Director/Secretary David Keep

Executed as a deed by **KEOLIS AMEY**)
DOCKLANDS LIMITED acting by two)
directors:)

Director Alistair Gordon

Director/Secretary Lee Jones