

First Capital Connect
Hertford House
1 Cranwood Street
London
EC1V 9QS

15th July 2010

Jenny Osborne
Capacity Allocation Manager
Network Rail

Ian Hammond
Train Planning Manager
First Capital Connect

CC: Paul Hebditch
Train Planning Centre Manager Paddington
Network Rail

Dear Jenny

December 10 WTT - First Capital Connect Response

GN Route

Please find attached:

- 125 F3 bids relating to changes required to GN offer predominantly SX. Details of relevant changes are contained on relevant F3s.
- A list of trains received in OP status on the GN routes for SX & SO. These services sit in OP status in error and this has indeed been communicated verbally to our GN planner. I seek formal confirmation that these trains are now formally offered.

TL Route

Attached Bids

I attach 12 F3 bids for changes required to the offer covering SX/ SO/SU, details of the changes are contained on the relevant F3.

Brighton Main Line

I write with great concern in relation to the state of the offer received for the Brighton Main Line SX & SO. We are most concerned that a number of our SX services have been offered provisionally due to the additional, but rejected, services that Southern seek to run.

If progressed, we believe that Southern's proposals would have a significantly detrimental impact on performance and would increase congestion on a line which already faces many operational challenges. In addition, it would appear that their timetable proposals have been designed to maximise the revenue absorption from FCC services at the expense of a timetable which can perform optimally.

We are extremely concerned about the non-compliances with Rules of the Plan in relation to the proposed Southern service revisions. At the meeting on the 2nd July, and on subsequent occasions, we requested details of these non-compliances to be made available to enable FCC to understand the consequential impact on our services. Can I please reiterate that these details must be made available so that we can coordinate any further response if necessary to do so.

As well as the Rules of the Plan non-compliances, we have serious concerns about the resilience of a timetable which would include Southern's proposals. We have raised this at a number of previous meetings and believe this to be borne out by the initial Rail Sys report that was commissioned by Network Rail. We feel that the opportunity to deliver robust operation of both our own and Southern's proposed services on the Brighton Main Line and the entire Thameslink route will be seriously compromised, but certain elements to emphasise this have not been adequately addressed in the Rail Sys modelling undertaken to date.

The principal areas within the recent modelling exercise which fail to address the likely performance effect of the proposed Southern Changes are as follows:-

- The RailSys simulation does not provide sufficient detailed modelling of the London Bridge area and the interaction with South Eastern services, which is absolutely critical to reliable service delivery.
- The modelling work undertaken by Network Rail had a scope that was clearly restrictive and did not fully reflect the performance impact that would occur on FCC services through London Bridge into the Thameslink core area and onto Midland Main Line.
- Likely effect of delays at Brighton due to the minimum turnround times on Southern's new Semi Fast service.
- Inability to model issues around the failure rate and dwell time of Class 442's.

Due to the apparent constraints of detail in key area of the simulation we feel it is essential that further modelling is undertaken to prove the reliability of any changes proposed before any revisions to agreements can be agreed.

Once enhanced results from modelling have been achieved we believe that it is essential that the timetable is developed alongside the Rules of the Plan review which is now being worked up jointly by Network Rail and TOCs to address many of the performance issues on the route. It is essential that the Rules of The Plan review reaches its conclusions and that these Rules are used as the base for a robust timetable plan going forward. At this stage, and without the revised Rules of The Plan being put in place, we believe the timetable to be fatally flawed in both its Rules compliance and overall Performance robustness. Unless tackled, this will constrain any opportunities the industry may have of achieving a sound robust BML timetable for the future.

For these reasons we request that any further development in relation to Southern's proposals are put on hold until such time as they can be modelled fully and they can be incorporated into the plan against an agreed revised set of Rules of the Plan.

Equally, our bid submitted at Capacity request and currently in OP status in the timetable offer must now be made firm and any Southern proposals must be deferred until the concerns over modelling and compliance against existing Rules of the Plan can be addressed and then measured against the subsequently agreed Rule of the Plan revisions.

One area of particular concern within the Offer is the proposal to start the 08:50 Gatwick to London Victoria service from Brighton, which has a non-compliant path between Burgess Hill and Balcombe Tunnel Jn. Southern's proposal to wedge this train (as 1A69 08.13 ex Brighton) amongst an already narrow flight of services is not only theoretical performance folly but also an inevitable delay-minute contributor in the event of even the most minor disruption. It is requested that Network Rail review this element of the timetable offer as a matter of urgency. In the meantime, I can advise you that FCC will be referring this particular item to the Access Disputes Committee.

Separately, and as you know, FCC is aware that similar proposals for Saturday frequencies have been erroneously offered to Southern which is entirely inconsistent with the Network Rail stance for weekdays. It is realised that Network Rail has attempted to withdraw Saturday services offered to Southern for this period but this has not been possible within the confines of the Network Code. Consequently, FCC will formally object to the content of the Saturday offer in terms of paths mistakenly offered to Southern and this will be pursued via the Access Disputes Committee accordingly

Yours Sincerely

A handwritten signature in black ink, appearing to read 'Ian Hammond', is written over a horizontal line.

Ian Hammond

First Capital Connect
Hertford House
1 Cranwood Street
London
EC1V 9QS

23rd July 2010

Jenny Osborne
Capacity Allocation Manager
Network Rail

Ian Hammond
Train Planning Manager
First Capital Connect

CC: Paul Hebditch
Train Planning Centre Manager Paddington
Network Rail

Dear Jenny

December 10 WTT – SO & SU First Capital Connect Response

GN Route

Please find attached:

- A zip file containing 2 files of F3 bids relating to changes required to GN offer to SO services (all periods).
 - The first SO file details changes to 81 of our own services with relevant details stated on the F3s. The majority of the items are activities and Public Differentials.
 - The other SO file contains details of associated changes to other operators services (4 East Coast/ 1 Hull Trains) the East Coast changes have been discussed with East Coast. The change to the Hull Trains service is a minor movement of half minute pathing time from approaching Stevenage to approaching Woolmer Green and has not been advised to Hull Trains.
-
- A zip file containing 2 files of F3 bids relating to changes required to GN offer to SU services (periods A & B).
 - The first SU file contains changes to 99 of our own services. Many of the changes are to accommodate NXEA replatforming, Cross-Country's standardisation and maintaining our 45-minute journey time Kings Cross to Cambridge on the Kings Lynn services. Plus removal of some unnecessary [box] time.
 - The other SU file contains details of associated changes to 8 East Coast Services these changes have been discussed with East Coast.

TL Route - North

Please find attached a summary list plus an EDI file of 242 SU TL route trains which have been date set split to operate in periods A&B and in Periods C&D. At this stage there is no difference between the content of data between the banks of two periods.

We have split the services to enable STP work to be commenced on trains in period A&B pending agreement of engineering work proposed in the Bedford Area for periods C&D.

Our intention once Network Rail has finalised with Operators details of the proposed works in the Bedford Area for Period C & D, is to bid a service compliant with the reduced infrastructure available. Once the engineering proposals are finalised we seek a meeting with Network Rail and East Midlands Trains so that we can work up detail of Period C& D service and agreed methodology of approach to ensure that the timetable work is delivered in the reduced timescales available.

TL Route - Brighton Main Line

We raised in our offer response letter to you of the 15th July 2010 our concern that you had offered in error a number of additional services between London Victoria and Brighton and vice versa to Southern on Saturdays in the December 10 offer.

The services concerned, details of which are included as an attachment to this letter, you had previously stated your intention to reject on the same basis as the rejected SX paths, namely due to issues of non compliance with Rules of the Plan and Performance issues. It is realised that Network Rail has attempted to withdraw these Saturday services offered to Southern for this period but this has not been possible within the confines of the Network Code.

All of our concerns and issues raised in relation to the additional SX Southern Services and disputed and referred to Access Disputes Committee are equally applicable to these additional SO paths. In fact due to the extended period of operation of the off peak paths on Saturday we believe that the risk to the delivery of reliable performance on the Brighton Main Line is potentially even greater than SX.

We do not feel that we can see implemented a timetable that has been offered in error, and if progressed would have a significantly detrimental impact on performance and would increase congestion on a line which already faces many operational challenges.

To implement a timetable proposal that has been designed to maximise the revenue absorption from FCC services at the expense of a timetable which can perform optimally, ahead of the opportunity to put in place a robust plan following the results of the BML Rules of The Plan Review would, we feel, be an extremely foolhardy decision for the industry to take at the is time.

Although First Capital Connect is committed to working with Network Rail and Southern to find a solution to these issues I am afraid that I have no choice at this stage other than to formally dispute these paths and refer to the Access Disputes Committee accordingly.

Yours Sincerely

A handwritten signature in black ink, appearing to be 'Ian Hammond', written over a horizontal line.

Ian Hammond

Additional Hourly Train Slots

The SLC 2A – Part 2, requires the existing hourly semi-fast train services to call at Clapham Junction, East Croydon, Gatwick Airport, Burgess Hill, Hassocks and Brighton. The SLC is not specific about the additional hourly trains slots listed below:

Table 1: London Victoria – Brighton

Days Operated	Number of Services	Departure Times
Monday – Friday	7 Services	09:21, 10:21, 11:21, 12:21, 13:21, 14:21, 15:21
Saturday	14 Services	07:21, 08:21, 09:21, 10:21, 11:21, 12:21, 13:21, 14:21, 15:21, 16:21, 17:21, 18:21, 19:21, 20:21

Table 2: Brighton - London Victoria

Days Operated	Number of Services	Departure Times
Monday – Friday	7 Services	09:58, 10:58, 11:58, 12:58, 13:58, 14:58, 15:58
Saturday	13 Services	06:58, 07:58, 08:58, 09:58, 10:58, 11:58, 12:58, 13:58, 14:58, 15:58, 16:58, 17:58, 18:58

South Central Franchise Service Level Commitment 2A - Part Two (Commencing PCD December 2010)

Route B2 London Victoria - Brighton (Semi-Fast Services)

1. Route Definition

- 1.1 Services shall be provided between London Victoria and Brighton, calling at Clapham Junction, East Croydon, Gatwick Airport, Burgess Hill and Hassocks.
- 1.2 There are no Limited Stops on this route.

2. Service Pattern – Mondays to Fridays

Core Service Specification

- 2.1 Between and including the Early and Late Services, one service per hour shall be provided at hourly intervals between London Victoria and Brighton, calling at the stations specified in Paragraph 1.1.

Additional Services and Variations

Towards Brighton

- 2.2 Between the Early and Late Service as specified in Paragraph 2.1, services from London Victoria may omit to call at Clapham Junction.

Towards London Victoria

- 2.3 There are no additions or variations to the services from Brighton to London Victoria as specified in Paragraph 2.1.

3. Service Pattern – Saturdays

Core Service Specification

- 3.1 Between and including the Early and Late Services, one service per hour shall be provided at hourly intervals between London Victoria and Brighton, calling at the stations specified in Paragraph 1.1.

Additional Services and Variations

Towards Brighton

- 3.2 Between and including the Early and Late Service as specified in Paragraph 3.1, services from London Victoria may omit to call at Clapham Junction.

Towards London Victoria

- 3.3 There are no additions or variations to the services from Brighton to London Victoria as specified in Paragraph 3.1.

4. Service Pattern – Sundays***Core Service Specification***

- 4.1 There is no core Semi-Fast service specification between London Victoria and Brighton (services are provided in Route B3 London Victoria to Brighton Stopping services).

5. Limited Stops

There are no Limited Stops on this route

6. Early and Late Services

Early Service arrives at destination no later than:			
Route	Monday - Friday	Saturday	Sunday
London Victoria to Brighton	1000	0900	N/A
Brighton to London Victoria	1030	0830	N/A

Late Service departs no earlier than:			
Route	Monday - Friday	Saturday	Sunday
London Victoria to Brighton	1545	1945	N/A
Brighton to London Victoria	1515	1815	N/A

7. Maximum Journey Times

Route	Monday - Friday	Saturday	Sunday
London Victoria to Brighton	1 hour 5 minutes	1 hour 5 minutes	N/A
Brighton to London Victoria	1 hour 3 minutes	1 hour 3 minutes	N/A

5.2 Headways

5.2.1 Headway Values

- All times are in minutes. All routes are shown.
- Where track circuit block (TCB) signalling applies, the standard headways for each route are shown, together with any exceptions.
- "AB" indicates locations where absolute block signalling applies: here the headway is to be calculated from the transit time of the first of each pair of trains running between the consecutive block posts being considered. To the transit time shall be added 2 minutes to allow for signallers' actions. Exceptions are shown as AB (Absolute Block) and appear together with the actual headway value to be used, which includes the allowance for signallers' actions. Where there is an intermediate block signal, the absolute block section concerned shall be between this signal and the next block post in advance.
- Single lines and other forms of signalling are shown, together with any values applicable, where they occur.
- Where headways are shown as being "fast" or "slow" these descriptions refer to the service that the path is following i.e. Fast is a non stopping service and Slow is a stopping service. The headway value does not refer to running lines. The "slow" headway should be applied to a service following a preceding service which stops at either a station or any other location for operational reasons. The "fast" headway should be applied to a service following a preceding service which does not stop at that location. Immediately the preceding service stops at any location for any reason, the following service headway should be amended to the "slow" value. If in doubt apply the use of the "slow" headway.

SUSSEX SIDE

SO 500 LONDON VICTORIA TO BRIGHTON

LOCATION	UP	DOWN	NOTES
London Victoria – Stoats Nest Junction	2 – Fast 2 – Slow	2 – Fast 3 – Slow	
Stoats Nest Junction – Brighton	2 – Fast 4 – Slow	2 – Fast 4 – Slow	

SO 500A SELHURST JUNCTION TO GLOUCESTER ROAD JUNCTION

LOCATION	UP	DOWN	NOTES
Selhurst Junction – Gloucester Road Junction	3	3	

SO 500B COPYHOLD JUNCTION TO ARDINGLY

LOCATION	UP	DOWN	NOTES
Copyhold Junction – Ardingly			One train working

SO 500C PRESTON PARK TO HOVE

LOCATION	UP	DOWN	NOTES
Preston Park – Hove	3 – Fast 4 – Slow	3 – Fast 4 – Slow	

SO 510 LONDON BRIDGE TO EPSOM DOWNS

LOCATION	UP	DOWN	NOTES
London Bridge – Gloucester Road Junction	2 – Fast 3 – Slow	2 – Fast 3 – Slow	
Gloucester Road Junction – West Croydon	3	3	2 minutes applies if using a different platform at West Croydon
West Croydon – Sutton	2½ – Fast 4½ – Slow	2½ – Fast 4½ – Slow	
Sutton – Epsom Downs			One train working

SO 510A SYDENHAM TO CRYSTAL PALACE

LOCATION	UP	DOWN	NOTES
Sydenham – Crystal Palace	3	3	

SO 510B NORWOOD JUNCTION TO WINDMILL BRIDGE JUNCTION

LOCATION	UP	DOWN	NOTES
Norwood Junction – Windmill Bridge Junction	2 – Fast 3 – Slow	2 – Fast 3 – Slow	

APPENDIX O.

TRACK ACCESS CONTRACT (PASSENGER SERVICES)

Dated

09 February 2006

Between

NETWORK RAIL INFRASTRUCTURE LIMITED

and

First Capital Connect Limited^{2nd}

Amended by:

- (i) Schedule 12 (with effect from 1 April 2006)
- (ii) First Supplemental Agreement dated 8 June 2006
- (iii) Second Supplemental Agreement dated 8 November 2006 approved 13 November 2006
- (iv) Third Supplemental Agreement dated 6 December 2006 approved 8 December 2006
- (v) Fourth Supplemental Agreement dated 18 December 2006 approved 20 December 2006
- (vi) Sixth Supplemental Agreement dated 20 December 2006 approved under General Approval 2006
- (vii) Ninth Supplemental Agreement dated 03 April 2007 approved under General Approval 2006
- (viii) Fifth Supplemental Agreement dated 18 January 2007 approved 18 January 2007
- (ix) Seventh Supplemental Agreement dated 03 April 2007 approved 02 May 2007
- (x) Eighth Supplemental Agreement dated 17 May 2007 approved 18 May 2007
- (xi) Tenth Supplemental Agreement dated 11 July 2008 approved under General Approval 2007
- (xii) Eleventh Supplemental Agreement dated 22 November 2007 approved 26 November 2007
- (xiii) Twelfth Supplemental Agreement dated 22 November 2007 approved 26 November 2007

- (xiv) Fourteenth Supplemental Agreement dated 7 December 2007 approved under General Approval 2007
- (xv) Sixteenth Supplemental Agreement dated 7 December 2007 approved under General Approval 2007
- (xvi) Fifteenth Supplemental Agreement dated 18 December 2007 approved under General Approval 2007
- (xvii) Eighteenth Supplemental Agreement dated 15 May 2008 approved under General Approval 2006
- (xviii) Thirteenth Supplemental Agreement dated 15 May 2008 approved 16 May 2008
- (xix) Nineteenth Supplemental Agreement dated 16 June 2008 approved under General Approval 2008
- (xx) Twentieth Supplemental Agreement dated 11 July 2008 approved under General Approval 2008
- (xxi) Seventeenth Supplemental Agreement dated 06 August 2008 approved 07 August 2008
- (xxii) Twenty First Supplemental Agreement dated 09 October 2008 approved 10 October 2008
- (xxiii) Twenty Third Supplemental Agreement dated 23 October 2008 approved 24 October 2008
- (xxiv) Twenty Fifth Supplemental Agreement dated 28 November 2008 approved under General Approval 2008
- (xxv) Twenty Second Supplemental Agreement dated 9 December 2009 approved 11 December 2008
- (xxvi) Twenty Ninth Supplemental dated 9 December 2008 approved under General Approval 2008
- (xxvii) Twenty Sixth Supplemental Agreement dated 19 March 2009 approved 20 March 2009
- (xxviii) Twenty Fourth Supplemental Agreement dated 27 March 2009 approved 31 March 2009
- (xxix) Twenty Seventh Supplemental Agreement dated 24 March 2009 approved 25 March 2009
- (xxx) Twenty Eighth Supplemental Agreement dated 27 March 2009 under review implementation notice 18 March 2009
- (xxxi) Thirtieth Supplemental Agreement dated 27 March 2009 approved 31 March 2009
- (xxxii) Thirty First Supplemental Agreement dated 12 May 2009 approved 15 May 2009
- (xxxiii) Thirty Second Supplemental Agreement dated 27 July 2009 approved 27 July 2009
- (xxxiv) Thirty Fourth Supplemental Agreement dated 19 November 2009 approved 25 November 2009
- (xxxv) Thirty Third Supplemental Agreement dated 2 December 2009 approved 8 December 2009

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

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

- (a) any step which has a reasonable prospect of success is taken by any person with a view to its administration under Part II of the Insolvency Act 1986;
- (b) it stops or suspends or threatens to stop or suspend payment of all or a material part of its debts, or is unable to pay its debts, or is deemed unable to pay its debts under section 123(1) or (2) of the Insolvency Act 1986, except that in the interpretation of this paragraph:
 - (i) section 123(1)(a) of the Insolvency Act 1986 shall have effect as if for “£750” there were substituted “£100,000” or such higher figure as the parties may agree in writing from time to time; and
 - (ii) it shall not be deemed to be unable to pay its debts for the purposes of this paragraph if any such demand as is mentioned in section 123(1)(a) of the Insolvency Act 1986 is satisfied before the expiry of 21 days from such demand;
- (c) its directors make any proposal under section 1 of the Insolvency Act 1986, or it makes any agreement for the deferral, rescheduling or other readjustment (or makes a general assignment or an arrangement or composition with or for the benefit of the relevant creditors) of all or a material part of its debts, or a moratorium is agreed or declared in respect of or affecting all or a material part of its debts;
- (d) any step is taken to enforce security over or a distress, execution or other similar process is levied or sued out against the whole or a substantial part of its assets or undertaking, including the appointment of a receiver, administrative receiver, manager or similar person to enforce that security;
- (e) any step is taken by any person with a view to its winding up or any person presents a winding-up petition which is not dismissed within 14 days, or it ceases or threatens to cease to carry on all or a material part of its business, except for the purpose of and followed by a reconstruction, amalgamation, reorganisation, merger or consolidation on terms approved by the other party before that step is taken (which approval shall not be unreasonably withheld or delayed); or
- (f) any event occurs which, under the law of any relevant jurisdiction, has an analogous or equivalent effect to any of the events listed above,

unless:

- (i) in any case, a railway administration order (or application for such order) has been made or such order (or application) is made within 14 days after the occurrence of such step, event, proposal or action (as the case may be) in relation to the party in question under section 60, 61 or 62 of the Act and for so long as any such order (or application) remains in force or pending; or

- (ii) in the case of paragraphs (a), (d) and (e), the relevant petition, proceeding or other step is being actively contested in good faith by that party with timely recourse to all appropriate measures and procedures;

"Liability Cap" has the meaning ascribed to it in paragraph 1 of Schedule 9;

Sch. 12

"Longstop Date" means 10 June 2006;

"Network" has the meaning ascribed to it in Part A of the Network Code;

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

"Network Rail Event of Default" has the meaning ascribed to it in paragraph 1.3 of Schedule 6;

"Office of Rail Regulation" has the meaning ascribed to it under section 15 of the Railways and Transport Safety Act 2003, and references to "ORR" shall be construed as references to the Office of Rail Regulation;

Sch. 12

"Performance Order" has the meaning ascribed to it in Clause 13.4.2;

"Previous Access Agreements" means the track access agreements dated 02 May 2004 and 31 March 2004 between Network Rail Infrastructure Limited and Thameslink Rail Limited and West Anglia Great Northern Railway Limited respectively;

"Railway Code Systems" means necessary systems within the meaning of the Systems Code;

"railway facility" has the meaning ascribed to it in section 83 of the Act;

"relevant ADRR Panel" has the meaning ascribed to it in Part A of the Network Code;

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

"Relevant Force Majeure Event" has the meaning ascribed to it in Clause 17.1;

"Relevant Losses" means, in relation to:

- (a) a breach of this contract;
- (b) in the case of Clause 10, any of the matters specified in Clause 10.1(a), (b) or (c) or Clause 10.2(a), (b) or (c) (each a "breach" for the purpose of this definition); or
- (c) in the case of Schedule 8, the matter specified in paragraph 18 of Schedule 8 (a "breach" for the purpose of this definition only),

all costs, losses (including loss of profit and loss of revenue), expenses, payments, damages, liabilities, interest and the amounts by which rights or entitlements to amounts have been reduced, in each case incurred or occasioned as a result of or by such breach;^{Sch. 12}

“Relevant Obligation” has the meaning ascribed to it in Clause 17;

“Routes” means that part of the Network specified in Schedule 2;

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

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

“Services” means the railway passenger services specified in Schedule 5;

“Specified Equipment” means, in relation to each of the Routes, the railway vehicles which the Train Operator is entitled to use in the provision of Services on that Route as specified in Schedule 5;

“SPP Threshold”^{Sch. 12} has the meaning ascribed to it in paragraph 18 of Schedule 8;

“SRA” means the Strategic Rail Authority;

“Stabling” means the parking or laying up of the Specified Equipment or such other railway vehicles as the Train Operator is permitted by this contract to use on the Network, such parking or laying up being necessary or reasonably required for giving full effect to the movements of Specified Equipment required for the provision of the Services;

“Suspension Notice” means a notice in writing served by the relevant party on the other party under paragraph 2 of Schedule 6;

“Systems Code” means the Code of Practice relating to the Management and Development of Railway Information Systems as from time to time approved by ORR under Network Rail’s network licence;

“Termination Notice” means a notice in writing served by the relevant party on the other party under paragraph 3 of Schedule 6;

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

“Track Charges” means the charges payable by or on behalf of the Train Operator to Network Rail, as set out in or calculated under Part 2 of Schedule 7;

“Train Consist Data” means information as to the number(s) and type(s) of railway vehicle comprised in a train movement;

“Train Operator Event of Default” has the meaning ascribed to it in paragraph 1.1 of Schedule 6;

“Train Slot” has the meaning ascribed to it in Part D of the Network Code;

“Value Added Tax” means value added tax as provided for in the Value Added Tax Act 1994, and any tax similar or equivalent to value added tax or any turnover tax replacing or introduced in addition to them, and “VAT” shall be construed accordingly;

“Working Day” has the meaning ascribed to it in Part D of the Network Code; and

“Working Timetable” has the meaning ascribed to it in Part A of the Network Code.

1.2 Interpretation

In this contract, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) any one gender includes the other;
- (c) all headings are for convenience of reference only and shall not be used in the construction of this contract;
- (d) reference to an item of primary or secondary legislation is to that item as amended or replaced from time to time;
- (e) reference to a contract, instrument or other document is to that contract, instrument or other document as amended, novated, supplemented or replaced from time to time;
- (f) reference to a party is to a party to this contract, its successors and permitted assigns;
- (g) reference to a recital, Clause or Schedule is to a recital, clause or schedule of or to this contract; reference in a schedule to a Part of or an Appendix to a schedule is to a part of or an appendix to the schedule in which the reference appears; reference in a Part of a Schedule to a paragraph is to a paragraph of that part; reference to a Part of an appendix is to a part of the appendix in which the reference appears; and reference in a schedule to a Table is a reference to the table included in or annexed to that schedule;
- (h) where a word or expression is defined, cognate words and expressions shall be construed accordingly;
- (i) references to the word “person” or “persons” or to words importing persons include individuals, firms, corporations, government agencies, committees, departments, authorities and other bodies incorporated or unincorporated, whether having separate legal personality or not;
- (j) “otherwise” and words following “other” shall not be limited by any foregoing words where a wider construction is possible;
- (k) the words “including” and “in particular” shall be construed as being by way of illustration or emphasis and shall not limit or prejudice the generality of any foregoing words;
- (l) words and expressions defined in the Railways Act 1993, the Railways (Safety Case) Regulations 2000 and Network Rail’s network licence shall, unless otherwise defined in this contract, have the same meanings in this contract;

- (m) any reference to the term "possession", either by itself or as part of any composite definition, shall be construed as a reference to a Restriction of Use as defined in Schedule 4;
- (n) words and expressions defined in the Network Code shall have the same meanings in this contract;
- (o) if there is any conflict of interpretation between this contract and the Network Code, the Network Code shall prevail; and
- (p) references to the Office of Rail Regulation or ORR shall be construed as references to the "Regulator".

1.3 Indemnities

Indemnities provided for in this contract are continuing indemnities in respect of the Relevant Losses to which they apply, and hold the indemnified party harmless on an after tax basis.

2 NETWORK CODE

2.1 Incorporation

The Network Code is incorporated in and forms part of this contract.

2.2 Modifications to the Network Code

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

2.3 Compliance by other operators

Except where ORR has directed otherwise in the exercise of its powers under the Act or the Network Code, and except in relation to London Underground Limited and Heathrow Express Operating Company Limited to the extent that such persons are not party to the Network Code, Network Rail shall ensure that all operators of trains having permission to use any track comprised in the Network agree to comply with the Network Code.

3 CONDITIONS PRECEDENT AND DURATION

3.1 Effective date

The provisions of this contract, other than Clause 5, take effect from the later of:

- (a) the signature of this contract; and
- (b) whichever is the earlier of:
 - (i) the expiry of the Previous Access Agreements; or
 - (ii) the termination of the Previous Access Agreements.

3.2 Conditions precedent to Clause 5

Clause 5 shall take effect when the following conditions precedent have been satisfied in full:

- (a) the Train Operator is authorised by a licence granted under section 8 of the Act to be the operator of trains for the provision of the Services or is exempt from the requirement to be so authorised under section 7 of the Act;
- (b) Network Rail is authorised by a licence granted under section 8 of the Act to be the operator of that part of the Network comprising the Routes or is exempt from the requirement to be so authorised under section 7 of the Act;
- (c) each of the Collateral Agreements is executed and delivered by all the parties to each such agreement and is unconditional in all respects (save only for the fulfilment of any condition relating to this contract becoming unconditional);
- (d) the Safety Case of each of the parties is accepted under the Railways (Safety Case) Regulations 2000; and
- (e) the provisions of this contract, other than Clause 5, have taken effect in accordance with Clause 3.1.

3.3 Obligations to satisfy conditions precedent to Clause 5

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

- (a) in the case of Network Rail, the conditions precedent contained in Clause 3.2(b) and, insofar as within its control, Clauses 3.2(c) and 3.2(d); and
- (b) in the case of the Train Operator, the conditions precedent contained in Clause 3.2(a) and, insofar as within its control, Clauses 3.2(c) and 3.2(d).

3.4 Consequences of non-fulfilment of conditions precedent to Clause 5

If the conditions precedent set out in Clause 3.2 have not been satisfied in full on or before the Longstop Date:

- (a) this contract shall lapse save for the obligations of confidence contained in Clause 14 which shall continue in force; and
- (b) neither party shall have any liability to the other except in respect of any breach of its obligations under this contract.

3.5 Expiry

This contract shall continue in force until the earliest of:

- (a) lapse under Clause 3.4;
- (b) termination under Schedule 6; and
- (c) 0159 hours on the Expiry Date.

3.6 Suspension and termination

Schedule 6 shall have effect.

4 STANDARD OF PERFORMANCE

4.1 General standard

Without prejudice to all other obligations of the parties under this contract, each party shall, in its dealings with the other for the purpose of, and in the course of performance of its obligations under, this contract, act with due efficiency and economy and in a timely manner with that degree of skill, diligence, prudence and foresight which should be exercised by a skilled and experienced:

- (a) network owner and operator (in the case of Network Rail); and
- (b) train operator (in the case of the Train Operator).

4.2 Good faith

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

5 PERMISSION TO USE

5.1 Permission to use the Routes

Network Rail grants the Train Operator permission to use the Routes.

5.2 Meaning

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

- (a) to use the track comprised in the Routes for the provision of the Services using the Specified Equipment;
- (b) to use the track comprised in the Network in order to implement any plan established under Part H of the Network Code;
- (c) to make Ancillary Movements;
- (d) to Stable, which shall be treated, for the purposes of Part D of the Network Code, as the use of a Train Slot;
- (e) for the Train Operator and its associates to enter upon that part of the Network comprising the Routes, with or without vehicles; and
- (f) for the Train Operator and its associates to bring things onto that part of the Network comprising the Routes and keep them there,

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

- (i) the Network Code;
- (ii) the Applicable Rules of the Route; and

- (iii) the Applicable Rules of the Plan.

5.3 Permission under Clauses 5.2(e) and 5.2(f)

In relation to the permissions specified in Clauses 5.2(e) and 5.2(f):

- (a) the Train Operator shall, and shall procure that its associates shall, wherever reasonably practicable, first obtain the consent of Network Rail, which consent shall not be unreasonably withheld or delayed;
- (b) the Train Operator shall remove any vehicle or other thing so brought onto any part of the Network when reasonably directed to do so by Network Rail; and
- (c) whilst exercising any rights conferred by Clauses 5.2(e) and 5.2(f), the Train Operator shall, and shall procure that its associates shall, comply with such reasonable restrictions or instructions as Network Rail shall specify.

5.4 Changes to Applicable Rules of the Route and Applicable Rules of the Plan

Changes to the Applicable Rules of the Route and the Applicable Rules of the Plan are subject to regulatory protection (including appeals) in accordance with Part D of the Network Code.

5.5 Rules of the Route, Rules of the Plan and Restrictions of Use

Schedule 4 shall have effect.

5.6 The Services and the Specified Equipment

Schedule 5 shall have effect.

5.7 Performance

Schedule 8 shall have effect.

5.8 Stabling

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

6 OPERATION AND MAINTENANCE OF TRAINS AND NETWORK

6.1 General

Without prejudice to the other provisions of this contract:

- (a) the Train Operator shall maintain and operate the Specified Equipment used on the Network in accordance with Clause 4.1 with a view to permitting the provision of the Services on the Routes in accordance with the Working Timetable and the making of Ancillary Movements; and

- (b) Network Rail shall maintain and operate the Network in accordance with Clause 4.1 with a view to permitting the provision of the Services on the Routes using the Specified Equipment in accordance with the Working Timetable and the making of Ancillary Movements.

6.2 Trespass, vandalism and animals

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

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

in each case as may affect either the provision of the Services or the Routes.

6.3 Safety

In relation to Safety Obligations:

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

6.4 Use of Railway Code Systems

6.4.1 General

The parties shall:

- (a) use the Railway Code Systems in their dealings with each other in connection with matters provided for in this contract; and
- (b) comply with the Systems Code.

6.4.2 Provision of Train Consist Data

Without prejudice to Clause 6.4.1, the Train Operator shall:

- (a) provide to Network Rail such Train Consist Data as shall be necessary to enable Network Rail to calculate the amount of Track Charges; and
- (b) procure that such data is true and accurate in all respects.

6.5 Relevant Schedule 7 modifications^{30th}

Schedule 13 shall have effect.

7 TRACK CHARGES

Schedule 7 shall have effect.

8 LIABILITY

8.1 Performance Orders in relation to breach

In relation to any breach of this contract:

- (a) the Innocent Party shall be entitled to apply under Clause 13 for a Performance Order against the party in breach; and
- (b) if a Performance Order is made, the party against whom it has been made shall comply with it.

8.2 Compensation in relation to breach

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

9 [INTENTIONALLY NOT USED.]^{Sch. 12}

10 LIABILITY - OTHER MATTERS

10.1 Train Operator indemnity

The Train Operator shall indemnify Network Rail against all Relevant Losses resulting from:

- (a) a failure by the Train Operator to comply with its Safety Obligations;
- (b) any Environmental Damage arising directly from the acts or omissions of the Train Operator or the proper taking by Network Rail under Condition E2 of the Network Code of any steps to prevent, mitigate or remedy an Environmental Condition which exists as a direct result of the acts or omissions of the Train Operator; and
- (c) any damage to the Network arising directly from the Train Operator's negligence.

10.2 Network Rail indemnity

Network Rail shall indemnify the Train Operator against all Relevant Losses resulting from:

- (a) a failure by Network Rail to comply with its Safety Obligations;
- (b) any Environmental Damage to the Network arising directly from any acts or omissions of the British Railways Board prior to 1 April 1994 and any Environmental Damage arising directly from the acts or omissions of Network Rail; and
- (c) any damage to the Specified Equipment or other vehicles or things brought onto the Network in accordance with the permission to use granted by this contract arising directly from Network Rail's negligence.

11 RESTRICTIONS ON CLAIMS

11.1 Notification and mitigation

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

- (a) shall notify the other party of the relevant circumstances giving rise to that claim as soon as reasonably practicable after first becoming aware of those circumstances (and in any event within 365 days of first becoming so aware); and
- (b) subject to Clause 11.1(c), shall take all reasonable steps to prevent, mitigate and restrict the circumstances giving rise to that claim and any Relevant Losses connected with that claim; but
- (c) shall not be required to exercise any specific remedy available to it under this contract.

11.2 Restrictions on claims by Network Rail

Any claim by Network Rail against the Train Operator for indemnity for Relevant Losses:

- (a) shall exclude payments to any person under or in accordance with the provisions of any Access Agreement other than any such payments which are for obligations to compensate for damage to property, and so that any claim for indemnity under this contract for such payments for damage to property, in relation to any incident, shall be limited to:
 - (i) the maximum amount for which the Train Operator would be liable for such damage in accordance with the Claims Allocation and Handling Agreement; less
 - (ii) any other compensation which the Train Operator has an obligation to pay for such damage;
- (b) shall exclude loss of revenue in respect of permission to use any part of the Network under or in accordance with any Access Agreement with any person; and
- (c) shall:
 - (i) include Relevant Losses only to the extent that these constitute amounts which Network Rail would not have incurred as network owner and operator but for the relevant breach; and
 - (ii) give credit for any savings to Network Rail which result or are likely to result from the incurring of such amounts.

11.3 Restrictions on claims by Train Operator

Any claim by the Train Operator against Network Rail for indemnity for Relevant Losses:

- (a) shall exclude any Relevant Losses to the extent that they result from delays to or cancellations of trains (other than delays or cancellations in circumstances where the SPP Threshold has been exceeded as provided for in paragraph 18 of Schedule 8^{Sch. 12}); and
- (b) shall:
 - (i) include Relevant Losses only to the extent that these constitute amounts which the Train Operator would not have incurred as train operator but for the relevant breach; and
 - (ii) give credit for any savings to the Train Operator which result or are likely to result from the incurring of such amounts.

11.4 Restriction on claims by both parties

Any claim for indemnity for Relevant Losses shall exclude Relevant Losses which:

- (a) do not arise naturally from the breach; and
 - (b) were not, or may not reasonably be supposed to have been, within the contemplation of the parties:
 - (i) at the time of the making of this contract; or
 - (ii) where the breach relates to a modification or amendment to this contract, at the time of the making of such modification or amendment,
- as the probable result of the breach.

11.5 Limitation on liability

Schedule 9 shall have effect so as to limit the liability of the parties to one another under the indemnities in Clauses 8.2 and 10, but:

- (a) does not limit any liability arising under Schedules 4, 5, 7 or 8 (other than under paragraph 18 of Schedule 8^{Sch. 12});
- (b) in relation to a failure to perform an obligation under the Network Code, only to the extent (including as to time and conditions) that the Network Code so provides; and
- (c) subject to Clause 18.3.3.

11.6 Claims Allocation and Handling Agreement

11.6.1 General

Clauses 16 and 17 of the Claims Allocation and Handling Agreement provide that claims between parties to it are limited to specified amounts unless the parties expressly contract otherwise.

11.6.2 Restriction of application

Except as otherwise expressly provided in this contract, Clauses 16 and 17 of the Claims Allocation and Handling Agreement shall not apply as between the parties to this contract if and to the extent that the giving of any right or remedy as provided for under this contract would be prevented or restricted by Clauses 16 and 17 of the Claims Allocation and Handling Agreement.

11.6.3 Liability for small claims

Nothing in this contract shall affect the application as between the parties of the provisions of the Claims Allocation and Handling Agreement which relate to liability for small claims equal to or below the Threshold (as defined in that agreement).

12 GOVERNING LAW

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

13 DISPUTE RESOLUTION

13.1 Arbitration

A Relevant Dispute shall be referred to arbitration in England in accordance with the Access Dispute Resolution Rules in force at the time of the reference (the "ADRR"), as modified by this Clause 13, unless:

- (a) any Part of the Network Code provides for an alternative dispute resolution procedure for the Relevant Dispute, in which case such alternative procedure shall apply;
- (b) any Part of Schedules 4, 5, 7 or 8 provides for an alternative dispute resolution procedure for the Relevant Dispute, in which case such alternative procedure shall apply;
- (c) Clause 13.2 applies;
- (d) the Relevant Dispute is referred to the relevant ADRR Panel or the High Court of England and Wales under Clause 13.3;
- (e) the parties otherwise agree in writing including an agreement to refer the Relevant Dispute for expert determination under Part D of the ADRR; or
- (f) the parties agree in writing to refer the Relevant Dispute for mediation under Part B of the ADRR and the Relevant Dispute is finally settled by such mediation.

13.2 Unpaid sums

If either party fails to pay:

- (a) any invoice issued to it under this contract in respect of Track Charges in accordance with the provisions of Schedule 7; or
- (b) any sum which has fallen due in accordance with the provisions of Schedules 4, 5 or 8 or the Network Code,

then:

- (i) the amount invoiced or sum due, as referred to in Clause 13.2(a) or (b), shall immediately constitute a debt due and owing from the party who has failed to pay the invoice or sum due to the other party (and to any assignee of a party's right to payment in respect of any Track Charges or other sum due);
- (ii) such debt shall be recoverable by any means available under the laws of England and Wales; and
- (iii) the dispute resolution procedures in Clauses 13.1 and 13.3 to 13.7 shall not apply to proceedings commenced under this Clause 13.2.

13.3 Request to Change Forum

13.3.1 Request to Change Forum

Within 5 days of service of the notice of arbitration, either party:

- (a) may notify the other party and ORR in writing that it wishes to refer the Relevant Dispute to the relevant ADRR Panel or to the High Court of England and Wales instead of arbitration, as the case may be (a "Request to Change Forum"); and
- (b) shall, in such Request to Change Forum, specify its preferred forum and the reasons for that preference.

13.3.2 Response to Request to Change Forum

Within 7 days of receipt of a notice under Clause 13.3.1, the receiving party shall notify the other party and ORR in writing that:

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

and every response under Clause 13.3.2(b) shall specify the preferred forum and the reasons for that preference.

13.3.3 Decision by the Office of Rail Regulation

If a Request to Change Forum is not agreed between the parties or the other party fails timeously to give a valid notice of objection under Clause 13.3.2(b), the Relevant Dispute shall be referred, following such consultation with the parties as ORR may determine is appropriate, in accordance with the final decision of ORR in its absolute discretion, namely whether the Relevant Dispute:

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

13.4 Performance Orders

13.4.1 Power to order provisional relief

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

13.4.2 Performance Orders

A Performance Order:

- (a) is an order made under Clause 13.4.3(b), relating to a Relevant Dispute, whether by way of interim or final relief; and
- (b) may be applied for by Network Rail or the Train Operator in the circumstances set out in Clauses 8.1 and 9, subject to the qualifications in Clause 17.8,

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

13.4.3 Duties of arbitral tribunal in relation to Performance Orders

Without prejudice to any additional remedies that may be ordered by the arbitral tribunal under Clause 13.5, where a party has applied for a Performance Order:

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

13.5 Remedies

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

- (a) the powers specified in sections 48(3) to (5) of the Arbitration Act 1996;
- (b) the powers specified in the ADRR;
- (c) the power to make Performance Orders; and
- (d) the power to order within the same reference to arbitration any relief specified in Clause 13.5 (a), (b) and (c) consequent upon, or for the breach of, any interim or final Performance Order previously made.

13.6 Exclusion of applications on preliminary points of law

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

13.7 Relevant ADRR Panel

13.7.1 Referrals to the relevant ADRR Panel

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

13.7.2 Appeal to arbitration

If either party is aggrieved with any determination of the relevant ADRR Panel in relation to a Relevant Dispute referred to it under this Clause 13, such party may refer the Relevant Dispute for resolution by arbitration in accordance with this Clause 13 (excluding Clause 13.3), and shall notify in writing the other party of its intention. Upon such reference the arbitral tribunal is not bound by the findings of the relevant ADRR Panel.

14 CONFIDENTIALITY

14.1 Confidential Information

14.1.1 General obligation

Except as permitted by Clause 14.2, all Confidential Information shall be held confidential during and after the continuance of this contract and shall not be divulged in any way to any third party without the prior written approval of the other party.

14.1.2 Network Rail - Affiliates

Except as permitted by Clause 14.2, Network Rail shall procure that its Affiliates and its and their respective officers, employees and agents shall keep confidential and not disclose to any person any Confidential Information.

14.1.3 Train Operator - Affiliates

Except as permitted by Clause 14.2, the Train Operator shall procure that its Affiliates and its and their respective officers, employees and agents shall keep confidential and not disclose to any person any Confidential Information.

14.2 Entitlement to divulge

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

- (a) to ORR;
- (b) to the Secretary of State;
- (c) to the Health and Safety Executive;
- (d) to any Affiliate of either party;
- (e) to any officer or employee of the party in question or any person engaged in the provision of goods or services to or for him if disclosure is necessary or reasonably required to enable the party in question to perform its obligations under this contract, upon obtaining an undertaking of strict confidentiality from such officer, employee or person;
- (f) to any professional advisers or consultants of such party engaged by or on behalf of such party and acting in that capacity, upon obtaining an undertaking of strict confidentiality from such advisers or consultants;
- (g) to any insurer or insurance broker from whom such party is seeking insurance or in connection with the making of any claim under any policy of insurance upon obtaining an undertaking of strict confidentiality from the insurer or insurance broker;
- (h) to any lender, security trustee, bank or other institution from whom such party is seeking or obtaining finance or credit support for such finance, or any advisers to any such entity, or any rating agency from whom such party is seeking a rating in connection with such finance or credit support, upon obtaining an undertaking of strict confidentiality from the entity, advisers or rating agency in question;
- (i) to the extent required by the Act, any licence under section 8 of the Act held by the party in question, any other applicable law, the rules of any recognised stock exchange or regulatory body or any written request of any taxation authority;
- (j) to the extent that it has become available to the public other than as a result of a breach of confidence; and
- (k) under the order of any court or tribunal of competent jurisdiction (including the relevant ADRR Panel).

14.3 Return of Confidential Information

Each of Network Rail and the Train Operator shall promptly return to the other party any Confidential Information requested by the other party if such request:

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

14.4 Retention or destruction of Confidential Information

If Network Rail or the Train Operator, as the case may be, has not received a request to return any Confidential Information to the other party under and within the time limits specified in Clause 14.3, it may destroy or retain such Confidential Information.

14.5 Ownership of Confidential Information

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

14.6 Network Code and Schedule 7

Nothing in this Clause 14 restricts the right of Network Rail to disclose information to which this Clause 14 applies to the extent that it is permitted or required so to do under the Network Code or Schedule 7.

15 ASSIGNMENT AND NOVATION

15.1 Assignment

Neither party may assign, transfer, novate (including a novation under Clause 15.2) or create any encumbrance or other security interest over the whole or any part of its rights and obligations under this contract except to the extent approved by ORR following consultation with the other party, and subject to the conditions (if any) of ORR's approval.

15.2 Novation

Network Rail (and any assignee of all or part of Network Rail's rights under this contract) shall:

- (a) agree to the novation of the rights and obligations of the Train Operator under this contract in favour of another person (including the Secretary of State or a person nominated by it) in any circumstances where the Secretary of State requests Network Rail to participate in such a novation in the course of exercising its powers under section 30 of the Act; and
- (b) execute such contracts and do such things as the Secretary of State may reasonably request to give effect to the novation.