

DATE:

TRACK ACCESS AGREEMENT

[PARTIES NAMED IN AGREEMENT]

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EXAMPLE ONLY

This Agreement is made the DATE

BETWEEN

- (1) **NORTHERN IRELAND RAILWAYS COMPANY LIMITED** having its registered office at Chamber of Commerce House, 22 Great Victoria Street, Belfast BT2 7LX ("NIR")
- (2) **NIR NETWORKS LIMITED** having its registered office at 22 Great Victoria Street, Belfast BT2 7LX (the "Infrastructure Manager" or "IM");
- (3) [the "Railway Undertaking" or "RU"]

WHEREAS

- (A) In Northern Ireland railway Infrastructure is owned by either the Northern Ireland Railways Company Limited (NIR) or the Northern Ireland Transport Holding Company (NITHC), both part of the Translink Group.
- (B) NIR Networks Limited (IM) is the entity responsible for establishing and maintaining the railway Infrastructure and for granting access to railway undertakings to such Infrastructure and the Minimum Access Package with support and co-operation from the Railway Holding Company as necessary or appropriate.
- (C) IM is willing (and able with the full support and co-operation of the Railway Holding Company) to grant the kind of Minimum Access Package and track access services and access to facilities envisaged by Schedule 1 of the First Railway Package Regulations to RU. Such access will be provided in a non-discriminatory way, and shall be subject to all reasonable conditions imposed on grounds of safety, regulation, licensing requirements being satisfied by RU in accordance with the Network Statement.

1 DEFINITIONS AND INTERPRETATION

- 1.1 Throughout this Agreement the following words and expressions have the meanings set out below.

Brexit means that during the Term of this Agreement pursuant to Article 50 of the Treaty of Lisbon the UK ceases to be a Member State of the European Union;

Change Notice means that notice provided for in Schedule 5;

Charges means:-

- (a) in respect of the use of the Network Routes, the Track Access Charge set out in Schedule 1 Part D of this Agreement; and
- (b) in respect access to services facilities or the use or consumption of other services outside the Minimum Access Package, those amounts to be invoiced separately to the RU.

Commencement Date means the date for commencement of the Services described in Schedule 1 Part C of this Agreement, or such other date as shall be agreed in writing between the Parties;

Confidential Information means all confidential information disclosed (whether in writing, orally or by any other means and whether directly or indirectly) by a Party (the "**Disclosing Party**") to the other Parties/Party (the "**Receiving Party**") whether before or after the date of this Agreement including, without limitation, information relating to the commercial aspects, negotiation, provisions and subject matter of this Agreement and the overall service supplied by any Party to [RU] or its customers or the Disclosing Party's operations, processes, plans or intentions, know-how, design rights, trade secrets or business affairs;

Dfi means the Department for Infrastructure, whose address is Clarence Court, Adelaide Street, Belfast, BT2 8BG and any successor to all or any of its functions;

Directive means Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area;

First Railway Package Regulations means The Railways Infrastructure (Access, Management and Licensing of Railway Undertakings) Regulations (Northern Ireland) 2016;

Force Majeure means, in relation to each Party, an event beyond the reasonable control of that Party involving an act of God, war, riot, act of terrorism, security alert, civil commotion, malicious damage, disease, pestilence, accident, fire, flood or storm which could not have been avoided by taking moderate precautions which, having regard to all matters known to it before the occurrence of the Force Majeure and all other relevant factors, it ought reasonably to have taken but did not take.

Good Industry Practice means those standards, practices, methods and procedures conforming to safety and legal requirements which are attained by exercising that degree of skill, diligence, prudence and foresight which would ordinarily be expected from a skilled and experienced operator engaged in the same type of undertaking under the same or similar circumstances;

Infrastructure means the track comprised in the Network but also sidings, running track points and junctions, and all relevant train control assets including signalling, track and structures within the Network.

Insurances means third party liability insurance covering liability for death and personal injury to any person and accidental loss of or damage to property caused by or arising directly as a result of the provision of the Services by RU for an amount not less than £100,000,000;

Laws means any law applicable in the Republic of Ireland, the law of the European Union (EU) and including without limitation common law, statutes, statutory instruments, any Directive, or any regulation of the EU, any bylaws, regulations, codes of practice, any amendments, modifications or replacements;

Minimum Access Package means the services stipulated at Schedule 2 (1) of the Railways Infrastructure (Access, Management and Licensing of Railway Undertakings) Regulations (Northern Ireland) 2016;

Network means the routes, tracks, and all related assets that form part of the Northern Ireland rail network as set out in Appendix 2 of the 2017/18 Network Statement;

Network Statement means the current Northern Ireland Railways Network Statement which sets out in detail the general rules, deadlines, procedures and criteria concerning charging and capacity allocation schemes and any other information as is required to enable RU to complete an application for infrastructure capacity;

Network Routes means the routes that form part of the Northern Ireland network set out in Schedule 1 Part A of this Agreement which includes but is not limited to the tracks, running track points and junctions, and train control including signalling, regulation, dispatching and the communication and the provision of information on train movement;

Operating Rules means the operating rules, technical regulations, policies and codes of conduct for compliance by RU as set out in Schedule 2 of this Agreement;

Party means each of the IM, RU and Railway Holding Company and "Parties" means all three of them;

Period means a financial period consisting of 4 or 5 weeks;

Regulator means the Office of Rail and Road or any replacement body appointed from time to time in accordance with the Directive to perform the functions set out in Article 56 of the Directive;

Rule Book means the document maintained by NIR which includes procedures and specific working instructions in relation to general safety responsibilities; signals; degraded working; level crossings; train working and station duties; shunting; mishaps; working by pilotman; possession management; on-track plant and machines; speeds, track and signalling work; train signalling regulations and signalling general instructions.

Services	means the services set out in Schedule 1 Part C of this Agreement;
Service Facilities	means the service facilities available on the network, including marshalling yards, train formation facilities, storage sidings, maintenance facilities and other technical facilities.
Specified Rolling Stock	means the rolling stock set out in Schedule 7 of this Agreement;
SRNI 2016/420	means the Railways Infrastructure (Access, Management and Licensing of Railway Undertakings) Regulations (Northern Ireland);
Stations	Locations on the network where passengers may embark and disembark trains;
Term	means the duration of this Agreement from the Commencement Date until the date referred to in Clause 2.1;
Track Access Charge	means the charge referred to in clause 3.2 and more definitively set out in Schedule 1 Part D of this Agreement;
Translink Group	means the Northern Ireland Transport Holding Company and all of its subsidiary companies including Citybus Limited, Flexibus Limited, NIR Networks Limited, Northern Ireland Railways Company Limited, NIR Operations Limited, Translink NI Limited, and Ulsterbus Limited.
Working Timetable	means the working timetable established by IM each calendar year in accordance with its capacity allocation process.

2 DURATION OF CONTRACT

2.1 This Agreement other than Clause 3, shall come into force on the Commencement Date and shall continue in full force and effect until *[date]* unless terminated earlier in accordance with its terms (the "**Term**").

2.2 In the event of Brexit:

- (a) if any Laws (which immediately prior to Brexit had legal effect within Northern Ireland) cease to have legal effect within Northern Ireland, whether by the repeal of SRNI2016/420 or otherwise; or
- (b) the Common Travel Area as provided for in Protocol 20 of the Treaty on the European Union and the Treaty on the Functioning of the EU, as originally introduced by the Treaty of Amsterdam, ceases to apply to the movement of persons between the territories of Northern Ireland and the Republic of Ireland by railway,

then, the Parties shall, within thirty (30) days of becoming aware of the events specified in Clauses 2.2(a) or 2.2(b) above, negotiate in good faith and acting reasonably to agree how to mitigate any adverse effects on either Party arising as a result of the circumstances specified in Clauses 2.2(a) or 2.2(b) and shall agree to make any necessary change to this Agreement in accordance with Clause 13 to implement such mitigations.

3 PERMISSIONS AND RIGHTS

3.1 NIR agrees that the IM may supply or grant the use of any of its relevant Infrastructure to any railway undertaking. NIR shall provide its full support and co-operation to IM in the discharge of its obligations.

3.2 IM hereby grants RU permission to use the Infrastructure subject to payment of the Track Access Charge.

3.3 The permission to use the Infrastructure under Clause 3.2 shall be construed to mean permission to use the track comprised in the Network Routes for the provision of the Services using the Specified Rolling Stock. It shall also extend to permission to access the service facilities and access to the point of service-supply set out in Schedule 1 Part B of this Agreement– such access subject to irrevocable commitment to pay the Charges and compliance with all applicable laws and the Operating Rules by RU.

- 3.4 IM will invoice and collect the Charges on behalf of and at the direction of the Railway Holding Company until such times as IM owns all relevant assets itself.
- 3.5 IM will procure for RU the facilities and services as set out in Schedule 1 Part E of this Agreement subject to reasonable remuneration to be determined and invoiced by IM to RU (which shall form part of the Charges).
- 3.6 If at any time, or for any reason, RU requires additional facilities and services to those set out in Schedule 1 Part E of this Agreement, IM shall endeavour to facilitate RU and the RU unequivocally agrees to pay such sums as IM directs.

4 ALLOCATION OF CAPACITY

- 4.1 IM shall allocate capacity on the Network in a fair and non-discriminatory manner in accordance with provisions of the Regulations and the Network Statement.

5 MUTUAL OBLIGATIONS

- 5.1 Each Party to this Agreement agrees and covenants and undertakes:-
- (a) to carry out all obligations duties and responsibilities under this Agreement with all reasonable skill, diligence, prudence and care and to act in a competent and efficient manner and in accordance with Good Industry Practice;
 - (b) to notify the other parties of all incidents as soon as such Party becomes aware of them and in particular where incidents have consequences for traffic control, traffic management and any part of the Infrastructure;
 - (c) to, at its own cost and expense effect, and maintain all necessary Insurances relevant to its activities;
 - (d) to attend such meetings with the other Parties or any other person or body approved by the other parties as may be notified from time to time;
 - (e) in exercising its respective rights and complying with its respective obligations under this Agreement (including when conducting any discussions or negotiations arising out of the application of any provisions of this Agreement or exercising any discretion under them), to at all times act in good faith;

- (f) to collaborate on the full safe and demonstrable application of the Rule Book, Notified National Technical Rules, and National Safety Rules as the same apply in Northern Ireland (together with any NIR or other authoritative rules and standards).

6 RU OBLIGATIONS

6.1 RU agrees and covenants and undertakes with IM:

- (a) to pay all of the Charges submitted by IM to RU under this Agreement (which payment shall be made promptly upon receipt of an invoice, and in any case no later than 30 days from the date of such invoice);
- (b) to provide sufficiently skilled and competent personnel to properly carry out the Services as specified at Schedule 1 Part C of this Agreement and to ensure that those personnel are properly and suitably trained and skilled throughout;
- (c) to ensure that all Specified Rolling Stock, equipment and materials are in good working order, suitable and fit for purpose (including all necessary and compliant registration with the national vehicle registration arrangements) and in sufficient condition to operate without causing damage or unnecessary wear and tear to the Infrastructure;
- (d) at all times to comply with any legal requirements brought to its attention by IM or reasonable requests made in writing by IM in relation to any aspect of RU's operations which affects or is likely to affect safety obligations or other legal requirements affecting the Translink Group. Should an event occur which causes disruption, RU shall abide strictly by IM's instructions. IM may make use insofar as necessary for the performance of its safety obligations, RU's operating resources. Fair payment shall be made in return for such use save where the resources used are for the predominant benefit of RU.
- (e) to ensure that the Services are operated in accordance with the Network Statement and all applicable laws and regulatory requirements applicable in Northern Ireland including the Transport Acts (NI) 1967 and 2011, the European Railway Safety Directive (2008/110/EC), the Railways Safety Act (Northern Ireland) 2002 and any relevant safety regulations (such as the as the Train Driving Licences and Certificates Regulations 2010) amended from time to time;

- (f) to inform IM immediately of any cancellation, amendment, suspension, revocation or replacement of its licence issued by DfI pursuant to the Regulations;
- (g) to comply with any relevant environmental legislation and reasonable requests from the IM flowing from such environmental legislation;
- (h) to ensure that rolling stock is approved and registered on the National Vehicle Register;
- (i) to ensure that at all times its train drivers hold a valid licence pursuant to the Train Driving Licences and Certificates Regulations 2010;
- (j) to ensure that no dangerous goods are brought onto the Network;
- (k) to desist and refrain from any activity in connection with assets or property owned by any Translink Group company which would have a negative effect on the availability of the Network or on the delivery by Northern Ireland Transport Holding Company or of any of its subsidiaries of any performance obligation under the service agreement dated 6 October 2015 (as between the then Department for Regional Development and the Northern Ireland Transport Holding Company) or by IM of any obligation under this Agreement; and,
- (l) to, at its own cost and expense, attend and prepare for such meetings with IM or any other person or body approved by IM as may be notified to RU from time to time as provided for in this Agreement.

7 IM OBLIGATIONS

7.1 IM agrees and covenants and undertakes with RU:

- (a) to provide RU with access to the Infrastructure in a timely, safe and professional manner;
- (b) that the Infrastructure will be in a sufficient condition to allow train operation without inflicting damage and/or unnecessary wear and tear to the RU's Specified Rolling Stock;

- (c) that the Network shall be in sufficient condition to allow traffic operation subject to notifications given regarding engineering possessions and other issues as agreed from time to time by the parties and as set out in the Network Statement;
- (d) to plan maintenance, repair, enhancement and renewals work with a view to minimising service disruption for the RU and the end-user and to facilitate this by committing to plan such works and disruptions as far as reasonable outside peak periods within the timetable and ideally on weekends and between the approximate hours of 00:20 and 05:30 on weekdays.
- (e) subject to provision of government funding, to develop the Network in line with reasonable adjustments to the timetable and improvements which require IM to conduct maintenance, repair, enhancements and renewals in accordance with plans set out in the IM Business Plan and which feed into the Translink Group Corporate Plan.

8 PAYMENT MECHANISMS

- 8.1 On submission of its request/application for Infrastructure capacity allocation, RU shall pay a 5% advance (Reservation Charge) on the relevant Track Access Charge and an administration fee of £750.
- 8.2 The Reservation Charge payable by RU under Clause 8.1 shall be paid via a bond in favour of IM that is guaranteed by a reputable bank acceptable to IM.
- 8.3 RU shall pay to IM the following (the "Charges"):-
 - (i) The Track Access Charge calculated at £0.006 per tonne-km attributable to any Period;
 - (ii) Any other sum or sums invoiced by IM to RU in respect any other services facilities and access to or supply of services outside the Minimum Access Package provided by IM, the Railway Holding Company or any other Translink Group company.
- 8.4 The Charges are exclusive of VAT.
- 8.5 Where any taxable supply for VAT purposes is made under or in connection with this Agreement by one Party to the other, the payer shall, in addition to any payment required for that supply, pay such VAT as is chargeable in respect of it.

- 8.6 IM shall invoice RU for Charges incurred on a monthly basis. Each invoice shall contain a statement of amount payable and such detail as shall be reasonably necessary or expedient to enable RU to understand, check and arrange prompt payment of the Charges. RU shall provide all necessary supporting information to IM for calculating the Charges at IM's request. If the relevant information is not provided, IM will be entitled to estimate the Charges and receive payment upon this basis.
- 8.7 All sums due or payable under this Agreement shall be paid promptly and in any case within 30 days of receipt of the invoice.
- 8.8 All payments made to IM under this Agreement shall be made entirely in pounds Sterling and shall be made by electronic funds transfer ("EFT") to the bank account of IM as notified to RU prior to the signing of this Agreement and as otherwise notified from time to time.

9 PERFORMANCE

- 9.1 Without prejudice to all other obligations of the parties under this Agreement, each Party shall, in its dealings with the others for the purpose of, and in the course of performance of its obligations under, this Agreement, 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) Infrastructure manager (in the case of IM);
 - (b) railway undertaking owner and/or operator (in the case of RU); and
 - (c) railway holding company (in the case of the Railway Holding Company) with expertise skills and a heritage of effective network ownership and management.
- 9.2 RU and IM shall comply with the Performance Regime (set out in Schedule 8) which seeks to minimise disruption and improve the performance of the Network in terms of aligned to those included in the Network Statement as updated from time to time.

10 OPERATING RULES: COMPLIANCE AND INSPECTION

- 10.1 RU shall comply with the Operating Rules (as set out in Schedule 2) as amended from time to time.
- 10.2 IM or its authorised representative shall be entitled to evaluate the compliance of RU with the obligations under this Agreement. If as a result of such evaluation, IM or its authorised representative is of the opinion that the Services are not being performed in accordance with this Agreement, and in particular but without limitation to the Operating Rules, IM shall so inform RU in writing, (the "Direction") and RU shall take such steps as may be necessary to ensure such compliance. Any notification under this Clause 10 shall be without prejudice to any of IM's other rights and remedies under this Agreement.
- 10.3 Should RU fail to comply with a Direction within the period stipulated, IM may take whatever action it considers necessary in the circumstances and charge RU the additional fees, charges, costs and expenses incurred by IM. IM may at its sole discretion deem the action as a breach of contract and terminate this Agreement immediately.
- 10.4 IM may inspect RU's Specified Rolling Stock where it suspects that such Specified Rolling Stock has inflicted or may inflict damage to the Infrastructure. RU may inspect the Infrastructure where it suspects that it has inflicted or may inflict damage to RU's Specified Rolling Stock. Inspections shall be conducted at reasonable times and on reasonable notice with a representative from Parties present.
- 10.5 Each Party may reasonably request that the other Party without undue delay inspect their own Infrastructure and Specified Rolling Stock on suspicion that it has inflicted or may inflict damage to the requesting Party's infrastructure/rolling stock.
- 10.6 Each Party in the presence of the other Party has a mutual right to inspect each other's railway Infrastructure and/or Specified Rolling Stock as the case may be after the occurrence of a problem or incident in order to uncover causes of the problem or incident.

11 INSURANCE REQUIREMENTS

- 11.1 RU shall at its own cost and expense effect and maintain the Insurances throughout the Term, in each case with insurers approved by IM.

- 11.2 Prior to the Commencement Date and at any time thereafter if requested by IM, RU shall provide IM with certificates of insurance and/or certified copies of all policies certifying that the Insurances are in force. RU shall notify IM immediately if any of the Insurances cease to be valid or effective.
- 11.3 RU agrees, represents and warrants to IM that such insurance policies shall indemnify IM against any acts, omissions, negligence and/or breach of any officers, servants, employees, sub-contractors and/or agents of RU or that such sub-contractors and agents will carry insurance to the same levels and on terms at least as favourable to IM as those required from RU. RU shall indemnify IM for any loss suffered by IM due to the failure of RU to comply with this obligation.
- 11.4 If RU fails to provide the Insurances, IM may do so for the whole or part of the period for which such cover is required and deduct any costs it incurs in obtaining such cover from any sums due from RU under this Agreement, or otherwise recover such sums from RU.
- 11.5 RU shall be liable to pay the full amount of any deductibles or excess amounts payable under such insurance policies, in the event of a claim under any such policies.
- 11.6 Where the level of indemnity to be provided under any of the insurance policies is an aggregate amount, RU shall notify IM of any claims made under such policy immediately. IM reserves the right to request that such policies provide a separate aggregate limit in respect of any claims arising out of or relating to this Agreement

12 AD HOC CAPACITY

- 12.1 RU may, at any time in writing request capacity from IM for an individual train path (available as spare capacity) outside the agreed track access arrangements the subject of this Agreement (an "**Ad Hoc Request**") if RU needs capacity for one or more provisional train paths.
- 12.2 IM shall respond to Ad Hoc requests for capacity promptly and aim to notify RU of its decision concerning the Ad Hoc Request within 5 working days of receiving the request.

13 CHANGE CONTROL PROCEDURE

- 13.1 If a Party (the “**Proposing Party**”) wishes to request a change to this Agreement or the rights granted pursuant to this Agreement at any time, it shall submit a request to the other parties in respect of the proposed change setting out:
- (a) a description of the proposed change;
 - (b) details of any impact on the Charges (if any) that will result from the proposed change;
 - (c) details of the consequential amendments to this Agreement which will be required to implement the proposed change;
 - (d) details of the impact on the Working Timetable;
 - (e) details of any changes required to the Insurances in effect at the date of the proposal (if any); and
 - (f) any other information as it considers necessary.
- 13.2 Appropriate governance in respect of changes to this Agreement must be implemented so that clear records of decisions and notification to relevant Boards of Directors (if required), and if necessary notifications to government can take place prior to the change becoming official through a Change Notice in template form at Schedule 4 of this Agreement.
- 13.3 Proposed changes shall be dealt with in the following ways within 60 days of receipt:
- (a) agreement in writing by the other Parties. If the proposed change is approved, then the Parties shall complete and sign the Change notice as provided for in Schedule 4 of this Agreement, which once signed becomes an official amendment and will be listed in an enduring Schedule to this Agreement; or
 - (b) if not satisfied with the proposal, a Party may require (acting reasonably) the other Party or Parties to reconsider and make a counter proposal or inform the other party in writing that it does not wish the proposal to be carried out. If accepted, the procedure at Clause 13.3 (a) then takes effect.
- 13.4 The Proposing Party shall on request produce to the other Parties reasonable supporting information in relation to the effect (if any) on the Charges, the terms of this

Agreement, IM's repair and maintenance obligations and the Insurances required as specified in the proposal submitted by the Proposing Party under Clause 13.1.

14 DISPUTE RESOLUTION PROCEDURE

- 14.1 If any dispute, claim, right of action or right to recover money relating to this Agreement arises, the dispute resolution process set out in Clause 14.2 and 14.3 shall be followed;
- 14.2 The Parties shall use their best endeavours to negotiate in good faith and attempt to resolve any dispute in a timely manner.
- 14.3 In the event that a dispute is not resolved by negotiation under Clause 14.2, the dispute may be referred:
- (a) to the extent that the subject matter of the dispute relates to matters which can be appealed to the Regulator in accordance with the Directive, to the Regulator; and
 - (b) to the extent that the subject matter of the dispute relates to any other matter, to the courts of Northern Ireland, to which both parties submit and which shall have exclusive jurisdiction in relation to any dispute.

15 COMMUNICATIONS AND GOVERNANCE

- 15.1 Each Party shall appoint a senior responsible officer "**SRO**" to deal with issues arising during the term of the Agreement. The names and contact details of the SROs are detailed at Schedule 5 of this Agreement. Any changes to the SROs must be notified in writing to the other parties not less than one month before the change is to take effect. Each warrants that its SRO has full authority to bind it pursuant to directions sought and taken from the relevant Board of Directors in respect of any decision made or action taken.
- 15.2 RU's SRO and IM's SRO shall meet on a regular basis to discuss any financial, administrative, commercial, performance or operational issues and shall use reasonable endeavours to resolve any problems in the operation of this Agreement.

16 DISRUPTIVE POSSESSION

- 16.1 RU acknowledges that IM will require possession of section of the Network from time to time throughout the term in order for maintenance, repair, enhancement and renewal

services to be undertaken. IM will notify RU accordingly and the parties will make and agree the arrangements for same as per Schedule 3 of this Agreement.

17 LIABILITY AND INDEMNITIES

17.1 RU shall indemnify and keep indemnified IM and its respective officers, managers, employees, servants and agents against all proceedings, actions, claims, losses, damages, costs and other expenses of any nature whatsoever incurred or suffered by IM arising out of:

- (a) a failure by RU to comply with any obligation under Clause 6 of this Agreement;
- (b) a failure by RU to comply with any obligation howsoever arising in connection with health and safety matters;
- (d) any environmental damage arising directly from the acts or omissions of RU; and
- (e) any damage to the Infrastructure arising directly from RU's negligence, oversight, error, act, default, omission, breach of contract, or breach of statutory duty.

17.2 IM shall indemnify and keep indemnified RU and its respective officers, managers, employees, servants and agents against all proceedings, actions, claims, losses, damages, costs and other expenses of any nature whatsoever incurred or suffered by RU arising out of:

- (a) a failure by IM to comply with any applicable obligation concerning health and safety;
- (b) any environmental damage arising directly from the acts or omissions of IM; and
- (c) any damage to RU's equipment or vehicles or things brought onto the infrastructure in accordance with the permission to use granted under Clause 3 arising directly from IM's negligence, act, default, omission, breach of contract, or breach of statutory duty.

- 17.3 RU agrees that it may be liable for any indirect, special or consequential loss or damage in connection with this Agreement which shall include, without limitation, any loss of or damage to IM or any Translink Group company's revenues, contracts, anticipated savings, goodwill, reputation or business opportunities whether direct or indirect or any costs incurred by IM or any Translink Group company in attending to any remedial activity or inquiry or investigation which results from any action or inaction on the part of RU.
- 17.4 Both IM and RU shall notify the other Party of the relevant circumstances giving rise to a claim as soon as reasonably practicable after first becoming aware of those circumstances and shall take all reasonable steps to prevent, mitigate and restrict the circumstances giving rise to that claim and any losses connected with that claim.
- 17.5 Nothing in this Agreement shall exclude, restrict or limit each Party's liability for:-
- (a) death or personal injury arising from that Party's negligence;
 - (b) fraud or fraudulent misrepresentation;
 - (c) anything for which that Party cannot legally limit or exclude liability.

18 CORRUPT GIFTS AND PAYMENTS OF COMMISSION

- 18.1 RU shall:
- (a) comply with all applicable laws, statutes, regulation relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 ("**Relevant Requirements**");
 - (b) have and maintain in place throughout the term of this Agreement its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and will enforce them where appropriate;
 - (c) promptly report to IM any request or demand for any undue financial or other advantage of any kind received by RU in connection with this Agreement;
 - (d) provide such supporting evidence of compliance as IM may reasonably request.

19 CONFIDENTIALITY

19.1 Subject to Clause 19.2 during the Term and at any time after the termination or expiry of this Agreement (for any reason) the Party in receipt of Confidential Information (the “**Receiving Party**”):

- (a) may not use any Confidential Information for any purpose other than in the performance of its obligations under this Agreement;
- (b) may not disclose any Confidential Information to any person except with the prior written consent of the Party who disclosed the Confidential Information to it (the “**Disclosing Party**”) or in accordance with Clause 19.2; and
- (c) shall make every effort to prevent the subsequent use or disclosure of Confidential Information.

19.2 The Receiving Party may disclose information which would otherwise be Confidential Information if and to the extent that:

- (a) it is required by law;
- (b) disclosure is required by DfI or a supervening government authority;
- (c) the information has come into the public domain or into the knowledge of the Receiving Party otherwise than through a breach of this Clause 19 or any other confidentiality agreement with the Disclosing Party by the Receiving Party;
- (d) it is required by existing contractual obligations of which the Disclosing Party is aware;
- (e) it is required by any regulatory or governmental body to which it is subject; or
- (f) the disclosure is to its professional advisors, auditors or banker or to any of its directors or officers to the extent that such disclosure is reasonably necessary for the purpose of this Agreement. All such recipients must be made aware of the confidential nature of the information and the confidentiality provisions of this Agreement.

20 TERMINATION

20.1 The following are RU “**Events of Default**”:

- (a) RU ceases to be authorised to be the operator of trains for the provision of the Services;
- (b) RU breaches its safety obligations or IM considers (acting reasonably) that RU's acts or omissions constitute a threat to the safe operation of any part of the infrastructure;
- (c) RU fails to pay the Charges to IM under this Agreement and such Charges remain unpaid for more than 7 days after their due date;
- (d) RU contravenes the provisions of Clause 6, Clause 10, Clause 11, Clause 17, Clause 18 or Clause 23;
- (e) RU commits a material or persistent breach of this Agreement and fails to remedy such breach (if capable of remedy) within ten (10) days of receipt of written notice from IM giving details of the breach and requiring it to be remedied;
- (f) enters into voluntary or compulsory liquidation or if any other proceedings are initiated pursuant to the Insolvency (Northern Ireland) Order 1989, or if a receiver or examiner of any of its assets is appointed; or
- (g) defrauds and/or attempts to defraud IM.

20.2 Without prejudice to any other right or remedy, IM may by notice in writing to RU, terminate this Agreement where a RU Event of Default has occurred and is continuing, such termination to take effect on the date falling ten (10) days after the date on which the notice is served on RU.

20.3 This Agreement may be terminated by RU by notice with immediate effect if the IM commits any material breach of any of the terms of this Agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of IM being notified of the breach, or such other period as may be specified in the notice (such period not to be less than 30 days);

20.4 In the event of termination of this Agreement for any reason, RU shall remove all of its property from the Infrastructure and ensure that such Infrastructure is left in a safe and tidy state to the reasonable satisfaction of IM.

20.5 Termination of this Agreement shall be without prejudice to the rights and remedies of any party in relation to any negligence, omission or default of any other party to this Agreement.

21 FORCE MAJEURE

21.1 If any Party is affected by Force Majeure (the “**Affected Party**”) it shall promptly notify the other parties in writing in reasonable detail of the nature and extent of the circumstances in question.

21.2 Notwithstanding any other provision of this Agreement, the Affected Party shall be deemed not to be in breach of this Agreement, or otherwise liable to the other parties, for any delay in the performance or non-performance of any of its obligations under this Agreement to the extent that the delay or non-performance is due to any Force Majeure of which it has notified the other parties and the time for performance of the affected obligations shall be extended accordingly.

21.3 The Affected Party shall use its reasonable endeavours to mitigate the effects of the Force Majeure on the performance of its obligations under this Agreement. In the event of Force Majeure, the parties shall meet as soon as possible to discuss how to mitigate the effects of the Force Majeure.

21.4 The Affected Party shall notify the other parties immediately once the Force Majeure has ended and shall immediately resume performances of all of its obligations under this Agreement.

21.5 If the Force Majeure continues for more than 6 months after the date on which the Force Majeure is notified to the other parties, any Party may by notice in writing to the other parties terminate this Agreement.

22 NOTICES AND SERVICE

- 22.1 All formal notices to be given under this Agreement shall be in writing and may be sent or served by email. Day to day communications between the Parties for the purposes of operating the Agreement may be sent by email or as otherwise agreed.
- 22.2 Any notices shall be deemed sufficient if sent by pre-paid registered post or by hand to the Parties at the addresses set out in Schedule 6 of this Agreement and, where posted, shall be deemed to have been given on the fourth day after the notice was posted and has not been returned to the sender shall be sufficient evidence that the notice was duly given. Notices sent by hand shall be deemed to have been delivered on receipt.

23 SUB-CONTRACTING ASSIGNMENT AND NOVATION

- 23.1 RU may not assign, sub-contract, novate, mortgage, charge, create an interest in any trust over, transfer, or otherwise dispose of all or any part of this Agreement, or any of RU's rights, benefits or obligations to in or under this Agreement or any part thereof, directly or indirectly to any person or persons without the prior written approval of IM. IM may withhold consent in its absolute discretion.
- 23.2 IM shall be entitled to transfer, assign or novate all or any part of the terms and conditions of this Agreement and shall give prompt notice to RU of such transfer, assignment or novation. RU shall do all acts, and execute all documentation necessary to give effect to such transfer, assignment or novation.

24 MISCELLANEOUS

- 24.1 The failure by either Party in any one or more instances to insist on strict performance or observance of any one or more of the terms of this Agreement to exercise any remedy, privilege or right provided by law or under this Agreement shall not be construed as a waiver of any breach or right to enforcement of such terms or to exercise such remedy, privilege or right.

24.2 Each of the provisions of this Agreement is severable and distinct from the others and if at any time one or more of such provisions is or becomes invalid, illegal or unenforceable in whole or in part such term, provision or part shall to the extent of such invalidity, illegality or unenforceability be deemed not to form part of this Agreement and the validity, legality or unenforceability of the remaining provisions shall not in any way be affected or impaired.

24.3 Each Party shall, at its own cost, from time to time and being required to do so by the other Party, now or at any time in the future, do or procure the doing of all such acts and/or execute or procure the execution of all such documents in a form satisfactory to the other Party as the other Party may reasonably consider necessary, to give full effect to this Agreement.

25 GOVERNING LAW AND JURISDICTION

25.1 This Agreement shall be governed by and construed in accordance with the laws of Northern Ireland.

IN WITNESS WHEREOF this Agreement is duly executed by each of IM and RU and the Railway Holding Company have executed this agreement on the first day above written:

SIGNED by

for and on behalf of

NORTHERN IRELAND RAILWAY COMPANY LIMITED

SIGNED by

for and on behalf of NIR NETWORKS LIMITED

SIGNED by

for and on behalf of [RU]

Schedule 1
Track Access Specific Provisions

Part A

The Network Routes

Permission to use the following routes:

[Routes of operation]

Part B

IM provided Services

As part of this Agreement, the RU shall be entitled to the Minimum Access Package and track access to service facilities and supply of services as set out below:

Minimum Access Package comprises of:

- (a) Handling of requests for infrastructure capacity;
- (b) The right to utilise capacity which is granted;
- (c) Use of running track points and junctions;
- (d) Train control including signalling, regulation, dispatching and the communication and the provision of information on train movement;
- (e) All other information required to implement or operate the service for which capacity has been granted.

Track access to services facilities and services shall comprise, where available:

- (a) Use of electrical supply equipment for traction current;
- (b) Track access to refuelling facilities;
- (c) Track access to stations, their buildings and other facilities;
- (d) Track access to freight terminals;
- (e) Marshalling yards;
- (f) Train formation facilities;
- (g) Storage sidings;
- (h) Track access to maintenance and other technical facilities.

Part C
RU Services

[Details of dates and times of operations]

Requests for capacity for operation outside the dates and times set-out above should be made under the Ad Hoc Capacity provisions at Clause 12.

Part D

Track Access Charges

The applicable charge for RU's use of the Network (in respect of track access and the minimum access package) shall be calculated based on a tariff of £0.006 / tonne-km.

Part E

Facilities and Services

IM shall procure facilities and services for RU in return for reasonable remuneration to be determined by IM. Those facilities and services which are available are listed below:

1. Driving
2. Shunting
3. Traffic Inspector
4. Additional security services or guards
5. Any additional supervisory staff as required

Schedule 2

Operating Rules

- 1 The Rule Book including appendices
- 2 Notified National Technical Rules
- 3 National Safety Rules
- 4 Any Appendix to the Working Timetable
- 5 Railway Holding Company standards
- 6 Any additional and agreed rules and instructions

EXAMPLE ONLY

Schedule 3

Disruptive Possession Management

IM Possession Planning

It is recognised that some maintenance, renewal and enhancement works require blockades outside the normal times as described in the Network Statement.

The below table describes the duration and expected notice period for possessions:

Duration of Possession	Notice Period
Emergency	None
24 hours or less	2 weeks
24 - 56 hours	2 months
56 hours - 1 week	4 months

Normally, planned blockades of greater than one week's duration will be advised in the Network Statement.

RU to IM Financial Compensation

In the situation where costs are incurred arising from any curtailment of a disruptive possession due to late running of a train, when the cause of the late running is attributed to the RU, then reasonable compensation costs may be agreed between the IM and RU (through SROs and relevant General Managers or Executives).

Schedule 4

DATE

TRACK ACCESS AGREEMENT BETWEEN NORTHERN IRELAND RAILWAYS COMPANY LIMITED (the "NIR"), NIR NETWORKS LIMITED (INFRASTRUCTURE MANAGER) (THE "IM") and (THE "RU") (THE "AGREEMENT").

The Parties hereby agree, in accordance with Clause 13 of the Agreement, to make the following alterations to the Agreement:

1. Wording and Clauses to be:

2. Originator of change and reason for change

3. Impacts on Charges payable or funding implications

APPROVED BY THE IM:

Dated

APPROVED BY THE RU:

Dated

APPROVED BY THE RAILWAY HOLDING COMPANY:

Dated

Schedule 5

Details of SROs

Details of SROs

DETAILS OF SRO - for the Railway Holding Company

Name:

Address/Email:

Telephone:

DETAILS OF SRO – for the RU

Name:

Address/Email:

Telephone:

DETAILS OF CONTRACT SRO – for the IM

Name:

Address/Email:

Telephone:

EXAMPLE ONLY

Schedule 6

Notices If to the RU to:

Address:

Fax:

Email:

If to the IM to: XXXX

Address:

Email:

If to NIR to: XXXX

Address:

Email:

Schedule 7

Specified Rolling Stock

[Detail of rolling stock]

EXAMPLE ONLY

Schedule 8 **Performance Regime**

It should be recognised that the concept of the performance regime is not to invoke financial penalty but to encourage a continuous improvement of all parties which will ultimately deliver the optimum service provision to all rail users in Northern Ireland.

The following should be read in conjunction with the Agreement in particular Clause 9.

As per the Network Statement the general principle will be to measure delayed trains in minutes measured against scheduled arrival times at destination points.

The train will be deemed as delayed if, at arrival at the destination, the service is 10 or more minutes late

For example – where a train is delayed and arrives at its destination 11 minutes after the scheduled timetable arrival time, 11 delay minutes will be attributed to the service and allocated to the IM, RU or other dependent on root cause.

This measurement will apply for both delays attributed to IM or RU.

This Performance Regime shall not be deemed to be an exclusive remedy and shall be without prejudice to either Party's other rights in this Agreement in respect of any of the following:

The operation of the Performance Regime is based on a threshold of Delay Minutes per period, direct and knock-on delays.

The Delay Minutes threshold is shown in a separate document to this Agreement and shall be maintained and kept up to date by RU and IM.

1. Incidents of Delay caused by RU

The operation of the Performance Regime is based on a threshold of Delay Minutes.

The Delay Minutes threshold will be recorded in a separate document and kept up to date by RU and IM.

Initial Threshold: Where the RU exceeds its threshold on the Network the penalty of 2% of the applicable Track Access Charge for the Network shall be imposed.

Penalties over Initial Threshold: Incremental and further penalties shall be capped at an additional 1% of the applicable Track Access Charge.

2. Incidents of Delay caused by the IM

The operation of the Performance Regime is based on a threshold of Delay Minutes.

Initial Threshold: Where the IM's performance results in a breach of the IM Delay Minute threshold, the RU will receive a 2% discount to the applicable Track Access Charge.

Penalties over Initial Threshold: Incremental and further penalties shall be capped at an additional 1% of the applicable Track Access Charge.

3. Delay attribution guidance

For the purposes of guidance, the following delay attribution will apply (these lists are not exhaustive) –

RU delay responsibilities shall include delays categorised under –

- Customer/Passenger
- Irish Rail (Cross Border normal passenger services with issues or delays on the IE Network impacting the NIR Network.)
- Fleet
- RU Operations
- Special Traffic

IM delay responsibilities shall include delays categorised under -

- Civil Engineering/Structures
- Civil Engineering/Track
- Signalling and Telecommunications
- Network Operations
- Low Adhesion

Other Delays not attributed to either RU/IM (these delays will be monitored however will not form part of the Track Access Performance Regime but will simply form part of the continuous improvement program in order to improve overall service delivery)–

- Security Alerts
- Vandalism
- Antisocial/criminal activity
- Extreme weather
- Any other event that could not be reasonably controlled by either RU or IM.

4. Minute Attribution Process

Stage 1: (Daily – on days of operation)

Delays are initially allocated against the root cause delay by the Control Office following review and agreement between the IM and RU Duty Control Office staff. Stage 1 shall take place on the day in question. The results will be available the following day.

Stage 2a: (Weekly – Monday -Sunday)

Staff from the IM Network Planning and Performance section will review the delay causation data and by means of conversation with the relevant personnel in the RU Organisation seek agreement of the allocation. This stage will culminate in a weekly report highlighting all performance issues and agreed attribution. This report will be accessible to all parties by noon on Monday reporting on the previous week's performance.

Stage 2b: (Weekly – Monday –Sunday)

If agreement cannot be reached at Stage 2a, the IM Network Planning and Performance manager will highlight this as an unresolved delay in the weekly report.

Stage 3: (Monthly)

The IM Network Planning and Access Manager compiles all the relevant data and provides it for review to the relevant SROs of both the IM and RU on a monthly basis. Any unresolved issues should be raised as well as areas for continuous improvement. If agreement still cannot be reached, the issue is escalated to Stage 4.

Stage 4: (As required)

This is the final level of dispute escalation before the process outlined in Clause 14 of the Agreement is triggered. In the case of a stage 4 dispute a meeting will be called between the IM and the RU where a decision on delay attribution will be made. Adjustments to the records will be made following this decision.

EXAMPLE ONLY