

DATED \_\_\_\_\_ 1996

**PRISM RAIL PLC**

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**DEED OF UNDERTAKING**

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Strategic Rail Authority

55 Victoria Street

London

SW1H 0EU

**This Deed** is made the       day of       1996 by Prism Rail PLC of 20 Devonshire Street, Keighley, West Yorkshire BD21 2AU (the "Franchisee").

**Whereas:**

- (A) **The Director of Passenger Rail Franchising** appointed under Section 1 of the Railways Act 1993 (the "Franchising Director") and the Franchisee entered into a franchise agreement dated 8 May 1996 (the "Franchise Agreement") under which the Franchisee will secure the provision by **LTS Rail Limited** (the "Franchise Operator") of certain services for the carriage of passengers by railway.
- (B) It is a condition precedent to the coming into force of certain parts of the Franchise Agreement that the Franchisee enters into this Deed of Undertaking.

**Witnesseth** as follows:

## **1 Undertaking**

### **1.1 Undertaking**

The Franchisee unconditionally and irrevocably undertakes to the Franchising Director that it shall:-

- 1.1.1** forthwith and on demand make available to the Franchise Operator such monies in cash as it is required to pay to the Franchise Operator pursuant to its obligations under Clause 14.2 of the Franchise Agreement; and
- 1.1.2** pay or procure the payment of £800,000 to the Franchise Operator whether by way of paying up uncalled capital or subscription for new shares within two years of the Franchise Commencement Date,

provided that the Franchisee shall only be liable to pay monies pursuant to this Deed to the extent that it has received monies from the Franchise Operator by way of dividend or other distribution at the time of such demand or within two years of the Franchise Commencement Date (as the case may be) and shall pay any outstanding monies as soon as practicable after receipt of any dividend or distribution from the Franchise Operator.

### **1.2 Continuing Liability**

The undertaking given in this Deed (the "Undertaking") is to be a continuing obligation of the Franchisee and accordingly is to remain in force for such time as the obligations of the Franchisee under Clause 14.2 of the Franchise Agreement exist. The Undertaking is in addition to and without prejudice to and not in substitution for any rights or security which the Franchising Director may now or hereafter have or hold for the performance and observance of the obligations, commitments and undertakings of the Franchisee under or in connection with the Franchise Agreement.

### **1.3 Franchisee's Liability**

The Franchisee's liability under this Deed shall not be affected by any event or

occurrence, including, without limitation:

- 1.3.1** any time, indulgence, concession, waiver or consent at any time given to the Franchisee or any other person including any individual, company, corporation, firm, partnership, joint venture, undertaking, association, organisation, trust, state or agency of a state (in each case, whether or not having a separate legal personality) (a "Person");
- 1.3.2** any amendment or supplement to any provision of the Franchise Agreement or to any mortgage, pledge, lien, hypothecation, security interest or other charge or encumbrance ("Security") or other guarantee;
- 1.3.3** the making or absence of any demand on the Franchisee or any other person for payment;
- 1.3.4** the enforcement or absence of enforcement of the Franchise Agreement, of this Deed or of any Security or other guarantee;
- 1.3.5** the taking, existence or release of any Security or other guarantee;
- 1.3.6** the winding-up, amalgamation, reconstruction, administration, dissolution, liquidation, merger or consolidation of the Franchisee or any other Person or any equivalent or analogous procedure under the law of any jurisdiction ("Winding-up"), or any step being taken for any such Winding-up; or
- 1.3.7** the illegality, invalidity or unenforceability of, or any defect in, any provision of the Franchise Agreement or this Deed or other guarantee or any other obligations of any of the parties under or in connection with the Franchise Agreement or this Deed or any Security or other guarantee.

#### **1.4 Indemnity**

The Franchisee unconditionally and irrevocably agrees to indemnify the Franchising Director on demand against all losses, liabilities, costs, charges, expenses, actions, proceedings, claims and demands which the Franchising Director may suffer through or arising from any breach by the Franchisee of its obligations under Clause 1.1.

## **2 Representations and Warranties**

The Franchisee represents and warrants to the Franchising Director as follows:

### **2.1 Status**

The Franchisee is a limited liability company duly incorporated and validly existing under the laws of England with power to enter into, exercise any rights and perform its obligations under this Deed.

### **2.2 Authorisations and Consents**

All action, conditions and things required to be taken, fulfilled and done (including the obtaining of any necessary consents, the making of registrations and the like) in order:

- 2.2.1 to enable the Franchisee lawfully to enter into, exercise any rights and perform and comply with its obligations under this Deed
  - 2.2.2 to ensure that those obligations are valid, legally binding and enforceable and
  - 2.2.3 to make this Deed admissible in evidence in the courts of England
- have been taken, fulfilled and done.

### **2.3 Non-Violation etc.**

The Franchisee's entry into, exercise of any rights and/or performance of its obligations under this Deed do not, and will not, violate or exceed any guaranteeing or other power or restriction granted or imposed by:

- 2.3.1 any law to which it is subject; or
- 2.3.2 its Memorandum or Articles of Association/Certificate of Incorporation or By-laws/Statutes; or
- 2.3.3 any other agreement to which the Franchisee is a party or which is binding on either of them,

or result in the existence of, or oblige either of them to create, any Security over all or any part of their respective business, undertaking, property, assets, revenues (including any right to receive revenues) and uncalled capital, wherever situated.

### **2.4 Winding-up**

No meeting has been convened for the Franchisee's Winding-up, no such step is intended by it and, so far as it is aware, no petition, application or the like is outstanding for its Winding-up.

### **2.5 Obligations Binding**

The Franchisee's obligations under this Deed are valid, binding and enforceable.

## **3 Miscellaneous**

### **3.1 Assignment**

This Deed shall be binding on the Franchisee and its successors and shall benefit the Franchising Director. Any reference in this Deed to the Franchisee shall be construed accordingly. The Franchisee may not transfer all or part of its obligations under this Deed.

### **3.2 Notices**

- 3.2.1 Any notice or other communication requiring to be given or served under or in connection with this Deed shall be in writing and shall be sufficiently given or served if delivered or sent to the registered office of the recipient.

**3.2.2** Any such notice or other communication shall be delivered by hand or sent by courier, fax or prepaid first class post. If sent by courier or fax such notice of communication shall conclusively be deemed to have been given or served at the time of despatch. If sent by post such notice or communication shall conclusively be deemed to have been received two business days from the time of posting.

### **3.3 Waivers and Remedies**

No failure by the Franchising Director to exercise, or delay by the Franchising Director in exercising, any right or remedy under this Deed will operate as a waiver thereof, nor will any single or partial exercise by the Franchising Director of any right or remedy preclude any other or further exercise of that or any other right or remedy. The rights and remedies provided for in this Deed are cumulative and not exclusive of any other rights or remedies which the Franchising Director may at any time have (whether provided by law or otherwise).

### **3.4 Amendments**

Any provision of this Deed may be amended, supplemented or waived only if the Franchising Director (and, in the case of an amendment or supplement, the Franchisee) so agrees in writing. Any such waiver, and any consent by the Franchising Director under any provision of this Deed, must be in writing and may be given subject to any conditions thought fit by the Franchising Director. Any waiver or consent shall be effective only in the instance and for the purpose for which it is given.

### **3.5 Partial Invalidity**

The illegality, invalidity or unenforceability of any provision of this Deed under the law of any jurisdiction shall not affect its legality, validity or enforceability under the law of any other jurisdiction nor the legality, validity or enforceability of any other provision of this Deed.

### **3.6 Information**

The Franchisee shall provide such information to the Franchising Director as the Franchising Director may reasonably request from time to time in order to assess the financial standing of the Franchisee.

### **3.7 Governing Law**

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

### **3.8 Jurisdiction**

The courts of England are to have jurisdiction to settle any disputes which may arise out of or in connection with this Deed and/or the Franchise Agreement and, accordingly, any legal action or proceedings arising out of or in connection with this Deed and/or the Franchise Agreement ("Proceedings") may be brought in those courts. The Franchisee irrevocably submits to the jurisdiction of those courts and waives any objection to Proceedings in such courts, whether on the ground of venue or on the ground that the Proceedings have been brought in an inconvenient forum. This

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submission is made for the benefit of the Franchising Director and shall not limit the right of the Franchising Director to take Proceedings in any other court of competent jurisdiction nor shall the taking of Proceedings in one or more jurisdictions preclude the Franchising Director from taking Proceedings in any other jurisdiction, whether concurrently or not.

**Executed** as a deed the day and year first before written.

SIGNED as a DEED                      }  
by PRISM RAIL PLC  
acting by  
and