

Dated

1996

(1) LTS RAIL LIMITED

- and -

(2) BARCLAYS BANK PLC

- and -

(3) THE DIRECTOR OF PASSENGER RAIL FRANCHISING

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**DEED OF SUBORDINATION**

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Strategic Rail Authority

55 Victoria Street

London

SW1H 0EU

This Deed is made the                      day of                      1996 **between:-**

- 1 LTS Rail Limited** whose registered office is at Euston House, 24 Eversholt Street, London NW1 1DZ (the "Franchise Operator");
- 2 Barclays Bank PLC** whose registered office is at 54 Lombard Street, London EC3P 3AH (the "Subordinated Creditor"); and
- 3 The Director Of Passenger Rail Franchising** appointed under Section 1 of the Railways Act 1993 (the "Franchising Director").

**Recitals:**

- (A) The Subordinated Creditor has agreed to provide a performance bond in respect of certain of the obligations of the Franchise Operator and the Franchisee on the terms set out in the bond annexed to this Deed (the "**Bond**").
- (B) The Subordinated Creditor has agreed that the Subordinated Debt is to be subordinated in all respects to the Senior Liabilities.
- (C) The Subordinated Creditor has agreed that such subordination will not be varied without the prior written consent of the Franchising Director.

Now this deed witnesseth as follows:-

**1 Definitions**

**1.1** In this Deed, including the Recitals, the following expressions shall have the following meanings:

<b>"Indebtedness"</b>	includes any obligation or liability (whether present or future, actual or contingent, as principal, surety or otherwise) for the payment or repayment of money, including, for the avoidance of doubt, any such obligation or liability arising as a consequence of any right of subrogation, however arising;
<b>"Right of Set-off"</b>	means from time to time, in relation to the Subordinated Creditor, every right (whether conferred by law or otherwise) which the Subordinated Creditor has to combine credit balances and debit balances, directly or indirectly being balances which belong to the Franchise Operator, or are owing by the Franchise Operator, or are deposits by the Franchise Operator with the Subordinated Creditor;
<b>"Senior Creditors"</b>	means all creditors of the Franchise Operator other than the Subordinated Creditor;

- “Senior Liabilities”** means all Indebtedness incurred by the Franchise Operator other than the Subordinated Debt and any Indebtedness that may be incurred under or pursuant to this Deed;
- “Subordinated Debt”** means all Indebtedness owed by the Franchise Operator to the Subordinated Creditor under or in connection with the Bond or any counter-indemnity relating thereto, including all interest and costs payable thereon.

- 1.2 References in this Deed to any agreement, deed or document (including, without limitation, reference to this Deed) shall be deemed to include references to such agreement, deed or document as varied, amended, modified, supplemented or replaced from time to time.

## **2 Subordinated Debt; Contingent Debt**

- 2.1 The Subordinated Creditor agrees that the Subordinated Debt shall from the date of this Deed be a contingent debt of the Franchise Operator which shall only become due and payable on the demand of the Subordinated Creditor if and when and to the extent that the Senior Liabilities have been paid and discharged in full, except as otherwise agreed in writing by the Franchising Director.
- 2.2 If the Franchise Operator is at any time in liquidation no amount in respect of the Subordinated Debt (whether or not already due or accrued prior to the time of commencement of such winding-up) owed by that company shall be due and payable by and no claim in respect thereof shall be provable or capable of being established against the Franchise Operator, as the case may be, in such winding-up unless and until and except to the extent that all the Senior Liabilities of the Franchise Operator have been paid or otherwise satisfied in full.

## **3 Standstill**

So long as any part of the Senior Liabilities remains outstanding, unpaid or undischarged, the Subordinated Creditor will not:

- (a) demand repayment of the Subordinated Debt; or
- (b) take any action against the Franchise Operator to recover the Subordinated Debt; or
- (c) petition for (or take any other step or action which may lead to) the liquidation, administration or dissolution of the Franchise Operator or to the instigation of any other insolvency proceeding in relation to the Franchise Operator.

## **4 Subordination**

The Subordinated Creditor and the Franchise Operator jointly and severally covenant

with the Franchising Director and agree and declare that, so long as any part of the Senior Liabilities remains outstanding, unpaid or undischarged, except as otherwise agreed in writing by the Franchising Director:

- (a) the Subordinated Debt shall be subordinated to the extent and in the manner set out in this Deed;
- (b) the Franchise Operator will not make any payment on account of the Subordinated Debt (whether by way of outright payment, loan or otherwise) nor will the Subordinated Creditor be entitled to demand or receive any such payment;
- (c) any payments received by the Subordinated Creditor in breach of sub-clause (b) above will be held by the Subordinated Creditor on trust for the Senior Creditors;
- (d) if the Subordinated Creditor receives the benefit of a Right of Set-Off or counterclaim and as a result the Subordinated Debt is reduced at a time when the Subordinated Creditor would not (by virtue of this Deed) be entitled to receive payment in respect of the Subordinated Debt, the Subordinated Creditor will hold such sum on trust for the Senior Creditors; and
- (e) it is acknowledged that nothing in this Deed creates or is intended to create any security on any asset of the Subordinated Creditor.

## 5 Amendments

So long as any part of the Senior Liabilities remains outstanding, unpaid or undischarged, this Deed may not be varied, amended, modified, supplemented or waived unless the Franchising Director so agrees in writing.

## 6 Governing Law and Jurisdiction

This Deed shall be governed by and construed in accordance with the laws of England. All the parties irrevocably agree that the courts of England are to have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Deed and that, accordingly, any legal action or proceedings arising out of or in connection with this Deed may be brought in those courts and each party irrevocably submits to the jurisdiction of those courts.

**IN WITNESS** whereof this Deed has been executed by or on behalf of the parties hereto on the date stated above.

THE COMMON SEAL of }  
LTS RAIL LIMITED  
was affixed in the presence of:

## SRA PUBLIC REGISTER COPY

Director

Secretary

THE COMMON SEAL of }  
BARCLAYS BANK PLC  
was hereunto affixed in the presence  
of:

Director

Secretary

THE CORPORATE SEAL of  
THE DIRECTOR OF PASSENGER  
RAIL FRANCHISING  
hereunto affixed is authenticated by:

Authorised by the Director of  
Passenger Rail Franchising