

Dated 27 June 2013

CROSS LONDON TRAINS LIMITED

FIRST CAPITAL CONNECT LIMITED

LEASE

**relating to 60 x 8-Car, and
55 x 12-Car
Class 700 electric Units**



Freshfields Bruckhaus Deringer

Freshfields Bruckhaus Deringer LLP
65 Fleet Street
London EC4Y 1HS

CONTENTS

CLAUSE	PAGE
1. DEFINITIONS AND COMMON TERMS.....	1
2. INTERPRETATIVE PROVISIONS	1
3. STATEMENTS OF FACT BY THE OPERATOR AND THE OWNER	2
4. CONDITIONS REQUIRED BY THE OWNER.....	4
5. CONDITIONS REQUIRED BY THE OPERATOR.....	5
6. LEASING AND DELIVERY	5
7. LATE DELIVERY	8
8. REPAIR OF THE UNITS OTHER THAN UNDER A PERFORMANCE REMEDIAL PLAN	10
9. EXCLUSION OF WARRANTIES	11
10. RENTAL AND PAYMENTS	11
11. TAXES.....	13
12. GENERAL INDEMNITY, TAX INDEMNITY AND OWNER LIABILITY	17
13. QUIET ENJOYMENT.....	21
14. OPERATIONAL AND MAINTENANCE UNDERTAKINGS	22
15. TECHNICAL RECORDS AND MANUALS.....	22
16. VARIATIONS, MODIFICATIONS AND CHANGES IN LAW.....	22
17. EVENTS OF LOSS AND OPERATOR INSURANCES.....	23
18. LEASE OPERATOR TERMINATION EVENTS.....	23
19. REMEDY FOR OPERATOR NON-COMPLIANCE.....	23
20. LEASE OWNER TERMINATION EVENTS.....	23
21. TERMINATION OF THE MSA, TSA AND TSSSA BY THE SECRETARY OF STATE.....	24
22. APPLICATION OF CAPS UNDER THE TSA.....	24
23. THE TSA GUARANTEE AND THE TSA BOND	24
24. REDELIVERY	24
25. ASSIGNMENT AND TRANSFERS	24
26. CONFIDENTIALITY OF INFORMATION AND FINANCIAL INFORMATION	26
27. NOTICES.....	29
28. WAIVERS, RIGHTS CUMULATIVE.....	31
29. ILLEGALITY	31
30. ENTIRE AGREEMENT.....	31

31.	COSTS.....	31
32.	SET-OFF.....	32
33.	APPROPRIATION.....	32
34.	COUNTERPARTS.....	32
35.	CERTIFICATES	32
36.	GOVERNING LAW AND JURISDICTION	32
37.	DISPUTES AND EXPERT DETERMINATION.....	33
38.	CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999.....	33
39.	DURATION.....	33
	SCHEDULE 1 FORM OF LEASE CONDITIONS PRECEDENT CERTIFICATE	35
	SCHEDULE 2 ACCEPTANCE OF UNITS, OWNER OWNED SPARES, SPECIAL TOOLS AND SIMULATORS.....	37
	SCHEDULE 3 [1].....	39
	SCHEDULE 3.1 [2].....	41
	SCHEDULE 3.2 [3].....	42
	SCHEDULE 3.3 [4].....	43
	SCHEDULE 3.4 [5].....	44
	SCHEDULE 3.5 [6].....	45
	SCHEDULE 3.6 [7].....	46
	SCHEDULE 3.7 [8].....	47
	SCHEDULE 3.8 [9].....	48
	SCHEDULE 3.9 [10].....	49
	SCHEDULE 3.10 [11].....	50
	SCHEDULE 4 [NOT USED]	51
	SCHEDULE 5 OPERATIONAL AND MAINTENANCE UNDERTAKINGS.....	52

¹ Redaction

² Redaction

³ Redaction

⁴ Redaction

⁵ Redaction

⁶ Redaction

⁷ Redaction

⁸ Redaction

⁹ Redaction

¹⁰ Redaction

¹¹ Redaction

APPENDIX TO SCHEDULE 5 PERMITTED USE (LEASE)..... 65

SCHEDULE 6 TECHNICAL RECORDS, MAINTENANCE RECORDS (LEASE)
AND TSA SOFTWARE..... 66

 SCHEDULE 6.1 Technical Records 67

 SCHEDULE 6.2 Maintenance Records (Lease) and TSA Software..... 69

SCHEDULE 7 MODIFICATIONS 71

SCHEDULE 8 []¹² 77

 SCHEDULE 8.1 []¹³ 78

 SCHEDULE 8.2 []¹⁴ 79

 Part 1 []¹⁵ 79

 Part 2 []¹⁶ 80

APPENDIX 1 TO SCHEDULE 8.2 []¹⁷ 81

APPENDIX 2 TO SCHEDULE 8.2 []¹⁸ 82

APPENDIX 3 TO SCHEDULE 8.2 []¹⁹ 83

 SCHEDULE 8.3 []²⁰ 84

SCHEDULE 9 []²¹ 85

SCHEDULE 10 LEASE OPERATOR TERMINATION EVENTS..... 87

SCHEDULE 11 []²² 94

SCHEDULE 12 TERMINATION OF THE MSA, TSA OR TSSSA; SECRETARY
OF STATE TERMINATION; UNINSURABILITY TERMINATION..... 96

 SCHEDULE 12.1 Termination of the MSA..... 97

 SCHEDULE 12.2 Termination of the TSA..... 100

 SCHEDULE 12.3 Termination of the TSSSA..... 105

 SCHEDULE 12.4 Termination by the Secretary of State 106

 SCHEDULE 12.5 Uninsurability Termination..... 107

SCHEDULE 13 REDELIVERY CONDITION (LEASE) SCHEDULE 108

¹² Redaction

¹³ Redaction

¹⁴ Redaction

¹⁵ Redaction

¹⁶ Redaction

¹⁷ Redaction

¹⁸ Redaction

¹⁹ Redaction

²⁰ Redaction

²¹ Redaction

²² Redaction

THIS LEASE (the *Agreement*) is made on 27 June 2013

BETWEEN:

- (1) **CROSS LONDON TRAINS LTD** (company number 7813033) whose registered office is at 210 Pentonville Road, London N1 9JY (the *Owner*); and
- (2) **FIRST CAPITAL CONNECT LIMITED** (company number 05281077) whose registered office is at 50 Eastbourne Terrace, London, W2 6LG (the *Operator*).

WHEREAS:

(A) The Train Manufacturer and Maintainer (the *TMM*), the Owner and the Operator have entered into an agreement on the date of this Agreement for the manufacture and supply of the Units, the Associated Equipment, the Operator Owned Spares and the Simulators, amongst other things (the *MSA*).

(B) The TMM, the Operator and the Owner have entered into agreements on the date of this Agreement (i) for the maintenance of the Units, the Simulators and the maintenance and use of the Associated Equipment manufactured and supplied under the MSA (the *TSA*) and (ii) for, on the expiry of the TSA, the supply of technical support and spares supply services in relation to, amongst other things, the Units, the Associated Equipment and the Simulators (the *TSSSA*).

(C) The Owner has agreed to lease the Units, the Associated Equipment and the Simulators to the Operator in accordance with the terms of this Agreement.

1. DEFINITIONS AND COMMON TERMS

Definitions

1.1 In this Agreement (including the Recitals) unless the context otherwise requires, all defined terms shall have the meanings given to such terms in the master definitions and common terms agreement entered into between the Parties on the date of this Agreement (the *Master Definitions Agreement*):

Common Terms

1.2 Except as provided in clause 1.2, the common terms set out in schedule 2 (*Common Terms*) to the Master Definitions Agreement shall apply to this Agreement, where applicable, and shall be binding on all Parties. If there is any conflict between the provisions of such common terms and the provisions of this Agreement, the provisions of this Agreement shall prevail.

2. INTERPRETATIVE PROVISIONS

Interpretation and Construction

2.1 In this Agreement, save where the contrary is expressly indicated in this Agreement, paragraph 2 (*Principles of Interpretation and Construction*) of schedule 1 (*Definitions*) of the Master Definitions Agreement shall apply.

MSA, TSA and TSSSA references

2.2 References to and the incorporation of definitions or clauses in the MSA, TSA and/or the TSSSA in this Agreement shall survive the termination or expiry of the MSA, TSA or the TSSSA (as applicable).

Contract Precedence

2.3 In the event of any inconsistency between any provision in Schedule 3 (*Rental Schedule*) and any other provision of this Agreement, the provision in Schedule 3 (*Rental Schedule*) shall take precedence.

3. STATEMENTS OF FACT BY THE OPERATOR AND THE OWNER

Operator Statements of Fact

3.1 The Operator makes the following statements of fact on and as of the date of this Agreement. The Operator understands that the Owner is relying on the statements of fact and is entering into this Agreement on the basis of them:

- (a) the Operator is a company duly incorporated and validly existing under the laws of England and Wales as a limited liability company. It has power to carry on its business as it is now being conducted and has all licences, consents, approvals, permits, authorisations, exemptions and certifications required for that purpose;
- (b) the Operator has power to enter into and perform its obligations under the Transaction Documents to which it is a party. All necessary corporate, shareholder and other action has been taken to authorise the entry into, performance and delivery of the Transaction Documents to which it is a party;
- (c) the Transaction Documents to which it is a party establish valid and legally binding obligations of the Operator;
- (d) entering into the Transaction Documents to which it is a party and performing its obligations under such Transaction Documents will not:
 - (i) conflict with the Operator's Memorandum and Articles of Association;
 - (ii) conflict with or result in a breach in any material respect of any existing contract which is binding upon it and which breach is likely to have a Material Adverse Effect; or
 - (iii) result in the creation of any Security Interest over the Operator or any of its property;
- (e) except as disclosed on or before this statement of fact is made or repeated pursuant to this clause 3, no legal proceedings are pending or to the Operator's knowledge threatened against it which (in the case of those threatened, if commenced against the Operator) would be reasonably likely to be adversely determined and, if so determined would be reasonably likely to have a Material Adverse Effect;
- (f) the audited accounts of the Operator supplied to the Owner are the latest available audited accounts and have been prepared in accordance with generally accepted accounting principles and practice in the United Kingdom and give a true and fair

view of the financial position of the Operator as at the date to which they were drawn up. There has been no change in the financial position of the Operator since the date to which the accounts were drawn up which would have a Material Adverse Effect;

- (g) the Operator is a wholly owned Subsidiary of First Rail Holdings Limited and whose Holding Company is FirstGroup plc;
- (h) none of the Lease Operator Termination Events has happened;
- (i) the Operator:
 - (i) is a franchisee or franchise operator who operates railway passenger services pursuant to the Franchise Agreement; or
 - (ii) is a person (other than a person falling within (i) above) who provides railway passenger services on the Thameslink Network pursuant to or under s30 of the Act or section 5 of the Railways Act 2005 or who is appointed by the Secretary of State to provide such services (otherwise than pursuant to a franchise agreement);
- (j) the Track Access Agreement and the Franchise Agreement specified in the Lease Conditions Precedent Certificate most recently delivered pursuant to clause 4.2(a) (subject to any changes notified to the Owner pursuant to paragraph 7.2 of Schedule 5 (*Operational and Maintenance Undertakings*)) are in full force and effect; and
- (k) the Passenger Licence and Railway Safety Certificate specified in the most recently delivered Lease Conditions Precedent Certificate (subject to any changes notified to the Owner pursuant to paragraph 7.2 of Schedule 5 (*Operational and Maintenance Undertakings*)) have been issued in its favour or approved as applicable and have not been revoked or rescinded.

3.2 Each of the statements of fact set out in clauses 3.1(a) to 3.1(i) inclusive shall be repeated by the Operator on the Delivery Date of each Unit and upon each Rental Payment Date.

Owner Statements of Fact

3.3 The Owner makes the following statements of fact on and as of the date of this Agreement. The Owner understands that the Operator is relying on the statements of fact and is entering into this Agreement on the basis of them:

- (a) the Owner is a company properly organised and validly existing under the laws of England and Wales as a special purpose vehicle owned directly or indirectly by Siemens Project Ventures GmbH, 3i Infrastructure plc and Innisfree PFI Secondary Fund LP. It has power to carry on its business as it is now being conducted and has all licences, consents, approvals, permits, authorisations, exemptions and certifications required for that purpose;
- (b) the Owner has power to enter into and perform its obligations under the Transaction Documents to which it is a party. All necessary corporate, shareholder and other action has been taken to authorise the entry into, performance and delivery of the Transaction Documents to which it is a party;

- (c) the Transaction Documents to which it is a party establish valid and legally binding obligations of the Owner;
- (d) entering into the Transaction Documents to which it is a party and performing its obligations under such Transaction Documents will not:
 - (i) conflict with the Owner's Memorandum and Articles of Association; or
 - (ii) conflict with or result in a breach in any material respect of any existing contract which is binding upon it and which breach is likely to have a Material Adverse Effect; and
- (e) except as disclosed on or before this statement of fact is made or repeated pursuant to this clause 3, no legal proceedings are pending or to the Owner's knowledge threatened against it which (in the case of those threatened, if commenced against the Owner) would be reasonably likely to be adversely determined and if so determined would be reasonably likely to have a Material Adverse Effect.

4. CONDITIONS REQUIRED BY THE OWNER

Initial Conditions Precedent

4.1 The rights and obligations of the Owner under this Agreement shall commence on the Effective Date save in relation to clauses 1 (*Definitions and Common Terms*), this clause 4.1, 5.1, 25 (*Assignment and Transfers*), 26 (*Confidentiality of Information and Financial Information*), 27 (*Notices*), 28 (*Waivers, Rights Cumulative*), 29 (*Illegality*), 30 (*Entire Agreement*), 31 (*Costs*), 34 (*Counterparts*), 35 (*Certificates*), 36 (*Governing Law and Jurisdiction*), 37 (*Disputes and Expert Determination*), 38 (*Contracts (Rights of Third Parties) Act 1999*) and 39 (*Duration*), which shall commence on the date hereof.

Conditions Precedent to Leasing

4.2 The Owner shall not be obliged to lease a Unit, the Owner Owned Spares, the Special Tools or a Simulator to the Operator unless, on the relevant Delivery Date:

- (a) in the case of the first Unit to be delivered and the fourteenth Unit to be delivered, the Operator delivers a Lease Conditions Precedent Certificate substantially in the form set out in Schedule 1 (*Form of Lease Conditions Precedent Certificate*);
- (b) there are no monies due and outstanding to the Owner from the Operator under this Agreement or any other Transaction Document on such Delivery Date;
- (c) in respect of a Unit or Simulator, the Operator has delivered evidence in a form reasonably satisfactory to the Owner showing that the relevant Unit or Simulator is the subject of the Operator Insurances in accordance with Schedule 8 (*Events of Loss and Insurance Requirements*); and
- (d) no Lease Operator Termination Event has occurred which is continuing on that Delivery Date.

5. CONDITIONS REQUIRED BY THE OPERATOR

Initial Conditions Precedent

5.1 The rights and obligations of the Operator under this Agreement shall commence on the Effective Date save in relation to clauses 1 (*Definitions and Common Terms*), 4.1, this clause 5.1, 25 (*Assignment and Transfers*), 26 (*Confidentiality of Information and Financial Information*), 27 (*Notices*), 28 (*Waivers, Rights Cumulative*), 29 (*Illegality*), 30 (*Entire Agreement*), 31 (*Costs*), 34 (*Counterparts*), 35 (*Certificates*), 36 (*Governing Law and Jurisdiction*), 37 (*Disputes and Expert Determination*), 38 (*Contracts (Rights of Third Parties) Act 1999*) and 39 (*Duration*) which shall commence on the date hereof.

Conditions Precedent to Leasing

5.2 The Operator shall not be obliged to lease a Unit, the Owner Owned Spares, the Special Tools or a Simulator from the Owner unless, on the relevant Delivery Date:

- (a) the Owner delivers to the Operator:
 - (i) the relevant Acceptance Certificate; and
 - (ii) a copy of the relevant Payment Instruction, unless
 - (A) paragraph 7.3 of part 2 (*Lease Owner Termination Events*) of schedule 2.4 (*Early Termination of the Lease*) of the Umbrella Agreement applies; or
 - (B) a Minimum Fleet Default Termination Suspension Period is subsisting,
- in each case issued under the MSA; and
- (b) no Lease Owner Termination Event has occurred which is continuing on that Delivery Date, other than as contemplated in the circumstances set out in paragraph 7.8(a) of part 2 (*Lease Owner Termination Events*) of schedule 2.4 (*Early Termination of the Lease*) of the Umbrella Agreement.

6. LEASING AND DELIVERY

Purchases

6.1 The Owner agrees to purchase:

- (a) the Units from the TMM for the Total Contract Price under the MSA; and
- (b) the Owner Owned Spares, the Special Tools and the Simulators from the TMM for the Owner Owned Spares Price (in the case of the Owner Owned Spares), for the Special Tools Price (in the case of the Special Tools) and for the Simulators Price (in the case of the Simulators) under the MSA.

Leasing

6.2 Subject to the terms of this Agreement, the Owner will lease and the Operator will take on lease the Units for the Unit Term, the Owner Owned Spares for the Owner Owned

Spares Term, the Special Tools for the Special Tools Term and the Simulators for the Simulators Term.

6.3 The Parties acknowledge that as at the date hereof the Scheduled Franchise Expiry Date in respect of the Initial Operator, subject to any permitted extensions, is 15 September 2013. The determination of the leasing of the Unit, the Associated Equipment and the Simulator on the occurrence of the Scheduled Franchise Expiry Date shall be without prejudice to any extant liabilities of either Party to the other.

Delivery of the Units

6.4 The Owner and the Operator agree that, on the date and time that the conditions set out in each of clause 4.2 and clause 5.2 are satisfied (or, other than the condition in clause 5.2(a) waived by the receiving party) in relation to each Unit:

- (a) such Unit shall be deemed to have been delivered to the Operator by the Owner and accepted by the Operator for leasing under and in accordance with the terms of this Agreement and such Unit shall thereafter be subject to the terms of this Agreement; and
- (b) the Operator shall have no right to refuse to take such Unit on lease from the Owner under this Agreement.

6.5 The provisions of Schedule 2 (*Acceptance of Units, Owner Owned Spares, Special Tools and Simulators*) shall apply in relation to the acceptance of Units under the MSA.

6.6 The Owner and the Operator agree that:

- (a) if the Operator has not satisfied each of the conditions set out in clause 4.2 in respect of a Unit within 1 Working Day of the date and time of the issue of the relevant Unit's Provisional Acceptance Certificate (or as the case may be, that Unit's Qualified Provisional Acceptance Certificate) the Operator shall pay to the Owner, from the expiry of that 1 Working Day period (or, if later, the Expected Delivery Date for that Unit) until such time as the conditions are satisfied, an amount equal to the Rental that would have been payable in respect of such Unit had it been Delivered at the end of that 1 Working Day period (or, if later, the Expected Delivery Date); and
- (b) if the Owner has not satisfied each of the conditions set out in clause 5.2, in respect of a Unit within 1 Working Day of the date and time of the issue of the relevant Unit's Provisional Acceptance Certificate (or as the case may be, that Unit's Qualified Provisional Acceptance Certificate) the Owner shall pay to the Operator, from the expiry of that 1 Working Day period (or, if later, the Expected Delivery Date for that Unit) until such time as the conditions are satisfied, liquidated damages in the amounts specified in clause 7.2 (subject to the Owner Aggregate Liability Cap).

Delivery of Owner Owned Spares and Special Tools

6.7 Subject to clauses 4.1 and 5.1, the Owner and the Operator agree that, on the date and time the conditions set out in each of clause 4.2 and 5.2 are satisfied (or, other than the condition in clause 5.2(a) in so far as it relates to the relevant Owner Owned Spares Acceptance Certificate, waived by the receiving party) in relation to any Owner Owned Spare:

- (a) such Owner Owned Spare shall be deemed to have been delivered by the Owner and accepted by the Operator for leasing under and in accordance with the terms of this Agreement for the Owner Owned Spares Term and such Owner Owned Spares shall be subject to the terms of this Agreement; and
- (b) the Operator shall have no right to refuse to take such Owner Owned Spare on lease from the Owner under this Agreement.

6.8 Subject to clauses 4.2 and 5.2, the Owner and the Operator agree that, on the date and time the conditions set out in each of clause 4.2 and 5.2 are satisfied (or, other than the condition in clause 5.2(a) in so far as it relates to the relevant Special Tools Acceptance Certificate, waived by the receiving party) in relation to any Special Tool:

- (a) such Special Tool shall be deemed to have been delivered by the Owner and accepted by the Operator for leasing under and in accordance with the terms of this Agreement for the Special Tools Term and such Special Tool shall be subject to the terms of this Agreement; and
- (b) the Operator shall have no right to refuse to take such Special Tool on lease from the Owner under this Agreement.

6.9 The Owner and the Operator agree in relation to the Associated Equipment to immediately:

- (a) upon any such Associated Equipment being deemed to have been delivered by the Owner and accepted by the Operator hereunder, make that Associated Equipment (other than those Special Tools that the Owner and the Operator have agreed the Operator can retain possession of for the purpose of carrying out Additional Services and Cosmetic Repairs in accordance with the terms of the TSA) available to the TMM in accordance with clauses 10.7 and 11.1 respectively of the TSA; and
- (b) following termination of the TSA due to the exercise of:
 - (i) the Parties' separate rights to terminate that agreement as a consequence of the occurrence of a TSA TMM Event of Default; or
 - (ii) the Operator's right to terminate that agreement as a consequence of the occurrence of the Operator TSA Voluntary Termination Right,

in each case, to make that Associated Equipment (other than those Special Tools that the Owner and the Operator have agreed the Operator can retain possession of for the purpose of carrying out Additional Services and Cosmetic Repairs in accordance with the terms of the TSA) available to any other maintainer in accordance with the terms of any New Maintenance Agreement entered into by the Parties.

6.10 The provisions of Schedule 2 (*Acceptance of Units, Owner Owned Spares, Special Tools and Simulators*) shall apply in relation to the acceptance of the Owner Owned Spares and Special Tools.

6.11 Pursuant to a Variation in respect of which an Authorisation to vary is issued, in accordance with schedule 4 (*Variations and Changes in Law*) of the Umbrella Agreement, the Operator may at any time prior to the expiry of six months after the date of Financial Close, by written notice to the Owner, request the Owner to purchase additional Owner Owned

Spares on the basis that the price of the new Owner Owned Spares will be based on the Owner Owned Spares Price, calculated in accordance with schedule 7.2 (*Spares*) of the MSA.

6.12 Neither Party shall pool or permit the pooling of any Owner Owned Spares with any other spares or parts relating to rolling stock vehicles other than the Units without the prior written consent of the other Party.

Delivery of Simulators

6.13 Subject to clauses 4 (*Conditions Required By The Owner*) and 5 (*Conditions Required By The Operator*), the Owner and the Operator agree that, on the date and time the conditions set out in each of clause 4.2 and 5.2 are satisfied (or, other than the condition in clause 5.2(a) in so far as it relates to the Simulator Acceptance Certificate, waived by the receiving party) in relation to any Simulator:

- (a) such Simulator shall be deemed to have been delivered by the Owner and accepted by the Operator for leasing under and in accordance with the terms of this Agreement for the Simulators Term and such Simulator shall be subject to the terms of this Agreement; and
- (b) the Operator shall have no right to refuse to take such Simulator on lease from the Owner under this Agreement.

6.14 The provisions of Schedule 2 (*Acceptance of Units, Owner Owned Spares, Special Tools and Simulators*) shall apply in relation to the acceptance of the Simulators.

7. LATE DELIVERY

Liquidated damages payable by Owner

7.1 The Owner shall pay the Operator liquidated damages in the amounts specified in clause 7.2:

- (a) where the TMM is granted an extension of time to the Expected Delivery Date of any Unit pursuant to paragraphs 4.1 and 4.2 of Schedule 13 (*Permitted Delay Procedure*) of the MSA as the result of an event that is described under paragraph (b) of the definition of Permitted Delay; and
- (b) subject to clause 7.10, in relation to each such affected Unit, from its Expected Delivery Date prior to the entitlement to the Permitted Delay specified in limb (b) of the definition of Permitted Delay, until the earliest of:
 - (i) the date of the expiry of the relevant extension of time which has been granted to the TMM under the MSA in respect of the Permitted Delay specified in limb (b) of the definition of Permitted Delay;
 - (ii) the date upon which a Provisional Acceptance Certificate or Qualified Provisional Acceptance Certificate is issued in relation to that Unit; and
 - (iii) the date of termination of the MSA in respect of that Unit.

7.2 Subject to the Owner Aggregate Liability Cap, the liquidated damages payable by the Owner pursuant to clause 7.1 shall be payable at the rate of []²³ or part thereof.

Liquidated damages payable by Operator

7.3 The Operator shall pay to the Owner liquidated damages in the amounts specified in clause 7.4:

- (a) where the TMM is granted an extension of time to the Expected Delivery Date in respect of any Unit, any Associated Equipment that is specified in the list agreed in accordance with clause 4.5(a), (b) or (c) (as applicable) of the MSA as being due for delivery on or before the Associated Equipment Rental Start Date, or a Simulator pursuant to paragraphs 4.1 and 4.2 of schedule 13 (*Permitted Delay Procedure*) of the MSA, in each case as the result of an event falling within any of paragraphs (a), (d), (f), (h), (i) (other than a Depot Force Majeure Event) or (j) of the definition of Permitted Delay; and
- (b) subject to clause 7.10, in relation to each such affected item of Equipment, from its Expected Delivery Date prior to the entitlement to that Permitted Delay (or, if later, the Scheduled Rental Start Date in relation to that Equipment), until the earliest of:
 - (i) the date of the expiry of the relevant extension of time which has been granted to TMM under the MSA in respect of the Permitted Delay;
 - (ii) the date upon which the relevant Acceptance Certificate is issued in relation to the relevant Equipment; and
 - (iii) the date of termination of the MSA in respect of that Equipment,

7.4 The liquidated damages payable by the Operator pursuant to clause 7.3 shall be payable at the applicable Owner Liquidated Damages Rate, or such other amount as may be determined pursuant to schedule 5.2 (*Runs of the Owner Financial Model*) of the Umbrella Agreement, if an Owner Financial Model Trigger Event occurs before Acceptance of the Last Unit.

Acceptance and Permitted Delay Disputes

7.5 Where the Owner and the Operator have reimbursed the TMM pursuant to paragraph 14.3 of schedule 6 (*Delivery and Acceptance*) of the MSA, the Party who issued the relevant Initial Statement (as defined in the MSA) shall pay to the other Party the amount which that other Party reimbursed to the TMM.

7.6 Where the Owner and the Operator have reimbursed the TMM pursuant to paragraph 8.3 of schedule 13 (*Permitted Delay Procedure*) of the MSA, then:

- (a) where the relevant Permitted Delay was under paragraph (b) of the definition thereof, the Owner shall pay to the Operator the amount reimbursed by the Operator to the TMM; or
- (b) where the relevant Permitted Delay was under any of paragraphs (a), (d), (f), (h), (i) (but excluding any Depot Force Majeure Event) or (j) of the definition of Permitted

²³ Redaction.

Delay, the Operator shall pay to the Owner the amount reimbursed by the Owner to the TMM.

Limitation of Operator Liability

7.7 The Operator's liability under clauses 7.3, 7.5 and 7.6 shall not exceed []²⁴ in respect of Permitted Delays falling under paragraph (a) of the definition of Permitted Delay or Permitted Depot Delays caused by an act of prevention or default of the Operator which, at the date of this Agreement, comprise paragraph (a) of the definition of Permitted Depot Delay in the relevant Depot Agreement for Leases.

7.8 Save as provided in clause 7.7, the Operator's liability under clauses 7.3, 7.5 and 7.6 shall be unlimited.

Invoicing and Payment

7.9 Amounts payable by the Owner or the Operator (as appropriate) under this clause 7 shall be invoiced by the Owner or Operator (as the case may be) every two weeks in respect of the Owner's or the Operator's (as the case may be) liability for liquidated damages accrued at the date of the invoice, and paid by the Owner or the Operator (as appropriate) within eight Working Days of receipt by it of such invoice.

Application of successive Permitted Delay claims

7.10 In respect of any affected Equipment, Permitted Delays awarded shall be applied in the sequence in which the original claims in respect thereof were made and not in the order in which such claims were decided.

8. REPAIR OF THE UNITS OTHER THAN UNDER A PERFORMANCE REMEDIAL PLAN

8.1 If at any time during the Unit Term of any Unit:

- (a) such Unit is required to be withdrawn from or is not available for service in accordance with the Train Plan; and
- (b) such withdrawal is required for warranty work to be carried out on such Unit by the TMM pursuant to schedule 14 (*Design Life, Warranties and MSA Fault Rectification*) of the MSA,

then subject to clause 8.2, and without prejudice to any claims the Operator may have against the TMM pursuant to paragraph 8 (*Liquidated Damages*) of schedule 14 (*Design Life, Warranties, and MSA Fault Rectification*) of the MSA, the Operator agrees that it will co-operate with the Owner and the TMM to make such Unit available to enable the warranty work to be carried out, subject to this clause 8 and paragraph 8.5 of schedule 14 of the MSA.

8.2 Clause 8.1 shall not apply where the warranty work to be carried out on any Unit is required pursuant to any Performance Remedial Plan, for which the provisions of paragraphs 4 (*Terms of Performance Remedial Plans*) and 9 (*Obligation to Co-operate in Implementing Plans*) of schedule 8 (*Performance Remedial Plans*) of the TSA shall apply.

²⁴ Redaction.

9. EXCLUSION OF WARRANTIES

9.1 Without prejudice to the Operator's rights against the TMM (or, in the case of the TSSSA, the Supplier) under the MSA, the TSA or the TSSSA, it is agreed and acknowledged that:

- (a) no condition, warranty or other term or any representation of any kind is or has been given or is deemed to be given by or on behalf of the Owner in respect of the Units, the Owned Spares, the Special Tools or the Simulators; and
- (b) as between the Operator and the Owner, all conditions or warranties express or implied by law relating to the description, fitness for purpose, merchantability, conformity to Group Standards, suitability, performance, quality, state, appearance, safety, durability, value, design or otherwise of the Units, the Owned Spares, the Special Tools or the Simulators are expressly excluded (the *Excluded Warranties*).

9.2 The Operator agrees and understands that, subject to the express terms of this Agreement and without prejudice to its rights against the TMM (or, in the case of the TSSSA, the Supplier) under the MSA, the TSA and the TSSSA, the Owner shall not be liable for any Losses, Taxes or loss of Relief:

- (a) in respect of any of the Excluded Warranties; and
- (b) caused directly or indirectly by any inadequacy or deficiency or defect of any Unit, Owner Owned Spare, Special Tool or Simulator or the use or performance of any Unit, Owner Owned Spare, Special Tool or Simulator or any repairs to or servicing of any Unit, Owner Owned Spare, Special Tool or Simulator.

9.3 To the extent permissible under applicable law (being that law that comprises part of the definition of Applicable Laws and Standards), the Operator waives (as against the Owner) any rights which it may have in tort in respect of the matters set out in clause 9.2 and agrees that the Owner shall have no greater liability in tort than it would in contract in relation to those matters.

9.4 The Operator understands that neither the TMM nor any other supplier of the Units, the Owned Spares, the Special Tools or Simulators is the agent of the Owner, and the Owner is not and shall not be bound by any representation, condition or warranty made by or on behalf of any such person.

10. RENTAL AND PAYMENTS

Rental

10.1 The Operator shall pay the Owner throughout the Unit Term, Owner Owned Spares Term, Special Tools Term or Simulators Term (as appropriate), the instalments of Rental in accordance with the Rental Schedule. Each such instalment of Rental shall be subject to adjustment and supplement in accordance with provisions of the Rental Schedule.

Obligation to pay Rental

10.2 Without limiting clause 10.1, but subject to any express provisions of this Agreement, including paragraphs 2 (*Rental Reduction for Poor Performance*) and 4 (*No Rental Payable for damaged Units*) of Schedule 3.10 (*Rental Reductions*), clause 13.3 and clause 32 (*Set Off*), the Operator's obligations to:

- (a) pay Rental until the relevant Expiry Date of each Unit, Owner Owned Spare, Special Tool or Simulator; and
- (b) comply with its other obligations under this Agreement,

shall be absolute and unconditional and no amount payable under this Agreement shall cease to be payable, be suspended or reduced for any reason whatsoever.

Payment of Rental

10.3 Subject to any express provision of this Agreement, all payments by the Operator under this Agreement will be made on a Working Day:

- (a) in Sterling; and
- (b) in cleared funds to the bank account notified by the Owner to the Operator.

Payment not on a Working Day

10.4 If any payment becomes payable on a day which is not a Working Day, that payment shall be made on the immediately preceding Working Day.

Alternative Currency

10.5 A Party (the *Paying Party*) shall pay any sum due under this Agreement or any order or judgment given or made in relation to this Agreement in the Second Currency in circumstances where the sum due has to be converted from the First Currency for the purposes of:

- (a) making or filing a claim or proof against the Paying Party;
- (b) obtaining an order or judgment in any court or other tribunal, or
- (c) enforcing any order or judgment given or made in relation to this Agreement.

10.6 The Paying Party will indemnify the other Party for any loss which the other Party suffers as a result of any difference between:

- (a) the rate of exchange used to convert the sum in question from the First Currency into the Second Currency, and
- (b) the rate or rates of exchange at which the other Party may, in the ordinary course of business, purchase the First Currency with the Second Currency upon receipt of such sum.

10.7 Any amount due from the Paying Party under clause 10.6 shall be due as a separate debt and shall not be affected by judgment obtained for any other sums due under or in respect of this Agreement.

10.8 For the purposes of clause 10.6, *rate of exchange* shall include any premium and costs of exchange payable in connection with the purchase of the First Currency with the Second Currency.

Default Interest

10.9 If any Party fails to pay any amount payable under this Agreement on the date when it is due, interest will accrue at the Default Interest Rate (both before and after judgment) on such unpaid amount from the day on which the payment was due and payable (compounding in each successive monthly period) and ending on the date of payment in full. All such interest will be calculated on the basis of the actual number of days elapsed and a 365 day year.

10.10 Default interest (if unpaid) arising on an overdue amount will be compounded monthly with the overdue amount but will remain immediately due and payable.

Late Payment of Commercial Debts (Interest) Act 1998

10.11 The Late Payment of Commercial Debts (Interest) Act 1998 and related regulations (as from time to time amended, extended or re-enacted) shall not apply to the late payment of any sums due under this Agreement.

Balancing Payments Account

10.12 The provisions of Schedule 9 (*Balancing Payments Account*) shall apply in respect of the Balancing Payments Account.

11. TAXES

Payments in full

11.1 Subject to the Owner's and Operator's rights of set-off under clause 32 (*Set-Off*), all payments made by a Party under this Agreement will be made in full without set-off, deduction or counterclaim from such payment (unless a deduction is required by law in respect of a payment of Tax, in which case, clause 11.2 shall apply).

11.2 All payments made by the Operator under this Agreement and all payments of liquidated damages made by the Owner to the Operator under clause 7.1 (in each case a **Relevant Payment**) shall be made as follows:

- (a) free and clear of, and without any deduction or withholding for or on account of any and all Taxes (a **Withholding**), unless the law requires the Relevant Payment to be made subject to a Withholding;
- (b) if the law does require payment subject to a Withholding, the Paying Party shall pay the Owner or, as the case may be, the Operator (each a **Payee**), the Relevant Payment less the Withholding (the **Reduced Payment**), together with (save where clause 11.2(c) applies) an additional amount (the **Gross-up Amount**) calculated in accordance with clause 11.3; and
- (c) the Paying Party shall not be obliged to pay the Gross-up Amount to the Payee in circumstances where the requirement for the Paying Party to make the Relevant Payment subject to a Withholding arises solely as a result of:
 - (i) a delay in the filing of a tax return or the submission of a claim by the Payee, where such delay was reasonably avoidable;
 - (ii) wilful misconduct or recklessness on the part of the Payee; or

- (iii) the Payee being resident for United Kingdom tax purposes outside the United Kingdom.

Withholdings

11.3 The Gross-up Amount referred to in clause 11.2(b) shall be:

- (a) the amount which, when paid in addition to the Reduced Payment, will ensure that the Payee receives, in total, a net amount equal to the full amount that the Payee would have been entitled to receive in the absence of any requirement to make a Withholding, taking into account any Withholding which the law requires the Paying Party to make from the Gross-up Amount in which case the Gross-up Amount shall be increased to take into account such Withholding; and
- (b) calculated by the Payee (acting reasonably in good faith), provided that if the Paying Party considers that the amount calculated by the Payee is incorrect, the Paying Party may require that the Payee's auditors produce a written certificate of the relevant amount (the costs of procuring such certificate to be borne by the Paying Party unless the certificate shows the Payee's calculation to be incorrect, in which case they shall be borne by the Payee).

11.4 If the Paying Party makes a Withholding from any Relevant Payment, the Paying Party shall pay the amount of that Withholding to the relevant taxation or other authority within the period set down by law for it to be paid. The Paying Party shall provide the Payee with an official receipt or other documentation from the Taxation or other authority which shows that the Withholding has been duly paid.

11.5 If:

- (a) the Paying Party pays a Gross-up Amount to the Payee in accordance with clause 11.2; and
- (b) the Payee receives a refund of Tax or a credit against Tax as a result of the requirement of the Paying Party to make a Withholding from any Relevant Payment,

the Payee shall, as soon as is reasonably practicable after receiving such refund or credit, pay the Paying Party an amount which the Payee (acting reasonably) determines will leave the Payee in no better or worse position than it would have been in if the Paying Party had not been required to make that Withholding.

11.6 The:

- (a) Payee shall not be required to make a payment to the Paying Party under clause 11.5 if doing so would prejudice the Payee's right to keep the refund or credit; and
- (b) Paying Party acknowledges that nothing in clause 11.5 shall interfere with the right of the Payee to arrange its Taxation affairs in whatever manner the Payee thinks fit. By way of example only of the rights of the Payee under clause 11.5, the Paying Party acknowledges that the Payee shall not be obliged to claim any refund or credit in priority to any other refund or credit to which the Payee may be entitled nor to disclose any information to the Paying Party in respect of its Taxation affairs.

Value Added Tax

11.7 In relation to Value Added Tax:

- (a) all Rental and other Relevant Payments are expressed to be exclusive of Value Added Tax;
- (b) any Value Added Tax properly chargeable by one Party in respect of supplies of goods and services by that Party under this Agreement shall be paid by the other Party in addition to such Rental or, as the case may be, other Relevant Payments;
- (c) the supplier of the relevant goods or services shall provide the other Party with an appropriate and valid Value Added Tax invoice in respect of any Value Added Tax payable under this Agreement; and
- (d) where under this Agreement one Party has agreed to reimburse or indemnify the other in respect of any payment made or cost incurred by the other, then the first Party shall also reimburse the other for any Value Added Tax paid which forms part of the payment made or cost incurred, to the extent that the second Party reasonably determines that Value Added Tax is not available for credit to that Party under sections 24-26 (inclusive) of the Value Added Tax Act 1994 or any regulations made thereunder or any similar or equivalent legislation replacing or introduced in addition to the same.

No deductible or offset

11.8 Subject to clause 11.9, clause 11.11 shall apply where:

- (a) the Owner is required to pay a sum to the Operator under this Agreement (a **Relevant Sum**);
- (b) the Relevant Sum is payable out of the income, profits or gains of the Owner which are chargeable to Tax, which shall include any sums payable to the Owner by way of liquidated damages under the Transaction Documents (the **Relevant Income**); and
- (c) the Owner determines (acting reasonably and in good faith) or, at the request and cost of the Operator, the Owner's auditors certify in writing that the Owner will not:
 - (i) be entitled to reduce its Relevant Income by the amount of the Relevant Sum by treating the payment of the Relevant Sum as an expense of its trade which will be deductible from the Relevant Income for Tax purposes in the Accounting Period of the Owner in which the Relevant Sum is paid; or
 - (ii) otherwise be entitled to reduce its Relevant Income by the amount of the Relevant Sum, by treating the payment of the Relevant Sum as giving rise to a deduction or off-set from its liability to pay Tax on the Relevant Income in such Accounting Period.

11.9 The following shall apply in relation to clause 11.8:

- (a) if the Owner anticipates that it will make a determination as referred to in clause 11.8(c)(i) or (ii) it will notify the Operator prior to making any such determination and the Owner will consider in good faith any representations made by the Operator concerning the basis on which the Relevant Sum would be deductible; and

- (b) unless and until the Owner makes any such determination the Owner shall submit its corporation tax computations for the Accounting Period in which the Relevant Sum is paid on a basis which claims to reduce the Relevant Income by the amount of the Relevant Sum.

11.10 Where clause 11.8 applies, the Operator shall pay to the Owner an amount within five Working Days of demand (the *Non-Deductibility Amount*). The Non-Deductibility Amount shall be the amount which the Owner determines or at the request and cost of Operator, which the Owner's auditors certify in writing that the Owner needs to ensure that it is placed in the same after-Tax position as the Owner would have been in had the Owner been entitled to reduce its Relevant Income by the amount of the Relevant Sum in the manner set out in clause 11.8(c)(i) or (ii).

11.11 The Operator acknowledges that the Owner will ascertain the requirement of the Operator to make payments under clause 11.10 on the basis of its expectations as to the treatment for Tax purposes of the Relevant Sum, and that such expectations may prove incorrect. In consequence, this clause 11.11 shall apply where:

- (a) the Owner pays a Relevant Sum on the basis that clause 11.10 will not require the Operator to pay a Non-Deductibility Amount and the Owner subsequently determines that a Non-Deductibility Amount should have been paid by the Operator under clause 11.10; or
- (b) the Operator pays a Non-Deductibility Amount to the Owner in accordance with clause 11.10 and the Owner subsequently determines that no Non-Deductibility Amount should have been paid by the Operator under clause 11.10.

11.12 Where clause 11.11 applies, the Owner shall determine the payments required to be made between the Operator and the Owner which are needed to restore the after-Tax position of the Owner. In making any determination under this clause 11.12, the Owner shall be entitled to take into account the effect on the Owner's after-Tax position having surrendered losses for Tax purposes to any member of the Owner's Group, which losses proved not to be available or which losses proved to be available in a greater amount, as a result of the Owner's expectation as to the tax treatment of the Relevant Sum having proved incorrect.

Untimely or incorrect payments

11.13 If for any reason a Party receives a payment of Rental or liquidated damages from the other Party under this Agreement:

- (a) on a date which is not the due date; or
- (b) in an amount which is not the amount payable under this Agreement,

and as a consequence it is necessary for the Party to:

- (i) liquidate or redeploy deposits from or with third parties (including any member of the Owner's Group or Operator's Group, as the case may be); or
- (ii) break any swaps or otherwise incur breakage costs under its financing arrangements,

then, subject to the non defaulting Party having used all reasonable endeavours so as to mitigate its losses, the defaulting Party shall pay to the non defaulting Party such amounts as

the non defaulting Party may certify are necessary to compensate it for all Losses incurred in liquidating or redeploying deposits from or with third parties (including any member of the Owner's Group or Operator's Group, as the case may be) to the extent those deposits were acquired or entered into to enable the non defaulting Party to perform its obligations under this Agreement (including, in relation to the Owner, any such deposits employed by the Owner in funding all or part of the Owner's Cost) or incurred on the breakage of any swaps or other financing arrangements entered into by the Party in connection with any such obligations.

No double recovery

11.14 The non-defaulting Party may not recover anything under clause 11.13 if and to the extent that such Party would recover more than once in respect of the same Loss by doing so.

12. GENERAL INDEMNITY, TAX INDEMNITY AND OWNER LIABILITY

General Indemnity

12.1 The Operator shall be liable for, and shall indemnify on an after-tax basis each Indemnitee against all Losses suffered or incurred by such Indemnitee which arise in connection with the use, operation or leasing during the Unit Term of the Units, the Owner Owned Spares Term of the Owner Owned Spares, the Special Tools Term of the Special Tools and/or the Simulators Term of the Simulators, including those Losses which arise by reason of or in connection with:

- (a) the possession, delivery, transportation, replacement, exchange, pooling, interchange, chartering, storage, management, control, use, operation, leasing, sub-leasing, insurance, loss, damage, refurbishment, condition, service, repair, maintenance undertaken, re-delivery of, in or to such Units, Owner Owned Spares, Special Tools or Simulators, except:
 - (i) insurance, loss or damage to the Owner Owned Spares and Special Tools in the possession of the TMM pursuant to the performance of its obligations under the TSA, for so long as the TSA is in effect; and
 - (ii) refurbishment, condition, service, repair, maintenance undertaken or re-delivery of or to such Units, Owner Owned Spares, Special Tools or Simulators pursuant to the performance by the TMM of its obligations under the TSA, for so long as the TSA is in effect;
- (b) loss or destruction of or damage to any property, or death or injury of, or other loss of whatsoever nature suffered by, any person caused by, relating to, or arising from or out of (in each case whether directly or indirectly) any of the matters set out above;
- (c) any infringement or alleged infringement of any intellectual property or analogous right;
- (d) any Event of Loss or event covered by the Operator Insurances; and/or
- (e) as a result of any Lease Operator Termination Event or any act or omission of the Operator which invalidates or which renders void any of the Operator Insurances.

but excluding any Losses to the extent that those Losses:

- (i) arise as a result of an act, omission, negligence, recklessness, breach of contract or wilful misconduct by the Owner, its employees, servants, agents, sub-contractors, directors or officers;
- (ii) arise as a result of an act, omission, negligence, recklessness, breach of contract or wilful misconduct by the TMM, its employees, servants, agents, sub-contractors, directors or officers;
- (iii) arise as a result of an act, omission, negligence, recklessness, breach of contract or wilful misconduct by any Third Party Maintainer appointed by the Owner, its employees, servants, agents, sub-contractors, directors or officers;
- (iv) arise as a result of any act, omission, negligence, recklessness, breach of contract or wilful misconduct by an Indemnatee, its employees, servants, agents, sub-contractors, directors or officers;
- (v) arise as a result of a Fault or constitute the cost of remedying any Fault;
- (vi) have been or will be reimbursed to the Owner pursuant to the Operator Insurances or any other insurance policies maintained by any of the Owner, the TMM or any Third Party Maintainer in respect of the Units, Associated Equipment, or Simulators;
- (vii) are amounts payable to any Financier under any of the Senior Finance Documents;
- (viii) are amounts payable by the Owner under the TSA, the MSA or the TSSSA or are expressed to be for the Owner's account thereunder other than to the extent such amounts arise from the Operator's breach, act or omission;
- (ix) are deductions levied pursuant to paragraph 2 (*Rental Reduction for Poor Performance*) of Schedule 3.10 (*Rental Reductions*);
- (x) arise as a result of a termination due to the occurrence of a Lease Owner Termination Event; or
- (xi) arise as a result of acts, events or omissions occurring after the expiry of the Unit Term in the case of the Units, after the expiry of the Owner Owned Spares Term in the case of the Owner Owned Spares, after the expiry of the Special Tools Term, in the case of the Special Tools and after the expiry of the Simulators Term, in the case of the Simulators.

12.2 If the Indemnatee has suffered or will suffer any Losses for which it is indemnified under clause 12.1, the Owner will notify the Operator as soon as reasonably practicable after it becomes aware of the fact that the Indemnatee has suffered, or will suffer, any such Losses. Thereafter, the Owner shall use reasonable endeavours to keep the Operator informed of developments in respect of any claims giving rise to such Losses. The Operator and the Owner shall consult to consider what action may properly be taken in respect of the Losses. Following such consultation, if the Operator wishes to contest the claim giving rise to such Losses in its own name (and not in the name of the Indemnatee) it may do so, to the extent permitted by law, provided that the following conditions are met:

- (a) the Indemnatee shall first have been indemnified and secured to its satisfaction against any Losses arising, or which may arise, out of the claim;

- (b) the claim will not, in the Owner's reasonable opinion, give rise to any likelihood of the sale, forfeiture or other loss of the Units, Owner Owned Spares, Special Tools or Simulators or any interest in them or criminal liability of the Owner or be prejudicial to the Owner's interests in any other respect; and
- (c) to the extent that the claim involves judicial, administrative or other similar proceedings, the Owner and the Operator shall have received an opinion of counsel reasonably acceptable to both to the effect that there is a reasonable prospect of the claim being successful.

12.3 The Owner undertakes on behalf of itself and, to the extent to which it is able to do so, each Indemnitee to take all reasonable action in order to enforce any other rights of recovery available to it in respect of the Losses subject to the indemnity in clause 12.1.

No double recovery and duty to mitigate

12.4 The Owner and each other Indemnitee may not recover anything under the indemnities set out in clause 12.1 if and to the extent that they would recover (by way of indemnity or otherwise) more than once in respect of the same Loss by doing so. Any amounts paid to an Indemnitee under clause 12.1 shall be paid by the Operator, on condition that the Indemnitee agrees that if it subsequently recovers monies in respect of the same loss for which it has been compensated by the Operator, the relevant Indemnitee shall make a repayment to the Operator for the amount in respect of which the Indemnitee subsequently receives compensation from another Party and the Owner shall, to the extent it has received such amount from the relevant Indemnitee, make such a repayment to the Operator. The Owner and each other Indemnitee shall each use their reasonable endeavours so as to mitigate their Losses.

Indemnity for operating Taxes

12.5 The Operator agrees to indemnify the Owner in respect of any and all Taxes (or loss of Relief), rates, licence fees, rent, or other similar costs suffered or incurred by the Owner to the extent they arise in connection with the use, operation or leasing during the relevant term of the Units, the Owner Owned Spares, the Special Tools and/or the Simulators, including those Taxes (or loss of Relief) which arise by reason of or in connection with the possession, control, use, operation, leasing, sub-leasing, insurance, loss, damage, maintenance undertaken (pursuant to the TSA), re-delivery of, in or to such Units, Owner Owned Spares, Special Tools or Simulators or otherwise in connection therewith.

12.6 The indemnity in clause 12.5 shall not apply to the extent that the Taxes (or loss of Relief), rates, licence fees, rent, or other similar costs suffered or incurred by the Owner:

- (a) arise outside the United Kingdom and would not have arisen but for any connection between the Owner and the jurisdiction in which such Taxes are imposed;
- (b) are imposed on the net income, profits or gains of the Owner;
- (c) are value added tax as referred to in clause 11.7;
- (d) constitute penalties, additions to Tax, fines or interest which would not have arisen but for the reasonably avoidable delay or failure by the Owner in the filing of any tax return, statement or other documentation with the relevant Tax authority;

- (e) arise as a result of any act, event or omission occurring after the expiry of the Unit Term in the case of the Units, after the expiry of the Owner Owned Spares Term in the case of the Owner Owned Spares, after the expiry of the Special Tools Term, in the case of the Special Tools and after the expiry of the Simulators Term in the case of the Simulators;
- (f) are capable of recovery by the Owner under any other provision of this Agreement or from any other person; or
- (g) would not have arisen but for the reckless disregard or wilful misconduct of the Owner or the breach by the Owner of any of its obligations, representations or warranties under this Agreement or any other Transaction Document to which it is a party.

12.7 The amount which is to be treated as payable under indemnity set out in clause 12.5 shall be an amount which shall leave the Owner in no better or worse position than it would have been in if no loss of Relief had occurred or no such Taxes had been imposed (as the case may be). Any amounts payable under clause 12.5 shall be determined by the Owner (acting reasonably and in good faith) or, at the request and cost of the Operator, by the Owner's auditors.

12.8 The Owner shall act reasonably so as to mitigate any loss of Relief or liability to Tax as mentioned in clause 12.5.

12.9 Where the Operator is liable to make a payment under clause 12.5, the payment shall be made in cleared funds by:

- (a) in the case that involves an actual payment of Tax, the latest date as determined by the Owner or, at the request and cost of the Operator, as certified by the Owner's auditors, on which such Tax could have been paid without giving any rise to a liability to interest or a penalty; or
- (b) in the case that involves loss of Relief, the latest date, determined by the Owner or, at the request and cost of the Operator, as certified by the Owner's auditors, on which Tax could have been paid in respect of the period in which the loss of Relief occurs without giving any rise to a liability to interest or a penalty.

Other indemnities

12.10 This clause 12.10 applies where the Operator is required to make an indemnity payment as a result of a person other than the Owner incurring any liability to which this clause 12 applies (an **Indemnity Sum**) and as a result the Owner is required to pay Tax on the Indemnity Sum.

12.11 Where clause 12.10 applies, the Operator shall pay to the Owner, within five days of a written demand, an additional sum determined by the Owner as being the amount required to leave the Owner in no better and no worse a position than the Owner would have been in if the liability which gives rise to the indemnity had never occurred.

12.12 In calculating any amount due:

- (a) from the Operator under clause 12.10, the Owner shall take into account any Tax which the Owner has to pay on any amount paid by the Operator under clause 12.10; and

- (b) under clause 12.10, the Owner shall take into account any Relief to which the Owner becomes entitled as a result of the liability which gives rise to the indemnity.

Payment on demand

12.13 All Losses indemnified against by the Operator pursuant to this Agreement will be paid by the Operator within five days of a written demand specifying the full details of the Losses claimed and the basis under this Agreement for indemnification, unless the Operator notifies the Owner in writing that it disputes the claim for indemnification within five days of written demand.

12.14 If the Operator disputes the claim for indemnification, the Operator shall inform the Owner in writing of its reasons for such dispute within 10 Working Days of receipt of the demand.

Survival

12.15 Unless any other shorter limitation period applies by law, the indemnities set out in this clause 12 shall continue in full force for six years after:

- (a) the expiry of the Unit Term in the case of the Units;
- (b) the expiry of the Owner Owned Spares Term in the case of the Owner Owned Spares;
- (c) the expiry of the Special Tools Term in the case of the Special Tools; and
- (d) the expiry of the Simulators Term in the case of the Simulators,

but only in respect of any Losses which are attributable to any event or circumstance occurring prior to or on the expiry of the Unit Term in the case of the Units, prior to or on the expiry of the Owner Owned Spares Term in the case of the Owner Owned Spares, prior to or on the expiry of the Special Tools Term in the case of the Special Tools and prior to or on the expiry of the Simulators Term in the case of the Simulators, and notwithstanding any breach or repudiation of this Agreement or the termination of the leasing of any Unit, Owner Owned Spare, Special Tool or Simulators hereunder.

[]²⁵

12.16 []²⁶

13. QUIET ENJOYMENT

[]²⁷

13.1 []²⁸

²⁵ Redaction.

²⁶ Redaction.

²⁷ Redaction.

²⁸ Redaction.

No Interference other than Permitted Owner Action

13.2 The Owner shall not, other than in accordance with clause 13.1, be entitled to prevent the Operator using or operating the Units or otherwise interfere with the quiet use, possession and enjoyment by the Operator of the Units, the Associated Equipment or the Simulators during, as appropriate, the Unit Term, the Owner Owned Spares Term, the Special Tools Term and the Simulators Term, and the Operator shall be entitled (but not obliged) to disregard any instruction from the Owner which purports to require any Unit to remain at any location or to proceed to and remain at any location which is not in accordance with clause 13.1. Any action taken by the Operator to disregard such an instruction from the Owner shall, providing that the Owner does not do anything that contravenes or purports to contravene such action, be deemed to remedy the Owner's breach of this clause 13.2.

□²⁹

13.3 □³⁰

14. OPERATIONAL AND MAINTENANCE UNDERTAKINGS

Each of the Operator and the Owner agrees to comply with its obligations set out in Schedule 5 (*Operational and Maintenance Undertakings*).

15. TECHNICAL RECORDS AND MANUALS

Each of the Operator and the Owner agrees to comply with its obligations set out in Schedule 6 (*Technical Records, Maintenance Records (Lease) and TSA Software*).

16. VARIATIONS, MODIFICATIONS AND CHANGES IN LAW

Restriction On The Right To Vary

16.1 The Parties shall not vary the terms of this Agreement and no such agreement purporting to vary the terms of this Agreement shall be enforceable between the Parties other than Variations entered into pursuant to schedule 4 (*Variations and Changes in Law*) of the Umbrella Agreement.

Variation Procedure

16.2 Schedule 4 (*Variations and Changes in Law*) of the Umbrella Agreement shall apply in relation to the issuing, consideration of, authorisation and implementation of Variations to this Agreement, including Variations to the Units, Associated Equipment and/or the Simulators that are the subject of this Agreement, the Rental, any Modifications or the rights and/or obligations of the Owner or the Operator under this Agreement.

Obligation to enter into a Contract Amendment Agreement

16.3 The Parties shall enter into a Contract Amendment Agreement amending the terms of this Agreement in accordance with any Authorisation to Vary requiring the same, as soon as reasonably practicable after receipt of that Authorisation to Vary from the Secretary of State pursuant to schedule 4 (*Variations and Changes in Law*) of the Umbrella Agreement.

²⁹ Redaction.

³⁰ Redaction.

Modifications

16.4 The provisions of Schedule 7 (*Modifications*) of this Agreement and schedule 4 (*Variations and Changes in Law*) of the Umbrella Agreement shall apply in respect of any Modification.

Changes in Law

16.5 The provisions of schedule 4.5 (*Change in Law*) of the Umbrella Agreement and the UA Variation Procedure shall apply in relation to any Qualifying Change in Law.

16.6 If any other Change in Law (which is not a Qualifying Change in Law) occurs, including one that requires a Mandatory Modification, the UA Variation Procedure shall apply to the extent that a Required Variation is to be made to this Agreement, provided that the Owner shall not be entitled to any relief from, or any additional payment in respect of, the implementation of such Required Variation other than pursuant to such UA Variation Procedure.

17. EVENTS OF LOSS AND OPERATOR INSURANCES

17.1 If an Event of Loss occurs in relation to a Vehicle, Unit or the Simulators the provisions of Schedule 8.1 (*Events of Loss*) shall apply.

17.2 The Operator agrees to comply with its obligations in relation to the Operator Insurances set out in Schedule 8.2 (*Insurance Requirements*) including any additional requirements properly stipulated in accordance with paragraph 2.2 of Part 1 (*Insurance Requirements*) of Schedule 8.2 (*Insurance Requirements*).

18. LEASE OPERATOR TERMINATION EVENTS

The Lease Operator Termination Events set out in paragraph 1 (*Lease Operator Termination Events*) of Schedule 10 (*Lease Operator Termination Events*) and the rights, remedies and other provisions set out in the remaining paragraphs of Schedule 10 of this Agreement and schedule 2 (*Termination*) of the Umbrella Agreement apply to this Agreement and the leasing of each Unit, the Associated Equipment and the Simulators under this Agreement.

19. REMEDY FOR OPERATOR NON-COMPLIANCE

19.1 If the Operator fails to comply with any provision of this Agreement, the Owner may do so on behalf of the Operator and the Operator shall, within five Working Days of demand, pay any reasonable sums spent by the Owner and any reasonable costs and expenses incurred by the Owner in doing so, together with interest on that sum at the Default Interest Rate from the date on which such expenditure is incurred to the date of payment thereof to the Owner.

19.2 Nothing in this clause 19 shall oblige the Owner to effect compliance on behalf of the Operator nor shall it prejudice the Owner's rights, where permissible, to treat, where appropriate, the non-compliance as a Lease Operator Termination Event and to exercise its rights as set out in Schedule 10 (*Lease Operator Termination Events*).

20. LEASE OWNER TERMINATION EVENTS

The Lease Owner Termination Events set out in paragraph 1 of Schedule 11 (*Lease Owner Termination Events*) and the rights, remedies and other provisions set out in the remaining clauses of Schedule 11 (*Lease Owner Termination Events*) of this Agreement and schedule 2

of the Umbrella Agreement apply to this Agreement and the leasing of each Unit, the Owner Owned Spares, the Special Tools and the Simulators.

21. TERMINATION OF THE MSA, TSA AND TSSSA BY THE SECRETARY OF STATE

Termination of the MSA

21.1 The provisions of Schedule 12.1 (*Termination of the MSA*) shall apply in relation to the Owner's rights to terminate the MSA.

Termination of the TSA

21.2 The provisions of Schedule 12.2 (*Termination of the TSA*) shall apply in relation to the Parties' respective rights to terminate the TSA.

Termination of the TSSSA

21.3 The provisions of Schedule 12.3 (*Termination of the TSSSA*) shall apply in relation to the Parties' respective rights to terminate the TSSSA.

Termination by the Secretary of State

21.4 The provisions of Schedule 12.4 (*Termination by the Secretary of State*) shall apply in relation to the voluntary termination of this Agreement by the Secretary of State.

22. APPLICATION OF CAPS UNDER THE TSA

22.1 Subject to clause 22.2, the Owner and the Operator agree that under the terms of clause 27 (*Liability, Indemnities*) of the TSA, the TMM shall be obliged to pay each claim to the Operator or the Owner, as the case may be, in accordance with the terms of the TSA.

22.2 ³¹

22.3 The provisions of this clause 22 shall survive the termination of this Agreement.

23. THE TSA GUARANTEE AND THE TSA BOND

The Owner and Operator agree that where clause 22.2 applies, they shall apply any amounts that they recover under the TSA Guarantee or, in the case of the Operator, the TSA Bond, in the order set out in clause 22.2.

24. REDELIVERY

The provisions of Schedule 13 (*Redelivery Condition (Lease) Schedule*) shall apply.

25. ASSIGNMENT AND TRANSFERS

Operator Rights

25.1 While clause 6 (*Disposal of this Agreement and the Contracts*) of the Umbrella Agreement remains in force, the Operator may not assign or transfer or otherwise dispose (whether by Legislation or any transfer scheme pursuant to any Legislation or otherwise) of

³¹ Redaction.

its rights and/or obligations under this Agreement, or create or agree to create or permit to exist any Security Interest on or over Rolling Stock or this Agreement, save by way of an Operator Accession or Operator Transfer Scheme that the Secretary of State effects in accordance with its undertaking under paragraph 1.1 of schedule 2.1 (*Section 54 Undertakings*) of the Umbrella Agreement.

Owner Rights

25.2 While clause 6 of the Umbrella Agreement remains in force, then subject to clauses 6.7(f), 6.8(a), 6.8(b), 6.8(e) and 6.8(f) of the Umbrella Agreement, the Owner may not:

- (a) assign or transfer or otherwise dispose of its rights and/or obligations under this Agreement, or sell any Rolling Stock, save by way of a Permitted Contracts Restructuring Arrangement in accordance with clause 6 of the Umbrella Agreement; or
- (b) create or agree to create or permit to exist any Security Interest on or over Rolling Stock or this Agreement, without the prior written consent of the Secretary of State.

Operator co-operation

25.3 The Operator agrees to co-operate with the Owner and to execute and deliver to the Owner such documents as are reasonably requested by the Owner in the event that the Owner:

- (a) amends, modifies or replaces the security arrangements in respect of the financing of the Units, Owner Owned Spares, Special Tools or Simulators;
- (b) refinances or sells the Units, Owner Owned Spares, Special Tools or Simulators in accordance with the terms of this Agreement and the Umbrella Agreement; or
- (c) assigns or transfers its rights and/or obligations under this Agreement, the Units, Owner Owned Spares, Special Tools or Simulators or any or all of its interests in any of them,

in each case as permitted in accordance with this clause 25.

No effect on Operator payments

25.4 Following any transfer, assignment or the creation of any Security Interest by the Owner, the Operator shall not be required to make any increased payment to the transferee, the assignee or the Security Interest Holder under this Agreement which arises as a consequence of such transfer, assignment or the creation of such Security Interest.

Owner Sub-Contracting

25.5 Subject to clauses 25.6 and 25.7, the Operator acknowledges that the Owner proposes to sub-contract the performance of some (but not all) of its obligations under this Agreement to Eversholt pursuant to the Eversholt Services Agreement.

25.6 The Owner shall retain responsibility in full for all of its obligations under this Agreement, and any act, omission, breach of contract or negligence of Eversholt or any other of its sub-contractors, agents or employees under its control shall, for the purposes of this Agreement, be deemed to be the act, omission, breach of contract or negligence of the Owner, save that the Owner's responsibility for such acts, omissions, breaches of contract or

negligence to which any relevant provisions of this Agreement or any of the other Contracts (including clauses 25.7 or 26.2 of this Agreement or clause 16.3 of the Umbrella Agreement) apply in accordance with their terms shall be as set out in those provisions.

25.7 If Eversholt or any other sub-contractor of the Owner is in breach of any confidentiality agreement entered into by that person in favour of the Operator in accordance with clause 26.2(c)(iv), then:

- (a) the Operator may require the Owner to ensure that any individual responsible for such breach be removed immediately from any involvement with the Project and shall not have any further access to the Operator's confidential information described in clause 26.1;
- (b) if another breach occurs within four months, the Owner shall immediately cease to share any further confidential information described in clause 26.1 with, as appropriate, Eversholt or the other subcontractor; and
- (c) if the original breach was related to Intellectual Property Rights or represented a material breach of the relevant confidentiality agreement, the Owner shall not share any further confidential information described in clause 26.1 belonging to the Operator with, as appropriate, Eversholt or the sub-contractor from the date four months after the breach and shall require that, as appropriate, Eversholt or the sub-contractor return to the Owner all confidential information described in clause 26.1 previously received.

26. CONFIDENTIALITY OF INFORMATION AND FINANCIAL INFORMATION

Confidentiality Undertaking

26.1 Subject to clause 26.2, each of the Owner and the Operator agree that:

- (a) it will keep confidential:
 - (i) this Agreement;
 - (ii) all documents related to this Agreement and all information and data furnished to the Owner or the Operator under this Agreement; and
 - (iii) any information or data concerning the Intellectual Property Rights, designs, operations, contractual, commercial or financial arrangements or affairs of the Owner, the Operator or any subsequent operator which may come to its knowledge; and
- (b) neither this Agreement nor any such documents, information and data acquired in the performance of this Agreement (the information in (a) and (b) being the ***Confidential Information***) will be furnished or disclosed by it to any other person (except as permitted by clause 26.2) without the prior written consent of the Owner, the Operator or any subsequent operator, as the case may be.

Permitted Disclosures

26.2 The restrictions in clause 26.1 shall not apply to any disclosure of any Confidential Information referred to in clause 26.1:

- (a) to the Secretary of State, whose obligations in relation to Confidential Information (Umbrella Agreement) are set out in clause 4.3 of the Umbrella Agreement;
- (b) to the ORR, the Bank of England or the Prudential Regulation Authority and the Financial Conduct Authority or as required by law or any written requirements of any Government Authority;
- (c) to:
 - (i) any solvent Affiliate of the disclosing Party (excluding for these purposes any person or other entity described in paragraph (b)(ii) of the definition of Affiliate in the Master Definitions Agreement which is not a direct or indirect shareholder of the Owner's Group) or any direct or indirect shareholder of the Owner or a member of the Owner's Group or another solvent member of the group of companies of which the disclosing Party is a member;
 - (ii) any lawyers, accountants, insurers or others providing professional services (other than any engineering or design services (including the provision of such services by train manufacturers)) to the Owner or the Operator;
 - (iii) any current or prospective financier of the Operator or any member of the Operator's Group or any current or prospective financier of any member of the Owner's Group or any sub-contractor of the Owner or the Operator (including, in the case of the Operator, any person who sub-leases the Units in accordance with the terms of this Agreement); or
 - (iv) Eversholt or any other sub-contractor of the Owner where Eversholt or such other sub-contractor of the Owner has provided an undertaking of confidentiality to the Operator on substantially the same terms as this clause 26 which is directly enforceable against Eversholt by the Operator,

provided that in any such case:

- (A) disclosure is necessary in order to enable the relevant recipient to perform its role in relation to the Project or the disclosing Party needs to make such disclosure in order to run its business; and
- (B) the disclosing Party agrees that:
 - (I) it shall use reasonable endeavours to obtain an undertaking of confidentiality (which is directly enforceable by the owner of such confidential information against the relevant recipient) on substantially the same terms as this clause 26 from each relevant third party recipient of the Confidential Information; and
 - (II) save where the relevant recipient has provided an undertaking of confidentiality to the owner of such confidential information that is directly enforceable by the owner of such confidential information in accordance with sub-paragraph (I), it shall be responsible for any breach of the provisions of this clause 26 by any relevant persons referred to in sub-clauses (i) to (iv) inclusive of this clause 26.2(c) to whom disclosures are made;

- (d) in connection with obtaining any insurance;
- (e) in connection with the maintenance of any Vehicle, Unit or Simulator where disclosure is reasonably required and is limited to the extent necessary to enable the Owner or the Operator to procure the maintenance and repair of any Vehicle, Unit or Simulator or any work (including as to any Modifications);
- (f) which is in the public domain other than as a result of the breach of any obligation of confidentiality;
- (g) which is required in connection with any litigation;
- (h) which is required in connection with an assignment, transfer or other disposition of rights permitted hereunder where prior to any disclosure the proposed assignee or transferee has provided a confidentiality undertaking to both the Owner and the Operator in the form of this clause 26;
- (i) which is required in connection with a sale or other disposition of shares or other ownership interest in the Owner's Group (or any company holding shares in a member of the Owner's Group), the Operator or any parent company of any Party provided always that prior to any disclosure any recipient of such information has provided an undertaking of confidentiality in substantially the same form as set out in this clause 26 to both the Owner and the Operator;
- (j) which was made available to the disclosing Party on a non confidential basis; or
- (k) as permitted or required by any Applicable Laws and Standards (including to Network Rail), the rules of any recognised stock exchange or regulatory body or any written requirements of any taxation authority or as expressly permitted by this Agreement.

Standard of Care

26.3 In fulfilling its obligations under this clause 26, each Party shall be required to use only the same degree of care to prevent unauthorised disclosure of the information described above as it would use to prevent the disclosure of its own commercial and financial information of the same or similar nature and which it considers proprietary or confidential.

26.4 Neither Party shall knowingly do or omit to do anything in relation to the Transaction Documents which may bring the standing or reputation of the other Party into disrepute or otherwise attract adverse publicity in relation to the other Party.

No Advertising

26.5 Neither Party shall issue any press release or announcement, to be published by or in, or undertake other communication with, the media or otherwise concerning this Agreement or the design, development or manufacture of any Unit or Simulator without the prior written approval of the other Party.

Financial information

26.6 Subject to the provisions of this clause 26, the Operator shall provide the Owner with copies of:

- (a) all documents sent by the Operator pursuant to any statutory obligations or any statutory process to its shareholders or any class of creditor (such documents to be provided promptly upon being sent pursuant to the relevant statutory obligations or processes);
- (b) its audited balance sheet and profit and loss account (such balance sheet and accounts to be provided promptly upon becoming available);
- (c) the financial information provided to the Secretary of State pursuant to the Franchise Agreement (such information to be provided at quarterly intervals, at the same time as such information is provided to the Secretary of State); and
- (d) such other information about its business and financial status as the Owner may from time to time reasonably require (such other information to be provided upon reasonable notice).

Remedies

26.7 The Parties acknowledge and agree that a breach of the provisions of clauses 26.1 to 26.3 may cause the owner of confidential information described in clause 26.1 to suffer irreparable damage that could not be adequately remedied by an action at law. Accordingly, each Party agrees that the owner of confidential information described in clause 26.1 that is disclosed in breach of clauses 26.1 to 26.3 is entitled to specific performance of those provisions to enjoin a breach or attempted breach thereof and to any other remedy, including, *inter alia*, damages and injunctive relief, awarded by the English courts.

Survival of obligations

26.8 The obligations of the Parties under this clause 26 (excepting clause 26.6) shall survive the expiry or the termination of this Agreement for whatever reason.

27. NOTICES

27.1 Any notice, notification or other communication under or in connection with Schedule 10 (*Lease Operator Termination Events*), Schedule 11 (*Lease Owner Termination Events*), or any Contract Dispute or Dispute under or in connection with this Agreement shall be in writing and shall be delivered by hand or recorded delivery or sent by pre-paid first class post to the relevant Party at the address for service set out below, or to such other address in the United Kingdom as each Party may specify by notice in writing to the other Party.

27.2 Any other notice, notification or other communication under or in connection with this Agreement shall be in writing and shall be delivered:

- (a) in accordance with clause 27.1; or
- (b) by electronic data transfer,

except that it shall be marked for the attention of Managing Director, or Company Secretary and Head of Projects and Procurement or ³², as appropriate.

³² Redaction.

27.3 The address and electronic data transfer details of the Owner, the Operator and Eversholt are as follows (or such other address or electronic mail details which may be subsequently notified by the relevant Party):

Owner: Address: Cross London Trains Limited
210 Pentonville Road, London, N1 9JY
Attention: []³³
Email: []³⁴

Eversholt: Address: Eversholt Rail (UK) Limited
210 Pentonville Road, London, N1P 2AR
Attention: []³⁵
Email: []³⁶

Operator: Address: First Capital Connect Limited
Hertford House, 1 Cranwood Street, London EC1V 9QS
Name: []³⁷
Email: []³⁸

27.4 Any such notice or other communication shall be deemed to have been received by the Party to whom it is addressed as follows:

- (a) if sent by hand or recorded delivery, when delivered;
- (b) if sent by pre-paid first class post, from and to any place within the United Kingdom, three Working Days after posting unless otherwise proven; and
- (c) if sent by electronic data transfer, upon sending, subject to receipt by the sender of a “delivered” confirmation (provided that the sender shall not be required to produce a “read” confirmation).

27.5 Any notice or communication sent under this Agreement to the Owner shall be copied to Eversholt at the address for service set out in clause 27.3 or such other address as the Owner may specify by notice in writing to the Operator.

³³ Redaction.

³⁴ Redaction.

³⁵ Redaction.

³⁶ Redaction.

³⁷ Redaction.

³⁸ Redaction.

28. WAIVERS, RIGHTS CUMULATIVE

The rights of the Parties under this Agreement may be exercised as often as necessary, are cumulative, are not exclusive of either Party's rights under any law and may be waived in writing and specifically. Except as expressly stated in this Agreement, no failure or delay by the Owner or the Operator at any time to enforce any of the provisions of this Agreement shall be construed as a waiver by such Party of such provision or in any way affect the validity of this Agreement or any part of it. The respective rights of the Parties (whether arising under this Agreement or under the general law) shall not be capable of being waived otherwise than by an express waiver in writing.

29. ILLEGALITY

If at any time any one or more of the provisions of this Agreement becomes invalid, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

30. ENTIRE AGREEMENT

30.1 The Transaction Documents supersede any previous written or oral agreement between the Parties in relation to the matters dealt with in the Transaction Documents and contain the whole agreement between the Parties relating to the subject matter of the Transaction Documents at the date hereof to the exclusion of any terms implied by law which may be excluded by contract, and this Agreement shall not be varied otherwise than by an instrument in writing dated the date of this Agreement or subsequent hereto executed by or on behalf of each of the Parties hereto in accordance with the provisions of schedule 4 (*Variations and Changes in Law*) of the Umbrella Agreement.

30.2 Each Party acknowledges that it has not been induced to enter into the Transaction Documents by any representation, warranty or undertaking not expressly incorporated into the Transaction Documents.

30.3 So far as permitted by law and except in the case of fraud, each Party agrees and acknowledges that its only rights and remedies in relation to any representation, warranty or undertaking made or given in connection with the Transaction Documents shall be for breach of the terms of the Transaction Documents, to the exclusion of all other rights and remedies (including those in tort or arising under statute).

31. COSTS

31.1 Except as otherwise agreed in this Agreement, each Party shall bear its own costs incurred in connection with the negotiation, preparation, execution and implementation of this Agreement.

31.2 Each Party will pay to the other Party (the *Non Defaulting Party*) within five Working Days of demand all expenses (including legal and other costs and any irrecoverable VAT on those costs) payable or incurred by the Non Defaulting Party in connection with the enforcement of or preservation of any of the Non Defaulting Party's rights under this Agreement or in respect of the repossession of the Units, the associated Technical Records, the Owner Owned Spares, the Special Tools or the Simulators pursuant to the terms of this Agreement.

32. SET-OFF

32.1 The Owner may set off any undisputed amount (including liquidated damages) due and payable by the Operator to the Owner under this Agreement (including any amount payable under Schedule 10 (*Lease Operator Termination Events*)) (to the extent beneficially owned by the Owner) and in respect of amounts (if any) paid by the Owner in respect of any liability of the Operator under the TSA against any undisputed amount due and payable by the Owner to the Operator.

32.2 The Operator may set off any undisputed amount (including liquidated damages) due and payable by the Owner to the Operator under this Agreement (including any amount payable under Schedule 11 (*Lease Owner Termination Events*)) and in respect of amounts (if any) paid by the Operator in respect of any liability of the Owner under the TSA against any undisputed amount due and payable by the Operator to the Owner (other than in respect of Rental except pursuant to clause 13.3 (*Suspension of Rental*)).

33. APPROPRIATION

33.1 If any sum paid or recovered in respect of the liabilities of the Operator under this Agreement is less than the amount due, the Owner may apply that sum to amounts due under this Agreement in such proportions and order and generally in such manner as the Owner may determine.

33.2 If any sum paid or recovered in respect of the liabilities of the Owner under this Agreement is less than the amount due, the Operator may apply that sum to amounts due under this Agreement in such proportions and order and generally in such manner as the Operator may determine.

34. COUNTERPARTS

This Agreement may be executed in any number of counterparts, and by each Party on separate counterparts. Each counterpart is an original, but all counterparts shall together constitute one and the same instrument.

35. CERTIFICATES

Except where this Agreement states otherwise, any certificate or determination by the Owner as to any rate of interest or amount payable by the Operator under this Agreement will, on production of any supporting evidence which the Operator reasonably requests, be conclusive and will bind the Operator unless there is a manifest error in the calculation.

36. GOVERNING LAW AND JURISDICTION

36.1 This Agreement and any non-contractual obligations arising out of or in relation to this Agreement are governed by English law.

36.2 Save as expressly provided otherwise in this Agreement, the English courts shall have exclusive jurisdiction in relation to all disputes arising out of or in connection with this Agreement (including claims for set-off and counterclaims), including disputes arising out of or in connection with:

- (a) the creation, validity, effect, interpretation, performance or non-performance of, or the legal relationships established by, this Agreement; and

(b) any non-contractual obligations arising out of or in connection with this Agreement,

and each Party irrevocably submits to the jurisdiction of the English courts and waives any objection to the exercise of such jurisdiction.

37. DISPUTES AND EXPERT DETERMINATION

37.1 Subject to:

(a) where this Agreement provides for the determination of matters by an Expert and/or circumstances where clause 37.2 is expressed to apply; and

(b) where otherwise expressly provided otherwise in this Agreement,

a Contract Dispute shall be resolved pursuant to schedule 8.1 (*Contract Disputes*) of the Umbrella Agreement.

37.2 Where this Agreement provides for the determination of matters by an Expert, the further provisions of schedule 8.2 (*Expert Determination*) of the Umbrella Agreement shall apply.

38. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement, and no person other than the Parties to this Agreement shall have any rights under this Agreement.

39. DURATION

This Agreement shall commence on the date of this Agreement and shall continue until the date on which it expires or is terminated in accordance with the express provisions of this Agreement (without prejudice to the express provisions of this Agreement as to arrangements which will survive any expiry or termination of this Agreement).

IN WITNESS whereof this Agreement has been executed by the Owner and the Operator on the day and date referred to above.

**SIGNED FOR AND ON BEHALF OF
CROSS LONDON TRAINS LIMITED**

DIRECTOR:

□³⁹

DIRECTOR/SECRETARY:

□⁴⁰



□⁴¹

□⁴²

³⁹ Redaction.

⁴⁰ Redaction.

⁴¹ Redaction.

⁴² Redaction.

**SIGNED FOR AND ON BEHALF OF
FIRST CAPITAL CONNECT LIMITED**

DIRECTOR:

□⁴³

DIRECTOR/SECRETARY:

□⁴⁴



□⁴⁵

□⁴⁶

⁴³ Redaction.

⁴⁴ Redaction.

⁴⁵ Redaction.

⁴⁶ Redaction.

SCHEDULE 1

FORM OF LEASE CONDITIONS PRECEDENT CERTIFICATE

Schedule 1: **Form of Lease Conditions Precedent Certificate**

SCHEDULE 1

Form of Lease Conditions Precedent Certificate

To: [Insert Owner's Address Details]

Attention: [_____]

Date:

This Certificate is given pursuant to clause 4.2(a) of the lease dated [_____] (the *Lease*) between [_____] (the *Owner*) and [_____] (the *Operator*).

Defined terms used in this letter will have the same meanings as the meanings given to them in the Lease.

The Operator confirms that the Track Access Agreement and Franchise Agreement specified below are in full force and effect and that the publicly available extracts from such documents previously supplied to the Owner are up-to-date and accurate in all respects. The Scheduled Franchise Expiry Date for the Operator is [●], subject to extension by the Secretary of State as contemplated by paragraph 3 of schedule 2.1 (*Section 54 Undertakings*) of the Umbrella Agreement provided that the latest Scheduled Franchise Expiry Date as so extended shall be [●].

The Operator also confirms that the Passenger Licence and Railway Safety Certificate specified below have been issued in its favour or approved as applicable and have not been revoked or rescinded:

1. TRACK ACCESS AGREEMENT

Date: [_____]

Parties: (1) Network Rail
(2) Operator

2. FRANCHISE AGREEMENT

Date: [_____]

Parties: (1) Secretary of State for Transport
(2) [_____]

3. PASSENGER LICENCE

Date: [_____]

4. RAILWAY SAFETY CERTIFICATE

Date: [_____]

SCHEDULE 2

**ACCEPTANCE OF UNITS, OWNER OWNED SPARES, SPECIAL TOOLS AND
SIMULATORS**

Schedule 2: **Acceptance of Units, Owner Owned Spares, Special Tools
and Simulators**

SCHEDULE 2

Acceptance of Units, Owner Owned Spares, Special Tools and Simulators

1. CONSULTATION IN RELATION TO UNIT ACCEPTANCE

Inspections

- 1.1 The Owner agrees that the Operator shall be entitled:
- (a) to make representations to the Owner regarding the programme of inspection to be agreed pursuant to clause 15.7 of the MSA, and the Owner acknowledges and agrees that it will have due regard to the comments of the Operator in agreeing such programme of inspection with the TMM under clause 15.7 of the MSA; and
 - (b) pursuant to clause 15.8 of the MSA, to participate in all inspections in the programme of inspection under clause 15.7 of the MSA.

Acceptance

- 1.2 The Owner and the Operator will participate in the procedures set out in schedule 6 (*Delivery and Acceptance*) of the MSA in accordance with the provisions thereof.

SCHEDULE 3

□⁴⁷

Schedule 3.1:	□ ⁴⁸
Schedule 3.2:	□ ⁴⁹
Schedule 3.3:	□ ⁵⁰
Schedule 3.4:	□ ⁵¹
Schedule 3.5:	□ ⁵²
Schedule 3.6:	□ ⁵³
Schedule 3.7:	□ ⁵⁴
Schedule 3.8:	□ ⁵⁵
Schedule 3.9:	□ ⁵⁶

⁴⁷ Redaction.

⁴⁸ Redaction.

⁴⁹ Redaction.

⁵⁰ Redaction.

⁵¹ Redaction.

⁵² Redaction.

⁵³ Redaction.

⁵⁴ Redaction.

⁵⁵ Redaction.

Schedule 3.10:

□⁵⁷

⁵⁶ Redaction.

⁵⁷ Redaction.

SCHEDULE 3.1

□⁵⁸

⁵⁸ Redaction.

SCHEDULE 3.2

□⁵⁹

⁵⁹ Redaction.

SCHEDULE 3.3

□⁶⁰

⁶⁰ Redaction.

SCHEDULE 3.4

□⁶¹

⁶¹ Redaction.

SCHEDULE 3.5

□⁶²

⁶² Redaction.

SCHEDULE 3.6

□⁶³

⁶³ Redaction.

SCHEDULE 3.7

□⁶⁴

⁶⁴ Redaction.

SCHEDULE 3.8

□⁶⁵

⁶⁵ Redaction.

SCHEDULE 3.9

□⁶⁶

⁶⁶ Redaction.

SCHEDULE 3.10

□⁶⁷

⁶⁷ Redaction.

SCHEDULE 4

[NOT USED]

SCHEDULE 5

OPERATIONAL AND MAINTENANCE UNDERTAKINGS

Schedule 5: Operational and Maintenance Undertakings

Appendix: Permitted Use (Lease)

SCHEDULE 5

Operational and Maintenance Undertakings

1. RISK

The Operator will be responsible for any loss, theft, damage or destruction to the Units during the Unit Term, the Simulators during the Simulators Term and the Associated Equipment during the Owner Owned Spares Term or the Special Tools Term, unless the terms of this Agreement expressly state otherwise.

2. OPERATION AND USE

2.1 During the Unit Term, Owner Owned Spares Term, Special Tools Term or the Simulators Term (as applicable), the Operator will only use and operate the Units, Simulators and Associated Equipment in accordance with:

- (a) all Applicable Laws and Standards;
- (b) all Relevant Approvals;
- (c) their Permitted Use (Lease);
- (d) the Manuals, the Maintenance Plan and the operating instructions and guidelines issued by the TMM; and
- (e) the Operator Insurances and any limits imposed under them in respect of the Operator (save as in the circumstances set out in paragraph 7 of Part 1 (*Insurance Requirements*) of Schedule 8.2 (*Insurance Requirements*)).

2.2 The Operator agrees that the:

- (a) Vehicles delivered as a Unit are to remain in that formation and the Operator shall not remove any Vehicle from a Unit without the Owner first giving its consent in writing;
- (b) the Operator will not couple a Vehicle to any other rolling stock vehicle (other than a Vehicle), unless it is suitable to do so, and by coupling the Vehicle to such other rolling stock vehicle, this will not have any adverse consequences to the condition or operation of such Vehicle; and
- (c) save for the relocation of a Simulator to a Designated Depot in accordance with Clause 4.15 of the MSA, Simulators are to remain in the location to which they have been Delivered for the duration of the Simulators Term, unless the Operator has requested, and the Owner has consented to, the movement of such Simulator(s).

2.3 Throughout the Unit Term or the Simulators Term (as applicable) but without prejudice to the Owner's obligations under this Agreement in relation to the use and operation of each Unit and each Simulator, the Operator will at its own cost:

- (a) comply with all Applicable Laws and Standards applicable to the use, operation, safety and safe operation of the Units or Simulators by a Train Operator of rolling stock vehicles. The Operator agrees that the Owner has no responsibility for the safe operation of the Units or Simulators by the Operator;

- (b) ensure that those persons employed by the Operator (whether as employees, sub-contractors, agents or otherwise) or any sublessee in connection with:
- (i) the operation; and
 - (ii) to the extent the Operator is required or permitted to do so under the TSA or alternative maintenance arrangements, maintenance and/or repair of the Units or Simulators,
- have, in each case, the qualifications and hold the licences required by the relevant Applicable Laws and Standards;
- (c) use the Units and Simulators solely in commercial or other operations for which the Operator is (to the extent necessary) duly authorised and for which the Operator has the Relevant Approvals;
- (d) comply in all material respects with its obligations under the Track Access Agreement, Passenger Licence and Railway Safety Certificate;
- (e) not use the Units for, or in connection with, the carriage of any goods, materials or items of cargo which could reasonably be expected to cause damage to such Units or which would not be adequately covered by the Operator Insurances;
- (f) obtain and maintain in full force all certificates, licences, permits, Relevant Approvals and authorisations required for the use and operation of the Units and Simulators by the Operator for the time being and to enable the Operator to comply with its obligations under this Agreement; and
- (g) notify the Owner of any amendment to any Manual (having first obtained an Authorisation to Vary from the Secretary of State pursuant to schedule 4.3 (*Secretary of State Authorisation of Variation*) of the Umbrella Agreement) and the Operator consents to the Owner giving any subsequent operator of the Units and Simulators access to any such amendment which impacts on safety or efficient operation of the Units and Simulators and the Operator confirms that it will not make any claim (financial or otherwise) against the Owner or any such subsequent operator in respect of the same.

2.4 If the Operator wishes to change the Permitted Use (Lease) of the Units, it shall obtain the Owner's consent, such consent not to be unreasonably withheld or delayed (provided that the Owner shall be entitled to withhold such consent unless and until the Secretary of State has issued an Authorisation to Vary in respect of the proposed change pursuant to schedule 4.3 (*Secretary of State Authorisation of Variations*) of the Umbrella Agreement). If the Owner gives its consent, it may impose any conditions which it considers reasonably necessary. The Owner may not withhold its consent to a change to the Permitted Use (Lease) unless:

- (a) the proposed change to the Permitted Use (Lease) is technically incompatible with the Units; or
- (b) the proposed change to the Permitted Use (Lease) will result in the Owner or the Operator not being able to fulfil their respective obligations under the TSA or the MSA; or

- (c) the Owner is able to demonstrate to the Operator (acting reasonably) that the proposed change to the Permitted Use (Lease) will adversely affect the Residual Value of the Units.

2.5 The Operator shall:

- (a) ensure that no Unit exceeds []⁶⁸ miles (or such other mileage as may be proposed by the Operator and agreed by the Owner acting reasonably, and having first obtained an Authorisation to Vary from the Secretary of State in accordance with schedule 4.3 (*Secretary of State Authorisation of Variations*) of the Umbrella Agreement, or as may result from any Variation) in any Railway Year; and
- (b) use reasonable endeavours to manage the mileage across the Fleet on an annual basis.

3. OWNERSHIP

Throughout the Unit Term, the Operator will not:

- (a) do or fail to do or knowingly allow something to be done or not done which would reasonably be expected to jeopardise the property rights of the Owner or any Financier in the Units;
- (b) create any Security Interest or allow one to exist upon the Units (other than a Permitted Lien);
- (c) do, or allow anything to be done, which may reasonably be expected to expose the Units to penalty, forfeiture, impounding, detention, appropriation, damage or destruction. If any such event does occur, the Operator will immediately inform the Owner and use all reasonable endeavours to arrange for the immediate release of such Units;
- (d) abandon the Units unless it is left with no reasonable option because of the weather or risk to human lives or for any other reasonable circumstance;
- (e) attempt, or hold itself out as owner of the Units or as having any power, to sell, lease or otherwise dispose of the Units, the Owner Owned Spares, the Special Tools or the Simulators; and
- (f) remove, or permit or agree to the removal of, the Units from the United Kingdom without the consent of the Owner.

4. MAINTENANCE AND REPAIRS

Suspension of covenants

4.1 The covenants in paragraph 4.4 shall be suspended and the Operator shall not be obliged to comply with their terms for so long as:

- (a) the TSA is in force and the TMM remains responsible thereunder for the repair, servicing and overhaul of the Units and Associated Equipment; or

⁶⁸ Redaction.

- (b) a New Maintenance Agreement that satisfies the requirements of paragraph 3.4 of Schedule 12.2 (*Termination of the TSA*) is in force following the termination of the TSA,

except to the extent the repair of a Unit constitutes an Additional Service or Cosmetic Repair that the Operator has not authorised the TMM to carry out under the TSA, or in the case of paragraph 4.1(b), the new maintainer to carry out under the terms of the New Maintenance Agreement.

4.2 The covenants in paragraph 4.4 shall cease to be suspended following the termination of the TSA for any reason where the Operator elects pursuant to paragraph 3.8 of Schedule 12.2 (*Termination of the TSA*) to self-maintain the Units or any New Maintenance Agreement that is entered into by the Operator does not satisfy the requirements of paragraph 3.4 of Schedule 12.2.

Covenants

4.3 Each of the Operator and the Owner undertakes to comply with their respective obligations under the TSA, provided that neither Party shall be liable to the other to pay any damages under this Agreement for failure to comply with an obligation under the TSA where damages are recoverable from that defaulting Party under the TSA.

4.4 The Operator undertakes, subject to paragraphs 4.1, 4.9 and 4.10 to:

- (a) procure the maintenance, repair, servicing and overhaul of the Units, the Associated Equipment and the Simulators during the Unit Term, the Owner Owned Spares Term, the Special Tools Terms and the Simulators Term, respectively, in each case in accordance with all Applicable Laws and Standards, the Maintenance Plan and the Manuals;
- (b) comply with the standards imposed by the Operator Insurances (save in the circumstances set out in paragraph 7 of Part 1 (*Insurance Requirements*) of Schedule 8.2 (*Insurance Requirements*)); and
- (c) make all necessary or appropriate repairs, replacements and renewals of the Units, the Associated Equipment and the Simulators which may be required to keep the Units, the Associated Equipment and the Simulators in the condition required pursuant to clause 24 (*Redelivery*), whether interior or exterior, ordinary or extraordinary, foreseen or unforeseen, and including repairs, replacements and renewals that would constitute capital expenditures.

4.5 The Owner hereby acknowledges that the Operator has the right under the terms of the TSA to carry out or procure the carrying out by third parties other than the TMM of Additional Services or Cosmetic Repairs, in each case, in accordance with all Applicable Laws and Standards, the Maintenance Plan and the Manuals providing that the Operator has obtained the Owner's prior written consent to such third party being an appropriately qualified and experienced contractor to carry out such Additional Services or Cosmetic Repairs. The Owner and Operator may agree a list of approved third party repairers and maintainers who meet each of the criteria set out in paragraph 4.3 of schedule 2.4 (*The Additional Services*) of the TSA, such list to be updated and amended by agreement between the Owner and Operator from time to time, and to the extent that the Operator uses an appropriately qualified third party repairer and maintainer from such agreed list taking into consideration the nature of the work to be carried out, the Operator shall not be required to obtain any further written consent from the Owner.

4.6 If, following a termination of the TSA, the Operator enters into a New Maintenance Agreement or the Operator is self-maintaining the Units (in each case in accordance with Schedule 12.2 (*Termination of the TSA*) of this Agreement) the Operator shall:

- (a) not agree to make any changes to the Maintenance Plan or Manuals without the prior written consent of the Owner (such consent not to be unreasonably withheld or delayed); and, if necessary, an Authorisation to Vary from the Secretary of State in accordance with schedule 4 (*Variations and Changes in Law*) of the Umbrella Agreement; and
- (b) agree (if the Operator is self-maintaining the Units) or procure (if the Operator enters into a New Maintenance Agreement) that the Owner shall (without prejudice to the specific rights of the Owner under paragraph 6) be entitled to inspect and/or audit the performance of the activities required pursuant to paragraph 4.4 and, (if the Operator enters into a New Maintenance Agreement), compliance with the terms of that Agreement.

4.7 If, following a termination of the TSA, the Operator enters into a New Maintenance Agreement to which the Owner is not a Party, the Operator shall deliver a copy of such agreement to the Owner promptly following its entry into such agreement and shall promptly notify the Owner of any amendments made thereto. This paragraph 4.7 shall be without prejudice to the specific rights of the Owner under paragraph 4.6(a) and Schedule 12.2 (*Termination of the TSA*).

Waiver

4.8 The Operator waives any right that it may now have or hereafter acquire under Applicable Laws and Standards or otherwise to:

- (a) require the Owner to maintain, repair, replace, alter, remove or rebuild all or any part of the Units and the Associated Equipment or procure the carrying out of any such activity; or
- (b) make repairs at the expense of the Owner.

4.9 If, on the start of any Lease (other than the Initial Lease) following any Scheduled Franchise Expiry Date, any Units are Delivered to the Operator in a condition that does not meet the Redelivery Condition (Lease), the Owner shall, within 10 Working Days of such delivery, make a proposal to the Operator to bring such Units into the Redelivery Condition (Lease) as soon as reasonably possible which proposal shall include enforcement of any obligation of the TMM in accordance with schedule 14 (*Redelivery Condition Schedule*) of the TSA, provided that such rectification works should not disrupt the Operator's provision of revenue earning passenger services. The Operator shall review such proposal and respond as soon as reasonably practicable after receipt. The Parties shall thereafter consult with a view to agreeing the relevant plan as soon as reasonably practicable thereafter. Once the Parties have agreed such plan (any failure so to agree within thirty (30) days being a Contract Dispute), the Operator shall proceed to implement the plan in accordance with its terms, and the provisions of paragraph 4.4(c) shall not apply in respect of such Units for so long as the Operator implements such plan in accordance with its terms. The costs of the implementation of a plan agreed pursuant to this paragraph 4.9 shall be borne in accordance with paragraph 6.28 to 6.30 of schedule 2.1 (*Section 54 Undertakings*) of the Umbrella Agreement.

4.10 If on the start of any Lease (other than the Initial Lease) following the service of a Lease Operator Termination Notice in accordance with Schedule 10 (*Lease Operator*

Termination Events) of this Agreement, any Units are delivered to the Operator in a condition which does not meet the Redelivery Condition (Lease), the Owner will, as soon as reasonably practicable, make a proposal to the Operator to bring such Units into the Redelivery Condition (Lease) as soon as reasonably possible which proposal shall include enforcement of any obligation of the TMM in accordance with Schedule 14 (*Redelivery Condition Schedule*) of the TSA, provided that such rectification works should not disrupt the Operator's provision of revenue earning passenger services. The Operator shall review such proposal and respond as soon as reasonably practicable after receipt. The Parties shall thereafter consult with a view to agreeing the relevant plan as soon as reasonably practicable thereafter. Once the Parties have agreed such plan as per paragraph 4.9, the Operator shall proceed to implement the plan in accordance with its terms, and the provisions of paragraph 4.4(c) shall not apply in respect of such Units for so long as the Operator implements such plan in accordance with its terms. The costs of the implementation of a plan agreed pursuant to this paragraph 4.10 shall be borne in accordance with paragraphs 6.29 to 6.32 of schedule 2.1 (*Section 54 Undertakings*) of the Umbrella Agreement.

5. SUB-LEASING

5.1 The Operator may not part with possession of or sub-lease any Unit unless:

- (a) the parting with possession is to the TMM in accordance with the TSA or to a third party maintainer in accordance with paragraph 4.5; or
- (b) [NOT USED]
- (c) in the case of a sub-lease:
 - (i) the Operator has given prior written notice of such proposed sub-lease to the Owner and (if the TSA is still in force) the TMM;
 - (ii) the Owner has given its prior written consent to such sub-lease (or has acknowledged that such consent is not required); and
 - (iii) for so long as the TSA is still in force, the TMM has, if required, given its written consent in accordance with clause 13.30 of the TSA,

in each case such consent not to be unreasonably withheld or delayed (having regard to the key concerns agreed by the Parties or set out in paragraph 5.2) except that such prior written consent shall not be required if the proposed sub-leasing satisfies the conditions in paragraph 5.2. In the case of any sub-lease, the Operator's notice pursuant to sub-paragraph (i) shall be deemed to be a Variation Proposal by the Operator, and the Operator shall be required to secure an Authorisation to Vary from the Secretary of State in accordance with schedule 4 (*Variations and Changes in Law*) of the Umbrella Agreement.

5.2 The Operator may sub-lease all or any of the Units to any Train Operator pursuant to paragraph 5.1 without the Owner's or the TMM's prior written consent, subject to the following conditions:

- (a) for so long as the TSA is in force, any such sub-leased Units continue to be maintained under the TSA and the TSA Services continue to be provided in relation to those Units in the Designated Depots, in which case the provisions of Schedule 3.10 (*Rental Reductions*) shall continue to apply to those Units;

- (b) where the TSA is no longer in force, any such sub-leased Units are maintained under any New Maintenance Agreement that has been entered into in its place, or by the Operator where the Operator has elected to self-maintain pursuant to paragraph 3.3(a) of Schedule 12.2 (*Termination of the TSA*) and in each case, the maintenance services to be provided pursuant to the terms of this Agreement continue to be provided in relation to those Units in the Designated Depots, in which case, in respect of any such New Maintenance Agreement that satisfies the requirements of paragraph 3.4 of Schedule 12.2 (*Termination of the TSA*), the provisions of Schedule 3.10 (*Rental Reductions*) shall continue to apply to those Units;
- (c) the mileage operated by that Train Operator pursuant to that sub-lease shall be consistent with the mileage bands that relate to the Unit Type of that Unit in schedule 6.3 (*Steady State Period Service Payments*) of the TSA and paragraph 2.5 of this Schedule 5;
- (d) the operation of the relevant Units by that franchised Train Operator is in accordance with the relevant Permitted Use (Lease) and does not require any alteration to the Train Plan Parameters;
- (e) any such sub-lease shall be subject and subordinate to this Agreement;
- (f) the Operator shall continue to be fully liable to the Owner pursuant to the terms of this Agreement for all of the acts, omissions, negligence or other breach or defaults of such sub-lessee as though such acts, omissions, negligence of other breach were a breach of the Operator; and
- (g) the Operator shall insure or procure the insurance of the Units in accordance with the terms of this Agreement. For the avoidance of doubt, the Operator shall not be required to procure such insurance of the Units in the circumstances set out in paragraph 7 of Part 1 (*Insurance Requirements*) of Schedule 8.2 (*Insurance Requirements*).

5.3 [NOT USED].

5.4 The Owner hereby acknowledges that any sub-lease granted by the Operator pursuant to paragraph 5.2 shall entitle the sub-lessee thereunder to carry out or procure the carrying out by third parties other than the TMM of Additional Services to or Cosmetic Repairs of the Units that are sub-leased to that sub-lessee, in each case, subject to:

- (a) the Operator providing the sub-lessee with such training as is necessary in order for that sub-lessee to carry out or procure the carrying out of those Additional Services or Cosmetic Repairs in accordance with all Applicable Laws and Standards, the Maintenance Plan and the Manuals; and
- (b) those Additional Services or Cosmetic Repairs being carried out in accordance with all Applicable Laws and Standards, the Maintenance Plan and the Manuals.

5.5 If it is intended as part of any sub-leasing arrangements that Units are to be maintained at depots other than a Designated Depot then those Units shall not continue to form part of the TSA Performance Regime nor be included in the Fleet Performance Calculations, and the Rental in respect of such Units shall be excluded from the Fleet Rental subject to any reduction pursuant to paragraph 2 of Schedule 3.10 (*Rental Reductions*), unless:

- (a) the Owner has given its consent to such sub-leasing under paragraph 5.1 of this Schedule 5 and the TMM has given its consent pursuant to clause 13.30 of the TSA;
- (b) a Variation has been authorised by the Secretary of State pursuant to schedule 4 (*Variations and Changes in Law*) of the Umbrella Agreement;
- (c) the Operator can demonstrate to the reasonable satisfaction of the Owner and the TMM that it would be reasonable, given the nature of the subleasing, including differences in the stopping pattern of the railway passenger services for which the subleased Units shall be used, and maintenance arrangements, for those Units to continue to be subject to the TSA Performance Regime and be included in the Fleet Performance Calculations; and
- (d) the Operator undertakes to the Owner to maintain the subleased Units in accordance with paragraphs 4.3 and 4.4, and to return the subleased Units in accordance with Schedule 13 (*Redelivery Condition (Lease) Schedule*).

5.6 If any subleased Units cease to be subject to a sublease, then:

- (a) promptly following the end of such sub-lease, the Operator and the Owner (and, while the TSA is in force, the TMM) shall carry out an inspection of such subleased Units (and the Technical Records that relate to such Units), in a manner consistent with paragraph 3.1 of Schedule 13 (*Redelivery Condition (Lease) Schedule*), in order to verify whether such Units are in the Redelivery Condition (Lease) at such time. To the extent that any such Units are not in the Redelivery Condition (Lease), the Operator shall be liable for the costs of bringing those Units into the Redelivery Condition (Lease), unless and to the extent the TMM is liable for such costs under the TSA; and
- (b) those sub-leased Units shall become subject to the TSA Performance Regime and be included in the Fleet Performance Calculations (if they have not continued to remain subject to the TSA Performance Regime and have been excluded from the Fleet Performance Calculations during the term of such sub-lease), either:
 - (i) for those Units that the inspection under paragraph (a) confirms are in the Redelivery Condition, with effect from the completion of that inspection; or
 - (ii) for those Units to which sub-paragraph (i) does not apply, with effect from such Units being brought into the Redelivery Condition.

5.7 The Operator shall:

- (a) remain primarily liable hereunder for the performance and observance of all of its obligations under this Agreement to the same extent as if any sub-lease had not been entered into;
- (b) procure that a sub-lessee complies with its obligations under the sub-lease and those matters contained in paragraph 2.3; and
- (c) insure or procure the insurance of the Units in accordance with the terms of this Agreement. For the avoidance of doubt, the Operator shall not be required to procure such insurance of the Units in the circumstances set out in paragraph 7 of Part 1 (*Insurance Requirements*) of Schedule 8.2 (*Insurance Requirements*).

6. INSPECTION

6.1 The Owner and any person designated by the Owner may at any reasonable time visit, inspect and survey the Units and Simulators (and the Technical Records relating to the Units and Simulators) to determine that the Units and Simulators are substantially in the condition required by this Agreement. The Operator or a person designated by the Operator shall be entitled to be present.

6.2 So long as no Lease Operator Termination Notice has been delivered in relation to a Lease Operator Termination Event and is outstanding, the Owner shall only exercise the rights in paragraph 6.1 on reasonable notice and so as not to disrupt the commercial operation of the Units and Simulators.

6.3 Where following an inspection under paragraph 6.1 of at least 10 Units the Owner reasonably believes that the Fleet is not in the condition required in accordance with paragraphs 4.4(a) and (c), and that the quantum of outstanding maintenance activities which is in arrears of the normal ongoing programme of work required to achieve such condition (and which is not work required as a result of an event that is the subject of a claim under the Operator Insurances and/or an indemnity from the TMM or otherwise is the subject of a confirmed arrangement or ongoing programme of work being implemented by the TMM or an approved third party repairer or maintainer) is such that:

- (a) at any time when the TSA is in force, the cost of carrying out such maintenance activities that are Additional Services would exceed []⁶⁹; or
- (b) at any other time, the cost of carrying out all such maintenance activities would exceed []⁷⁰,

in each case required for the Fleet to achieve the relevant condition, then the Owner shall be entitled to require the Operator to put in place an on demand bond or a cash security guarantee as collateral for the performance by the Operator of its obligations under paragraph 1 (*Redelivery*) of Schedule 13 (*Redelivery Condition (Lease) Schedule*) having a value of the relevant work, and the Operator shall thereafter provide and maintain a bond or cash collateral to the Owner for its relevant obligations.

6.4 Following the provision by the Operator of collateral in accordance with paragraph 6.3, the Owner shall be entitled to require that the amount of that collateral is increased if, and to the extent that, following a subsequent inspection under paragraph 6.1 of at least 10 Units, the Owner reasonably believes that the Fleet is not in the condition required in accordance with paragraphs 4.4(a) and (c), and the quantum of outstanding work required to achieve such condition (other than work required as a result of an event that is the subject of a claim under the Operator Insurances and/or an indemnity from the TMM or otherwise is the subject of a confirmed arrangement or ongoing programme of work being implemented by the TMM or an approved third party repairer or maintainer) is such that:

- (a) at any time when the TSA is in force, the cost of carrying out such maintenance activities that are Additional Services; or
- (b) at any other time, the cost of carrying out all such maintenance activities,

⁶⁹ Redaction.

⁷⁰ Redaction.

in each case required for the Fleet to achieve the relevant condition, exceeds the aggregate of (i) the then applicable limit set out in paragraph 6.3(a) or (b), plus (ii) the value of the collateral already provided by the Operator pursuant to paragraph 6.3.

6.5 The Operator will comply with all mandatory inspection requirements applicable to an Operator arising from Applicable Laws and Standards.

6.6 ⁷¹

6.7 The Operator will pay to the Owner within five Working Days of a demand for all reasonable out-of-pocket expenses incurred by the Owner in connection with any such visit, inspection or survey mentioned in paragraph 6.1 if a Lease Operator Termination Notice has been delivered in relation to a Lease Operator Termination Event and is outstanding or in the event that such a visit is required because the previous inspection demonstrated that the quantum of outstanding work required to bring the Fleet to substantially the required condition was in excess of the amounts specified in paragraph 6.3.

7. FINANCIAL INFORMATION

7.1 The Operator will:

- (a) give notice to the Owner promptly upon the occurrence of any Lease Operator Termination Event or any matter which may give rise to a Lease Operator Termination Event;
- (b) deliver to the Owner the financial information specified in clause 26.6; and
- (c) without prejudice to any other provision of this Agreement, promptly deliver to the Owner all information held by the Operator and not in the possession of the Owner or available to the Owner or obtainable for the purpose of replying to enquiries made of the Owner by any Taxation authority, in each case, from the TMM under the TSA, which the Owner from time to time reasonably requests regarding the Units, and promptly deliver to any such Taxation authority any such information which such Taxation authority may from time to time request from the Operator.

7.2 The Operator shall inform the Owner of any change to any of the documents specified in the Lease Conditions Precedent Certificate provided by the Operator pursuant to clause 4.2(a), provided that the Operator shall only be obliged to provide the publicly available extracts from the Track Access Agreement and the Franchise Agreement to the Owner.

8. CERTIFICATION

8.1 The Operator will ensure that each Vehicle is registered in the rolling stock library maintained by Network Rail in a timescale consistent with the on-track testing and service envisaged in the MSA when required by any Applicable Laws and Standards.

8.2 The Operator shall provide the Owner with written evidence of the registration of such Vehicle in the rolling stock library prior to the date of that Vehicle and Unit being tendered for Provisional Acceptance. In order to assist the Operator in performing its obligations under this paragraph 8.2, the Owner will, on or before the relevant Delivery Date,

⁷¹ Redaction.

deliver to the Operator such documentary evidence in the possession of the Owner as the Operator may reasonably require.

8.3 So far as required under Applicable Laws and Standards and permitted by the registration practice of Network Rail, the registration of the Vehicles in the rolling stock library maintained by Network Rail shall set out any limitations on the purpose and use of the relevant Vehicles and shall note the respective interests of the Operator, as operator, and the Owner (or, if applicable, any relevant Financier) as owner of the Vehicles.

8.4 Without prejudice to paragraph 8.5, neither the Owner nor the Operator will, at any time during the Unit Term relating to each Vehicle, do or not do something which could prejudice the existing Relevant Approvals for the Vehicle or the existing registration of the Vehicle in the rolling stock library maintained by Network Rail.

8.5 If, in relation to any Vehicle:

- (a) the Owner consents to any change in its Permitted Use (Lease) pursuant to paragraph 2.4 and an Authorisation to Vary from the Secretary of State has been obtained;
- (b) that Vehicle is sub-leased in accordance with paragraph 5 (*Sub-Leasing*); or
- (c) any Modification is made to that Vehicle in accordance with Schedule 7 (*Modifications*) of this Agreement and schedule 4 (*Variations and Changes in Law*) of the Umbrella Agreement,

then, in any such case, the Operator shall take whatever steps (if any) are necessary in order to ensure that the registration of that Vehicle in the rolling stock library maintained by Network Rail reflects (to the extent necessary) such change or addition or variation or sub-lease or Modification (as the case may be) (a **Registration Event**).

8.6 Notwithstanding anything to the contrary contained in this Agreement, no such Registration Event shall be permitted under this Agreement unless and until any necessary revised Authorisation for Placing Into Service has been issued and/or the necessary revised registration has been effected (or, in any such case, the Owner is satisfied that the relevant revised certificate will be issued and/or the relevant revised registration will be effected when the applicable Registration Event first takes effect). The cost of taking any such steps referred to in this paragraph 8.6 shall be borne by the Operator unless, in the case of a Modification, that Modification is a Mandatory Modification or Owner Modification to which the Operator has consented, in which case, the cost shall be dealt with in accordance with Schedule 7 (*Modifications*) of this Agreement and schedule 4 (*Variations and Changes in Law*) of the Umbrella Agreement.

8.7 The Operator will (at the Owner's cost) do all acts and things (including making any filing or registration with any Government Authority) and sign and deliver all documents as may be reasonably required by the Owner following any change or proposed change in the ownership of any Vehicle and in each case which cannot be undertaken by the Owner.

8.8 The Parties may agree to amend this paragraph 8 if necessary and to the extent that the applicable procedures from time to time relating to the registration of rolling stock vehicles differ from those contemplated in this paragraph 8.

9. VANDALISM AND DAMAGE

9.1 Subject to the terms of schedule 2.4 (*The Additional Services*) of the TSA, the Operator will authorise the TMM (or other such third party maintainer as approved by the Owner and Operator in accordance with paragraph 4.5 of this Schedule 5) to carry out necessary Additional Services under the TSA and repairs or other work needed to be undertaken as a result of vandalism, collision damage or damage caused by the infrastructure comprising part of the Thameslink Network, such that in each case, the Fleet is, and the Simulators are, in a condition which is consistent with Schedule 13 (*Redelivery Condition (Lease) Schedule*) on reasonable notice from the Owner.

9.2 The Operator will, where appropriate, pay for the Additional Services and repairs or other work needed to be undertaken as a result of vandalism, collision damage or damage caused by the infrastructure comprising part of the Thameslink Network, in each case, in accordance with its obligations to the TMM in clause 8.10 of the TSA but otherwise in accordance with any obligations the Operator has in place from time to time with any third party for the purpose of carrying out such services, repairs or other work.

APPENDIX TO SCHEDULE 5

PERMITTED USE (LEASE)

1. PERMITTED USE (LEASE)

1.1 The Operator is permitted to:

- (a) operate the Units on the Thameslink Network;
- (b) use the Associated Equipment and Simulators in the furtherance of the operation of the Units described in paragraph 1.1(a); and
- (c) use the Simulators for the purpose of training and competence management of their own employees and employees of other organisations, who reasonably require such skills.

1.2 Any sub-lessee:

- (a) approved by the Owner pursuant to paragraph 5.1 of Schedule 5 (*Operational and Maintenance Undertakings*); or
- (b) to a sublease of any of the Units that satisfies the conditions set out in paragraph 5.2 of Schedule 5,

is permitted to:

- (i) operate those Units on the Thameslink Network;
- (ii) use such of the Associated Equipment and Simulators as relate to those Units in the furtherance of the operation of those Units; and
- (iii) use the Simulators for the purpose of training and competence management of their own employees.

1.3 [NOT USED].

1.4 Any sub-lessee is permitted to operate such Units and use such of the Associated Equipment and Simulators as relates to these Units as the Owner shall have consented to in accordance with paragraph 5.1(c) of Schedule 5 and (where required) the TMM has consented to such in accordance with clause 13.30 (*Agents or Employees*) of the TSA.

SCHEDULE 6

**TECHNICAL RECORDS, MAINTENANCE RECORDS (LEASE) AND TSA
SOFTWARE**

Schedule 6.1: **Technical Records**

Schedule 6.2: **Maintenance Records (Lease) and TSA Software**

SCHEDULE 6.1

Technical Records

1. TECHNICAL RECORDS

Suspension of Covenants

1.1 The covenants to maintain or procure the maintenance of the Technical Records and to ensure compliance in this Schedule 6.1, shall be suspended to the extent that the TSA or the TSSSA remains in force and the TMM remains responsible to both the Owner and the Operator thereunder for ensuring such maintenance and compliance.

1.2 The Operator shall maintain or procure the maintenance of the Technical Records on the Technical Records Database and shall ensure that the recommendations of the TMM and any other applicable seller, supplier, sub-contractor, the TMM or any other maintenance performer or repairer:

- (a) are duly recorded in those records; and
- (b) are complied with where the Technical Records are required to be kept so as not to invalidate any continuing warranty.

2. TECHNICAL RECORDS DATABASE

The Technical Records Database shall be EQUINOX and DRUID and/or CORMAP.

3. ACCESS TO TECHNICAL RECORDS

3.1 To facilitate the integration of the Units into the business of a subsequent Train Operator or franchisee of the Units, the Owner will give any Successor Operator access to the Technical Records (including access to the entries on the Technical Records Database).

3.2 The Operator consents to the giving of such access and agrees to afford all reasonable assistance to the Owner and any such potential subsequent Train Operator or franchisee in understanding and analysing the Technical Records.

3.3 The Operator also consents to the Owner and/or any subsequent Train Operator or franchisee using the Maintenance Plan and Manuals for the purposes of future maintenance and repairs to the Units, but the Operator will give no warranty as to the content, accuracy or completeness of the Maintenance Plan and Manuals, and confirms that it will not make any claim (financial or otherwise) against the Owner.

3.4 For the purposes of this paragraph 3 only, any reference to the Maintenance Plan shall be a reference to the Maintenance Plan as it exists on the Delivery Date of the Units and shall include any additions or variations made to it after the Delivery Date of the Units, but shall not include any Intellectual Property Rights which are exclusive to the Operator or any additions or variations made to any other documents or programmes or working practices developed by the Operator which describe how any Maintenance and Repairs are to be performed (as opposed to additions or variations or any other documents or programmes or working practices which describe the substance of any Maintenance and Repairs).

4. REDELIVERY OF THE TECHNICAL RECORDS

The Operator shall redeliver or procure the redelivery of the Technical Records and the Technical Records Database upon the last Expiry Date to occur in relation to a Unit hereunder, provided that this obligation shall be deemed satisfied to the extent that the TSA continues in force and the TMM is responsible to both the Owner and the Operator thereunder to maintain those records and that database.

SCHEDULE 6.2

**Maintenance
Records (Lease)
and TSA
Software**

1. MAINTENANCE RECORDS (LEASE) AND TSA SOFTWARE

Suspension of Covenants

1.1 The covenants to maintain and update or procure the maintenance and updating of the Maintenance Records (Lease) and the TSA Software and to keep and maintain records in this Schedule 6.2 shall be suspended to the extent the TSA and the TSSSA remains in force and the TMM remains responsible thereunder for ensuring such maintenance and updating.

Operator obligation to maintain Maintenance Records (Lease) and TSA Software

1.2 With respect to each Unit, Vehicle, Part, Owner Owned Spare, Special Tool or Simulator on each day of, as appropriate, the Unit Term, Owner Owned Spares Term, Special Tools Term or Simulators Term, the Operator shall maintain and update or procure the maintenance and updating of:

- (a) all Maintenance Records (Lease);
- (b) all TSA Software; and
- (c) any other software installed in, or on, a Unit, Vehicle, Part, Owner Owned Spare, Special Tool or Simulator fulfilling the same functions as the TSA Software, in each case pursuant to any New Maintenance Agreement or other maintenance arrangement entered into in accordance with this Agreement.

1.3 The Operator shall keep and maintain for the Unit Term of each Unit, clear, adequate and accurate records and documentation evidencing to the Owner's reasonable satisfaction that the maintenance, repair, overhaul and refurbishment of Units, Vehicles, Parts, Owner Owned Spares, Special Tools or Simulators has been and is being carried out in accordance with all Applicable Laws and Standards, the Maintenance Plan, the Quality Plan, the Safety and Security Plan, the Sustainability and Environmental Management Plan and the Manuals.

1.4 The Operator shall keep and maintain accurate and complete records in a form reasonably satisfactory to the Owner of the performance of the main components of the Units which are the subject of maintenance and repairs, and co-operate with the Owner to assist the Owner to understand the repair cycle, rate of deterioration and/or failure of such components.

1.5 The Operator shall maintain records of all individual Owner Owned Spares and Parts, such records to include the serial numbers, details of those Owner Owned Spares and Parts fitted on Vehicles and the number of Vehicles serviced including a maintenance, overhaul and repair history in respect of each Vehicle.

2. REDELIVERY OF MAINTENANCE RECORDS (LEASE) AND TSA SOFTWARE

2.1 The Operator shall redeliver or procure redelivery of the Maintenance Records (Lease) and the TSA Software upon the last Expiry Date to occur in relation to a Unit hereunder, provided that this obligation shall be deemed to be satisfied to the extent that the TSA continues in force and the TMM is obliged thereunder to maintain those records and the TSA Software.

SCHEDULE 7
MODIFICATIONS

Schedule 7: Modifications

SCHEDULE 7

Modifications

1. OPERATOR MODIFICATIONS

Proposing Operator Modifications

1.1 The Operator may only make a Modification to the Units, any item of Associated Equipment or the Simulators (an *Operator Modification*) if:

- (a) the Operator makes a Variation Proposal to the Owner setting out the proposed modification in full detail;
- (b) the Owner consents to such Modification in accordance with the procedure set out in schedule 4.2 (*Variation Proposals*) of the Umbrella Agreement; and
- (c) the Secretary of State issues an Authorisation to Vary, authorising such Modification in accordance with the procedure set out in schedule 4.3 (*Secretary of State Authorisation of Variations*) of the Umbrella Agreement.

Permission to make Operator Modifications

1.2 The Owner shall consider whether to grant or withhold consent to an Operator Modification in accordance with the procedure set out in paragraph 2 (*Acknowledgement and Response*) of schedule 4.2 (*Variation Proposals*) of the Umbrella Agreement, and in doing so, the Owner shall consider:

- (a) the nature of the Operator Modification;
- (b) its likely impact on the value, utility, performance, capability and condition of the relevant Unit, item of Associated Equipment or Simulator, as the case may be, and other rolling stock vehicles or equipment of the same or a similar type or class;
- (c) the identity of the person carrying out the Operator Modification;
- (d) the impact on the Rental and the Aggregate Contract Price under the MSA;
- (e) any adverse effect on the TSA or the MSA, including, for the avoidance of doubt, any increase in maintenance or manufacturing costs under the TSA or the MSA;
- (f) the impact on the Delivery Date for that Unit, Associated Equipment or Simulator;
- (g) the timetable for the carrying out of any Operator Modification;
- (h) the downtime and the number of Units or Simulators out of service at any time as a consequence of installing that Operator Modification;
- (i) the feasibility of the Owner securing financing for the cost of the Operator Modification pursuant to paragraph 1.5(b);
- (j) any impact on the availability of insurance or cost of effecting or maintaining insurance for the Units, Associated Equipment or Simulator;

- (k) the additional Relevant Approvals (if any) that would be required for the implementation of the Operator Modification, in accordance with paragraph 8.6 of Schedule 5 (*Operational and Maintenance Undertakings*); and
- (l) any impact on the Residual Value of the Units.

1.3 If the Owner grants consent, it may do so subject to any conditions it considers to be reasonable in the circumstances.

1.4 The Owner shall not withhold consent to an Operator Modification proposed by the Operator if the following circumstances apply:

- (a) the proposed Operator Modification is a cosmetic or branding Modification;
- (b) if the Operator Modification:
 - (i) is removable, the Operator agrees to remove the Operator Modification at the Expiry Date and to leave the Unit, item of Associated Equipment or Simulator, as the case may be, in the same condition as it would have been in if the Operator Modification had not been made; or
 - (ii) is not removable, it is established that there is no adverse effect on the Residual Value of the Operator Modification remaining on the Unit, item of Associated Equipment or Simulator, as the case may be, at the Expiry Date; and
- (c) there are no adverse safety implications for the Owner or the Operator of the proposed Operator Modification.

1.5 Unless otherwise agreed, if the Operator carries out an Operator Modification pursuant to an Authorisation to Vary, it may, either:

- (a) act as principal (and fund that Operator Modification itself); or
- (b) act as the Owner's agent, in which case the Owner will use reasonable endeavours to fund the costs of that Operator Modification, in accordance with and subject to the funding principles set out in schedule 4.6 (*Funding Variations*) of the Umbrella Agreement, but will recover these from the Operator by way of an increased Rental for the Units, Spares, Special Tools and/or Simulators in accordance with paragraph 3(b) of Schedule 3.1 (*Rental Schedule – General*).

1.6 The Parties shall act in good faith to agree the Agreed Life of any Operator Modification to be made pursuant to this paragraph 1 and where any such Operator Modification relates to a Unit or a Simulator, the impact of that Operator Modification on the Agreed Value of that Unit or Simulator.

Removing Operator Modifications

1.7 The Operator agrees that on or before the Expiry Date, the Operator shall, subject to paragraph 1.4, be obliged to remove any Operator Modification from a Unit, item of Associated Equipment or Simulator, as the case may be, if the Owner requires its removal, provided that the Operator shall not remove an Operator Modification if its removal would result in that Unit, item of Associated Equipment or Simulator, as the case may be, not complying with any Applicable Laws and Standards in force at that date.

1.8 In removing such an Operator Modification, the Operator shall comply with all relevant Group Standards and the Unit, item of Associated Equipment or Simulator, as the case may be, shall be left in the same condition as it would have been in if that Operator Modification had not been made. In these circumstances, the Operator will automatically become the owner of any Part forming part of the Operator Modification upon its removal. However, if the costs of the Operator Modification are paid for either wholly or in part by the Owner then the Operator Modification will remain on the Unit, Special Tool, Owner Owned Spare or Simulator, as the case may be, and the Owner will automatically become the owner of any Part removed in installing the Operator Modification.

Updating the Technical Records and Technical Records Database

1.9 If the Owner consents to an Operator Modification, the Operator shall be responsible for ensuring that the Technical Records and the Technical Records Database are updated on completion of the fitment of that Operator Modification to record that that Operator Modification has been fitted to the relevant Unit or item of Associated Equipment or Simulator, as the case may be.

2. MANDATORY MODIFICATIONS

Obligation to carry out Mandatory Modifications

2.1 The Operator shall be responsible for ensuring that all applicable Mandatory Modifications are duly carried out to the Units, the Vehicles, Parts, Associated Equipment, Simulators and/or Operator Owned Spares, in accordance with all Applicable Laws and Standards and the Relevant Approvals and within any time limits set out in such Applicable Laws and Standards for the completion of such Mandatory Modifications. The Operator shall also be responsible for securing the approval of the Secretary of State pursuant to schedule 4.3 (*Secretary of State Authorisation of Variations*) of the Umbrella Agreement and the Owner shall not be obliged to allow the implementation of any such proposed Variation until the Secretary of State has issued an Authorisation to Vary in respect of such Variation Proposal.

2.2 The obligation in paragraph 2.1 shall be deemed satisfied to the extent the Mandatory Modification in question is implemented pursuant to and in accordance with clause 27.6 of the MSA by the TMM or carried out by any Third Party Maintainer as permitted under clause 8.6 of the TSA following the issuance of an Authorisation to Vary by the Secretary of State.

Permission for third parties to carry out Mandatory Modifications

2.3 To the extent any such Mandatory Modification is not so carried out pursuant to clause 27.6 of the MSA by the TMM or carried out by any Third Party Maintainer as permitted under clause 8.6 of the TSA:

- (a) in accordance with the UA Variation Procedure and subject to an Authorisation to Vary:
 - (i) the Operator shall obtain the Owner's prior written approval pursuant to schedule 4 (*Variations and Changes in Law*) of the Umbrella Agreement (not to be unreasonably withheld or delayed) of:
 - (A) the person or persons who are to carry out that Mandatory Modification;

- (B) the cost of carrying out that Mandatory Modification;
 - (C) the specification of the Mandatory Modification; and
 - (D) the terms on which the necessary works are to be provided; and
- (ii) the Operator shall provide the Owner with drafts of the design documentation in relation to any such Mandatory Modification and shall take account of any comments the Owner may have in relation to such design; and
- (b) it shall be a condition of any Variation Proposal the Operator makes in accordance with the UA Variation Procedure that:
 - (i) the Operator contracts for that Mandatory Modification being made to the relevant Unit, Vehicle, Owner Owned Spare, Special Tool or Simulator, as the case may be;
 - (ii) upon the expiry or earlier termination of this Agreement, the Operator shall assign to the Owner the benefit of all warranties in respect of such work which are continuing at that time and which the Operator has the benefit of.

2.4 The Parties shall act in good faith to agree the Agreed Life of any Mandatory Modification to be made pursuant to this paragraph 2 and where any such Mandatory Modification relates to a Unit or Simulator, the impact of that Mandatory Modification on the Agreed Value of that Unit or Simulator.

3. OWNER MODIFICATIONS

Proposing Owner Modifications

3.1 The Owner may only make a Modification to the Units, any item of Associated Equipment or Simulator (other than a Performance Remedial Plan Modification, for which the provisions of paragraph 4.2 to 4.5 inclusive of schedule 8 (*Performance Remedial Plans*) of the TSA shall apply) (an **Owner Modification**) if:

- (a) the Owner makes a Variation Proposal to the Operator setting out the proposed Modification in full detail in accordance with the provisions of paragraph 3.2;
- (b) the Operator consents to such Modification in accordance with the procedure set out in schedule 4.2 (*Variation Proposals*) of the Umbrella Agreement; and
- (c) the Secretary of State issues an Authorisation to Vary, authorising such Modification in accordance with the procedure set out in schedule 4.3 (*Secretary of State Authorisation of Variations*) of the Umbrella Agreement.

Permission to make Owner Modifications

3.2 The Operator shall consider whether to grant or withhold consent to an Owner Modification in accordance with the procedure set out in paragraph 2 (*Acknowledgement and Response*) of schedule 4.2 (*Variation Proposals*) of the Umbrella Agreement, and in doing so, the Operator shall act reasonably and shall consider without limitation:

- (a) the nature of the Owner Modification;

- (b) its likely impact on the Rental under this Agreement and the Service Payments under the TSA;
- (c) the likely impact on the utility, performance, capability and condition of the relevant Unit, Owner Owned Spare, Special Tool or Simulator and other rolling stock vehicles or equipment of the same or a similar type or class;
- (d) whether its implementation will have any adverse effect on the TSA;
- (e) the identity of the person carrying out that Owner Modification;
- (f) the timetable for the carrying out of that Owner Modification;
- (g) the downtime and the number of Units or Simulators out of service at any time as a consequence of installing that Owner Modification; and
- (h) the provision of alternative rolling stock vehicles (if any) or compensation offered to the Operator by the Owner.

3.3 If the Operator grants consent, it may do so subject to any conditions that are reasonable in the circumstances.

3.4 The Parties shall act in good faith to agree the Agreed Life of any Owner Modification to be made pursuant to this paragraph 3 and the impact of that Owner Modification on the Agreed Value of that Unit.

4. TRANSPARENCY OF COSTS

Without prejudice to the provisions of schedule 4.2 of the Umbrella Agreement, the Party responsible for proposing (and where not responsible for proposing, responsible for procuring) each Operator Modification, Owner Modification and Mandatory Modification shall procure that the other Party receives a statement forming part of the Variation Proposal made by that proposing Party, setting out the related costs with full transparency.

5. UMBRELLA AGREEMENT

5.1 The Parties agree and acknowledge that the provisions of schedules 4.5 (*Change in Law*) and 4.6 (*Funding Variations*) of the Umbrella Agreement shall apply in respect of Mandatory Modifications.

SCHEDULE 8

□⁷²

Schedule 8.1: □⁷³

Schedule 8.2: **Part 1** □⁷⁴

Part 2 □⁷⁵

Appendix 1 □⁷⁶

Appendix 2 □⁷⁷

Appendix 3 □⁷⁸

Schedule 8.3 □⁷⁹

⁷² Redaction.

⁷³ Redaction.

⁷⁴ Redaction.

⁷⁵ Redaction.

⁷⁶ Redaction.

⁷⁷ Redaction.

⁷⁸ Redaction.

⁷⁹ Redaction.

SCHEDULE 8.1

□⁸⁰

⁸⁰ Redaction.

SCHEDULE 8.2

□⁸¹

Part 1

□⁸²

⁸¹ Redaction.

⁸² Redaction.

Part 2
□⁸³

⁸³ Redaction.

APPENDIX 1 TO SCHEDULE 8.2

□⁸⁴

⁸⁴ Redaction.

APPENDIX 2 TO SCHEDULE 8.2

□⁸⁵

⁸⁵ Redaction.

APPENDIX 3 TO SCHEDULE 8.2

□⁸⁶

⁸⁶ Redaction.

SCHEDULE 8.3

□⁸⁷

⁸⁷ Redaction.

SCHEDULE 9

□⁸⁸

Schedule 9

□⁸⁹

⁸⁸ Redaction.

⁸⁹ Redaction.

SCHEDULE 9

□⁹⁰

⁹⁰ Redaction.

SCHEDULE 10

LEASE OPERATOR TERMINATION EVENTS

Schedule 10

Lease Operator Termination Events

SCHEDULE 10

Lease Operator Termination Events

1. LEASE OPERATOR TERMINATION EVENTS

1.1 The occurrence of any of the following events or circumstances shall, subject to paragraph 1.2 constitute a breach of the terms of this Agreement which shall entitle the Owner to terminate this Agreement in accordance with the provisions of this Schedule 10:

- (a) the Operator fails to make any payment under this Agreement (other than any Balancing Cost Payment under Schedule 9 (*Balancing Payments Account*)) which is due and payable (and which is not the subject of a bona fide dispute) (excluding where such failure results solely from technical or administrative failure beyond the control of the Operator) within five Working Days of the due date;
- (b) the Operator fails to pay any invoiced amount of a Balancing Cost Payment that is due under the TSA or paragraph 12 (*Balancing Cost Payments*) of Schedule 9 (*Balancing Payments Account*) and is not being disputed in good faith, within 28 days of its receipt of the Owner's invoice, and such payment is not made within 20 Working Days of a notice from the Owner of that failure;
- (c) any Operator Insurances required to be effected and maintained by the Operator under this Agreement are not effected or maintained or there is any cancellation, revocation, lapse or non-renewal of any such Operator Insurances without immediate replacement (in the case of the cancellation or lapse of such an insurance for reason of the insolvency (however described) of an insurer, upon the Operator becoming aware of such insolvency), provided that:
 - (i) if the Owner or the Operator has delivered a notification pursuant to paragraph 7 (*Risks that Become Uninsurable*) of Part 1 (*Insurance Requirements*) of Schedule 8.2 (*Insurance Requirements*); or
 - (ii) if the Secretary of State has notified the Owner and Operator that it requires the Units to be operated on the Network while such Operator Insurances are or may not be in effect as provided in clause 14.1 of the Umbrella Agreement then the Operator shall not be in breach of its obligations unless and until it is agreed or determined that the relevant risk is not an Uninsurable Risk pursuant to clause 14.5 of the Umbrella Agreement;
- (d) the Operator fails to comply with any of its material obligations under this Agreement (other than an obligation relating to payment, or an obligation which is the subject of any other Lease Operator Termination Event or any obligations under paragraph 2.5 of Schedule 5 (*Operational and Maintenance Undertakings*)) and where such failure is capable of remedy, the failure is not remedied within 21 days of the Owner giving notice to the Operator of such failure;
- (e) any representation made or repeated by the Operator in clause 3.1 or in any certificate delivered by the Operator pursuant to this Agreement is or proves to have been incorrect (at the time it was made or deemed to be made or repeated) in any respect which has a Material Adverse Effect on the Owner or a Material Adverse Effect on the Operator unless the circumstances giving rise to the misrepresentation:

- (i) are capable of remedy; and
 - (ii) are remedied within 21 days of the earlier of the Owner giving notice to the Operator and the Operator becoming aware of the misrepresentation;
- (f) the Operator fails to procure the issue of a bond or other acceptable collateral which is valid and enforceable and in at least the required amount, within 10 Working Days of being required to do so pursuant to paragraph 6.3 of Schedule 5 (*Operational and Maintenance Undertakings*) or fails to maintain or increase the same as required pursuant to paragraph 6.3 and 6.4 of Schedule 5 (*Operational and Maintenance Undertakings*);
- (g) the ORR shall impose upon the Operator a fine or penalty payment the imposition of which will have a Material Adverse Effect;
- (h) any Franchise Performance Bond is enforced resulting in a Material Adverse Effect;
- (i) any consent, authorisation, licence, certificate or approval of or registration with or declaration to any Government Authority required by the Operator in connection with this Agreement including:
- (i) one required by the Operator to authorise, or in connection with, the execution, delivery, validity, enforceability or admissibility in evidence of this Agreement or the performance by the Operator of its obligations under this Agreement and the absence of which will have a Material Adverse Effect; or
 - (ii) the Operator's Passenger Licence or Railway Safety Certificate, is modified (other than any modification to the Railway Safety Certificate contemplated by the Safety Regulations), withheld, revoked, suspended, cancelled, withdrawn, terminated or not renewed, or otherwise ceases to be in full force and effect without immediate replacement and which has a Material Adverse Effect, provided that the same shall have occurred or arisen by reason of a breach, default or non-compliance by the Operator of its obligations under this Agreement or of any Applicable Laws and Standards;
- (j) an Insolvency Event occurs in relation to the Operator;
- (k) the Operator's obligations under this Agreement become wholly or partly invalid or unenforceable and, in the case of partial invalidity or unenforceability only, this has a material adverse effect on the rights of the Owner or a Material Adverse Effect on the Operator's performance of its obligations under this Agreement;
- (l) the Operator suspends or ceases to carry on all or a substantial part of its business other than for the purpose of a reconstruction or amalgamation the terms of which have received the consent of the Owner (such consent not to be unreasonably withheld or delayed);
- (m) the Operator disposes of all or a substantial part of its assets, whether by one or a series of transactions, related or not, other than for the purpose of a reconstruction or amalgamation the terms of which have received the consent of the Owner (such consent not to be unreasonably withheld or delayed);

- (n) the existence, validity, legality, enforceability or priority of the rights of the Owner or any relevant Financier in respect of the Units, the Owner Owned Spares, the Special Tools or the Simulators under this Agreement are challenged in legal proceedings by the Operator or any other person (other than the Owner) acting on behalf of the Operator;
- (o) the Operator's liability to pay liquidated damages for Permitted Delay events referred to in clause 7.7 exceeds the amount set out in that clause 7.7;
- (p) an MSA Operator Termination Notice is issued by the TMM;
- (q) a TSA Operator Termination Notice is issued by the TMM;
- (r) the Franchise Agreement is terminated for any reason other than effluxion of time or expiry;
- (s) the Operator is a signatory to an Unauthorised Contract and the circumstances specified in paragraph 4.4 of schedule 4.3 (*Secretary of State Authorisation of Variations*) of the Umbrella Agreement apply or the Operator is in breach of its obligations under clause 6.1 of the Umbrella Agreement, and the Secretary of State has directed the Owner to issue a Lease Operator Termination Notice in accordance with paragraph 4.7 of schedule 4.3 of the Umbrella Agreement;
- (t) the Operator fails to remedy an assignment, transfer or other disposal of the Operator's rights and/or obligations under this Agreement and/or any other Contract that is in breach of the Operator's obligations under clause 6.1 of the Umbrella Agreement within 20 Working Days of its receipt of a notice from the TMM or the Owner under clause 6.11 of the Umbrella Agreement; or
- (u) as a consequence of the commission of a Prohibited Act by the Operator (or a sub-contractor of the Operator or anyone employed by or acting on behalf of the Operator or such sub-contractor) in respect of which the relevant remedial action has not been taken in accordance with clause 16.3 of the Umbrella Agreement, the Secretary of State has instructed the Owner to terminate the Lease by issuing a Lease Operator Termination Notice in accordance with clause 16.7 of the Umbrella Agreement.

1.2 Provided that the Operator is invoking its rights against the TMM, any of the events referred to in paragraph 1.1 (other than paragraph 1.1(a) to the extent relating to a non payment of Rental) shall not constitute a Lease Operator Termination Event where such event occurs solely as a result of:

- (a) any breach by the Owner of this Agreement or any of the other Transaction Documents;
- (b) a failure by the TMM to perform any of its obligations under the MSA; and/or
- (c) a failure by the TMM to perform any of its obligations under the TSA,

provided that the Operator is:

- (a) able to prove that the Lease Operator Termination Event occurred solely as a result of the Owner's breach of this Agreement or any other Transaction Document or the TMM's failure to perform any of its obligations under the MSA or TSA (as applicable); and

- (b) invoking its rights in relation to such TMM failure to perform.

2. NOTICE OF LEASE OPERATOR TERMINATION EVENT

Upon becoming aware of the occurrence of a Lease Operator Termination Event, the Owner shall promptly notify the Operator and the Secretary of State of the Lease Operator Termination Event, providing reasonable details of the circumstances of the relevant event, and the provisions of Part 1 (*Operator default*) of schedule 2.4 (*Early Termination of the Lease*) of the Umbrella Agreement shall apply.

3. RIGHTS

3.1 Subject to Part 1 (*Operator default*) of schedule 2.4 (*Early Termination of the Lease*) of the Umbrella Agreement, if any Lease Operator Termination Event occurs and is continuing, the Owner may, at its option (and without prejudice to any of its other rights at law or otherwise):

- (a) deliver to the Operator a notice (a *Lease Operator Termination Notice*) terminating the Owner's obligations to perform future obligations under this Agreement, such notice to take effect immediately or from such later date as is specified in the Lease Operator Termination Notice, in which case the Operator agrees that all of its right to lease and operate the Units, the Owner Owned Spares, Special Tools and the Simulators shall terminate;
- (b) enforce its rights under the Agreement and/or recover damages for the breach of this Agreement; and/or
- (c) require the Operator to redeliver the Units and Simulators (including any Technical Records in the possession of the Operator) to the Owner at the redelivery location as may be specified by the Owner and to deregister in accordance with paragraph 1.2 of Schedule 13 (*Redelivery Condition (Lease) Schedule*).

3.2 If the Operator fails to redeliver the Units and Simulators forthwith upon being required so to do, the Owner may take possession of such Units and Simulators and, for this purpose, the Owner may enter any premises belonging to or in the occupation of or under the control of the Operator where the Units and Simulators may be located and/or may cause the Units to be redelivered to the Owner at the specified redelivery location.

3.3 The Parties acknowledge that the provisions of paragraphs 1 (other than paragraph 1.2) to 7 inclusive of schedule 2.1 (*Section 54 Undertakings*) of the Umbrella Agreement shall apply upon the termination of the Operator's obligations under this Agreement, subject to the limitations set out in paragraph 1.3 of that schedule 2.1 of the Umbrella Agreement.

4. DEFAULT PAYMENTS

4.1 Following service of a Lease Operator Termination Notice, the Owner shall be entitled to recover within five days of a demand an amount calculated as at the termination of this Agreement being a sum equal to the aggregate of:

- (a) all arrears of Rental and all other amounts accrued and due under the terms of this Agreement;
- (b) any costs and expenses incurred by the Owner collecting any payments due but not paid when done under this Agreement;

- (c) any other Losses suffered by the Owner under this Agreement and arising as a result of such termination, including, without limitation, the proper and reasonable costs of the Owner in relation to agreeing and implementing an Operator Accession or an Operator Transfer Scheme, provided that the Owner shall not be entitled to recover (by way of indemnity or otherwise) more than once in respect of the same loss or damage under this Agreement or any other Contract;
- (d) any costs and expenses reasonably incurred by the Owner in recovering or bringing the Units and any Associated Equipment into the Redelivery Condition (Lease) or bringing them to the Redelivery Location save and to the extent that such costs and expenses are recovered under a Redelivery Condition Bond; and
- (e) an amount equal to interest on all sums specified in paragraphs 4.1(a) and (c) inclusive at the Default Interest Rate from the date on which such payments become due until the date they are paid.

4.2 In making a demand under paragraph 4.1 the Owner shall, acting reasonably, determine the amounts set in paragraph 4.1.

4.3 Upon the termination of the leasing of the Units, the Associated Equipment and the Simulators pursuant to paragraph 4.1, the Operator shall:

- (a) immediately stop using the Units, the Associated Equipment and the Simulators for any purpose;
- (b) return or store the Units, the Associated Equipment and the Simulators in accordance with the Owner's instructions;
- (c) cease to be in possession of the Units, the associated Technical Records, the Associated Equipment and the Simulators unless with the consent of the Owner; and
- (d) subject to any Owner right of set off under clause 32.1, be entitled to receive from the Owner a rebate of Rental already paid in respect of any period following the date of such termination.

4.4 If the Operator is in breach of any of its obligations under this Agreement and the Owner incurs any costs or expenses:

- (a) in respect of the Units, the associated Technical Records, the Associated Equipment and the Simulators which should have been incurred by the Operator;
- (b) in ensuring that the Operator performs its obligations under this Agreement;
- (c) in remedying a breach of contract by the Operator, or
- (d) in relation to agreeing and implementing an Operator Accession or an Operator Transfer Scheme in accordance with paragraph 2 of schedule 2.1 (*Section 54 Undertakings*) of the Umbrella Agreement,

the Owner shall be entitled (without prejudice to any other rights it may have hereunder) to recover such expenditure from the Operator or an Existing Operator together with interest on that sum at the Default Interest Rate from the date on which such expenditure is incurred to the date of payment thereof to the Owner.

5. SURVIVAL

The provisions of this Schedule 10 shall survive the termination of this Agreement.

SCHEDULE 11

□⁹¹

Schedule 11

□⁹²

⁹¹ Redaction.

⁹² Redaction.

SCHEDULE 11

□⁹³

⁹³ Redaction.

SCHEDULE 12

**TERMINATION OF THE MSA, TSA OR TSSSA; SECRETARY OF STATE
TERMINATION; UNINSURABILITY TERMINATION**

Schedule 12.1:	Termination of the MSA
Schedule 12.2:	Termination of the TSA
Schedule 12.3:	Termination of the TSSSA
Schedule 12.4:	Termination by the Secretary of State
Schedule 12.5	Uninsurability Termination

SCHEDULE 12.1

Termination of the MSA

1. RIGHT TO MAKE REPRESENTATIONS

1.1 The Operator shall have the right to make representations to the Owner where the Operator reasonably believes that the TMM is in breach of any material obligation or has persistently breached any other obligation, in each case under the MSA.

1.2 The Owner shall have regard to the Operator's opinions expressed pursuant to paragraph 1.1 in determining whether to exercise any of its rights under the MSA in respect of the TMM.

2. MSA TERMINATION FOR TMM DEFAULT BEFORE ALL UNITS ACCEPTED

2.1 If either the Owner or the Operator issues an MSA TMM Pre-Minimum Fleet Termination Notice then, with effect from the date of such notice:

- (a) this Agreement and all rights and obligations of the Parties hereunder will, save as expressly provided to the contrary in this Agreement (including, without limitation, in paragraph (b) below) or in the Umbrella Agreement, terminate;
- (b) the provisions of paragraph 4 (*Termination of MSA upon TMM Default prior to Supply of Minimum Fleet*) of Part 1 (*TMM Default of MSA*) of schedule 2.2 (*Early Termination of the MSA*) of the Umbrella Agreement shall apply; and
- (c) each Party shall cease to accrue any further obligations or liabilities to the other Party under this Agreement, save only in respect of the Parties' obligations under clause 26 (*Confidentiality of Information and Financial Information*) (other than clause 26.6), any other provision of this Agreement that survives termination and any antecedent breaches of the Party's obligations or liabilities which have accrued in respect of the period up to the date of termination.

2.2 If either the Owner or the Operator issues an MSA TMM Post-Minimum Fleet Termination Notice then, with effect from the date of such notice:

- (a) the leasing and the Owner's obligation to deliver for leasing under this Agreement of any Equipment that has not been Accepted at the date of the relevant MSA TMM Post-Minimum Fleet Termination Notice shall, subject to any express provision in this Agreement or in the Umbrella Agreement to the contrary, terminate;
- (b) all other rights and obligations of the Parties under this Agreement in respect of the Units, Owner Owned Spares, Special Tools and/or Simulators which have been Accepted under the MSA at the date of the relevant MSA TMM Post-Minimum Fleet Termination Notice shall, subject to any express provision in this Agreement or in the Umbrella Agreement to the contrary, continue in full force and effect; and
- (c) the provisions of paragraphs 6 (*Continuing Arrangements following MSA TMM Post-Minimum Fleet Termination Notice*) to 11 ([]⁹⁴) (inclusive) and either paragraph 12

⁹⁴ Redaction.

(*Termination of Owner Participation*) or paragraph 13 ([]⁹⁵), in each case of Part 1 (*TMM Default of MSA*) of schedule 2.2 (*Early Termination of the MSA*) of the Umbrella Agreement shall apply.

2.3 Where paragraph 12 (*Termination of Owner Participation*) of Part 1 (*TMM Default of MSA*) of schedule 2.2 (*Early Termination of the MSA*) of the Umbrella Agreement applies then, with effect from the TMM Default Termination Closing Date:

- (a) this Agreement and all rights and obligations of the Parties hereunder will, save as expressly provided to the contrary in this Agreement or in the Umbrella Agreement, terminate; and
- (b) each Party shall cease to accrue any further obligations or liabilities to the other Party under this Agreement, save only in respect of the Parties' obligations under clause 26 (*Confidentiality of Information and Financial Information*) (other than clause 26.6), any other provision of this Agreement that survives termination and any antecedent breaches of the Party's obligations or liabilities which have accrued in respect of the period up to the date of termination.

2.4 []⁹⁶:

- (a) []⁹⁷; and
- (b) all the rights and obligations of the Parties under this Agreement in respect of the Units, Owner Owned Spares, Special Tools and/or Simulators which have been Accepted under the MSA at the date of the relevant MSA TMM Post-Minimum Fleet Termination Notice shall, subject to any express provision in this Agreement or in the Umbrella Agreement to the contrary, continue in full force and effect, subject to the application of the Revised Unit Rentals (calculated in accordance with Part 1 of schedule 2.2 of the Umbrella Agreement) with effect from the Revised Unit Rental (TMM Default) Date.

3. FORCE MAJEURE – TERMINATION OF THE LEASING

3.1 The Parties acknowledge that the provisions of schedule 2.6 (*Termination of Contracts for Force Majeure*) of the Umbrella Agreement shall apply to their rights and obligations under this Agreement where the MSA is terminated as the result of the occurrence of a Force Majeure Event or a Depot Force Majeure Event.

3.2 If the Secretary of State or any Party to the MSA delivers a notice requiring the termination of the TMM's obligations to deliver Force Majeure Affected Equipment under the MSA pursuant to paragraph 3.1 of schedule 2.6 (*Termination of Contracts for Force Majeure*) of the Umbrella Agreement in circumstances where either paragraph 4 (*Circumstances where Lease and TSA are terminated following MSA Force Majeure Event*) or paragraph 5 (*MSA Termination where performance of TSA may continue*) of schedule 2.6 (*Termination of Contracts for Force Majeure*) of the Umbrella Agreement applies then, with effect from the date set out in the relevant termination notice:

⁹⁵ Redaction.

⁹⁶ Redaction.

⁹⁷ Redaction.

- (a) this Agreement and all rights and obligations of the Parties hereunder will, save as expressly provided to the contrary in this Agreement or in the Umbrella Agreement, terminate; and
- (b) each Party shall cease to accrue any further obligations or liabilities to the other Party under this Agreement, save only in respect of the Parties' obligations under clause 26 (*Confidentiality of Information and Financial Information*) (other than clause 26.6), any other provision of this Agreement that survives termination and any antecedent breaches of the Party's obligations or liabilities which have accrued in respect of the period up to the date of termination.

3.3 If the Secretary of State or any Party to the MSA delivers a notice requiring the termination of the TMM's obligations to deliver Force Majeure Affected Equipment under the MSA pursuant to paragraph 3.1 of schedule 2.6 (*Termination of Contracts for Force Majeure*) of the Umbrella Agreement in circumstances where paragraph 6 (*MSA Termination where performance of the TSA and Lease may continue*) of schedule 2.6 of the Umbrella Agreement applies then, with effect from the date set out in the relevant termination notice, []⁹⁸ and:

- (a) the leasing and the Owner's obligation to deliver for leasing under this Agreement of any Equipment that has not been Accepted at such date shall, subject to any express provision in this Agreement or in the Umbrella Agreement to the contrary, terminate; and
- (b) all other rights and obligations of the Parties under this Agreement in respect of the Units, Owner Owned Spares, Special Tools and/or Simulators which have been Accepted under the MSA at the date of the relevant MSA TMM Post-Minimum Fleet Termination Notice shall, subject to any express provision in this Agreement or in the Umbrella Agreement to the contrary, continue in full force and effect, subject to the application of the Revised Unit Rentals (calculated in accordance with schedule 2.6 of the Umbrella Agreement) with effect from the first day of the month immediately following the date of the []⁹⁹.

4. []¹⁰⁰

5. []¹⁰¹

⁹⁸ Redaction.

⁹⁹ Redaction.

¹⁰⁰ Redaction.

¹⁰¹ Redaction.

SCHEDULE 12.2

Termination of the TSA

1. TSA OWNER TERMINATION RIGHT

Subject to the terms of the Umbrella Agreement, the Operator acknowledges that the Owner has the rights, subject to paragraph 3 (*Requirements prior to Termination*):

- (a) to terminate the TSA in accordance with its terms where any TSA TMM Event of Default (other than a TSA TMM Event of Default set out in paragraph 1(p) of schedule 13.1 (*TMM Events of Default*) of the TSA) has occurred and is continuing; or
- (b) to terminate the TSA in accordance with paragraph 8 (*Termination or Continuation of the TSA*) of schedule 2.6 (*Termination of Contracts for Force Majeure*) of the Umbrella Agreement.

2. TSA OPERATOR TERMINATION RIGHTS

2.1 Subject to the terms of the Umbrella Agreement and if directed by the Secretary of State, the Owner acknowledges that the Operator has the rights:

- (a) subject to paragraph 3, to terminate the TSA in accordance with its terms where any TSA TMM Event of Default has occurred and is continuing;
- (b) subject to paragraph 3, to terminate the TSA voluntarily by exercising the Operator TSA Voluntary Termination Right;
- (c) subject to paragraph 3, to terminate the TSA in accordance with paragraph 8 (*Termination or Continuation of the TSA*) of schedule 2.6 (*Termination of Contracts for Force Majeure*) of the Umbrella Agreement.
- (d) to terminate either or both of the TSA and this Agreement in accordance with their respective terms where the Fleet is performing at a level equal to or worse than the Termination Performance Level.

3. REQUIREMENTS PRIOR TO TERMINATION

No consent requirements

3.1 Subject to the terms of the Umbrella Agreement and to paragraphs 3.2 to 3.8, neither Party shall require the consent of the other to exercise any express right available to it under the TSA to terminate the TSA in accordance with its terms.

Obligation to put in place alternative maintenance arrangements following termination

3.2 Where the Owner wishes to terminate the TSA for any reason, the Owner shall be obliged to put in place a New Maintenance Agreement that is in force from the date and time of the termination of the TSA and which satisfies the requirements set out in paragraph 3.4, unless the Operator elects pursuant to paragraph 3.8 to self-maintain the Units and Simulators.

3.3 Where the Operator wishes to deliver an Operator TSA Voluntary Termination Notice in accordance with schedule 13.5 (*Operator Voluntary Termination Right*) of the TSA, the Operator shall be obliged to self-maintain pursuant to paragraph 3.3(a) and where the Operator wishes to terminate the TSA for any other reason, the Operator shall be obliged to either:

- (a) self-maintain pursuant to paragraph 3.8 from the date and time of the termination of the TSA, in which case:
 - (i) the covenants in paragraph 4.4 of Schedule 5 (*Operational and Maintenance Undertakings*) shall cease to be suspended pursuant to paragraph 4.1 of that Schedule;
 - (ii) paragraph 3.9 shall apply; and
 - (iii) paragraph 5(a) shall apply; or
- (b) put in place a New Maintenance Agreement that is in force from the date and time of the termination of the TSA and which satisfies the requirements set out in paragraph 3.4, by the end of the consultation period in paragraph 1.1(d) of part 1 (*TMM Default of TSA*) of schedule 2.3 (*Early Termination of the TSA*) of the Umbrella Agreement, failing which:
 - (i) the covenants in paragraph 4.4 of Schedule 5 (*Operational and Maintenance Undertakings*) shall cease to be suspended pursuant to paragraph 4.1 of that Schedule;
 - (ii) the Operator shall be obliged to put in place a New Maintenance Agreement that is in force from the date and time of the termination of the TSA with an alternative maintainer that is an appropriately qualified and experienced maintainer of rolling stock vehicles of the same or similar type of rolling stock vehicles as the Units and carries out work of a similar scope, type, nature and complexity to that required under the TSA;
 - (iii) paragraph 3.9 shall apply; and
 - (iv) paragraph 5(a) shall apply.

Conditions to alternative maintenance arrangements following termination

3.4 The requirements in relation to any New Maintenance Agreement that must be satisfied pursuant to paragraph 3.2 or 3.3(b) (except where paragraph 3.3(b)(ii) applies) are that:

- (a) the alternative maintainer shall be an appropriately qualified and experienced maintainer of rolling stock vehicles of the same or similar type of rolling stock vehicles as the Units and carry out work of a similar scope, type, nature and complexity to that required under the TSA;
- (b) the alternative maintainer shall:
 - (i) have a long term credit rating of at least A+ with Standard & Poor's or equivalent rating with any other rating agency; or

- (ii) provide a guarantee in the same terms (or such other terms as may be agreed between the Parties, each acting reasonably) as the TSA Guarantee for the performance of its obligations under the New Maintenance Agreement from an entity that has a credit rating of at least A+ with Standard & Poor's or equivalent rating with any other rating agency;
- (c) where the Owner is the terminating Party, the maintenance arrangements set out in that New Maintenance Agreement continue to require the new maintainer's compliance with the Train Plan Parameters;
- (d) the terms of that New Maintenance Agreement are the same as the terms of the TSA; and
- (e) the alternative maintainer permits the Owner to have the same recourse to it for the matters and on the same terms as set out in the Siemens Owner Support Provisions.

Costs and savings

3.5 Where the Owner terminates the TSA upon the occurrence and continuation of any TSA TMM Event of Default or the Operator terminates the TSA upon the occurrence and continuation of the TSA TMM Event of Default set out in paragraph 1(c) of schedule 13.1 (*TMM Events of Default*) of the TSA, the Operator shall be entitled to retain any saving it makes in relation to any reduction in the maintenance costs which arise as a result of entering into the New Maintenance Agreement.

3.6 Where the Operator terminates the TSA upon the occurrence and continuation of any TMM Event of Default or by exercising the Operator TSA Voluntary Termination Right, the Operator shall be entitled to retain any saving it makes in relation to any reduction in the maintenance costs which arise as a result of entering into the New Maintenance Agreement.

3.7 The relevant Parties shall, save where the Operator elects to self-maintain the Units and the Simulators in accordance with paragraph 3.8, enter into a New Maintenance Agreement, in each case with the new maintainer with effect from the date and time of termination of the TSA.

Conditions to Operator self-maintaining the Units following termination

3.8 The Operator may self-maintain the Units and Simulators upon the termination of the TSA or any New Maintenance Agreement provided that the Operator:

- (a) is an appropriately qualified maintainer of rolling stock vehicles with demonstrable experience in carrying out work of a similar scope, type, nature and complexity to the services performed by the TMM under the TSA; and
- (b) undertakes to perform that maintenance with effect from the date and time of termination of the TSA or any New Maintenance Agreement in accordance with the requirements of paragraph 4.3 of Schedule 5 (*Operational and Maintenance Undertakings*).

Revised BPA Statement

3.9 Promptly following the delivery of a TSA TMM Termination Notice:

- (a) where the Operator has elected to self-maintain the Units and Simulators in accordance with paragraph 3.8, the Operator; or
- (b) where a Third Party Maintainer has been appointed, the Operator and the relevant Third Party Maintainer,

shall prepare a Variation Proposal by way of amendment to the BPA Statement to reflect the view of the costs and schedule for carrying out the BPA Maintenance Activities, taking into account the Maintenance Plan and Manuals at such time.

3.10 Such amended BPA Statement, once approved by the Owner, shall be adopted for the purposes of Schedule 9 (*Balancing Payments Account*), and any increase in the costs of BPA Maintenance Activities set out in the BPA Statement above the costs set out in the BPA Statement that was in force immediately prior to the termination of the TSA shall be used to determine the amounts to be paid into the Balancing Payments Account in accordance with clause 22.2(b).

4. RENTAL REDUCTIONS

Not used.

5. FURTHER CONSEQUENCES OF OPERATOR TERMINATION OF TSA

If the Operator or the Owner terminate the TSA in accordance with its terms, then Schedule 3.10 (*Rental Reductions*), paragraph 1.1(b) of Schedule 1.1 (*Lease Owner Termination Events*) and schedule 8 (*Performance Remedial Plans*) of the TSA:

- (a) shall no longer apply where, upon termination of the TSA either:
 - (i) the Operator self-maintains the Units and Simulators pursuant to paragraph 3.8; or
 - (ii) any New Maintenance Agreement entered into pursuant to paragraph 3.7 does not satisfy the requirements of paragraph 3.4; and
- (b) shall continue to apply where, upon termination of the TSA, any New Maintenance Agreement entered into pursuant to paragraph 3.7 satisfies the requirements of paragraph 3.4, including providing for an obligation on the third party maintainer thereunder to:
 - (i) co-operate with the development of any performance remedial plan in the manner contemplated by paragraph 3 (*Obligation to Submit and Update Performance Remedial Plans*) of schedule 8 (*Performance Remedial Plans*) of the TSA;
 - (ii) implement any performance remedial plan in the manner contemplated by paragraph 9 (*Obligation to co-operate in Implementing Plans*) of schedule 8 (*Performance Remedial Plans*) of the TSA; and
 - (iii) where relevant, enter into a Day 1 Remedial Plan with the Owner and implement that plan in accordance with its terms.

6. FORCE MAJEURE – TERMINATION OF THE TSA

The Parties acknowledge that the provisions of paragraphs 8 (*Termination or Continuation of the TSA*) and 9 (*Consequences of TSA Termination*) of schedule 2.6 (*Termination of Contracts for Force Majeure*) of the Umbrella Agreement shall apply in respect of their rights and obligations under this Agreement where the TSA is terminated as the result of the occurrence of a Force Majeure Event (as defined in the TSA).

SCHEDULE 12.3

Termination of the TSSSA

1. TSSSA OPERATOR TERMINATION RIGHTS

The Owner acknowledges that the Operator has the right to terminate the TSSSA in accordance with its terms.

2. CONSULTATION AND CONSENT REQUIREMENTS PRIOR TO TERMINATION

Consultation requirements

- 2.1 The Parties shall consult and discuss in good faith for no less than 14 days:
- (a) in the case of the occurrence of any Supplier Event of Default, whether the Operator should terminate the TSSSA and appoint an alternative maintainer and the terms of that appointment; and
 - (b) in the case of the exercise by the Operator of the Operator TSSSA Voluntary Termination Right, whether the Operator should terminate the TSSSA and the terms of any alternative maintenance arrangements (including ongoing arrangements, if any, in relation to amounts standing to the credit of the Balancing Payments Account upon the intended date of termination of the TSSSA) that will be put in place.

Consent requirements

- 2.2 The Operator shall require the prior written consent of the Owner to terminate the TSSSA unless the Operator wishes either:
- (a) to appoint a third party maintainer on substantially the same terms as the TSA; or
 - (b) to continue to self-maintain the Units and Simulators and to appoint an alternative technical support and spares supply provider, provided that the conditions set out in paragraph 3.8 of Schedule 12.2 (*Termination of the TSA*) are satisfied.

SCHEDULE 12.4

Termination by the Secretary of State

1. EVENT

1.1 The Parties acknowledge and agree that the Secretary of State may require termination of this Agreement at any time pursuant to schedule 2.7 (*Voluntary Termination of Contracts by the Secretary of State*) of the Umbrella Agreement.

1.2 Upon receipt of a notice from the Secretary of State under paragraph 1.1(a) of schedule 2.7 (*Voluntary Termination of Contracts by the Secretary of State*) of the Umbrella Agreement (a ***Secretary of State Voluntary Termination Notice***), the Parties agree that this Agreement shall terminate on the date specified in the notice.

2. CONSEQUENCES OF TERMINATION

On the date of termination of this Agreement in accordance with paragraph 1.2:

- (a) each Party shall cease to accrue any further obligations or liabilities to the other Party under this Agreement, save only in respect of the Parties' obligations under clause 26 (*Confidentiality of Information and Financial Information*) (excepting clause 26.6), any other provision of this Agreement that survives the termination of this Agreement and any antecedent breaches of the Party's obligations or liabilities which have accrued in respect of the period up to the date of termination of this Agreement;
- (b) the provisions of schedule 2.7 of the Umbrella Agreement shall apply; and
- (c) the provisions of schedule 2.8 (*Transfer of Rolling Stock and Contracts upon Termination*) of the Umbrella Agreement shall apply.

SCHEDULE 12.5

□¹⁰²

¹⁰² Redaction.

SCHEDULE 13

REDELIVERY CONDITION (LEASE) SCHEDULE

Schedule 13

Redelivery Condition (Lease) Schedule

SCHEDULE 13

Redelivery Condition (Lease) Schedule

1. REDELIVERY

Redelivery requirements

1.1 Upon the Expiry Date (excluding limb (d) thereof), the Operator shall, subject to paragraphs 1.5, 1.6 and 1.8, redeliver each Unit, each Simulator and each item of Associated Equipment (including, in each case, its Technical Records and the Manuals) to the Owner at the Redelivery Location, in the Redelivery Condition, except to the extent that any Unit, Simulator or item of Associated Equipment has suffered an Event of Loss, in which case the provisions of paragraph 1.9 shall apply in relation to that Unit, Simulator or item of Associated Equipment, as the case may be.

1.2 Upon redelivery of a Unit, the Operator will take all steps necessary to effect de-registration of the Operator's interest (and/or the interest of any permitted sub-Train Operator) as operator of the relevant Unit from any register of rolling stock vehicles.

1.3 The Operator will provide such assistance as the Owner may reasonably require in the registration of the interest of any new Train Operator of such Unit in such register.

1.4 The Operator shall not be required to make any adjustment payments to the Owner on redelivery by reference to the maintenance condition of the Units, Simulators or the Associated Equipment.

Performance Remedial Plans

1.5 Where any Unit or item of Associated Equipment that is to be redelivered pursuant to paragraph 1.1 is a Performance Remedial Plan Unit or is Performance Remedial Plan Associated Equipment, as appropriate, in respect of which rectification work is being undertaken at that time, then the Operator's obligation in relation to the condition of that Unit or item of Associated Equipment shall be to return that Unit or item of Associated Equipment, as appropriate, to the Owner:

- (a) in a condition that is, so far as practicable, given that rectification work, consistent with the Redelivery Condition; and
- (b) to the extent that is not practicable, in a condition that is consistent with the condition that Unit or item of Associated Equipment, as appropriate, should be in on the date of redelivery, assuming that the relevant Performance Remedial Plan has been carried out in accordance with its terms.

Suspension

1.6 The Owner acknowledges that the TMM covenants, subject to the terms of the TSA, to redeliver the Units, Simulators and the Associated Equipment to the Owner at the Redelivery Location in the Redelivery Condition (Lease). Consequently, the covenant in paragraph 1.1 shall be suspended (other than in respect of the repair of a Unit constituting an Additional Service or Cosmetic Repair that the Operator has not authorised (i) the TMM to carry out under the TSA or (ii) the new maintainer to carry out under the terms of the New Maintenance Agreement) and the Operator shall not be responsible for any costs associated with the Units or Simulators not being in Redelivery Condition (Lease) for so long as the TSA

or a New Maintenance Agreement that satisfies the requirements of paragraph 3.4 of Schedule 12.2 (*Termination of the TSA*) is in force. If the TSA has been terminated and is no longer in force and no New Maintenance Agreement is in force, the covenant in paragraph 1.1 shall cease to be suspended and the Operator obliged to comply with its terms.

1.7 For so long as the covenant in paragraph 1.1 is suspended by the operation of paragraph 1.6, the Operator shall only be obliged to carry out or procure the carrying out of Additional Services and Cosmetic Repairs in each case, as required to put the Units into the Redelivery Condition (Lease) upon the Expiry Date (excluding limb (d) thereof) and the other provisions of this Schedule 13 shall only apply insofar as they comply with the obligations in this paragraph 1.7.

Entry into New Lease

1.8 The Units shall (save for any Units that the Owner has been previously notified are undergoing maintenance or repair work away from the Thameslink Network) be redelivered on the Thameslink Network (or such other place as the Operator or a sub-lessee are entitled to use such Units in accordance with paragraph 5 (*Sub-Leasing*) of Schedule 5 (*Operational and Maintenance Undertakings*)) and on a “where is” basis and the Operator shall not be obliged to redeliver the Units to the Redelivery Location upon entry into of a new Lease by the Owner and a Train Operator pursuant to clause 6 (*Disposal of this Agreement and the Contracts*) of the Umbrella Agreement on the expiry or termination of this Agreement.

Events of Loss

1.9 If an Event of Loss has occurred in relation to a Unit, Simulator or item of Associated Equipment, the Operator shall (except to the extent that the covenant in paragraph 1.1 is suspended by the operation of paragraph 1.6) promptly redeliver the Technical Records that relate to that Unit, Simulator or item of Associated Equipment (as the case may be) to the Owner, but shall not be obliged to redeliver that Unit, Simulator or item of Associated Equipment (as the case may be).

Security Interests

1.10 Unless otherwise expressly agreed in writing, the Units, Simulators and the Associated Equipment, shall, at redelivery, be free and clear of all Security Interests other than any Owner Security Interest.

2. FINAL INSPECTION

2.1 Before the Expiry Date, in respect of a Unit, Simulator or any item of Associated Equipment, the Owner will notify the Operator of the date upon which it and/or any person designated by it will inspect the relevant Unit, Simulator or item of Associated Equipment, as the case may be, including its Technical Records and any uninstalled Parts, in order to verify the Redelivery Condition (Lease) (the *Final Inspection*).

2.2 On the redelivery of a Unit, provided no Lease Operator Termination Notice has been delivered and is outstanding, the Final Inspection shall not unreasonably disrupt the commercial operations of the relevant Unit. The Final Inspection will however, be long enough to permit the Owner and/or any person designated by the Owner to fully inspect the relevant Unit, Simulator, or item of Associated Equipment (including all the uninstalled Parts and the relevant Technical Records), as the case may be.

2.3 On the redelivery of a Unit or Simulator, the Operator shall make available facilities to enable the Owner and/or any person designated by the Owner to carry out a detailed examination of the interior, exterior and the underside of the relevant Unit or Simulator. Gauges shall be made available by the Operator if required by the Owner to enable full examination of such items as wheel sets, couplers and any other critical component by the Owner and/or any person designated by the Owner.

3. DETAILS OF THE FINAL INSPECTION

3.1 The site of the Final Inspection shall be such premises as are reasonably specified by the Operator to the Owner, subject to:

- (a) the Operator's consent where located at a Designated Depot (other than where located in a Maintenance Shed, where no such consent shall be required) or Outstation in each case for the purpose of minimising disruption to the provision of railway passenger services by the Operator; and
- (b) such premises being adequate for the purpose of the Final Inspection being carried out in accordance with this paragraph 3.

3.2 The Operator shall be entitled to have a representative present at the Final Inspection.

3.3 Safe access to the site of the Final Inspection will be provided by the Operator where that site is part of a Designated Depot or Outstation.

3.4 After the Final Inspection and immediately prior to the actual handback of a Unit or Simulator, the Owner shall:

- (a) carry out a more cursory 'walk around' of the relevant Unit or Simulator, to identify any visible deterioration occurring subsequent to the Final Inspection; and
- (b) check subsequent Technical Records.

4. NON-COMPLIANCE

If by the date of a Final Inspection or upon the required redelivery date for the relevant Unit or Simulator or item of Associated Equipment, the condition of that Unit or Simulator or item of Associated Equipment, as the case may be, does not meet the requirements of paragraph 5 (*Redelivery Condition*), the Owner will provide the Operator with details of such non-compliance and the Operator will redeliver the non-compliant Unit, Simulator or item of Associated Equipment, as the case may be, to the Owner on the required redelivery date and indemnify the Owner on terms satisfactory to the Owner in its reasonable discretion against the cost of putting such non-compliant Unit, Simulator or item of Associated Equipment into the Redelivery Condition.

5. REDELIVERY CONDITION

The Units

5.1 The Units shall be returned pursuant to paragraph 1 (*Redelivery*) in a condition consistent with their position within the Maintenance Plan and taking into account any items listed on a Qualified Provisional Acceptance Certificate that have not been rectified pursuant to the MSA. To the extent that such position allows, and subject to normal wear and tear, the Units and the Associated Equipment will be returned in a fully operational condition, and, in

the case of the Units, in the same formation as at the Delivery Date (unless the formation has been changed pursuant to a Variation) and with all Parts fitted and operational and free from all defects.

5.2 The Units and the Associated Equipment shall have the same design configuration as at the Delivery Date (as defined in the Lease), save for any permitted Modifications which are not required to have been removed under the terms of this Agreement.

5.3 Each Unit shall be clean and free from any material damage (fair wear and tear is excepted but etching or any other damage caused by vandalism and accidental damage shall not be treated as fair wear and tear and the Operator shall be obliged to carry out or procure the carrying out of repairs to put the Units into the Redelivery Condition) and each Unit shall be in an appropriate condition including:

- (a) in relation to the exterior:
 - (i) all significant dents and scrapes shall have been repaired and major paintwork blemishes and graffiti (pieces and spray tagging) shall have been made good;
 - (ii) all corrosion to the bodysHELLS and underframes of the Units shall have been rectified in accordance with the Maintenance Plan;
 - (iii) the Unit shall be watertight in that there shall be no ingress of water through damage, also all window seals shall be in effective working order and opening windows shall be operable and shut;
 - (iv) all windows with etching which was not present at the Delivery Date shall be replaced; and
 - (v) exterior paintwork shall have been maintained in accordance with the Maintenance Plan; and
- (b) in relation to the interior:
 - (i) all interior furnishings and fittings shall be in serviceable condition and free from major blemishes, significant graffiti, window etching resulting in damage and other engraving or defacing of a significant nature; and
 - (ii) in a winterised condition, including the following:
 - (A) doors and windows shall be closed;
 - (B) the toilet water tank and all other water service pipework shall be drained in accordance with the Manuals. As much water as possible shall be cleared from the lavatory pan by means of a mop or plunger or an application of DP 132-1 or similar non-corrosive anti-freeze using a 25 per cent. v/v solution. A common salt solution shall not be used; and
 - (C) water shall be drained from air reservoirs in accordance with the Manuals,

provided that, the interior of each Unit shall not be returned in such winterised condition upon the entry into of a new Lease by the Owner and a Train Operator pursuant to schedule 2 (*Termination*) of the Umbrella Agreement on the expiry or termination of this Agreement.

Maintenance

5.4 Each Unit shall be re-delivered in a condition in which the spread of wear on all of its Parts reasonably corresponds to the Unit's position in the Maintenance Plan.

Associated Equipment

5.5 The Owner Owned Spares shall be returned in a condition consistent with their having been maintained in accordance with the Maintenance Plan, the Manuals and this Agreement, such that each such spare is capable of being fitted to a Unit such that that Unit shall be Fit for Purpose (TSA).

5.6 The Special Tools shall be returned in a condition such that each such tool is Fit for Purpose (TSA).

Simulators

5.7 The Simulators shall be returned in a condition such that each Simulator is Fit for Purpose (TSA).

Technical Records

5.8 The Technical Records shall be redelivered in accordance with paragraph 4 (*Redelivery of the Technical Records*) of Schedule 6.1 (*Technical Records*).

Redelivery Location

5.9 The Units, Simulators and the Associated Equipment shall be capable of redelivery at the Redelivery Location.

6. DISPUTES

If there is a dispute between the Owner and the Operator as to whether any Unit, Owner Owned Spare, Special Tool or Simulator meets the Redelivery Condition, the Parties shall appoint an Expert to resolve the dispute in accordance with schedule 8.2 (*Expert Determination*) of the Umbrella Agreement, provided that the Expert shall inspect the relevant Unit, Owner Owned Spare, Special Tool or Simulator and prepare a report which determines whether or not such Unit, Owner Owned Spare, Special Tool or Simulator meets the Redelivery Condition (Lease) within 10 Working Days of his appointment.