

DATED 27 JUNE 2013

THE SECRETARY OF STATE FOR TRANSPORT

CROSS LONDON TRAINS LIMITED

SIEMENS PLC

FIRST CAPITAL CONNECT LIMITED

THAMESLINK UMBRELLA AGREEMENT

**relating to
Contracts for the provision of Rolling Stock and Services
in connection with the provision of Rolling Stock**



Freshfields Bruckhaus Deringer

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THIS AGREEMENT is made as a deed on 27 JUNE 2013

BETWEEN:

- (1) **THE SECRETARY OF STATE FOR TRANSPORT** whose principal place of business is at Great Minster House, 33 Horseferry Road, London SW1P 4DR (the *Secretary of State*);
- (2) **CROSS LONDON TRAINS LIMITED** (Registered Number 07813033) a company incorporated in England whose registered office is 210 Pentonville Road, London N1 9JY (the *Owner*);
- (3) **SIEMENS PLC** (Registered Number 727817), a company incorporated in England and Wales whose registered office is at Faraday House, Sir William Siemens Square, Frimley, Camberley GU16 8QD (the *TMM*); and
- (4) **FIRST CAPITAL CONNECT LIMITED** (Registered Number 05281077), a company incorporated in England and Wales whose registered office is at 50 Eastbourne Terrace, Paddington, London W2 6LG and whose address for correspondence is Hertford House, 1 Cranwood Street, London EC1V 9QS (the *Initial Operator*).

WHEREAS:

- (A) The Initial Operator is the franchisee under the Initial Franchise Agreement.
- (B) The TMM, the Owner and the Initial Operator have entered into the Manufacture and Supply Agreement (*MSA*) in relation to the supply of Equipment to the Owner and the Operator for use on the Thameslink Network.
- (C) The Initial Operator and the Owner have entered into the Lease under which the Initial Operator will lease the Rolling Stock from the Owner.
- (D) The Initial Operator, the Owner and the TMM have entered into the Train Services Agreement (*TSA*) under which the TMM will service and maintain the Rolling Stock.
- (E) Each of the Secretary of State, the Initial Operator and the TMM are, amongst others, parties to each Depot Agreement for Leases (one each in respect of each Designated Depot) in connection with which the Depot Construction Contracts will be entered into. The Secretary of State will give certain undertakings in respect of the Designated Depots in a separate deed of undertaking. Following completion of the Designated Depots, leasing arrangements will be entered into by the relevant parties in respect of the Designated Depots.
- (F) The Parties have entered into this Agreement, amongst other things, to (i) set out undertakings by the Secretary of State in relation to the transfer of the rights and obligations of the Operator of the day under the MSA, TSA and Lease to a Successor Operator when that Operator's role in the Project comes to an end; (ii) regulate the circumstances in which such Contracts may be terminated¹; (iii) provide for termination payments to be made in certain circumstances; (iv) deal with certain matters in relation to Variations and Changes in Law; (v)

¹ Redaction.

regulate runs of the Financial Models; (vi) regulate certain matters in relation to refinancing; and (vii) manage disputes under the Contracts.

NOW THIS AGREEMENT WITNESSES as follows:

1. DEFINITIONS, INTERPRETATION 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*).

Interpretation and Construction

1.2 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, and reference to any computer system shall be to that computer system as amended or substituted with a computer system of substantially the same functionality as the original computer system.

Contract references

1.3 References to and the incorporation of clauses and other provisions in the MSA, the TSA, the Lease, the TSSSA and/or the Master Definitions Agreement in this Agreement shall survive the termination or expiry of the MSA, the TSA, the Lease, the TSSSA or the Master Definitions Agreement (as applicable).

1.4 Unless the context otherwise admits, or they are otherwise defined, capitalised terms and expressions used in this Agreement shall bear the meanings ascribed to them in the Master Definitions Agreement.

Contract Precedence

1.5 In the event of any conflict or inconsistency between the terms of this Agreement and the terms of any Contract, the terms of this Agreement shall prevail.

Common Terms

1.6 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. CONDITIONS PRECEDENT

Save in relation to clauses 1, 2, 4, 5, 6, 19, 20, 21, 22, 24, 26, 27, 28, 29, 30, 31, 32, 33 and Schedule 8 (*Dispute Resolution*), which shall each be effective on and from the date of this Agreement, the rights and obligations of the Parties to this Agreement shall commence on the Effective Date.

3. INFORMATION UNDERTAKINGS

Financial information

3.1 Each of the Operator and the Owner shall provide the Secretary of State with copies of:

- (a) all documents sent by the representative of the Operator or the Owner (as applicable) 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); and
- (c) such other information about its business and financial status as the Secretary of State may from time to time reasonably require (such other information to be provided upon reasonable notice).

Additional information to be provided to the Secretary of State

3.2 Each of the Operator and the Owner shall:

- (a) at all times maintain a full record of particulars of the costs of performing their respective rights and obligations under the Contracts, including those relating to the design, manufacture, maintenance, operation and finance of the Equipment that is owned or to be owned by the relevant party and including (in the case of the Owner) details of any commitments made by the Owner for future expenditure and details of any funds held by the Owner;
- (b) when requested by the Secretary of State, provide a summary of any of the costs referred to in clause 3.2(a), including details of any funds held by the Operator and the Owner (respectively) specifically to cover such costs, in such form and detail as the Secretary of State may reasonably require to enable the Secretary of State to monitor the performance by the Operator and the Owner of their respective obligations under this Agreement and the Contracts; and
- (c) provide such facilities as the Secretary of State may reasonably require for its representatives to visit any place where the records are held and examine the records maintained under this clause 3.2.

3.3 In order to comply with clause 3.2, the Operator and the Owner shall keep books of account in accordance with generally accepted accountancy practice showing in detail:

- (a) administrative overheads;
- (b) payments made to sub-contractors;
- (c) capital and revenue expenditure; and
- (d) such other items as the Secretary of State may reasonably require from time to time to conduct cost audits for verification of cost expenditure or estimated expenditure upon termination of the Contracts or otherwise,

and the Operator and the Owner shall have the books of account evidencing the items listed in clauses 3.3(a) to (d) inclusive available for inspection by the Secretary of State (and any expert) upon reasonable notice, and shall present a report of these to the Secretary of State as and when requested.

3.4 To the extent that the Operator provides the Secretary of State with any of the information referred to in clauses 3.2 and 3.3 pursuant to a Franchise Agreement, the Operator shall not be required to provide the same information again under this Agreement.

3.5 The Operator and the Owner shall keep the records referred to in clauses 3.2 and 3.3 for a period of at least five years after the termination or expiry of the TSA (or if the TSSSA is in full force and effect, at least five years after the scheduled expiry date of the TSSSA) provided that each Operator may hand such records over to the Secretary of State following the termination of its Franchise Agreement.

Information to be provided by the TMM

3.6 The TMM shall provide the Secretary of State with copies of:

- (a) its audited balance sheet and profit and loss account (such balance sheet and accounts to be provided promptly upon becoming publicly available); and
- (b) any other information about its business, financial status and activities in relation to the Project that it is required to deliver to the Owner's Financiers or any representative of such Financiers, in accordance with the Senior Finance Documents (such information to be provided promptly after it is delivered to the Financiers).

Financial information to be provided by the Owner

3.7 The Owner shall:

- (a) provide to the Secretary of State on 30 June and 31 December each year, a document listing all information provided by the Owner to its Financiers during the preceding six month period and, at the request of the Secretary of State, provide to him any information provided by the Owner to its Financiers during the term of this Agreement and any other information relating to the Project that the Secretary of State may reasonably require;
- (b) provide to the Secretary of State copies of its annual report within 30 days of publication;
- (c) promptly upon the occurrence of a CTA Event of Default under the Senior Finance Documents, notify the Secretary of State of such default; and
- (d) provide the Secretary of State on the first Working Day of each calendar month during which any Additional Permitted Borrowing is, or may be, subsisting:
 - (i) the amount outstanding under the Senior Finance Documents (as the same are amended (whether or not with the approval of the Secretary of State));
 - (ii) the amount of any Distribution made by the Owner; and
 - (iii) the amount of any credit balance on any account of the Owner.

3.8 The Secretary of State may, following the occurrence of a CTA Event of Default under the Senior Finance Documents which is continuing (regardless of whether the Senior Lenders have exercised any enforcement or similar rights under the Senior Finance Documents) require the Owner to provide a report containing such information as the Secretary of State requests (including details of the CTA Event of Default, what steps are being taken to remedy the CTA Event of Default, and the progress of any ongoing discussions with the Senior Lenders) and to attend, and use all reasonable endeavours to ensure that the Senior Lenders attend, such meetings as the Secretary of State may convene to discuss such report and the circumstances giving rise to it.

Examination of information and records

3.9 The Operator, the Owner and the TMM shall permit records referred to in this clause 3 to be examined and copied by the Secretary of State, and by the Comptroller and Auditor General and his representatives.

4. CONFIDENTIALITY

Confidentiality Undertaking of Operator, Owner and TMM

4.1 Subject to clause 4.2, each of the Operator, the Owner and the TMM agree that:

- (a) it will keep confidential all Confidential Information (Umbrella Agreement) belonging to the Secretary of State;
- (b) it will not furnish nor disclose any Confidential Information (Umbrella Agreement) belonging to the Secretary of State to any other person (except as permitted by clause 4.2) without the prior written consent of the Secretary of State; and
- (c) it will not use any Confidential Information (Umbrella Agreement) that it receives from the Secretary of State otherwise than for the performance of the Project or other activities expressly contemplated or permitted by the provisions of the Contracts.

Permitted Disclosures

4.2 The restrictions in clause 4.1 shall not apply to any disclosure of any Confidential Information (Umbrella Agreement):

- (a) to the Bank of England, the Prudential Regulation Authority and the Financial Conduct Authority or as required by Applicable Laws and Standards or any written requirements of any Government Authority;
- (b) to:
 - (i) any solvent Affiliate of the disclosing Party or other solvent member of the group of companies of which the disclosing Party is a member (in each case excluding for these purposes any person or other entity described in paragraph (b)(ii) or paragraph (c) of the definition of Affiliate in the Master Definitions Agreement which is not a direct or indirect shareholder of the Owner or a member of the Owner's Group) or any direct or indirect shareholder of the Owner or a member of the Owner's Group;
 - (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 TMM, the Owner or the Operator or another person described under sub-clause (i) above;

- (iii) any financier of the Operator or the TMM, or any Financier of any member of the Owner's Group; or
- (iv) any permitted Sub-Contractor or 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 the Lease and the TSA),

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;
- (B) the disclosing Party agrees that:
 - (I) it shall use reasonable endeavours to obtain an undertaking of confidentiality (which is directly enforceable by the Secretary of State against the relevant recipient) on substantially the same terms as this clause 4 from each relevant third party recipient of the Confidential Information (Umbrella Agreement); and
 - (II) save where the relevant recipient has provided an undertaking of confidentiality to the Secretary of State that is directly enforceable by the Secretary of State in accordance with sub-paragraph (I), it shall be responsible for any breach of the provisions of this clause 4 by any relevant persons referred to in sub-clauses (i) to (iv) inclusive of this clause 4.2(b) to whom disclosures are made;
- (c) which is required in connection with obtaining or renewing any insurance required under the Contracts;
- (d) which is in the public domain other than as a result of the breach of any obligation of confidentiality under this Agreement;
- (e) which is required in connection with any litigation, provided that the disclosing Party shall reveal only such Confidential Information (Umbrella Agreement) as is reasonably necessary for such litigation and shall seek to minimise both the number of third party recipients of such Confidential Information (Umbrella Agreement) and the amount of Confidential Information (Umbrella Agreement) disclosed;
- (f) 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 the Secretary of State in substantially the same form as this clause 4;
- (g) which is required in connection with a sale or other disposition of shares or other interest in the Operator, any member of the Owner's Group, the TMM, or any parent company (or other entity which is a direct or indirect shareholder of the Owner's Group) of those persons, provided always that prior to any disclosure, any recipient of

such information has provided a confidentiality undertaking in substantially the same form as this clause 4 to the Secretary of State;

- (h) which was made available to the disclosing Party on a non-confidential basis; or
- (i) as required by 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.

Confidentiality obligations of the Secretary of State

4.3 The Secretary of State agrees and acknowledges that all Confidential Information (Umbrella Agreement) provided to him under this Agreement by another Party has been provided in confidence and that he and his lawyers, accountants and others providing professional services will keep any such Confidential Information (Umbrella Agreement) confidential unless:

- (a) disclosure of such information is required by Applicable Laws and Standards (including in accordance with clauses 4.6 to 4.12 inclusive);
- (b) the disclosure consists of the electronic publication by the Secretary of State of those parts of the Contracts which the other Parties have agreed in writing, acting reasonably, do not constitute Commercially Sensitive Information at the relevant time;
- (c) disclosure of such information is required in connection with litigation, provided that the disclosing Party shall reveal only such Confidential Information (Umbrella Agreement) as is reasonably necessary for such litigation and shall seek to minimise both the number of third party recipients of such Confidential Information (Umbrella Agreement) and the amount of Confidential Information (Umbrella Agreement) so disclosed;
- (d) the information is in the public domain other than as a result of the breach of any obligation of confidentiality;
- (e) the information was made available to the disclosing Party on a non-confidential basis;
- (f) the information is disclosed by the Secretary of State:
 - (i) to the Bank of England, the Prudential Regulation Authority, the Financial Conduct Authority, the Parliamentary Commissioner for Administration, a Minister of the Crown, any department of the government of the United Kingdom or any Government Authority; or
 - (ii) to persons other than those listed in sub-paragraph (i) above, for the purpose of facilitating the carrying out of its functions or the exercise of its rights under the Act, the Transport Act 2000 or the Railways Act 2005,

provided that the Secretary of State shall:

- (A) in each case, disclose only such information which is necessary for the relevant purpose of the particular disclosure;

- (B) in each case communicate to the recipient the confidential nature of any Confidential Information (Umbrella Agreement) so disclosed, require that such information is treated in confidence in accordance with the terms of this clause 4 and shall, where appropriate, obtain an undertaking to such effect; and
- (C) in the case of disclosures made under sub-paragraph (ii):
 - (I) use reasonable endeavours to obtain an undertaking of confidentiality (which is directly enforceable by the owner of such Confidential Information (Umbrella Agreement) against the relevant recipient) on substantially the same terms as this clause 4 from each relevant third party recipient of the Confidential Information (Umbrella Agreement); and
 - (II) save where the relevant recipient has provided an undertaking of confidentiality to the owner of such Confidential Information (Umbrella Agreement) that is directly enforceable by the owner of such Confidential Information (Umbrella Agreement) in accordance with sub-paragraph (I), be responsible for any breach of the provisions of this clause 4 by the relevant recipient to whom disclosures are made;
- (g) the information is disclosed for the purpose of:
 - (i) the examination and certification of a Party's accounts; or
 - (ii) any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Secretary of State has used his resources; or
- (h) it is necessary for the Secretary of State to disclose any information in order to give effect to the provisions of this Agreement, including as provided for under clauses 4.6 and 4.7 provided that, other than in the case of any disclosure made under clause 4.6 or 4.7 or as otherwise permitted under paragraphs (a) to (f)(i) and (g) above, the Secretary of State shall:
 - (i) use reasonable endeavours to obtain an undertaking of confidentiality (which is directly enforceable by the owner of such Confidential Information (Umbrella Agreement) against the relevant recipient) on substantially the same terms as this clause 4 from each relevant third party recipient of the Confidential Information (Umbrella Agreement); and
 - (ii) save where the relevant recipient has provided an undertaking of confidentiality to the owner of such Confidential Information (Umbrella Agreement) that is directly enforceable by the owner of such Confidential Information (Umbrella Agreement) in accordance with sub-paragraph (i), be responsible for any breach of the provisions of this clause 4 by the relevant recipient to whom such disclosures are made.

Franchise Bidding Procedure

4.4 Each of the Owner and the TMM shall, []² if and to the extent so reasonably requested by the Secretary of State, provide the Secretary of State and his representatives and advisers with information extracted from the Transaction Documents to which the Operator is party and other information which the Owner or the TMM (as applicable) is required to provide under the Contracts and which those representatives and advisers reasonably believe that a potential Successor Operator would require in order to tender for the right and obligation to provide or operate all or any services under the then applicable Franchise Agreement, for the purpose of such representatives and advisers preparing any reports or other documents in connection with any invitation to potential Successor Operators to tender for such right and obligation. []³

4.5 Any information provided to the Secretary of State and his representatives and advisers pursuant to clause 4.4 may be disclosed by the Secretary of State to persons who have expressed an interest in becoming the relevant franchisee, provided that such persons have provided an undertaking regarding the confidentiality and use of such information for the benefit of the Secretary of State and the Party who provided such information to the Secretary of State, in substantially the same form as this clause 4. Such disclosure of any such information by the Secretary of State will be limited to the extent the Secretary of State considers reasonably necessary for the relevant stage of the tender process and full disclosure of the terms of any Transaction Document, including detailed financial information, will, subject to any legal requirement to which the Secretary of State is or may become subject, only be made available to the successful Successor Operator.

Freedom of Information

4.6 Each of the Operator, the Owner and the TMM acknowledges that the Secretary of State is subject to the requirements of the FOIA and the Environmental Information Regulations and shall facilitate the Secretary of State's compliance with his Information disclosure requirements pursuant to the same in the manner provided for in clauses 4.7 to 4.12 inclusive.

4.7 Where the Secretary of State receives a Request for Information in relation to any Information that is or includes Confidential Information (Umbrella Agreement) belonging to any of the Owner, the Operator or the TMM, the Secretary of State:

- (a) shall notify the applicable Party of such request as soon as practicable and in any event within five Working Days of receiving such Request for Information; and
- (b) if the request relates to Information that any of the Operator, the Owner or the TMM is holding on the Secretary of State's behalf, shall refer such Request for Information to the applicable Party at the same time as the notification is made under paragraph (a) and, if the Secretary of State does so, the Operator, the Owner and/or the TMM (as applicable) shall, at its own cost:
 - (i) provide the Secretary of State with a copy of all such Information in the form that the Secretary of State requires as soon as practicable and in any event

² Redaction.

³ Redaction.

within ten Working Days (or such other period as the Secretary of State acting reasonably may specify) of the Secretary of State's request; and

- (ii) provide all necessary assistance as reasonably requested by the Secretary of State in connection with any such Information, to enable the Secretary of State to respond to a Request for Information within the time for compliance set out in Section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations; and
- (c) shall, where he intends to disclose any of the relevant Confidential Information (Umbrella Agreement) in response to the Request for Information, notify the applicable Party of his intention to disclose such Information at least three Working Days before such disclosure is made.

4.8 Following notification under clause 4.7(a), and up until such time as either:

- (a) where the Secretary of State holds all the relevant Information, the Information is disclosed in response to the Request for Information; or
- (b) where clause 4.7(b) applies, the Operator, the Owner and/or the TMM (as applicable) has provided the Secretary of State with all the Information specified in paragraph 4.7(b),

the Operator, the Owner and/or the TMM (as applicable) may make representations to the Secretary of State as to whether or not or on what basis Information requested should be disclosed and, where clause 4.7(b) applies, whether further information should reasonably be provided in order to identify and locate the information requested, provided always that the Secretary of State shall be responsible for determining in his absolute discretion:

- (i) whether Information is exempt from disclosure under the FOIA and the Environmental Information Regulations; and
- (ii) whether Information is to be disclosed in response to a Request for Information,

and in no event shall the Operator, the Owner and/or the TMM (as applicable) respond directly, or allow its sub-contractors to respond directly, to a Request for Information unless expressly authorised to do so by the Secretary of State.

4.9 Each of the Operator, the Owner and the TMM shall ensure that all Information held by it on behalf of the Secretary of State is retained for disclosure for at least 6 years (from the date it is acquired) and shall permit the Secretary of State to inspect such Information as requested from time to time.

4.10 Each of the Operator, the Owner and the TMM shall transfer to the Secretary of State any Request for Information received by it as soon as practicable and in any event within two Working Days of receiving such Request for Information.

4.11 The Secretary of State agrees that he shall, in exercising his discretions under sub-paragraphs (i) and (ii) of paragraph 4.8, take into account any lists or redacted versions of the Transaction Documents provided to the Secretary of State listing or outlining Confidential Information (Umbrella Agreement), provided that the Secretary of State may nevertheless be obliged to disclose Confidential Information (Umbrella Agreement) in accordance with the requirements of the FOIA and the Environmental Information Regulations.

4.12 Each of the Operator, the Owner and the TMM acknowledges that (notwithstanding the provisions of this clause 4), the Secretary of State may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part I of the Freedom of Information Act 2000 (the *Code*), be obliged under the FOIA, or the Environmental Information Regulations to disclose Information concerning the Operator, the Owner, the TMM and/or the Project, following consultation with the Operator, the Owner and/or the TMM (as applicable) and having taken the relevant Party's views into account.

Official Secrets Acts

4.13 The provisions of this clause 4 are without prejudice to the application of the Official Secrets Acts 1911 to 1989 to any Confidential Information (Umbrella Agreement).

Standard of care

4.14 In fulfilling its obligations under this clause 4, each Party shall be required to use a proper standard of care, which shall in no event be less than the same degree of care to prevent unauthorised disclosure of the Confidential Information (Umbrella Agreement) 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.

Remedies

4.15 []⁴

5. NOMINATED REPRESENTATIVES

Appointment

5.1 Each Party shall appoint (after consultation with the other Parties) one or more Nominated Representatives to act on its behalf under this Agreement. Each Party shall advise the other Parties in writing on or prior to the date of this Agreement of the name and contact details of its Nominated Representative. As at the date of this Agreement, *Nominated Representatives* shall comprise:

- (a) in respect of the Owner, the Owner's Contract Manager, appointed in accordance with Schedule 9 (*Contract Management*) of the TSA;
- (b) in the case of the Initial Operator, []⁵ of Hertford House, 1 Cranwood Street, London EC1V 9QS;
- (c) []⁶; and
- (d) in respect of the Secretary of State, []⁷, whose contact details are set out in clause 20.3.

⁴ Redaction.

⁵ Redaction.

⁶ Redaction.

⁷ Redaction.

5.2 Any Party may, on giving reasonable notice to the other Parties, appoint an additional Nominated Representative or replace an existing Nominated Representative. Each Party shall be responsible for the acts, omissions, breaches of contract or negligence of any of its Nominated Representatives as if such acts, omissions, breaches of contract or negligence were the acts, omissions, breaches of contract or negligence of that Party itself, save that the relevant Party's responsibility for such acts, omissions, breaches of contract or negligence to which any relevant provisions of this Agreement or the other Contracts (including clause 16.3 of this Agreement) apply shall be as set out in those provisions, in accordance with their terms.

5.3 Each Party warrants that each of its Nominated Representatives has full authority to bind it in respect of any decision made or action taken by any such Nominated Representative.

Senior Representatives

5.4 Each Party shall advise the other Parties in writing:

- (a) on or prior to the date of this Agreement of the name and contact details of its Senior Representative; and
- (b) as soon as reasonably practical of any replacement of an existing Senior Representative.

5.5 Each Party shall be responsible for the acts, omissions, breaches of contract or negligence of its Senior Representatives as if such acts, omissions, breaches of contract or negligence were the acts, omissions, breaches of contract or negligence of that Party itself, save that the relevant Party's responsibility for such acts, omissions, breaches of contract or negligence to which any relevant provisions of this Agreement or the other Contracts (including clause 16.3 of this Agreement) apply shall be as set out in those provisions, in accordance with their terms.

5.6 Each Party warrants that each of its Senior Representatives has full authority to bind it in respect of any decision made or action taken by any such Senior Representative, including, in the case of the Secretary of State, to sign an Authorisation to Vary.

5.7 The Secretary of State hereby nominates []⁸ as its Senior Representative from the date of this Agreement until such time as it provides notice of his replacement in accordance with clause 5.4(b).

6. DISPOSAL OF THIS AGREEMENT AND THE CONTRACTS

Restrictions on Operator Disposal

6.1 Save as provided in clause 6.7, the Operator may not assign or transfer or otherwise dispose (whether by Legislation or any transfer scheme pursuant to any Legislation or otherwise) of its rights and/or obligations under this Agreement or under any Contract, or sell any Rolling Stock or create or agree to create or permit to exist any Security Interest on or over Rolling Stock or any Contract, save by way of an Operator Accession or Operator

⁸ Redaction.

Transfer Scheme that the Secretary of State effects in accordance with its undertaking under paragraph 1.1 (*Section 54 Undertaking*) of Schedule 2.1 (*Section 54 Undertakings*).

Restrictions on Owner or TMM disposal

6.2 Subject to clause 6.7, neither the Owner nor the TMM may:

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

6.3 Save only as provided in clause 6.6, any Permitted Contracts Restructuring Arrangement shall require the prior written consent of the Secretary of State (such consent not to be unreasonably withheld or delayed).

6.4 ⁹

6.5 ¹⁰

6.6 ¹¹

Permitted disposals

6.7 Clauses 6.1 to 6.6 shall not apply to:

- (a) ¹²;
- (b) any ¹³ pursuant to clause 14 (¹⁴) of the Lenders' Direct Agreement (including any disposal of the Equipment permitted under those provisions of the Lenders' Direct Agreement);
- (c) the sale of the Equipment by the TMM to the Owner or the Operator pursuant to the MSA;
- (d) ¹⁵;
- (e) ¹⁶;

⁹ Redaction.

¹⁰ Redaction.

¹¹ Redaction.

¹² Redaction.

¹³ Redaction.

¹⁴ Redaction.

¹⁵ Redaction.

¹⁶ Redaction.

- (f) the creation and enforcement of a security interest by the Owner on or over the Rolling Stock and the Owner's rights under the Contracts in favour of the Senior Lenders and the creation and enforcement of a security interest in the share capital of the Owner in favour of the Senior Lenders, in each case under the Senior Finance Documents as at the date of Financial Close;
- (g) ¹⁷; or
- (h) ¹⁸.

Permitted Contracts Restructuring Arrangement

6.8 In the event that the Owner or the TMM (each being an *Applicable Transferor*) wishes to effect a Permitted Contracts Restructuring Arrangement in relation to its rights and obligations, and the Secretary of State and (to the extent required pursuant to clause 6.4) the Owner have each approved the proposed Approved Transferee then the following provisions shall apply:

- (a) Any Restructuring Document may only incorporate amendments to the Agreed Form for that Restructuring Document with the prior written agreement of all of the Parties to this Agreement in order to:
 - (i) complete (in the manner indicated in the relevant Agreed Form of such Restructuring Document) any fact, matter or thing which is incomplete on the face of the Agreed Form of such Restructuring Document; or
 - (ii) correct any fact, matter or thing which is incorrect on the face of the relevant Agreed Form of such Restructuring Document in relation to that Permitted Contracts Restructuring Arrangement and/or the Applicable Transferor and Approved Transferee,

PROVIDED ALWAYS THAT any such completion or correction shall be effected in a way which does not in any way alter or affect the substance or contractual effect of the applicable Agreed Form of the relevant Restructuring Documents.

- (b) The Applicable Transferor shall provide to the other Parties to this Agreement drafts of all of the applicable Restructuring Documents that comply with the requirements of paragraph (a) above, no less than 20 Working Days (or such shorter period as the other Parties may agree) before the date on which the Applicable Transferor wishes the Permitted Contracts Restructuring Arrangement to take effect.
- (c) The Parties to this Agreement shall enter into discussions and co-operate, acting promptly and reasonably with a view to agreeing the final form of all the applicable Restructuring Documents within a period of no more than 10 Working Days of delivery of the applicable draft Restructuring Documents. The Parties shall meet as necessary and in accordance with a timetable and procedures that they shall establish in order to address and comply with the required timetable for effecting the Permitted Contracts Restructuring Arrangement. Any aspects of the applicable Restructuring Documents that are not agreed within that 10 Working Day period shall constitute a

¹⁷ Redaction.

¹⁸ Redaction.

Contract Dispute and shall be referred to an Expert for Expert determination pursuant to Schedule 8.2 (*Expert Determination*) for an interim decision pursuant to paragraph 5.4(c) of Schedule 8.2 on the basis that the requirements set out in clauses 6.4, 6.5 and 6.8(a) are complied with.

- (d) Each of the Parties hereby agrees from time to time to do and perform such other and further acts and execute and deliver any and all of the applicable Restructuring Documents in final execution form (as agreed or determined in accordance with paragraph (c) above) or which are required in order to effect completion of the Permitted Contracts Restructuring Arrangement on the date which is 5 Working Days after the forms of the applicable Restructuring Documents have been agreed or determined or such other date as the Parties shall agree (in each case the ***Restructuring Closing Date***).
- (e) On the Restructuring Closing Date and pursuant to paragraph (d) above, the Applicable Transferor, the Approved Transferee and all contract counterparties shall enter into the Applicable Replacement Contracts and the Applicable Deed of Accession in the Agreed Form of such documents, as amended in accordance with this clause 6.8.
- (f) Completion of the Permitted Contracts Restructuring Arrangement shall take place by 2.00pm on the Restructuring Closing Date at the offices of the solicitors to the Applicable Transferor or at such other time and place as the Parties may agree.

6.9 The Applicable Transferor shall bear the proper costs of the other Parties in relation to considering and implementing any proposed Permitted Contracts Restructuring Arrangement, whether or not such Permitted Contracts Restructuring Arrangement is successfully completed.

Restrictions on Secretary of State Disposal

6.10 The Secretary of State shall not, save with the written consent of each of the Owner and the TMM, assign or transfer or otherwise dispose (whether by any Legislation or any scheme pursuant to any Legislation or otherwise) of its rights and/or obligations under this Agreement or under any Secretary of State Contract to any person other than to any public body (being a single entity) who:

- (a) has the legal capacity, power and authority to become a Party to and to perform the obligations of the Secretary of State under all the Secretary of State Contracts, and is:
 - (i) a Minister of the Crown pursuant to an Order under the Ministers of the Crown Act 1975; or
 - (ii) any other public body whose obligations under all the Secretary of State Contracts (such obligations having been novated to such public body under an accession deed in a form acceptable to all of the Parties, each acting reasonably, or by means of statutory transfer or similar legislative process effecting the transfer of all the obligations of the Secretary of State to such public body) are unconditionally and irrevocably guaranteed (in a form reasonably acceptable to each of the Owner and the TMM) by the Secretary of State or a Minister of the Crown having the legal capacity, power and authority to perform the obligations under the guarantee and the obligations of the Secretary of State under all the Secretary of State Contracts; and

- (b) is the common counterparty in place of the Secretary of State under all the Secretary of State Contracts,

in which case the consent of the Owner and the TMM shall not be required.

Consequences of Operator breach

6.11 If the Operator is in breach of its obligations under clause 6.1, the Owner or the TMM may serve a notice on the Operator, specifying that the relevant person will require the termination of the Operator’s participation in the Contracts if the breach is not rectified within 20 Working Days.

6.12 If the Operator fails to rectify the breach that gave rise to a notice served under clause 6.11 within 20 Working Days of its receipt of that notice, such failure shall constitute:

- (a) in the case of a notice served by the Owner, a Lease Operator Termination Event; or
- (b) in the case of a notice served by the TMM, an MSA Operator Event of Default and/or a TSA Operator Event of Default.

□¹⁹

6.13 □²⁰

6.14 □²¹

Consequences of TMM breach of obligations to the Owner

6.15 □²²

6.16 □²³

Consequences of Secretary of State breach of obligations

6.17 If the Secretary of State is in breach of its obligations under clause 6.10, the Owner or the TMM may serve a notice on the Secretary of State, specifying that the Owner or the TMM will require the termination of the Contracts in accordance with clause 17 (*Secretary of State Default*) if the breach is not rectified within 20 Working Days.

6.18 If the Secretary of State fails to rectify the breach that gave rise to a notice served under clause 6.17 within 20 Working Days of its receipt of that notice, such failure shall constitute a Secretary of State Default.

¹⁹ Redaction.

²⁰ Redaction.

²¹ Redaction.

²² Redaction.

²³ Redaction.

7. CHANGE OF CONTROL

Ownership Information

7.1 The Owner represents and warrants to the Secretary of State that, at the date of this Agreement:

- (a) the legal and beneficial ownership of the Owner is as set out in Schedule 9.1 (*Ownership of the Owner*); and
- (b) no agreement is in place that may result in any sale, transfer or disposal of any legal, beneficial, equitable or other interest in any or all of the shares in the Owner other than:
 - (i) pursuant to a Security Interest created in favour of the Senior Lenders;
 - (ii) any agreement providing for the transfer of an Investor's interest in any or all of its shares in the Owner to another Investor in the event of the transferor Investor's default of its obligations in relation to the Project; or
 - (iii) pursuant to the ²⁴.

7.2 ²⁵

7.3 Subject to clause 7.5, the Owner or the TMM (as applicable) shall inform the Secretary of State as soon as reasonably practicable (and in any event, within 30 days) of any Change of Control in respect of which it is the Affected Person.

7.4 The Secretary of State may, not more than twice in each Contract Year or at any time when a Lease Owner Termination Event is outstanding, require the Owner to provide details of any Change of Control in respect of the Owner and, subject to clause 7.5, the Owner shall provide such details to the Secretary of State as soon as reasonably practicable and in any event within 30 days of the Owner's receipt of the Secretary of State's request.

7.5 The Owner's and the TMM's obligations under clauses 7.3 and 7.4 shall, except where a legal transfer of shares has occurred, be limited to the extent of the relevant Party's awareness having made all reasonable enquiry.

Restrictions on Change of Control

7.6 ²⁶

Grounds for objection to Change of Control following the Lock-In Period

7.7 After the Lock-In Period, a Change of Control of the Owner or ²⁷:

²⁴ Redaction.

²⁵ Redaction.

²⁶ Redaction.

²⁷ Redaction.

7.8 ²⁸

7.9 ²⁹

7.10 ³⁰

7.11 ³¹

7.12 ³²

Change of Shareholding in TMM prior to the date that the Minimum Performance Level has been achieved

7.13 ³³

Change of Shareholding in TMM at or after the date that the Minimum Performance Level has been achieved until the Backstop Date

7.14 ³⁴

³⁵

7.15 ³⁶

7.16 ³⁷

7.17 ³⁸

8. SECTION 54 UNDERTAKINGS

Schedule 2.1 (*Section 54 Undertakings*) shall apply in relation to the undertakings granted by the Secretary of State pursuant to section 54 of the Act.

8A SECRETARY OF STATE SQM AUDITS

8A.1 The Parties (other than the Secretary of State) agree that the Secretary of State, his employees and agents shall have the right to:

²⁸ Redaction.

²⁹ Redaction.

³⁰ Redaction.

³¹ Redaction.

³² Redaction.

³³ Redaction.

³⁴ Redaction.

³⁵ Redaction.

³⁶ Redaction.

³⁷ Redaction.

³⁸ Redaction.

- (a) witness any SQM Audit carried out by the Operator; and
- (b) carry out his own independent audits of the Units in order to determine the Operator's compliance in meeting its obligation under the Franchise Agreement to manage and deliver service quality to passengers.

8A.2 The Secretary of State shall use all reasonable endeavours to ensure that the persons employed in undertaking independent audits carry out such audits diligently and objectively.

8A.3 In witnessing any SQM Audits or carrying out any independent audits the Secretary of State shall ensure that his employees or agents:

- (a) are appropriately trained and briefed with respect to any location-specific safety rules and regulations;
- (b) obey any location-specific rules and regulations in respect of security and access; and
- (c) do not unreasonably disrupt the commercial operation of the TMM's or any Sub-Contractor's business.

8A.4 The Parties (other than the Secretary of State) shall co-operate with the Secretary of State and his employees and agents acting on his behalf in the Secretary of State exercising his rights under this clause 8A.

9. EARLY TERMINATION OF THE CONTRACTS

□³⁹

9.1 □⁴⁰

9.2 □⁴¹

9.3 □⁴²

9.4 □⁴³

9.5 □⁴⁴

9.6 □⁴⁵

9.7 □⁴⁶

³⁹ Redaction.

⁴⁰ Redaction.

⁴¹ Redaction.

⁴² Redaction.

⁴³ Redaction.

⁴⁴ Redaction.

⁴⁵ Redaction.

Default termination

9.8 The following provisions shall apply in relation to the early termination []⁴⁷ of the Contracts for default by one or more of the parties thereto:

- (a) Part 1 (*TMM default of MSA*) and Part 3 (*Operator default of MSA*) of Schedule 2.2 (*Early Termination of the MSA*);
- (b) Schedule 2.3 (*Early Termination of the TSA*), other than Part 5 (*Operator TSA Voluntary Termination Right*) of that Schedule 2.3;
- (c) Schedule 2.4 (*Early Termination of the Lease*); and
- (d) Schedule 2.5 (*Early Termination of the TSSSA*).

Operator voluntary termination of the TSA

9.9 The provisions of Part 5 (*Operator TSA Voluntary Termination Right*) of Schedule 2.3 (*Early Termination of the TSA*) shall apply in relation to the voluntary termination of the TSA by the Operator in accordance with schedule 13.5 (*Operator Voluntary Termination Right*) of the TSA.

Force Majeure termination

9.10 The provisions of Schedule 2.6 (*Termination of Contracts for Force Majeure*) shall apply in relation to the termination []⁴⁸ of any Contract due to the occurrence of a Force Majeure Event or in the circumstances described in paragraph 10 of that Schedule 2.6.

Secretary of State voluntary termination

9.11 The provisions of Schedule 2.7 (*Voluntary Termination of Contracts by the Secretary of State*) shall apply in relation to the voluntary termination of the Contracts by the Secretary of State.

Transfer of Rolling Stock and Contracts upon Termination

9.12 The provisions of Schedule 2.8 (*Transfer of Rolling Stock and Contracts upon Termination*) shall apply where the Secretary of State requires, pursuant to any provision of this Agreement, the transfer of Rolling Stock and Contracts upon termination.

Application of Franchise Agreement in relation to termination of the Contracts

- 9.13 The Parties acknowledge that if the Secretary of State does not consent to:
- (a) the Operator terminating the MSA under any of the circumstances described in Part 1 (*TMM Default of the MSA*) of Schedule 2.2 (*Early Termination of the MSA*);
 - (b) the Operator terminating the TSA under any of the circumstances described in Part 1 (*TMM Default of the TSA*) of Schedule 2.3 (*Early Termination of the TSA*);

⁴⁶ Redaction.

⁴⁷ Redaction.

⁴⁸ Redaction.

- (c) ⁴⁹
- (d) the Operator terminating the TSSSA under any of the circumstances described in Schedule 2.5 (*Early Termination of the TSSSA*),

then without prejudice to any provisions of this Agreement, the relevant provisions of the Franchise Agreement shall apply as between the Secretary of State and the Operator.

10. TERMINATION SUMS

10.1 The following provisions shall apply in relation to the terms, calculation and payment of termination sums that are payable by the Secretary of State upon the occurrence of certain circumstances of termination of, or reduction in the scope of (in terms of the amount of Equipment subject thereto) the Contracts:

- (a) ⁵⁰
- (b) ⁵¹
- (c) ⁵²
- (d) ⁵³
- (e) ⁵⁴

10.2 Each of the Owner, the Operator and the TMM acknowledge that the provisions referred to in clause 10.1 shall apply in accordance with their terms, and shall apply without prejudice to any provisions of the Contracts providing for remedies (including the payment of termination sums) having effect between the parties thereto.

11. ENTRY INTO AND AMENDMENT OF THIS AGREEMENT AND OTHER CONTRACTS

Contracts to be on arms' length terms

11.1 Each of the Owner and the TMM agrees that any Contract with an Operator in relation to Rolling Stock Supply to which it is a party will be on arms' length commercial terms and will not be subject to any discriminatory pricing in favour of any Operator who is an Affiliate of it or in favour of any other person who is an Affiliate of it and who has submitted a tender to the Secretary of State to be the franchisee under a Franchise Agreement.

⁴⁹ Redaction.
⁵⁰ Redaction.
⁵¹ Redaction.
⁵² Redaction.
⁵³ Redaction.
⁵⁴ Redaction.

Variation Procedure

11.2 The provisions of Schedule 4 (*Variations and Changes in Law*) shall apply for the purpose of varying the terms of any Contract or this Agreement or entering into any Contract, including as a result of any Change in Law.

12. PRICING OF AMENDMENTS AND FINANCIAL MODELS

Restatement of Equipment Prices

12.1 The provisions of Schedule 5.1 (*Changes to Equipment Prices*) shall apply and the relevant Equipment Prices shall be restated in accordance with that Schedule upon the occurrence of a TMM Equipment Price Restatement Trigger Event.

Runs of the Owner Financial Model

12.2 The provisions of []⁵⁵ and/or Schedule 5.2 (*Runs of the Owner Financial Model*) (as applicable) shall apply and a Run of the Owner Financial Model shall be performed upon the occurrence of an Owner Financial Model Trigger Event.

Runs of the TMM Financial Model

12.3 The provisions of Schedule 5.3 (*Runs of the TMM Financial Model*) shall apply and a Run of the TMM Financial Model shall be performed upon the occurrence of a TMM Financial Model Trigger Event.

Runs of the TSSSA Financial Model

12.4 The provisions of Schedule 5.6 (*Runs of the TSSSA Financial Model*) shall apply and a Run of the TSSSA Financial Model shall be performed upon the occurrence of a TSSSA Financial Model Trigger Event.

12.5 The Financial Models and the other Escrow Documents shall be delivered to the Secretary of State and held in escrow in accordance with, as appropriate, Schedule 5.4 (*Identity of the Owner Financial Model*), Schedule 5.5 (*Identity of the TMM Financial Model*) or Schedule 5.7 (*Identity of the TSSSA Financial Model*). The Financial Models and other Escrow Documents shall not be amended or varied except as set out in Schedule 5 (*Determining Financial Consequences of Variations and Other Changes*).

13. RESTRICTIONS ON OWNER REFINANCING

13.1 The provisions of Schedule 6 (*Refinancing*) shall apply in respect of any Refinancing.

13.2 []⁵⁶

13.3 []⁵⁷

⁵⁵ Redaction.

⁵⁶ Redaction.

⁵⁷ Redaction.

14. CESSATION OF OPERATOR INSURANCE

Cessation of Operator Insurances

14.1 ⁵⁸

14.2 ⁵⁹

14.3 ⁶⁰

14.4 ⁶¹

Cessation of Operator Insurances due to Uninsurable Risk

14.5 ⁶²

Consequences

14.6 ⁶³

14.7 ⁶⁴

14.8 ⁶⁵

Termination

14.9 If the Secretary of State elects to terminate this Agreement and the Contracts in accordance with clause 14.6(d), the following shall apply:

- (a) each of this Agreement and the other Contracts shall terminate simultaneously upon the date set out in the Secretary of State's notice⁶⁶
- (b) the Secretary of State shall pay to the Owner ⁶⁷
- (c) the Secretary of State shall pay to the TMM ⁶⁸
- (d) ⁶⁹

⁵⁸ Redaction.

⁵⁹ Redaction.

⁶⁰ Redaction.

⁶¹ Redaction.

⁶² Redaction.

⁶³ Redaction.

⁶⁴ Redaction.

⁶⁵ Redaction.

⁶⁶ Redaction.

⁶⁷ Redaction.

⁶⁸ Redaction.

(e) []⁷⁰

15. []⁷¹

16. CORRUPT GIFTS, COMMISSION AND REPUTATION

16.1 None of the Operator, the Owner or the TMM shall:

- (a) give, offer to give or agree to give to any person (including any employee of such person or any director, officer, agent, consultant or contractor of such person) any gift or consideration (other than of a trifling nature) as an inducement or reward for doing or forbearing to do or having done or forborne to do any act in relation to the obtaining or execution of this Agreement or any Contract or for showing or forbearing to show favour or disfavour to any person in relation to this Agreement or any Contract; or
- (b) enter into this Agreement or any Contract or any other agreement relating to this Project in connection with which commission has been paid or agreed to be paid by it or on its behalf or to its knowledge to any person unless, before this Agreement, the Contract or such other agreement is made, particulars of any such commission and of the terms and conditions of any agreement for its payment have been disclosed in writing to the Secretary of State and the Secretary of State has approved it in writing,

each a *Prohibited Act*.

16.2 If the Owner, the Operator or the TMM, or any sub-contractor of one of those Parties (excluding, in the case of the Owner or the Operator, the TMM), or anyone employed by or acting on behalf of any of such persons commits any Prohibited Act, then the Secretary of State shall be entitled to act in accordance with clause 16.3 below.

16.3 If the Prohibited Act:

- (a) is committed by the Owner, the Operator or the TMM or by an employee of such Party not acting independently of such Party, then the Secretary of State may, following notice of the same to the relevant Party, take the action set out in clause 16.5, 16.6 or 16.7 (as applicable);
- (b) is committed by an employee of the Owner, the Operator or the TMM acting independently of that Party, then the Secretary of State may give notice to the relevant Party of its intention to take the action set out in clause 16.5, 16.6 or 16.7 (as applicable), and take such action unless, within 30 days of receipt of the Secretary of State's notice, the Owner, the Operator or the TMM (as applicable) terminates the employee's employment;
- (c) is committed by a sub-contractor of the Owner (other than the TMM), the Operator (other than the TMM) or the TMM or by an employee of such sub-contractor not acting independently of such sub-contractor, then the Secretary of State may give notice to the relevant Party of its intention to take the action set out in clause 16.5, 16.6 or 16.7 (as applicable), and take such action unless, within 30 days of receipt of

⁶⁹ Redaction.

⁷⁰ Redaction.

⁷¹ Redaction.

the Secretary of State's notice, the Owner, the Operator or the TMM (as applicable) terminates the relevant sub-contract and, subject to the provisions of clause 40 (*Assignment and Sub-contracting*) of the MSA, clause 8 (*Sub-contractors and Third Parties*) and/or 41 (*Assignment and Sub-contracting*) of the TSA, clause 25 (*Assignment and Transfers*) of the Lease and clause 6 (*Assignment of this Agreement and the Contracts*) of this Agreement, procures the performance of the relevant works or services by another person;

- (d) is committed by an employee of a sub-contractor of the Owner (other than the TMM), the Operator (other than the TMM) or the TMM acting independently of that sub-contractor, then the Secretary of State may give notice to the relevant Party of its intention to take the action set out in clause 16.5, 16.6 or 16.7 (as applicable), and take such action unless, within 30 days of Owner's, the Operator's or the TMM's (as applicable) receipt of the Secretary of State's notice, the sub-contractor terminates the employee's employment; or
- (e) is committed by any other person not specified in paragraphs (a) to (d), then the Secretary of State may give notice to the Owner, the Operator or the TMM (as applicable) of its intention to take the action set out in clause 16.5, 16.6 or 16.7 (as applicable), and take such action unless, within 30 days of Owner's, the Operator's or the TMM's (as applicable) receipt of the Secretary of State's notice, the Owner, the Operator or the TMM (as applicable) procures the termination of the relevant person's employment and/or the appointment of the employer of that person.

16.4 Any notice from the Secretary of State of his intention to take the action set out in clause 16.5, 16.6 or 16.7 (as applicable) shall specify:

- (a) the nature of the Prohibited Act;
- (b) the identity of the person whom the Secretary of State believes has committed the Prohibited Act; and
- (c) the date on which the Secretary of State will take the action set out in clause 16.5, 16.6 or 16.7 (as applicable), in accordance with the applicable provision of clause 16.3.

16.5 ⁷²

16.6 The commission of a Prohibited Act by the TMM (or a sub-contractor of the TMM or anyone employed by or acting on behalf of the TMM or such sub-contractor) shall, unless the relevant remedial action is taken in accordance with clause 16.3, constitute an MSA TMM Event of Default pursuant to paragraph 1(m) of schedule 19.1 (*TMM Events of Default*) of the MSA, a TSA TMM Event of Default pursuant to paragraph 1(q) of schedule 13.1 (*TMM Events of Default*) of the TSA and a TSSSA Supplier Event of Default pursuant to paragraph 1(q) of Schedule 12.1 (*Supplier Event of Default*) of the TSSSA. Upon such a breach, the Secretary of State may direct:

- (a) the Operator to terminate the MSA under paragraph 3 (*Termination*) of schedule 19.1 of the MSA;

⁷² Redaction.

- (b) the Operator to terminate the TSA under paragraph 4 (*Termination*) of schedule 13.1 of the TSA; and
- (c) the Operator to terminate the TSSSA under paragraph 4 (*Operator and Owner rights to terminate*) of schedule 12.1 (*Supplier Events of Default*) of the TSSSA.

16.7 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) shall, unless the relevant remedial action is taken in accordance with clause 16.3, entitle the Secretary of State, by written notice to the Owner (copied to the Operator and the TMM), direct the Owner to terminate the Lease by issuing a Lease Operator Termination Notice, in which case the provisions of Schedule 2.1 (*Section 54 Undertakings*) and of Part 1 (*Operator default*) of Schedule 2.4 (*Early Termination of the Lease*) shall apply.

17. SECRETARY OF STATE DEFAULT

Termination on Secretary of State Default

17.1 If a Secretary of State Default has occurred and the Owner and/or the TMM wishes to terminate this Agreement and the Contracts, the Owner or the TMM (as applicable) must serve a termination notice on the Secretary of State and the other Parties to this Agreement within 30 days of becoming aware of the Secretary of State Default, including a reasonably detailed description of the relevant event and any action taken by the relevant Party (who is serving the notice) in respect thereof.

17.2 The Contracts and this Agreement will terminate on the date falling 45 days after the date on which the Secretary of State receives the termination notice, unless the Secretary of State rectifies the Secretary of State Default within 30 days of receipt of such termination notice.

Compensation following termination

17.3 On termination of the Contracts and this Agreement under clause 17.2, the Secretary of State shall pay:

- (a) the Owner the amount set out in paragraph 1 (*Compensation payable to the Owner*) of Schedule 3.3 (*Termination Sum Payable on Voluntary Termination or Default by Secretary of State*); and
- (b) the TMM the amount set out in paragraph 2 (*Compensation payable to the TMM*) of Schedule 3.3.

Transfer of Train Assets

17.4 The Secretary of State may, upon the termination of the Contracts and this Agreement under clause 17.2, require the Owner to transfer its rights, title and interest in and to the Train Assets (subject to the Permitted Liens) to the Secretary of State or such other person as is nominated by the Secretary of State, and the provisions of paragraph 1 (*Asset Transfer*) of Schedule 2.8 (*Transfer of Rolling Stock and Contracts upon Termination*) shall apply.

18. DURATION FEE

18.1 ⁷³

18.2 The Secretary of State's obligation to pay the Term Loan Duration Fee Amount to the Owner under clause 18.1 will be subject to the Owner providing to the Secretary of State:

- (a) an initial notice of the Owner's calculation of the Term Loan Duration Fee Amount and the date on which such amount will become payable, no more than 13 months and no less than 365 days before the payment date;
- (b) a second notice of the Owner's calculation (revised, if appropriate) of the Term Loan Duration Fee Amount and the date on which such amount will become payable, no more than 210 days and no less than 180 days before the payment date;
- (c) a final notice of the Owner's calculation (revised, if appropriate) of the Term Loan Duration Fee Amount and the date on which such amount will become payable, no more than 45 days and no less than 30 days before the payment date,

and the Secretary of State's obligation under clause 18.1 shall arise on the date which is the latest to occur of:

- (i) 365 days after the initial notice delivered pursuant to clause 18.2(a);
- (ii) 180 days after the second notice delivered pursuant to clause 18.2(b);
- (iii) 30 days after the final notice delivered pursuant to clause 18.2(c); and
- (iv) 9 years after the date of this Agreement.

18.3 If the Secretary of State pays the Term Loan Duration Fee Amount to the Owner, the Owner shall repay such amount to the Secretary of State, together with interest accrued on such amount from the date of payment by the Secretary of State until the date of repayment at the Current Floating Senior Debt Rate, from any Refinancing Gain arising from a Qualifying Refinancing that is subsequently effected, such repayment to be made in priority to the application of paragraph 1.4 or 1.5 (as applicable) of Schedule 6 (*Refinancing*) until all amounts due to the Secretary of State under this clause 18.3 have been discharged in full.

18.4 If the Owner effects any Refinancing that involves either:

- (a) the prepayment of all outstanding amounts under the Term Loan Facility Agreement;
or
- (b) the waiver by Senior Lenders of their entitlement to receive the Duration Fee (as defined in the Term Loan Facility Agreement),

in either case before the Term Loan Duration Fee Amount has become due in accordance with clauses 18.1 and 18.2, the Secretary of State's obligation under clause 18.1 shall terminate with immediate effect.

18.5 ⁷⁴

⁷³ Redaction.

18.6 Save for the express provisions in this clause 18 as to repayment of the Term Loan Duration Fee Amount (pursuant to clause 18.3) or termination of the Secretary of State's obligation to pay such amount (pursuant to clause 18.4), it is agreed that delay by the Owner in providing any notice under clause 18.2 shall not terminate (as distinct from deferring) the Owner's entitlement to such amount.

19. VALUE ADDED TAX

19.1 All payments made or to be made under this Agreement are deemed to be exclusive of any Value Added Tax chargeable thereon or by reference thereto. If any such payment constitutes the whole or part of the consideration for a taxable or deemed taxable supply (whether that supply is taxable pursuant to the exercise of an option or otherwise), the Party making the supply shall provide the Party which receives it with an appropriate Value Added Tax invoice in respect thereof, and an amount shall be paid on demand by the Party which receives the supply to the Party making such supply in addition to that payment which is equal to the amount of Value Added Tax which is chargeable in respect of the taxable or deemed taxable supply in question.

19.2 Where under this Agreement one Party has agreed to reimburse or indemnify another Party in respect of any payment made or cost incurred by the other then the first Party shall also reimburse the VAT paid by such other Party which forms part of its payments made or cost incurred to the extent that such VAT is not available for credit (whether by way of set-off or repayment) by such other Party under sections 24 to 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.

Balancing Payments Account

19.3 All Parties intend that, in respect of the TSA Services, the supplies for VAT purposes are to be invoiced and accounted for in the manner described in the TSA. The Owner intends to obtain agreement from HMRC that this VAT accounting treatment is correct.

19.4 Should HMRC disagree with what is described in the TSA and consider alternative VAT accounting is appropriate, all Parties agree to implement such VAT accounting as is finally agreed with HMRC, provided that each Party agrees that it shall, to the extent reasonable possible, seek to maintain the economic principles of the VAT accounting treatment in the TSA. Such arrangements shall allow any resulting working capital requirement in respect of the Periodic Maintenance Charges to continue to be funded from the BPA.

20. NOTICES

20.1 Any notice, notification or other communication under or in connection with any Contract Dispute or Dispute 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 Parties.

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

⁷⁴ Redaction.

- (a) in accordance with clause 20.1; or
- (b) by electronic data transfer.

20.3 The address and electronic data transfer details of the Parties are as follows (or such other address or electronic mail details which may be subsequently notified by the relevant Party):

Secretary of State: Address: Department for Transport
Great Minster House
33 Horseferry Road
London
SW1P 4DR

Name: []⁷⁵

Email: []⁷⁶

Owner: Address: Cross London Trains Limited
210 Pentonville Road
London
N1 9JY

Name: []⁷⁷

Email: []⁷⁸

TMM: Address: Siemens plc
2 Queen Anne's Gate Buildings
Dartmouth Street
London
SW1H 9BP

Attention: []⁷⁹

Email: []⁸⁰

Operator: Address: First Capital Connect Limited
Hertford House
1 Cranwood Street
London

⁷⁵ Redaction.

⁷⁶ Redaction.

⁷⁷ Redaction.

⁷⁸ Redaction.

⁷⁹ Redaction.

⁸⁰ Redaction.

EC1V 9QS

Name: []⁸¹

Email: []⁸²

Eversholt: Address: Eversholt Rail (UK) Limited
210 Pentonville Road
London N1P 2AR

Attention: []⁸³

Email: []⁸⁴

20.4 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).

20.5 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 20.3 or such other address as the Owner may specify by notice in writing to the TMM and the Operator.

20.6 For the purposes of any notice or communication under this Agreement that is required to be delivered to the Intercreditor Agent, the provisions of clause 20 (*Miscellaneous*) of the Lenders’ Direct Agreement shall apply.

21. RIGHTS OF THIRD PARTIES

This Agreement does not create any right under the Contracts (Rights of Third Parties) Act 1999 which is enforceable by any person who is not party to it.

22. INVALIDITY

If any provision in this Agreement is held to be void, illegal, invalid or unenforceable, in whole or in part, under any enactment or rule of law, such provision or part will to that extent be deemed not to form part of this Agreement but the legality, validity and enforceability of the remainder of this Agreement will not be affected.

⁸¹ Redaction.

⁸² Redaction.

⁸³ Redaction.

⁸⁴ Redaction.

23. ACCRUED RIGHTS

Save as expressly set out in this Agreement, termination of this Agreement shall not affect any accrued rights and obligations under this Agreement as at the date of termination.

24. COSTS

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

25. SET-OFF AND APPROPRIATION

25.1 Except to the extent expressly stated otherwise in this Agreement, the Secretary of State may set off from any amount payable by him to a Party any undisputed amount due to them by that Party.

25.2 If any sum paid or recovered in respect of the liability of any Party to the Secretary of State under this Agreement is less than the amount due, the Secretary of State may apply that sum to amounts due to the relevant Party under this Agreement in such proportions and order and generally in such manner as the Secretary of State may determine.

26. WAIVER AND VARIATION

Except as expressly stated in this Agreement, no failure or delay by any of the Parties to this Agreement 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 or varied otherwise than by an express waiver or variation in writing.

27. LANGUAGE

All documentation or information required or produced in the course of or in connection with a Party's performance of this Agreement shall be in English.

28. ENTIRE AGREEMENT

28.1 This Agreement supersedes any previous written or oral agreement between the Parties in relation to the matters dealt with in this Agreement and contains the whole agreement between the Parties relating to the subject matter of this Agreement at the date hereof to the exclusion of any terms implied by law which may be excluded by contract, and shall not be varied otherwise than by an instrument in writing of even date herewith or subsequent hereto executed by or on behalf of each of the Parties hereto, including by way of the UA Variation Procedure.

28.2 Each Party acknowledges that it has not been induced to enter into this Agreement by any representation, warranty or undertaking not expressly incorporated into it. 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 this Agreement shall be a breach of the terms of this Agreement, to the exclusion of all other rights and remedies (including those in tort or arising under statute).

29. GOVERNING LAW AND JURISDICTION

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

29.2 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, without limitation, 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.

30. DISPUTE RESOLUTION

30.1 Subject to:

- (a) where this Agreement or any other Contract provides for the determination of matters by an Expert and/or circumstances where clause 30.2 is expressed to apply; and
- (b) any provisions of the Contracts which expressly provide otherwise,

any Contract Dispute shall be resolved pursuant to Schedule 8.1 (*Contract Disputes*).

30.2 Where any Contract provides for the determination of matters by an Expert, the further provisions of Schedule 8.2 (*Expert Determination*) shall apply.

31. FORM OF AUTHORITY

The signature or sealing of this document by or on behalf of a Party will constitute an authority to the solicitors, or an agent or employee of the solicitors acting for that Party in connection with this document to date it and deliver it as a deed on behalf of that Party.

32. 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.

33. TERM OF THIS AGREEMENT

Duration

33.1 This Agreement and the rights and obligations of the Parties to this Agreement shall (to the extent set out in clause 2 (*Conditions Precedent*)), take effect on the Effective Date, and (subject to clauses 33.2 and 33.3) shall expire on the Backstop Date unless terminated earlier in accordance with clause 33.4.

Survival

33.2 In the event that the Parties enter into []⁸⁵, this Agreement shall be amended and restated as provided in paragraph 4 of Part 3 []⁸⁶ of Schedule 2.4 (*Early Termination of the Lease*).

33.3 The expiry of this Agreement on the Backstop Date or any early termination of this Agreement in full, whether in accordance with clause 33.4 or otherwise, shall not affect the accrued rights and liabilities of the Parties as at the date of such expiry or termination, and the following provisions shall survive such expiry or termination in full:

- (a) clause 1 (*Definitions, Interpretation and Common Terms*);
- (b) clause 4 (*Confidentiality*) in respect of any Information that is disclosed on or before the date of such expiry or termination;
- (c) clause 5 (*Nominated Representatives*);
- (d) any undertaking given by the Secretary of State on or before the date of such expiry or termination in accordance with clause 14.9(e);
- (e) clauses 20 (*Notices*) to 30 (*Dispute Resolution*);
- (f) the undertakings given by the Secretary of State under paragraph 1.2 of Schedule 2.1 (*Section 54 Undertakings*), and paragraphs 1.5 to 1.8, 2 (*Process*), 4 (*Termination of Franchise Agreement*) and 7 (*Liability*) of that Schedule 2.1 in relation to such undertakings;
- (g) Schedule 2.2 (*Early Termination of the MSA*) to Schedule 2.8 (*Transfer of Rolling Stock and Contracts upon Termination*) (inclusive) in relation to a relevant termination event or event of default under any Contract that occurred before the date of such expiry or termination;
- (h) Schedule 3 (*Termination Sums*), in relation to amounts payable as a result of a relevant termination event or event of default under any Contract that occurred before the date of such expiry or termination; and
- (i) Schedule 8 (*Dispute Resolution*).

Termination of this Agreement

33.4 Subject to clauses 33.2 and 33.3, this Agreement shall terminate, simultaneously with all of the other Contracts upon:

- (a) termination of all of the Contracts in accordance with clause 14.9(a);
- (b) termination of all of the Contracts in accordance with clause 17 (*Secretary of State Default*);

⁸⁵ Redaction.

⁸⁶ Redaction.

- (c) termination of all of the Contracts in accordance with 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*);
- (d) termination of all of the Contracts in accordance with paragraph 4 (*Circumstances where Lease and TSA are terminated following MSA Force Majeure Event*) of Schedule 2.6 (*Termination of Contracts for Force Majeure*);
- (e) termination of all of the Contracts in accordance with paragraph 1 (*Termination by the Secretary of State*) of Schedule 2.7 (*Voluntary Termination of Contracts by the Secretary of State*) or
- (f) termination of all the Contracts in accordance with paragraph 2.18(a) of Schedule 2.8 (*Transfer of Rolling Stock and Contracts upon Termination*).

IN WITNESS WHEREOF this Agreement has been executed as a deed the day and year first before written.

SEAL REF No. 7678

The corporate seal of
**THE SECRETARY OF STATE FOR
TRANSPORT** is hereto affixed



[]⁸⁷
Authenticated by authority of the
Secretary of State for Transport

[]⁸⁸

**EXECUTED and DELIVERED as a
deed** for and on behalf of
**CROSS LONDON TRAINS
LIMITED**



[]⁹¹

DIRECTOR:

[]⁹²

[]⁸⁹

DIRECTOR/SECRETARY:

[]⁹⁰

⁸⁷ Redaction.
⁸⁸ Redaction.
⁸⁹ Redaction.
⁹⁰ Redaction.
⁹¹ Redaction.
⁹² Redaction.

EXECUTED and DELIVERED as a deed for and on behalf of **SIEMENS PLC** acting by its duly authorised attorneys:

ATTORNEY:

⁹³

In the presence of:

⁹⁴



⁹⁷

⁹⁸

ATTORNEY:

⁹⁵

In the presence of:

⁹⁶

⁹³ Redaction.

⁹⁴ Redaction.

⁹⁵ Redaction.

⁹⁶ Redaction.

⁹⁷ Redaction.

⁹⁸ Redaction.

EXECUTED and DELIVERED as a deed for and on behalf of
FIRST CAPITAL CONNECT LIMITED

DIRECTOR:

□⁹⁹

DIRECTOR/SECRETARY:

□¹⁰⁰

} □¹⁰¹
} □¹⁰²

⁹⁹ Redaction.

¹⁰⁰ Redaction.

¹⁰¹ Redaction.

¹⁰² Redaction.

SCHEDULE 1

DEEDS OF ACCESSION

Schedule 1.1:	Deed of Operator Accession
Schedule 1.2:	Deed of Owner Accession
Schedule 1.3:	Deed of TMM Accession
Schedule 1.4:	Deed of Public Sector Operator Accession
Schedule 1.5:	Transfer Scheme Certificate

SCHEDULE 1.1

Deed of Operator Accession

THIS DEED OF ACCESSION is made the _____ day of _____ 20 [_____]

BETWEEN

- (1) [NAME OF SUCCESSOR OPERATOR] whose registered office is at [_____] (the *Successor Operator*);
- (2) **THE SECRETARY OF STATE FOR TRANSPORT** (the *Secretary of State*); and
- (3) [_____] (the *Existing Operator*);
- (4) [_____] (the *Owner*);
- (5) [_____] (the *TMM*);
- (6) []¹⁰³
- (7) [_____] (the *Security Trustee*, for and on behalf of the [Senior Lenders/Senior Secured Creditors]).

WHEREAS¹⁰⁴

(A) The Secretary of State, the Owner, the TMM and the Operator entered into an agreement dated [_____] in order, amongst other things, to facilitate the Secretary of State's functions under the Act (the *Umbrella Agreement*).

(B) The following parties entered into the following Contracts, each on [insert date], as amended: (i) the TMM, the Owner and the Operator entered into the MSA for the purpose of, amongst other things, designing, manufacturing, testing, commissioning, supplying and purchasing the Equipment; (ii) the Owner and the Operator entered into the Lease for the purpose of, amongst other things, leasing certain of that Equipment in return for the payment of Rental; (iii) the TMM, the Operator and the Owner entered into the TSA for the purpose of, amongst other things, maintaining, repairing, overhauling, refurbishing and replacing that Equipment in return for the payment of Service Payments; and (iv) the Supplier, the Operator and the Owner entered into the TSSSA for the purpose of, amongst other things, the provision, following termination of the TSA, of technical support and spares supply services in return for the payment of Service Payments, in each case, upon the terms and conditions set out in the relevant agreement (such agreements being, together with the Umbrella Agreement, the *Original Agreements*).

(C) [The Successor Operator has entered into a franchise agreement with the Secretary of State for Transport dated [_____] in relation to the operation of railway passenger services on the Thameslink Network]]

¹⁰³ Redaction.

¹⁰⁴ Delete/amend descriptions of transactions as appropriate.

(D) [The Successor Operator wishes to: (a) enter into the Replacement Contracts; and (b)] accede to the terms of the Relevant Contracts and thereby be bound by their terms.]

(E) Clause 6 (*Disposal of this Agreement and the Contracts*) of the Umbrella Agreement provides that the Operator may not assign or transfer any of its rights and/or obligations under any Contract except pursuant to an Operator Accession or an Operator Transfer Scheme (each as defined in the Master Definitions Agreement) effected in accordance with Schedule 2.1 (*Section 54 Undertakings*) of the Umbrella Agreement.

(F) This Deed is being entered into in respect of the Relevant Contracts in order to satisfy the requirements of Schedule 2.1 (*Section 54 Undertakings*) of the Umbrella Agreement.

NOW THIS DEED WITNESSES and in consideration of the payment of £1 (receipt of which is acknowledged) it is hereby agreed as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 The provisions of clause 1 (*Definitions and Interpretation*) of the Master Definitions Agreement shall apply, with any necessary modifications, to this Deed.

1.2 In addition, in this Deed:

Replacement Contracts means the contracts so identified and specified in Part A of the Annex to this Deed.

Relevant Contracts means the contracts so identified and specified in Part B of the Annex to this Deed.

2. STATEMENTS OF FACT

Statements by the Successor Operator

2.1 The Successor Operator states to the other parties as at the date of this Agreement that each of the statements of fact contained in clause 4.2 of the Conditions Precedent Agreement *mutatis mutandis* (as if references to the Operator therein are references to the Successor Operator) are true and accurate and the Successor Operator understands that the other parties are relying on the statements of fact and are entering into this Deed on the basis of them.

2.2 The Successor Operator represents to the Secretary of State that it is not an Affiliate of any Party [(*other than the Existing Operator*)].

3. CONDITIONS PRECEDENT

All of the parties' (other than the Successor Operator's) obligations under this Deed, are subject to the receipt by the parties (other than the Successor Operator) of the following on or before the date of the execution of this Deed:

- (a) copies, certified by an officer of the Successor Operator to be true, complete and up-to-date copies of the Memorandum and Articles of Association of the Successor Operator; and
- (b) copies, certified by an officer of the Successor Operator to be true copies, and as being in full force and effect and not amended or rescinded, of resolutions of the

board of directors (or other appropriate body with requisite power and authority) of the Successor Operator:

- (i) approving the terms of, and the transactions contemplated by, this Deed, the Replacement Contracts and the Relevant Contracts to which it is (or will be pursuant to this Deed) a party;
- (ii) authorising a specified person or persons to sign and deliver on behalf of the Successor Operator this Deed, the Replacement Contracts and the Relevant Contracts to which it is (or will be pursuant to this Deed) a party;
- (c) copies, certified by an officer of the Successor Operator to be true, complete and accurate, of the Successor Operator's latest publicly available audited balance sheet and audited profit and loss statement;
- (d) signature and delivery by the Successor Operator of all of the Replacement Contracts and the Relevant Contracts, whether by accession or otherwise; and
- (e) a certificate of insurance and broker's letter of undertaking demonstrating that the Successor Operator, the TMM and the Owner have the benefit of the insurances required to be implemented by the Successor Operator as Operator under the Contracts.¹⁰⁵

4. CO-OPERATION

Each party to this Deed, other than the Successor Operator, agrees that it will, to the extent not performed on or before the date hereof, as soon as possible do all such acts as are reasonably necessary to enable the accession of the Successor Operator in accordance with this Deed, including:

- (a) signature and delivery of all of the Replacement Contracts and the Relevant Contracts, whether by accession or otherwise;
- (b) ¹⁰⁶
- (c) ¹⁰⁷
- (d) ¹⁰⁸
- (e) ¹⁰⁹

5. ACCESSION

5.1 The Successor Operator agrees, with effect from the Operator Succession Date:

¹⁰⁵ List of required conditions precedent to reflect those delivered by the Initial Operator under the Conditions Precedent Agreement.

¹⁰⁶ Redaction.

¹⁰⁷ Redaction.

¹⁰⁸ Redaction.

¹⁰⁹ Redaction.

- (a) to accept, observe, perform and discharge the obligations expressed to be imposed on the Operator (other than the Retained Obligations) under the Relevant Contracts and the Replacement Contracts as a party to the Relevant Contracts and the Replacement Contracts and all agreements ancillary thereto, in place (and to the exclusion) of the Existing Operator to the extent the same shall fall due to be performed on or after the Operator Succession Date;
- (b) to grant a Permitted Delay and/or recognise any Permitted Delay (and to pay any applicable costs related thereto) granted to the TMM in accordance with Schedule 13 (*Permitted Delay Procedure*) of the MSA and to pay liquidated damages to the Owner if and when required to in accordance with the terms of the Replacement Lease and/or the Umbrella Agreement after the Operator Succession Date, notwithstanding that such liability has arisen due to any act, omission, breach or default of any other person (including any previous Operator) occurring before the Operator Succession Date, provided that any such liability that arose as the result of any act, omission, breach or default occurring before the Operator Succession Date shall not be counted towards the limit on liability under clause 7.6 of the Lease;
- (c) save as provided in paragraph (b), to be bound by the acts or omissions of any previous Operator under any of the Contracts and all agreements ancillary thereto that do not constitute a breach of the relevant Contract or agreement (including the issuance of notices, approvals, consents or acknowledgements or the exercise of discretions or elections in accordance with the terms of the relevant Contract or other agreement) to the extent that such previous Operator would have been so bound;
- (d) [to observe, perform and discharge all of the obligations of the Existing Operator under the Relevant Contracts, including accrued but unperformed obligations;]¹¹⁰
- (e) to recognise and accept any relevant time periods that have accrued or are continuing to accrue as at the time of the Operator Succession Date;
- (f) that any accrued liabilities of the Owner to the Operator under the Relevant Contracts and the Reference Contracts shall continue to be aggregated for the purposes of calculating whether the amount of the Owner Aggregate Liability Cap has been reached; and
- (g) that any accrued liabilities of the TMM to the Operator under any of the Relevant Contracts shall continue to be aggregated for the purposes of calculating whether any of the caps or other limitations on liability under any of the Relevant Contracts has been reached.

5.2 Each of the Secretary of State, the TMM and the Owner agrees:

- (a) that the Successor Operator may exercise and enjoy all of the rights of the Operator (other than the Retained Rights) under the Relevant Contracts and the Replacement Contracts and all agreements ancillary thereto, in place (and to the exclusion) of the Existing Operator to the extent the same shall fall due to be performed on or after the Operator Succession Date;

¹¹⁰ Delete this paragraph, unless the Existing Operator is an Affiliate of the Successor Operator and the relevant succession is not occurring upon the expiry through effluxion of time of the Existing Operator's Franchise Agreement.

- (b) to observe, perform and discharge its obligations to the Operator (other than those that relate to the Retained Rights) under the Relevant Contracts and the Replacement Contracts and all agreements ancillary thereto, for the benefit of the Successor Operator in place (and to the exclusion) of the Existing Operator to the extent the same shall fall due to be performed on or after the Operator Succession Date;
- (c) [that, save as provided in paragraph 5.1, the Successor Operator shall not have any liability for any accrued but unsatisfied liabilities of the Existing Operator (as at the Operator Succession Date) under or for any breaches of, or defaults under any of the Relevant Contracts or the Reference Contracts and all agreements ancillary thereto to the extent the same occurred prior to the Operator Succession Date;]¹¹¹
- (d) that, subject to any applicable limits on liability, it shall be liable to the Successor Operator for any of its accrued but unperformed obligations (other than those that relate to the Retained Rights) to the Operator under the Relevant Contracts and the Replacement Contracts and all agreements ancillary thereto to the extent that such liability arises after the Operator Succession Date, notwithstanding that such liability arises as the result of any act, omission, breach or default occurring before the Operator Succession Date;
- (e) save as provided in sub-paragraph (d), that it shall be bound by and responsible to the Successor Operator for its acts or omissions before the Operator Succession Date under any of the Contracts and all agreements ancillary thereto that do not constitute a breach of such Relevant Contract or agreement (including the issuance of notices, approvals, consents or acknowledgements or the exercise of discretions or elections in accordance with the terms of such Relevant Contract or other agreement) to the extent that it would have been so bound and responsible to the Existing Operator;
- (f) to recognise any relevant time periods that have accrued or are continuing to accrue at the time of the Operator Succession Date; and
- (g) that any accrued liabilities of the Existing Operator shall, for the purposes only of calculating whether any limitations of liability of the Operator under any of the Relevant Contracts have been reached, be deemed to be cancelled.

6. RELEASE OF THE EXISTING OPERATOR

6.1 Each of the Secretary of State, the TMM and the Owner agrees, with effect from the Operator Succession Date that:

- (a) the Existing Operator (without prejudice to any rights or obligations of the Existing Operator which have already arisen and are not assumed by the Successor Operator as described in paragraph 5.1) will not be liable to perform its future obligations under the Relevant Contracts and all agreements ancillary thereto (other than the Retained Obligations);

¹¹¹ Delete this paragraph only if paragraph 5.1(d) is being included, if the Existing Operator is an Affiliate of the Successor Operator and the relevant succession is not occurring upon the expiry through effluxion of time of the Existing Operator's Franchise Agreement.

- (b) the Existing Operator may exercise and enjoy the Retained Rights of the Operator under the Relevant Contracts and the Replacement Contracts and all agreements ancillary thereto; and
- (c) it shall observe, perform and discharge its obligations to the Operator (that relate to the Retained Rights) under the Relevant Contracts and the Replacement Contracts and all agreements ancillary thereto, for the benefit of the Existing Operator to the extent the same shall fall due to be performed on or after the Operator Succession Date,

provided that the Existing Operator will continue to be obliged not to prevent or interfere with the Successor Operator (or any successor in title to it) performing its obligations under the Relevant Contracts and the Replacement Contracts.

6.2 The Existing Operator agrees, with effect from the Effective Date:

- (a) to release and discharge each of the Owner, the TMM and the Secretary of State from their respective obligations to the Operator (other than those that relate to Retained Rights) under the Relevant Contracts, the Reference Contracts and all agreements ancillary thereto, to the extent the same shall fall due to be performed on or after the Operator Succession Date; and
- (b) to perform and discharge the Retained Obligations of the Operator under the Relevant Contracts and all agreements ancillary thereto, to the extent the same shall fall due to be performed on or after the Operator Succession Date; and
- (c) that, save as provided in paragraph 5.1, the Existing Operator shall remain liable for all accrued but unsatisfied liabilities of the Existing Operator (as at the Operator Succession Date) under or for any breaches of or defaults under any of the Relevant Contracts, the Reference Contracts and all agreements ancillary thereto by the Existing Operator, to the extent the same occurred prior to the Operator Succession Date.

7. MISCELLANEOUS

7.1 Clauses 4 (*Confidentiality*) and 20 (*Notices*) to 32 (*Counterparts*) of the Umbrella Agreement will apply, with any necessary amendments, to this Deed.

7.2 For the purposes of clause 20 of the Umbrella Agreement, notices will be given to the Successor Operator to:

[Insert name and contact details]

ANNEX TO ACCESSION DEED

Part A – Replacement Contracts

1. Replacement Lease
2. Eversholt NDA (Operator)
3. [Others]

Part B - Relevant Contracts

1. Umbrella Agreement
2. MSA
3. TSA
4. TSSSA
5. Lenders' Direct Agreement
6. Master Definitions Agreement
7. ¹¹²
8. ¹¹³
9. ¹¹⁴
10. ¹¹⁵
11. ¹¹⁶
12. Software Escrow Agreement
13. [Others]

IN WITNESS whereof this accession deed has been executed as a Deed the day and year first before written.

¹¹² Redaction.

¹¹³ Redaction.

¹¹⁴ Redaction.

¹¹⁵ Redaction.

¹¹⁶ Redaction.

[INSERT EXECUTION BLOCKS TO ACCESSION DEED]

SCHEDULE 1.2

Deed of Owner Accession

THIS DEED OF ACCESSION is made the _____ day of _____ 20 [_____]

BETWEEN

- (1) [NAME OF NEW OWNER] whose registered office is at [_____] (the *New Owner*);
- (2) **THE SECRETARY OF STATE FOR TRANSPORT** (the *Secretary of State*); and
- (3) [_____] (the *Existing Owner*);
- (4) [_____] (the *Operator*);
- (5) [_____] (the *TMM*);
- (6) []¹¹⁷
- (7) [_____] (the *Security Trustee*, for and on behalf of the [Senior Lenders/Senior Secured Creditors]).

WHEREAS¹¹⁸

(A) The Secretary of State, the Owner, the TMM and the Operator entered into an agreement dated [_____] in order, amongst other things, to facilitate the Secretary of State's functions under the Act (the *Umbrella Agreement*).

(B) The following parties entered into the following Contracts, each on [*insert date*] as amended: (i) the TMM, the Owner and the Operator entered into the MSA for the purpose of, amongst other things, designing, manufacturing, testing, commissioning, supplying and purchasing the Equipment; (ii) the Owner and the Operator entered into the Lease for the purpose of, amongst other things, leasing certain of that Equipment in return for the payment of Rental; (iii) the TMM, the Operator and the Owner entered into the TSA for the purpose of, amongst other things, maintaining, repairing, overhauling, refurbishing and replacing that Equipment in return for the payment of Service Payments; and (iv) the Supplier, the Operator and the Owner entered into the TSSSA for the purpose of, amongst other things, the provision, following termination of the TSA, of technical support and spares supply services in return for the payment of Service Payments, in each case, upon the terms and conditions set out in the relevant agreement (such agreements being, together with the Umbrella Agreement, the *Original Agreements*).

(C) [It is proposed that the Existing Owner [DESCRIBE TRANSACTIONS] the Rolling Stock to the New Owner.]

(D) [The New Owner wishes to[: (a) enter into the Replacement Contracts; and (b)] accede to the terms of the Relevant Contracts and thereby be bound by their terms.]

¹¹⁷ Redaction.

¹¹⁸ Delete/amend descriptions of transactions as appropriate.

(E) Clause 6 (*Disposal of this Agreement and the Contracts*) of the Umbrella Agreement provides that the Owner may not assign or transfer any of its rights and/or obligations under any Contract except by way of a Permitted Contracts Restructuring Arrangement (as defined in the Master Definitions Agreement) or unless the prior written consent of the Secretary of State is provided.

(F) This Deed is being entered into in respect of the Relevant Contracts in order to satisfy the requirements of clause 6 of the Umbrella Agreement.

NOW THIS DEED WITNESSES and in consideration of the payment of £1 (receipt of which is acknowledged) it is hereby agreed as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 The provisions of clause 1 (*Definitions and Interpretation*) of the Master Definitions Agreement shall apply, with any necessary modifications, to this Deed.

1.2 In addition, in this Deed:

Owner Substitution Date means the date on which the Replacement Contracts and the novation to the New Owner of the Rolling Stock and the Relevant Contracts takes effect; and

Replacement Contracts means the Contracts so identified and specified in Part A of the Annex to this Deed.

Relevant Contracts means the contracts so identified and specified in Part B of the Annex to this Deed.

2. STATEMENTS OF FACT

Statements by the New Owner

2.1 The New Owner states to the other parties as at the date of this Agreement that each of the statements of fact contained in clause 4.3 of the Conditions Precedent Agreement *mutatis mutandis* (as if references therein to the Owner are references to the New Owner) are true and accurate and the New Owner understands that the other parties are relying on the statements of fact and are entering into this Deed on the basis of them.

2.2 The New Owner represents to the Secretary of State that it is not an Affiliate of any Party and that any sale of the Rolling Stock has been at arm's length and on commercial terms.

2.3 [The New Owner is an Affiliate of the TMM and has purchased the Rolling Stock and the Associated Equipment in accordance with the provisions of clause 13 []¹¹⁹ and schedule 1 []¹²⁰

¹¹⁹ Redaction.

¹²⁰ Redaction.

3. CONDITIONS PRECEDENT

All of the parties' (other than the New Owner's) obligations under this Deed, are subject to the receipt by the parties (other than the New Owner) of the following on or before the date of the execution of this Deed:

- (a) copies, certified by an officer of the New Owner to be true, complete and up-to-date copies of the Memorandum and Articles of Association of the New Owner; and
- (b) copies, certified by an officer of the New Owner to be true copies, and as being in full force and effect and not amended or rescinded, of resolutions of the board of directors (or other appropriate body with requisite power and authority) of the New Owner:
 - (i) approving the terms of, and the transactions contemplated by, this Deed, the Replacement Contracts and the Relevant Contracts to which it is (or will be pursuant to this Deed) a party; and
 - (ii) authorising a specified person or persons to sign and deliver on behalf of the New Owner this Deed, the Replacement Contracts and the Relevant Contracts to which it is (or will be pursuant to this Deed) a party; and
- (c) signature and delivery by the New Owner of all of the Replacement Contracts and the Relevant Contracts, whether by accession or otherwise.¹²¹

4. CO-OPERATION

Each party to this Deed, other than the New Owner, agrees that it will, to the extent not performed on or before the date hereof, as soon as possible do all such acts as are reasonably necessary to enable the accession of the New Owner in accordance with this Deed, including:

- (a) signature and delivery of all the Replacement Contracts and the Relevant Contracts, whether by accession or otherwise;
- (b) ¹²²
- (c) ¹²³
- (d) ¹²⁴
- (e) ¹²⁵

5. ACCESSION

5.1 The New Owner agrees, with effect from the Owner Substitution Date:

¹²¹ List of required conditions precedent to reflect those delivered by the original Owner under the Conditions Precedent Agreement.

¹²² Redaction.

¹²³ Redaction.

¹²⁴ Redaction.

¹²⁵ Redaction.

- (a) to observe, perform and discharge the obligations expressed to be imposed on the Owner (other than the obligations of the Owner under clause 30 (*Confidentiality of Information*) of the MSA, clause 31 (*Advertising and Confidentiality*) of the TSA, clause 26 (*Confidentiality of Information and Financial Information*) of the Lease, clause 25 (*Advertising and Confidentiality*) of the TSSSA and clause 4 (*Confidentiality*) of the Umbrella Agreement, in each case in relation to relevant information disclosed to the Existing Owner prior to the Owner Substitution Date) under the Relevant Contracts and the Replacement Contracts as a party to the Relevant Contracts and the Replacement Contracts and all agreements ancillary thereto, in place (and to the exclusion) of the Existing Owner to the extent the same shall fall due to be performed on or after the Owner Substitution Date;
- (b) to be bound by the acts or omissions of any previous Owner under any of the Relevant Contracts and all agreements ancillary thereto to the extent that such previous Owner would have been so bound;
- (c) to observe, perform and discharge all of the obligations of the Existing Owner under the Relevant Contracts, including accrued but unperformed obligations;
- (d) to recognise and accept any relevant time periods that have accrued or are continuing to accrue as at the time of the Owner Substitution Date;
- (e) that any accrued liabilities of the then current Operator to the Owner under any previous Reference Contracts and under the Relevant Contracts shall continue to be aggregated for the purposes of calculating whether any of the caps or limitations on that Operator's liability under any of the Relevant Contracts has been reached; and
- (f) that any accrued liabilities of the TMM to the Owner under any of the Relevant Contracts shall continue to be aggregated for the purposes of calculating whether any of the caps or limitations on the TMM's liability under any of the Relevant Contracts has been reached.

5.2 Each of the Secretary of State, the TMM and the Operator agrees:

- (a) that the New Owner may exercise and enjoy all of the rights of the Owner under the Relevant Contracts and the Replacement Contracts and all agreements ancillary thereto, in place (and to the exclusion) of the Existing Owner to the extent the same shall fall due to be performed on or after the Owner Substitution Date;
- (b) to observe, perform and discharge its obligations to the Owner under the Relevant Contracts and the Replacement Contracts and all agreements ancillary thereto, for the benefit of the New Owner in place (and to the exclusion) of the Existing Owner;
- (c) that it shall be bound by and responsible to the New Owner for its acts or omissions before the Owner Substitution Date under any of the Relevant Contracts and all agreements ancillary thereto that do not constitute a breach of such Relevant Contract or agreement (including the issuance of notices, approvals, consents or acknowledgements or the exercise of discretions or elections in accordance with the terms of such Relevant Contract or other agreement) to the extent that it would have been so bound and responsible to the Existing Owner;
- (d) to recognise any relevant time periods that have accrued or are continuing to accrue at the time of the Owner Substitution Date; and

- (e) that any accrued liabilities of the Existing Owner shall, for the purposes only of calculating whether any limitations of liability of the Owner under any of the Relevant Contracts have been reached, be deemed to be cancelled.

6. RELEASE OF THE EXISTING OWNER

6.1 Each of the Secretary of State, the TMM and the Operator agrees, with effect from the Owner Substitution Date, that the Existing Owner (save only for any rights or obligations of the Existing Owner in respect of clause 30 (*Confidentiality of Information*) of the MSA, clause 31 (*Advertising and Confidentiality*) of the TSA, clause 26 (*Confidentiality of Information and Financial Information*) of the Lease, clause 25 (*Advertising and Confidentiality*) of the TSSSA and clause 4 (*Confidentiality*) of the Umbrella Agreement) will not be liable to perform or be entitled to exercise its obligations or rights under the Owner Contracts and all agreements ancillary thereto save for (i) any rights accrued to the Existing Owner under the Owner Contracts before the Owner Substitution Date, and (ii) any rights of the Existing Owner under the Owner Contracts that are expressed to survive the Owner Substitution Date, provided that the Existing Owner will continue to be obliged not to prevent or interfere with the New Owner (or any successor in title to it) performing its obligations under the Relevant Contracts and the Replacement Contracts. Each of the Secretary of State, the TMM and the Operator agrees to release and discharge the Existing Owner from all of its obligations to such party under the Relevant Contracts and all agreements ancillary thereto, other than in respect of clause 30 (*Confidentiality of Information*) of the MSA, clause 31 (*Advertising and Confidentiality*) of the TSA, clause 26 (*Confidentiality of Information and Financial Information*) of the Lease, clause 25 (*Advertising and Confidentiality*) of the TSSSA and clause 4 (*Confidentiality*) of the Umbrella Agreement.

6.2 The Existing Owner agrees, with effect from the Owner Substitution Date:

- (a) to release and discharge each of the Operator, the TMM and the Secretary of State from its obligations to the Existing Owner under the Relevant Contracts and all agreements ancillary thereto; and
- (b) to perform and discharge the obligations of the Owner under clause 30 (*Confidentiality of Information*) of the MSA, clause 31 (*Advertising and Confidentiality*) of the TSA, clause 26 (*Confidentiality of Information and Financial Information*) of the Lease, clause 25 (*Advertising and Confidentiality*) of the TSSSA and clause 4 (*Confidentiality*) of the Umbrella Agreement, in each case in relation to relevant information disclosed to the Existing Owner prior to the Owner Substitution Date.

7. MISCELLANEOUS

7.1 Clauses 4 (*Confidentiality*) and 20 (*Notices*) to 32 (*Counterparts*) of the Umbrella Agreement will apply, with any necessary amendments, to this Deed.

7.2 For the purposes of Clause 20 of the Umbrella Agreement, notices will be given to the New Owner to:

[Insert name and contact details]

ANNEX TO ACCESSION DEED

Part A – Replacement Contracts

1. [Replacement Lease]/[Alternative Rolling Stock Operation Arrangement]¹²⁶
5. [Others]

Part B - Relevant Contracts

1. Umbrella Agreement
2. MSA
3. TSA
4. TSSSA
5. Master Definitions Agreement
6. Lenders' Direct Agreement
7. ¹²⁷
8. ¹²⁸
9. ¹²⁹
10. ¹³⁰
11. ¹³¹
12. Software Escrow Agreement
13. [Others]

IN WITNESS whereof this accession deed has been executed as a Deed the day and year first before written.

[INSERT EXECUTION BLOCKS TO ACCESSION DEED]

¹²⁶ Delete, as applicable to the relevant Owner succession.

¹²⁷ Redaction.

¹²⁸ Redaction.

¹²⁹ Redaction.

¹³⁰ Redaction.

¹³¹ Redaction.

SCHEDULE 1.3

Deed of TMM Accession

THIS DEED OF ACCESSION is made the _____ day of _____ 20 [_____]

BETWEEN

- (1) [NAME OF NEW TMM] whose registered office is at [_____] (the *New TMM*);
- (2) **THE SECRETARY OF STATE FOR TRANSPORT** (the *Secretary of State*); and
- (3) [_____] (the *Existing TMM*);
- (4) [_____] (the *Operator*);
- (5) [_____] (the *Owner*);
- (6) []¹³²
- (7) [_____] (the *Security Trustee*, for and on behalf of the [Senior Lenders/Senior Secured Creditors]).

WHEREAS¹³³

(A) The Secretary of State, the Owner, the TMM and the Operator entered into an agreement dated [_____] in order, amongst other things, to facilitate the Secretary of State's functions under the Act (the *Umbrella Agreement*).

(B) The following parties entered into the following Contracts, each on [*insert date*] as amended: (i) the TMM, the Owner and the Operator entered into the MSA for the purpose of, amongst other things, designing, manufacturing, testing, commissioning, supplying and purchasing the Equipment; (ii) the Owner and the Operator entered into the Lease for the purpose of, amongst other things, leasing certain of that Equipment in return for the payment of Rental; (iii) the TMM, the Operator and the Owner entered into the TSA for the purpose of, amongst other things, maintaining, repairing, overhauling, refurbishing and replacing that Equipment in return for the payment of Service Payments; and (iv) the Supplier, the Operator and the Owner entered into the TSSSA for the purpose of, amongst other things, the provision, following termination of the TSA, of technical support and spares supply services in return for the payment of Service Payments, in each case, upon the terms and conditions set out in the relevant agreement (such agreements being, together with the Umbrella Agreement, the *Original Agreements*).

(C) It is proposed that the Existing TMM [DESCRIBE TRANSACTIONS].

(D) [The New TMM wishes to accede to the terms of the Relevant Contracts and thereby be bound by their terms.]

¹³² Redaction.

¹³³ Delete/amend descriptions of transactions as appropriate.

(E) [Clause 6 (*Disposal of this Agreement and the Contracts*) of the Umbrella Agreement provides that the TMM may not assign or transfer any of its rights and/or obligations under any Contract except by way of a Permitted Contracts Restructuring Arrangement (as defined in the Master Definitions Agreement) or the prior written consent of the Secretary of State.

(F) This Deed is being entered into in respect of the Relevant Contracts in order to satisfy the requirements of Schedule 2.1 of the Umbrella Agreement.

NOW THIS DEED WITNESSES and in consideration of the payment of £1 (receipt of which is acknowledged) it is hereby agreed as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 The provisions of clause 1 (*Definitions and Interpretation*) of the Master Definitions Agreement shall apply, with any necessary modifications, to this Deed.

1.2 In addition, in this Deed:

TMM Substitution Date means the date on which the [*assignment/transfer*] to the New TMM of the Relevant Contracts takes effect; and

Replacement Contracts means the Contracts so identified and specified in Part A of the Annex to this Deed.

Relevant Contracts means the contracts so identified and specified in Part B of the Annex to this Deed.

2. STATEMENTS OF FACT

Statements by the New TMM

2.1 The New TMM states to the other parties as at the date of this Agreement that each of the statements of fact contained in clause 4.1 of the Conditions Precedent Agreement *mutatis mutandis* (as if references therein to the TMM are references to the New TMM) are true and accurate and the New TMM understands that the other parties are relying on the statements of fact and are entering into this Deed on the basis of them.

2.2 [The New TMM represents to the Secretary of State that it is not an Affiliate of any Party.]¹³⁴

3. CONDITIONS PRECEDENT

All of the parties (other than the New TMM)'s obligations under this Deed, are subject to the receipt by the parties (other than the New TMM) of the following on or before the date of the execution of this Deed:

- (a) copies, certified by an officer of the New TMM to be true, complete and up-to-date copies of the Memorandum and Articles of Association of the New TMM;

¹³⁴ Delete if not appropriate to the applicable circumstances.

- (b) copies, certified by an officer of the New TMM to be true copies, and as being in full force and effect and not amended or rescinded, of resolutions of the board of directors (or other appropriate body with requisite power and authority) of the New TMM:
 - (i) approving the terms of, and the transactions contemplated by, this Deed, the Replacement Contracts and the Relevant Contracts to which it is (or will be pursuant to this Deed) a party; and
 - (ii) authorising a specified person or persons to sign and deliver on behalf of the New TMM this Deed and the Relevant Contracts to which it is (or will be pursuant to this Deed) a party;
- (c) ¹³⁵
- (d) ¹³⁶
- (e) ¹³⁷
- (f) delivery to the Operator and the Owner of a certificate of insurance and broker's letter of undertaking demonstrating that the New TMM, the Owner and the Operator have the benefit of the insurances required to be implemented by the New TMM as the TMM under the Contracts.¹³⁸

4. CO-OPERATION

Each party to this Deed, other than the New TMM, agrees that it will, to the extent not performed on or before the date hereof, as soon as possible do all such acts as are reasonably necessary to enable the accession of the New TMM in accordance with this Deed, including:

- (a) signature and delivery of all the Replacement Contracts and the Relevant Contracts;
- (b) ¹³⁹
- (c) ¹⁴⁰

5. ACCESSION

5.1 The New TMM agrees, with effect from the TMM Substitution Date:

- (a) to observe, perform and discharge with the obligations expressed to be imposed on the TMM (other than the obligations of the TMM under clause 30 (*Confidentiality of Information*) of the MSA, clause 31 (*Advertising and Confidentiality*) of the TSA, clause 26 (*Confidentiality of Information and Financial Information*) of the Lease,

¹³⁵ Redaction.

¹³⁶ Redaction.

¹³⁷ Redaction.

¹³⁸ List of required conditions precedent to reflect those delivered by the original TMM under the Conditions Precedent Agreement.

¹³⁹ Redaction.

¹⁴⁰ Redaction.

clause 25 (*Advertising and Confidentiality*) of the TSSSA and clause 4 (*Confidentiality*) of the Umbrella Agreement, in each case in relation to relevant information disclosed to the Existing TMM prior to the TMM Substitution Date) under the Relevant Contracts as a party to the Relevant Contracts and all agreements ancillary thereto, in place (and to the exclusion) of the Existing TMM to the extent the same shall fall due to be performed on or after the TMM Substitution Date;

- (b) to be bound by the acts or omissions of any previous TMM under any of the Contracts and all agreements ancillary thereto to the extent that such previous TMM would have been so bound; and
- (c) to recognise and accept any relevant time periods that have accrued or are continuing to accrue as at the time of the TMM Substitution Date.

5.2 Each of the Secretary of State, the Owner and the Operator agrees:

- (a) that the New TMM may exercise and enjoy all of the rights of the TMM under the Relevant Contracts and the Replacement Contracts, in place (and to the exclusion) of the Existing TMM to the extent the same shall fall due to be performed on or after the TMM Substitution Date;
- (b) to observe, perform and discharge its obligations to the TMM under the Relevant Contracts and the Replacement Contracts, for the benefit of the New TMM in place (and to the exclusion) of the Existing TMM to the extent the same shall fall due to be performed on or after the TMM Substitution Date;
- (c) that it shall be bound by and responsible to the New TMM for its acts or omissions before the TMM Substitution Date under any of the Relevant Contracts that do not constitute a breach of such Relevant Contract or agreement (including the issuance of notices, approvals, consents or acknowledgements or the exercise of discretions or elections in accordance with the terms of such Relevant Contract or other agreement) to the extent that it would have been so bound and responsible to the Existing TMM; and
- (d) to recognise any relevant time periods that have accrued or are continuing to accrue at the time of the TMM Substitution Date.

6. RELEASE OF THE EXISTING TMM

6.1 Each of the Secretary of State, the Owner and the Operator agrees, from the TMM Substitution Date, that the Existing TMM (save only for any rights or obligations of the Existing TMM which are not assumed by the New TMM as described in paragraph 5.1(a)) will not be liable to perform or be entitled to exercise its obligations or rights under the Restructuring Documents and all agreements ancillary thereto, save for (i) any rights accrued to the Existing TMM under the Restructuring Documents before the TMM Substitution Date, and (ii) any rights of the Existing TMM under the Restructuring Documents that are expressed to survive the TMM Substitution Date, provided that the Existing TMM will continue to be obliged not to prevent or interfere with the New TMM (or any successor in title to it) performing its obligations under the Relevant Contracts and the Replacement Contracts.

6.2 The Existing TMM agrees, with effect from the TMM Substitution Date:

- (a) to release and discharge each of the Owner, the Operator and the Secretary of State from its obligations to the TMM under the Relevant Contracts and all agreements ancillary thereto; and
- (b) to perform and discharge the obligations of the TMM under clause 30 (*Confidentiality of Information*) of the MSA, clause 31 (*Advertising and Confidentiality*) of the TSA, clause 25 (*Advertising and Confidentiality*) of the TSSSA and clause 4 (*Confidentiality*) of the Umbrella Agreement, in each case in relation to relevant information disclosed to the Existing TMM prior to the TMM Substitution Date.

7. MISCELLANEOUS

7.1 Clauses 4 (*Confidentiality*), 20 (*Notices*) to 32 (*Counterparts*) of the Umbrella Agreement will apply, with any necessary amendments, to this Deed.

7.2 For the purposes of clause 20 of the Umbrella Agreement, notices will be given to the New TMM to:

[*Insert name and contact details*]

ANNEX TO ACCESSION DEED

Part A – Replacement Contracts

1. Eversholt NDA (TMM)
2. [Include any other Replacement Contracts that the TMM will enter into, []¹⁴¹]

Part B - Relevant Contracts

1. Umbrella Agreement
2. MSA
3. TSA
4. TSSSA
5. Master Definitions Agreement
6. []¹⁴²
7. []¹⁴³
8. Software Escrow Agreement
9. [Others]

IN WITNESS whereof this accession deed has been executed as a Deed the day and year first before written.

[INSERT EXECUTION BLOCKS TO ACCESSION DEED]

¹⁴¹ Redaction.

¹⁴² Redaction.

¹⁴³ Redaction.

SCHEDULE 1.4

Deed of Public Sector Operator Accession

THIS DEED OF ACCESSION is made the _____ day of _____ 20 [_____]

BETWEEN

- (1) [NAME OF SUCCESSOR OPERATOR] whose registered office is at [_____] (the *Successor Operator*);
- (2) THE SECRETARY OF STATE FOR TRANSPORT (the *Secretary of State*); and
- (3) [_____] (the *Existing Operator*);
- (4) [_____] (the *Owner*);
- (5) [_____] (the *TMM*);
- (6) []¹⁴⁴
- (7) [_____] (the *Security Trustee*, for and on behalf of the [Senior Lenders/Senior Secured Creditors])

WHEREAS¹⁴⁵

The Secretary of State, the Owner, the TMM and the Operator entered into an agreement dated [_____] in order, amongst other things, to facilitate the Secretary of State's functions under the Act (the *Umbrella Agreement*).

(A) The following parties entered into the following Contracts, each on [*insert date*], as amended: (i) the TMM, the Owner and the Operator entered into the MSA for the purpose of, amongst other things, designing, manufacturing, testing, commissioning, supplying and purchasing the Equipment; (ii) the Owner and the Operator entered into the Lease for the purpose of, amongst other things, leasing certain of that Equipment in return for the payment of Rental; (iii) the TMM, the Operator and the Owner entered into the TSA for the purpose of, amongst other things, maintaining, repairing, overhauling, refurbishing and replacing that Equipment in return for the payment of Service Payments; and (iv) the Supplier, the Operator and the Owner entered into the TSSSA for the purpose of, amongst other things, the provision, following termination of the TSA, of technical support and spares supply services in return for the payment of Service Payments, in each case, upon the terms and conditions set out in the relevant agreement (such agreements being, together with the Umbrella Agreement, the *Original Agreements*).

(B) [The Successor Operator has been appointed by the Secretary of State for the purpose of operating railway passenger services on the Thameslink Network pending the entry into by the Secretary of State of a franchise agreement]

¹⁴⁴ Redaction.

¹⁴⁵ Delete/amend descriptions of transactions as appropriate.

(C) [The Successor Operator wishes to: (a) enter into the Replacement Contracts; and (b)] accede to the terms of the Relevant Contracts and thereby be bound by their terms.]

(D) [Clause 6 (*Disposal of this Agreement and the Contracts*) of the Umbrella Agreement provides that the Operator may not assign or transfer any of its rights and/or obligations under any Contract except pursuant to an Operator Accession or an Operator Transfer Scheme (each as defined in the Master Definitions Agreement) effected in accordance with Schedule 2.1 (*Section 54 Undertaking*) of the Umbrella Agreement.]

(E) This Deed is being entered into in respect of the Relevant Contracts in order to satisfy the requirements of Schedule 2.1 of the Umbrella Agreement.

NOW THIS DEED WITNESSES and in consideration of the payment of £1 (receipt of which is acknowledged) it is hereby agreed as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 The provisions of clause 1 (*Definitions and Interpretation*) of the Master Definitions Agreement shall apply, with any necessary modifications, to this Deed.

1.2 In addition, in this Deed:

Replacement Contracts means the contracts so identified and specified in Part A of the Annex to this Deed.

Relevant Contracts means the contracts so identified and specified in Part B of the Annex to this Deed.

2. STATEMENTS OF FACT

The Successor Operator states to the other parties as at the date of this Agreement that each of the statements of fact contained in clause 4.2 of the Conditions Precedent Agreement *mutatis mutandis* (as if references therein to the Operator are references to the Successor Operator) are true and accurate and the Successor Operator understands that the other parties are relying on the statements of fact and are entering into this Deed on the basis of them.

3. CONDITIONS PRECEDENT

All of the parties' (other than the Successor Operator's) obligations under this Deed, are subject to the receipt by the parties (other than the Successor Operator) of the following on or before the date of the execution of this Deed:

- (a) copies, certified by an officer of the Successor Operator to be true, complete and up-to-date copies of the Memorandum and Articles of Association of the Successor Operator; and
- (b) copies, certified by an officer of the Successor Operator to be true copies, and as being in full force and effect and not amended or rescinded, of resolutions of the board of directors (or other appropriate body with the requisite power and authority) of the Successor Operator:
 - (i) approving the terms of, and the transactions contemplated by, this Deed, the Replacement Contracts and the Relevant Contracts to which it is (or will be pursuant to this Deed) a party;

- (ii) authorising a specified person or persons to sign and deliver on behalf of the Successor Operator this Deed, the Replacement Contracts and the Relevant Contracts to which it is (or will be pursuant to this Deed) a party;
- (c) copies, certified by an officer of the Successor Operator to be true, complete and accurate, of the Successor Operators latest publicly available audited balance sheet and audited profit and loss statement;
- (d) signature and delivery by the Successor Operator of all of the Replacement Contracts and the Relevant Contracts, whether by accession or otherwise[; and
- (e) a certificate of insurance and broker's letter of undertaking demonstrating that the Successor Operator, the TMM and the Owner have the benefit of the insurances required to be implemented by the Successor Operator as Operator under the Contracts]^{146 147}.

4. CO-OPERATION

Each party to this Deed, other than the Successor Operator, agrees that it will, to the extent not performed on or before the date hereof, as soon as possible do all such acts as are reasonably necessary to enable the accession of the Successor Operator in accordance with this Deed, including:

- (a) signature and delivery of all of the Replacement Contracts and the Relevant Contracts, whether by accession or otherwise;
- (b) ¹⁴⁸
- (c) ¹⁴⁹
- (d) ¹⁵⁰
- (e) ¹⁵¹

5. ACCESSION

5.1 The Successor Operator agrees, with effect from the Operator Succession Date:

- (a) to accept, observe, perform and discharge the obligations expressed to be imposed on the Operator (other than the Retained Obligations) under the Relevant Contracts and the Replacement Contracts as a party to the Relevant Contracts and the Replacement Contracts and all agreements ancillary thereto, in place (and to the exclusion) of the

¹⁴⁶ Delete if paragraph 8 is included.

¹⁴⁷ List of required conditions precedent to reflect those delivered by the Initial Operator under the Conditions Precedent Agreement.

¹⁴⁸ Redaction.

¹⁴⁹ Redaction.

¹⁵⁰ Redaction.

¹⁵¹ Redaction.

Existing Operator to the extent the same shall fall due to be performed on or after the Operator Succession Date;

- (b) to grant a Permitted Delay and/or recognise any Permitted Delay (and to pay any applicable costs related thereto) granted to the TMM in accordance with Schedule 13 (*Permitted Delay Procedure*) of the MSA and to pay liquidated damages to the Owner if and when required to in accordance with the terms of the Replacement Lease and/or the Umbrella Agreement after the Operator Succession Date, notwithstanding that such liability has arisen due to any act, omission, breach or default of any other person (including any previous Operator) occurring before the Operator Succession Date, provided that any such liability that arose as the result of any act, omission, breach or default occurring before the Operator Succession Date shall not be counted towards the limit on liability under clause 7.6 of the Lease;
- (c) save as provided in paragraph 5.1(b), to be bound by the acts or omissions of any previous Operator under any of the Contracts and all agreements ancillary thereto that do not constitute a breach of the Relevant Contract or agreement (including the issuance of notices, approvals, consents or acknowledgements or the exercise of discretions or elections in accordance with the terms of the Relevant Contract or other agreement) to the extent that such previous Operator would have been so bound;
- (d) to recognise and accept any relevant time periods that have accrued or are continuing to accrue as at the Operator Succession Date;
- (e) that any accrued liabilities of the Owner to the Operator under any previous Reference Contracts and under the Relevant Contracts shall continue to be aggregated for the purposes of calculating whether the amount of the Owner Aggregate Liability Cap has been reached; and
- (f) that any accrued liabilities of the TMM to the Operator under any of the Relevant Contracts shall continue to be aggregated for the purposes of calculating whether any of the caps or other limitations on liability under any of the Relevant Contracts has been reached.

5.2 Each of the Secretary of State, the Owner and the TMM agrees:

- (a) that the Successor Operator may exercise and enjoy all of the rights of the Operator (other than the Retained Rights) under the Relevant Contracts and the Replacement Contracts and all agreements ancillary thereto, in place (and to the exclusion) of the Existing Operator to the extent the same shall fall due to be performed on or after the Operator Succession Date;
- (b) to observe, perform and discharge its obligations to the Operator (other than those that relate to the Retained Rights) under the Relevant Contracts and the Replacement Contracts and all agreements ancillary thereto, for the benefit of the Successor Operator in place (and to the exclusion) of the Existing Operator to the extent the same shall fall due to be performed on or after the Operator Succession Date;
- (c) that, save as provided in paragraph 5.1, the Successor Operator shall not have any liability for any accrued but unsatisfied liabilities of the Existing Operator (as at the Operator Succession Date) under or for any breaches of, or defaults under any of the Relevant Contracts or the Reference Lease and all agreements ancillary thereto to the extent the same occurred prior to the Operator Succession Date;

- (d) that, subject to any applicable limits on liability, it shall be liable to the Successor Operator for any of its accrued but unperformed obligations (other than those that relate to the Retained Rights) to the Operator under the Relevant Contracts and the Replacement Contracts and all agreements ancillary thereto to the extent that such liability arises after the Operator Succession Date, notwithstanding that such liability arises as the result of any act, omission, breach or default occurring before the Operator Succession Date;
- (e) save as provided in sub-paragraph (d), that it shall be bound by and responsible to the Successor Operator for its acts or omissions before the Operator Succession Date under any of the Contracts and all agreements ancillary thereto that do not constitute a breach of such Relevant Contract or agreement (including the issuance of notices, approvals, consents or acknowledgements or the exercise of discretions or elections in accordance with the terms of such Relevant Contract or other agreement) to the extent that it would have been so bound and responsible to the Existing Operator;
- (f) to recognise any relevant time periods that have accrued or are continuing to accrue at the time of the Operator Succession Date; and
- (g) that any accrued liabilities of the Existing Operator shall, for the purposes only of calculating whether any limitations of liability of the Operator under any of the Relevant Contracts have been reached, be deemed to be cancelled.

6. RELEASE OF THE EXISTING OPERATOR

6.1 Each of the Secretary of State, the TMM and the Owner agrees, with effect from the Operator Succession Date that:

- (a) the Existing Operator (without prejudice to any rights or obligations of the Existing Operator which have already arisen and are not assumed by the Successor Operator as described in paragraph 5.1) will not be liable to perform its future obligations under the Relevant Contracts and all agreements ancillary thereto (other than the Retained Obligations);
- (b) the Existing Operator may exercise and enjoy the Retained Rights of the Operator under the Relevant Contracts and the Replacement Contracts and all agreements ancillary thereto; and
- (c) it shall observe, perform and discharge its obligations to the Operator (that relate to the Retained Rights) under the Relevant Contracts and the Replacement Contracts and all agreements ancillary thereto, for the benefit of the Existing Operator to the extent the same shall fall due to be performed on or after the Operator Succession Date,

provided that the Existing Operator will continue to be obliged not to prevent or interfere with the Successor Operator (or any successor in title to it) performing its obligations under the Relevant Contracts and the Replacement Contracts.

6.2 The Existing Operator agrees, with effect from the Effective Date:

- (a) to release and discharge each of the Owner, the TMM and the Secretary of State from their respective obligations to the Operator (other than those that relate to Retained Rights) under the Relevant Contracts, the Reference Contracts and all agreements

ancillary thereto, to the extent the same shall fall due to be performed on or after the Operator Succession Date; and

- (b) to perform and discharge the Retained Obligations of the Operator under the Relevant Contracts and all agreements ancillary thereto, to the extent the same shall fall due to be performed on or after the Operator Succession Date; and
- (c) that, save as provided in paragraph 5.1, the Existing Operator shall remain liable for all accrued but unsatisfied liabilities of the Existing Operator (as at the Operator Succession Date) under or for any breaches of or defaults under any of the Relevant Contracts, the Reference Contracts and all agreements ancillary thereto by the Existing Operator, to the extent the same occurred prior to the Operator Succession Date.

7. SECRETARY OF STATE PRIMARY LIABILITY

The Secretary of State hereby irrevocably and unconditionally undertakes that, for so long as the Successor Operator is the Operator under the Replacement Contracts and the Relevant Contracts, it shall be Primarily Liable under those agreements and all agreements ancillary thereto to which the Successor Operator is party.

8. [SECRETARY OF STATE SELF-INSURANCE

8.1 The Secretary of State hereby irrevocably and unconditionally undertakes that, from the date hereof:

- (a) for so long as the Successor Operator is the Operator under the Replacement Contracts and the Relevant Contracts; or
- (b) until such earlier date as the Secretary of State shall nominate by providing at least 20 Working Days' written notice,

the Secretary of State shall act as self-insurer for those insurances which the Successor Operator is, as Operator, under an obligation to procure under any of the Replacement Contracts and the Relevant Contracts, and in so doing, the Secretary of State shall, on the occurrence of any risk that would have been the subject of such insurance if it had been procured by the Successor Operator in accordance with the terms of the applicable contract, pay to the Owner, the Operator and/or the TMM (as the case may be) an amount equal to the insurance proceeds that would have been payable had the relevant insurance continued to be available on the same terms and conditions.

8.2 Each of the other parties to this Deed acknowledge that, for so long as the Secretary of State's undertaking under paragraph 8.1 continues, the Successor Operator's obligations to procure the insurances to which such undertaking applies under any of the Replacement Contracts and the Relevant Contracts shall be suspended.]¹⁵²

9. MISCELLANEOUS

9.1 Clauses 4 (*Confidentiality*), 20 (*Notices*) to 32 (*Counterparts*) of the Umbrella Agreement will apply, with any necessary amendments, to this Deed.

¹⁵² Paragraph 8 may be included at the Secretary of State's option.

9.2 For the purposes of clause 20 of the Umbrella Agreement, notices will be given to the Successor Operator to:

[Insert name and contact details]

ANNEX TO ACCESSION DEED

Part A – Replacement Contracts

1. Replacement Lease
2. Eversholt NDA (Operator)
3. [Others]

Part B - Relevant Contracts

1. Umbrella Agreement
2. MSA
3. TSA
4. TSSSA
5. ¹⁵³
6. Master Definitions Agreement
7. ¹⁵⁴
8. ¹⁵⁵
9. ¹⁵⁶
10. ¹⁵⁷
11. ¹⁵⁸
12. Software Escrow Agreement
13. [Others]

IN WITNESS whereof this accession deed has been executed as a Deed the day and year first before written.

[INSERT EXECUTION BLOCKS TO ACCESSION DEED]

¹⁵³ Redaction.

¹⁵⁴ Redaction.

¹⁵⁵ Redaction.

¹⁵⁶ Redaction.

¹⁵⁷ Redaction.

¹⁵⁸ Redaction.

SCHEDULE 1.5

Transfer Scheme Certificate

To: (1) Owner
(2) TMM
(3) Security Trustee
(4) Intercreditor Agent

From: (1) The Secretary of State for Transport ("**Secretary of State**")
(2) [Successor Operator]

[Date]

1. We refer to the provisions of paragraph 1 of Schedule 2.1 (*Section 54 Undertakings*) of the Agreement (*Umbrella Agreement*) dated [____] and made between the Secretary of State for Transport (1) Cross London Trains Limited (2) Siemens PLC (3) and First Capital Connect Limited (4) governing the arrangements in the event that the Secretary of State elects to procure that a Transfer Scheme is effected in order to fulfil his undertaking to procure that on each Operator Succession Date a Successor Operator enters into a Permitted Contracts Restructuring Arrangement.

2. Words and expressions defined in the Master Definitions Agreement dated [____] 2013 and made between [*List all parties*] shall bear the same meaning when used in this Certificate.

3. In addition, in this Certificate:

Replacement Contracts means the contracts so identified and specified in Part A of the Annex to this Certificate.

Relevant Contracts means the contracts so identified and specified in Part B of the Annex to this Certificate.

4. The Successor Operator has entered into a franchise agreement with the Secretary of State for Transport dated [____] in relation to the operation of railway passenger services on the Thameslink Network and hereby unconditionally confirms that the Operator Succession Date has occurred on the date of this Certificate in accordance with the terms of this Certificate.

5. The Successor Operator states to each of the parties to this Certificate that as at the date of this Certificate each of the statements of fact contained in clause 4.2 of the Conditions Precedent Agreement *mutatis mutandis* (as if references therein to the Operator are references to the Successor Operator) are true and accurate and the Secretary of State and the Successor Operator each understand and acknowledge that the recipients of this Certificate are relying on the statements of fact and are accepting this Certificate and agree to the Operator Transfer Scheme on the basis that the Successor Operator has represented and warranted to the recipients of this Certificate that the statements of fact are true and accurate.

6. The Successor Operator represents to the Secretary of State, the Owner and the TMM at the date of this Certificate that it is not an Affiliate of any Party [(other than the Existing Operator)].
7. The following documentation is attached to this Certificate:
- (a) copies, certified by an officer of the Successor Operator to be true, complete and up-to-date copies of the Memorandum and Articles of Association of the Successor Operator;
 - (b) copies, certified by an officer of the Successor Operator to be true copies, and as being in full force and effect and not amended or rescinded, of resolutions of the board of directors (or other appropriate body with the requisite power and authority) of the Successor Operator:
 - (i) approving the terms of, and the transactions contemplated by, this Deed, the Replacement Contracts and the Relevant Contracts to which it is (or will be pursuant to this Deed) a party; and
 - (ii) authorising a specified person or persons to sign and deliver on behalf of the Successor Operator this Deed, the Replacement Contracts and the Relevant Contracts to which it is (or will be pursuant to this Deed) a party;
 - (c) copies, certified by an officer of the Successor Operator to be true, complete and accurate, of the Successor Operator's latest publicly available audited balance sheet and audited profit and loss statement;
 - (d) all of the Replacement Contracts duly executed by all parties and dated with today's date and all of the Relevant Contracts; and
 - (e) a notice of assignment, addressed to the relevant Guarantor and signed by [the Existing Operator]/[the Secretary of State], in relation to each of the Operator Guarantee and the TSA Guarantee;
 - (f) a notice of transfer, addressed to the relevant Bond Provider and signed by [the Existing Operator]/[the Secretary of State], in relation to each of the Operator Bond and the TSA Bond;
 - (g) [a certificate of insurance and broker's letter of undertaking demonstrating that the Successor Operator has the benefit of the insurances required by it as Operator under the Replacement Contracts and the Relevant Contracts to which it is party;]¹⁵⁹ and
 - (h) a certified true copy of the Operator Transfer Scheme, executed by the Secretary of State for Transport, which Operator Transfer Scheme transfers to the Successor Operator with effect from the Operator Succession Date the Existing Operator's assets, interests, rights, obligations and liabilities (both actual and contingent) under the Replacement Contracts and the Relevant Contracts in accordance with the terms of this Certificate.¹⁶⁰

¹⁵⁹ To be deleted if the Secretary of State undertakes to self-insure pursuant to paragraphs 11 and 12.

¹⁶⁰ List of required conditions precedent to reflect those delivered by the Initial Operator under the Conditions Precedent Agreement.

8. The Successor Operator agrees, with effect from the Operator Succession Date:
- (a) to accept, observe, perform and discharge the obligations expressed to be imposed on the Operator (other than the Retained Obligations) under the Relevant Contracts and the Replacement Contracts as a party to the Relevant Contracts and the Replacement Contracts and all agreements ancillary thereto, in place (and to the exclusion) of the Existing Operator to the extent the same shall fall due to be performed on or after the Operator Succession Date;
 - (b) to grant a Permitted Delay and/or recognise any Permitted Delay (and to pay any applicable costs related thereto) granted to the TMM in accordance with Schedule 13 (*Permitted Delay Procedure*) of the MSA and to pay liquidated damages to the Owner if and when required to in accordance with the terms of the Replacement Lease and/or the Umbrella Agreement after the Operator Succession Date, notwithstanding that such liability has arisen due to any act, omission, breach or default of any other person (including any previous Operator) occurring before the Operator Succession Date, provided that any such liability that arose as the result of any act, omission, breach or default occurring before the Operator Succession Date shall not be counted towards the limit on liability under clause 7.6 of the Lease;
 - (c) save as provided in paragraph 8(b), to be bound by the acts or omissions of any previous Operator under any of the Contracts and all agreements ancillary thereto that do not constitute a breach of the Relevant Contract or agreement (including the issuance of notices, approvals, consents or acknowledgements or the exercise of discretions or elections in accordance with the terms of the Relevant Contract or other agreement) to the extent that such previous Operator would have been so bound;
 - (d) [to observe, perform and discharge all of the obligations of the Existing Operator under the Relevant Contracts, including accrued but unperformed obligations;]¹⁶¹
 - (e) to recognise and accept any relevant time periods that have accrued or are continuing to accrue as at the Operator Succession Date;
 - (f) that any accrued liabilities of the Owner to the Operator under the Relevant Contracts and the Reference Contracts shall continue to be aggregated for the purposes of calculating whether the amount of the Owner Aggregate Liability Cap has been reached; and
 - (g) []¹⁶²
9. With effect from the Operator Succession Date, the Successor Operator:
- (a) may exercise and enjoy all of the rights of the Operator (other than the Retained Rights) under the Relevant Contracts and the Replacement Contracts and all agreements ancillary thereto, in place (and to the exclusion) of the Existing Operator to the extent the same shall fall due to be performed on or after the Operator Succession Date;

¹⁶¹ Delete this paragraph, unless the Existing Operator is an Affiliate of the Successor Operator and the relevant succession is not occurring upon the expiry through effluxion of time of the Existing Operator's Franchise Agreement.

¹⁶² Redaction.

- (b) shall be entitled to the performance and discharge by each of the Secretary of State, the Owner and the TMM of their respective obligations to the Operator (other than those that relate to the Retained Rights) under the Relevant Contracts and the Replacement Contracts and all agreements ancillary thereto, for the benefit of the Successor Operator in place (and to the exclusion) of the Existing Operator to the extent the same shall fall due to be performed on or after the Operator Succession Date;
 - (c) [save as provided in paragraph 8, shall not have any liability for any accrued but unsatisfied liabilities of the Existing Operator (as at the Operator Succession Date) under or for any breaches of, or defaults under any of the Relevant Contracts or the Reference Contracts and all agreements ancillary thereto to the extent the same occurred prior to the Operator Succession Date;]¹⁶³
 - (d) shall be entitled to the performance and discharge by each of the Secretary of State, the Owner and the TMM of their respective accrued but unperformed obligations (other than those that relate to the Retained Rights) to the Operator under the Relevant Contracts and the Replacement Contracts and all agreements ancillary thereto to the extent that such liability arises after the Operator Succession Date, notwithstanding that such liability arises as the result of any act, omission, breach or default occurring before the Operator Succession Date;
 - (e) shall be entitled to the rights of the Operator under any of the Contracts arising from the acts or omissions of each of the Secretary of State, the Owner and the TMM before the Operator Succession Date under any of the Contracts and all agreements ancillary thereto that do not constitute a breach of such Relevant Contract or agreement (including the issuance of notices, approvals, consents or acknowledgements or the exercise of discretions or elections in accordance with the terms of such Relevant Contract or other agreement) to the extent that such person would have been so bound and responsible to the Existing Operator; and
 - (f) shall treat any accrued liabilities of the Existing Operator, for the purposes only of calculating whether any limitations of liability of the Operator under any of the Relevant Contracts have been reached, as having been cancelled.
10. With effect from the Operator Succession Date, the Existing Operator:
- (a) (without prejudice to any rights or obligations of the Existing Operator which have already arisen and are not assumed by the Successor Operator as described in paragraph 8 of this Certificate) will not be liable to perform its future obligations under the Relevant Contracts and all agreements ancillary thereto (other than the Retained Obligations);
 - (b) may exercise and enjoy the Retained Rights of the Operator under the Relevant Contracts and the Replacement Contracts and all agreements ancillary thereto;
 - (c) shall be entitled to the performance and discharge by each of the Secretary of State, the Owner and the TMM of their respective obligations to the Operator (that relate to

¹⁶³ Delete this paragraph only if paragraph 8(d) is being included, if the Existing Operator is an Affiliate of the Successor Operator and the relevant succession is not occurring upon the expiry through effluxion of time of the Existing Operator's Franchise Agreement.

the Retained Rights) under the Relevant Contracts and the Replacement Contracts and all agreements ancillary thereto, for the benefit of the Existing Operator to the extent the same shall fall due to be performed on or after the Operator Succession Date;

- (d) shall release and discharge each of the Owner, the TMM and the Secretary of State from their respective obligations to the Operator (other than those that relate to Retained Rights) under the Relevant Contracts, the Reference Contracts and all agreements ancillary thereto, to the extent the same shall fall due to be performed on or after the Operator Succession Date;
- (e) shall continue to be obliged to perform and discharge the Retained Obligations of the Operator under the Relevant Contracts and all agreements ancillary thereto, to the extent the same shall fall due to be performed on or after the Operator Succession Date; and
- (f) save as provided in paragraph 8 of this Certificate, shall remain liable for all accrued but unsatisfied liabilities of the Existing Operator (as at the Operator Succession Date) under or for any breaches of or defaults under any of the Relevant Contracts, the Reference Contracts and all agreements ancillary thereto by the Existing Operator, to the extent the same occurred prior to the Operator Succession Date,

provided that the Existing Operator will continue to be obliged not to prevent or interfere with the Successor Operator (or any successor in title to it) performing its obligations under the Relevant Contracts and the Replacement Contracts.

11. [The Secretary of State hereby irrevocably and unconditionally undertakes that, from the date hereof:

- (a) for so long as the Successor Operator is the Operator under the Replacement Contracts and the Relevant Contracts; or
- (b) until such earlier date as the Secretary of State shall nominate by providing at least 20 Working Days' written notice,

the Secretary of State shall act as self-insurer for those insurances which the Successor Operator is, as Operator, under an obligation to procure under any of the Replacement Contracts and the Relevant Contracts, and in so doing, the Secretary of State shall, on the occurrence of any risk that would have been the subject of such insurance if it had been procured by the Successor Operator in accordance with the terms of the applicable contract, pay to the Owner, the Operator and/or the TMM (as the case may be) an amount equal to the insurance proceeds that would have been payable had the relevant insurance continued to be available on the same terms and conditions.

12. For so long as the Secretary of State's undertaking under paragraph 11 continues, the Successor Operator's obligations to procure the insurances to which such undertaking applies under any of the Replacement Contracts and the Relevant Contracts shall be suspended.]¹⁶⁴

¹⁶⁴ Paragraph 8 may be included at the Secretary of State's option in place of insurance by Successor Operator.

ANNEX TO TRANSFER SCHEME CERTIFICATE

Part A – Replacement Contracts

1. Replacement Lease
2. Eversholt NDA (Operator)
3. [Others]

Part B - Relevant Contracts

1. Umbrella Agreement
2. MSA
3. TSA
4. TSSSA
5. ¹⁶⁵
6. Master Definitions Agreement
7. ¹⁶⁶
8. ¹⁶⁷
9. ¹⁶⁸
10. ¹⁶⁹
11. ¹⁷⁰
12. Software Escrow Agreement
13. [Others]

¹⁶⁵ Redaction.

¹⁶⁶ Redaction.

¹⁶⁷ Redaction.

¹⁶⁸ Redaction.

¹⁶⁹ Redaction.

¹⁷⁰ Redaction.

SCHEDULE 2

TERMINATION

Schedule 2.1:	Section 54 Undertakings
Schedule 2.2:	<input type="checkbox"/> ¹⁷¹
Schedule 2.3:	Early Termination of the TSA
Schedule 2.4:	<input type="checkbox"/> ¹⁷²
Schedule 2.5:	Early Termination of the TSSSA
Schedule 2.6:	Early Termination of Contracts for Force Majeure
Schedule 2.7:	Voluntary Termination of Contracts by the Secretary of State
Schedule 2.8:	Transfer of Rolling Stock and Contracts upon Termination

¹⁷¹ Redaction.

¹⁷² Redaction.

SCHEDULE 2.1

Section 54 Undertakings

1. SECTION 54 UNDERTAKINGS

The Secretary of State's general undertaking

1.1 Subject to paragraph 1.5, the Secretary of State undertakes to each of the TMM and the Owner to procure that, prior to the Backstop Date, simultaneously with:

- (a) the occurrence of any Key Contract Operator Termination Event;
- (b) the expiry of a Lease by the effluxion of time; or
- (c) any expiry by effluxion of time or termination of the Franchise Agreement to which the then current Operator is a party,

either (i) an Operator Accession occurs, or (ii) an Operator Transfer Scheme is effected, in each case in accordance with paragraph 2 (*Process*).

The Secretary of State's extended TSA undertaking

1.2 Subject to paragraph 1.5 and to the TSA not having been terminated in accordance with its terms (other than the termination of the Operator's participation in the TSA by reason of a TSA Operator Event of Default or the termination of the Owner's participation in the TSA by reason of a TSA Owner Event of Default) prior to the Backstop Date, the Secretary of State undertakes to the TMM and the Owner to procure that, after the Backstop Date and prior to the end of the Scheduled TSA Term, at any time that any Rolling Stock is used by a Train Operator for the provision of services on the Network, that Operator shall:

- (a) have acceded to the TSA by an Operator Accession;
- (b) become party to the TSA by way of an Operator Transfer Scheme; or
- (c) entered into a new TSA on substantially the same terms as the previous TSA,

and shall in each such case have entered into a direct agreement relating to the TSA, MSA and TSSSA in substantially the terms set out in Schedule 10 (*Form of Maintenance Direct Agreement*), in the case of each such document in relation to the leased Rolling Stock.

1.3 If, at any time during the TSA Term, any Units that are the subject of the TSA are the subject of a lease that involves the operation of such Units on a part of the Network other than the Thameslink Network that is within the Secretary of State's jurisdiction then the TMM shall continue to be appointed to maintain such Units in accordance with the terms of the TSA subject to a Variation, and the Secretary of State shall procure that the Operator delivers a Variation Proposal under the TSA to reflect that proposed operation.

1.4 Each Party to this Agreement acknowledges and agrees that, if the Secretary of State's undertaking under paragraph 1.2 is continuing at the Backstop Date or any earlier time at which this Agreement terminates in accordance with clause 33.4, each Party whose participation in the Project is not ceasing at such time shall, no later than the Backstop Date or date of termination of this Agreement (as the case may be), enter into a direct agreement

relating to the TSA, MSA and TSSSA in substantially the terms set out in Schedule 10 (*Form of Maintenance Direct Agreement*).

Limitations to and provisions of the Secretary of State's undertakings

1.5 The undertakings given by the Secretary of State in paragraphs 1.1 and 1.2 are subject to the following limitations:

- (a) the undertaking in paragraph 1.1 shall cease to apply after the Backstop Date;
- (b) the undertaking in paragraph 1.2 shall cease to apply after the end of the Scheduled TSA Term;
- (c) ¹⁷³
- (d) ¹⁷⁴
- (e) the undertaking in paragraph 1.1 shall cease to apply in respect of the Lease (and shall subsequently only apply in respect of the other Contracts to the extent that any Rolling Stock is used by a Train Operator for the provision of services on the Network), if the Secretary of State directs that such cessation should apply upon the Operator terminating the Lease following a direction by the Secretary of State pursuant to paragraph 4.5 of Schedule 4.3;
- (f) the undertakings shall cease to apply if the Contracts are terminated due to the occurrence of a force majeure event in accordance with paragraph 3.1 of Schedule 2.6 (*Termination of Contracts for Force Majeure*) and paragraph 4 (*Circumstances where Lease and TSA are terminated following MSA Force Majeure Event*) of Schedule 2.6 applies pursuant to paragraph 3.2(a) of Schedule 2.6;¹⁷⁵
- (g) ¹⁷⁶
- (h) ¹⁷⁷
- (i) ¹⁷⁸
- (j) the undertaking in paragraph 1.1 shall cease to apply in respect of the Lease (but shall continue in relation to the other Contracts to the extent that any Rolling Stock is used by a Train Operator for the provision of services on the Network) if the Lease is terminated due to the occurrence of a Force Majeure Event in accordance with paragraph 6.18 of Schedule 2.6 and paragraph 5 of Schedule 2.6 applies;

¹⁷³ Redaction.

¹⁷⁴ Redaction.

¹⁷⁵ Redaction.

¹⁷⁶ Redaction.

¹⁷⁷ Redaction.

¹⁷⁸ Redaction.

- (k) the undertaking in paragraph 1.1 shall cease to apply in respect of the Lease (but shall continue in relation to the other Contracts to the extent that any Rolling Stock is used by a Train Operator for the provision of services on the Network) upon the termination of the Lease due to the occurrence of a Lease Owner Non-MR/EFV Termination Event;
- (l) the undertakings shall cease to apply in respect of the TSA (but, subject to the other sub-paragraphs of this paragraph 1.5, the undertaking in paragraph 1.1 shall continue in relation to the other Contracts) if the TSA is terminated due to the exercise by the Operator of:
 - (i) its termination right under schedule 13.4 ([]¹⁷⁹) of the TSA; or
 - (ii) its voluntary termination right under schedule 13.5 (*Operator Voluntary Termination Right*) of the TSA;
- (m) []¹⁸⁰
- (n) the undertakings shall cease to apply to the TSA and the TSSSA (but, subject to the other sub-paragraphs of this paragraph 1.5, the undertaking in paragraph 1.1 shall continue in relation to the other Contracts) if the TSA is terminated due to the occurrence of a Force Majeure Event in accordance with paragraph 8 (*Termination or continuation of the TSA*) of Schedule 2.6;
- (o) the undertaking in paragraph 1.1 applies to all Rolling Stock that is leased immediately prior to the relevant Operator Succession Date or is due to be leased in accordance with the Reference Lease at such time, provided that the undertaking shall cease to apply in relation to any Equipment:
 - (i) which is the subject of an Event of Loss or the leasing of which has been irrevocably terminated under the Lease; or
 - (ii) []¹⁸¹

Owner and TMM consent not required

1.6 Neither the Owner nor the TMM shall have any rights to object to the identity of a person nominated by the Secretary of State to act as a Successor Operator.

Co-Operation

1.7 Each of the Parties agrees that, where the Secretary of State is required to exercise his undertaking in accordance with paragraph 1.1, that Party will, in accordance with paragraph 2 (*Process*), do all such acts and execute or procure the execution of all such relevant contracts and deeds of accession as are reasonably necessary to enable the Successor Operator to accede to or otherwise have transferred to it all of the Operator's rights and obligations under the Contracts to which the Operator is party, subject to and in accordance with paragraphs 2 and 7 (*Liability*).

¹⁷⁹ Redaction.

¹⁸⁰ Redaction.

¹⁸¹ Redaction.

1.8 ¹⁸²

2. PROCESS

2.1 The Secretary of State shall, save as provided in paragraph 5 (*Operator Continuation*), fulfil his undertaking in paragraph 1.1 of this Schedule in accordance with the following provisions.

Operator Succession Notice

2.2 The Secretary of State shall notify the Owner and the TMM in writing (an *Operator Succession Notice*) of his intention to effect either an Operator Accession or an Operator Transfer Scheme and of the proposed Operator Succession Date:

- (a) where the Successor Operator is not a Public Sector Operator, not less than 20 Working Days prior to the proposed Operator Succession Date; or
- (b) where the Successor Operator is a Public Sector Operator, as far in advance of the proposed Operator Succession Date as is reasonably practicable, taking into account the prevailing circumstances of the relevant Operator succession, including, without limitation, the Secretary of State's duties under Section 30 of the Act.

2.3 At the time that the Secretary of State provides an Operator Succession Notice, he shall also provide to the Owner and the TMM for review a draft of:

- (a) where the Successor Operator is not a Public Sector Operator, either a Deed of Operator Accession or a Transfer Scheme Certificate (together with all required attachments thereto); or
- (b) where the Successor Operator is a Public Sector Operator, a Deed of Public Sector Operator Accession,

and the Applicable Relevant Contracts and the Applicable Replacement Contracts, in each case in the Agreed Form of such document subject only to amendments that comply with the requirements of paragraph 2.4, together with any other documents that are required to be delivered in relation to the relevant arrangement in accordance with the Applicable Deed of Accession or Transfer Scheme Certificate (as the case may be).

Permitted Amendments

2.4 The Agreed Forms of Deed of Operator Accession, Transfer Scheme Certificate and Deed of Public Sector Operator Accession and the Applicable Relevant Contracts and the Applicable Replacement Contracts shall only be amended in order to:

- (a) complete (in the manner indicated in the form of the Agreed Form of such document) any fact, matter or thing which is incomplete on the face of that Agreed Form of such document; or

¹⁸² Redaction.

- (b) correct any fact, matter or thing which is incorrect on the face of the Agreed Form of such document in relation to the proposed Operator succession and/or the applicable Existing Operator and Successor Operator; or
- (c) in accordance with the provisions of paragraph 6 (*Provisions under a Replacement Lease*),

PROVIDED ALWAYS THAT any such amendment shall be effected in a way which does not in any way alter or affect the substance and/or contractual effect of the applicable Agreed Form document.

Agreement of Documents

2.5 The Secretary of State, the intended Successor Operator, the Owner and the TMM shall enter into discussions and co-operate, acting promptly and reasonably with a view to agreeing the final form of the Restructuring Documents pursuant to paragraph 2.4 within a period of no more than 7 Working Days following receipt of the Operator Succession Notice under paragraph 2.3, (or, if the intended Successor Operator is a Public Sector Operator, such shorter period as may be required to achieve the Operator Succession Date notified pursuant to paragraph 2.2(b)). The Parties shall meet as necessary and in accordance with a timetable and procedures that they shall establish in order to address and comply with the required timetable for effecting the Operator Accession or Operator Transfer Scheme. Any aspects of the draft Restructuring Documents that are not agreed within that period shall constitute a Contract Dispute and shall be referred to an Expert for Expert determination pursuant to Schedule 8.2 (*Expert Determination*) for an interim decision pursuant to paragraph 5.4(c) of Schedule 8.2.

Completion

- 2.6 On the Operator Succession Date and pursuant to paragraph 1.7 above:
- (a) in the case of an Operator Accession, each of the Secretary of State, the Existing Operator, the Successor Operator and all contract counterparties shall enter into the Deed of Operator Accession or Deed of Public Sector Operator Accession, as applicable;
 - (b) in the case of an Operator Transfer Scheme, each of the Secretary of State and the Successor Operator will provide to each of the Owner and the TMM a completed Transfer Scheme Certificate together with all required attachments thereto; and
 - (c) each of the Secretary of State, the Successor Operator and all contract counterparties shall enter into the Applicable Relevant Contracts and the Applicable Replacement Contracts,

in each case in the Agreed Form of such documents, as amended in accordance with this paragraph 2.

2.7 In the case of an Operator Accession, completion of such Operator Accession shall take place by 2.00pm on the Operator Succession Date at the offices of the solicitors to the Secretary of State or at such other time and place as the Parties may agree, and each of the Parties (other than the Existing Operator and the Successor Operator) hereby acknowledges and confirms that its rights and obligations under the Applicable Replacement Contracts and Applicable Relevant Contracts shall remain in full force and effect in accordance with the

terms of the Deed of Operator Accession or the Deed of Public Sector Operator Accession (as applicable).

2.8 In the case of an Operator Transfer Scheme, each of the Owner and the TMM (and all other persons including the Senior Lenders) shall be entitled to treat the completed Transfer Scheme Certificate as having immediate effect upon the Operator Succession Date set out in the completed Transfer Scheme Certificate, and each of the Parties (other than the Existing Operator and the Successor Operator) hereby acknowledges and confirms that its rights and obligations under the Applicable Replacement Contracts and Applicable Relevant Contracts shall remain in full force and effect in accordance with the terms of the Transfer Scheme Certificate, notwithstanding any Operator Transfer Scheme and the substitution of the Successor Operator in place of the Existing Operator.

Costs

2.9 ¹⁸³

3. EXTENSION OF THE FRANCHISE AGREEMENT

Each of the Owner and the TMM acknowledges that the Secretary of State has certain powers within any franchise agreement to extend the term of that franchise agreement unilaterally for a limited period, and that, if the term of a Franchise Agreement is so extended before the Backstop Date, then the relevant Lease, and the participation of the relevant Operator in the other Transaction Documents to which it is party, will also be extended for such limited period ¹⁸⁴. The Secretary of State acknowledges that the Lease provides for an automatic extension of the term of the Lease in such circumstances. Each Party acknowledges and agrees that such an extension shall not constitute a replacement of the Operator, and none of the other provisions of this Schedule 2.1 shall apply in relation to that extension.

4. TERMINATION OF FRANCHISE AGREEMENT

4.1 If the Secretary of State serves a notice on an Operator terminating its Franchise Agreement for any reason, the Secretary of State shall notify the Owner and the TMM promptly, such notice to include the date on which that termination will take effect.

4.2 Without prejudice to its rights under the relevant Contracts, the Owner shall terminate the Lease to which the Operator is party, such termination to take effect on the date notified to the Owner by the Secretary of State.

4.3 The provisions of paragraphs 1 (*Section 54 Undertakings*) and 2 (*Process*) of this Schedule 2.1 shall apply in the event that the Secretary of State serves a notice in accordance with this paragraph 4.

5. OPERATOR CONTINUATION

Where the then current Operator enters into a new Franchise Agreement with the Secretary of State that commences immediately following the expiry by effluxion of time of the preceding Franchise Agreement:

¹⁸³ Redaction.

¹⁸⁴ Redaction.

- (a) the undertaking in paragraph 1 (*Section 54 Undertaking*) shall be deemed satisfied provided that the remaining requirements of this paragraph 5 are all satisfied;
- (b) all the applicable Transaction Documents other than the Lease shall continue on their terms;
- (c) that Operator shall enter into a Replacement Lease; and
- (d) there shall be no requirement on the part of the Secretary of State to effect an Operator Transfer Scheme or to require that Operator to enter into an Operator Accession.

6. PROVISIONS UNDER A REPLACEMENT LEASE

Term of Replacement Lease

6.1 The maximum duration of any Replacement Lease shall be at the sole discretion of the Secretary of State, except that the Secretary of State may not choose a Scheduled Franchise Expiry Date that (otherwise than by way of potential exercise of the Secretary of State's powers to extend the terms of a franchise agreement unilaterally for a limited period, as provided for in paragraph 3) is later than the Backstop Date without the Owner's consent.

6.2 Each of the Owner and the Secretary of State acknowledges and agrees that, if the Owner consents pursuant to paragraph 6.1 to the entry into of a Replacement Lease with a Scheduled Franchise Expiry Date that (otherwise than by way of potential exercise of the Secretary of State's powers to extend the terms of a franchise agreement unilaterally for a limited period as provided for in paragraph 3) is later than the Backstop Date, then the leasing arrangements shall comprise:

- (a) a Replacement Lease with a scheduled Expiry Date on the Backstop Date; and
- (b) a further reversionary lease between the Owner and the relevant Operator, the term of which shall commence on the Backstop Date, and the parties to that reversionary lease shall negotiate and agree the terms of such lease that will apply for the period beyond the Backstop Date before entering into the Replacement Lease.

6.3 The Owner agrees with the Secretary of State that, if before the Backstop Date the Owner agrees (whether in pursuant to paragraph 6.1 or otherwise) to enter into any leasing arrangement relating to the Units with an Operator that will have effect after the Backstop Date (other than by way of the Secretary of State's powers to extend the term of a franchise agreement unilaterally for a limited period, in which case paragraph 3 applies), then the Owner and the Secretary of State shall negotiate and agree necessary associated documentation, including a direct agreement between the Owner and the Secretary of State, that will apply for the period after the Backstop Date and that includes provisions that enable the Secretary of State to fulfil its then current statutory obligations to secure the continued operation of passenger railway services on the Thameslink Network.

[]¹⁸⁵

6.4 []¹⁸⁶

¹⁸⁵ Redaction.

- 6.5 []¹⁸⁷
 - 6.6 []¹⁸⁸
 - 6.7 []¹⁸⁹
 - 6.8 []¹⁹⁰
 - 6.9 []¹⁹¹
 - 6.10 []¹⁹²
 - []¹⁹³
 - 6.11 []¹⁹⁴
 - 6.12 []¹⁹⁵
 - 6.13 []¹⁹⁶
 - 6.14 []¹⁹⁷
 - 6.15 []¹⁹⁸
 - 6.16 []¹⁹⁹
 - 6.17 []²⁰⁰
 - 6.18 []²⁰¹
 - 6.19 []²⁰²
-

¹⁸⁶ Redaction.
¹⁸⁷ Redaction.
¹⁸⁸ Redaction.
¹⁸⁹ Redaction.
¹⁹⁰ Redaction.
¹⁹¹ Redaction.
¹⁹² Redaction.
¹⁹³ Redaction.
¹⁹⁴ Redaction.
¹⁹⁵ Redaction.
¹⁹⁶ Redaction.
¹⁹⁷ Redaction.
¹⁹⁸ Redaction.
¹⁹⁹ Redaction.
²⁰⁰ Redaction.
²⁰¹ Redaction.

6.20 ²⁰³

6.21 ²⁰⁴

6.22 ²⁰⁵

²⁰⁶

6.23 ²⁰⁷

Rental

6.24 The Rental Schedule of each Replacement Lease shall be determined by reference to the Owner Financial Model on or before the date of entry into such Replacement Lease, provided that the Rental payable from the commencement of such Replacement Lease shall be payable on the same terms as the Rental that was payable under the Reference Lease immediately prior to the expiry or termination of such Reference Lease.

6.25 On the first day of a Replacement Lease entered into between a Successor Operator and the Owner that occurs after any Unit, Associated Equipment or Simulator has been Delivered, the Successor Operator shall pay Rental in respect of any Units, Associated Equipment and Simulators that have been Delivered on that date (where relevant) and have not suffered an Event of Loss, such Rental being calculated in accordance with the relevant part of the Rental Schedule of the Lease, from the first day of the Replacement Lease until the subsequent Rental Payment Date, by multiplying the Rental by a factor of:

$$\frac{PD}{MD}$$

where:

PD means the number of days between and inclusive of the first day of the Replacement Lease and the first Rental Payment Date to occur under that Replacement Lease but exclusive of that Rental Payment Date; and

MD means the number of days between and inclusive of the last Rental Payment Date under the Reference Lease and the first Rental Payment Date to occur under that Replacement Lease, but exclusive of that Rental Payment Date.

6.26 If an Operator Default Indemnity Period under paragraph 2.2 of Part 1 (*Operator default of Lease*) of Schedule 2.4 (*Early Termination of the Lease*) commences:

(a) after any Unit, Associated Equipment or Simulator has been Delivered; and

²⁰² Redaction.

²⁰³ Redaction.

²⁰⁴ Redaction.

²⁰⁵ Redaction.

²⁰⁶ Redaction.

²⁰⁷ Redaction.

- (b) at a time when the relevant Operator has not paid the Rental due at the last Rental Payment Date under the relevant Lease,

that Operator Default Indemnity Period shall, for the purposes of the calculation of PD in paragraph 6.25, be deemed to be a Replacement Lease.

□²⁰⁸

6.27 □²⁰⁹

Redelivery Condition

6.28 The Owner shall notify the Secretary of State promptly upon delivering a notice to the Operator under paragraph 6.3 or 6.4 of schedule 5 (*Operational and Maintenance Undertakings*) of the Lease requiring the Operator to put in place, or to increase the amount of, any collateral for the performance by the Operator of its obligations under paragraph 1 (*Redelivery*) of schedule 13 (*Redelivery Condition*) of the Lease.

6.29 □²¹⁰

6.30 If and to the extent that the amounts payable by the Owner pursuant to paragraph 6.29 are insufficient for the purpose of putting the Units back in the Redelivery Condition (Lease), the Successor Operator shall, subject to paragraph 4.9 or 4.10 (as applicable) of schedule 5 of the Lease, pay the cost of the necessary remedial work.

6.31 The provisions of paragraphs 6.29 and 6.30 shall not affect or reduce the obligations of the Existing Operator under schedule 13 (*Redelivery Condition Schedule*) of the Lease in relation to the Redelivery Condition (Lease) of Units and Associated Equipment at the end of the Reference Lease to which it is party, nor its liability to the Owner in relation thereto. The Existing Operator acknowledges that, to the extent that the Successor Operator is required to pay the costs of necessary remedial work under paragraph 6.30, that Successor Operator shall be subrogated to the rights of the Owner under the Reference Lease in relation to that liability.

6.32 □²¹¹

7. LIABILITY

Successor Operator

7.1 With effect from the Operator Succession Date:

- (a) the Successor Operator shall accept, observe, perform and discharge all obligations of the Operator (other than the Retained Obligations) under the Restructuring Documents and all agreements ancillary thereto, in place (and to the exclusion) of the Existing Operator to the extent the same shall fall due to be performed on or after the Operator Succession Date;

²⁰⁸ Redaction.

²⁰⁹ Redaction.

²¹⁰ Redaction.

²¹¹ Redaction.

- (b) ²¹²
- (c) other than in the circumstances described in paragraph 5 (*Operator Continuation*) or as provided in paragraph 7.2, the Successor Operator shall not have any liability for any accrued but unsatisfied liabilities of the Existing Operator (as at the Operator Succession Date) under or for any breaches of, or defaults under any of the Restructuring Documents and all agreements ancillary thereto to the extent the same occurred prior to the Operator Succession Date unless the Existing Operator is an Affiliate of the Successor Operator and the relevant succession has not occurred upon the expiry by effluxion of time of the Existing Operator's Franchise Agreement; and
- (d) ²¹³
- (e) ²¹⁴
- 7.2 ²¹⁵
- 7.3 ²¹⁶

Existing Operator

- 7.4 With effect from the Operator Succession Date:
- (a) each of the Owner, the TMM and the Secretary of State releases and discharges the Existing Operator from all further obligations of the Operator (other than the Retained Obligations) under the Contracts and all agreements ancillary thereto to the extent the same shall fall due to be performed after the Operator Succession Date;
 - (b) the Existing Operator releases and discharges each of the Owner, the TMM and the Secretary of State from its respective obligations to the Operator (other than those that relate to the Retained Rights) under the Contracts and all agreements ancillary thereto, to the extent the same shall fall due to be performed after the Operator Succession Date;
 - (c) the Existing Operator shall continue to observe, perform and discharge the Retained Obligations of the Operator under the Contracts and all agreements ancillary thereto to the extent the same shall fall due to be performed after the Operator Succession Date;
 - (d) each of the TMM, the Owner and the Secretary of State:
 - (i) agrees that the Existing Operator may exercise and enjoy the Retained Rights of the Operator under the Contracts and all agreements ancillary thereto; and

²¹² Redaction.

²¹³ Redaction.

²¹⁴ Redaction.

²¹⁵ Redaction.

²¹⁶ Redaction.

- (ii) undertakes to observe, perform and discharge its respective obligations that relate to the Retained Rights of the Operator under the Contracts and all agreements ancillary thereto for the benefit of the Existing Operator,

to the extent the same shall fall due to be performed after the Operator Succession Date; and

- (e) save as provided in paragraph 7.2, the Existing Operator shall remain liable for all accrued but unsatisfied liabilities of the Existing Operator (as at the Operator Succession Date) under or for any breaches of, or defaults under any of the Contracts and all agreements ancillary thereto by the Existing Operator, to the extent the same occurred prior to the Operator Succession Date.

No Secretary of State liability for Operator non-performance

7.5 The TMM and the Owner agree and acknowledge that, notwithstanding the undertaking by the Secretary of State in paragraph 1, save as provided in paragraphs 7.6 and 8 of this Schedule 2.1 or paragraphs 2.2 to 2.4 of Part 1 (*Operator Default*) of Schedule 2.4 (*Early Termination of the Lease*), or otherwise expressly provided in this Agreement, the Secretary of State shall have no obligation or liability to the TMM or the Owner in respect of any Operator's obligations under any Contract.

7.6 ²¹⁷

Continuation of Performance Remedial Plan implementation

7.7 ²¹⁸

8. OPERATOR EXPOSURE LIMIT

8.1 The Secretary of State agrees that, if and to the extent that, the outstanding liability to the Owner under and in accordance with the terms of the applicable Reference Lease of an Existing Operator as at the Operator Succession Date on which that Existing Operator is replaced as Operator exceeds the Operator Exposure Limit, the Secretary of State shall, indemnify the Owner in respect of such excess.

8.2 If the Secretary of State makes any payment to the Owner pursuant to the indemnity contained in paragraph 8.1, the Secretary of State may, acting reasonably (and in particular having regard to the likely costs of enforcement and extent of any recovery), direct the Owner to enforce any rights that the Owner may have against the Operator under the Contracts, and any associated guarantee or security in respect of such payment. Any sums recovered by the Owner in respect of its own claims and the claim made at the direction of the Secretary of State will be applied:

- (a) first, in discharge of the reasonable costs of recovery; and
- (b) second, shared between the Owner and the Secretary of State pro rata to the value of their respective awards in respect of such claims,

²¹⁷ Redaction.

²¹⁸ Redaction.

and the Owner shall hold the Secretary of State's share on trust for him.

9. PUBLIC SECTOR OPERATOR

Secretary of State Primary Liability

9.1 Where the Secretary of State performs its undertakings set out in paragraph 1 (*Section 54 Undertakings*) of this Schedule 2.1 by appointing a Public Sector Operator as the Successor Operator, the Secretary of State shall, for so long as the Public Sector Operator is the Operator, be Primarily Liable under any Contract to which that Public Sector Operator is party.

Notices

9.2 Where the Secretary of State is Primarily Liable under any Contract and the Secretary of State is not or is no longer a party to that Contract, each of the Owner and the TMM shall nevertheless ensure that the Secretary of State is served with a copy of any notice which is served on any relevant contracting party, at the same time as the notice is served on the relevant contracting party.

Entitled to self-insure

9.3 To the extent that the Secretary of State or an entity owned by the Secretary of State is party to a Contract as the Operator, the Secretary of State shall be entitled to act as self-insurer for any insurance which the Secretary of State or such entity is, as Operator under that Contract, under an obligation to procure under that Contract, and in so doing, the Secretary of State shall, on the occurrence of any risk that would have been the subject of such insurance if it had been procured by the Operator in accordance with the terms of such contract, pay to the Owner, the Operator and/or the TMM (as the case may be) an amount equal to the insurance proceeds that would have been payable under the relevant insurance had such insurance continued to be available on the same terms and conditions as are required under the relevant Contract. Any deductible that would have been payable by any of the Parties to this Agreement in respect of the occurrence of that risk had the relevant insurance continued to be so available shall be paid by that Party in the same amount.

9.4 The Secretary of State may, at any time when a Public Sector Operator is the Operator, deliver an Operator Succession Notice in accordance with paragraph 2.2 not less than 20 Working Days prior to the relevant Operator Succession Date, notifying the Owner and the TMM of his intention to effect either an Operator Accession or an Operator Transfer Scheme and:

- (a) where the proposed Successor Operator is another Public Sector Operator, the provisions of this paragraph 9 shall continue to apply following that Operator Succession Date; or
- (b) where the proposed Successor Operator is not another Public Sector Operator, the provisions of this paragraph 9 shall cease to apply with effect from the relevant Operator Succession Date save only in relation to any liabilities and obligations of the outgoing Public Sector Operator that it is required to satisfy, observe, perform and discharge after the Operator Succession Date in accordance with paragraph 7 (*Liability*).

10. ROLLING STOCK LIVERY

10.1 The Owner shall act reasonably in relation to the livery and/or branding in which Rolling Stock is accepted for re-delivery from an Operator under a Lease with a view to avoiding any unnecessary change of livery and/or branding at the end of a franchise.

10.2 The Owner shall accept redelivery of any item of Rolling Stock in branding and/or livery where the relevant Operator has provided to a Successor Operator an irrevocable licence of any such branding and/or livery or an irrevocable undertaking that no rights will be enforced in relation to that branding and/or livery in a form specified by the Secretary of State, and the Secretary of State has confirmed this to the Owner.

10.3 Where the circumstances described under paragraph 10.2 do not arise but the relevant Operator is liable under the relevant franchise agreement to pay to a Successor Operator the costs of removing livery and/or branding, the Owner shall accept redelivery of Rolling Stock under a Contract in livery and/or branding specified at the time of redelivery as acceptable by the Secretary of State provided that such Rolling Stock is to be used by a Successor Operator and it is agreed by the Secretary of State and the Owner, acting reasonably, that no additional cost will be incurred by the Owner by reason of acceptance of the Rolling Stock in such livery and/or branding.

APPENDIX TO SCHEDULE 2.1

□²¹⁹

²¹⁹ Redaction.

SCHEDULE 2.2

□²²⁰

Part 1

□²²¹

²²⁰ Redaction.

²²¹ Redaction.

Part 2

[NOT USED]

Part 3

□²²²

²²² Redaction.

Part 4

□²²³

²²³ Redaction.

Part 5

□²²⁴

²²⁴ Redaction.

APPENDIX

□²²⁵

²²⁵ Redaction.

SCHEDULE 2.3

Early Termination of the TSA

Part 1

□²²⁶

1. □²²⁷

□²²⁸

1.1 Upon the occurrence of a TSA TMM Event of Default, the following shall apply:

(a) the Operator shall promptly notify the Secretary of State of that TSA TMM Event of Default and any action taken by the Operator and Owner in respect thereof (including any information relating to the delivery of, or performance of the TMM in relation to, a TMM Default Remediation Notice (as defined in paragraph 3 (*TMM Remediation Plan*) of schedule 13.1 (*TMM Events of Default*) of the TSA)), providing, in each case a reasonably detailed description thereof;

(b) the Operator and the Owner shall provide such further information in respect of that TSA TMM Event of Default as may be reasonably requested by the Secretary of State from time to time;

(c) □²²⁹

(d) □²³⁰

□²³¹

1.2 □²³²

2. CONTINUED EXERCISE OF RIGHTS

Where a TSA TMM Event of Default has occurred, the Owner and the Operator shall continue to exercise their respective rights under the TSA to procure that the other Parties comply with their respective obligations under the TSA until the termination of the TSA.

3. □²³³

²²⁶ Redaction.

²²⁷ Redaction.

²²⁸ Redaction.

²²⁹ Redaction.

²³⁰ Redaction.

²³¹ Redaction.

²³² Redaction.

²³³ Redaction.

Part 2

Operator default of TSA

1. NOTIFICATION OF SECRETARY OF STATE

Notification

1.1 Upon the occurrence of a TSA Operator Event of Default (and unless (i) it has already received a request to terminate the Operator's participation in the TSA from the Secretary of State under this Agreement, or (ii) the TSA Operator Event of Default is one arising under paragraph 1(f), 1(g) or 1(h) of schedule 13.2 (*Operator Events of Default*) of the TSA, in which case paragraph 2.2 shall apply), the TMM shall:

- (a) notify the Secretary of State and the Owner of that TSA Operator Event of Default and any action taken or proposed to be taken by the TMM in respect thereof, providing in each case a reasonably detailed description thereof; and
- (b) provide the Secretary of State with such further information in respect of that TSA Operator Event of Default and the TMM's actions or proposed actions in respect thereof as may be reasonably requested by the Secretary of State from time to time.

Lease Owner Termination

1.2 The issue of a notification pursuant to paragraph 1.1(a) shall constitute an Operator Default Notice, and the provisions of paragraph 2 (*Secretary of State's Rights following Operator Default*) of Part 1 (*Operator Default of Lease*) of Schedule 2.4 (*Early Termination of Lease*) shall apply.

2. TERMINATION UPON OPERATOR DEFAULT AND CROSS TERMINATION

TSA termination

2.1 If the TMM issues a TSA Operator Termination Notice in accordance with paragraph 3 (*Termination*) of schedule 13.2 (*Operator Events of Default*) of the TSA terminating the TSA, the provisions of Schedule 2.1 (*Section 54 Undertakings*) shall apply, subject to the limitations set out in paragraph 1.5 of that Schedule 2.1.

Obligation to terminate TSA upon Operator cross termination

2.2 Where a TSA Operator Event of Default has occurred and that TSA Operator Event of Default is the expiry or termination for any reason other than effluxion of time of the Franchise Agreement, the issue of an MSA Operator Termination Notice or the issue of the Lease Operator Termination Notice, then the TMM shall issue a TSA Operator Termination Notice (with a termination date no later than the date of termination specified in the relevant MSA Operator Termination Notice or Lease Operator Termination Notice) upon becoming so entitled in accordance with paragraph 3 (*Termination*) of schedule 13.2 (*Operator Events of Default*) of the TSA.

Part 3

Owner default of TSA

1. NOTIFICATION OF SECRETARY OF STATE AND RESTRICTION ON TERMINATION

Notification

- 1.1 Upon the occurrence of a TSA Owner Event of Default, the TMM shall promptly:
- (a) notify the Secretary of State of that TSA Owner Event of Default and any action taken by the TMM in respect thereof, providing in each case a reasonably detailed description thereof; and
 - (b) provide the Secretary of State with such further information in respect thereof as may be reasonably requested by the Secretary of State from time to time.

Restriction on termination

1.2 The TMM will consult in good faith with the Secretary of State and the Operator following the delivery of notice under paragraph 1.1(a) for a period of 21 days (or less if the Secretary of State agrees) and may not exercise its rights to issue a TSA Owner Termination Notice under paragraph 4 (*Termination*) of schedule 13.3 (*Owner Events of Default*) of the TSA until that consultation period has expired or otherwise ended.

2. ²³⁴

²³⁴ Redaction.

Part 4

□²³⁵

²³⁵ Redaction.

Part 5

Operator TSA Voluntary Termination Right

1. RESTRICTION ON TERMINATION

The Operator shall not issue an Operator TSA Voluntary Termination Notice under schedule 13.5 (*Operator Voluntary Termination Right*) of the TSA without the Secretary of State's prior written consent, such consent not to be unreasonably withheld if:

- (a) the alternative arrangements for the maintenance of the Equipment proposed by the Operator ²³⁶ have been approved by the Secretary of State in his absolute discretion, including the terms thereof under Schedule 4.3 (*Secretary of State Authorisation of Variations*); and
- (b) the Secretary of State is satisfied in his absolute discretion that such alternative arrangements will come into force immediately following termination of the TSA.

2. TERMINATION OF TSA

If the Operator issues an Operator TSA Voluntary Termination Notice in accordance with schedule 13.5 (*Operator Voluntary Termination Right*) of the TSA:

- (a) the TSA shall terminate in accordance with paragraph 3 (*Consequences of Termination*) of schedule 13.5 of the TSA; and
- (b) the MSA and Lease shall continue and the relevant provisions of schedule 12.2 (*Termination of the TSA*) of the Lease shall apply in relation to the procurement of alternative maintenance.

²³⁶ Redaction.

Part 6

□²³⁷

²³⁷ Redaction.

SCHEDULE 2.4

□²³⁸

Part 1

□²³⁹

²³⁸ Redaction.

²³⁹ Redaction.

Part 2

□²⁴⁰

²⁴⁰ Redaction.

Part 3

□²⁴¹

²⁴¹ Redaction.

SCHEDULE 2.5

Early Termination of the TSSSA

Part 1

Supplier default of TSSSA

1. NOTIFICATION OF SECRETARY OF STATE

Upon the occurrence of a TSSSA Supplier Event of Default, the following shall apply:

- (a) the Operator shall promptly notify the Secretary of State and the Owner of that TSSSA Supplier Event of Default, providing a reasonably detailed description thereof and shall provide such further information in respect thereof as may be reasonably requested by the Secretary of State and the Owner from time to time;
- (b) the Operator may, at any time and at its sole discretion, serve a Supplier Default Remediation Notice on the Supplier and the Owner, as defined in, and under paragraph 2 (*Supplier Remediation Plan*) of schedule 12.1 (*Supplier Events of Default*) of the TSSSA; and
- (c) the Operator may not issue a Supplier Notice of Default as defined in, and under paragraph 3.1 of schedule 12.1 of the TSSSA, unless its has consulted with the Secretary of State and obtained the approval of the Secretary of State under paragraph 2.

2. RESTRICTION ON TERMINATION

The Operator agrees that it will not exercise its right to terminate the TSSSA for a TSSSA Supplier Event of Default without the prior written consent of the Secretary of State, such consent not to be unreasonably withheld if:

- (a) alternative arrangements for technical support and spares supply have been approved by the Secretary of State, in his absolute discretion, including the terms thereof under clause 11 (*Entry into and amendment of this Agreement and Other Contracts*); and
- (b) the Secretary of State, is satisfied in his absolute discretion, that such alternative arrangements will come into force immediately following termination of the TSSSA.

Part 2

Operator default of TSSSA

1. NOTIFICATION OF SECRETARY OF STATE

Notification

1.1 Upon the occurrence of a TSSSA Operator Event of Default (and unless (i) it has already received a request to terminate the Operator's participation in the TSSSA from the Secretary of State under this Agreement, or (ii) the TSSSA Operator Event of Default is one arising under paragraph 1(g) or 1(h) of schedule 12.2 (*Operator Events of Default*) of the TSSSA, in which case paragraph 2.2 shall apply), the TMM, in its capacity as Supplier, shall:

- (a) notify the Secretary of State and the Owner of that TSSSA Operator Event of Default and any action taken or proposed to be taken by the Supplier in respect thereof, providing in each case a reasonably detailed description thereof; and
- (b) provide the Secretary of State with such further information in respect of that TSSSA Operator Event of Default and the Supplier's actions or proposed actions in respect thereof as may be reasonably requested by the Secretary of State from time to time.

Lease Owner Termination

1.2 The issue of a notification pursuant to paragraph 1.1(a) shall constitute an Operator Default Notice, and the provisions of paragraph 2 (*Secretary of State's Rights following Operator Default*) of Part 1 (*Operator default*) of Schedule 2.4 (*Early Termination of Lease*) shall apply.

2. TERMINATION UPON OPERATOR DEFAULT AND CROSS TERMINATION

TSA termination

2.1 If the Supplier issues a TSSSA Operator Termination Notice in accordance with paragraph 3 (*Termination*) of schedule 12.2 (*Operator Events of Default*) of the TSSSA terminating the TSSSA, the provisions of Schedule 2.1 (*Section 54 Undertakings*) shall apply, subject to the limitations set out in paragraph 1.5 of that Schedule 2.1.

Obligation to terminate TSA upon Operator cross termination

2.2 Where a TSSSA Operator Event of Default has occurred and that TSSSA Operator Event of Default is the expiry or termination for any reason other than effluxion of time of the Franchise Agreement, the issue of an MSA Operator Termination Notice or the issue of the Lease Operator Termination Notice, then the TMM shall issue a TSSSA Operator Termination Notice (with a termination date no later than the date of termination specified in the relevant MSA Operator Termination Notice or Lease Operator Termination Notice) upon becoming so entitled in accordance with paragraph 3 (*Termination*) of schedule 12.2 (*Operator Events of Default*) of the TSSSA.

Part 3

Owner default of TSSSA

1. NOTIFICATION OF SECRETARY OF STATE AND RESTRICTION ON TERMINATION

Notification

1.1 Upon the occurrence of a TSSSA Owner Event of Default, the TMM shall, in its capacity as Supplier, promptly:

- (a) notify the Secretary of State and the Operator of that TSSSA Owner Event of Default and any action taken by the TMM in respect thereof, providing in each case a reasonably detailed description thereof; and
- (b) provide the Secretary of State with such further information in respect thereof as may be reasonably requested by the Secretary of State from time to time.

Restriction on termination

1.2 The TMM will consult in good faith with the Secretary of State and the Operator following the delivery of notice under paragraph 1.1(a) for a period of 21 days (or less if the Secretary of State agrees) and may not exercise its rights to issue a TSSSA Owner Termination Notice under paragraph 3 (*Termination*) of schedule 12.3 (*Owner Events of Default*) of the TSSSA until that consultation period has expired or otherwise ended.

2. TERMINATION OF OWNER'S PARTICIPATION IN THE TSA UPON OWNER DEFAULT

Termination of Owner's Participation

2.1 If the TMM serves a TSSSA Owner Termination Notice in accordance with paragraph 3 (*Termination*) of schedule 12.3 (*Owner Events of Default*) of the TSSSA, then:

- (a) the Owner's participation in the TSSSA shall terminate on the date of that TSSSA Owner Termination Notice or from such later date as is specified in that TSSSA Owner Termination Notice; and
- (b) paragraph 4 (*Supplier's and Operator's rights and obligations following termination of Owner participation*) of schedule 12.3 of the TSSSA shall apply;
- (c) the Lease and the MSA shall continue in accordance with their terms; and
- (d) the Operator and the Supplier shall promptly meet with a view to agreeing (each acting reasonably) relevant amendments to the TSSSA to reflect the termination of the Owner's participation.

No cross termination of Contracts unless otherwise stated

2.2 The termination of the Owner's participation in the TSSSA pursuant to paragraph 2.1 shall not give rise to any right to terminate any other Contract by the parties thereto and those Contracts shall continue on their terms, save as expressly provided in the relevant Contract.

Part 4

TSSSA Voluntary Termination Right

1. RESTRICTION ON TERMINATION

The Operator shall not issue a TSSSA Operator Voluntary Termination Notice under schedule 12.4 (*Operator Voluntary Termination Right*) of the TSSSA without the Secretary of State's prior written consent, such consent not to be unreasonably withheld if:

- (a) alternative arrangements for the maintenance of the Equipment have been approved by the Secretary of State in his absolute discretion, including the terms thereof under clause 11 (*Entry into and amendment of this Agreement and Other Contracts*); and
- (b) the Secretary of State is satisfied in his absolute discretion that such alternative arrangements will come into force immediately following termination of the TSSSA.

SCHEDULE 2.6

Termination of Contracts for Force Majeure

1. NOTIFICATION OF SECRETARY OF STATE OF FORCE MAJEURE EVENTS

1.1 Upon the occurrence of a Force Majeure Event ²⁴² under a Contract, the Affected Party under such Contract shall notify the Secretary of State of such occurrence, including providing the Secretary of State with a reasonably detailed description of the circumstances of such Force Majeure Event, by copy of the notification given by that Party under the relevant Contract in respect of the Force Majeure Event.

1.2 Where Acceptance has not yet occurred in respect of the final Unit in the Contract Programme and a Force Majeure Event under the MSA ²⁴³ has occurred, the Affected Party shall, either in the notification provided under paragraph 1.1, or in a separate notice delivered promptly following the occurrence of the relevant event, confirm to the Secretary of State ²⁴⁴.

1.3 The Affected Party shall regularly (and at least weekly) provide updates to the Secretary of State and the other Parties in respect of any Force Majeure Event notified pursuant to paragraph 1.1 that is on-going and the action it and the other parties to the relevant Contract are taking in respect thereof. The Parties shall provide such further information in respect of any such Force Majeure Event as is reasonably requested by the Secretary of State from time to time.

1.4 The Affected Party shall notify the other Parties as soon as practicable after any Force Majeure Event ceases or no longer causes such person to be unable to comply with its obligations under the relevant Contract. Following such notification, the relevant Contract shall continue to be performed on the terms existing immediately prior to the occurrence of such Force Majeure Event.

2. ²⁴⁵

Where Acceptance has not yet occurred in respect of the final Unit in the Contract Programme, and a Force Majeure Event under the MSA ²⁴⁶ has occurred and is continuing, and the conditions set out in paragraph 3.3 of schedule 18 (*Force Majeure*) of the MSA are satisfied, the Parties shall consult for ²⁴⁷ days (or such shorter period as they agree, taking into account the provisions of paragraph 3.2 of Schedule 18 of the MSA, such that the consultation period will end no later than the date on which a Party would be entitled to require a termination or ²⁴⁸ of the MSA under paragraph 3.1 or 3.2 of Schedule 18 of the

²⁴² Redaction.

²⁴³ Redaction.

²⁴⁴ Redaction.

²⁴⁵ Redaction.

²⁴⁶ Redaction.

²⁴⁷ Redaction.

²⁴⁸ Redaction.

MSA) to determine whether to terminate the MSA in relation to the Force Majeure Affected Equipment (the *MSA FM Consultation Period*).

3. ²⁴⁹

4. ²⁵⁰

5. ²⁵¹

6. ²⁵²

7. ²⁵³

8. ²⁵⁴

9. ²⁵⁵

10. ²⁵⁶

11. SURVIVAL

The provisions of this Schedule 2.6 shall survive termination of this Agreement.

²⁴⁹ Redaction.

²⁵⁰ Redaction.

²⁵¹ Redaction.

²⁵² Redaction.

²⁵³ Redaction.

²⁵⁴ Redaction.

²⁵⁵ Redaction.

²⁵⁶ Redaction.

SCHEDULE 2.7

Voluntary Termination of Contacts by the Secretary of State

1. TERMINATION BY THE SECRETARY OF STATE

The Secretary of State may require termination of all of the Contracts and this Agreement at any time as follows:

- (a) if the Secretary of State wishes to terminate the Contracts and this Agreement under this paragraph 1, he shall give notice to the other Parties stating:
 - (i) that the Secretary of State is terminating the Contracts and this Agreement under this paragraph 1;
 - (ii) that the Contracts and this Agreement will terminate on the date specified in the notice, which shall be a minimum of 30 days after the date of receipt of the notice;
 - (iii) the person to whom the Secretary of State requires the Existing Owner to transfer its rights, title and interest in and to the Train Assets in accordance with paragraph 1 (*Asset Transfer*) of Schedule 2.8 (*Transfer of Rolling Stock and Contracts upon Termination*);
 - (iv) the manner in which the Secretary of State has chosen to exercise his rights under paragraph 3 (*Novation of MSA Warranties*) of Schedule 2.8; and
- (b) the Contracts and this Agreement will terminate simultaneously on the date specified in the notice referred to in paragraph 1(a)(ii) and the provisions (if any) of the Contracts making reference to this paragraph 1 shall apply.

2. OPERATOR RIGHTS UPON VOLUNTARY TERMINATION BY SECRETARY OF STATE

On termination of the Contracts and this Agreement under paragraph 1 (*Termination by the Secretary of State*), the rights and obligations of the Operator, as between the Operator and the Secretary of State, shall be as set out in the Franchise Agreement.

3. COMPENSATION PAYABLE TO OWNER

On termination of the Contracts and this Agreement under paragraph 1 (*Termination by the Secretary of State*), the Secretary of State shall pay the Owner the amount set out in paragraph 1 (*Compensation payable to the Owner*) of Schedule 3.3 (*Termination Sum Payable on Voluntary Termination or Default by Secretary of State*).

4. COMPENSATION PAYABLE TO TMM

On termination of the Contracts and this Agreement under paragraph 1 (*Termination by the Secretary of State*), the Secretary of State shall pay the TMM []²⁵⁷.

²⁵⁷ Redaction.

SCHEDULE 2.8

Transfer of Rolling Stock and Contracts upon Termination

1. ASSET TRANSFER

1.1 In the event that the Owner is required to transfer its rights, title and interest in and to the Train Assets (subject to the Permitted Liens) to the Secretary of State, or as directed by the Secretary of State, pursuant to any of:

- (a) Clause 14.9(d);
- (b) clause 17.4;
- (c) ²⁵⁸
- (d) ²⁵⁹
- (e) ²⁶⁰
- (f) ²⁶¹
- (g) ²⁶²
- (h) paragraph 1(a)(iii) of Schedule 2.7 (*Voluntary Termination of Contracts by the Secretary of State*);
- (i) paragraph 2.13(d) or paragraph 3.12 of Schedule 3.1 (*Termination Sum Payable on Termination for Owner Default*); and
- (j) paragraph 4.5(a)(iii) of Schedule 4.3 (*Secretary of State Authorisation of Variations*),

the Secretary of State shall serve a written notice to the Owner requiring the transfer of the Train Assets on such date as is specified in the relevant provisions of this Agreement for transfer of such assets or, where no such date is specified, on such date or dates as the Secretary of State may specify in such notice.

1.2 Following delivery of the Secretary of State's written notice referred to in paragraph 1.1 above, the Owner and the Secretary of State shall promptly execute (and the Secretary of State shall procure that the New Owner, if applicable, executes), and comply with their respective obligations under, the Asset Transfer Agreement.

1.3 The Owner acknowledges that payment by the Secretary of State of:

²⁵⁸ Redaction.

²⁵⁹ Redaction.

²⁶⁰ Redaction.

²⁶¹ Redaction.

²⁶² Redaction.

- (a) the amounts described in clause 14.9(b);
- (b) the amounts set out in paragraph 1 (*Compensation payable to the Owner*) of Schedule 3.3 (*Termination Sum Payable on Voluntary termination or Default by Secretary of State*) in accordance with clause 17.3(a);
- (c) ²⁶³
- (d) ²⁶⁴
- (e) the Revised Senior Debt Termination Amount in accordance with paragraph 4 (*Termination Sum Payable following Lease Owner Non-MR/EFV Termination Event*) of Schedule 3.1;
- (f) the Net Adjusted Highest Compliant Tender Price in accordance with paragraph 2.15 or 2.17 of Schedule 3.1 (*Termination Sum Payable on Termination for Owner Default*);
- (g) the Net Adjusted Estimated Fair Value of the Train Assets in accordance with paragraph 3.8 of Schedule 3.1;
- (h) the Force Majeure Termination Sum in accordance with paragraph 1.1 of Schedule 3.2 (*Sum Payable on Force Majeure Termination*);
- (i) the amounts set out in paragraph 1 (*Compensation payable to the Owner*) of Schedule 3.3 (*Termination Sum Payable on Voluntary termination or Default by Secretary of State*) in accordance with paragraph 3 (*Compensation payable to the Owner*) of Schedule 2.7 (*Voluntary Termination of Contracts by the Secretary of State*);

(as applicable) in accordance with the relevant provisions of this Agreement and the Asset Transfer Agreement shall constitute consideration for the performance by the Owner of its obligations pursuant to paragraphs 1.1 and 1.2 of this Schedule 2.8.

1.4 The Parties agree that, provided the Owner (or a duly authorised agent or attorney on its behalf or a mortgagee, chargee, receiver or administrator on behalf of the relevant mortgagee or chargee) executes and delivers the Bill of Sale and any other Transfer Documents (as defined in the Asset Transfer Agreement) for which the Owner is responsible to the Secretary of State or the New Owner (as applicable) in accordance with the Asset Transfer Agreement, the Secretary of State shall pay the relevant termination sum required to be paid by it in accordance with the terms of this Agreement and the Secretary of State's obligation to pay such sum shall not be conditional on the Transfer Documents operating to legally transfer any rights, title or interest in the Train Assets to the Secretary of State or another person who he nominates as the New Owner.

1.5 The Owner further agrees to appoint:

- (a) the Security Trustee as its attorney pursuant to a power of attorney contained in the Borrower Charge; or

²⁶³ Redaction.

²⁶⁴ Redaction.

- (b) following the Senior Discharge Date, the Secretary of State pursuant to a power of attorney contained in the SoS Debenture,

in each case to perform, inter alia, all such acts and execute all such agreements, deeds, documents, letters and amendments as the Secretary of State may deem desirable in order to effect an efficient and timely transfer of the Train Assets pursuant to and in accordance with the terms of the Asset Transfer Agreement.

1.6 As of the date hereof, the Owner further agrees to grant, by way of security, a charge over the Train Assets in favour of the Secretary of State pursuant to the terms of the Borrower Charge, the SoS Debenture and the Intercreditor Deed.

1.7 If the Owner fails to comply with its obligations pursuant to the Asset Transfer Agreement to transfer its rights and legal title to the Train Assets (subject to the Permitted Liens) to the Secretary of State or the New Owner in accordance with this Schedule 2.8, the Owner shall indemnify and keep indemnified the Secretary of State against all Losses suffered or incurred by the Secretary of State as a result of the Owner's failure to comply with its obligations to transfer its rights and legal title to the Train Assets (subject to the Permitted Liens) to the Secretary of State or the New Owner.

1.8 ²⁶⁵

1.9 Following transfer of the Train Assets to the Secretary of State or the New Owner in accordance with this paragraph 1, the Secretary of State or other New Owner shall be entitled to:

- (a) where the Secretary of State makes an Instalment Election pursuant to paragraph 1.2 of Schedule 3.5 (*Calculation and payment of Early Termination Sums*) in relation to payment of the relevant Early Termination Sum, exercise Dealing Rights in relation to those Train Assets, subject only to:
- (i) paragraph 2 (*Novation of Contracts*) in relation to those Use Rights referred to in paragraph (b) of the definition of such term in the Master Definitions Agreement; and
 - (ii) clause 9.11 of the Intercreditor Deed; or
- (b) where the Secretary of State does not make an Instalment Election pursuant to paragraph 1.2 of Schedule 3.5 (*Calculation and payment of Early Termination Sums*) in relation to payment of the relevant Early Termination Sum, exercise Dealing Rights in relation to those Train Assets or make an outright disposal of ownership of any or all of the Train Assets, subject only to paragraph 2 (*Novation of Contracts*) in relation to those Use Rights referred to in paragraph (b) of the definition of such term in the Master Definitions Agreement,

provided that, in either such case, where paragraph 5 (*Secretary of State Termination for Unauthorised Contract*) applies, the exercise of such rights will be subject to the provisions of paragraph 5.2.

²⁶⁵ Redaction.

2. NOVATION OF CONTRACTS

Right to require novation

2.1 ²⁶⁶

2.2 ²⁶⁷

Application of Provisions

2.3 The provisions of this paragraph 2 shall not apply and shall have no effect in relation to a termination of any Contract which:

(a) is or occurs as part of a termination of the Operator's participation in the Project by way of an Operator Accession or an Operator Transfer Scheme in accordance with Schedule 2.1 (*Section 54 Undertakings*);

(b) ²⁶⁸

(c) ²⁶⁹

(d) is a termination as a result of a ²⁷⁰ of either (i) the Lease where the Security Trustee elects for the ²⁷¹ to apply, or (ii) the TSA; or

(e) occurs in accordance with:

(i) clause 14.9;

(ii) clause 17.2;

(iii) ²⁷²

(iv) ²⁷³

2.4 In accordance with paragraph 1.2 of Schedule 2.1 (*Section 54 Undertakings*), the Secretary of State shall deliver a Proposed Owner Succession Notice in accordance with paragraph 2.6 and the provisions of paragraphs 2.7 to 2.17 shall apply if the Secretary of State procures that:

(a) the New Owner enters into a Replacement Lease (in the case of a transfer to a New Owner who is the highest tenderer in accordance with paragraph 2 (*Retendering*

²⁶⁶ Redaction.

²⁶⁷ Redaction.

²⁶⁸ Redaction.

²⁶⁹ Redaction.

²⁷⁰ Redaction.

²⁷¹ Redaction.

²⁷² Redaction.

²⁷³ Redaction.

Procedure) of Schedule 3.1 (*Termination Sum Payable on Termination for Owner Default*)) as part of the New Owner Accession Arrangement; or

- (b) an alternative lease or other arrangement to permit the Operator to use the Units (to which the New Owner Accession Arrangement applies pursuant to paragraph 2.5) to provide services on the Network is put in place and is effective between the New Owner and the Operator (an *Alternative Rolling Stock Operation Arrangement*).

Novation

2.5 Any New Owner Accession Arrangement under paragraph 2.1 above:

- (a) shall include the New Owner acceding to the terms of the MSA and (as appropriate) the TSA or TSSSA in relation to the Equipment that has been Accepted by the Owner Succession Date; and
- (b) if the relevant Owner Succession Date occurs before the Acceptance of the Last Unit, may, in the absolute discretion of the Secretary of State (unless the New Owner is the Compliant Tenderer who submitted the Highest Compliant Tender Price in accordance with the retendering procedure under paragraph 2 (*Retendering Procedure*) of Schedule 3.1 (*Termination Sum Payable on Termination for Owner Default*)), in which case the Secretary of State shall ensure that such novation shall include the New Owner acceding to the terms of the MSA and (as appropriate) the TSA or TSSSA in relation to the Equipment that has not been Accepted by the Owner Succession Date,

in each case on the same terms of those documents, save only as expressly provided otherwise in this Agreement or the applicable Contract or as otherwise agreed between the Secretary of State, the Operator, the TMM and the New Owner at the relevant time. If paragraph (b) applies, the Secretary of State shall notify the Existing Owner, the TMM and the Operator of his election by the inclusion of a statement in the applicable Proposed Owner Succession Notice in accordance with paragraph 2.6(c) and where such statement is a Fleet Reduction Notice, the provisions of paragraph 2.17 shall apply.

Notice of Accession

2.6 In order to effect a New Owner Accession Arrangement pursuant to paragraph 2.1, the Secretary of State shall, at any time following the issue of the applicable notice that the termination of the Existing Owner's participation in the Project will occur, give notice to the Existing Owner, the TMM and the Operator that the Secretary of State wishes a New Owner to enter into a New Owner Accession Arrangement, such notice to include:

- (a) the date on which the Secretary of State proposes that such accession will take place (the *Proposed Owner Succession Date*), which date shall be:
 - (i) no earlier than the applicable Relevant Termination Date; and
 - (ii) no fewer than 20 Working Days after the date of the notice;
- (b) the identity of the Proposed New Owner and, if the Proposed New Owner is not the Secretary of State or a Secretary of State Nominee, shall also provide the following information in relation to the Proposed New Owner:
 - (i) its registered address;

- (ii) the names of its shareholders and the share capital held by each of them;
 - (iii) the names of its directors and secretary;
 - (iv) details of the manner in which it is proposed to finance the Proposed New Owner (including the extent to which such finance is committed and any conditions precedent as to its availability for drawing); and
 - (v) details of the resources (including contractual arrangements) which are to be available to the Proposed New Owner to enable it to perform its obligations under the Applicable Relevant Contracts;
- (c) where the accession will occur before Acceptance of the Last Unit, a statement, in accordance with paragraph 2.5(b), as to whether, as part of the accession, the Proposed New Owner:
- (i) will assume the Owner's rights and liabilities under the MSA in respect of the Equipment that has not been Accepted by the Owner Succession Date; or
 - (ii) will not assume the Owner's rights and liabilities under the MSA in respect of the Equipment that has not been Accepted by the Owner Succession Date (a *Fleet Reduction Notice*); and
- (d) reasonable details of the Replacement Lease or Alternative Rolling Stock Operation Arrangement that would apply as between the Proposed New Owner and the Operator,

such notice being a *Proposed Owner Succession Notice*.

2.7 The Secretary of State shall promptly provide to the TMM or the Operator any other information relating to the Proposed New Owner as may reasonably be required by that Party.

Right to Object

2.8 The TMM or the Operator shall notify the Secretary of State in writing within ten (10) Working Days of its receipt of all information required under paragraph 2.6(b), if it objects to the entry into of a New Owner Accession Arrangement by the Proposed New Owner in accordance with this paragraph 2. Neither the TMM nor the Operator may so object if the Proposed New Owner is:

- (a) the Secretary of State;
- (b) a Secretary of State Nominee for whom the Secretary of State undertakes to be Primarily Liable; or
- (c) the Compliant Tenderer who submitted the Highest Compliant Tender Price in accordance with the retendering procedure under paragraph 2 (*Retendering Procedure*) of Schedule 3.1 (*Termination Sum Payable on Termination for Owner Default*).

2.9 If the Proposed New Owner is not one of the entities described in sub-paragraphs (a) to (c) (inclusive) of paragraph 2.8, the TMM or the Operator may object to the entry into a New Owner Accession Arrangement by the Proposed New Owner only if:

- (a) the Secretary of State fails to demonstrate to the relevant Party's reasonable satisfaction the legal capacity, power and authority of the Proposed New Owner to become a Party to and perform the obligations of the Owner under the Applicable Relevant Contracts and the Applicable Replacement Contracts; or
- (b) the Secretary of State fails to demonstrate to the relevant Party's reasonable satisfaction that the technical competence and the technical resources available to the Proposed New Owner are sufficient to perform the obligations of the Owner under the Applicable Relevant Contracts and the Applicable Replacement Contracts;
- (c) where the Secretary of State confirms in the Proposed Owner Succession Notice pursuant to paragraph 2.6(c)(i) that the Proposed New Owner will assume the Owner's rights and liabilities under the MSA in respect of the Equipment that has not been Accepted by the Owner Succession Date, the Secretary of State fails to demonstrate to the TMM's reasonable satisfaction that the financial resources available to the Proposed New Owner are sufficient to perform those obligations under the MSA; or
- (d) the Proposed New Owner is either:
 - (i) a manufacturer of trains;
 - (ii) a company which would reasonably be regarded as a competitor of the Operator or the Operator's Group in connection with its UK railway franchise business; or
 - (iii) in relation to either sub-paragraph (i) or (ii) above, an Affiliate of such a manufacturer or company.

2.10 Any dispute concerning an objection by the TMM or the Operator to the entry into of a New Owner Accession Arrangement by the Proposed New Owner (whether on grounds that the objection is unreasonable or otherwise), shall be referred to dispute resolution in accordance with the provisions of Schedule 8.1 (*Contract Disputes*).

2.11 If the TMM or the Operator objects to the entry into of a New Owner Accession Arrangement and the Applicable Replacement Contracts by the Proposed New Owner in accordance with paragraph 2.9, the Secretary of State shall be entitled to give one or more subsequent Proposed Owner Succession Notices pursuant to the provisions of paragraph 2.6 containing changed particulars in relation to any of the matters described in that Proposed Owner Succession Notice and/or particulars relating to another Proposed New Owner, provided that:

- (a) only one Proposed Owner Succession Notice may be outstanding at any one time; and
- (b) the Owner Succession Date occurs no later than 60 days after the Relevant Termination Date, or such later date as the TMM, the Operator and the Existing Owner may agree.

Effect of Proposed Owner Succession Notice

2.12 Unless the Proposed Owner Succession Notice is withdrawn, each of the Secretary of State, the TMM and the Owner agree that they will do all such acts and execute or procure the execution of all such documents as are reasonably necessary to enable the Proposed New Owner to accede to the Applicable Relevant Contracts and enter into the Applicable

Replacement Contracts, subject to and in accordance with paragraph 2.15, on the Proposed Owner Succession Date.

2.13 ²⁷⁴

2.14 In any event, the New Owner's accession to the Applicable Relevant Contracts and the Applicable Replacement Contracts, in each case pursuant to the New Owner Accession Arrangement, may only come into effect simultaneously.

Implementation of Applicable Relevant Contracts

2.15 On the Owner Succession Date, the Secretary of State, the New Owner, the Existing Owner, the TMM and the Operator shall enter into a Deed of Owner Accession (amended, as necessary, to reflect the provisions of this paragraph 2.15), and, upon entry into that Deed of Owner Accession, each of the Secretary of State, the New Owner and all contractual counterparties shall enter into the Applicable Replacement Contracts, and with effect from the due completion, execution and delivery of the Deed of Owner Accession, in each case subject to paragraph 2.17:

- (a) the New Owner shall observe, perform and discharge all obligations of the Owner (other than the obligations of the Owner under clause 30 (*Confidentiality of Information*) of the MSA, clause 31 (*Advertising and Confidentiality*) of the TSA, clause 26 (*Confidentiality of Information and Financial Information*) of the Lease, clause 25 (*Advertising and Confidentiality*) of the TSSSA and clause 4 (*Confidentiality*), in each case in relation to relevant information disclosed to the Existing Owner prior to the Owner Succession Date) under the Owner Contracts and all agreements ancillary thereto, in place of (and to the exclusion of) the Existing Owner, to the extent the same shall fall due to be performed on or after the Owner Succession Date; and
- (b) each of the Secretary of State, the TMM and the Operator agrees:
 - (i) that the New Owner may exercise and enjoy all of the rights of the Owner under the Owner Contracts and all agreements ancillary thereto; and
 - (ii) to observe, perform and discharge its respective obligations to the Owner under the Owner Contracts and all agreements ancillary thereto for the benefit of the New Owner;

in place (and to the exclusion) of the Existing Owner, to the extent the same fall due to be performed on or after the Owner Succession Date;

(c) ²⁷⁵

(d) ²⁷⁶

(e) ²⁷⁷

²⁷⁴ Redaction.

²⁷⁵ Redaction.

²⁷⁶ Redaction.

(f) ²⁷⁸

2.16 The provisions of paragraph 2.15 shall, in every case where an Owner Succession Date occurs, apply in relation to that Equipment which has been Accepted prior to the Owner Succession Date and, save as provided in paragraph 2.17, shall also apply in relation to any Equipment that has not been Accepted prior to the Owner Succession Date.

Consequences of Fleet Reduction Notice

2.17 ²⁷⁹

Consequences of SoS OPT Project Termination Notice

2.18 ²⁸⁰

3. NOVATION OF MSA WARRANTIES

Right to require novation

3.1 ²⁸¹

Terms of Novation

3.2 Any novation of the MSA under paragraph 3.1 above shall include the New Owner acceding to the terms of the MSA in relation to the Equipment that has been Accepted by the date of the relevant Owner termination.

3.3 Any novation of the MSA under paragraph 3.1 above shall not include:

- (a) the New Owner acceding to the terms of the MSA in relation to any Equipment that has not been Accepted by the date of the relevant Owner termination;
- (b) the New Owner acceding to, or otherwise assuming any obligations or rights under, any other Contract in relation to any of the Equipment,

and simultaneously with such novation, the provisions of the MSA shall terminate in full other than the provisions set out in clause 42 (*Survival*) and schedule 14 (*Design Life, Warranties and MSA Fault Rectification*) of the MSA.

Notice of Novation

3.4 In order to effect a novation pursuant to paragraph 3.1, the Secretary of State shall, at any time following the issue of the applicable notice that the termination of the Owner's participation in the Project will occur, give notice to the Owner, the TMM and the Operator that the Secretary of State wishes a New Owner to assume the rights and obligations of the Existing Owner under the MSA, such notice to include:

²⁷⁷ Redaction.

²⁷⁸ Redaction.

²⁷⁹ Redaction.

²⁸⁰ Redaction.

²⁸¹ Redaction.

- (a) the date on which the Secretary of State proposes that such novation will take place, which date shall be:
 - (i) no earlier than the applicable Relevant Termination Date; and
 - (ii) no fewer than 20 Working Days after the date of the notice; and
- (b) the identity of the Proposed New Owner.

Effect of Notice

3.5 Unless the notice issued pursuant to paragraph 3.4 is withdrawn, each of the Secretary of State, the TMM and the Owner agree that they will do all such acts and execute or procure the execution of all such documents as are reasonably necessary to enable the New Owner to accede to the MSA, subject to and in accordance with paragraph 2.15, on the date nominated by the Secretary of State pursuant to paragraph 3.4(a).

3.6 Without prejudice to the generality of paragraph 3.5:

- (a) ²⁸²
- (b) ²⁸³

Implementation of New Owner accession

3.7 On the date on which the New Owner assumes the Owner's rights and obligations under the MSA, each of the New Owner, the Existing Owner, the TMM and the Operator shall enter into a deed of accession, and with effect from the due completion, execution and delivery of that deed of accession:

- (a) the New Owner shall observe, perform and discharge all obligations of the Owner (other than the obligations of the Owner under clause 30 (*Confidentiality of Information*) of the MSA, clause 31 (*Advertising and Confidentiality*) of the TSA, clause 26 (*Confidentiality of Information and Financial Information*) of the Lease, clause 25 (*Advertising and Confidentiality*) of the TSSSA and clause 4 (*Confidentiality*), in each case in relation to relevant information disclosed to the Existing Owner prior to the Owner Succession Date) under schedule 14 of the MSA and all agreements ancillary thereto, in place of (and to the exclusion of) the Existing Owner, to the extent the same shall fall due to be performed on or after the date of the New Owner's accession; and
- (b) each of the TMM and the Operator agrees:
 - (i) that the New Owner may exercise and enjoy all of the rights of the Owner under schedule 14 of the MSA and all agreements ancillary thereto; and
 - (ii) to observe, perform and discharge its respective obligations to the Owner under schedule 14 of the MSA and all agreements ancillary thereto for the benefit of the New Owner;

²⁸² Redaction.

²⁸³ Redaction.

in place (and to the exclusion) of the Existing Owner, to the extent the same fall due to be performed on or after the Owner Succession Date;

- (c) each of the Secretary of State, the TMM and the Operator agrees that it shall be bound by and responsible to the New Owner for its acts or omissions before the Owner Succession Date under the MSA and all agreements ancillary thereto that do not constitute a breach of the relevant Contract or agreement (including the issuance of notices, approvals, consents or acknowledgements or the exercise of discretions or election in accordance with the terms of the relevant Contract or other agreement) to the extent that it would have been so bound and responsible to the Existing Owner in relation to schedule 14 of the MSA; and
- (d) the accrued liabilities of the TMM under schedule 14 of the MSA subject to any caps, limitations or exclusions set out in the MSA shall not be deemed to be cancelled and shall continue to be aggregated for the purposes of calculating whether such caps, limitations or exclusions apply.

4. SECRETARY OF STATE VOLUNTARY TERMINATION

Actions in connection with termination of the MSA

4.1 The Secretary of State may, on termination of the MSA pursuant to the exercise by the Secretary of State of his rights under Schedule 2.7, and subject to the Secretary of State having paid ²⁸⁴ require the TMM to deliver up, and transfer with full title guarantee, to the Secretary of State or his nominee, possession of any Rolling Stock and any other Parts and materials including Software, Spares and Special Tools (all as in their state of completion) intended to be incorporated in the Units that comprise that Rolling Stock, and information to be supplied in connection therewith, to the extent title is vested in the TMM ²⁸⁵.

Actions in connection with termination of the TSA

4.2 Upon termination of the TSA pursuant to the exercise by the Secretary of State of his rights under Schedule 2.7, the Secretary of State may, subject to the Secretary of State having paid ²⁸⁶ require the TMM:

- (a) to deliver up to the Secretary of State possession of all Owner Owned Spares, Special Tools and Simulators;
- (b) to provide the Secretary of State with ²⁸⁷; and
- (c) to transfer with full title guarantee to the Secretary of State the TMM Owned Spares and any materials and moveable equipment used for providing the Services ²⁸⁸.

5. ²⁸⁹

²⁸⁴ Redaction.

²⁸⁵ Redaction.

²⁸⁶ Redaction.

²⁸⁷ Redaction.

²⁸⁸ Redaction.

²⁸⁹ Redaction.

APPENDIX TO SCHEDULE 2.8

FORM OF ASSET TRANSFER AGREEMENT

DATED _____ **20[]**

CROSS LONDON TRAINS LIMITED

THE SECRETARY OF STATE FOR TRANSPORT

[NEW OWNER]

ASSET TRANSFER AGREEMENT

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THIS AGREEMENT is made on _____ 20[]

BETWEEN:

- (1) **CROSS LONDON TRAINS LIMITED**, whose registered number is [_____] and registered address is at [_____] (the *Owner*);
- (2) **THE SECRETARY OF STATE FOR TRANSPORT**, whose principal address is at 33 Horseferry Road, London, SW1P 4DR (the *Secretary of State*); and
- (3) **[NEW OWNER]**, whose registered number is [_____] and registered address is at [_____] (the *New Owner*).

WHEREAS:

(A) The Secretary of State, the Owner, Siemens plc (the *TMM*) and First Capital Connect Limited (the *Operator*) entered into an agreement dated [•] 2013 in order, amongst other things, to facilitate the Secretary of State's functions under the Railways Act 1993 (the *Umbrella Agreement*).

(B) The following parties entered into the following Contracts, each on [•] 2013, as amended: (i) the TMM, the Owner and the Operator entered into a manufacture and supply agreement for the purpose of amongst other things, designing, manufacturing, testing, commissioning, supplying and purchasing a fleet of trains for operation on the Thameslink Network, and associated equipment necessary for their operation and maintenance; (ii) the Owner and the Operator entered into a rolling stock lease for the purpose of, amongst other things, leasing those trains and certain of the associated equipment in return for the payment of rental; (iii) the TMM, the Operator and the Owner entered into a train services agreement for the purpose of, amongst other things, maintaining, repairing, overhauling, refurbishing and replacing the trains and associated equipment; and (iv) the TMM, the Operator and the Owner entered into a technical support and spares supply agreement for the purpose of, amongst other things, the provision, following termination of the train services agreement, of technical support and spares supply services, in each case, upon the terms and conditions set out in the relevant agreement.

(C) Pursuant to Schedule 2.8 (*Transfer of Rolling Stock and Contracts upon Termination*) of the Umbrella Agreement, the Secretary of State has the right, in certain circumstances, to serve a Transfer Notice on the Owner requiring the transfer of its rights, title and interest in and to the Train Assets referred to in the Transfer Notice and the Owner has agreed that in those circumstances, it will transfer its rights, title and interest in and to the Train Assets.

(D) The Owner is the legal and beneficial owner (subject to the Permitted Liens) of the Train Assets which the Owner agrees to transfer to the Secretary of State/New Owner and the Secretary of State wishes to purchase.

IT IS AGREED as follows:

1. INTERPRETATION

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 [•] 2013. In addition, the

following words and expression shall have the meanings set forth in this clause 1.1, except where the context otherwise requires:

Acceptance Certificate means, in relation to any of the Train Assets the certificate in respect of those Train Assets substantially in the form set out in Schedule 2 (*Acceptance Certificate*);

Bill of Sale means, in relation to the Train Assets, a bill of sale in respect of those Train Assets from the Owner to the Secretary of State/New Owner substantially in the form set out in Schedule 1 (*Bill of Sale*);

Borrower Charge has the meaning given to such term in the Intercreditor Deed;

Delivery means, in relation to the Train Assets, the transfer of title to such Train Assets by the Owner to the Secretary of State/New Owner in accordance with Clause 6 (*Delivery Process*) of this Agreement;

Delivery Date means, the date identified as such in the Transfer Notice which shall be a date that is no later than the [Relevant Termination Date];

Delivery Location means such location on the Thameslink Network as the Owner and the Secretary of State/New Owner shall agree;

[]²⁹⁰

Purchase Price means whichever of the following is applicable according to the reason for termination of the Umbrella Agreement:

- (a) the amounts described in clause 14.9(b) of the Umbrella Agreement;
- (b) the amounts set out paragraph 1 (*Compensation payable to the Owner*) of Schedule 3.3 (*Termination Sum Payable on Voluntary Termination or Default by Secretary of State*) of the Umbrella Agreement in accordance with clause 17.3(a) of the Umbrella Agreement;
- (c) []²⁹¹
- (d) []²⁹²
- (e) the Net Adjusted Highest Compliant Tender Price in accordance with paragraph 2.15 or 2.17 of Schedule 3.1 (*Termination Sum Payable on Termination for Owner Default*) of the Umbrella Agreement;
- (f) the Net Adjusted Estimated Fair Value of the Rolling Stock in accordance with paragraph 3.8 of Schedule 3.1 of the Umbrella Agreement;
- (g) the Revised Senior Debt Termination Amount in accordance with paragraph 4 (*Termination Sum Payable following Lease Owner Non-MR/EFV Termination Event*) of Schedule 3.1 of the Umbrella Agreement;

²⁹⁰ Redaction.

²⁹¹ Redaction.

²⁹² Redaction.

- (h) the Force Majeure Termination Sum in accordance with paragraph 1.1 of Schedule 3.2 (*Sum Payable on Force Majeure Termination*) of the Umbrella Agreement; or
- (i) the amounts set out paragraph 1 (*Compensation payable to the Owner*) of Schedule 3.3 (*Termination Sum Payable on Voluntary Termination or Default by Secretary of State*) of the Umbrella Agreement in accordance with paragraph 3 (*Compensation payable to the Owner*) of Schedule 2.7 (*Voluntary Termination of Contracts by the Secretary of State*) of the Umbrella Agreement;

Transfer Documents means this Agreement, the Acceptance Certificate for the Train Assets, the Bill of Sale for the Train Assets and any notices, acknowledgements or consents issued pursuant thereto; and

Transfer Notice means a notice given by the Secretary of State pursuant to paragraph 1 (*Asset Transfer*) of Schedule 2.8 (*Transfer of Rolling Stock and Contracts upon Termination*) of the Umbrella Agreement.

Construction

1.2 References in this Agreement to:

- (a) any statutory or other legislative provision shall be construed as including any statutory or legislative modification or re enactment thereof, or any provision enacted in substitution therefor;
- (b) the words *person* or *persons* or to words importing persons include, without limitation, individuals, partnerships, corporations, government agencies, committees, departments, authorities and other bodies, corporate or unincorporated, whether having distinct legal personality or not;
- (c) *Secretary of State, Owner* or *New Owner* include any successor in title to the Secretary of State, the Owner or the New Owner respectively;
- (d) any deed, agreement or instrument shall include any such deed, agreement or instrument as may from time to time be amended, supplemented or substituted;
- (e) an *agreement* also includes a concession, contract, deed, franchise, licence, treaty or undertaking (in each case, whether oral or written);
- (f) the *assets* of any person shall be construed as a reference to the whole or any part of its business, undertaking, property, assets and revenues (including any right to receive revenues);
- (g) *law* includes common or customary law and any constitution, decree, judgment, legislation, order, ordinance, regulation, statute, treaty or other legislative measure in any jurisdiction or any present or future directive, regulation, request or requirement (in each case, whether or not having the force of law but, if not having the force of law, the compliance with which is in accordance with the general practice of persons to whom the directive, regulation, request or requirement is addressed);
- (h) unless otherwise stated in this Agreement, the costs of performing an obligation under this Agreement shall be borne by the party required to perform such obligation;
- (i) a clause or a Schedule is a reference to a clause of or a schedule to this Agreement;

- (j) *month* is a reference to a period which starts on one day in a calendar month and ends on the day immediately preceding the numerically corresponding day in the next calendar month, except that, if there is no numerically corresponding day in that next month, it shall end on the last day of that next month (and references to “months” shall be construed accordingly);
- (k) headings are for ease of reference only; and
- (l) where the context so admits, words importing the singular number only shall include the plural and vice versa, and words importing neuter gender shall include the masculine or feminine gender.

2. COMMENCEMENT AND DURATION

2.1 This Agreement shall commence, take effect and be binding upon the Secretary of State, the Owner and the New Owner on and from the date of this Agreement.

2.2 The rights and obligations set out in this Agreement shall cease to apply with effect from the Backstop Date.

3. AGREEMENT TO TRANSFER

In the event that the Owner is required to transfer its rights, title and interest in and to the Train Assets to the [Secretary of State/New Owner] in accordance with Schedule 2.8 (*Transfer of Rolling Stock and Contracts upon Termination*) of the Umbrella Agreement, then, subject to the provisions of this Agreement and the Lenders’ Direct Agreement, the Owner shall, in consideration for the payment by the Secretary of State of the Purchase Price in accordance with clause 5 (*Purchase Price*), transfer the Train Assets, with full title guarantee (but subject to the Permitted Liens), to the [Secretary of State/New Owner] in accordance with the Transfer Notice and the [Secretary of State/New Owner] shall purchase the Train Assets from the Owner on the Delivery Date in an “as is, where is” condition.

4. REPRESENTATIONS AND WARRANTIES

The Owner makes the following representations and warranties on both the date of this Agreement and the Delivery Date in respect of itself with reference to the facts and circumstances existing at the time. The Owner acknowledges and agrees that [each of] the Secretary of State [and the New Owner] is relying on the representations and warranties made by the Owner and is entering into this Agreement to which the Secretary of State [and the New Owner] is a party on the basis of them:

4.1 the Owner is a company duly incorporated and validly existing under the laws of England and Wales as a limited liability company;

4.2 the Owner has the corporate power to enter into and perform, and has taken all necessary corporate and other action to authorise the entry into, performance and delivery of this Agreement and the transactions contemplated by this Agreement;

4.3 this Agreement constitutes, or upon execution will constitute, the Owner’s legal, valid and binding obligations;

4.4 the entry by the Owner into this Agreement and the performance by the Owner of its obligations under this Agreement does not and will not:

- (a) conflict with the Owner's constitutional documents;
- (b) conflict with any law or regulation applicable to the Owner; or
- (c) conflict with, or result in a breach of, any document which is binding on the Owner or the Train Assets; and
- (d) except as disclosed in writing to the Secretary of State [and the New Owner] on or before the Delivery Date, no legal proceedings are pending or, to the best of the Owner's knowledge and belief, threatened against the Owner, which if decided against the Owner, would have a material adverse effect upon the financial condition, assets or business of the Owner or the ability of the Owner to perform its obligations under this Agreement.

5. PURCHASE PRICE

Payments

5.1 Where the Purchase Price is a positive number, the Secretary of State shall pay to the Owner the Purchase Price on the Payment Date.

5.2 All payments by the Secretary of State to the Owner under this Agreement shall be made for value on the Payment Date in Sterling and in immediately available freely transferable funds.

5.3 Payment by the Secretary of State of the Net Adjusted Highest Compliant Tender Price or the relevant Early Termination Sum pursuant to the Umbrella Agreement shall discharge the Secretary of State's obligations to pay the Purchase Price under this Agreement.

Gross up

5.4 The Purchase Price for the Train Assets shall be subject to paragraph 2.1 of Schedule 3.5 (*Calculation and Payment of Early Termination Sums*) of the Umbrella Agreement.

Set off

5.5 Payments to be made by the Secretary of State under this Agreement shall be subject to paragraph 2.3 of Schedule 3.5 (*Calculation and Payment of Early Termination Sums*) of the Umbrella Agreement.

6. DELIVERY PROCESS

Title Transfer

6.1 Upon and subject to the terms and conditions of the Umbrella Agreement, this Agreement, the Lenders' Direct Agreement [and the Intercreditor Deed], the transfer of title to the Train Assets by the Owner to the [Secretary of State/New Owner] hereunder shall take place on the Delivery Date by the Owner delivering to the [Secretary of State/New Owner] the duly completed and executed Bill of Sale for the Train Assets, immediately whereupon title to the Train Assets shall pass with full title guarantee (but subject to the Permitted Liens) from the Owner to the [Secretary of State/New Owner]. The [Secretary of State/New Owner] shall thereupon execute and deliver to the Owner the Acceptance Certificate for the Train Assets.

6.2 The Owner hereby acknowledges that if it fails to complete and execute the Bill of Sale for the Train Assets in accordance with Clause 6.1 that the Secretary of State may exercise his rights, subject to and in accordance with the Borrower Charge, the Intercreditor Deed and the Lenders' Direct Agreement to give effect to or to require the Security Trustee to give effect to the transfer of title to the Train Assets (subject to Permitted Liens) to the Secretary of State.

Delivery Location

6.3 Delivery of the Train Assets shall be effected while the Train Assets are located in the Delivery Location.

7. NO LIABILITY FOR CONDITION OF TRAIN ASSETS

7.1 The Owner hereby warrants to the [Secretary of State/New Owner] that, immediately prior to Delivery the Owner will have full legal and beneficial title to the Train Assets (subject to the Permitted Liens) and will have full power and lawful authority to, and on Delivery will, transfer that title to the [Secretary of State/New Owner] (subject to the Permitted Liens).

7.2 The [Secretary of State/New Owner] [and the New Owner each] unconditionally agrees that, subject only to Clauses 6.1 and 7.1, as between the [Secretary of State/New Owner] and the Owner, the Train Assets and each part thereof is to be transferred in an *as is, where is* condition and no term, condition, warranty, representation or covenant of any kind whatsoever has been made or is given by the Owner or its servants or agents in respect of the value, quality, durability, condition, design, operation, description, merchantability or fitness for use or purpose of the Train Assets or any part thereof, as to the absence of latent, inherent or other defects (whether or not discoverable), as to the completeness or condition of the Train Assets, or as to the absence of any infringement of any patent, copyright, design, or other proprietary rights and all conditions, warranties and representations (or obligation or liability, in contract or in tort) in relation to any of those matters, expressed or implied, statutory or otherwise, are expressly excluded.

8. MISCELLANEOUS PROVISIONS

Benefit of Agreement

8.1 None of the Owner[, the New Owner] nor the Secretary of State shall assign or transfer all or any of its respective rights and/or obligations under this Agreement without the prior written consent of the other party hereto, save that:

- (a) the Owner may assign its rights under this Agreement to the Senior Lenders as security [pursuant to the Security Documents] and any beneficiary of that security may also assign the benefit of this Agreement in favour of any person to whom it transfers the entitlements under this Agreement when realising such security conferred by [the Security Documents]; and
- (b) the Secretary of State may assign, novate or otherwise transfer his rights and/or obligations under this Agreement to any person that the Secretary of State assigns, novates or otherwise transfers its rights and/or obligations under the Umbrella Agreement.

Rights Cumulative, Waivers

8.2 The rights of the Owner[, the New Owner] and the Secretary of State under this Agreement are cumulative, may be exercised as often as each party considers appropriate and are in addition to its rights under the general law. The rights of the Owner[, the New Owner] and the Secretary of State in relation to the Train Assets (whether arising under this Agreement or the general law) shall not be capable of being waived or varied otherwise than by an express waiver or variation in writing; and in particular any failure to exercise or any delay in exercising any of such rights shall not operate as a waiver or variation of that or any other such right; any defective or partial exercise of any of such rights shall not preclude any other or further exercise of that or any other such right; and no act or course of conduct or negotiation on the part of either party or on its behalf shall in any way preclude it from exercising any such right or constitute a suspension or any variation of any such right.

Rights of Third Parties Act

8.3 A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

Counterparts

8.4 This Agreement may be executed in counterparts and any single counterpart or set of counterparts signed in either case, by all the parties hereto shall be deemed to constitute a full and original agreement for all purposes.

Further Assurance

8.5 Each of the parties agrees to perform (or procure the performance of) all further acts and things within its control, and execute and deliver (or procure the execution and delivery of) such further documents, as may be required by applicable law or as may be necessary or reasonably desirable to implement and/or give effect to this Agreement and the transactions contemplated by this Agreement.

Variation

8.6 The provisions of this Agreement shall not be amended or modified otherwise than by an instrument in writing executed by the parties hereto.

Invalidity of any Provision

8.7 If, at any time, any provision hereof is or becomes illegal, invalid or unenforceable in any respect under the applicable law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions hereof nor the legality, validity or enforceability of such provision under the applicable law of any other jurisdiction shall in any way be affected or impaired thereby.

9. NOTICES

9.1 Every notice, request, direction or other communication under this Agreement shall:

- (a) be in writing delivered personally or by recorded delivery or sent by first-class prepaid letter or by electronic data transfer;
- (b) be deemed to have been received:

- (i) in the case of a letter delivered personally or by recorded delivery, when actually delivered;
- (ii) 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
- (iii) 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); and

9.2 be sent:

To Secretary of State at:

Address: Great Minster House
33 Horseferry Road
London
SW1P 4DR

Attention: [Director – Major Projects and London]

Email: []

To the Owner at:

Address: []

Attention: []

Email: []

[To the New Owner at:

Address: []

Attention: []

Email: []

10. GOVERNING LAW AND JURISDICTION

Governing Law

10.1 This Agreement and any non-contractual obligations arising out of or in relation to this Agreement are governed by and shall be construed in accordance with English law.

Jurisdiction

10.2 The Parties agree that any dispute arising under or in connection with this Agreement will be determined pursuant to Schedule 8.1 (*Contract Disputes*) of the Umbrella Agreement.

SIGNATURE PAGE – ASSET TRANSFER AGREEMENT

IN WITNESS whereof this Agreement has been duly executed and delivered as a Deed on the date first above written.

THE OWNER

EXECUTED AS A DEED BY)
CROSS LONDON TRAINS LIMITED)
acting by [a director in the presence of a witness])

Signature
Director

Name

Witness signature:

Witness name:

Witness address:

Witness occupation:

THE SECRETARY OF STATE

THE CORPORATE SEAL OF)
THE SECRETARY OF STATE FOR)
TRANSPORT is hereunto affixed)

.....

Authenticated by authority of
The Secretary of State for Transport

THE NEW OWNER

EXECUTED AS A DEED BY)
[•] **LIMITED**)
acting by [a director in the presence of a witness])

Signature
Director

Name

Witness signature:

Witness name:

Witness address:

Witness occupation:

SCHEDULE 1

BILL OF SALE

CROSS LONDON TRAINS LIMITED a company whose registered number is [_____] and registered address is at [_____] (*Owner*), is (subject to the Permitted Liens) the owner of the full legal and beneficial title to the following Train Assets (as defined in the Master Definitions Agreement made between, amongst others, the Secretary of State and the Owner dated _____ (the *Master Definitions Agreement*)):

- (a) all Units (including any Vehicle forming part of any Unit);
- (b) all Owner Owned Spares;
- (c) all Special Tools; and
- (d) the Simulators,

(as such terms are defined in the Master Definitions Agreement).

Capitalised terms used but not defined herein shall have the meaning given to them in the Asset Transfer Agreement.

For valuable consideration, the Owner does hereby grant, transfer and deliver, with full title guarantee, all its right, title and interest in and to the Train Assets (subject to the Permitted Liens (as such term is defined in the Master Definitions Agreement) to [**THE SECRETARY OF STATE FOR TRANSPORT**]/[*NEW OWNER*] whose principal address is at [33 Horseferry Road, London, SW10 4DR] (the [*Secretary of State*]/[*New Owner*]) in accordance with the asset transfer agreement dated _____ and made between the Owner[,the New Owner] and the Secretary of State (the *Asset Transfer Agreement*) to have and to hold the Train Assets forever.

The Owner hereby warrants to the [Secretary of State/New Owner] that it has on the date hereof good and lawful right to sell, deliver and transfer title to the Train Assets to the [Secretary of State/New Owner] (subject to the Permitted Liens) and that good legal and beneficial title to the Train Assets are hereby conveyed to the [Secretary of State/New Owner] with full title guarantee (subject to the Permitted Liens) and the [Secretary of State/New Owner] hereby agrees to warrant and defend such title forever against all claims and demands whatsoever.

This Bill of Sale is governed by English law.

IN WITNESS whereof, the Owner has caused this Bill of Sale to be duly executed on

SIGNED)
by _____)
for and on behalf of)
CROSS LONDON TRAINS LIMITED)
in the presence of)

SCHEDULE 2

ACCEPTANCE CERTIFICATE

This Acceptance Certificate is delivered on and as of the date set forth below by the Secretary of [Secretary of State/New Owner] (the [*Secretary of State*]/[*New Owner*]) to Cross London Trains Limited (the *Owner*), pursuant to an asset transfer agreement dated _____ and made between the Secretary of State and the Owner (the *Asset Transfer Agreement*).

The [Secretary of State/New Owner] hereby confirms to the Owner that the [Secretary of State/New Owner] has at _____ hours (_____ time) on this _____ day of _____ at _____ accepted the following Train Assets (as defined in the master definitions agreement made between, amongst others, the Secretary of State and the Owner dated _____ (the *Master Definitions Agreement*)) subject to the Permitted Liens in accordance with the provisions of the Asset Transfer Agreement:

- (a) all Units (including any Vehicle forming part of any Unit);
- (b) all Owner Owned Spares;
- (c) all Special Tools; and
- (d) the Simulators,

(as such terms are defined in the Master Definitions Agreement).

IN WITNESS whereof [Secretary of State/New Owner] has executed this Acceptance Certificate, this _____ day of _____.

[SIGNED)
by _____)
for and on behalf of)
THE SECRETARY OF STATE)
FOR TRANSPORT)

Name:

Title:]

OR

[Include relevant execution block for New Owner]

SCHEDULE 3

TERMINATION SUMS

- Schedule 3.1:** Termination Sum Payable on Termination for Owner Default
- Schedule 3.2:** Termination Sum Payable on Force Majeure Termination
- Schedule 3.3:** Termination Sum payable on Voluntary Termination or Default by Secretary of State
- Schedule 3.4:** ²⁹³
- Schedule 3.5:** Calculation and Payment of Early Termination Sums

²⁹³ Redaction.

SCHEDULE 3.1

□²⁹⁴

²⁹⁴ Redaction.

SCHEDULE 3.2

□²⁹⁵

²⁹⁵ Redaction.

SCHEDULE 3.3

□²⁹⁶

²⁹⁶ Redaction.

SCHEDULE 3.4

□²⁹⁷

²⁹⁷ Redaction.

SCHEDULE 3.5

□²⁹⁸

²⁹⁸ Redaction.

SCHEDULE 4

VARIATIONS AND CHANGES IN LAW

Schedule 4.1: Scope, Variation Rights and Duties and General Matters

Schedule 4.2: Variation Proposals

Schedule 4.3: Secretary of State Authorisation of Variations

Appendix: Notification of Authorisation to Vary

Schedule 4.4: Implementing and Withdrawing Variations

Appendix: Notifications of Withdrawal

Schedule 4.5: Change in Law

Schedule 4.6: Funding Variations

SCHEDULE 4.1

SCOPE, VARIATION RIGHTS AND DUTIES AND GENERAL MATTERS

1. SCOPE

Any amendment to the terms of any Contract, including to the rights and/or obligations of the TMM, the Owner, the Operator or the Secretary of State under any Contract to which they are a party shall, save expressly provided to the contrary in the Contracts, be made in accordance with the procedure set out in this Schedule 4 and by the issue by the Secretary of State of an Authorisation to Vary in accordance with Schedule 4.3 (*Secretary of State Authorisation of Variations*).

2. VARIATION RIGHTS

2.1 Any of the TMM, the Owner or the Operator may issue a Variation Proposal in accordance with Schedule 4.2 (*Variation Proposals*), proposing a Variation to one or more of the Contracts to which they are a Party to the other Parties to, as appropriate, this Agreement and/or those other Contracts.

2.2 The Secretary of State may, in accordance with this Schedule 4, issue to the Parties to any Contract:

- (a) a Variation Proposal in accordance with Schedule 4.2 (*Variation Proposals*), proposing a Variation to the terms of that Contract; and
- (b) an Authorisation to Vary in accordance with Schedule 4.3 (*Secretary of State Authorisation of Variations*), authorising the implementation of a Variation.

2.3 Without prejudice to the generality of paragraph 2.2, the Secretary of State may issue a Variation Proposal for the exercise by the Owner of any Priced Option under schedule 17 (*Priced Options*) of the MSA, in accordance with the provisions of that schedule 17 of the MSA.

3. DUTIES

3.1 In exercising any of their rights and performing any of their obligations under this Schedule 4 and Schedule 5 (*Determining Financial Consequences of Variations and Other Changes*), the Parties shall use reasonable endeavours to act in such a manner so as to simplify and minimise the administrative time and costs incurred in dealing with any Variation Proposal, Authorisation to Vary or Withdrawal Notice.

3.2 Each Party agrees to act reasonably and not to require any other Party to undertake unnecessary and onerous work in relation to a Variation Proposal.

4. RETROSPECTIVE CLAIMS

4.1 The Owner, the Operator and the Secretary of State will not accept any retrospective claims arising from a Variation, including claims for an increase to any Equipment Price, the Service Payments and/or any Additional Services Payments, a change to the Contract Programme, or relief from the TMM's obligations, including under the TSA Performance Regime, in each case, after an Authorisation to Vary has been issued in respect of that Variation.

4.2 The Owner, the Operator and the Secretary of State will not accept any retrospective claims, including any claims in respect of the matters referred to in paragraph 4.1, arising from work which is being or has already been carried out by the TMM and which was not the subject of an Authorisation to Vary prior to such work being commenced.

5. CONTRACT MANAGEMENT OF VARIATIONS

5.1 The TMM shall:

- (a) allocate a unique number to the Variation that is the subject of a Variation Proposal upon the issue of any such Variation Proposal;
- (b) maintain a sequentially numbered register of all Variations that are the subject of a Variation Proposal and all Variations that are the subject of an Authorisation to Vary; and
- (c) where any such Variation Proposal or any such Authorisation to Vary relates to more than one Contract and/or to any Contract and to a Depot Agreement, ensure that the register enables the Variation that is the subject of that Variation Proposal or Authorisation to Vary (as the case may be) to be identified as affecting more than one such Contract or affecting one such Contract and the Depot Agreement (as appropriate) and enables, in the case of any such Depot Agreement, reference to be made to the corresponding entry on any separate register that is maintained by the relevant Party to that other Contract and/or Depot Agreement (as the case may be).

5.2 Promptly following a request from the Secretary of State:

- (a) the TMM shall provide him with an up-to-date copy of the relevant register; and
- (b) the relevant Party shall provide him with a copy of any Variation Proposal that that Party has made or received from any other Party.

5.3 Each Party shall procure that all correspondence it delivers in relation to any Variation subsequent to the allocation of a unique number pursuant to paragraph 5.1(a) shall bear that number.

6. DETERMINING THE COSTS OF AND FINANCING VARIATIONS

□²⁹⁹

7. COSTS OF PROCESSING VARIATIONS

□³⁰⁰

8. VARIATION PROCEDURES

8.1 The Secretary of State may at any time (providing that any Variation for which the Secretary of State has issued an Authorisation to Vary shall not be affected):

²⁹⁹ Redaction.

³⁰⁰ Redaction.

- (a) issue, revise and withdraw, from time to time, procedures that he reasonably requires to be followed for the purposes of orderly consideration of Variations and the prompt notification of any issue, revision or withdrawal of any Variation Proposal; and
- (b) require the other Parties to provide any information that the Secretary of State reasonably requires for this purpose and he shall promptly pay the providing Party the reasonable costs that Party has incurred in providing such information.

8.2 Procedures issued pursuant to paragraph 8.1(a) may provide for:

- (a) indicative restatements of any Equipment Prices, indicative Runs of the Owner Financial Model, indicative Runs of the TMM Financial Model, in each case, in relation to one or more Variations and/or indicative restatements of any Service Payments to be made under the TSSSA; and
- (b) any number of Variations to be grouped together as a single Variation for the purposes of:
 - (i) confirming the effect (if any) of any Variation Proposal on any Contract, and/or any Depot Agreement (as the case may be) including the rights and obligations of any Party thereto; and/or
 - (ii) agreeing or determining Revised Owner Inputs and/or Revised TMM Inputs, and then performing a Run of the Owner Financial Model and/or Run of the TMM Financial Model.

8.3 Procedures issued pursuant to paragraph 8.1 shall have contractual effect between the Parties in accordance with their terms.

SCHEDULE 4.2

VARIATION PROPOSALS

1. ISSUING VARIATION PROPOSALS

Completion of Variation Proposals

1.1 If a party to a Contract wishes to make a Variation of any kind to that Contract (including a Required Variation), that person (the **Proposing Party**) shall complete Part A of the Appendix to Schedule 4.3 (*Notification of Authorisation to Vary*) and send that Variation Proposal to all the other Parties to this Agreement (each, a **Recipient Party**), provided that the Secretary of State shall be entitled to issue a Variation Proposal in relation to Contracts to which he is not a party and, where he does so, for the purposes of this Schedule 4.2, he shall be deemed to be a Proposing Party.

Information to be supplied when making a Variation Proposal

1.2 A Proposing Party shall ensure that any Variation Proposal contains, but is not limited to, the following information (as applicable):

- (a) the date of the proposal;
- (b) a statement as to whether that Variation Proposal is a Required Variation including confirmation of the relevant Change in Law, or if not a Required Variation, the reason why that Variation Proposal is being issued;
- (c) confirmation as to which and in what way the terms of the relevant Contract will be affected or whether a new Contract is proposed, and in each case, in sufficient detail that each Recipient Party that receives that Variation Proposal can evaluate the contractual, financial and other effects of implementing the Variation that is the subject of that Variation Proposal;
- (d) the proposed timescale for implementation of the proposed Variation, such timescale to be on the basis of mitigating as far as reasonably practicable any adverse impact on the Contract Programme;
- (e) the proposed means by which the costs of the implementation of the proposed Variation (including the costs referred to in paragraph 7.1 of Schedule 4.1 (*Scope, Variation Rights and Duties and General Matters*)) would be funded, taking into account that paragraph 7.1 of Schedule 4.1 and:
 - (i) if the Variation Proposal relates to a Required Variation, the provisions of paragraph 3 (*Costs Associated with Changes in Law*) of Schedule 4.5 (*Change in Law*) and Schedule 4.6 (*Funding Variations*); and/or
 - (ii) if the Variation Proposal relates to or includes the Modification of any Equipment, the provisions of Schedule 7 (*Modifications*) of the Lease;
- (f) where the Proposing Party is the TMM, the confirmation referred to in paragraph 1.2(c) shall:

- (i) include a specification of the effect (if any) in the TMM's opinion of that Variation Proposal:
 - (A) in the case of the MSA, on any Equipment Price (which the TMM shall calculate on the same basis as is set out in Schedule 5.1 (*Changes to Equipment Prices*)), the Specification, the Contract Programme and/or any Expected Delivery Dates;
 - (B) in the case of the TSA, on the Annual Contract Price, the Service Payments, the Additional Services Payments, and/or the amount of deposits into and withdrawals from the Balancing Payments Account (which, in each case, the TMM shall calculate on the same basis as is set out in Schedule 5.3 (*Runs of the TMM Financial Model*)), the Services, the TSA Performance Regime and/or the Maintenance Plan; and
 - (C) in the case of the TSSSA, on the Services, the Service Payments, and/or the amount of deposits into and withdrawals from the Balancing Payments Account (which, in each case, the TMM shall calculate on the same basis as is set out in Schedule 5.6 (*Changes to the TSSSA Service Payments*)), the TSSSA Performance Regime and/or the Maintenance Plan; and
- (ii) contain a statement certifying that the TMM will hold that Variation Proposal open for at least:
 - (A) 60 days in the case of a Variation Proposal submitted at anytime prior to Acceptance of the Last Unit; and
 - (B) 90 days in the case of any other Variation Proposal,in each case, from the date of that Variation Proposal;
- (g) where the Proposing Party is the Owner, and that Variation Proposal relates to the Lease, the confirmation referred to in paragraph 1.2(c) shall include a specification of the effect (if any) of that Variation Proposal on:
 - (i) the Rental; and
 - (ii) in the case of any Variation Proposal issued before Acceptance of the Last Unit, the rate of liquidated damages payable by the TMM pursuant to clause 19.1 of the MSA (or by the Operator pursuant to clause 7.3 of the Lease),

(which, in each case, the Owner shall calculate on the same basis as is set out in Schedule 5.2 (*Runs of the Owner Financial Model*)); and
- (h) where, in the opinion of the Proposing Party, the terms of:
 - (i) more than one Contract to which it is a party will be affected, the Proposing Party shall provide the confirmation described in paragraph 1.2(c) in relation to each such affected Contract; and
 - (ii) any Depot Agreement to which it is a party will be affected, the Proposing Party shall confirm that it has made a separate variation proposal to the

parties to that Depot Agreement in accordance with the variation procedure set out in that Depot Agreement.

Variation Proposals to Depot Agreements

1.3 If the TMM, the Operator or the Secretary of State make a variation proposal under Schedule 14 to a Depot Agreement for Leases which, in their opinion, will affect any of the Contracts, the relevant Party will make the relevant Variation Proposals in accordance with this Schedule 4.2.

1.4 If the Depot SPC makes a variation proposal under Schedule 14 to a Depot Agreement for Leases which, in the opinion of the TMM will affect any of the Contracts, the TMM will make the relevant Variation Proposals in accordance with this Schedule 4.2.

Operator protections for Variation Proposals relating to works on the Units

1.5 If the TMM or the Owner initiate a Variation Proposal in relation to work to be carried out on any Units that have been Accepted and Delivered, then unless the TMM is able to demonstrate to the Operator that any work to be carried out by the TMM on those Units in implementing that Variation Proposal can be carried out without the number of Units of each Unit Type being Available to run the Diagrams being less than the relevant Availability Benchmark, then, without limiting the Operator's rights under this Schedule 4.2 to object to that Variation or its terms, the Operator shall not be obliged to consent to such Variation Proposal unless the Operator receives at least 12 weeks' (or such shorter period as the Operator may, in its absolute discretion, agree) written notice of the date on which such work is to begin.

2. ACKNOWLEDGEMENT AND RESPONSE

2.1 Each Recipient Party shall:

- (a) promptly acknowledge receipt of the Variation Proposal to the Proposing Party in writing, and in so doing, indicate a timescale (not more than 28 days from receipt of that Variation Proposal, unless otherwise agreed by the relevant Parties acting reasonably, having regard to the complexity of the Variation Proposal) within which that Recipient Party will make a full written response to that Variation Proposal by completing Part B of the Appendix to Schedule 4.3 (*Notification of Authorisation to Vary*); and
- (b) make that full written response within that proposed timescale to the Proposing Party and each other party to the relevant Contract.

2.2 In responding to any Variation Proposal, each Recipient Party shall:

- (a) state the effect (if any) in its opinion of that Variation Proposal on the relevant Contract, including on the rights and/or obligations of the parties to the relevant Contract and on the costs likely to be incurred by that Recipient Party as a result of the implementation of the Variation that is the subject of that Variation Proposal;
- (b) state its opinion of the timescale for implementation of the Variation that is the subject of that Variation Proposal, (including, where the Recipient Party is the Owner and the Variation Proposal is issued before Acceptance of the Last Unit, the cost to the Owner of any proposed delay to the Acceptance of any Units likely to result from the implementation of the Variation Proposal, determined at the Owner Liquidated

Damages Rate) such timescale to be stated on the basis of mitigating as far as reasonably practicable any adverse impact of implementation of that Variation on the Contract Programme;

- (c) confirm whether in its opinion there is any other consequence of that Variation Proposal, including whether any Depot Agreement will be affected, in which case the Proposing Party shall, or, in the case of a Variation Proposal submitted by the Owner, the TMM shall, promptly issue a variation proposal under the relevant Depot Agreement(s) for Leases;
- (d) confirm, if relevant, the costs and expenses of the kind specified in paragraphs 7.1(a) to (c) of Schedule 4.1 (*Scope, Variation Rights and Duties and General Matters*) that that Recipient Party expects to incur; and
- (e) subject to paragraph 2.3(c), confirm whether the contractual terms proposed by the Proposing Party, appended to that Variation Proposal, are acceptable or not to that Recipient Party and where not acceptable, either:
 - (i) confirm that the Recipient Party objects to or requires the Variation Proposal to be withdrawn in accordance with paragraph 3 (*Rights to Refuse a Variation*), including, if that Recipient Party is the TMM or the Owner, the reason for such requirement; or
 - (ii) propose alternate contractual terms upon which that Recipient Party would be prepared to contract.

2.3 Where the Recipient Party is the TMM, the TMM:

- (a) in complying with the terms of paragraph 2.2, shall specify in its response to the relevant Variation Proposal, the effect (if any) in the TMM's opinion of that Variation Proposal on:
 - (i) in the case of the MSA, any Equipment Price, the Specification, the Contract Programme and/or any Expected Delivery Dates;
 - (ii) in the case of the TSA, the TSA Services, the Annual Contract Price, the Service Payments, the Additional Service Payments, the Simulator Service Payments, the TSA Performance Regime and/or the Maintenance Plan; and
 - (iii) in the case of the TSSSA, the TSSSA Services, the Service Payments, the TSSSA Performance Regime and/or the Maintenance Plan,

and in each case, that opinion shall be formulated on the same basis as if the TMM had made a Variation Proposal in accordance with paragraph 1.2; and

- (b) shall certify in its response to a Variation Proposal made by another Proposing Party that the TMM will hold the terms of that response open for:
 - (i) 60 days, in the case of a Variation Proposal submitted before the Acceptance of the Last Unit; and
 - (ii) 90 days, in the case of any other Variation Proposal,in each case, from the date of that response; and

- (c) in the case of a Variation Proposal relating to the Lease (and without prejudice to its right to object to such Variation Proposal under paragraph 3.3), shall only be entitled to propose any alternative terms if, and to reflect the extent that, it reasonably believes that the implementation of that Variation would adversely affect the TMM's rights or the performance of the TMM's obligations under any of the other Contracts.

2.4 Where the Recipient Party is the Owner and the Variation Proposal relates to the Lease, the Owner, in complying with the terms of paragraph 2.2, shall specify in its response to the relevant Variation Proposal, the effect (if any) in the Owner's opinion of that Variation Proposal on:

- (a) the Rental;
- (b) in the case of any Variation Proposal issued before Acceptance of the Last Unit, the rate of liquidated damages payable by the TMM pursuant to clause 19.1 of the MSA (or by the Operator pursuant to clause 7.3 of the Lease); and/or
- (c) any Senior Finance Document or Subordinated Financing Agreement and the Secretary of State's liabilities on termination of any Contract if the Owner reasonably believes that consent of the Secretary of State under paragraph 4.10 of Schedule 4.3 (*Secretary of State Authorisation of Variations*) would be required if the proposed Variation were implemented,

and, in each case, that opinion shall be formulated on the same basis as if the Owner had made a Variation Proposal in accordance with paragraph 1.2(g).

2.5 Where the Recipient Party is the Operator, the Operator shall specify in its response to the relevant Variation Proposal, the adverse effect (if any) in the Operator's opinion of that Variation Proposal on:

- (a) the Operator's Railway Safety Certificate; and
- (b) the Operator's track access arrangements for the Units, including any additional maintenance or other charges that the Operator would be reasonably likely to incur under the Track Access Agreement were the proposed Variation to be implemented.

2.6 Any response by any Party to a Variation Proposal shall be made on the form on which that Variation Proposal was made by completing Part B of the Appendix to Schedule 4.3 (*Notification of Authorisation to Vary*) and such response shall form part of that Variation Proposal upon receipt by the other Parties of that response.

3. RIGHTS TO REFUSE A VARIATION

Secretary of State/Operator rights

3.1 In the case of a Variation Proposal issued by the TMM or the Owner (other than a Variation Proposal that relates to a Required Variation, in which case this paragraph 3.1 shall not apply), the Secretary of State in relation to this Agreement and the Operator in relation to any other Contract may, having considered the relevant Variation Proposal constructively and in good faith, confirm in accordance with paragraph 4.1 that he or it does not wish that Variation Proposal to be carried out or that that Variation Proposal is not necessary, in which case, the TMM or Owner (as appropriate) shall withdraw that Variation Proposal by issuing a Withdrawal Notice to the parties to the relevant Contract in accordance with paragraph 3.1 of Schedule 4.4 (*Implementing and Withdrawing Variations*). If the Variation Proposal relates

to a Performance Remedial Plan Modification (as defined in the TSA), the Secretary of State and the Operator shall have regard to the matters set out in paragraph 4.3 of schedule 8 (*Performance Remedial Plans*) of the TSA in exercising their discretion under this paragraph 3.1.

Owner/TMM rights

3.2 In the case of a Variation Proposal issued by any other Party to this Agreement, the TMM or the Owner may (without prejudice to the Owner's rights under paragraph 1.2 of schedule 7 (*Modifications*) of the Lease in relation to any Modification proposed by the Operator), object to the implementation of that Variation Proposal on one or more of the following grounds:

- (a) that implementation of the Variation Proposal would:
 - (i) infringe any Applicable Laws and Standards; or
 - (ii) cause any existing Relevant Approval (which is not capable of modification) to be revoked; or
 - (iii) require a new Relevant Approval which will not (even if all relevant Parties to this Agreement use all reasonable endeavours) be obtainable; or
- (b) that implementation of the Variation Proposal would result in a change in the essential nature of the Project,

in which case paragraph 4.3 shall apply.

3.3 In the case of a Variation Proposal related to the Lease only, the TMM shall not be entitled to raise an objection to that Variation Proposal except where the TMM reasonably believes that:

- (a) one or more of the grounds set out in paragraph 3.2 applies to that Variation Proposal; or
- (b) the implementation of that Variation Proposal would materially and adversely affect the TMM's rights or the performance of the TMM's obligations under any of the Contracts,

in which case paragraph 4.3 shall apply.

4. SETTLEMENT OF VARIATION PROPOSALS

Notification of whether Parties have further comments on Variation Proposal and response

4.1 Promptly and in any event within 28 days of receipt of all responses to a Variation Proposal, the parties to the relevant Contract shall confirm to each other in writing whether (a) that Party has further comments on the terms of that Variation Proposal and the responses from the other Recipient Parties, and (b) it considers that the Variation Proposal is ready to be submitted for an Authorisation to Vary or not. Any Party who confirms that it has no further comments in respect of a Variation Proposal shall confirm this by signing Part C of the Appendix to Schedule 4.3 (*Notification of Authorisation to Vary*), and the Secretary of State agrees and acknowledges that such a signature shall not constitute the relevant Party entering

into or becoming a signatory to an Unauthorised Contract. If any Recipient Party (other than the Secretary of State) who is not a party to the relevant Contract has not provided a response to the Variation Proposal within such 28 day period, that person shall be deemed to have no further comments on the Variation Proposal and to consider the Variation Proposal ready to be submitted for an Authorisation to Vary.

Confirmation of completeness of Variation Proposal and responses

4.2 If the Parties to this Agreement (other than the Secretary of State) have all confirmed to each other in writing that that Party has no further comments on the terms of that Variation Proposal, including any responses thereto, and considers the Variation Proposal ready to be submitted for an Authorisation to Vary, (or is deemed to do so pursuant to paragraph 4.1), the Operator shall apply to the Secretary of State as soon as reasonably practicable thereafter for the purpose of obtaining an Authorisation to Vary in accordance with paragraph 2 (*Seeking an Authorisation to Vary*) of Schedule 4.3 (*Secretary of State Authorisation of Variations*), provided that where the Secretary of State is the Proposing Party, paragraph 3.4 of Schedule 4.3 shall apply.

Further comments on or dispute concerning terms of Variation Proposal and/or responses

4.3 If pursuant to paragraph 4.1 or 3.3, any of the Parties to this Agreement confirms that it is not satisfied with the terms of that Variation Proposal, including any of the responses thereto, or has further comments thereon, the Parties shall meet as soon as reasonably practicable after receipt of that confirmation, in order to seek to agree the terms of that Variation Proposal, including any responses thereto.

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Validity of TMM proposals and responses

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Further information

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4.9 ³⁰⁶

³⁰¹ Redaction.

³⁰² Redaction.

³⁰³ Redaction.

³⁰⁴ Redaction.

³⁰⁵ Redaction.

³⁰⁶ Redaction.

5. REFERENCE FINANCIAL EXERCISES

Where the TMM or the Owner wishes to make any Variation Proposal or are to make any response to a Variation Proposal pursuant to this Schedule 4.2, and the relevant Party reasonably believes that the implementation of the Variation that is the subject of that Variation Proposal or response will have a financial effect on the terms of a Contract, the TMM or the Owner (as appropriate) shall perform a Reference Financial Exercise and include the results of that exercise in that Variation Proposal or response (as appropriate).

SCHEDULE 4.3

Secretary of State Authorisation of Variations

1. REQUIREMENT FOR AN AUTHORISATION TO VARY

1.1 An Authorisation to Vary must first be issued by the Secretary of State pursuant to this Schedule 4.3 in order for the implementation of the related Variation Proposal to be authorised.

1.2 Once the Parties (other than the Secretary of State) have confirmed or are deemed to have confirmed that each such Party has no further comments on the Variation Proposal in accordance with paragraph 4.2 of Schedule 4.2 (*Variation Proposals*), or once any dispute has been determined in accordance with paragraph 4.6 of Schedule 4.2, and in each case the relevant parties have signed Part C of the Appendix to Schedule 4.3 (*Notification of Authorisation to Vary*) the Operator shall send the Variation Proposal and comments thereon to the Secretary of State.

1.3 The Secretary of State shall, in accordance with paragraph 3 (*Authorising or Rejecting Variation Proposals*), consider the application of the Operator made pursuant to paragraph 4.2 or 4.6 of Schedule 4.2 (*Variation Proposals*) and in accordance with paragraph 2 (*Seeking an Authorisation to Vary*) for the Secretary of State to issue an Authorisation to Vary.

2. SEEKING AN AUTHORISATION TO VARY

2.1 An application made by the Operator pursuant to paragraph 4.2 or 4.6 of Schedule 4.2 for the Secretary of State to issue an Authorisation to Vary shall include the following information:

- (a) a copy of that Variation Proposal;
- (b) any response to that Variation Proposal by any other Party to this Agreement;
- (c) comprehensive contractual drafting that clearly sets out the full extent of the proposed changes to that Contract;
- (d) ³⁰⁷
- (e) any other supporting information.

3. AUTHORISING OR REJECTING VARIATION PROPOSALS

Consideration by the Secretary of State

3.1 Promptly and in any event within 28 days of the receipt by the Secretary of State of any application for the Secretary of State to issue an Authorisation to Vary in relation to any Variation Proposal, the Secretary of State shall, subject to the Secretary of State exercising his right pursuant to paragraph 3.12 to seek further information, notify the parties to the Contract

³⁰⁷ Redaction.

that is the subject of that application whether he is willing to countersign the Variation Proposal, in which event the countersigned Variation Proposal shall be deemed to be an Authorisation to Vary.

3.2 If the Secretary of State decides to issue an Authorisation to Vary, he shall do so by countersigning the Variation Proposal submitted by the Operator in accordance with paragraph 1.2 by countersigning Part D of the Appendix to Schedule 4.3 (*Notification of Authorisation to Vary*) and issuing a copy of that Authorisation to Vary to each Party and/or each party to the Contract that is the subject of an application for authorisation, in which case the provisions of paragraph 1 (*Implementation of Authorised Variations*) of Schedule 4.4 (*Implementing and Withdrawing Variations*) shall apply.

3.3 Subject to paragraph 3.8, the other Parties to this Agreement acknowledge that the Secretary of State is under no obligation to authorise any Variation Proposal that provides for the inclusion in any Contract of, in the reasonable opinion of the Secretary of State, any unusual or unduly onerous obligations which would impose a greater burden on the Operator than was imposed on the Operator prior to that Variation Proposal being made.

Secretary of State as Proposing Party

3.4 Where the Secretary of State is the Proposing Party and the parties to the Contract that is the subject of the related Variation Proposal made by him have all confirmed to each other and the Secretary of State that they are satisfied with the terms of that Variation Proposal, then, unless the Secretary of State decides to withdraw that Variation Proposal in accordance with paragraph 3.1 of Schedule 4.4, the Secretary of State shall promptly issue an Authorisation to Vary to all of the Parties to this Agreement.

Secretary of State as Recipient Party

3.5 Where the Secretary of State is a Recipient Party and the parties to any Contract that is the subject of a Variation Proposal and the Secretary of State have all confirmed to each other that they are satisfied with the terms of that Variation Proposal, then, unless the Proposing Party decides to withdraw that Variation Proposal in accordance with paragraph 3.1 of Schedule 4.4, the Secretary of State shall promptly issue an Authorisation to Vary to those parties.

Variations to more than one Contract and Depot Variations

3.6 In giving due consideration pursuant to paragraph 3.1, the Secretary of State shall (acting reasonably) consider in his sole discretion whether the Variation to a Contract that is the subject of an application to him to issue an Authorisation to Vary, is related to:

- (a) any Variation to any other Contract that is the subject of that application; and/or
- (b) any variation proposal made to the Secretary of State pursuant to any Depot Agreement.

3.7 Where the Secretary of State concludes pursuant to paragraph 3.6 that Variations proposed to two or more Contracts and/or a proposed Variation to a Contract and any variation proposal made to him pursuant to any Depot Agreement are related:

- (a) those proposals shall be considered and authorised or rejected concurrently;

- (b) where an application has been made in relation to Variations to two or more Contracts, an Authorisation to Vary shall not be issued in relation to one such Variation alone; and
- (c) where an application has been made in relation to a Variation to a Contract and in relation to a variation to any Depot Agreement, an Authorisation to Vary shall not be issued in relation to that Variation unless an equivalent authorisation has also been issued by the Secretary of State in relation to the variation to that Depot Agreement.

Authorising a Required Variation

3.8 The Secretary of State shall promptly issue an Authorisation to Vary where:

- (a) a Required Variation is to be made pursuant to paragraph 2 (*Agreement or Determination of Required Variations*) of Schedule 4.5 (*Change in Law*); and
- (b) the terms of the Variation Proposal in which that Required Variation has been proposed are resolved between the relevant Parties and the Secretary of State, in accordance with Schedule 4.2 (*Variation Proposals*) including resolving the financial terms in accordance with the relevant Schedule of Schedule 5 (*Determining Financial Consequences of Variations and Other Changes*).

Reference Financial Exercises

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3.10 ³⁰⁹

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Further information

3.12 The Secretary of State shall have the right (acting reasonably) to require any party to a Contract that is the subject of an application for the Secretary of State to issue an Authorisation to Vary to produce any reasonably detailed supporting documentation in relation to the effects (if any) on that Contract (other than any financial information that has already been supplied by the Owner or the TMM for the purposes of carrying out an indicative or actual Run of the Owner Financial Model or Run of the TMM Financial Model), and that Party shall comply with that request as soon as reasonably practicable thereafter.

3.13 Where the Secretary of State exercises the right pursuant to paragraph 3.12 to request further information, he shall, for the purpose of responding to the relevant request to issue an Authorisation to Vary pursuant to paragraph 3.1, respond to the Proposing Party and the other parties to the relevant Contract promptly and in any event within 28 days of receipt of the relevant Party's response to any such request for further information.

³⁰⁸ Redaction.

³⁰⁹ Redaction.

³¹⁰ Redaction.

4. UNAUTHORISED VARIATIONS

Obligation not to vary without consent

4.1 None of the Owner, the TMM or the Operator shall enter into any Contract Amendment Agreement without the prior issue by the Secretary of State of a related Authorisation to Vary, which will include written confirmation in respect of the final draft of that Contract Amendment Agreement pursuant to paragraph 1.1 of Schedule 4.4 (*Implementing and Withdrawing Variations*). The Parties acknowledge that a confirmation of no further comments in accordance with paragraph 4.2 of Schedule 4.2 (*Variation Proposals*) shall not be considered entry into a Contract Amendment Agreement.

Failure to obtain consent

4.2 If an Unauthorised Contract is made or entered into without the consent of the Secretary of State, as required under paragraph 4.1, then the Secretary of State may by written notice, notify the Parties that have entered into any Unauthorised Contract that the Unauthorised Contract has been entered into without his consent and that, pursuant to the terms of the relevant Contract, the Variation that is the subject of that Unauthorised Contract is unenforceable between the Parties.

Obligation to remedy where capable of remedy

4.3 Where:

- (a) all of the actions taken pursuant to an Unauthorised Contract are remediable, the Secretary of State shall; or
- (b) only some of the actions taken pursuant to an Unauthorised Contract are remediable, the Secretary of State may in his sole discretion,

by written notice notify the Parties that have entered into that Unauthorised Contract, that:

- (i) he requires, within a reasonable period specified by the Secretary of State (being not less than 20 Working Days), those Parties:
 - (A) as appropriate, to amend the Contract that is the subject of that Unauthorised Contract, to revoke the changes made by that Unauthorised Contract and/or revoke that new Contract; and
 - (B) to the extent specified, put those Parties into the position they were in prior to the entry into of that Unauthorised Contract, remedying all actions, or those actions that are considered to have material effect, as appropriate, that were, in each case, taken by or on behalf of any of them prior to the Secretary of State's notice that are capable of remedy; or
- (ii) the Secretary of State authorises that Unauthorised Contract, in which case, he shall issue an Authorisation to Vary.

Consequences where irremediable actions or failure to remedy

4.4 Paragraphs 4.5, 4.6 and 4.7 shall apply in relation to the Owner, the TMM and the Operator respectively where:

- (a) the relevant Unauthorised Contract has a material adverse effect on the Secretary of State, the Operator (where the Operator is not a signatory) and/or the Project, or otherwise materially and adversely affects the performance or amenity of the Units; and
- (b) one of the following circumstances applies:
 - (i) in a case where either paragraph 4.3(a) or paragraph 4.3(b) applies, the Secretary of State requires the parties that have entered into an Unauthorised Contract to amend the relevant Contract, revoke any new Contract and/or remedy actions, and any of those amendments, that revocation or those actions are not made or remedied, as appropriate, within the reasonable period specified by the Secretary of State;
 - (ii) in a case where paragraph 4.3(b) applies, the Secretary of State neither requires the relevant parties to amend, revoke and/or remedy as referred to in sub-paragraph (i) of paragraph 4.3, nor authorises the relevant Unauthorised Contract pursuant to sub-paragraph (ii) of paragraph 4.3; or
 - (iii) all of the actions taken pursuant to that Unauthorised Contract are irremediable.

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4.7 Where the Operator is a signatory to an Unauthorised Contract and the circumstances specified in paragraph 4.4 apply, then, without limiting the Secretary of State's other remedies (including any that apply under the applicable Franchise Agreement):

- (a) the Secretary of State may, by written notice to the Owner (copied to the Operator and the TMM), direct the Owner to terminate the Lease by issuing a Lease Operator Termination Notice, in which case:
 - (i) the provisions of Schedule 2.1 (*Section 54 Undertakings*) and of Part 1 (*Operator default of Lease*) of Schedule 2.4 (*Early Termination of the Lease*) shall apply;
 - (ii) the Secretary of State may require that the terms of any relevant Contract, including any Replacement Lease, do not include any Variation that is the subject of that Unauthorised Contract; and
 - (iii) the Secretary of State shall exercise his rights thereunder to terminate the Franchise Agreement; and
 - (iv) the Secretary of State may otherwise take enforcement action against the Operator; or
- (b) where the Secretary of State does not direct the Owner to terminate the Lease, then:

³¹¹ Redaction.

³¹² Redaction.

- (i) the Secretary of State may require that the terms of any relevant Contract, including the Lease, will not include any Variation that is the subject of that Unauthorised Contract; and
- (ii) no Lease Operator Termination Event shall occur as a result of that Unauthorised Contract.

4.8 Where the Secretary of State requires the termination of Contracts pursuant to paragraph 4.6, he may hereby require the Owner and/or the Operator to exercise their respective rights under the MSA and/or the TSA to terminate either or both of those agreements where:

- (a) the TMM has entered into an Unauthorised Contract (as defined in any Depot Agreement for Leases);
- (b) an MSA TMM Event of Default and a TSA TMM Event of Default have occurred as a result; and
- (c) the circumstances described in paragraph 4.4 of schedule 16.3 (*Secretary of State Authorisation of Variations*) of that Depot Agreement for Leases apply,

in which case, the Owner and/or the Operator shall (but not otherwise) promptly exercise those rights.

4.9 Where the Secretary of State requires the termination of one or more Contracts pursuant to any of paragraphs 4.5, 4.6 and/or 4.7, each of the Owner, the TMM and the Operator agree that if it was a signatory to any of the Unauthorised Contracts in respect of which the termination referred to above is required, it shall not be entitled to seek any compensation resulting from such termination under that Contract from any other Party who is a signatory to such Unauthorised Contract.

Changes To Financing Documents

4.10 Subject to paragraph 4.11, no amendment, variation, waiver or exercise of a right under any Senior Finance Document or Subordinated Financing Agreement, any Contract or other ancillary document shall have the effect of increasing the Secretary of State's liabilities on termination of any Contract unless:

- (a) that amendment, variation, waiver or exercise of a right is the subject of an Authorisation to Vary or has otherwise been expressly authorised by the Secretary of State;
- (b) the Owner has obtained the prior written consent of the Secretary of State to such increased liability for the purposes of this paragraph 4.10; or
- (c) it is an Additional Permitted Borrowing.

4.11 If either:

- (a) at any time before the expiry of the Availability Period or (as the case may be) the Pre-Funded Period:
 - (i) the Intercreditor Agent, at the Owner's request, grants a waiver in writing and in accordance with the Senior Finance Documents (but without increasing or

otherwise amending the Total Term Loan Commitments or the EIB Commitment), of any condition to:

- (A) a utilisation made or to be made before the expiry of the Availability Period; or
- (B) a drawing made or to be made before the expiry of the Pre-Funded Period,

(such utilisation or drawing being a **Relevant Utilisation**) under clause 4 (*Conditions of Utilisation*) of the Common Terms Agreement or clause 2.3 of the EIB Finance Contract (each such waiver being a **Drawstop Waiver**); and

- (ii) the Owner gives to the Secretary of State, within 5 Working Days after the date of the relevant Drawstop Waiver, notice of the relevant Drawstop Waiver, together with full particulars of it, including:

- (A) the circumstances giving rise to the need for the relevant Drawstop Waiver;
- (B) the condition or conditions to the Relevant Utilisation to which the relevant Drawstop Waiver relates;
- (C) details of any conditions or other terms to which the relevant Drawstop Waiver is subject; and
- (D) a copy of the relevant Drawstop Waiver; or

- (b) at any time:

- (i) the Intercreditor Agent, at the Owner's request, grants a waiver in writing and in accordance with the Senior Finance Documents of any obligation to make a prepayment pursuant to any of paragraph (b) (*Refinancing of Existing Senior Debt*) []³¹³, paragraph (e)(vii) (*Balloon Cash Sweep*), paragraph (e)(viii) (*Cash Sweep in relation to Locked-Up Funds after the Actual Completion Date*), paragraph (e)(ix) (*Cash Sweep in relation to a failure to maintain the Operator Reserve*) or paragraph (e)(x) (*Cash Sweep in relation to failure to meet the Balloon Cover Ratio*) (in each case) of clause 5.8 (*Mandatory prepayments*) of the Common Terms Agreement (each such waiver being a **Prepayment Waiver**); and

- (ii) the Owner gives to the Secretary of State, within 5 Working Days after the date of the relevant Prepayment Waiver, notice of the relevant Prepayment Waiver, together with full particulars of it, including:

- (A) the circumstances giving rise to the need for the relevant Prepayment Waiver;
- (B) details of any conditions or other terms to which the relevant Prepayment Waiver is subject; and

³¹³ Redaction.

(C) a copy of the relevant Prepayment Waiver,

and after the date of the relevant Drawstop Waiver or Prepayment Waiver, a Contract is terminated, then paragraph 4.10 shall not apply to any increase in the Secretary of State's liabilities on such termination arising solely as a result of the making of the Relevant Utilisation in accordance with the relevant Drawstop Waiver or the giving of the Prepayment Waiver (as applicable), but only to the extent that any Early Termination Sum is, solely as a result of the making of the Relevant Utilisation in accordance with the relevant Drawstop Waiver or the giving of the Prepayment Waiver (as applicable), greater than such Early Termination Sum would have been as at the Relevant Termination Date had the Relevant Utilisation not been made or the Prepayment Waiver not been given (as applicable).

APPENDIX TO SCHEDULE 4.3

Form of Variation Proposal and Notification of Authorisation to Vary

VARIATION PROPOSAL	NUMBER	VP
CONTRACT NO: <i>[INSERT NAME OF CONTRACT]</i>		
PART A (to be completed by Proposing Party of Variation Proposal)		
Description of Variation Proposal:		
Quantity affected by this Variation Proposal:		
Signature: _____ Proposing Party	Designation:	Operator's Contract Manager/ Owner's Contract Manager/ Secretary of State's Nominated Representative TMM's Nominated Representative
PART B (to be completed by Recipient Party to the Contract)		
Agreement Effect(s): [For example: (delete as appropriate):] Equipment Price Effect(s): Specification Effect(s): Contract Programme Effect(s): Expected Delivery Date Effect(s): Services Effect(s): Service Payments Effect(s): Performance Regime Effect(s): Maintenance Plan Effect(s): Other Effect(s): Programme for completion of actions to be carried out under this Variation Proposal:		
Comments on Parts A or B:		

PART C (to be completed by each Party (other than the Secretary of State) confirming no further comments on Variation Proposal)

Each of the following parties confirms, in accordance with paragraph 4.2 of Schedule 4.2 (*Variation Proposal*), that it has no further comments on the terms of the Variation Proposal set out in Part A and Part B above:

Signature: _____
Operator

Date: _____

Signature: _____
Owner

Date: _____

Signature: _____
TMM

Date: _____

PART D (to be completed by Secretary of State)

When complete, this form must be returned to all parties to the Contract

The Secretary of State confirms, in accordance with paragraph 3.2 of Schedule 4.3 (*Secretary of State Authorisation of Variations*) its Authorisation to Vary in respect of the Variation Proposal set out in Part A and Part B above.

Signature: _____
Secretary of State's Nominated Representative

Date: _____

Note: Unless and until authorised by the Secretary of State's Nominated Representative this Variation Proposal is null and void and of no contractual effect. No Party shall commence implementation of such Variation Proposal until signed by the Secretary of State's Nominated Representative.

SCHEDULE 4.4

Implementing and Withdrawing Variations

1. IMPLEMENTATION OF AUTHORISED VARIATIONS

Obligation to enter into Contract Amendment Agreement or new Contract

1.1 If the Secretary of State issues an Authorisation to Vary pursuant to paragraph 3.2 of Schedule 4.3 (*Secretary of State Authorisation of Variations*) then the parties to each Contract that is the subject of that Authorisation to Vary shall implement the relevant Variation that is specified in that Authorisation to Vary promptly and in any event within the timescale and in accordance with any key milestones or stages specified in that Authorisation to Vary by:

- (a) exercising their respective rights under that Contract to require the counterparties to that Contract to enter into a Contract Amendment Agreement and/or a new Contract (as appropriate) to give effect to the terms of the Variation Proposal; and
- (b) where appropriate, making such amendments to the Escrow Documents to reflect that Variation as have been authorised by that Variation Proposal and thereafter deposit those documents in accordance with the applicable of Schedule 5.4 (*Identity of the Owner Financial Model*) and Schedule 5.5 (*Identity of the TMM Financial Model*).

Copies of executed Contract Amendment Agreements and Contracts

1.2 Promptly after any Contract Amendment Agreement is entered into pursuant to any Authorisation to Vary, the Proposing Party to the related Variation Proposal shall provide the Secretary of State with execution versions of that Contract Amendment Agreement.

2. MODIFICATIONS AND THE SIMULATOR EQUIPMENT

To the extent that the Units are to be the subject of a Modification and as a result, it is necessary to modify the Simulator equipment in order that the equipment continues to have the same functionality as the equivalent equipment on the Units, then the Variation to which that Modification relates shall be deemed to include (to the extent that Variation does not already contain such an obligation) an obligation on the TMM to make the necessary modifications to the Simulator equipment as part of the modification works to be carried out on the Units (subject to the Operator making the Simulator equipment available to the TMM for such purpose).

3. WITHDRAWAL OF VARIATION PROPOSALS

3.1 A Party may withdraw a Variation Proposal it has made at any time prior to the issue of an Authorisation to Vary authorising the implementation of that Variation Proposal (and thereafter only by agreement of the relevant Parties) by issuing a notice to the Parties that that Variation Proposal was issued to, confirming that that Variation Proposal has been withdrawn (a *Withdrawal Notice*).

3.2 A Variation Proposal shall be withdrawn on the date on which all of the Parties to whom that Variation Proposal was issued are in receipt of the Withdrawal Notice confirming its withdrawal.

3.3 [redacted]³¹⁴

³¹⁴ Redaction.

APPENDIX TO SCHEDULE 4.4

Notification of Withdrawal

VARIATION PROPOSAL	NUMBER	VP				
CONTRACT NO: <i>[INSERT NAME OF CONTRACT]</i>						
PART A (to be completed by Proposing Party of Variation Proposal)						
Description of Variation Proposal:						
Quantity affected by this Variation Proposal:						
Confirmation of the Proposing Party's withdrawal of the Variation Proposal: <table style="width: 100%; border: none;"> <tr> <td style="width: 40%; vertical-align: top;"> Signature: _____ Proposing Party </td> <td style="width: 60%; vertical-align: top;"> Designation: Operator's Contract Manager/ Owner's Contract Manager/ Secretary of State's Nominated Representative/ TMM's Nominated Representative </td> </tr> <tr> <td style="vertical-align: top;"> Date: _____ </td> <td></td> </tr> </table>			Signature: _____ Proposing Party	Designation: Operator's Contract Manager/ Owner's Contract Manager/ Secretary of State's Nominated Representative/ TMM's Nominated Representative	Date: _____	
Signature: _____ Proposing Party	Designation: Operator's Contract Manager/ Owner's Contract Manager/ Secretary of State's Nominated Representative/ TMM's Nominated Representative					
Date: _____						

SCHEDULE 4.5

Change in Law

1. NOTICE OF CHANGES IN LAW AND EFFECTS

Notice of effects of Change in Law

1.1 If a Change in Law (including one that requires a Mandatory Modification) occurs or is shortly to occur, then any Party (a *Notifying Party*) may notify the relevant parties to the relevant Contract of the Notifying Party's opinion of that Change in Law's likely effects, giving details of its opinion of:

- (a) in the case of the MSA, any necessary change in the performance of the obligations of any of the parties to the MSA, including the procedure for implementing such change in performance;
- (b) in the case of the TSA, any necessary change in the Services and/or Additional Services, including the procedure for implementing such change in the Services and/or Additional Services;
- (c) in the case of the Lease, any necessary change in the basis upon which the Units and Associated Equipment are leased, including the procedure for implementing such change in that basis;
- (d) in the case of the TSSSA, any necessary change in the Services, including the procedure for implementing such change in the Services;
- (e) whether any Required Variation to the terms of the MSA, the TSA, the TSSSA and/or the Lease (as applicable) is necessary to deal with that Change in Law;
- (f) where that Change in Law is a Qualifying Change in Law that requires a Mandatory Modification to be made, the scope of and the programme for carrying out that Mandatory Modification;
- (g) where that Change in Law is a Qualifying Change in Law, whether relief from compliance with the Notifying Party's obligations under any Contract is required during the implementation of that Qualifying Change in Law;
- (h) where that Change in Law is a Qualifying Change in Law, any loss of revenue of the Notifying Party that will result from that Qualifying Change in Law;
- (i) where that Change in Law is a Qualifying Change in Law, any Estimated Change in Costs of, as appropriate, the TMM or the Owner that will directly result from that Qualifying Change in Law;
- (j) where that Change in Law is a Qualifying Change in Law, any Capital Expenditure that is required or no longer required as a result of that Qualifying Change in Law; and
- (k) any other legal or commercial effects that directly result from that Change in Law and where that Change in Law is a Qualifying Change in Law, the financial effects that directly result.

Making a Variation Proposal for a Required Variation to be made

1.2 Where the TMM and/or the Owner seeks a Required Variation to be made to address the effects of a Change in Law, then as soon as practicable after receipt of any notice under paragraph 1.1, the TMM and/or the Owner (as appropriate) shall prepare and issue a Variation Proposal in relation to that Required Variation to the other parties to the relevant Contract and the Secretary of State in accordance with paragraph 1 (*Issuing Variation Proposals*) of Schedule 4.2 (*Variation Proposals*) and the provisions of that Schedule shall apply. Where the relevant Change in Law requires a Modification to the Units or Associated Equipment, the TMM shall prepare the Variation Proposal in the first instance with input from the Owner as appropriate.

1.3 ³¹⁵

1.4 The relevant parties shall discuss the likely effects of a Change in Law notified pursuant to paragraph 1.1 and any ways in which the TMM and/or Owner (as appropriate) can mitigate the effect of that Change in Law in accordance with the process in Schedule 4.2 for settling Variation Proposals where a Variation Proposal has been made in respect of that Qualifying Change in Law, and if not, as soon as reasonably practicable after receipt of the notice pursuant to paragraph 1.1.

2. AGREEMENT OR DETERMINATION OF REQUIRED VARIATIONS

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3. ³¹⁷

³¹⁵ Redaction.

³¹⁶ Redaction.

³¹⁷ Redaction.

SCHEDULE 4.6

□³¹⁸

³¹⁸ Redaction.

SCHEDULE 5

DETERMINING FINANCIAL CONSEQUENCES OF VARIATIONS AND OTHER CHANGES

Schedule 5.1:	Changes to Equipment Prices
	Appendix: Work Rates
Schedule 5.2:	Runs of the Owner Financial Model
Schedule 5.3:	Runs of the TMM Financial Model
Schedule 5.4:	Identity of the Owner Financial Model
Schedule 5.5:	Identity of the TMM Financial Model
Schedule 5.6:	Runs of the TSSSA Financial Model
Schedule 5.7:	Identity of the TSSSA Financial Model

SCHEDULE 5.1

□³¹⁹

³¹⁹ Redaction.

APPENDIX TO SCHEDULE 5.1

□³²⁰

³²⁰ Redaction.

SCHEDULE 5.2

□³²¹

³²¹ Redaction.

SCHEDULE 5.3

□³²²

³²² Redaction.

SCHEDULE 5.4

□³²³

³²³ Redaction.

SCHEDULE 5.5

□³²⁴

³²⁴ Redaction.

SCHEDULE 5.6

□³²⁵

³²⁵ Redaction.

SCHEDULE 5.7

□³²⁶

³²⁶ Redaction.

SCHEDULE 6

REFINANCING

Schedule 6: Refinancing

SCHEDULE 6

Refinancing

1. REFINANCING

Rights and obligations

1.1 The Owner and Secretary of State shall at all times act in good faith with respect to any Refinancing or potential or proposed Refinancing.

1.2 The Secretary of State shall (before, during and at any time after any Refinancing) have unrestricted rights of audit over any financial model and documentation (including any aspect of the calculation of the Refinancing Gain) used in connection with that Refinancing (whether that Refinancing is a Qualifying Refinancing or not).

Qualifying Refinancing

1.3 The Owner shall not enter into or permit any Qualifying Refinancing without the Secretary of State's prior written consent.

Sharing of Refinancing Gains

1.4 ³²⁷

1.5 ³²⁸

1.6 The Secretary of State may not withhold or delay his consent to a Qualifying Refinancing that will give rise to a Refinancing Gain to obtain a greater share of any Refinancing Gain than that specified in paragraph 1.4 or 1.5 (as applicable).

1.7 The Owner shall promptly provide the Secretary of State with full details of:

(a) any proposed Qualifying Refinancing that will give rise to a Refinancing Gain; or

(b) ³²⁹

in each case including a copy of the proposed financial model relating to it (if any) and the basis for the assumptions used in the proposed financial model.

1.8 ³³⁰

1.9 [NOT USED]

1.10 The Secretary of State shall have the right to elect, prior to the commencement of any refinancing process, to receive his share of any Refinancing Gain (including any Margin Gain) as:

³²⁷ Redaction.

³²⁸ Redaction.

³²⁹ Redaction.

³³⁰ Redaction.

- (a) a single payment in an amount less than or equal to any Distribution that is made on or about the date of the Refinancing as a result of the relevant Refinancing; or
- (b) as determined by the Secretary of State by means of either (i) a reduction of the Rental payable under the Lease or any number of Replacement Leases up to the Backstop Date, or (ii) a combination of a single payment as described in paragraph 1.10(a) and a reduction to the Rental as described in paragraph (b)(i).

□³³¹

1.11 □³³²

1.12 The Secretary of State and Owner shall negotiate in good faith to agree the basis of any Refinancing Gain (including any Margin Gain) and the payment of the Secretary of State's share. The provisions of Schedule 8.2 (*Expert Determination*) will apply in the event that the Secretary of State and the Owner fail to agree.

1.13 A Refinancing Gain shall be calculated after deduction of the reasonable and proper professional costs that each Party incurs in relation to the relevant Refinancing.

1.14 The Owner shall, within 28 days of any Qualifying Refinancing (or a Refinancing that is an Exempt Refinancing under limb (a) or (h) of the definition of such term), pay the Secretary of State's reasonable and proper professional costs incurred by the Secretary of State in connection with that Refinancing, as disclosed on or before the date of the Refinancing.

Notification

1.15 Without prejudice to the other provisions of this paragraph 1, the Owner shall

- (a) notify the Secretary of State of all Notifiable Financings on becoming aware of the same and again when they are entered into and provide full details of the same; and
- (b) include a provision in the Senior Finance Documents whereby it is entitled to be informed of any proposals which the Senior Lenders may have to refinance the Senior Finance Documents.

2. SECRETARY OF STATE RIGHT TO REQUEST REFINANCING

2.1 Subject to paragraphs 2.2, 2.3 and 2.5, if □³³³, the Secretary of State (acting reasonably considers the funding terms generally available in the market to be more favourable than those reflected in the Senior Finance Documents, the Secretary of State may, by delivery of a notice (a *Refinancing Notice*), require the Owner to request potential funders to provide terms for a potential Refinancing in respect of the financing of the Equipment generally.

³³¹ Redaction.

³³² Redaction.

³³³ Redaction.

2.2 ³³⁴

2.3 The Owner shall, subject to paragraph 2.4, be entitled to object to the request in a Refinancing Notice where the proposed Refinancing:

(a) would not be approved by a prudent board of directors of a company operating the same business in the United Kingdom to that operated by the Owner, in similar circumstances, acting reasonably and considering the requirements of the Investors;

(b) ³³⁵

(c) ³³⁶

(d) ³³⁷

2.4 ³³⁸

2.5 Subject to paragraph 2.1, the Secretary of State shall be entitled to issue a Refinancing Notice at any time provided that he shall not issue more than two Refinancing Notices in any two year period ³³⁹

2.6 For the purposes of paragraph 2.5:

(a) a Refinancing Notice delivered by the Secretary of State shall be counted as having been issued notwithstanding that the relevant request is later withdrawn, save where that withdrawal is made under paragraph 2.7; and

(b) a notice delivered by the Secretary of State pursuant to paragraph 2.18 or 2.21 shall not constitute a new Refinancing Notice.

2.7 A Refinancing Notice delivered in accordance with paragraph 2.1 or 2.2 shall set out in reasonable detail the grounds upon which the Secretary of State believes the funding terms to be available ³⁴⁰. The Owner and Secretary of State shall meet to discuss the Refinancing Notice within 28 days. Such a meeting will consider the evidence available to both Parties about:

(a) the availability of funding terms for a potential Refinancing; and

(b) any objection of the Owner to the proposed Refinancing pursuant to any of paragraphs 2.3 to 2.5 (as applicable).

³³⁴ Redaction.

³³⁵ Redaction.

³³⁶ Redaction.

³³⁷ Redaction.

³³⁸ Redaction.

³³⁹ Redaction.

³⁴⁰ Redaction.

The Secretary of State shall be entitled to withdraw the Refinancing Notice at or before such a meeting, or within 10 days following the meeting, and shall either withdraw such Refinancing Notice if the conditions set out in paragraphs 2.3 to 2.5 are not satisfied in respect of the proposed Refinancing or amend the Refinancing Notice so that such conditions are so satisfied. ³⁴¹

2.8 If the Secretary of State serves a Refinancing Notice and such notice is not withdrawn pursuant to paragraph 2.7, then the Owner shall, subject to paragraph 2.10:

- (a) act promptly, diligently and in good faith with respect to the potential Refinancing;
- (b) use reasonable endeavours to implement the proposed Refinancing, subject to and in accordance with paragraph 2.7, and, subject to paragraph 2.10 below to obtain the most favourable available terms from existing and/or new lenders for any potential Refinancing, which shall also be terms which are likely to generate a positive Refinancing Gain after the deduction of costs in accordance with the provisions of paragraph 1.13; and

(c) ³⁴²

2.9 ³⁴³

2.10 ³⁴⁴

2.11 [NOT USED]

2.12 The following shall apply in relation to the Refinancing Process:

(a) ³⁴⁵

(b) ³⁴⁶

(c) ³⁴⁷

(d) ³⁴⁸

(e) as soon as reasonably practicable after receipt of the Refinancing Notice, the Owner shall provide to the Secretary of State:

(i) ³⁴⁹

³⁴¹ Redaction.

³⁴² Redaction.

³⁴³ Redaction.

³⁴⁴ Redaction.

³⁴⁵ Redaction.

³⁴⁶ Redaction.

³⁴⁷ Redaction.

³⁴⁸ Redaction.

- (ii) if the Owner (acting reasonably) believes that it is not possible to obtain funding terms which are more favourable than those reflected in the relevant Senior Finance Documents in accordance with the requirements of paragraph 2.8, provide evidence to the reasonable satisfaction of the Secretary of State that the Owner has complied with its obligations in paragraphs 2.8(a) and (b).

2.13 Subject to paragraph 2.21, as soon as reasonably practicable following receipt of the information referred to in paragraph 2.12(e) ³⁵⁰, the Secretary of State (in his absolute discretion) shall, save where paragraph 2.21 applies, notify the Owner that:

- (a) the proposed indicative Refinancing terms are approved, in which case paragraph 2.14 shall apply;
- (b) the proposed indicative Refinancing terms are not approved, in which case paragraph 2.17 shall apply; or
- (c) ³⁵¹

2.14 If the Secretary of State instructs the Owner to implement the proposed Refinancing pursuant to paragraph 2.13(a), the Owner shall, as soon as reasonably practicable, use all reasonable endeavours to procure that such proposed Refinancing is implemented in accordance with the timetable provided pursuant to paragraph 2.12(e)(i)(E).

2.15 ³⁵²

2.16 ³⁵³

2.17 ³⁵⁴

2.18 ³⁵⁵

2.19 If the Owner achieves financial close in respect of an approved Refinancing pursuant to this paragraph 2:

- (a) the provisions of paragraph 1 (*Refinancing*) shall apply, including, where the approved Refinancing is the result of a new Refinancing Process implemented in accordance with paragraph 2.18, the payment of costs pursuant to paragraph 1.13 shall include the reasonable and proper costs incurred by each Party in relation to the Refinancing Process that was subject to the relevant Refinancing Stop Notice;
- (b) the Parties shall implement any Variation agreed pursuant to paragraph 2.17 in accordance with paragraph 4 (*Settlement of Variation Proposals*) of Schedule 4.2

³⁴⁹ Redaction.

³⁵⁰ Redaction.

³⁵¹ Redaction.

³⁵² Redaction.

³⁵³ Redaction.

³⁵⁴ Redaction.

³⁵⁵ Redaction.

(*Variation Proposals*) and paragraph 1 (*Implementation of Authorised Variations*) of Schedule 4.4 (*Implementing and Withdrawing Variations*); and

- (c) where paragraph 1.11 applies, the Parties shall:
- (i) perform a Run of the Owner Financial Model using an updated Record of Owner Assumptions and Revised Owner Inputs; and
 - (ii) revise the Rental payable by the Operator under the Lease in accordance with paragraph 3 (*Principles*) of schedule 3.1 (*Rental Schedule - General*) to the Lease,

in each case reflecting the terms of the Refinancing, the respective shares of the Secretary of State and the Owner of the relevant Refinancing Gain and any Variation implemented in accordance with paragraph 2.19(b).

2.20 If, following the delivery of a Refinancing Stop Notice, either:

- (a) ³⁵⁶
- (b) at any time the Secretary of State notifies the Owner that he wishes to permanently discontinue the attempts to procure the potential Refinancing,

then the Secretary of State shall reimburse the Owner for the reasonable and proper professional costs incurred by the Owner in relation to the potential Refinancing ³⁵⁷, such costs to be paid to the Owner by the Secretary of State within 28 days after receipt of a valid invoice in respect of such amount. Such costs shall not include any internal management costs incurred by the Owner except insofar as:

- (i) it can be demonstrated to the reasonable satisfaction of the Secretary of State that such costs have been incurred in place of professional costs which would in the normal course of such business have been paid to third parties; and
- (ii) the Secretary of State has, by prior written agreement, approved the use of such internal management resource.

2.21 If the Secretary of State reasonably considers at any time that the requirements of paragraph 2.8(b) have not been satisfied, the Secretary of State may serve a notice on the Owner requiring the Owner to satisfy its obligations under paragraph 2.8(b), whereupon (without prejudice to Clause 13.2) the provisions of paragraphs 2.8 and 2.12 shall apply as if the Secretary of State had served a Refinancing Notice.

3. ³⁵⁸

³⁵⁶ Redaction.

³⁵⁷ Redaction.

³⁵⁸ Redaction.

SCHEDULE 7

[NOT USED]

SCHEDULE 8

DISPUTE RESOLUTION

Schedule 8.1: Contract Disputes

Schedule 8.2: Expert Determination

SCHEDULE 8.1

Contract Disputes

1. CONTRACT DISPUTES

Subject to:

- (a) where any Contract provides for the determination of matters by an Expert and/or circumstances where Schedule 8.2 (*Expert Determination*) of this Agreement is expressed to apply; or
- (b) where expressly provided otherwise in any Contract,

any dispute, controversy or claim of whatever nature between any of the Parties arising out of, under or in connection with any Contract (including any question of the breach, interpretation, validity, effect, performance or termination of any Contract and any claims for set off or counterclaim) (a *Contract Dispute*) shall be referred by notice in writing by the Nominated Representative of the referring Party to the Nominated Representative of each other Party involved in the Contract Dispute for resolution.

2. REFERRAL NOTICE

The written notice from the referring Party (the *Referral Notice*) shall identify the matter in dispute and the relief sought, and shall also identify and briefly set forth the basis for claiming the relief sought (including identification of the applicable provisions in the Contract that are relevant to the Contract Dispute in question).

3. ATTEMPT TO RESOLVE THE CONTRACT DISPUTE BY NOMINATED REPRESENTATIVES

When a Contract Dispute is referred to the relevant Nominated Representatives in accordance with paragraph 1 (*Contract Disputes*), the Nominated Representatives shall consider the Contract Dispute and try to reach agreement to resolve the Contract Dispute.

4. REFERRAL TO SENIOR REPRESENTATIVES

4.1 If no agreement can be reached by the relevant Nominated Representatives within five 5 Working Days of the date of the Referral Notice, the Contract Dispute shall then be referred, by any relevant Party, to the Senior Representative of each Party involved in the Contract Dispute by giving written notice to the Senior Representative of each relevant Party (the *Director Notice*).

4.2 The Director Notice shall be accompanied by a copy of the Referral Notice, delivered in accordance with paragraph 2 (*Referral Notice*), and if the Party delivering the Director Notice intends, at the relevant Senior Representatives' level, to raise any matter or seek any relief relating to the Contract Dispute that is additional to, or differs from, the matter and relief identified in the Referral Notice, the Party delivering the Director Notice shall, at the same time as it delivers the Director Notice, provide written particulars to each Party's Senior Representative of the additional, or differing, matter and/or relief sought by that Party.

4.3 When a Contract Dispute is referred to the Senior Representatives in accordance with paragraph 4.1, the Senior Representatives shall consider the Contract Dispute and try to reach agreement to resolve the Contract Dispute.

5. EXPERT DETERMINATION

5.1 Should the relevant Senior Representatives fail to resolve a Contract Dispute within 10 Working Days, or such other period as may be agreed between the relevant Parties, of the date of the Director Notice, then such Parties may agree to refer the Contract Dispute to determination by an Expert in accordance with Schedule 8.2.

5.2 Any Contract Dispute referred to interim determination by an Expert shall, unless otherwise agreed between the relevant Parties, be determined in accordance with the procedure set out in paragraphs 2 to 8 of Schedule 8.2, subject to the following amendments:

- (a) paragraph 2.6 is deleted;
- (b) paragraph 5.4 is deleted;
- (c) “Dispute” shall mean “Contract Dispute”; and
- (d) any amendments agreed between the Parties to the Contract Dispute.

5.3 Where the relevant Parties agree to refer a Contract Dispute to determination by an Expert in accordance with Schedule 8.2 pursuant to paragraph 5.1:

- (a) no court proceedings relating to the Contract Dispute shall be commenced; and/or
- (b) any on-going court proceedings relating to the Contract Dispute shall be stayed,

for the duration of the Expert determination process.

6. COURT PROCEEDINGS

6.1 Should the relevant Senior Representatives fail to resolve a Contract Dispute within 10 Working Days of the date of the Director Notice or such other period as may be agreed between the relevant Parties, then, subject to paragraph 7.1, any relevant Party may commence or continue court proceedings provided that where the Contract Dispute has been referred to Expert Determination pursuant to paragraph 5.1:

- (a) the Expert has issued his determination pursuant to paragraph 5 of Schedule 8.2 and any relevant Party has issued notice of its dissatisfaction with the Expert’s determination for one of the reasons set out in paragraph 5.3 of Schedule 8.2 within 30 Working Days; or
- (b) pursuant to paragraph 5 of Schedule 8.2, the Expert has failed to issue his determination or the Expert’s appointment has been terminated and a replacement Expert has not been appointed pursuant to paragraph 7.3 of Schedule 8.2.

7. MEDIATION

7.1 Should the relevant Senior Representatives fail to resolve a Contract Dispute within 10 Working Days of the date of the Director Notice, or such other date as may be agreed

between the relevant Parties, the relevant Parties may agree to refer the Contract Dispute to mediation at CEDR in accordance with the CEDR Model Mediation Procedure at any time.

7.2 The Parties agree that for the purposes of mediation of a Contract Dispute pursuant to paragraph 7.1 and in accordance with the CEDR Model Mediation Procedure, they shall attempt, in good faith, to agree on a person (who has experience in the discipline or area of expertise that the Parties agree is appropriate for the Contract Dispute in question) who should act as mediator for the Contract Dispute in question. In the event that the Parties are unable, within 10 Working Days of a party referring the Contract Dispute to mediation in accordance with paragraph 7.1, to agree on the person who should act as mediator, then CEDR shall, in accordance with those rules, appoint a person to act as mediator for the Contract Dispute in question.

7.3 In all instances, the Parties shall use their reasonable endeavours to resolve Contract Disputes expeditiously.

7.4 Unless otherwise agreed by all relevant Parties to the mediation or directed by a court, a referral to mediation shall not in any way suspend or otherwise delay any other dispute resolution process under this Agreement.

8. INTERIM RELIEF IN ENGLISH COURTS

Nothing in this Agreement shall prevent any Party seeking interim relief in any English court.

9. SERVICE AND NOTICE

9.1 Any notice, notification or other communication under or in connection with this Schedule shall be made 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 in Clause 20 (*Notices*) of the Agreement. Where pre-paid first class post is used as a method of service, the documentation shall also be sent by electronic mail or fax to the address for service set out in Clause 20 (*Notices*) of the Agreement.

9.2 Service shall be deemed to be on the same Working Day if delivered within usual business hours, otherwise service shall be deemed to be on the next Working Day.

SCHEDULE 8.2

Expert Determination

1. DISPUTES REFERRED TO EXPERT DETERMINATION

1.1 In any case where:

- (a) an Acceptance Dispute;
- (b) a Variations Dispute;
- (c) a Delay Dispute; or
- (d) a Liquid Market Dispute,

(a *Dispute* for the purpose of this Schedule 8.2) arises between the any of the Parties or where it is specified in a Contract that a dispute shall be referred to Expert Determination, the terms of this Schedule 8.2 will apply, and, with the exception of paragraphs 8 and 9 of Schedule 8.1, to the exclusion of Schedule 8.1.

1.2 Acceptance Disputes and Liquid Market Disputes shall, subject to paragraph 5.4, be referred to Expert Determination in accordance with this Schedule 8.2.

1.3 Delay Disputes and Variations Disputes shall, subject to paragraph 5.4, be referred to Expert Determination in accordance with this Schedule 8.2, unless the relevant Parties agree otherwise

2. EXPERT DETERMINATION PROCEDURES

2.1 Any Party wishing to refer a Dispute for Expert Determination shall give written notice to the other relevant Parties of its intention, setting out with adequate specificity the issue or issues to be investigated and resolved by the Expert (the *Notice of Dispute*). Service of the Notice of Dispute will initiate the Expert Determination procedure.

Appointment of Expert

2.2 Within 3 Working Days of receipt of the Notice of Dispute, the relevant Parties shall use reasonable endeavours to agree a shortlist of persons whom they would consider suitable to act as the Expert, serve on them the Notice of Dispute and invite them (in turn in the order in which they appear on the agreed shortlist) to accept the reference of the Dispute referred to in the Notice of Dispute.

2.3 In the event that the relevant Parties fail jointly to appoint a person willing and suitable to act as an Expert within 3 Working Days of the Notice of Dispute (or within such further time as they may agree), any relevant Party may apply to the London Court of International Arbitration (*LCIA*) to appoint an Expert to determine the Dispute.

2.4 Appointment using the LCIA shall be effected as quickly as possible and in any event within 6 Working Days of the Notice of Dispute.

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Escalation

2.6 The service of the Notice of Dispute shall initiate a process of escalation pursuant to this paragraph 2.6, to be undertaken contemporaneously with the process of appointing an Expert pursuant to paragraphs 2.2 to 2.5, provided that such process of escalation shall not delay or suspend the appointment of the Expert. The relevant Parties shall use reasonable endeavours to negotiate in good faith to settle any Dispute through discussion between the Senior Representatives. If the Dispute is not resolved within 3 Working Days of referral to the Senior Representatives, any relevant Party may notify the appointed Expert that escalation has failed to resolve the Dispute and request him to proceed with the Expert Determination in accordance with the provisions of paragraphs 3 to 8 or, if no Expert has been appointed, request the LCIA to complete an appointment with minimal further delay.

2.7 Forthwith upon the agreement or determination of the Expert's terms of appointment and remuneration between the Expert and the relevant Parties, the Expert shall notify such Parties of his appointment (the *Notice of Appointment*).

2.8 On the next Working Day after the Notice of Appointment is received, the notifying Party, now the referring Party, shall serve on the Expert and the other relevant Party or Parties a written submission which sets out the nature of its case and append the supporting documentation which it considers relevant to the Dispute, and shall as a minimum:

- (a) set out with adequate specificity the issue or issues to be investigated and resolved by the Expert;
- (b) be accompanied by any correspondence between the relevant Parties that discusses the issues and the Parties' attempts to resolve them; and
- (c) be accompanied by any relevant contractual documents, specifications and/or any technical documents or other data relevant to an initial understanding of the issue.

2.9 The other relevant Parties may, within 2 Working Days, serve on the Expert and the referring Party a submission in reply (the *Counter Notice*) setting out its response to the referring Party's submission, clarifying or adding to the issues to be investigated and appending any additional supporting documentation upon which it wishes to rely.

3. REPEAT DISPUTES

3.1 No Party may refer for Expert Determination a Dispute which relates to a different Unit but arises out of the same facts in all material respects as a Dispute referred to Expert Determination previously unless new relevant facts or issues have arisen or come to light which such Party considers would warrant further consideration by an Expert (a *Repeat Dispute*).

3.2 If a Notice of Dispute is given and any recipient Party believes that this notice relates to a Repeat Dispute, then such recipient Party may require the Expert appointed in accordance with paragraph 2 to first determine whether the Dispute is a Repeat Dispute where the issue cannot be resolved as part of the process of escalation. The relevant recipient Party must raise

³⁵⁹ Redaction.

any issue relating to a Repeat Dispute in their Counter Notice served pursuant to paragraph 2.9, along with relevant submissions on the issue and a copy of the relevant earlier Expert Determination. The issuing Party must reply within 2 Working Days with submissions either disputing that it is a Repeat Dispute or justifying why such a determination is warranted. The Expert shall either:

- (a) determine this issue within 3 Working Days of receipt of such reply submissions, and the time periods within this Schedule 8.2 shall be extended accordingly; or
- (b) the Expert may direct that the determination must continue and that he shall resolve the issue as part of his final determination.

3.3 If the Expert determines pursuant to paragraph 3.2 that the Dispute is not a Repeat Dispute, the Dispute shall be determined in accordance with the provisions and procedure set out in this Schedule 8.2. If the Expert determines that an issue or issues referred to him for Expert Determination do not amount to a Repeat Dispute (notwithstanding that other issues referred by the same Notice of Dispute have been determined to amount to a Repeat Dispute) then the Expert will continue to determine those issues pursuant to paragraph 5.

4. ROLE OF THE EXPERT

4.1 The role of the Expert shall be to investigate using his professional skill and experience the issues raised by the Dispute and to determine for himself the correct answer to any disagreement or issue that is required to be resolved between the parties to the Dispute which has been referred to him for Expert Determination pursuant to paragraph 2.1. The Expert shall not act in a judicial or quasi judicial capacity, but instead will act on his own behalf and seek to determine on a wholly independent and objective basis his view of the correct answer or solution to any issues raised by the parties. The Expert shall act as an expert and not as an arbitrator or adjudicator and the provisions of the Arbitration Act 1996 and the law relating to arbitration shall not apply to the Expert, his decision or the procedure by which he reached his decision.

4.2 The Parties agree and acknowledge that they shall act reasonably and co-operate promptly with the Expert, and shall provide (or, where applicable, shall use reasonable endeavours to procure that others provide) the Expert with such assistance and documentation as the Expert reasonably requires for the purpose of reaching his decision. This will include facilitating:

- (a) prompt access for the Expert to any individuals whom the Expert needs to meet;
- (b) the prompt provision of written answers to any written questions the Expert may seek to put to such individuals; and
- (c) any physical inspection of the assets.

4.3 Upon the written request of any Party to the Expert Determination (to be served within five Working Days of receipt of the Notice of Appointment) the Expert shall appoint:

- (a) in the case of a technically qualified Expert, a financial adviser and/or legal adviser;
- (b) in the case of a financially qualified Expert, a technical adviser and/or legal adviser;
or
- (c) in the case of a legally qualified Expert, a technical adviser and/or financial adviser,

to assist him in reaching his decision. Any advice received by the Expert from any advisers appointed by him shall be appended to his decision.

4.4 The Expert shall, subject to any limitation in this Agreement or the Contract to which the Dispute relates, have complete discretion as to how to conduct the Expert Determination, and may, at his discretion, but shall not be obliged to:

- (a) convene meetings upon reasonable notice to the Parties to the Dispute at which such parties and their Representatives shall be entitled to be present;
- (b) submit lists of questions to the relevant Parties to be answered in such meetings or in writing within such reasonable time as he may require;
- (c) require the Parties to provide him with such information, access and other facilities as he may reasonably require for the determination of the Dispute;
- (d) otherwise take such action and adopt such procedures as do not conflict with any of the provisions of this Agreement or the Contract to which the Dispute relates and shall be reasonable and proper for the just, expeditious and economical determination of the Dispute; and/or
- (e) carry out any inspection he considers necessary.

5. THE EXPERT'S DETERMINATION

5.1 The Expert shall make his determination as expeditiously as reasonably practicable and in any event within 28 Working Days after service of the Notice of Appointment in accordance with paragraph 2.7 or such other time as may be agreed or determined pursuant to paragraph 5.2. The Expert shall provide, at the same time as his determination, a written set of conclusions including reasons for such conclusions, to the parties to the Dispute.

5.2 Without prejudice to paragraph 5.1, the period in which the Expert shall deliver his determination may be extended by:

- (a) agreement of the relevant Parties to the Dispute to such an extension, whereby all relevant Parties will inform the Expert of the revised date by which he shall deliver his determination; or
- (b) up to 15 Working Days by agreement between the Expert and one of the parties to the Dispute to such an extension, whereby the Expert will inform all relevant Parties of the revised date by which he shall deliver his determination.

5.3 Subject to paragraph 5.4, the Expert's determination shall be final and binding upon the relevant Parties save in respect of:

- (a) error on a point of law which any relevant Party reasonably believes materially affects the Expert's determination;
- (b) fraud;
- (c) manifest error; or
- (d) matters outside the Expert's jurisdiction.

5.4 If any relevant Party is dissatisfied with the Expert's decision for any of the reasons set out in paragraph 5.3 or in respect of:

- (a) a Delay Dispute;
- (b) a Variation Dispute arising in respect of Schedule 4.5 (*Change in Law*); or
- (c) where it has otherwise been agreed between the Parties to the Dispute that the Expert's determination shall be interim,

then such Party may, on or before the 30th Working Day after the day on which it received notice of the Expert's determination or any varied or revised determination, or such later date as may be agreed between the relevant Parties, issue and serve court proceedings for the determination of the Dispute. In relation to any proceedings commenced pursuant to this paragraph 5.4:

- (d) no Party shall be limited in the proceedings before the court to the evidence or arguments put before the Expert;
- (e) the Expert shall not be called as a witness nor be required to give evidence before the court on any matter whatsoever; and
- (f) any relevant Party shall be entitled to refer to any such proceedings or issues which arise from substantially the same or similar facts or issues as the Dispute, whether or not such facts or issues have been escalated in accordance with the process of Escalation as set out in paragraph 4 of Schedule 8.1.

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7. TERMINATION OF APPOINTMENT OF THE EXPERT

7.1 The relevant Parties may jointly terminate the Expert's appointment at any time.

7.2 If the Expert fails to give notice of his determination within the period prescribed by this Schedule 8.2, or, if at any time the Expert declines to act or is unable to act as a result of his death, disability, resignation or otherwise, the Expert's appointment shall automatically terminate.

7.3 Where the Expert's appointment has terminated, a person shall be appointed as a replacement Expert in accordance with paragraphs 2.1 to 2.5 as if the Notice of Dispute was given on the date such notice is given to the replacement Expert, and the remaining provisions shall apply accordingly, save that, to the extent that steps have been completed before the change of Expert, the relevant Parties will not have to repeat any such steps.

8. CONFIDENTIALITY

All matters concerning the process and result of the determination by the Expert, including but not limited to any documentation provided by the relevant Parties, to the extent that they are not otherwise in the public domain, shall:

- (a) as between the Parties and the Expert, be treated as confidential; and

³⁶⁰ Redaction.

as between the Parties, be treated as Confidential Information (Umbrella Agreement) and shall be subject to the provisions of clauses 4.1 to 4.3 of this Agreement.

SCHEDULE 9

OWNERSHIP

Schedule 9.1 **Ownership of the Owner**

Schedule 9.2 **Ownership of the TMM**

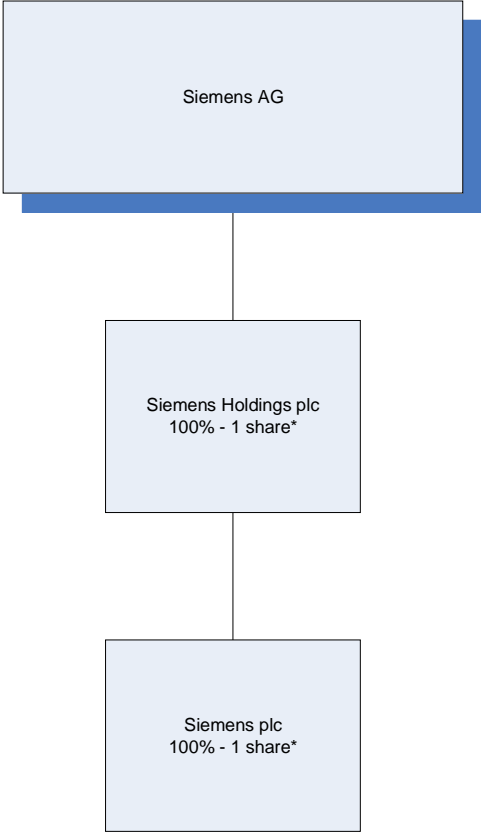
SCHEDULE 9.1

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³⁶¹ Redaction.

SCHEDULE 9.2

Ownership of the TMM



* 1 share owned by Siemens Beteiligungsverwaltung GmbH & Co. OHG, a subsidiary of Siemens AG registered in Germany.

SCHEDULE 10

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Schedule 10:

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³⁶² Redaction.

³⁶³ Redaction.

SCHEDULE 10

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³⁶⁴ Redaction.