

**DATED 27 June 2013**

**THE SECRETARY OF STATE FOR TRANSPORT**

**CROSS LONDON TRAINS LIMITED**

**SIEMENS PLC**

**FIRST CAPITAL CONNECT LIMITED**

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**MASTER DEFINITIONS AND  
COMMON TERMS AGREEMENT**

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**Freshfields Bruckhaus Deringer**

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<sup>1</sup> Redaction

**THIS AGREEMENT** is made as a deed on 27 June 2013,

**BETWEEN:**

- (1) **THE SECRETARY OF STATE FOR TRANSPORT** of 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 & Wales 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 50 Eastbourne Terrace, Paddington, London W2 6LG (the *Initial Operator*).

**BACKGROUND:**

(A) The TMM, the Owner and the Operator intend to enter into the Manufacture and Supply Agreement (as defined below) in relation to the supply of Equipment to the Owner and the Operator for use on the Thameslink Network. Pursuant to the Train Services Agreement (as defined below) the TMM will service and maintain the Rolling Stock. The Initial Operator will lease the Rolling Stock from the Owner under the Lease (as defined below). The Parties also intend to enter into the Umbrella Agreement (as defined below) on or about the date of this Agreement (the *Transaction*).

(B) The Parties have agreed that on or about the date of this Agreement they shall enter into the documents as set out in Schedule 3 to this Agreement (the *Initial Contracts*).

(C) The purpose of this Agreement is to provide definitions for terms used in the Contracts (as defined herein) (as applicable) and to set out common terms in respect of the Contracts (as applicable).

**THIS DEED WITNESSES** as follows:

**1. INTERPRETATION**

**Definitions**

1.1 Unless otherwise defined herein or the context requires otherwise, words and expressions used in this Agreement shall have the meaning and constructions ascribed to them in Schedule 1 (*Definitions*) of this Agreement or the relevant Contract (as applicable).

**Incorporation of Defined Terms**

1.2 Unless all of the Parties to this Agreement agree otherwise, no amendment (including any supplement, novation, replacement, assignment, re-enactment or revision of whatsoever nature) to any of the CTA Definitions, the Intercreditor Deed Definitions, the SECA Definitions, [●]<sup>2</sup>, the Account Bank Agreement Definitions, the Term Loan Facility

<sup>2</sup> Redaction.

Agreement Definitions, [●]<sup>3</sup> shall have effect for the purposes of this Agreement such that this Agreement and each of the Contracts shall be read and construed by reference to such definitions in the form set out in each of the Exhibited CTA Terms, the Exhibited Intercreditor Deed Terms, the Exhibited SECA Terms, the Exhibited Account Bank Agreement Terms, [●]<sup>4</sup> and the Exhibited Term Loan Facility Agreement Terms as the case may be.

## **2. COMMON TERMS**

### **Incorporation of common terms**

The common terms set out in Schedule 2 to this Agreement shall, unless the context requires otherwise, apply to all of the Contracts (and any other document to which the provisions of this Agreement are expressed to apply, and shall be binding on all Parties).

## **3. EXECUTION AND EFFECTIVENESS OF INITIAL CONTRACTS**

3.1 The Parties hereto agree that on or about the date of this Agreement each Party will enter into each Initial Contract to which it is expressed to be a Party.

3.2 Each of the Initial Contracts (other than the Conditions Precedent Agreement) shall take effect on the Effective Date.

## **4. COUNTERPARTS**

This Agreement may be executed in any number of counterparts, and by each Party hereto in separate counterparts. Each counterpart is an original, but all counterparts shall together constitute one and the same instrument. Delivery of a counterpart of this Agreement by e-mail attachment or telecopy shall be an effective mode of delivery.

## **5. SURVIVAL**

Save, in each case, as provided herein or as the context may require otherwise, this clause 5, the definitions as described in Schedule 1 to this Agreement, and the common terms as set out in Schedule 2 to this Agreement shall remain in full force and effect notwithstanding the termination of any of the Contracts (in accordance with the terms therein).

## **6. EXECUTION**

The Parties have executed this Agreement as a deed on the date stated at the beginning of this Agreement and this Agreement shall take effect as a deed.

## **7. GOVERNING LAW**

This Agreement and any non-contractual obligations arising out of or in relation to it is governed by English Law.

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<sup>3</sup> Redaction.

<sup>4</sup> Redaction.

## SCHEDULE 1

### DEFINITIONS

#### 1. DEFINITIONS

##### Defined Terms

1.1 Except where the context otherwise requires, the following defined terms used in any Contract or other document to which this Schedule 1 (*Definitions*) is expressed to apply, have the meanings set out below (as the same may be amended and supplemented by agreement of the Parties to this Agreement from time to time by way of an express waiver or variation in writing that is entered into either (a) in accordance with an Authorisation to Vary, or (b) another agreement that falls within any of the exclusions that are set out in paragraphs (a) to (h) of the definition of Contract Amendment Agreement):

**6.4(a) notice** has the meaning given to it in paragraph 6.4(a) of schedule 2.1 (*Section 54 Undertakings*) of the Umbrella Agreement;

**6.4(e) notice** has the meaning given to it in paragraph 6.4(e)(i) of schedule 2.1 (*Section 54 Undertakings*) of the Umbrella Agreement;

**6.5(a) notice** has the meaning given to it in paragraph 6.5(a) of schedule 2.1 (*Section 54 Undertakings*) of the Umbrella Agreement;

**6.5(e) notice** has the meaning given to it in paragraph 6.5(e) of schedule 2.1 (*Section 54 Undertakings*) of the Umbrella Agreement;

**6.11 notice** has the meaning given to it in paragraph 6.11 of schedule 2.1 (*Section 54 Undertakings*) of the Umbrella Agreement;

[•]<sup>5</sup>;

[•]<sup>6</sup>;

[•]<sup>7</sup>;

[•]<sup>8</sup>;

**2006 Act** means the Companies Act 2006;

**Acceptable Bank** means:

- (a) a bank or financial institution which has a rating for its long-term unsecured and non credit enhanced debt obligations of A- or higher by Standard & Poor's Rating Services or Fitch Ratings Ltd or A3 or higher by Moody's

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<sup>5</sup> Redaction.

<sup>6</sup> Redaction.

<sup>7</sup> Redaction.

<sup>8</sup> Redaction.

Investor Services Limited or a comparable rating from an internationally recognised credit rating agency; or

- (b) any other bank or financial institution approved by the relevant beneficiary, meaning, in the case of:
  - (i) the Advance Payment Bond, the Owner Bond, a Post-Minimum Fleet Third Party Bond or a Redelivery Condition Bond, the Owner;
  - (ii) the Operator Bond or the TSA Bond, the Operator; or
  - (iii) the BPA Bank, the agreement of each of the Owner, the Operator, the Secretary of State and, while the TSA is in force, the TMM, in accordance with paragraph 1.4 of schedule 6.6 (*Balancing Payments Account*) of the TSA or, when in effect, paragraph 3.3 of schedule 9 (*Balancing Payments Account*) of the Lease;

[•]<sup>9</sup>

***Acceptable Performance Level*** means [•]<sup>10</sup>

***Acceptance*** means:

- (a) in relation to any Unit, that Unit achieves a Provisional Acceptance Certificate or Qualified Provisional Acceptance Certificate;
- (b) in relation to any Owned Spare, that Owned Spare achieves a Spares Acceptance Certificate;
- (c) in relation to any Special Tool, that Special Tool achieves a Special Tools Acceptance Certificate;
- (d) in relation to the Mock-up, that the Mock-up achieves a Mock-up Acceptance Certificate;
- (e) in relation to either Simulator, that Simulator achieves a Simulator Acceptance Certificate; or
- (f) in relation to the Integration Laboratory Train Equipment, the Integration Laboratory Train Equipment achieves the Integration Laboratory Train Equipment Acceptance Certificate,

and in each case, ***Accept*** and ***Accepted*** shall be construed accordingly;

[•]<sup>11</sup>;

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<sup>9</sup> Redaction.

<sup>10</sup> Redaction.

<sup>11</sup> Redaction.

**Acceptance Certificate** means:

- (a) in relation to any Unit, the applicable Provisional Acceptance Certificate or Qualified Provisional Acceptance Certificate;
- (b) in relation to any Owned Spare, the applicable Spares Acceptance Certificate;
- (c) in relation any Special Tool, the applicable Special Tools Acceptance Certificate;
- (d) in relation to the Mock-up, the Mock-up Acceptance Certificate;
- (e) in relation to either Simulator, the applicable Simulator Acceptance Certificate; or
- (f) in relation to the Integration Laboratory Train Equipment, the Integration Laboratory Train Equipment Acceptance Certificate;

**Acceptance Date** means, in respect of a Unit, the date on which a Provisional Acceptance Certificate or a Qualified Provisional Acceptance Certificate is issued in respect of that Unit in accordance with the MSA;

**Acceptance Dispute** means any dispute between the Parties to the MSA as to:

- (a) any matters under schedule 4 (*Testing*) of the MSA;
- (b) [•]<sup>12</sup>;
- (c) whether an item of Equipment (other than a Unit) should be Accepted;
- (d) whether Provisional Acceptance of a Unit should occur;
- (e) the Preconditions that should apply in relation to any Unit;
- (f) the duration of any Preconditions Timetable;
- (g) any matters under schedule 14 (*Design Life, Warranties and MSA Fault Rectification*) of the MSA; or
- (h) any matters under schedule 15 (*Permitted Changes*) of the MSA;

**Acceptance Testing Documentation** means:

- (a) the testing procedures produced by the TMM pursuant to paragraph 7.1 of schedule 4.1 (*Requirements for Agreed Testing Programme*) of the MSA; and
- (b) test reports produced by the TMM pursuant to paragraph 7.2 of schedule 4.1 of the MSA, in relation to every test identified in the Acceptance Testing Matrix.

**Acceptance Testing Matrix** has the meaning given to it in paragraph 4.1 of schedule 4.1 (*Requirements for Agreed Testing Programme*) of the MSA;

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<sup>12</sup> Redaction.

**Accepted Equipment** means any Equipment that has been Accepted;

**Accepted Unit** means any Unit that has been Accepted;

[•]<sup>13</sup>;

**Account Bank Agreement Definitions** has the meaning given to it in paragraph 1.5;

**Act** means the Railways Act 1993;

**Actual Annual Average Mileage Per Unit** means, in relation to any Unit Type, the annual average miles operated by each Unit of that Unit Type in any Reference Contract Year during the Steady State Period, calculated in accordance with paragraph 4.2 or 4.3 (as applicable) of schedule 6.3 (*Steady State Period Service Payments*) of the TSA;

**Actuaries' Letter** has the meaning given to it in paragraph 1.1 (*Retirement Benefits*) of schedule 18 (*Pension Arrangements*) of the TSA;

**Additional Insureds** has the meaning given to it in clause 24.11(b) of the MSA;

**Additional Performance Review Meeting** has the meaning given to it in paragraph 5.5 of schedule 9 (*Contract Management*) of the TSA;

**Additional Permitted Borrowing** means [•]<sup>14</sup>

**Additional Permitted Borrowings Limit** means [•]<sup>15</sup>

**Additional Qualifying Senior Lender Claims** means, upon the service of an MSA TMM Post-Minimum Fleet Termination Notice:

(a) [•]<sup>16</sup>

(b) [•]<sup>17</sup>

[•]<sup>18</sup>

**Additional Services** means any repairs or other work that needs to be undertaken in respect of any Unit as a result of:

- (a) vandalism to or misuse of a Unit while such Unit is not in the TMM's or any Sub-Contractor's care, custody and control, or vandalism or misuse of a Unit by any employee, agent, sub-lessee or subcontractor of the Operator (other than the TMM) whilst such Unit is in the care, custody and control of the TMM; or

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<sup>13</sup> Redaction.

<sup>14</sup> Redaction.

<sup>15</sup> Redaction.

<sup>16</sup> Redaction.

<sup>17</sup> Redaction.

<sup>18</sup> Redaction.

- (b) loss, accident, damage or damage to a Unit caused by the infrastructure comprising part of the Thameslink Network, in each case whilst a Unit is not in the TMM's or any Sub-Contractor's care, custody and control or loss, accident or damage whilst a Unit is in the TMM's care, custody and control where that loss, accident or damage was caused by any employee, agent, sub-lessee or subcontractor of the Operator (other than the TMM),

except to the extent that such vandalism, misuse, loss, accident or damage, as the case may be, is caused by a Fault or an act, omission, neglect or default of the TMM, the Depot SPC or any of their respective Sub-Contractors or the employees or suppliers of any of them, or due to the TMM's performance, non-performance or purported performance of its obligations under the TSA (including any failure to provide the TSA Services), the MSA or any Depot Agreement for Lease or the Depot SPC's performance, non-performance or purported performance of its obligations under any Depot Agreement for Lease or any Depot Headlease;

***Additional Services Payments*** has the meaning given to it in clause 18.9 of the TSA;

***Adjusted Distributable Cash (SoS/Operator)*** means, in respect of any Calculation Period, where clause 15.4(e) of the Common Terms Agreement applies, any amount available for the making of payments due to the Secretary of State or the Operator in accordance with paragraph (xi) of schedule 17 (*TMM Insolvency PT Unpaid HBC Amount – Revised Order of Application*) of the Common Terms Agreement, after payment of all amounts of a higher priority under schedule 17 of the Common Terms Agreement;

***Adjusted Estimated Fair Value of the Rolling Stock*** means [●]<sup>19</sup>

***Adjusted Highest Compliant Tender Price*** means [●]<sup>20</sup>

[●]<sup>21</sup>

***Adjusted Rentals*** means [●]<sup>22</sup>

***Advance Payment Bond*** means any advance payment bond issued by a Bond Provider in accordance with clause 11 (*Operator Bond, Advance Payment Bond and Owner Bond*) of the MSA in the form required by clause 11.3(b) of the MSA, and shall include any replacement advance payment bond issued pursuant to such clause 11 of the MSA;

[●]<sup>23</sup>

***AEFV Calculation Date*** means the date agreed between the Secretary of State and the Owner in accordance with paragraph 3.5(c) of schedule 3.1 (*Termination Sum Payable for Owner Default*) of the Umbrella Agreement, for the purposes of determining the Adjusted Estimated Fair Value of the Rolling Stock;

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<sup>19</sup> Redaction.

<sup>20</sup> Redaction.

<sup>21</sup> Redaction.

<sup>22</sup> Redaction.

<sup>23</sup> Redaction.

**Affected Party** means:

- (a) in the context of the occurrence of a Force Majeure Event, the Party that is prevented from carrying out its obligations under the relevant Transaction Document by that Force Majeure Event; and
- (b) in the context of the introduction, imposition variation or change of any Applicable Laws and Standards, the Party that is unable to give effect to its obligations under the TSA;

**Affected Person** has the meaning given to it in the definition of Change of Control;

**Affiliate** means, in relation to any person other than the Secretary of State (for the purposes of this definition, a **Relevant Person**):

- (a) a fund managed, advised or controlled by that Relevant Person; or
- (b) where the Relevant Person is an Investment Entity (or a nominee or subsidiary undertaking of an Investment Entity):
  - (i) the Manager of the Relevant Person (or the Investment Entity of whom the Relevant Person is a nominee or subsidiary undertaking), who shall be the **Relevant Manager** for the purposes of this definition;
  - (ii) any other Investment Entity managed, advised or controlled at the relevant time by the Relevant Manager (or by a subsidiary undertaking or parent undertaking of the Relevant Manager or by any subsidiary undertaking of any such parent undertaking); or
  - (iii) a subsidiary undertaking of any Investment Entity referred to in paragraph (ii); or
- (c) a subsidiary undertaking or a parent undertaking of the Relevant Person or any other subsidiary undertaking of any such a parent undertaking,

with **undertaking**, **parent undertaking** and **subsidiary undertaking** having respectively the meanings contained in the Companies Act 2006;

**AG Transferee Conditions** means, in relation to a Permitted Contracts Restructuring Arrangement proposed by the TMM where:

- (a) [•]<sup>24</sup>
- (b) [•]<sup>25</sup>
- (c) [•]<sup>26</sup>
- (d) there is no outstanding breach of clause 7 (*Change of Control*) of the Umbrella Agreement:

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<sup>24</sup> Redaction.

<sup>25</sup> Redaction.

<sup>26</sup> Redaction.

- (i) by the TMM; or
- (ii) by the Owner as a result of a change of control in respect of the Investor who is a member of the Siemens group;
- (e) [•]<sup>27</sup>
- (f) [•]<sup>28</sup>

**Aggregate Contract Price** means the amount which is the aggregate of the Total Contract Price, the Owner Owned Spares Price, the Special Tools Price, the Operator Owned Spares Price, the Integration Laboratory Train Equipment Price and the Simulators Price;

**Aggregate Funding Deficiency Amount** means the aggregate value of all Individual Funding Deficiency Amounts;

[•]<sup>29</sup>

**Agreed Form** means, in relation to any Permitted Contracts Restructuring Arrangement, Operator Accession or Operator Transfer Scheme:

- (a) in the case of the Applicable Deed of Accession or Transfer Scheme Certificate (as the case may be) the form of such document set out in the Umbrella Agreement; or
- (b) in the case of any Applicable Replacement Contract or Applicable Relevant Contract, the form of the Applicable Reference Contract or Applicable Relevant Contract that is in force at the relevant time;

**Agreed Labour Rate** has the meaning given to it in paragraph 1.2(a) of schedule 6.4 (*Additional Services Payments*) of the TSA;

**Agreed Life** means the economic life of a Modification;

**Agreed Report Proposals** has the meaning given to that term in clause 7.3 of the Lenders' Direct Agreement;

**Agreed Testing Programme** means the programme for testing the functionality and performance of the Units set out in and produced pursuant to schedule 4.1 (*Requirements for Agreed Testing Programme*) of the MSA;

**Agreed Training Programme** has the meaning given to it in clause 7.3 of the MSA;

**Agreed Value** means, in relation to any Unit or Simulator, the amount set out in the applicable column of the table set out in paragraph 1 (*Initial Agreed Values*) of Appendix 2 (*Agreed Values*) to schedule 8.2 (*Insurance Requirements*) of the Lease, or such other amount as has been agreed between the Operator and the Owner pursuant to paragraph 2 (*Adjustment to Agreed Values*) of Appendix 2 (*Agreed Values*) to schedule 8.2 (*Insurance Requirements*) of the Lease;

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<sup>27</sup> Redaction.

<sup>28</sup> Redaction.

<sup>29</sup> Redaction.

**Allowable Failure** means a Unit being Unavailable or suffering a Cancellation or a Casualty or incurring Primary Minutes Delay or an SQM Failure occurring which, in any such case:

- (a) has been caused by an Event of Loss, provided that an Event of Loss caused by the default of the TMM or any Sub-Contractor of the TMM appointed to perform any of the TMM's obligations under the TSA, shall not be treated as an Allowable Failure;
- (b) arose as a result of the occurrence of an Exonerating Event;
- (c) has been caused by a Force Majeure Event, provided that the TMM has used all reasonable endeavours to mitigate any such Unit not being Handed Back, any such Unit suffering a Cancellation or any such Unit incurring Primary Minutes Delay, as the case may be;
- (d) in the case of a Cancellation or Primary Minutes Delay, is solely consequential upon faulty design, faulty materials, bad workmanship or negligence of the Owner, the Operator or a third party which carries out TSA Services pursuant to clause 8.8 of the TSA (unless the TMM has been given the opportunity to supervise the performance of such work), rectification work pursuant to clause 15.5 of the TSA, Additional Services or Cosmetic Repairs pursuant to clause 8.11 of the TSA or the Operator Own Services;
- (e) in the case of a Unit not being Handed Back when required by the Train Plan, is solely consequential upon:
  - (i) work being carried out by the Owner, the Operator or a third party pursuant to clause 8.8, 8.11 or 15.5 of the TSA; or
  - (ii) the performance of the Operator Own Services,
- [•]<sup>30</sup>
- (f) arose as a result of the Operator failing to comply with its obligations to provide drivers and shunting staff for the movement of Units within the Designated Depots (or, if applicable, an Alternative Depot) in accordance with clauses 13.5 to 13.12 (inclusive) of the TSA;

[•]<sup>31</sup>

[•]<sup>32</sup>;

**Alternative Rolling Stock Operation Arrangement** has the meaning given to it in paragraph 2.4(b) of schedule 2.8 (*Transfer of Rolling Stock and Contracts upon Termination*) of the Umbrella Agreement;

**AMPC** has the meaning given to that term in paragraph 2.2(b) of schedule 8 (*Performance Remedial Plans*) of the TSA;

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<sup>30</sup> Redaction.

<sup>31</sup> Redaction.

<sup>32</sup> Redaction.

**Annual BCP Reconciliation Adjustment** means that proportion of an Annual Reconciliation Adjustment that relates to the Periodic Balancing Cost Payments in the relevant Reference Contract Year in accordance with paragraph 4.11 of schedule 6.2 (*Ramp-Up Period Service Payments*) of the TSA or paragraph 4.11 of schedule 6.3 (*Steady State Period Service Payments*) of the TSA (as appropriate), and is calculated by the TMM pursuant to paragraph 4.4 of schedule 6.2 of the TSA or paragraph 4.4 of schedule 6.3 of the TSA (as appropriate);

**Annual Contract Price** means an amount equal to the aggregate Service Payments projected to be paid under the TSA by the Operator to the TMM (in respect of TMM Payments) and the Owner (in respect of Balancing Cost Payments) in each Contract Year;

**Annual Reconciliation Adjustment** means, in relation to any Reference Contract Year, the difference between:

- (a) the aggregate of Type 1 Unit Service Payments and Type 2 Unit Service Payments calculated for each Railway Period in that Reference Contract Year; and
- (b) the Reconciled Annual Service Payments for Type 1 Units and Type 2 Units for that Reference Contract Year,

calculated by the TMM pursuant to paragraph 4.4 of schedule 6.2 (*Ramp-Up Period Service Payments*) of the TSA or paragraph 4.4 of schedule 6.3 (*Steady State Period Service Payments*) of the TSA (as appropriate);

**Annual TMMP Reconciliation Adjustment** means that portion of any Annual Reconciliation Adjustment that is not the applicable Annual BCP Reconciliation Adjustment, calculated by the TMM pursuant to paragraph 4.4 of schedule 6.2 (*Ramp-Up Period Service Payments*) of the TSA or paragraph 4.4 of schedule 6.3 (*Steady State Period Service Payments*) of the TSA (as appropriate);

**Antecedent Owner Manufacturing Liabilities** has the meaning given to that term in paragraph 7.3(a) of Part 2 (*Lease Owner Termination Events*) of schedule 2.4 (*Early Termination of the Lease*) of the Umbrella Agreement;

**APB Distribution** means [●]<sup>33</sup>

**Applicable Costs and Expenses** has the meaning given to that term in clause 18(b) of the Lenders' Direct Agreement;

**Applicable Deed of Accession** means:

- (a) in relation to any Operator Accession, the Deed of Operator Accession or Deed of Public Sector Operator Accession;
- (b) in relation to any Permitted Contracts Restructuring Arrangement in respect of which the then Owner is the Applicable Transferor, the Deed of Owner Accession;

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<sup>33</sup> Redaction.

- (c) in relation to any Permitted Contracts Restructuring Arrangement in respect of which the then TMM is the Applicable Transferor, the Deed of TMM Accession; or
- (d) in relation to any New Owner Accession Arrangement, the Deed of Owner Accession,

that, in each case, is entered into between the parties thereto in accordance with the applicable terms of the Umbrella Agreement;

***Applicable Dispute Resolution Provisions*** means:

- (a) while the Umbrella Agreement is in force, schedule 8.1 (*Contract Disputes*) of the Umbrella Agreement; and
- (b) after the Umbrella Agreement has terminated or expired, schedule 7.1 (*Contract Disputes*) of the Maintenance Direct Agreement;

***Applicable Expert Determination Provisions*** means:

- (a) while the Umbrella Agreement is in force, schedule 8.2 (*Expert Determination*) of the Umbrella Agreement; and
- (b) after the Umbrella Agreement has terminated or expired, schedule 7.2 (*Expert Determination*) of the Maintenance Direct Agreement;

[●]<sup>34</sup>

***Applicable Laws and Standards*** means, depending on the context, all or any laws, statutes, proclamations, by-laws, directives, regulations, statutory instruments, rules, orders, rules of court, delegated or subordinate legislation, rules of common law or any European Union legislation at any time or from time to time in force in the United Kingdom and which are or may become applicable to any Transaction Document, any agreement or document referred to in the Contracts or the Units, the Vehicles, the Spares, the Special Tools, the Mock-up, the Integration Laboratory Train Equipment or the Simulators (including, but not limited to, in the context of the MSA only, the items listed in schedule 1.4 (*Relevant Laws and Standards*) of the MSA), Industry Standards, the Rule Book and the relevant requirements of ORR, in each case subject to any applicable Derogations;

[●]<sup>35</sup>::

***Applicable Reference Contracts*** means, for the purposes of any Operator Accession, Operator Transfer Scheme, Permitted Contracts Restructuring Arrangement or New Owner Accession Arrangement, in respect of any Applicable Replacement Contract the applicable Contract that was in force immediately prior to such Replacement Contract coming into force;

***Applicable Relevant Contracts*** means the applicable Relevant Contracts for the Existing Operator, the Applicable Transferor or the Existing Owner (as applicable) that are listed in:

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<sup>34</sup> Redaction.

<sup>35</sup> Redaction.

- (a) for the purposes of an Operator Accession, a Permitted Contracts Restructuring Arrangement or a New Owner Accession Arrangement, Part B of the Annex to the Applicable Deed of Accession; or
- (b) for the purposes of an Operator Transfer Scheme, Part B of the Annex to the Transfer Scheme Certificate,

in each case as applicable;

**Applicable Replacement Contracts** means the applicable replacement Contracts (including for the purposes of an Operator Accession, and Operator Transfer Scheme or a Permitted Contracts Restructuring Arrangement the Replacement Lease) to be entered into by the Successor Operator, the Approved Transferee or the New Owner (as applicable) that are listed in:

- (a) for the purposes of an Operator Accession, a Permitted Contracts Restructuring Arrangement or a New Owner Accession Arrangement, Part A of the Annex to the Applicable Deed of Accession; or
- (b) for the purposes of an Operator Transfer Scheme, Part A of the Annex to the Transfer Scheme Certificate,

in each case as applicable, and which shall, save as may be provided otherwise in accordance with paragraph 2 (*Novation of Contracts*) of schedule 2.8 (*Transfer of Rolling Stock and Contracts upon Termination*) of the Umbrella Agreement in relation to a New Owner Accession Arrangement, be in the form of the Applicable Reference Contracts;

[•]<sup>36</sup>

**Applicable Specification** means:

- (a) in relation to the Units, Associated Equipment, Parts and Spares, the Specification;
- (b) in relation to the Simulators, the Simulator Specification;
- (c) in relation to the Mock-up, schedule 7.3 (*Mock-Up*) of the MSA; and
- (d) in relation to the Integration Laboratory Train Equipment, schedule 7.4 (*Integration Laboratory Train Equipment*) of the MSA;

**Applicable TMM Default Termination Month** means the month in which the fifteenth day after the issue of the TMM Default Termination Election Notice falls;

**Applicable TMM Results** means, for the purposes of the TSA:

- (a) in relation to any Run of the TMM Financial Model:
  - (i) the Daily Service Charges (TSA) per Unit for each mileage band listed in Column 1 of the tables in paragraphs 2.6 and 2.7 of schedule 6.3 (*Steady State Period Service Payments*) of the TSA; and

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<sup>36</sup> Redaction.

- (ii) the Periodic Balancing Cost Payments and Periodic Maintenance Charges,

that will apply for each Railway Period during the Steady State Period for the purposes of calculating or determining Service Payments in accordance with schedule 6.3 of the TSA; and

- (b) in relation to any Run of the TMM Financial Model that is carried out during the Ramp-up Period:

- (i) the Daily Service Charges (TSA) per Unit for each mileage band listed in Column 1 of the tables in paragraphs 2.6 and 2.7 of schedule 6.2 (*Ramp-Up Period Service Payments*) of the TSA; and

- (ii) the Daily Balancing Cost Payments in respect of Type 1 Units and Type 2 Units and Periodic Maintenance Charges,

that will apply for each Railway Period during the Ramp-Up Period for the purposes of calculating or determining Service Payments in accordance with schedule 6.2 of the TSA;

***Applicable Transferor*** has the meaning given to it in clause 6.8 of the Umbrella Agreement;

***Applicable TSSSA Results*** means, in relation to any Run of the TSSSA Financial Model and for the purposes of the TSSSA:

- (a) the Daily Service Charges (TSSSA) per Unit for each mileage band listed in Column 1 of the tables in paragraphs 2.6 and 2.7 of schedule 6.2 (*Base TSSSA Services Payments*) of the TSSSA; and
- (b) the Periodic Balancing Cost Payments, the Periodic Maintenance Charges and the Supplier Periodic Maintenance Charges (as defined in the TSSSA),

that will apply for each Railway Period during the TSSSA Term for the purposes of calculating or determining Service Payments (TSSSA) under the TSSSA in accordance with schedule 6.2 of the TSSSA;

***Applicable Variation Procedure*** means the procedure for varying this Agreement and/or the other Contracts, set out in:

- (a) prior to the expiry or termination of the Umbrella Agreement, schedule 4 (*Variations and Changes in Law*) of the Umbrella Agreement; or
- (b) after the expiry or termination of the Umbrella Agreement, schedule 5 (*Variations and Changes in Law*) of the Maintenance Direct Agreement;

***Appointed Representative*** means the Security Trustee or any Suitable Substitute Owner that has assumed, jointly and severally with the Owner, the Owner's rights under the Contracts under clause 8.2(a)(i) or clause 8.2(a)(ii) (*Decision Notice Arrangements*) of the Lenders' Direct Agreement;

***Approvals Plan*** means the plan meeting the requirements of clause 6.6 of the MSA, as set out in schedule 3.1 (*Approvals Plan*) of the MSA;

**Approved Sub-Contractor (MSA)** means, in respect of a Key System, a sub-contractor listed in the table set out in schedule 8 (*Key Systems and Approved Sub-Contractors (MSA)*) of the MSA;

**Approved Sub-Contractor (TSA)** has the meaning given to it in clause 8.1 of the TSA;

**Approved Transferee** means a Party intending to enter into a Permitted Contracts Restructuring Arrangement which is duly approved in accordance with the provisions of clause 6 (*Disposal of this Agreement and the Contracts*) of the Umbrella Agreement;

**As Built Drawings** means relevant technical design and manufacturing drawings produced by the TMM during the course of the MSA, showing the Vehicles and Parts as supplied and including variations or modifications to the Design incorporated in Vehicles or Parts, including variations or modifications incorporated during the period between the date of Acceptance of the First Accepted Unit and the date of expiry of the Warranty Period (MSA) that applies to any Vehicle or Part to which the relevant As Built Drawing relates;

[•]<sup>37</sup>

[•]<sup>38</sup>

**Asset Transfer Agreement** means an asset transfer agreement in the form set out in the Appendix to schedule 2.8 (*Transfer of Rolling Stock and Contracts upon Termination*) of the Umbrella Agreement;

**Associated Equipment** means the Owner Owned Spares and the Special Tools;

**Associated Equipment Rental Start Date** means [•]<sup>39</sup> or the latest date to which the Expected Delivery Date relating to any item(s) of the Associated Equipment that is specified in the original list agreed in accordance with clause 4.5(a), (b) or (c) (as applicable) of the MSA as being due for delivery on or before [•]<sup>40</sup> is amended, as a result of:

- (a) a grant of a Permitted Delay pursuant to clause 18 (*Permitted Delays*) of the MSA and schedule 13 (*Permitted Delay Procedure*) of the MSA; or
- (b) a Variation in respect of which an Authorisation to Vary has been issued;

[•]<sup>41</sup>

[•]<sup>42</sup>

[•]<sup>43</sup>;

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<sup>37</sup> Redaction.

<sup>38</sup> Redaction.

<sup>39</sup> Redaction.

<sup>40</sup> Redaction.

<sup>41</sup> Redaction.

<sup>42</sup> Redaction.

<sup>43</sup> Redaction.

[•]<sup>44</sup>

**ATOC** means the Association of Train Operating Companies;

**Authorisation For Placing Into Service** means, in relation to the Initial Units, the authorisation issued by the ORR, in accordance with the Railways (Interoperability) Regulations 2011, for placing the Initial Units into railway passenger service;

**Authorisation to Vary** means a countersignature to a Variation Proposal by the Secretary of State confirming the Secretary of State's acceptance of the relevant proposal to amend any Contract and/or enter into any new Contract in accordance with:

- (a) prior to the expiry or termination of the Umbrella Agreement, schedule 4.3 (*Secretary of State Authorisation of Variations*) of the Umbrella Agreement, in the form set out in Part D of the Appendix (*Variation Proposal and Authorisation to Vary*) to schedule 4.3 of the Umbrella Agreement; or
- (b) after the expiry or termination of the Umbrella Agreement, schedule 5.3 (*Secretary of State Authorisation of Variations*) of the Maintenance Direct Agreement, in the form set out in Part D of the Appendix (*Variation Proposal and Authorisation to Vary*) to schedule 5.3 of the Maintenance Direct Agreement;

[•]<sup>45</sup>

**Automatic Train Operation** or **ATO** means the automatic train operating system specified in the Specification;

**Availability Benchmark** means [•]<sup>46</sup>

**Availability Deduction** means a deduction calculated in accordance with paragraph 3.4 of schedule 5.1 (*Availability Regime*) of the TSA that comprises part of an Availability Payment;

**Availability Payment** means the payment due from the TMM to the Operator for any Railway Period calculated in accordance with paragraph 3 (*Calculation of Availability Payments*) of schedule 5.1 (*Availability Regime*) of the TSA;

**Availability Regime** means that part of the TSA Performance Regime that relates to the availability of the Units, set out in schedule 5.1 (*Availability Regime*) of the TSA;

**Available** has the meaning given to it in paragraph 1.1 of schedule 5.1 (*Availability Regime*) of the TSA;

[•]<sup>47</sup>

**Backstop Date** means the date falling 20 years after the date on which the Acceptance Certificate is issued in respect of the First Accepted Unit;

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<sup>44</sup> Redaction.

<sup>45</sup> Redaction.

<sup>46</sup> Redaction.

<sup>47</sup> Redaction.

**Balancing Cost Payment** means that proportion of a Service Payment that is payable into the Balancing Payments Account in accordance with clause 18.7 of the TSA and paragraph 12 (*Balancing Cost Payments*) of schedule 6.6 (*Balancing Payments Account*) of the TSA, (or, when in effect, paragraph 12 (*Balancing Cost Payments*) of schedule 9 (*Balancing Payments Account*) of the Lease), [●]<sup>48</sup>:

(a) [●]<sup>49</sup>

(b) [●]<sup>50</sup>

[●]<sup>51</sup>

[●]<sup>52</sup>;;

[●]<sup>53</sup>;;

**Bank Mandates** means the bank mandates, terms, conditions and operating procedures relating to the Balancing Payments Account;

**Base Senior Debt Termination Amount** means [●]<sup>54</sup>

**Base Standard Service Payment** means the payment specified in paragraph 2.3 of schedule 6.1 (*Service Payments*) of the TSA;

[●]<sup>55</sup>

**Bill of Sale** has the meaning given to it in the Asset Transfer Agreement;

[●]<sup>56</sup>

[●]<sup>57</sup>

[●]<sup>58</sup>

[●]<sup>59</sup>

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<sup>48</sup> Redaction.

<sup>49</sup> Redaction.

<sup>50</sup> Redaction.

<sup>51</sup> Redaction.

<sup>52</sup> Redaction.

<sup>53</sup> Redaction.

<sup>54</sup> Redaction.

<sup>55</sup> Redaction.

<sup>56</sup> Redaction.

<sup>57</sup> Redaction.

<sup>58</sup> Redaction.

<sup>59</sup> Redaction.

**Bonus Weight** means in relation to any Unit Type, the weight specified in column 3 of the table in clause 19.12 of the MSA that corresponds to that Unit Type;

**BPA Bank** means the bank with which the BPA is established and maintained in accordance with paragraphs 1.1 and 1.4 of schedule 6.6 (*Balancing Payments Account*) of the TSA or, when in effect, paragraphs 2 and 3.3 of schedule 9 (*Balancing Payments Account*) of the Lease;

[•]<sup>60</sup>

[•]<sup>61</sup>

[•]<sup>62</sup>

[•]<sup>63</sup>

**British Transport Police** means the British Transport Police Authority, established by Section 18(1) of the Railways and Transport Safety Act 2003 and having duties and obligations as set out in that act;

**Broken Funding Costs** means all amounts including Hedge Break Costs and other breakage costs which are payable by the Owner to its Senior Lenders as a result of:

- (a) a prepayment under the Senior Finance Documents; or
- (b) the cancellation of amounts of Permitted Borrowing that have not been drawn;

**CAA 2001** means the Capital Allowances Act 2001;

**CAD Materials** means those computer aided design materials, drawings and computer models (presented in electronic format and/or hard copy and/or computer object code with related databases) relating to development of the final design of the Units and used for analysis of gauging, ride, performance and structural integrity of the bodysells and bogies;

**CAHA** means the UK railway industry Claims Allocation and Handling Agreement dated 1 December 2009 entered into between the several industry parties who are parties thereof and Railway Claims Limited, as amended from time to time, and any agreement entered into by any Party to this Agreement in replacement for that Claims Allocation and Handling Agreement;

**Cancellation** means [•]<sup>64</sup>

**Cancellation Deduction** means a deduction made in accordance with paragraphs 2 (*Calculation of Cancellation Payments*) and 3 (*Cancellations - General*) of schedule 5.2 (*Cancellations Regime*) of the TSA that comprises part of a Cancellation Payment;

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<sup>60</sup> Redaction.

<sup>61</sup> Redaction.

<sup>62</sup> Redaction.

<sup>63</sup> Redaction.

<sup>64</sup> Redaction.

**Cancellation Payment** means the payment due from the TMM to the Operator for any Railway Period, calculated in accordance with paragraph 2 (*Calculation of Cancellation Payments*) of schedule 5.2 (*Cancellations Regime*) of the TSA;

**Cancellation Rate** means [•]<sup>65</sup>

**Cancellations Regime** means that part of the TSA Performance Regime that relates to cancellations of the Units, set out in schedule 5.2 (*Cancellations Regime*) of the TSA;

**Capability Tests** means those tests specified in paragraph 2 (*Required Capability Tests*) of schedule 4.1 (*Requirements for Agreed Testing Programme*) of the MSA;

**Capital Expenditure** means any expenditure which falls to be treated as capital expenditure in accordance with GAAP;

[•]<sup>66</sup>

**Casualty** means [•]<sup>67</sup>

**CEDR** means the Centre for Effective Dispute Resolution in London;

**Change in Law** means the coming into effect after [•]<sup>68</sup> of:

- (a) Legislation;
- (b) Applicable Laws and Standards that have force of law; or
- (c) any applicable judgment of a relevant court of law which changes a binding precedent;

**Change of Control** means, in relation to a person (other than the Secretary of State) (an Affected Person) if a person (or persons acting in concert) who directly or indirectly Controls the Affected Person (or any person having a direct or indirect interest in the Affected Person) as at the date of the Umbrella Agreement ceases to do so or if a person (or persons acting in concert) obtains direct or indirect control of the Affected Person (or any person having a direct or indirect interest in the Affected Person) after the date of the Umbrella Agreement;

**Code** has the meaning given to it in clause 4.12 of the Umbrella Agreement;

[•]<sup>69</sup>

**Commercially Sensitive Information** means the sub-set of Confidential Information which is agreed from time to time between the Parties to be commercially sensitive;

**Common Parts** means tracks, roads, paths, entrance halls, corridors, lifts, staircases, landing and other means of access or egress in or upon the Designated Depots the use of which is

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<sup>65</sup> Redaction.

<sup>66</sup> Redaction.

<sup>67</sup> Redaction.

<sup>68</sup> Redaction.

<sup>69</sup> Redaction.

necessary or desirable for obtaining access to and egress from the Maintenance Sheds and/or access and/or egress routes to and from the Designated Depots;

**Common Terms Agreement** means the agreement entitled “Common Terms Agreement” entered into on or about the date of this Agreement between, inter alia, the Owner, HoldCo, HoldCo2, FinCo, the Intercreditor Agent, the Security Trustee and the Senior Lenders;

**Compensation Sum** means, in relation to any Indemnity Sum that is paid by a Party to the MSA or the TSA (as applicable) to a person other than the relevant First Party and is treated as taxable in the hands of such First Party, such sum as (after taking into account any Taxation suffered by the First Party and the time when such Taxation is payable on the Compensation Sum) shall reimburse such First Party for any Taxation suffered by it in respect of the Indemnity Sum;

**Competent Authority** means any statutory undertaker or any statutory public local or other authority or regulatory body or any court of law or government department or any of them or any of their duly authorised officers;

**Compliant Tender** means any tender submitted by a Compliant Tenderer;

**Compliant Tenderer** means a tenderer who is a Suitable Substitute Owner and who has complied in all material respects with the Qualification Criteria and any other requirements and terms of the Tender Process set by the Secretary of State in accordance with paragraphs 2.4 and 2.6 of schedule 3.1 (*Termination Sum Payable on Termination for Owner Default*) of the Umbrella Agreement, in relation to the tender it is tendering for;

**Components** has the meaning given to it in clause 15.8 of the TSA;

**Concession** means the consent of the Operator to a Unit entering, or continuing in, service, in each case, with a Fault;

**Conditional QPAC Unit** has the meaning given to it in paragraph 4.7 of schedule 6 (*Delivery and Acceptance*) of the MSA;

**Conditions Precedent Agreement** means the conditions precedent agreement dated on or about the date of this Agreement entered into between the Secretary of State, the Owner, the Initial Operator and the TMM;

**Confidential Information:**

- (a) in relation to the MSA, has the meaning given to such term in clause 30.2 of the MSA;
- (b) in relation to the TSA, has the meaning given to such term in clause 31.1 of the TSA;
- (c) in relation to the Lease, has the meaning given to such term in clause 26.1(b) of the Lease;
- (d) in relation to the TSSSA, has the meaning given to such term in clause 25.1 of the TSSSA; or
- (e) in relation to the Umbrella Agreement or the Maintenance Direct Agreement, means the Confidential Information (Umbrella Agreement);

***Confidential Information (Umbrella Agreement)*** means any information or data related to the Project and/or furnished by or on behalf of a Party to any other Party or Parties in relation to the Project, which has, in each case, been designated as confidential in writing by the Party disclosing it or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored), including information which relates to the commercial or financial arrangements or affairs, operations, properties, assets, trading and/or working practices, designs, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of each Party and the Commercially Sensitive Information;

***CONOPS*** means the train concept of operations, set out in schedule 2.2 (*CONOPS*) of the MSA;

***Consultation Plan*** means the consultation plan set out in Appendix 2 to Schedule 17 (*Employment Arrangements*) of the TSA;

***Contingent Funding Liabilities*** means, at any time, the Available B Loan Note Commitments payable directly or indirectly to the Owner together with, without double counting, any security (by way of letter of credit, guarantee or otherwise) for those liabilities;

***Contract*** means any one or more, as the context permits, of:

- (a) the Umbrella Agreement;
- (b) the MSA;
- (c) the Lease;
- (d) the TSA;
- (e) the TSSSA;
- (f) the Conditions Precedent Agreement;
- (g) the Lenders' Direct Agreement;
- (h) this Agreement;
- (i) the Owner Guarantee;
- (j) the Operator Guarantee;
- (k) the Owner Bond;
- (l) the Advance Payment Bond;
- (m) the Operator Bond;
- (n) the TSA Guarantee;
- (o) the TSA Bond;
- (p) the TSSSA Guarantee;
- (q) the TSSSA Bond; and

- (r) any other or subsequent contract for Rolling Stock Supply entered into between any of two or more of the Parties to the Umbrella Agreement during the term of the Umbrella Agreement;

***Contract Amendment Agreement*** means any agreement providing for the variation or amendment of any Contract, or a new Contract, in each case entered into by the Parties to that Contract, excluding:

- (a) any such agreement entered into to give effect to a Permitted Change (MSA) or Permitted Change (TSA) under the MSA or the TSA (as applicable); or
- (b) any such agreement to which the Applicable Variation Procedure is expressed not to apply in any relevant Contract, including, without limitation, any such agreement entered into in accordance with:
  - (i) clause 5.13 of the MSA;
  - (ii) clause 7.7 of the MSA;
  - (iii) clause 8.6 of the MSA;
  - (iv) clause 8.20 of the MSA;
  - (v) clause 10.17 of the MSA;
  - (vi) clause 19.11 of the MSA;
  - (vii) clauses 20.13 to 20.17 (inclusive) of the TSA; or
  - (viii) clause 20.18 of the TSA;
- (c) any updating of information or provisions of a Transaction Document where such updating is expressly required or contemplated in the relevant Transaction Document;
- (d) any agreement between the Parties to a Transaction Document to an extended time period for the performance of an action under that Transaction Document, where the potential for such an agreement is expressly contemplated in the relevant Transaction Document;
- (e) the granting of an extension of time for the performance of obligations of the TMM and of variations to the date for performance of any action under the Contract Programme, in each case in accordance with the terms of schedule 13 (*Permitted Delay Procedure*) of the MSA;
- (f) the production and delivery of documents and information as expressly required in the Transaction Documents;
- (g) the calculation and/or determination of:
  - (i) [•]<sup>70</sup>

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<sup>70</sup> Redaction.

(ii) [•]<sup>71</sup>

(h) the exercise of rights, or the grant of waivers or consents and similar actions under the Transaction Documents which relate to day to day specified administrative and supervisory matters;

**Contract Dispute** has the meaning given to it in paragraph 1 (*Contract Disputes*) of schedule 8.1 (*Contract Disputes*) of the Umbrella Agreement;

**Contract Price** means, in respect of a Unit, the price for the relevant Unit Type specified in paragraph 1 (*Contract Price for each Unit Type*) of schedule 11 (*Schedule of Prices*) of the MSA;

**Contract Programme** means the programme of design, manufacture, testing, certification, commissioning, achievement of approvals (safety and other) and delivery and acceptance, as set out in schedule 9 (*Contract Programme*) of the MSA;

**Contract Year** means a period of 13 consecutive Railway Periods during the TSA Term, beginning on 1 April and ending on 31 March, except that the first and last Contract Years may be for a period of less than 13 consecutive Railway Periods and the first Contract Year shall begin on the date of the TSA and the last Contract Year shall end on the last day of the TSA Term;

**Contract Year (TSSSA)** has the meaning given to it in the TSSSA;

**Contractor Claim** means any claim of any kind, whether in contract or otherwise in relation to any of the Contracts, by the TMM and/or SAG against the Owner;

**Contractor's Share** means [•]<sup>72</sup>

Cumulative Capital Expenditure	Contractor's Share %
[•] <sup>73</sup>	[•] <sup>74</sup>
[•] <sup>75</sup>	[•] <sup>76</sup>
[•] <sup>77</sup>	[•] <sup>78</sup>

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<sup>71</sup> Redaction.

<sup>72</sup> Redaction.

<sup>73</sup> Redaction.

<sup>74</sup> Redaction.

<sup>75</sup> Redaction.

<sup>76</sup> Redaction.

<sup>77</sup> Redaction.

<sup>78</sup> Redaction.

**Control** means, for the purposes of the definition of Change of Control:

- (a) the holding and/or possession of the legal or beneficial interest in, and/or the ability to exercise the voting rights applicable to, shares or securities of the Affected Person (or any person having a direct or indirect interest in the Affected Person) by the relevant person (or persons acting in concert);
- (b) the power of the relevant person (or persons acting in concert) (directly or indirectly) to secure that the business and/or affairs and/or policies of the Affected Person (or any person who has a direct or indirect interest in the Affected Person) are conducted in accordance with the wishes of that person (or persons); or
- (c) the right of the relevant person (or persons acting in concert) to receive (directly or indirectly) on a winding up the greater part of the assets of the Affected Person (or any person having a direct or indirect interest in the Affected Person) which are available for distribution;

**Core Area** means the Thameslink Core;

**Corporation Tax Self Assessment** has the meaning given to it in paragraph 6.4(a)(ii) of schedule 2.1 (*Section 54 Undertakings*) of the Umbrella Agreement;

**Cosmetic Repair** means any repair of a minor nature to a Unit including:

- (a) repair or replacement of any minor Part damaged by vandalism, including seat covers, signage, posters;
- (b) removal of graffiti in accordance with Servicing and Cleaning Manual;
- (c) replacement of failed interior fluorescent light tubes and bulbs and LED lighting;
- (d) replacement of missing or damaged items from safety equipment cupboards;
- (e) resetting any tripped relays, circuit breakers, controllers and systems, replacement of fuses in accordance with the Driver's Manuals; or
- (f) replacement of windscreen wiper blades and other consumables in accordance with the Servicing and Cleaning Manual,

in each case which may involve the use of Operator Owned Spares or such other Part procured by the Operator;

**Cost of the Senior Debt** means the cost of the senior debt facility projected to be outstanding at the Backstop Date, or, if there is projected to be more than one such facility at the Backstop Date, this shall be the weighted average cost of all senior debt facilities projected to be then outstanding;

**Counter Notice** has the meaning given to it in paragraph 2.9 of schedule 8.2 (*Expert Determination*) of the Umbrella Agreement;

**Critical Spares** means the critical spares which are agreed pursuant to clause 4.5(c) of the MSA, an indicative list of which is set out in paragraph 2.1 of schedule 7.2 (*Spares*) of the

MSA, as such critical spares shall be overhauled and/or replaced by the TMM (including as Supplier where appropriate) pursuant to the TSA or TSSSA (as the case may be);

**CT Payment Date** means the following quarterly instalment dates for each accounting period (which accounting periods will, in all circumstances, and regardless of actual treatment, be deemed to be successive 12 month periods ending on 30 June): 14 January and 14 April (each preceding the end of the accounting period), and 14 July and 14 October (each following the end of the accounting period);

[●]<sup>79</sup>

**CTA Definitions** has the meaning given to it in paragraph 1.2;

**CTA Event of Default** has the meaning given to “Event of Default” in the CTA Definitions;

**Cumulative Capital Expenditure** means the aggregate of:

- (a) all Capital Expenditure that has been incurred as a result of each General Change in Law that has come into effect after [●]<sup>80</sup>; and
- (b) the amount of Capital Expenditure that is agreed, or determined to be required, as a result of a General Change in Law under schedule 4.5 (*Change in Law*) of the Umbrella Agreement;

[●]<sup>81</sup>;

**Current Senior Debt Terms** means the terms and conditions in the Senior Finance Documents on which the Facilities are available as at the date that the Owner issues any Funding Availability Notice or any Lender Default Notice (as applicable);

**Daily Performance Record** means the daily performance record prepared by the Operator in accordance with paragraph 8 (*Daily Performance Record*) of schedule 5.5 (*Performance Regime General Provisions*) of the TSA;

**Daily Service Charge (TSA)** means, in relation to Type 1 Units or Type 2 Units (as appropriate) a fixed, single daily charge, in each case determined in accordance with (as appropriate):

- (a) schedule 6.2 (*Ramp-Up Period Service Payments*) of the TSA where that charge forms part of the calculation of Type 1 Unit Service Payments or Type 2 Unit Service Payments (as appropriate) during the Ramp-Up Period; or
- (b) schedule 6.3 (*Steady State Period Service Payments*) of the TSA where that charge forms part of the calculation of Type 1 Unit Service Payments or Type 2 Unit Service Payments (as appropriate) during the Steady State Period;

**Daily Service Charge (TSSSA)** has the meaning given to it in the TSSSA;

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<sup>79</sup> Redaction.

<sup>80</sup> Redaction.

<sup>81</sup> Redaction.

**Data Book** means:

- (a) in respect of the Owner Financial Model, a document prepared by the Owner comprising part of the Owner Financial Model, and identified within the Owner Financial Model as the **Owner Base Case DB**, and Placed in Escrow; and
- (b) in respect of the TMM Financial Model, a document prepared by the TMM and in the agreed terms marked **TMM Base Case DB** and Placed in Escrow; and
- (c) in respect of the TSSSA Financial Model, a document prepared by the TMM (in its role as Supplier) and in the agreed terms marked **TSSSA Base Case DB** and Placed in Escrow;

**Day 1 Remedial Plan** has the meaning given in paragraph 6.1 of schedule 13.1 (*TMM Events of Default*) of the TSA;

**Decision Notice** has the meaning given to that term in clause 8.1 of the Lenders' Direct Agreement;

**Deed of Accession** means a Deed of Operator Accession, a Deed of Public Sector Operator Accession, a Deed of Owner Accession or a Deed of TMM Accession, as the context requires and the expression **Applicable Deed of Accession** shall be construed accordingly;

**Deed of Operator Accession** means a deed of accession in the form contained in schedule 1.1 (*Deed of Operator Accession*) of the Umbrella Agreement;

**Deed of Owner Accession** means a deed of accession in the form contained in schedule 1.2 (*Deed of Owner Accession*) of the Umbrella Agreement;

**Deed of Public Sector Operator Accession** means a deed of accession in the form contained in schedule 1.4 (*Deed of Public Sector Operator Accession*) of the Umbrella Agreement;

**Deed of TMM Accession** means a deed of accession in the form contained in schedule 1.3 (*Deed of TMM Accession*) of the Umbrella Agreement;

**Deemed Available** has the meaning given to it in paragraph 1.3 of schedule 5.1 (*Availability Regime*) of the TSA;

[●]<sup>82</sup>;

**Default Interest** means any increased margin that is payable by the Owner to the Senior Lenders, or which accrues as a result of any payment due by the Owner to the Senior Lenders not being made on the date on which it is due;

**Default Interest Rate** means [●]<sup>83</sup>

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<sup>82</sup> Redaction.

<sup>83</sup> Redaction.

**Default Package** means an electronic and hard copy set of the following:

- (a) the Technical Records;
- (b) a computer file comprising the data held in the Technical Records Database in a generic format;
- (c) a list of any Sub-Contractors (including suppliers of Parts and Special Tools),  
(each of paragraphs (a) to (c) inclusive up-dated by the TMM in accordance with the TMM's obligations under the TSA and to include details of any Variations (including Variations effected or agreed otherwise than under the Applicable Variation Procedure));
- (d) details of the estimated and, when available, the actual annual usage of each type of Part; and
- (e) object code for TSA software and MSA software;

**Defaulted Owner** means the person who was the Existing Owner at the time of the Secretary of State's delivery of the applicable Lease Owner Non-MR/EFV Termination Event Notice;

**Defaulting Lender** means, in respect of a Senior Lender Default, any Senior Lender whose failure to advance funds causes that Senior Lender Default to arise;

**Deferred Invoice** has the meaning given to it in paragraph 13.9 of schedule 6.6 (*Balancing Payments Account*) of the TSA or, when in effect, paragraph 13.8 of schedule 9 (*Balancing Payments Account*) of the Lease;

[•]<sup>84</sup>

[•]<sup>85</sup>

**Delay Attribution Guide** has the meaning given to it in the Network Code;

**Delay Deduction** means a deduction calculated in accordance with paragraph 2 (*Calculation of Delay Payments*) of schedule 5.3 (*Delay Regime*) of the TSA that comprises part of a Delay Payment;

**Delay Dispute** means any dispute between the Parties to the MSA as to any matters under schedule 13 (*Permitted Delay Procedure*) of the MSA;

**Delay Incident** means a planned or unplanned incident (the occurrence and duration of which is determined in accordance with the Delay Attribution Guide and recorded by TRUST) that causes Primary Minutes Delay to a railway service and is not specified in the applicable Plan of the Day;

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<sup>84</sup> Redaction.

<sup>85</sup> Redaction.

**Delay Incident Conditions** means the following conditions:

- (a) the Operator issues to the TMM a Train Plan pursuant to clause 5.2 of the TSA that provides for the operation of 20 or more trains per hour on the Thameslink Network, provided that this condition shall not apply prior to the Passenger Change Date occurring in December 2018; and
- (b) Network Rail has adopted an attribution process that supports the Network Monitoring System which is capable of attributing Delay Incidents of one Minute Delay to railway services operating in the Performance Core;

**Delay Payment** means the payment due from the TMM to the Operator for any Railway Period calculated in accordance with paragraph 2 (*Calculation of Delay Payments*) of schedule 5.3 (*Delay Regime*) of the TSA;

**Delay Regime** means that part of the TSA Performance Regime that relates to the reliability of the Units, set out in schedule 5.3 (*Delay Regime*) of the TSA;

[•]<sup>86</sup>

**Delivery** means:

- (a) in respect of any Unit, the delivery or deemed delivery by the Owner and Acceptance by the Operator of that Unit in accordance with clause 6.4 of the Lease; and
- (b) in respect of any Owner Owned Spare, Special Tool or Simulator, the delivery or deemed delivery by the Owner and acceptance by the Operator of that Owner Owned Spare, Special Tool or Simulator (as the case may be) in accordance with clauses 6.7, 6.8 or 6.13 of the Lease, as appropriate,

and **Delivered** shall be construed accordingly;

**Delivery Date** means in respect of any Unit, any Owner Owned Spare, any Special Tool, and/or any Simulator the date on which Delivery of such Unit, Owner Owned Spare, Special Tool and/or any Simulator takes place;

**Delivery Documentation** means for each Unit, maintenance and operations records, details of any Variations applied to that Unit, repairs made during production, modification status, a list of all critical components by part number/serial number, the Unit Record Book, Faults identified during test and actions taken in respect of those Faults and differences from any Unit previously delivered under the MSA and originals, when necessary, of all certificates issued in relation to a Unit, in all cases prior to Provisional Acceptance or Qualified Provisional Acceptance of that Unit;

**Depot Access Conditions** means the depot access conditions for each Designated Depot, substantially in the form of the access conditions set out in schedule 17.7 of the applicable Depot Agreement for Leases;

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<sup>86</sup> Redaction.

***Depot Annexes*** means the annexes for:

- (a) the Whole Site (as defined in the applicable Depot Agreement for Leases) in respect of the Designated Depot at Hornsey; or
- (b) the New Depot Land (as defined in the applicable Depot Agreement for Leases) in respect of Designated Depot at Three Bridges,

in each case in the form of the draft annexes set out in schedule 17.5 of the applicable Depot Agreement for Leases, completed with all necessary insertions, and subject to any modifications agreed by the parties to the applicable Depot Agreement for Leases and/or required by the ORR;

***Depot Agreement*** means any Depot Agreement for Lease, any Depot Deed of Undertaking or any Depot Payment Deed and any subsequent contract entered into in relation to the Depot Project during the term of this Agreement between any two or more of the Parties to such specified Depot Agreements;

***Depot Agreement for Lease*** means either of the following agreements for the leases of a Designated Depot dated on or about the date of this Agreement:

- (a) the agreement for asset protection works and grant of leases between the Depot SPC, Network Rail, the Secretary of State, the Operator and the TMM in respect of the Designated Depot at Three Bridges; and
- (b) the agreement for asset protection works and grant of leases between the Depot SPC, Network Rail, the Secretary of State, the Operator as depot facility operator in respect of the existing depot, and the TMM in respect of the Designated Depot at Hornsey,

and ***Depot Agreements for Lease*** shall mean both of such agreements;

***Depot Construction Contract*** means the “Building Contract” for the construction of a Designated Depot, as such term is defined in the Depot Agreement for Lease in respect of such Designated Depot;

***Depot Deed of Undertaking*** means either or both (as the context may require) of the following deeds in relation to a Designated Depot dated on or about the date of this Agreement:

- (a) the deed of undertaking entered into between the Secretary of State, the Depot SPC, the Operator and the TMM in respect of the Designated Depot at Three Bridges; and
- (b) the deed of undertaking entered into between the Secretary of State, the Depot SPC, the Operator and the TMM in respect of the Designated Depot at Hornsey;

***Depot Dependent Obligation*** means any of the following obligations under the MSA in respect of the supply of any Unit that the TMM shall carry out in accordance with the MSA and the Contract Programme, the performance of which is dependent upon having access to a Designated Depot (or such other maintenance location as is agreed by the Parties):

- (a) the obtaining of Relevant Approvals pursuant to clause 6 (*Approvals*) of the MSA;
- (b) the provision of training pursuant to clause 7 (*Operator's Trainers' Training and Programme*) of the MSA;
- (c) any testing and/or commissioning of any Unit which is required pursuant to clause 8 (*Testing and Certification*) or schedule 4.1 (*Requirements for Agreed Testing Programme*) of the MSA including any maintenance required pursuant to the Pre-Acceptance Maintenance Plan to be performed on the Units during testing and/or commissioning; and
- (d) the tendering of Units for Provisional Acceptance or Qualified Provisional Acceptance pursuant to schedule 6 (*Delivery and Acceptance*) of the MSA;

***Depot Force Majeure Event*** means an event defined as a force majeure event under any Depot Agreement for Lease as at the date of this Agreement that prevents the TMM from carrying out any Depot Dependent Obligations;

***Depot Headlease*** means the headlease of any Designated Depot, to be between Network Rail (as lessor) and the Depot SPC (as lessee) pursuant to the terms of the relevant Depot Agreement for Lease;

***Depot Payment Deed*** means either or both (as the context may require) of the following deeds in relation to a Designated Depot dated on or about the date of this Agreement;

- (a) the payment deed entered into between the Depot SPC, the Operator and the Secretary of State in respect of the Designated Depot at Three Bridges; and
- (b) the payment deed entered into between the Depot SPC, the Operator and the Secretary of State in respect of the Designated Depot at Hornsey;

***Depot Project*** means the interfacing project for the design, construction, operation and maintenance of the Designated Depots pursuant to the Depot Agreements;

***Depot SPC*** means [●]<sup>87</sup> in its capacity as Depot SPC under each Depot Agreement for Lease, as lessee under the head lease for each Designated Depot and as lessor under the under lease for each Designated Depot;

***Derogations*** means, in relation to any Applicable Laws and Standards:

- (a) any temporary non compliance;
- (b) any permanent non compliance;
- (c) any derogation; or
- (d) any other exemption having a similar effect to any of the above,

in each case as permitted by the relevant governmental or regulatory authority in relation to that Applicable Law and Standard;

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<sup>87</sup> Redaction.

**Design** means the design of the Equipment to be produced by the TMM in accordance with the Specification;

**Design Authority Fee** has the meaning given to it in paragraph 2.4(b) of schedule 23 (*Design Authority*) to the MSA;

**Design Authority Meeting** has the meaning given to it in paragraph 4.1 of schedule 23 (*Design Authority*) to the MSA;

**Design Authority Term** means the period commencing on the date of termination of the TSA (or, if the TMM is acting as the design authority in respect of the Equipment under the TSSSA, the date of termination of the TSSSA) and continuing until [•]<sup>88</sup> after the date of Acceptance of the Last Unit;

**Design Defect** means, in relation to the Units, the Simulators or any of the types of Key Component (for the purposes of this definition (and the definition of **Potential Design Defect**), each reference to a Key Component being a reference to all of the components of a particular type, such types being listed in paragraph 4.3 of schedule 14 (*Design Life, Warranties and MSA Fault Rectification*) of the MSA) that the Units, the Simulators or such Key Components have failed to achieve the applicable Design Life as a consequence of inappropriate or inadequate design attributable to the TMM, its Sub-Contractors or suppliers, or the employees of any of them and taking account of the Applicable Specification, the Maintenance Plan and Manuals for the Units, the Simulators or that Key Component (as appropriate), provided that:

- (a) where any such Key Component is the bodyshell, the defect which has caused the bodyshell to fail to achieve its Design Life directly impacts on the structural integrity of the bodyshell or the safety of the Units; and
- (b) where any such Key Component is the traction system, the defect which has caused the traction system to fail to achieve its Design Life directly impacts on the system integrity of the traction system or the safety of the Units,

and provided further that, if there are design variances to the Units, the Simulators or any type of Key Component that are not applied to all Units, both Simulators or all of the Key Component of that type, any reference in this definition (and the definition of **Potential Design Defect**) to the Units, the Simulators or the Key Component shall be deemed to be references to those Units, Simulators or all the Key Components of that type that share a common design;

**Design Life** means:

- (a) in relation to any Key Component, the relevant design life specified in paragraph 4.3 of schedule 14 (*Design Life, Warranties and MSA Fault Rectification*) of the MSA;
- (b) in relation to any Unit, its Unit Design Life; and
- (c) in relation to either Simulator, the Simulator Design Life;

**Design Requirement** has the meaning given to it in clause 5.1(b) of the MSA;

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<sup>88</sup> Redaction.

**Design Review Process** means the design review process, as set out in schedule 2.1 (*The Design Review Process*) of the MSA;

**Designated Depots** means the following depot facilities:

- (a) the Three Bridges Depot situated on operational railway land south of Three Bridges Station, Three Bridges, Crawley, West Sussex; and
- (b) the Hornsey Depot situated at Coronation Sidings west and to the north of the Hornsey Light Maintenance Depot, Hornsey, London;

**Detailed Statement** means a detailed written statement issued by the Owner or the Operator to the TMM in accordance with:

- (a) [●]<sup>89</sup>
- (b) paragraph 3.7 or paragraph 3.8 of schedule 6 of the MSA in relation to the rejection of a Unit for Provisional Acceptance,

setting out in each case, the detailed, specific reasons why the Owner or the Operator (as the case may be) believe, acting reasonably, that the conditions in paragraph 2.1 or 3.1 (as appropriate) of schedule 6 of the MSA have not been satisfied in relation to that Unit;

**Diagram** means a description of a railway service specified in the Train Plan to be delivered by the Operator, showing:

- (a) the number of Vehicles and Unit Type to be used to deliver that service;
- (b) the Entry Point, Entry Time, Exit Point and Exit Time;
- (c) the Stabling Points; and
- (d) the principal places and station Turnarounds of each relevant Diagram Leg,

and Diagramming shall be construed accordingly;

**Diagram Leg** means that element of a Diagram that relates to a single journey between an originating point and a terminating point;

**Director Notice** has the meaning given to it in paragraph 4.1 of schedule 8.1 (*Contract Disputes*) of the Umbrella Agreement;

**Discriminatory Change in Law** means a Change in Law, the terms of which apply expressly to:

- (a) the Project, including the Contracts but excluding references in the definition of Project to the procurement of the depots and similar agreements or projects; and/or
- (b) the TMM and/or the Owner and not to other persons;

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<sup>89</sup> Redaction.

**Dispute** has the meaning given to it in paragraph 1.1 of schedule 8.2 (*Expert Determination*) of the Umbrella Agreement;

[●]<sup>90</sup>

[●]<sup>91</sup>;

**Distribution** means any:

- (a) dividend or other distribution in respect of share capital;
- (b) reduction of capital, redemption or purchase of shares or any other reorganisation of, or variation to, share capital;
- (c) payments under the Subordinated Financing Agreements (whether of principal, interest, breakage costs or otherwise);
- (d) payment, loan, contractual arrangement or transfer of assets or rights to the extent (in each case) it was put in place after Financial Close and was neither in the ordinary course of business nor on reasonable commercial terms; or
- (e) the receipt of any other benefit which is not received in the ordinary course of business and on reasonable commercial terms,
- (f) in each case, whether in cash or in kind;

**Drawstop Waiver** has the meaning given to it in paragraph 4.11(a)(i) of schedule 4.3 (*Secretary of State Authorisation of Variations*) of the Umbrella Agreement;

**Driver's Manual** has the meaning given to it in clause 10.10 of the MSA;

[●]<sup>92</sup>

[●]<sup>93</sup>

[●]<sup>94</sup>

[●]<sup>95</sup>

**EEA** means from time to time the European Economic Area as created by The Agreement on the European Economic Area 1992 or any successor or replacement body, association, entity or organisation which has assumed either or both the function and responsibilities of the European Economic Area;

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<sup>90</sup> Redaction.

<sup>91</sup> Redaction.

<sup>92</sup> Redaction.

<sup>93</sup> Redaction.

<sup>94</sup> Redaction.

<sup>95</sup> Redaction.

**Effective Date** means the date and time at which the last Final CP Satisfaction Certificate is released in accordance with the Conditions Precedent Agreement;

**Effective Senior Debt Rate** means [●]<sup>96</sup>

[●]<sup>97</sup>;

**Emergency Bulletins** means any updates to the Manuals issued by the TMM at short notice;

**Endemic Defect** means a MSA Fault in a Unit, Vehicle or Part (excluding consumables) which has occurred and:

- (a) is reasonably likely to occur or has occurred in other Units, Vehicles or Parts; and
- (b) the Owner and Operator reasonably believe will thereafter become an Epidemic Defect;

**Endemic/Epidemic Protection Period** means [●]<sup>98</sup>

**Enforcement Notice** means a notice in writing from the Security Trustee to the Secretary of State stating that an Enforcement Event has occurred and that the Security Trustee intends to issue a Decision Notice;

**Engineering Change Control Procedure** means the procedure produced pursuant to schedule 7.2 (*Engineering Change Control Procedure*) of the TSA;

**Entry Point** means, in respect of a Unit, the place in a Diagram where such Unit is to be located in accordance with the Train Plan at the Entry Time;

**Entry Time** means, in respect of a Unit, the time set out in the Train Plan when that Unit is scheduled to be ready to enter into service at the relevant Entry Point;

**Environment** means the air, water and land and the medium of air includes the air within buildings and the air within other natural or man-made structures above or below ground;

**Environmental Condition** means:

- (a) any Environmental Damage; and/or
- (b) any event, circumstance, condition, operation or activity which it is reasonably foreseeable is likely to result in Environmental Damage,

at, in, under or originating from the relevant Designated Depot which (in either case) is in breach of Environmental Law and has resulted or could reasonably be expected to result in any other party to the TSA or the TSSSA incurring any material liability or being subject to the direction of a Competent Authority under Environmental Law, or could reasonably be expected otherwise to materially and adversely affect the continued use of the relevant Designated Depot for the Permitted/Licensed Use;

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<sup>96</sup> Redaction.

<sup>97</sup> Redaction.

<sup>98</sup> Redaction.

***Environmental Damage*** means any material injury or damage to persons, living organisms or property (including material offence to man's senses) or any material pollution or impairment of the Environment resulting from the discharge, emission, escape or migration of any substance, energy, noise or vibration;

***Environmental Information Regulations*** means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such regulations;

***Environmental Laws*** means any Applicable Laws and Standards which relate to pollution or impairment of the Environment or to the protection of the health of humans, animals or plants and any Railway Group Standards to the extent applicable to such matters, but excluding, for the avoidance of doubt, those laws relating specifically to the health and safety of workers in the work place;

***Environmental Liability*** means any liability under Environmental Laws;

***Environmental Loss*** means any damage, losses, claims, demands, liabilities, costs, damages, orders and out of pocket expenses (including costs reasonably incurred in investigating or defending any claim, proceedings, demand or order and any expenses reasonably incurred in preventing, avoiding or mitigating loss, liability or damage) which results from an Environmental Condition, but shall exclude any loss of revenue (including fare revenue, subsidy, access charge revenue and incentive payments);

***Epidemic Defect*** means [•]<sup>99</sup>

***Equipment*** means the Units (including each Unit Type), the Vehicles, the Associated Equipment, the Operator Owned Spares, any Part, the Integration Laboratory Train Equipment the Mock-up and the Simulators;

***Equipment Changes*** has the meaning given to it in paragraph 3.2 of schedule 23 (*Design Authority*) to the MSA;

***Equipment Price*** means any of the Contract Price, the Owner Owned Spares Price, the Operator Owned Spares Price, the Special Tools Price or the Simulators Price, the Integration Laboratory Train Equipment Price;

***Equity IRR (Model Run)*** means [•]<sup>100</sup>

***Equity IRR Throughout the Useful Economic Life of the Rolling Stock*** means [•]<sup>101</sup>

***Equivalent Annual Average Mileage Per Unit*** means, in relation to any Type 1 Unit, the equivalent annual average miles operated by each Unit of that Unit Type during any Reference Contract Year in the Ramp-Up Period, calculated in accordance with paragraph 4.2 or 4.3 of schedule 6.2 (*Ramp-Up Period Service Payments*) of the TSA;

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<sup>99</sup> Redaction.

<sup>100</sup> Redaction.

<sup>101</sup> Redaction.

**ERTMS** means European Rail Traffic Management System, the signalling and management system for trains operating in Europe which enables the interoperability of trains throughout European rail networks;

**ERTMS/ATO Integration Testing Programme** has the meaning given to it in clause 8.26 of the MSA and any reference to any Phase of the ERTMS/ATO Integration Testing Programme shall have the meaning set out in schedule 4.2 (*ERTMS/ATO Testing Support*) of the MSA;

**ERTMS/ATO Support** has the meaning given to it in clause 8.17 of the MSA;

**ERTMS/ATO Support Date** means 21 December 2019 or such later date as determined in accordance with clauses 8.17 and 8.20 of the MSA;

**Escrow Agent** has the meaning given to it in the Software Escrow Agreement;

**Escrow Documents** means the Owner Escrow Documents, the TMM Escrow Documents and/or the TSSSA Escrow Documents;

**Escrow Materials** means all Source Codes and all updates to those Source Codes;

**Escrow Release Event** has the meaning set out in the Software Escrow Agreement;

**Estimated Change in Costs** means in relation to schedule 4.5 (*Change in Law*) of the Umbrella Agreement, the aggregate (without any double counting) of any estimated increase in construction costs, manufacturing costs, operating costs, maintenance costs, asset management costs and financing costs less the aggregate of any estimated reduction in construction costs, manufacturing costs, maintenance costs, operating costs, asset management costs and financing costs;

**Estimated Fair Value of the Rolling Stock** means the amount that a notional Suitable Substitute Owner would pay to the Secretary of State as the market value of:

- (a) assuming the role of the Owner under the Applicable Replacement Contracts (including a Replacement Lease that, in accordance with paragraph (b) of such definition, is assumed to be on the same terms and conditions as the applicable Reference Lease save only for amendments required to reflect the change in identity of the Owner);
- (b) accession to the role of Owner under the Applicable Relevant Contracts; and
- (c) the ownership of the Rolling Stock transferred pursuant to the Asset Transfer Agreement with the ability to generate rental income until the end of the useful life of the Units,

determined in accordance with paragraph 3.4 of schedule 3.1 (*Termination Sum Payable on Termination for Owner Default*) of the Umbrella Agreement;

[•]<sup>102</sup>

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<sup>102</sup> Redaction.

**Event of Loss** means, with respect to any Vehicle, Unit, Owner Owned Spare, Special Tool or Simulator (and in respect of Owner Owned Spares or Special Tools, save where disapplied pursuant to schedule 8.3 (*Spares and Special Tools Insurance*) of the Lease):

- (a) the actual, constructive, agreed, arranged or compromised total loss of such Vehicle, Unit, Owner Owned Spare, Special Tool or Simulator (including any damage to such Vehicle, Unit, Owner Owned Spare, Special Tool or Simulator or requisition for use or hire of such Vehicle, Unit, Owner Owned Spare, Special Tool or Simulator which results in an insurance settlement on the basis of a total loss);
- (b) such Vehicle, Unit, Owner Owned Spare, Special Tool or Simulator being destroyed, condemned, damaged beyond repair or rendered permanently unfit for normal use for any reason whatsoever (including destruction or damage caused by act of terrorism or act of war);
- (c) the requisition of title, or other compulsory acquisition, requisition, expropriation or confiscation for any reason of such Vehicle, Unit, Owner Owned Spare, Special Tool or Simulator by any Government Authority, but excluding requisition for use or hire not involving requisition of title; or
- (d) the condemnation, confiscation, capture, deprivation, seizure or requisition for use or hire of such Vehicle, Unit, Owner Owned Spare, Special Tool or Simulator by any Government Authority which deprives any person permitted by the TSA to have possession and/or use of such Vehicle, Unit, Owner Owned Spare, Special Tool or Simulator of its possession and/or use for more than 180 days;

**Eversholt** means Eversholt Rail (UK) Limited, a limited company incorporated in England and Wales whose company registration number is 06953114 and whose registered office is at 210 Pentonville Road, London N1 9JY;

**Eversholt Costs** means all payments due from the Owner to Eversholt under the Eversholt Services Agreement;

**Eversholt MSA Payments** means [●]<sup>103</sup>

**Eversholt NDA (Operator)** means the undertaking of confidentiality entered into between Eversholt, the Owner and the Initial Operator in the agreed terms in accordance with clause 30.7(c)(v) of the MSA and clause 31.5(c)(v) of the TSA, or any subsequent undertaking of confidentiality entered into between Eversholt and any Successor Operator;

**Eversholt NDA (TMM)** means the undertaking of confidentiality entered into between Eversholt, the Owner and the TMM in the agreed terms in accordance with clause 30.7(c)(v) of the MSA and clause 31.5(c)(v) of the TSA;

**Eversholt Services Agreement** means the services agreement in relation to the Project to assist the Owner conduct its rolling stock business, entered into between Eversholt and the Owner on or about the date of this Agreement;

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<sup>103</sup> Redaction.

**Excluded Hedging Documents** means those Hedging Documents in respect of which the relevant Hedging Banks have, [●]<sup>104</sup>, notified the Security Trustee in writing [●]<sup>105</sup> that they agree that their respective Hedging Transactions under such Hedging Documents [●]<sup>106</sup>;

**Excluded Matter** means any of the following:

- (a) the occurrence of a delay to a Unit which is due to an act or omission of Network Rail, allocated or which properly falls to be allocated to Network Rail in accordance with the TRUST system or any Cancellation due to an act or omission of Network Rail;
- (b) the occurrence of a Force Majeure Event;
- (c) vandalism, suicide or attempted suicide, collision or accidental damage occurring after the date of Acceptance of the relevant Unit, Vehicle or the date of Acceptance of the relevant Simulator (other than in respect of which the TMM, any of its Sub-Contractors or suppliers, or its or their respective employees or agents is directly responsible);
- (d) Improper Use; or
- (e) any failure to maintain the Units or Simulators in accordance with the Maintenance Plan in circumstances where the TMM or any other member of the TMM's Group is not obliged to maintain the Units or Simulators (as the case may be);

**Excluded Warranties** has the meaning given to it in clause 9.1(b) of the Lease;

**Exempt Refinancing** means [●]<sup>107</sup>

- (a) any Refinancing that was already taken account of in the Owner Base Case Financial Model as at the date of this Agreement including the refinancing of the Balloon Amount, the implementation of which is contemplated as a variant scenario in the Owner Base Case Financial Model;
- (b) a change in taxation or change in accounting treatment;
- (c) the exercise of rights, waivers, consents and similar actions which relate to day to day administrative and supervisory matters, and which are in respect of:
  - (i) breach of representations and warranties or undertakings;
  - (ii) movement of monies between the Owner's bank accounts in accordance with the terms of the Senior Finance Documents as at Financial Close;
  - (iii) late or non-provision of information, consents or licenses;

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<sup>104</sup> Redaction.

<sup>105</sup> Redaction.

<sup>106</sup> Redaction.

<sup>107</sup> Redaction.

- (iv) amendments to the Transaction Documents (where this Agreement is not being amended);
- (v) approval of revised technical and economic assumptions for financial model runs (to the extent required only for the preparation of forecasts under the Senior Finance Documents);
- (vi) restrictions imposed by the Senior Lenders on the dates at which Senior Debt can be advanced to the Owner under the Senior Finance Documents and/or amounts can be released from the Pre-Funding Accounts in accordance with the Senior Finance Documents, and which are imposed as the result of
  - (A) any failure by the TMM to ensure that the manufacture of the Equipment is performed in accordance with the Contract Programme; or
  - (B) any breach by the Operator of its obligations under the MSA or any Permitted Delay for which the Operator has assumed responsibility under the MSA; or
  - (C) any Force Majeure Event,and which are notified in writing by the Owner or the Senior Lenders to the Secretary of State before being given;
- (vii) changes to milestones for drawdown and/or amounts released from the Pre-Funding Accounts that are set out in the Senior Finance Documents and which changes are given as a result of:
  - (A) any failure by the TMM to ensure that the manufacture of the Equipment is performed in accordance with the Contract Programme and
  - (B) any breach by the Operator of its obligations under the MSA; or
  - (C) any Force Majeure Event,and which are notified in writing by the Owner or the Senior Lenders to the Secretary of State before being given;
- (viii) failure by the Owner to obtain any consent by statutory bodies required by the Senior Finance Documents; or
- (ix) voting by the Senior Lenders and the voting arrangements between the Senior Lenders in respect of the levels of approval required by them under the Senior Documents;
- (d) any Refinancing effected to reflect the terms of a Variation or Contract Amendment Agreement in respect of which the Secretary of State issues an Authorisation to Vary in accordance with schedule 4.3 (*Secretary of State Authorisation of Variations*) of the Umbrella Agreement;

- (e) any sale of shares in the Owner, its parent or its parent's parent by the Investors or securitisation of the existing rights and/or interests attaching to shares in the Owner or its parent or its parent's parent;
- (f) any sale or transfer of the existing rights and/or interests of the lenders under the Subordinated Financing Agreements or securitisation of the existing rights and/or interests of the lenders under the Subordinated Financing Agreements or the rights of Siemens AG under any other Transaction Document;
- (g) any Qualifying Bank Transaction; or
- (h) [●]<sup>108</sup>;
- (i) [●]<sup>109</sup>;
- (j) [●]<sup>110</sup>;
- (k) [●]<sup>111</sup>;

***Exhibited Account Bank Agreement Terms*** has the meaning given to it in paragraph 1.5;

***Exhibited CTA Terms*** has the meaning given to it in paragraph 1.2;

[●]<sup>112</sup>;

[●]<sup>113</sup>;

[●]<sup>114</sup>;

[●]<sup>115</sup>;

***Exhibited SECA Terms*** has the meaning given to it in paragraph 1.4;

[●]<sup>116</sup>

***Exhibited Term Loan Facility Agreement Terms*** has the meaning given to it in paragraph 1.10;

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<sup>108</sup> Redaction.

<sup>109</sup> Redaction.

<sup>110</sup> Redaction.

<sup>111</sup> Redaction.

<sup>112</sup> Redaction.

<sup>113</sup> Redaction.

<sup>114</sup> Redaction.

<sup>115</sup> Redaction.

<sup>116</sup> Redaction.

**Existing Operator** means the Operator which is party to the Lease and other applicable Contracts immediately prior to the entry into of an Operator Accession or an Operator Transfer Scheme;

**Existing Owner** means the Owner which is party to a Lease and other applicable Contracts immediately prior to an Owner Succession Date;

**Exit Point** means, in respect of a Unit, the location in a Diagram where such Unit is to be located in accordance with the Train Plan at the Exit Time;

**Exit Time** means, in respect of a Unit, the time set out in the Train Plan when that Unit is scheduled to come out of service at the relevant Exit Point;

**Exonerating Event** has the meaning given to it in clause 9.1 of the TSA;

**Expected Delivery Date** means in relation to:

- (a) each Unit, the date set out in the Contract Programme for the Provisional Acceptance of that Unit;
- (b) each Owned Spare the relevant date set out in the Contract Programme for acceptance of the relevant type of Owned Spare in accordance with schedule 6 (*Delivery and Acceptance*) of the MSA, being, in respect of Owner Owned Spares, as agreed in accordance with clause 4.5(c) of the MSA;
- (c) each Special Tool, the relevant date set out in the Contract Programme for acceptance of the relevant type of Special Tool in accordance with schedule 6 (*Delivery and Acceptance*) of the MSA, as agreed in accordance with clause 4.5(a) or 4.5(b) (as applicable) of the MSA;
- (d) each of the Simulators, the date set out in the Contract Programme for acceptance of that Simulator in accordance with schedule 6 of the MSA;
- (e) the Mock-up, the date set out in the Contract Programme for acceptance of the Mock-up in accordance with schedule 6 of the MSA; and
- (f) the Integration Laboratory Train Equipment, the date set out in the Contract Programme for acceptance of the Integration Laboratory Train Equipment in accordance with schedule 6 of the MSA,

in each case, as amended as a result of (i) a grant of a Permitted Delay pursuant to clause 18 (*Permitted Delays*) and schedule 13 (*Permitted Delay Procedure*) of the MSA, or (ii) a Variation in respect of which an Authorisation to Vary has been issued;

**Expected Fleet Acceptance Date** means the scheduled date for Fleet Acceptance set out in the Contract Programme;

**Expert** means any expert who qualifies and is appointed as such in accordance with schedule 8.2 (*Expert Determination*) of the Umbrella Agreement;

**Expiry Date** means, in respect of each Unit, Owner Owned Spare, Special Tool or Simulator, as the case may be, the earlier of the date on which:

- (a) the Franchise Agreement expires through effluxion of time (including any permitted extension thereof), being the Scheduled Franchise Expiry Date;
- (b) the leasing of such Unit, Owner Owned Spare, Special Tool or Simulator, as the case may be, is terminated in accordance with the terms of the Lease;
- (c) with respect to a Unit or Simulator, the Owner receives the Agreed Value for such Unit, or the Simulator Agreed Value for such Simulator, as the case may be, following an Event of Loss and all other amounts payable to the Owner under the Lease in relation to that Unit, or Simulator as the case may be; or
- (d) in the case of any Unit, Owner Owned Spare, Special Tool or Simulator, such Equipment is returned to the TMM in accordance with schedule 19.2 (*Minimum Fleet*) of the MSA;

[●]<sup>117</sup>;

**Fair Market Value** means a fair market rental which would be received by the Owner for each Unit from a willing operator of services using the Fleet, acting at arm's-length, taking into account all relevant information, including the condition of the Fleet and comparable asset fleets in the market;

**Fair Value** means the amount at which an asset or liability could be exchanged in an arm's length transaction between informed and willing Parties, other than in a forced liquidation or sale;

[●]<sup>118</sup>;

[●]<sup>119</sup>;

[●]<sup>120</sup>;

[●]<sup>121</sup>;

**Fault** means an MSA Fault or a TSA Fault;

**Fault Free** means, in relation to a Unit or Vehicle, that such Unit or Vehicle is able to run without an MSA Fault manifesting itself, which MSA Fault would cause a Service Failure, other than an MSA Fault resulting from an Excluded Matter;

**Fault Notification Procedure** has the meaning given to it in:

- (a) schedule 1.5 of the TSA, where the TSA is in full force and effect; and
- (b) the TSSSA, where the TSA has been terminated and a TSSSA Requirement Notice has been served by the Operator in accordance with the TSA;

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<sup>117</sup> Redaction.

<sup>118</sup> Redaction.

<sup>119</sup> Redaction.

<sup>120</sup> Redaction.

<sup>121</sup> Redaction.

**Fault Rectification Plan** has the meaning given to it in clause 15.2(b) of the TSA;

**FDR** has the meaning given to it in schedule 2.1 (Design Review Process) of the MSA;

**Final Acceptance** means the final acceptance of each Unit by the Owner in accordance with paragraph 6 (*Final Acceptance*) of schedule 6 (*Delivery and Acceptance*) of the MSA, evidenced by the Owner's signature of the Final Acceptance Certificate relating to that Unit;

[●]<sup>122</sup>

**Final Acceptance Backstop Date** means [●]<sup>123</sup>

**Final Acceptance Certificate** means a certificate in the form of Appendix 4 (*Form of Final Acceptance Certificate*) to schedule 6 (*Delivery and Acceptance*) of the MSA;

**Final Conditions Precedent** means each of the conditions precedent set out in Part 2 (*Final Conditions Precedent*) of schedule 1 (*Conditions Precedent Documents*) to the Conditions Precedent Agreement;

**Final CP Satisfaction Certificate** means a certificate, in the form set out in Part 2 (*Final CP Satisfaction Certificates*) of schedule 2 (*Certificates of Satisfaction of Conditions Precedent*) of the Conditions Precedent Agreement, issued by a Party to the Conditions Precedent Agreement in accordance with clause 3.4 of the Conditions Precedent Agreement;

[●]<sup>124</sup>;

**Final Franchise Inspection** has the meaning given to it in paragraph 2.1 of schedule 14 (*Redelivery Condition Schedule*) of the TSA;

**Final Inspection** has the meaning given to it:

- (a) in paragraph 2.1 of schedule 13 (*Redelivery Condition Schedule*) of the Lease in respect of the Lease; or
- (b) in paragraph 2.1 of schedule 14 (*Redelivery Condition Schedule*) of the TSA in respect of the TSA;

[●]<sup>125</sup>;

[●]<sup>126</sup>;

**Financial Close** means the satisfaction or waiver of all conditions precedent to the availability of the Owner's senior debt financing specified in the Senior Finance Documents;

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<sup>122</sup> Redaction.

<sup>123</sup> Redaction.

<sup>124</sup> Redaction.

<sup>125</sup> Redaction.

<sup>126</sup> Redaction.

**Financial Indebtedness** means any indebtedness in respect of:

- (a) moneys borrowed and debit balances at banks;
- (b) any debenture, financial bond, note, loan stock or other debt security;
- (c) any acceptance under an acceptance credit opened by a bank or other financial institution or any documentary credit;
- (d) receivables sold or discounted (otherwise than on a non-recourse basis);
- (e) the acquisition cost of any asset to the extent payable before or after the time of acquisition or possession by the Party liable where the advance or deferred payment is arranged primarily as a method of raising finance or financing the acquisition of that asset (but excluding trade credit in the ordinary course of business outstanding for a period not exceeding 270 days);
- (f) rental payments so far as attributable to payments of capital under finance leases, operating leases and hire purchase agreements (whether in respect of land, machinery, equipment or otherwise) entered into primarily as a method of raising finance or financing the acquisition of the asset leased;
- (g) currency, commodity or interest rate swaps or other hedging arrangements;
- (h) amounts raised under any other transaction having the commercial effect of a borrowing or raising of money; or
- (i) any guarantee, indemnity or similar assurance against financial loss of any person in respect of any of the above,

provided that:

- (i) the amount taken into account in relation to any currency, commodity or interest exchange agreement or other hedging arrangement is the net settlement amount and no amount shall be taken into account more than once in the same calculation;
- (ii) any letter of credit, insurance bond, performance bond or similar instrument issued in support of actual indebtedness not falling within paragraphs (a) to (i) (inclusive) of this definition shall be excluded; and
- (iii) no amount shall be taken into account more than once in the same calculation of Financial Indebtedness;

**Financial Model** means, as the context requires, the Owner Financial Model, the TMM Financial Model and/or the TSSSA Financial Model;

**Financier** means:

- (a) any financial institution which from time to time agrees to provide financing facilities to, or directly for the benefit of the Owner which are used in relation to the Units, the Associated Equipment and/or the Simulators and for whose benefit any Security Interest over, or rights relating to, Rolling Stock and/or any Contract is granted; or

- (b) any financial institution which from time to time serves as security agent and/or trustee for one or more financial institutions falling within paragraph (a),

and which, in each case, is notified by the Owner to the Secretary of State and (in the case of a new agent), enters into a direct agreement pursuant to clause 21.2 of the Lenders' Direct Agreement;

**FinCo** means Cross London Trains Finance Company Limited, a limited company incorporated in England and Wales whose company registration number is 8111482 and whose registered office is at 210 Pentonville Road, London N1 9HY;

**First Accepted Unit** means the first Unit to be Accepted in accordance with the MSA;

[•]<sup>127</sup>

**First Currency** means the currency in which any sum due from either Party under the Lease or under any order or judgment which is given or made in relation to the Lease is payable;

**First Party** means, in relation to any Indemnity Sum, the Party to whom that Indemnity Sum constitutes an indemnity;

**First Unit** means the first Unit scheduled in the Contract Programme to be Accepted under the MSA;

**Fit for Purpose (MSA)** means:

- (a) in relation to each Unit (assuming that such Unit is operated in accordance with the Manuals and all Applicable Laws and Standards and, in the event that the TMM ceases to maintain the Units under the TSA, assuming that such Unit has been maintained in accordance with the Maintenance Plan and all Applicable Laws and Standards) that such Unit:
  - (i) is in a condition which meets the Specification and is suitable to enable the Operator to operate such Unit on the Thameslink Network in revenue-earning passenger service;
  - (ii) is compatible with Applicable Laws and Standards subject to the application of schedule 4.5 (*Change in Law*) of the Umbrella Agreement;
  - (iii) is compatible with the technical characteristics of the infrastructure interfaces specified in the TIIS (or has a permanent derogation which shall not be, and shall not be capable of becoming a derogation limited in duration and which is acceptable to the Owner and the Operator); and
  - (iv) has all Relevant Approvals and those Relevant Approvals are in full force and effect;
- (b) in relation to each Spare or any Part, that such Spare or any Part:

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<sup>127</sup> Redaction.

- (i) is in a condition which meets the Specification and is compatible with Applicable Laws and Standards; and
- (ii) when incorporated into a Unit, does not of itself prevent such Unit from being Fit for Purpose (MSA) as defined in paragraph (a);
- (c) in relation to each Special Tool, that such Special Tool:
  - (i) is in a condition which meets the Specification and is compatible with Applicable Laws and Standards; and
  - (ii) is suitable to enable a reputable maintainer of rolling stock to carry out the TSA Services in accordance with the Manuals; and
- (d) in relation to any Simulator, that such Simulator is in a condition which meets the Simulator Specification and is compatible with Applicable Laws and Standards;
- (e) in relation to the Mock-Up, that the Mock-Up is in a condition which satisfies the requirements of schedule 7.3 (*Mock-Up*) of the MSA and is compatible with Applicable Laws and Standards; and
- (f) in relation to the Integration Laboratory Train Equipment, that the Integration Laboratory Train Equipment is in a condition which satisfies the requirements of schedule 7.4 (*Integration Laboratory Train Equipment*) of the MSA and is compatible with Applicable Laws and Standards;

***Fit for Purpose (TSA)*** means:

- (a) in relation to each Unit, on the assumption that such Unit is operated in accordance with the relevant Manuals and all Applicable Laws and Standards, that:
  - (i) all Relevant Approvals in respect of that Unit have been obtained and are in full force and effect;
  - (ii) such Unit is in a condition which meets the Specification and is suitable to enable the Operator to operate such Unit on the Thameslink Network in revenue-earning passenger service; and
  - (iii) such Unit is in a condition which satisfies the requirements of the Maintenance Plan, the Maintenance Manual and all relevant safety standards and all Applicable Laws and Standards;
- (b) in relation to each Owned Spare, that such Owned Spare:
  - (i) is in a condition which meets the Specification and is compatible with Applicable Laws and Standards; and
  - (ii) when incorporated into a Unit, does not of itself prevent such Unit from being Fit for Purpose (TSA) as defined in paragraph (a);
- (c) in relation to each TMM Owned Spare, that such TMM Owned Spare:

- (i) is in a condition which meets the Specification and is compatible with Applicable Laws and Standards; and
- (ii) when incorporated into a Unit, does not of itself prevent such Unit from being Fit for Purpose (TSA) as defined in paragraph (a);
- (d) in relation to each Special Tool, that such Special Tool:
  - (i) is in a condition which meets the Specification and is compatible with Applicable Laws and Standards; and
  - (ii) is suitable to enable the TMM to carry out the TSA Services in accordance with the Manuals applicable to the Special Tools; and
- (e) in relation to each Simulator, that such Simulator is in a condition which meets the Simulator Specification and is compatible with Applicable Laws and Standards;

**Fit for Service** means in relation to a Unit that is to deliver any Diagram, that Unit is:

- (a) Fit for Purpose (TSA) (except where the sole reason a Unit is not Fit for Purpose (TSA) is:
  - (i) due to a failure by the Operator to obtain a Relevant Approval that only a Train Operator can obtain and such failure is not itself due to a failure by the TMM to provide the Operator with the requisite information and documents needed to obtain such Relevant Approval; or
  - (ii) due to a Relevant Approval not being in full force and effect other than for any reason attributable to the TMM or its Subcontractors); and
- (b) the same Unit Type as the Unit Type specified in the Train Plan for that Diagram;

**Fleet** means, in respect of any date, those Initial Units that have been Delivered on or before such date, but excluding any Initial Unit that has suffered an Event of Loss (including any Initial Unit, a Vehicle of which has suffered an Event of Loss) on or before such date;

**Fleet Acceptance** means the acceptance of the Fleet by the Owner in accordance with paragraph 7 (*Fleet Acceptance*) of schedule 6 (*Delivery and Acceptance*) of the MSA, evidenced by the Owner's signature of a Fleet Acceptance Certificate;

**Fleet Acceptance Backstop Date** means the Fleet Acceptance Backstop Date (First Target), the Fleet Acceptance Backstop Date (Second Target) or the Fleet Acceptance Backstop Date (Third Target), as appropriate;

**Fleet Acceptance Backstop Date (First Target)** means [●]<sup>128</sup>

**Fleet Acceptance Backstop Date (Second Target)** means [●]<sup>129</sup>

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<sup>128</sup> Redaction.

<sup>129</sup> Redaction.

***Fleet Acceptance Backstop Date (Third Target)*** means [●]<sup>130</sup>

***Fleet Acceptance Certificate*** means a certificate in the form of Appendix 5 (*Form of Fleet Acceptance Certificate*) to schedule 6 (*Delivery and Acceptance*) of the MSA;

***Fleet Acceptance Date*** means the date on which the Fleet Acceptance occurs;

***Fleet Acceptance First Target*** means [●]<sup>131</sup>

***Fleet Acceptance Second Target*** means [●]<sup>132</sup>

***Fleet Acceptance Target*** means [●]<sup>133</sup>

***Fleet Acceptance Third Target*** means [●]<sup>134</sup>

***Fleet Performance Calculation*** means [●]<sup>135</sup>

***Fleet Performance Date*** means [●]<sup>136</sup>

***Fleet Reduction Notice*** has the meaning given to it in paragraph 2.6(c)(ii) of schedule 2.8 (*Transfer of Rolling Stock and Contracts upon Termination*) of the Umbrella Agreement;

***Fleet Rental*** means [●]<sup>137</sup>

[●]<sup>138</sup>;

***FOIA*** means the Freedom of Information Act 2000 and any subordinate legislation (as defined in section 84 of the Freedom of Information Act 2000) made under the Freedom of Information Act 2000 from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant UK government department in relation to such act;

***Force Majeure Affected Equipment*** means those Units, Associated Equipment and Simulators in relation to which a Party to the MSA has become entitled to terminate the TMM's obligations to manufacture and supply such Equipment under the MSA in accordance with paragraph 3.1 or 3.2 of schedule 18 (*Force Majeure*) of the MSA;

***Force Majeure Event*** means any of the following:

- (a) war or civil war (whether declared or undeclared);

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<sup>130</sup> Redaction.

<sup>131</sup> Redaction.

<sup>132</sup> Redaction.

<sup>133</sup> Redaction.

<sup>134</sup> Redaction.

<sup>135</sup> Redaction.

<sup>136</sup> Redaction.

<sup>137</sup> Redaction.

<sup>138</sup> Redaction.

- (b) civil unrest;
- (c) any act of terrorism;
- (d) a specific threat of terrorism;
- (e) nuclear accident;
- (f) lightning, earthquake, or extraordinary storm; or
- (g) fire or flooding,

if and only to the extent that such event is not caused by, and its effects are beyond the reasonable control of the Affected Party and is not an event:

- (i) whose adverse effect on the Affected Party's ability to perform the MSA, the TSA or the TSSSA (as the case may be) could reasonably have been avoided or provided against by the Affected Party;
- (ii) whose effect the Affected Party is otherwise required to avoid or provide against (other than by way of insurance) under the MSA, the TSA or the TSSSA (as the case may be); or
- (iii) which the Affected Party could reasonably have avoided or provided against;

[●]<sup>139</sup>

[●]<sup>140</sup>

**Force Majeure Termination Sum** has the meaning given to it in paragraph 1.2 of schedule 3.2 (*Termination Sum Payable on Force Majeure Termination*) of the Umbrella Agreement;

**Forecast Residual Value of the Rolling Stock** means [●]<sup>141</sup>

**Franchise Agreement** means the Initial Franchise Agreement and any subsequent franchise agreement in relation to services for the carriage of passengers on the Thameslink Network;

**Franchise Performance Bond** means any bond required to be maintained pursuant to a Franchise Agreement in support of the Operator's obligations under the Franchise Agreement;

[●]<sup>142</sup>;

[●]<sup>143</sup>;

[●]<sup>144</sup>;

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<sup>139</sup> Redaction.

<sup>140</sup> Redaction.

<sup>141</sup> Redaction.

<sup>142</sup> Redaction.

<sup>143</sup> Redaction.

[●]<sup>145</sup>

[●]<sup>146</sup>;

[●]<sup>147</sup>

[●]<sup>148</sup>

[●]<sup>149</sup>

[●]<sup>150</sup>

[●]<sup>151</sup>

[●]<sup>152</sup>

[●]<sup>153</sup>

***Further Warranty Period*** means the Further Warranty Period (Part) or the Further Warranty Period (Owned Spare or Special Tools), as appropriate;

***Further Warranty Period (Part)*** has the meaning given to it in paragraph 3.5 of schedule 14 (*Design Life, Warranties and MSA Fault Rectification*) of the MSA;

***Further Warranty Period (Owned Spare or Special Tool)*** has the meaning given to it in paragraph 6.2 of schedule 14 (*Design Life, Warranties and MSA Fault Rectification*) of the MSA;

***GAAP*** means generally accepted accounting principles in the United Kingdom, as derived from and including the accounting requirements of the Companies Act 1985, 'Statements of Standard Accounting Practice', 'Financial Reporting Standards', abstracts issued by the Urgent Issues Task Force of the Accounting Standards Board and, where appropriate, International Financial Reporting Standards and the listing rules of the Financial Conduct Authority, in each case, as at the date of the Umbrella Agreement;

***General Change in Law*** means a Change in Law which is not a Discriminatory Change in Law or a Specific Change in Law;

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<sup>144</sup> Redaction.

<sup>145</sup> Redaction.

<sup>146</sup> Redaction.

<sup>147</sup> Redaction.

<sup>148</sup> Redaction.

<sup>149</sup> Redaction.

<sup>150</sup> Redaction.

<sup>151</sup> Redaction.

<sup>152</sup> Redaction.

<sup>153</sup> Redaction.

**Generally Approved Additional Services** has the meaning given to it in paragraph 2 (*Generally Approved Additional Services*) of schedule 2.4 (*The Additional Services*) the TSA;

**Government Authority** means any UK national, European Union, state or local government, any political subdivision thereof or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, authority, body or other similar entity and includes the Secretary of State, Network Rail, RSSB, HMRI, the Health and Safety Executive and the ORR, and any successors to all or any of their functions;

[●]<sup>154</sup>;

**Gross-up Amount** has the meaning given to it in clause 11.2(b) of the Lease;

**Group Standards** means, to the extent applicable to the Units, Simulators and/or Associated Equipment and their operation, those standards (including codes of practice, guidance notes and manuals) to which railway assets or equipment used on or as part of railway assets must conform, and operating procedures with which the operators of railway assets must comply, known generally as “Railway Group Standards” and which are established and maintained by the RSSB;

[●]<sup>155</sup>

**Hand Back** means: (i) in relation to a Unit, the formal handing back of a Unit by the TMM to the Operator following the carrying out of the TSA Services on that Unit pursuant to the TSA in accordance with the Hand Back Procedure; and (ii) in relation to a Simulator, the formal handing back of a Simulator by the TMM to the Operator following the carrying out of the TSA Services on that Simulator pursuant to the TSA in accordance with the Simulator Hand Back Procedure, and in each case references to **Handed Back** shall be construed accordingly;

**Hand Back Certificate** means the certificate populated by the TMM in accordance with paragraph 1.3 of schedule 2.1 (*Hand Back and Hand Over*) of the TSA in relation to a Unit and made available to the Operator when that Unit is Handed Back;

**Hand Back Point** means in relation to any Unit, the place in the relevant Designated Depot (or, if applicable, Alternative Depot) where such Unit is to be located in accordance with the Hand Back Procedure at the Scheduled Hand Back Time;

**Hand Back Procedure** has the meaning given to it in clause 5.11 of the TSA;

**Hand Back Time** means, in relation to any Unit, the time at which that Unit is Handed Back;

**Hand Over** means: (i) in relation to a Unit, the formal handing over of a Unit by the Operator to the TMM in accordance with the Hand Over Procedure for the TSA Services to be performed on that Unit pursuant to the TSA; and (ii) in relation to a Simulator, the formal handing over of a Simulator by the Operator to the TMM in accordance with the Simulator Hand Over Procedure for the TSA Services to be performed on that Simulator pursuant to the TSA, and in each case references to **Handed Over** shall be construed accordingly;

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<sup>154</sup> Redaction.

<sup>155</sup> Redaction.

**Hand Over Certificate** means the certificate populated by the Operator in accordance with paragraph 5.4 of schedule 2.1 (*Hand Back and Hand Over*) of the TSA in relation to a Unit and made available to the TMM when that Unit is Handed Over;

**Hand Over Point** means, in relation to any Unit, the place in the relevant Designated Depot (or, if applicable, Alternative Depot) where such Unit is to be located in accordance with the Hand Over Procedure at the Scheduled Hand Over Time;

**Hand Over Procedure** has the meaning given to it in clause 5.11 of the TSA;

**Hand Over Time** means, in relation to any Unit, the time at which that Unit is Handed Over;

**Hedge Break Costs** means any termination amounts or amounts due to any reprofiling, restructuring, resizing or close out of the Hedging Arrangements which are payable by the Owner under the Hedging Documents;

**Hedge Break Gains** means any termination amount or amounts due to any reprofiling, restructuring, resizing or close out of the Hedging Arrangements which are payable to the Owner under the Hedging Documents;

**Hedging Arrangements** means the arrangements between the Owner and the Hedging Banks entered into in accordance with schedule 5 to the Intercreditor Deed;

**Highest Compliant Tender Price** means the price offered by the Compliant Tenderer (if any) with the highest tender price;

**Historic Law Question** has the meaning given to it in paragraph 6.4(e)(iii) of schedule 2.1 (*Section 54 Undertakings*) of the Umbrella Agreement;

**Historic Long Funding Lease** has the meaning given to it in paragraph 6.4(e)(i) of schedule 2.1 (*Section 54 Undertakings*) of the Umbrella Agreement;

**HMRC** means Her Majesty's Revenue and Customs;

**HMRC Challenge** has the meaning given to it in paragraph 6.6(b) of schedule 2.1 (*Section 54 Undertakings*) of the Umbrella Agreement;

**HMRI** means Her Majesty's Railway Inspectorate;

**HoldCo** means Cross London Trains Holdco Limited, a limited company incorporated in England and Wales whose company registration number is 8111476 and whose registered office is at 210 Pentonville Road, London N1 9JY;

**HoldCo 2** means Cross London Trains Holdco 2 Limited, a limited company incorporated in England and Wales whose company registration number is 07813037 and whose registered office is at 210 Pentonville Road, London N1 9JY;

**Holding Company** means any holding company within the meaning of section 1159 of the Companies Act 2006;

**HSE** means the Health & Safety Executive;

**ICTA** means the Income and Corporation Taxes Act 1988;

**ILTE Phase 1** has the meaning given to it in paragraph 1 of schedule 7.4 (*Integration Laboratory Train Equipment*) of the MSA;

**ILTE Phase 2** has the meaning given to it in paragraph 1 of schedule 7.4 (*Integration Laboratory Train Equipment*) of the MSA;

**Improper Use** means, in respect of any Unit, Vehicle, Part or Simulator, any misuse or abuse of such Unit, Vehicle, Part or Simulator in contravention of any Applicable Laws and Standards and/or any Relevant Approvals and/or any relevant Manuals by any person when such Unit, Vehicle or Part is not in the care, custody and control of the TMM, provided that:

- (a) in the case of Manuals, the same shall have been provided by the TMM to the Operator in accordance with this Agreement; and
- (b) there shall be deemed to have been Improper Use in any case where such Unit, Vehicle, Part or Simulator has not been used in compliance with any current relevant Manuals which have been provided by the TMM to the Operator, unless such non-compliance is as a result of compliance with any conflicting Applicable Laws and Standards and/or Relevant Approvals;

**Income** means any interest, dividends or other income arising from or in respect of an Authorised Investment;

[●]<sup>156</sup>

**Indebtedness** means any obligation for the payment or repayment of money, whether as principal or as surety and whether present or future, actual or contingent;

**Indemnitee** means Eversholt and the Owner, including any of the Owner's successors and permitted assignees, the other members of the Owner's Group, any Financier and any of their respective directors, officers, servants, agents and employees;

**Indemnity Sum** means any sum that constitutes (directly or indirectly) an indemnity to a Party under any Contract and that another Party to that Contract is required to pay in accordance with the relevant Contract as a result of a person other than the applicable First Party incurring a liability;

**Indexation Adjustment Formula** means the formula for adjusting all amounts payable under the TSA and set out in schedule 6.5 (*Indexation Adjustment Formula*) of the TSA;

**Indexed Values** has the meaning given to that term in paragraph 1.1 of schedule 6.5 (*Indexation Adjustment Formula*) of the TSA.

[●]<sup>157</sup>;

**Individual Funding Deficiency Amount** means [●]<sup>158</sup>

**Industry Standards** means, in relation to each of the Contracts, all the laws, rules, regulations, recommendations and instructions, including codes of practice and conduct which have the

<sup>156</sup> Redaction.

<sup>157</sup> Redaction.

<sup>158</sup> Redaction.

force of law relating to the performance of that Contract and/or applicable to the Units or Vehicles which are or have been issued by ATOC, HMRI, HSE, Network Rail, a Notified Body, the ORR, the RSSB, (in each case to the extent acting in its capacity as a relevant authority under the Applicable Laws and Standards) or any other Government Authority or other person from time to time legally authorised to set standards in respect of the rail industry and shall include Group Standards, Network Rail Standards, the Rule Book and Notified National Technical Rules;

**Information** means information recorded in any form held by the Secretary of State or held by the Operator, the Owner or the TMM on behalf of the Secretary of State and relating to any of the Contracts;

**Infrastructure Dependent Obligation** means any of the following obligations under the MSA in respect of the supply of any Unit that the TMM shall carry out in accordance with the MSA and the Contract Programme, the performance of which is dependent upon the infrastructure interfaces of the Thameslink Network having the technical characteristics specified in the TIIS:

- (a) the performance of any Fault Free running pursuant to schedule 4.1 (*Requirements for Agreed Testing Programme*) of the MSA;
- (b) the obtaining of Relevant Approvals pursuant to clause 6 (*Approvals*) of the MSA; and
- (c) any testing and/or commissioning of any Unit which is required pursuant to clause 8 (*Testing and Certification*) or schedule 4.1 of the MSA;

**Initial Conditions Precedent** means each of the conditions precedent set out in Part 1 (*Initial Conditions Precedent*) of schedule 1 (*Conditions Precedent Documents*) to the Conditions Precedent Agreement;

**Initial CP Satisfaction Certificate** means a certificate, in the form set out in Part 1 (*Initial CP Satisfaction Certificates*) of schedule 2 (*Certificates of Satisfaction of Conditions Precedent*) of the Conditions Precedent Agreement, issued by a Party to the Conditions Precedent Agreement in accordance with clause 3.3 of the Conditions Precedent Agreement;

**Initial Franchise Agreement** means the franchise agreement entered into between the Secretary of State and the Initial Operator on 12 December 2005 in relation to services for the carriage of passengers on the Thameslink Network, as subsequently amended and amended on the date of this Agreement;

**Initial Lease** means the lease agreement dated on or about the date of this Agreement and entered into between the Owner and the Initial Operator;

[●]<sup>159</sup>;

**Initial Operator** means First Capital Connect Limited (Registered Number 05281077), a company incorporated in England and Wales whose registered office is 50 Eastbourne Terrace, Paddington, London W2 6LG and whose address for correspondence is Hertford House, 1 Cranwood Street, London EC1V 9OS;

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<sup>159</sup> Redaction.

**Initial Rentals** means the Fleet Rental, the Owner Owned Spares Rental, the Special Tools Rental and the Simulators Rental set out in the Rental Schedule as at the date of the Initial Lease;

**Initial Spares** means the initial spares which are agreed pursuant to clause 4.5(c) of the MSA, an indicative list of which is set out in paragraph 1.1 of schedule 7.2 (*Spares*) of the MSA, as such spares are overhauled and/or replaced by the TMM (including as Supplier where appropriate) pursuant to the TSA or the TSSSA (as the case may be);

**Initial Statement** means an initial written statement issued by the Owner or the Operator to the TMM in accordance with:

- (a) [•]<sup>160</sup>
- (b) paragraph 3.7 or paragraph 3.8 of schedule 6 of the MSA in relation to the rejection of a Unit for Provisional Acceptance,

setting out in each case, the specific reasons why the Owner or the Operator (as the case may be) believe, acting reasonably, that the conditions in paragraph 2.1 or 3.1 (as appropriate) of schedule 6 of the MSA have not been satisfied in relation to that Unit;

**Initial Units** means:

- (a) 55 Type 1 Units; and
- (b) 60 Type 2 Units,

provided that if there is:

- (i) an Event of Loss that occurs with respect to a Unit after its Acceptance; or
- (ii) [•]<sup>161</sup>,

the number of Initial Units shall be reduced by the number of Units to which subparagraph (i) or (ii) (as applicable) applies;

**Insolvency Event** means:

- (a) an order is made, a winding-up petition is presented or a resolution is passed for (or any other formal step is taken with a view to commencing) the administration, winding up, bankruptcy or dissolution of the relevant person (except for the purposes of an amalgamation or reconstruction, the terms of which have been previously notified to and approved by the other Parties);
- (b) if a voluntary arrangement under section 1 of the Insolvency Act 1986 (as amended) is made in respect of the relevant person (except for the purposes of an amalgamation or reconstruction, the terms of which have been previously notified to and approved by the other Parties);

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<sup>160</sup> Redaction.

<sup>161</sup> Redaction.

- (c) the relevant person proposes or makes any agreement for the deferral, rescheduling or other readjustment (or proposes or makes a general assignment or an arrangement or composition with or for the benefit of creditors) of all or a material part of (or of a particular type of) its debts, or a moratorium is agreed or declared in respect of or affecting all or a material part of (or of a particular type of) its debts (except for the purposes of an amalgamation or reconstruction, the terms of which have been previously notified to and approved by the other Parties);
- (d) any distress, execution, sequestration or other similar process is levied or enforced upon or against the whole or any material part of the assets of the relevant person and the same is not discharged within five Working Days;
- (e) any encumbrancer takes possession or an administrative or other receiver or manager is appointed of the whole or any material part of the assets of the relevant person and is not removed or discharged within five Working Days in any such case;
- (f) the relevant person stops or suspends or threatens to stop or suspend payment of all or a material part of (or of a particular type of) its debts or is unable to pay its debts or is deemed to be unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (save that the amount referred to in section 123(1)(a) shall be £100,000 for the purposes of this definition);
- (g) where the relevant person is the Operator, a railway administration order is made in relation to the Operator under sections 60 to 62 of the Act; or
- (h) any event that occurs which, under the law of any relevant jurisdiction, has an analogous or equivalent effect to any of the events listed in paragraphs (a) to (g) (inclusive) of this definition,

unless, in the case of paragraphs (a), (b), (d), (e) and (g) of this definition, (i) the relevant petition, proceeding or other step is being actively contested in good faith by the relevant person with recourse to all appropriate resources and procedures, and (ii) is discharged within 21 days;

**Instalment** means each payment of principal and interest as described in paragraphs 1.2 and 1.3 of schedule 3.5 (*Calculation and payment of Early Termination Sums*) of the Umbrella Agreement;

**Instalment Dates** has the meaning given to it in paragraph 1.2(a)(i)(A) of schedule 3.5 (*Calculation and Payment of Early Termination Sums*) of the Umbrella Agreement;

**Instalment Election** means an election by the Secretary of State to pay a relevant Early Termination Sum in instalments, all as provided in paragraph 1.2 of schedule 3.5 (*Calculation and payment of Early Termination Sums*) of the Umbrella Agreement;

**Insured Force Majeure Events** means any of the matters described in paragraphs (c), (f) and (g) of the definition of Force Majeure Event in this Agreement;

**Integration Laboratory Train Equipment** means the equipment described in schedule 7.4 of the MSA;

**Integration Laboratory Train Equipment Acceptance Certificate** means the acceptance certificate issued by the Operator in relation to the Integration Laboratory Train Equipment in the form set out in Appendix 9 (*Form of Integration Laboratory Train Equipment Acceptance Certificate*) to schedule 6 (*Delivery and Acceptance*) of the MSA;

**Integration Laboratory Train Equipment Delivery Documentation** means the Integration Laboratory Train Equipment conformance certificate issued by the TMM substantially in the form set out in the Appendix (*Form of Integration Laboratory Train Equipment Delivery Documentation*) to schedule 7.4 (*Integration Laboratory Train Equipment*) of the MSA;

**Integration Laboratory Train Equipment Price** means the price set out in paragraph 3 (*Integration Laboratory Train Equipment Price*) of schedule 11 (*Schedule of Prices*) of the MSA;

**Intellectual Property Rights** means copyrights (including rights in computer software), patents, trade marks, trade names, service marks, business names (including internet domain names), design rights, database rights, semi-conductor topography rights, rights in undisclosed or confidential information (such as know how, trade secrets and inventions (whether patentable or not)) and all other intellectual property or similar proprietary rights of whatever nature (whether registered or not and including applications to register or rights for registration) which may now or in the future subsist anywhere in the universe;

**Intercreditor Deed** means the intercreditor deed dated on or about the date of this Agreement between, amongst others, the Owner, the Intercreditor Agent, the Shareholders, the Secretary of State, the Senior Lenders, the Security Trustee, the Hedging Banks, HoldCo, HoldCo 2 and FinCo;

**Intercreditor Deed Definitions** has the meaning given to it in paragraph 1.3;

[•]<sup>162</sup>

[•]<sup>163</sup>

**Investment Entity** means a fund, collective investment vehicle or investment entity;

**Investment Period** has the meaning given to it in paragraph 11.3 of schedule 6.6 (*Balancing Payments Account*) of the TSA, paragraph 11.3 of schedule 9 (*Balancing Payments Account*) of the Lease or paragraph 11.3 of schedule 6.5 (*Balancing Payments Account*) of the TSSSA;

**Investment Proceeds** means:

- (a) any net proceeds received by the BPA Bank upon disposal or realisation of an Authorised Investment; or
- (b) any sum received by the BPA Bank upon maturity, in respect of an Authorised Investment, but excluding all Income;

**Investor** means any person from time to time holding any share capital in the Owner, or any Affiliate of such person;

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<sup>162</sup> Redaction.

<sup>163</sup> Redaction.

**Joint Insurance Account** means [●]<sup>164</sup>

**Key Components** has the meaning given to it in paragraph 4.3 of schedule 14 (*Design Life, Warranties and MSA Fault Rectification*) of the MSA;

**Key Contract Operator Termination Event** means each of the following:

- (a) any termination of the Lease prior to the Backstop Date due to the occurrence of a Lease Operator Termination Event;
- (b) any termination of the Operator's participation in the MSA due to the occurrence of an MSA Operator Event of Default; or
- (c) any termination of the Operator's participation in the TSA due to the occurrence of a TSA Operator Event of Default;

**Key Output 2** means the milestone agreed between the Secretary of State and Network Rail at which the Thameslink Network is declared ready to support the upgraded service based on 24 trains per hour through the Thameslink Core;

**Key System** means any of the systems listed in the table set out in schedule 8 (*Key Systems and Approved Sub-Contractors (MSA)*) of the MSA;

**Know-why** has the meaning given to it in paragraph 5.1(a) of schedule 23 (*Design Authority*) to the MSA;

[●]<sup>165</sup>

**Last Unit** means the last Initial Unit scheduled in the Contract Programme to be Accepted under the MSA;

**Latent Defect** means:

- (a) an MSA Fault (other than one that constitutes an Epidemic Defect, an Endemic Defect or a Design Defect) which occurs in any Unit, Vehicle, Part, Owned Spare, Special Tool, Mock-up or Simulator during the Warranty Period (MSA) or Further Warranty Period (MSA) (as applicable), where the Party (either the Owner or the Operator) that seeks to bring a claim in relation to that MSA Fault under schedule 14 (*Design Life, Warranties and MSA Fault Rectification*) of the MSA was not aware of the MSA Fault until after the expiry of the Warranty Period (MSA) or Further Warranty Period (MSA) (as applicable); or
- (b) an Epidemic Defect or an Endemic Defect which arises during the Endemic/Epidemic Protection Period, where the Party (either the Owner or the Operator) that seeks to bring a claim in relation to that Epidemic Defect or Endemic Defect under paragraph 5 (*Endemic and Epidemic Defect*) of schedule 14 of the MSA was not aware of the Epidemic Defect or Endemic Defect until after the expiry of the Endemic/Epidemic Protection Period;

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<sup>164</sup> Redaction.

<sup>165</sup> Redaction.

**Latent Fault** means a Fault which is not an Endemic Defect, Epidemic Defect, Design Defect or MSA Fault and which occurs in any Unit, Vehicle, Part, Owner Owned Spare, or Special Tool during the Warranty Period (TSA) or, in the case of a Component, the relevant warranty period under clause 15.8 of the TSA, where the Party (either the Owner or the Operator) which seeks to bring a claim in relation to that Fault under clause 15.1 or clause 15.8 (as applicable) of the TSA and was not aware of the Fault until after the expiry of the Warranty Period (TSA) or, in the case of a Component, the relevant warranty period under clause 15.8 of the TSA;

**LCIA** means the London Court of International Arbitration;

[•]<sup>166</sup>

[•]<sup>167</sup>

[•]<sup>168</sup>

[•]<sup>169</sup>

[•]<sup>170</sup>

[•]<sup>171</sup>

[•]<sup>172</sup>

**LD Step-Up Date** means the later to occur of:

- (a) the last day of the Availability Period as defined in the CTA; or
- (b) the date on which the Owner notifies the other Parties that the Available Facilities have been utilised in at least the amount of the Assessed Pre-Funding Amount and transferred to the Pre-Funding Accounts, in accordance with clause 15.3 of the Umbrella Agreement;

[•]<sup>173</sup>

**Lease** means:

- (a) the Initial Lease;
- (b) [•]<sup>174</sup>

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<sup>166</sup> Redaction.

<sup>167</sup> Redaction.

<sup>168</sup> Redaction.

<sup>169</sup> Redaction.

<sup>170</sup> Redaction.

<sup>171</sup> Redaction.

<sup>172</sup> Redaction.

<sup>173</sup> Redaction.

(c) [●]<sup>175</sup>

(d) any Replacement Lease entered into in accordance with the Umbrella Agreement;

***Lease Conditions Precedent Certificate*** means a certificate in substantially the form set out in schedule 1 (*Form of Conditions Precedent Certificate*) of the Lease;

***Lease Operator Termination Event*** means any of the events or circumstances set out in paragraph 1.1 of schedule 10 (*Operator Termination Events*) of the Lease;

***Lease Operator Termination Notice*** has the meaning given to it in paragraph 3.1(a) of schedule 10 (*Operator Termination Events*) of the Lease;

[●]<sup>176</sup>;

[●]<sup>177</sup>;

[●]<sup>178</sup>;

[●]<sup>179</sup>;

[●]<sup>180</sup>;

[●]<sup>181</sup>;

[●]<sup>182</sup>;

[●]<sup>183</sup>;

[●]<sup>184</sup>;

***Lease Termination Date Discount Rate*** means [●]<sup>185</sup>;

***Lease Termination Event Notice Date*** means the date on which the Primary Period Termination Notice is received by the Owner;

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<sup>174</sup> Redaction.

<sup>175</sup> Redaction.

<sup>176</sup> Redaction.

<sup>177</sup> Redaction.

<sup>178</sup> Redaction.

<sup>179</sup> Redaction.

<sup>180</sup> Redaction.

<sup>181</sup> Redaction.

<sup>182</sup> Redaction.

<sup>183</sup> Redaction.

<sup>184</sup> Redaction.

<sup>185</sup> Redaction.

**Legislation** means any:

- (a) Act of Parliament or subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978;
- (b) exercise of the Royal Prerogative; and
- (c) enforceable community right within the meaning of section 2 of the European Communities Act 1972,

in each case in the United Kingdom;

[●]<sup>186</sup>;

**Lenders' Direct Agreement** means the direct agreement dated on or about the date of this Agreement and made between the Secretary of State, the Owner, the TMM, the Operator, the Intercreditor Agent, FinCo, HoldCo, HoldCo 2, [●]<sup>187</sup>, Siemens AG and the Security Trustee for and on behalf of the Senior Lenders;

**Lenders' Technical Adviser** means Atkins Limited, in its capacity as technical adviser to the Senior Lenders, or such other reputable and competent person (who is not a manufacturer of trains, or a member of a group which includes companies that manufacture trains) who the Owner notifies the TMM and the Operator has been appointed in such role from time to time;

**Licensed Design Documents** means As Built Drawings, wiring diagrams, schematics, Spare Parts Catalogue, object code for the MSA Software, the Specification and all updates to any of the foregoing;

**Licensed Non-Design Documents** means the Maintenance Plan, the Approvals Plan, Agreed Testing Programme, the Manuals (including the Maintenance Manual, the Servicing and Cleaning Manual, the Driver's Manual and the Train Crew Manuals, MSA Quality Plan, Contract Programme, Delivery Documentation and all documentation provided under the MSA which relates to the Mock-up and the Simulators, list of manufacturing tooling, Performance Reports, safety information (excluding any safety information required to be submitted to obtain any Relevant Approval), any training materials provided by the TMM to the Owner pursuant to clause 7.1 of the MSA, a list of the contents of the Technical Library, a list of all Off-The-Shelf Software and all updates to any of the foregoing;

**Liquid Market** means that there are sufficient willing Parties (being at least three Parties, each of whom (a) is a Suitable Substitute Owner, (b) is not owned or controlled by, and is acting independently of and not in collusion with, the Crown or any other tenderer, and (c) as at the conclusion of the Secretary of State's prequalification procedure, has or offers subcontractors who have at least four years of experience relevant to performing the role of the Owner under the Contracts) in the market for Rolling Stock Supply in relation to rolling stock vehicles and associated equipment similar to the Rolling Stock (on terms and conditions the same as the Contracts) for the price that is likely to be achieved through a tender to be a reliable indicator of Fair Value, provided always that any vehicle controlled and established by the Senior Lenders specifically for the purposes of this Project and to which the Umbrella Agreement may be novated in accordance with the Lenders' Direct Agreement shall be discounted in assessing whether there are sufficient willing Parties in the market for such purposes;

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<sup>186</sup> Redaction.

<sup>187</sup> Redaction.

***Liquid Market Dispute*** means a dispute as to the existence of a Liquid Market;

***Lock-In Period*** means the period commencing on the date of this Agreement and ending on the date on which the last Unit is Accepted;

***Long Funding Lease*** is a Lease which is a long funding lease within the meaning given at section 70G of the CAA 2001 as at the date of this Agreement;

***Loss*** or ***Losses*** means any losses (other than loss of profits, but loss of profit shall not include any financing costs or charges incurred in relation to any claims), costs (including costs incurred in preventing, avoiding or mitigating loss), charges, expenses, interest, fees (including legal fees), payments, demands, liabilities, claims, actions, proceedings, penalties, fines, damages, adverse judgments, orders or other sanctions, but excluding Taxes;

***Lost Equipment*** has the meaning given to it in clause 21.9 of the MSA;

***Maintenance and Repairs*** means any maintenance work required to be carried out on any Unit or any Associated Equipment under the Maintenance Plan and work arising from that maintenance work, including the detection and rectification of any Faults;

***Maintenance Direct Agreement*** means a direct agreement in substantially the terms set out in schedule 10 (*Form of Maintenance Direct Agreement*) of the Umbrella Agreement to be entered into by the Secretary of State, the TMM, the Owner and the Operator on or before the Backstop Date or any earlier date on which the Umbrella Agreement terminates in accordance with its terms;

***Maintenance Manual*** has the meaning given to it in clause 10.10 of the MSA;

***Maintenance Plan*** means the programme for the maintenance of the Units, Vehicles, Simulators, Spares (to the extent these require maintenance), Special Tools and Parts encompassing repairing and overhauling, light and heavy maintenance, periodic examinations and including the production of the maintenance instructions contained in the Manuals, formulated to provide full service provision in relation to the Units, Vehicles, Simulators, the relevant Spares, Special Tools and Parts in accordance with their description in the Applicable Specification;

***Maintenance Records (Lease)*** means the records set out in paragraph 1.2 of schedule 6.1 (*Technical Records*) of the Lease and paragraphs 1.2 to 1.5 inclusive of schedule 6.2 (*Maintenance Records (Lease) and TSA Software*) of the Lease showing all maintenance and rectification work carried out on the Units, Vehicles, Special Tools, Owner Owned Spares, Parts and Simulators;

***Maintenance Records (TSA)*** means the records set out in clauses 7.2 to 7.5 of the TSA inclusive, to be compiled by the TMM and updated in accordance with the TSA, showing all maintenance and rectification work carried out on Units, Vehicles, Special Tools, Owner Owned Spares, Simulators and Parts in accordance with the Maintenance Plan, the Maintenance Manual, the TSA and all Applicable Laws and Standards;

***Maintenance Shed*** means in respect of each of the Designated Depots the part of such Designated Depot shown edged blue on the Maintenance Shed Plan relating to such Designated Depot;

***Maintenance Shed Plan*** means, in respect of each Designated Depot, the applicable plan set out in schedule 19 (*Plans of Maintenance Sheds*) of the TSA;

**Maintenance Special Tools** means:

- (a) the items of special equipment, tools and other materials designed and built specifically for testing, maintenance, overhaul, servicing, operation and repair of the Units, Vehicles and Spares; and
- (b) software for use in shore-based systems for diagnosing and condition-monitoring of Units, Vehicles and Spares,

in each case, as agreed pursuant to clause 4.5(a) of the MSA, an indicative list of which is set out in paragraph 1.1 of schedule 7.1 (*Special Tools*) of the MSA;

**Major Exonerating Event** has the meaning given to it in paragraph 3.2 of schedule 4 (*Exonerating Event Procedure*) of the TSA;

**Malus Weight** means in relation to any Unit Type, the weight specified in column 2 of the table in clause 19.12 of the MSA that corresponds to that Unit Type;

[●]<sup>188</sup>;

**Mandatory Modification** means a Modification which is required to be made pursuant to any Change in Law, including any directive of Network Rail (which is not addressed by a Network Change) or any Government Authority;

**Manuals** means the documents which describe how the Vehicles, the Units, the Special Tools, the Owned Spares and the Simulators (as applicable) should be operated, serviced, maintained, repaired, overhauled and disposed of, including the Maintenance Manual, the Servicing and Cleaning Manual, the Driver's Manual and the Train Crew Manuals, prepared by the TMM (in hard copy and/or electronic format, as the Owner may request), as the same may be amended from time to time in accordance with the MSA, the TSA and the TSSSA;

**Manufacture and Supply Agreement** or **MSA** means the manufacture and supply agreement dated on or about the date of this Agreement entered into between the TMM, the Owner and the Initial Operator;

**Manufacturing Documents** means the manufacturing and process control instructions (provided in electronic and/or hard copy format) used in the manufacture of equipment designed for the Units, the detailed tolerance manufacturing drawings of equipment fitted to the Units and, where applicable, all certificates of conformance issued by any Sub-Contractor in relation to such equipment;

**Manufacturing Tooling** means all jigs, fixtures, and patterns required for moulding Parts, or for laminating elements, dies for hot and/or cold treated shaped sections and tooling for pressed Parts;

**Margin** has the meaning given to it in the Senior Finance Documents as at the date immediately prior to the relevant Qualifying Refinancing;

**Margin Gain** means [●]<sup>189</sup>

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<sup>188</sup> Redaction.

<sup>189</sup> Redaction.

**Market Retendering/EFV Notice** means a notice in writing from the Security Trustee to the Secretary of State and the Operator pursuant to clause 8.2(a)(iii) of the Lenders' Direct Agreement;

**Master Definitions Agreement** means this master definitions and common terms agreement;

**Material Adverse Effect** means:

- (a) [●]<sup>190</sup>
- (b) for all other purposes, any event or circumstance which has a material adverse effect on the ability of the Operator or the Owner, as the case may be, to perform its material obligations under the Lease, or on the business of the Operator or the Owner, as the case may be;

[●]<sup>191</sup>

**Maximum Liability Amount** has the meaning given to such term in the Owner Bond;

[●]<sup>192</sup>

**Milestone** means the achievement of each of the stages in the design, manufacture, testing, certification and commissioning and delivery and acceptance of the Units or a Unit (as the case may be), the Fleet, the Owned Spares, the Special Tools, the Simulators, the Integration Laboratory Train Equipment and the Mock-up, in each case as more particularly described in column three (*Actions required to achieve Milestone*) of the table set out in schedule 12 (*Milestones and Payments*) of the MSA and, in the case of any Optional Unit or Optional Vehicle, the table set out in paragraph 3.7 of schedule 17 (*Priced Options*) of the MSA;

**Milestone Payment** means the amount payable by the Owner or the Operator (as applicable) in accordance with clause 17 (*Payments*) of the MSA following the completion of a Milestone, in each case as more particularly described in column four (*Amount payable by the Owner*) or column six (*Amount payable by the Operator*) (as applicable) of the table set out in schedule 12 (*Milestones and Payments*) of the MSA and, in the case of any Optional Unit or Optional Vehicle, the table set out in paragraph 3.7 of schedule 17 (*Priced Options*) of the MSA;

**Minimum Fleet** means [●]<sup>193</sup>;

**Minimum Fleet Date** means [●]<sup>194</sup>

**Minimum Fleet Default** means the MSA TMM Event of Default referred to in paragraph 1(d) of schedule 19.1 (*TMM Events of Default*) of the MSA;

[●]<sup>195</sup>

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<sup>190</sup> Redaction.

<sup>191</sup> Redaction.

<sup>192</sup> Redaction.

<sup>193</sup> Redaction.

<sup>194</sup> Redaction.

**Minimum Liability Coverage** means [●]<sup>196</sup>;

**Minimum Performance Level** means [●]<sup>197</sup>

**Minimum Performance Level Certificate** means a certificate in the form set out in the Appendix (*Form of Minimum Performance Level Certificate*) to schedule 8 (*Performance Remedial Plans*) of the TSA;

**Minor Exonerating Event** has the meaning given to it in paragraph 3.1 of schedule 4 (*Exonerating Event Procedure*) of the TSA;

**Minutes Delay** means, in relation to any railway service and a Recording Point minutes of delay to that railway service that are recorded by that Recording Point and reported by TRUST;

[●]<sup>198</sup>

**Mock-up** means the mock-up specified in schedule 7.3 (*Mock-up*) of the MSA;

**Mock-up Acceptance Certificate** means the acceptance certificate issued by the Operator in relation to the Mock-up in the form set out in Appendix 8 (*Form of Mock-up Acceptance Certificate*) to schedule 6 (*Delivery and Acceptance*) of the MSA;

**Mock-up Delivery Documentation** means the mock-up conformance certificate issued by the TMM substantially in the form set out in the Appendix (*Form of Mock-up Delivery Documentation*) to schedule 7.3 (*Mock-up*) of the MSA;

**Model Changes** means:

- (a) in the case of the Owner Financial Model, any changes that the Secretary of State and the Owner agree or, failing agreement within a reasonable period, and following referral to him, an Expert determines are required to the Owner Financial Model, as released to the Owner pursuant to paragraph 2.1(d) of schedule 5.4 (*Identity of the Owner Financial Model*) of the Umbrella Agreement or released by the Secretary of State pursuant to paragraph 2.2 of schedule 5.4 of the Umbrella Agreement, as a consequence of and in order to give effect to the Revised Owner Inputs; and
- (b) in the case of the TMM Financial Model, any changes that the Secretary of State and the TMM agree or, failing agreement within a reasonable period, and following referral to him, an Expert determines are required to the TMM Financial Model, as released to the TMM pursuant to paragraph 2.1(d) of schedule 5.5 (*Identity of the TMM Financial Model*) of the Umbrella Agreement or released by the Secretary of State pursuant to paragraph 2.2 of schedule 5.5 of the Umbrella Agreement, as a consequence of and in order to give effect to the Revised TMM Inputs; and

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<sup>195</sup> Redaction.

<sup>196</sup> Redaction.

<sup>197</sup> Redaction.

<sup>198</sup> Redaction.

- (c) in the case of the TSSSA Financial Model, any changes that the Secretary of State and the TMM (in its capacity as Supplier) agree or, failing agreement within a reasonable period, and following referral to him, an Expert determines are required to the TSSSA Financial Model, as released to the TMM (as Supplier) pursuant to paragraph 2.1(d) of schedule 5.7 (*Identity of the TSSSA Financial Model*) of the Umbrella Agreement or released by the Secretary of State pursuant to paragraph 2.2 of schedule 5.5 of the Umbrella Agreement, as a consequence of and in order to give effect to the Revised TSSSA Inputs;

**Model Mediation Procedure** means the Model Mediation Procedure (as amended from time to time) or such other mediation rules issued by CEDR for the time being;

**Models** means the computer simulation models comprised of software, object code and related databases used to demonstrate compliance with the Specification and/or any Capability Test;

**Modification** means any variation, modification or addition to the Units, Vehicles, Parts, Associated Equipment, Simulators and/or Operator Owned Spares;

[●]<sup>199</sup>;

[●]<sup>200</sup>;

[●]<sup>201</sup>;

[●]<sup>202</sup>;

[●]<sup>203</sup>;

**month** means a period beginning on a particular day in one calendar month and ending on the numerically corresponding day in the next calendar month following that on which it started; provided that if there is no such numerically corresponding day in the next calendar month following that on which it started, it shall end on the last day in such next calendar month, and months and monthly shall be interpreted accordingly;

**Monthly Period** means each period commencing on the first day of a calendar month and expiring on the last day of that calendar month;

**Mortgage** means any mortgage or charge over the Units, Owner Owned Spares, the Special Tools and/or the Simulators made in favour of any Financier in connection with the financing of the Units, Owner Owned Spares, the Special Tools and/or the Simulators by the Owner;

**MSA Acceptance Payments** has the meaning given to that term in paragraph 7.8 of Part 2 (*Lease Owner Termination Events*) of schedule 2.4 (*Early Termination of the Lease*) of the Umbrella Agreement;

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<sup>199</sup> Redaction.

<sup>200</sup> Redaction.

<sup>201</sup> Redaction.

<sup>202</sup> Redaction.

<sup>203</sup> Redaction.

**MSA Fault** means, in relation to any Vehicle, Unit, Part, Owned Spare, Special Tool, Mock-Up, item of Integration Laboratory Train Equipment or Simulator, that it:

- (a) does not comply with the details of the Applicable Specification; or
- (b) is not Fit for Purpose (MSA), except that for the purpose of schedule 14 (*Design Life, Warranties and MSA Fault Rectification*) only, paragraph (a)(iv) of the definition of Fit for Purpose (MSA) shall not apply,

in each case whether in consequence of faulty design, faulty materials, bad workmanship or negligence of the TMM or its employees, Sub-Contractors or suppliers or the employees of any of them or for any other reason attributable to the TMM or its employees, Sub-Contractors or suppliers or the employees of any of them arising out of the performance or non-performance of the TMM's obligations under the MSA;

**MSA Fault Unit** has the meaning given to it in paragraph 8.1(a) of schedule 14 (*Design, Life, Warranties and Fault Rectification*) of the MSA;

**MSA FM Consultation Period** has the meaning given to it in paragraph 2 of schedule 2.6 (*Termination of Contracts for Force Majeure*) of the Umbrella Agreement;

**MSA Operator Event of Default** means any of the events set out in paragraph 1 (*Events of Default*) of schedule 19.4 (*Operator Events of Default*) of the MSA;

**MSA Operator Termination Notice** has the meaning given to it in paragraph 3 (*Replacement of the Operator*) of schedule 19.4 (*Operator Events of Default*) of the MSA;

**MSA Owner Default Notice** means a notice of the occurrence of an MSA Owner Event of Default delivered by the TMM in accordance with paragraph 2 of schedule 19.3 (*Owner Events of Default*) of the MSA;

**MSA Owner Event of Default** means any of the events set out in paragraph 1 (*Events of Default*) of schedule 19.3 (*Owner Events of Default*) of the MSA;

**MSA Quality Plan** means the quality plan as set out in schedule 5 (*MSA Quality Plan*) of the MSA;

**MSA Software** means all computer programs:

- (a) installed in, or on, a Unit, Vehicle, Parts or Spares;
- (b) installed in, or on, Special Tools; or
- (c) installed in, or on a Simulator,

specifically produced by the TMM or any Sub-Contractor for the MSA or which are proprietary to or licensed to the TMM or to a Sub-Contractor other than Off-The-Shelf Software;

**MSA TMM Default Initial Notice** has the meaning given to it in paragraph 1.2(a) of Part 1 (*TMM Default of MSA*) of schedule 2.2 (*Early Termination of the MSA*) of the Umbrella Agreement;

**MSA TMM Event of Default** means any of the events set out in paragraph 1 (*Events of Default*) of schedule 19.1 (*TMM Events of Default*) of the MSA;

**MSA TMM Post-Minimum Fleet Termination Notice** means a notice in writing in the form set out in Appendix 2 (*Form of MSA TMM Post-Minimum Fleet TMM Termination Notice*) to schedule 19.1 (*TMM Events of Default*) of the MSA;

**MSA TMM Potential Default Notice** has the meaning given to it in paragraph 1.1 of Part 1 (*TMM Default of MSA*) of schedule 2.2 (*Early Termination of the MSA*) of the Umbrella Agreement;

**MSA TMM Pre-Minimum Fleet Termination Notice** means a notice in writing in the form set out in Appendix 1 (*Form of MSA TMM Pre-Minimum Fleet Termination Notice*) to schedule 19.1 (*TMM Events of Default*) of the MSA;

**MSA TMM Termination Notice** means either an MSA TMM Pre-Minimum Fleet Termination Notice or an MSA TMM Post-Minimum Fleet Termination Notice;

**MSPA** has the meaning given to it in paragraph 2.2(a) of schedule 8 (*Performance Remedial Plans*) of the TSA;

**National Safety Authority** means the ORR;

**Necessary Consents** means all planning permissions and all other consents, licences, permissions, certificates, authorisations and approvals whether of a public or private nature which shall be required by any Competent Authority for the Permitted/Licensed Use;

**Net Adjusted Estimated Fair Value of the Rolling Stock** means such amounts of the Adjusted Estimated Fair Value of the Rolling Stock as are payable to the Owner in accordance with paragraph 3.7 of schedule 3.1 (*Termination Sum Payable on Termination for Owner Default*) of the Umbrella Agreement;

**Net Adjusted Highest Compliant Tender Price** means such amounts of the Adjusted Highest Compliant Tender Price as are payable to the Owner in accordance with paragraph 2.14 of schedule 3.1 (*Termination Sum Payable on Termination for Owner Default*) of the Umbrella Agreement;

[●]<sup>204</sup>

**Net Present Value** or **NPV** means the aggregate of the discounted values, calculated as of the estimated date of the Refinancing, of each of the relevant projected Distributions, in each case discounted using the Threshold Equity IRR;

**Network** means the rail network of which Network Rail is the owner and/or operator and which is situated in Great Britain;

**Network Change** has the meaning given to it in Part G of the Network Rail Track Access Conditions as in force from time to time;

**Network Code** means the document known as the Network Code, incorporated by reference into the Track Access Agreement or any equivalent code or agreement;

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<sup>204</sup> Redaction.

**Network Monitoring System** means TRUST or any replacement system with similar or equivalent functionality, in each case operated by Network Rail;

**Network Rail** means Network Rail Infrastructure Limited (Registered Number 2904587) (formerly known as Railtrack PLC) a company incorporated in England and Wales whose registered office is at 40 Melton Street, London NW1 2EE and includes any successor to all or any of the functions of Network Rail Infrastructure Limited or the person authorised under any Applicable Laws and Standards to produce mandatory operational and engineering standards associated with safety and interworking of the operation of rolling stock on Network Rail's facilities and infrastructure;

**Network Rail Integration Facility** means the facility established by Network Rail for testing and demonstrating in a controlled environment the integration of ERTMS and ATO onboard equipment forming part of Network Rail infrastructure, prior to trials in service conditions in the Performance Core;

**Network Rail Minutes Delay** means those Minutes Delay attributable to Network Rail pursuant to the Track Access Agreement;

**Network Rail Standards** means, to the extent applicable to the Units, the Special Tools, the Owned Spares, the TMM Owned Spares, the Supplier Owned Spares or the Simulators and their operation, those mandatory operational and engineering standards issued by Network Rail associated with safety and interworking of the operation of rolling stock or Network Rail's facilities and infrastructure;

**New Critical Spare** has the meaning given to it in clause 10.16 of the TSA;

**New Currency** means to the extent that Sterling is replaced as the lawful currency of the United Kingdom by another currency, that currency;

**New Initial Spare** has the meaning given to it in clause 10.13 of the TSA;

**New Maintainer** has the meaning given to it in paragraph 5.1(a) of schedule 17 of the TSA;

**New Maintenance Agreement** means a maintenance agreement between the Operator, the Owner and a Third Party Maintainer or between the Operator and a Third Party Maintainer, in each case in respect of the maintenance of the Units and entered into upon the termination of the TSA under schedule 13.1 (*TMM Events of Default*) of the TSA;

**New Owner** means:

- (a) the person who has bid the Highest Compliant Tender Price as a result of the operation of paragraph 2 (*Retendering Procedure*) of schedule 3.1 (*Termination Sum Payable on Termination for Owner Default*) of the Umbrella Agreement and who contemporaneously enters into the Asset Transfer Agreement, the Replacement Lease and the Applicable Replacement Contracts and accedes to the Applicable Relevant Contracts pursuant to a Deed of Owner Accession under paragraph 2 (*Retendering Procedure*) of schedule 3.1 of the Umbrella Agreement;
- (b) the notional Suitable Substitute Owner for the purposes of the operation of paragraph 3 (*No Retendering Procedure*) of schedule 3.1 of the Umbrella Agreement, who it is assumed enters into the Asset Transfer Agreement, the Replacement Lease and the Applicable Replacement Contracts and accedes to

the Applicable Relevant Contracts pursuant to a Deed of Owner Accession for the purposes of paragraph 3 of schedule 3.1 of the Umbrella Agreement;  
or

- (c) the Secretary of State, a Secretary of State Nominee or any other person to whom the Secretary of State requires that the Train Assets are transferred in accordance with paragraph 1 of schedule 2.8 (*Transfer of Rolling Stock and Contracts upon Termination*) of the Umbrella Agreement;

***New Owner Accession Arrangement*** means an arrangement between the Existing Owner and a New Owner upon the termination of the Existing Owner's participation in the Project involving entry into:

- (a) an Owner Deed of Accession; and
- (b) the Applicable Replacement Contracts,

in each case in compliance with the requirements of paragraphs 2.12 to 2.16 of schedule 2.8 (*Transfer of Rolling Stock and Contracts upon Termination*) of the Umbrella Agreement and pursuant to which the rights, obligations and interests of the Existing Owner under all the Applicable Relevant Contracts are novated to the New Owner and contemporaneously the Applicable Replacement Contracts come into full force and effect, in each case in accordance with the terms and conditions of paragraph 2 (*Novation of Contracts*) of schedule 2.8 of the Umbrella Agreement;

[●]<sup>205</sup>;

***New TMM Results*** means, following a Run of the TMM Financial Model in relation to any TMM Financial Model Trigger Event, the restated Applicable TMM Results for the purposes of the TSA;

***New TSSSA Results*** means, following a Run of the TSSSA Financial Model in relation to any TSSSA Financial Model Trigger Event, the restated Applicable TSSSA Results for the purposes of the TSSSA;

***No Fault Found*** means an alleged Fault which is classified as a No Fault Found in accordance with the Fault Notification Procedure;

***No Liquid Market Notice*** has the meaning given to such term in clause 9A(a) of the Lenders' Direct Agreement;

***Nominated Representative*** has the meaning given to it in clause 5.1 of the Umbrella Agreement, and shall include persons nominated, for the purposes of:

- (a) the MSA, in accordance with clause 16.4 of the MSA;
- (b) the TSA, in accordance with clause 22.2 of the TSA; or
- (c) the TSSSA in accordance with Clause 26.2 of the TSSSA;

***Non-Deductibility Amount*** has the meaning given to it in clause 11.10 of the Lease;

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<sup>205</sup> Redaction.

**Non Defaulting Party** has the meaning given to it in clause 31.2 of the Lease;

[●]<sup>206</sup>;

[●]<sup>207</sup>;

[●]<sup>208</sup>

**Non-Service Affecting Fault** means a Fault on a Unit or Vehicle that occurs whilst that Unit or Vehicle is operating in service but which does not cause that Unit to incur any Minutes Delay;

**Notice of Appointment** has the meaning given to it in paragraph 2.7 of schedule 8.2 (*Expert Determination*) of the Umbrella Agreement;

**Notice of Dispute** has the meaning given to it in paragraph 2.1 of schedule 8.2 (*Expert Determination*) of the Umbrella Agreement;

**Notice of Non-Compliant Design** has the meaning given to it in clause 5.2 of the MSA;

**Notifiable Financing** means any Refinancing described in paragraph (a) or (c) of the definition of Refinancing and any other arrangement which has or would have a similar effect or which has or would have the effect of limiting the ability of the Owner or any Affiliate of the Owner to carry out any such arrangement;

**Notified Body** or (**NoBo**) means a body appointed pursuant to the Railways (Interoperability) Regulations 2011;

**Notified National Technical Rule** has the meaning given to it in the Railways (Interoperability) Regulations 2011;

**Notifying Party** has the meaning given to it in paragraph 1.1 of schedule 4.5 (*Change in Law*) of the Umbrella Agreement;

**Notional Balloon Refinancing** means the Refinancing of the Assumed Balloon Amount that is assumed to occur at the date and on the terms set out in the Owner Base Case DB;

[●]<sup>209</sup>;

[●]<sup>210</sup>;

[●]<sup>211</sup>;

[●]<sup>212</sup>;

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<sup>206</sup> Redaction.

<sup>207</sup> Redaction.

<sup>208</sup> Redaction.

<sup>209</sup> Redaction.

<sup>210</sup> Redaction.

<sup>211</sup> Redaction.

[●]<sup>213</sup>;

[●]<sup>214</sup>;

[●]<sup>215</sup>

**Off-The-Shelf Software** means all computer programs:

- (a) installed in, or on, a Unit, Vehicle, Parts or Spares;
- (b) installed in, or on, Special Tools; or
- (c) installed in, or on a Simulator,

that are generally available to the public on a commercial or open source basis;

**Old Equity Structure Owner Base Case Financial Model** means a version of the Owner Financial Model which has alternative inputs, including, amongst others, the equity and subordinated debt amounts and coupon rates and which is Placed in Escrow;

**Old Owner Results** means:

- (a) the Rentals under the Lease; and/or
- (b) in the case of an Owner Financial Model Trigger Event occurring prior to the Acceptance of the Last Unit, the Owner Liquidated Damages Rate,

in each case being:

- (i) those set out in the relevant Contract as at the date of this Agreement, in the case of the first Owner Financial Model Trigger Event; or
- (ii) those produced by a Run of the Owner Financial Model in respect of the immediately preceding Owner Financial Model Trigger Event, in the case of any other Owner Financial Model Trigger Event;

**Old TMM Results** means the Applicable TMM Results for the purposes of the TSA, being:

- (a) the Applicable TMM Results as calculated in the TSA as at the Effective Date and/or set out in the then current BPA Statement, in the case of the first TMM Financial Model Trigger Event; or
- (b) thereafter the Applicable TMM Results produced by a Run of the TMM Financial Model in respect of the immediately preceding TMM Financial Model Trigger Event and/or in the then current BPA Statement;

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<sup>212</sup> Redaction.

<sup>213</sup> Redaction.

<sup>214</sup> Redaction.

<sup>215</sup> Redaction.

**Old TSSSA Results** means the Applicable TSSSA Results for the purposes of the TSSSA, being:

- (a) the Applicable TSSSA Results as calculated in the TSSSA as at the Effective Date and/or set out in the then current BPA Statement, in the case of the first TSSSA Financial Model Trigger Event; or
- (b) thereafter the Applicable TSSSA Results produced by a Run of the TSSSA Financial Model in respect of the immediately preceding TSSSA Financial Model Trigger Event and/or in the then current BPA Statement;

**Ongoing Debt Service and Other Cost Requirements** means, in respect of any period, the sum of:

- (a) all principal amounts, interest and fees in each case falling due for payment by the Owner to the Senior Lenders in respect of Permitted Borrowing during such period; and
- (b) running costs and expenses of the Owner which are properly incurred during such period;

**Operational Training Module** means the set of specific module aims and objectives, attendees and programme duration developed by the Operational Training Working Group for each role, in accordance with the Appendix to Schedule 10 (*Required Training Courses*) of the MSA;

**Operator** means the Initial Operator or any Successor Operator;

**Operator Accession** means an arrangement between the Existing Operator and the Successor Operator involving entry into (a) a Deed of Operator Accession or a Deed of Public Sector Operator Accession, and (b) the Applicable Replacement Contracts, in each case in compliance with the requirements of paragraph 2 (*Process*) of schedule 2.1 (*Section 54 Undertaking*) of the Umbrella Agreement and pursuant to which all of the rights, obligations and interests of the Existing Operator under all the Applicable Relevant Contracts are novated to the Successor Operator and contemporaneously the Applicable Replacement Contracts come into full force and effect, in each case in accordance with the terms and conditions of schedule 2.1 of the Umbrella Agreement;

**Operator Accommodation** means office accommodation within each of the Maintenance Sheds for use by the Operator together with access to and use of toilets, washroom and mess room facilities;

**Operator Bond** means the bond provided to the Operator in relation to the TMM's obligations under the MSA in the form set out in schedule 20.1 (*Agreed Form of Form of Operator Bond*) of the MSA and shall include any replacement bond for an Operator Bond issued pursuant to clause 11 (*Operator Bond, Advance Payment Bond and Owner Bond*) of the MSA;

**Operator Default Indemnity Period** means the period from the date of the Secretary of State's receipt of an Operator Default Notice until the earliest to occur of:

- (a) the date on which the default or breach which gave rise to the Operator Default Notice has been remedied; or

- (b) the date on which a Successor Operator enters into a Replacement Lease and accedes to or otherwise becomes party to the other Applicable Relevant Contracts in accordance with schedule 2.1 (*Section 54 Undertakings*) of the Umbrella Agreement;

**Operator Default Notice** means:

- (a) the Owner's notice under paragraph 1.2(b)(i) of Part 1 (*Operator default of Lease*) of schedule 2.4 (*Early termination of the Lease*) of the Umbrella Agreement;
- (b) the TMM's notice under paragraph 1.1(a) of Part 3 (*Operator default of MSA*) of schedule 2.2 (*Early Termination of the MSA*) of the Umbrella Agreement;
- (c) the TMM's notice under paragraph 1.1(a) of Part 2 (*Operator default of TSA*) of schedule 2.3 (*Early Termination of the TSA*) of the Umbrella Agreement;  
or
- (d) the TMM's notice under paragraph 1.1(a) of Part 2 (*Operator default of TSSSA*) of schedule 2.5 (*Early Termination of the TSSSA*) of the Umbrella Agreement,

as the case may be;

[●]<sup>216</sup>

[●]<sup>217</sup>

**Operator Exposure Limit** means [●]<sup>218</sup>

[●]<sup>219</sup>

**Operator Insurances** means the insurances required to be obtained and maintained by the Operator pursuant to Schedule 8 (*Events of Loss and Insurance Requirements*) of the Lease and, during the TSA Term, pursuant to Schedule 10.2 (*Vehicle and Simulator Insurance*) of the TSA;

**Operator Minutes Delay** means those Minutes Delay attributable to the Operator pursuant to the Track Access Agreement;

**Operator Modification** has the meaning given to it in paragraph 1.1 of schedule 7 (*Modifications*) of the Lease;

**Operator Obligations** means all of the covenants, obligations, duties and undertakings of the Operator under the Transaction Documents;

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<sup>216</sup> Redaction.

<sup>217</sup> Redaction.

<sup>218</sup> Redaction.

<sup>219</sup> Redaction.

***Operator Own Services*** means:

- (a) interior and exterior cleaning of Units;
- (b) emptying of toilet retention tanks; and
- (c) replenishment of water tanks,

in each case as undertaken at Designated Depots or at other locations;

***Operator Owned Spares*** means the Operator-owned spares which are agreed pursuant to clause 4.5(d) of the MSA, an indicative list of which is set out in paragraph 4 (*Operator Owned Spares*) of schedule 7.2 (*Spares*) of the MSA, and such further spares which are provided to the Operator by the TMM in accordance with clause 10.19 of the TSA (or paragraph 9.1 of schedule 4.1 (*Spares Supply Services*) of the TSSSA);

***Operator Owned Spares Price*** means the aggregate price for all of the Operator Owned Spares supplied under the MSA, calculated in accordance with and subject to the limitation in paragraph 5.1 of schedule 7.2 (*Spares*) of the MSA;

***Operator Special Tools*** means:

- (a) the items of special equipment, tools and other materials designed and built specifically for testing, maintenance, overhaul, servicing, operation and repair of the Units, Vehicles and Spares; and
- (b) software for use in shore-based systems for diagnosing and condition-monitoring of Units, Vehicles and Spares,

in each case, as agreed pursuant to clause 4.5(b) of the MSA, an indicative list of which is set out in paragraph 1.2 of schedule 7.1 (*Special Tools*) of the MSA;

***Operator Succession Date*** means the date on which a Successor Operator assumes the Operator's obligations under each of the Applicable Replacement Contracts and each of the Applicable Relevant Contracts pursuant to an Operator Accession or an Operator Transfer Scheme;

***Operator Succession Notice*** has the meaning given to it in paragraph 2.2 of schedule 2.1 (*Section 54 Undertaking*) of the Umbrella Agreement;

***Operator Termination Notice*** means:

- (a) a Lease Operator Termination Notice;
- (b) an MSA Operator Termination Notice;
- (c) a TSA Operator Termination Notice; or
- (d) a TSSSA Operator Termination Notice,

as the case may be;

**Operator Transfer Scheme** means a Transfer Scheme in the form attached to the Transfer Scheme Certificate as amended and approved in accordance with paragraph 2 (*Process*) of schedule 2.1 (*Section 54 Undertaking*) of the Umbrella Agreement;

**Operator TSA Performance Termination Right** means the right of the Operator to terminate the TSA pursuant to paragraph 1 (*Operator Right to Terminate*) of schedule 13.4 ([●]<sup>220</sup>) of the TSA;

**Operator TSA Voluntary Termination Notice** has the meaning given to it in paragraph 2.1 of schedule 13.5 (*Operator Voluntary Termination Right*) of the TSA;

**Operator TSA Voluntary Termination Right** means the right of the Operator to terminate the TSA pursuant to paragraph 2.1 or 4.3 of schedule 13.5 (*Operator Voluntary Termination Right*) of the TSA;

**Operator TSA Voluntary Termination Suspension Notice** has the meaning given to it in paragraph 4.1 of schedule 13.5 (*Operator Voluntary Termination Right*) of the TSA;

**Operator TSA Voluntary Termination Suspension Period** has the meaning given to it in paragraph 4.2 of schedule 13.5 (*Operator Voluntary Termination Right*) of the TSA;

**Operator TSSSA Voluntary Termination Right** means the right of the Operator to terminate the TSSSA pursuant to paragraph 2 of schedule 12.4 (*Operator Voluntary Termination Right*) of the TSSSA;

**Operator's Contract Manager** has the meaning given to it in paragraph 1.1 of schedule 9 (*Contract Management*) of the TSA;

**Operator's Group** means:

- (a) the Operator and any company which is from time to time a Subsidiary of the Operator; and
- (b) the Operator's ultimate Holding Company (if any) from time to time and any company which is from time to time a Subsidiary of that ultimate Holding Company;

**Operator's Railway Safety Certificate** means the certificate issued by ORR under the Safety Regulations, certifying its acceptance of the Operator's Safety Management System and the provisions adopted by the Operator to meet the requirements that are necessary to ensure safe operation on the Thameslink Network;

**Operator's Safety Management System** has the meaning given to it in the Safety Regulations;

[●]<sup>221</sup>

**Optional Spares** means any Owner Owned Spares purchased by the Owner from the TMM pursuant to a Priced Option;

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<sup>220</sup> Redaction.

<sup>221</sup> Redaction.

**Optional Tools** means any Special Tools purchased by the Owner from the TMM pursuant to a Priced Option;

**Optional Units** means any dual voltage, electric trains purchased by the Owner from the TMM pursuant to a Priced Option;

**Optional Vehicles** means any Vehicles purchased by the Owner from the TMM pursuant to a Priced Option;

**Original BPA Amount** has the meaning given to it in paragraph 13.19 of schedule 6.6 (*Balancing Payments Account*) of the TSA;

**Original Senior Commitment** means the amount committed under the Senior Finance Documents as at Financial Close (as adjusted to take into account any Run of the Owner Financial Model);

**Original Transfer** has the meaning given to it in clause 7.6 of the Umbrella Agreement;

**ORR** means the Office of Rail Regulation established by Section 15 of the Railways and Transport Safety Act 2003 and having duties and obligations as set out in the Railways Act;

[●]<sup>222</sup>;

[●]<sup>223</sup>;

[●]<sup>224</sup>;

[●]<sup>225</sup>;

[●]<sup>226</sup>;

**Outstanding Principal** means the aggregate principal amount outstanding at the Relevant Termination Date of each borrowing (other than any borrowing under any equity bridge facility) under the Senior Finance Documents;

[●]<sup>227</sup>

[●]<sup>228</sup>;

[●]<sup>229</sup>;

[●]<sup>230</sup>;

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<sup>222</sup> Redaction.

<sup>223</sup> Redaction.

<sup>224</sup> Redaction.

<sup>225</sup> Redaction.

<sup>226</sup> Redaction.

<sup>227</sup> Redaction.

<sup>228</sup> Redaction.

<sup>229</sup> Redaction.

[●]<sup>231</sup>;

[●]<sup>232</sup>

[●]<sup>233</sup>;

**Outstation** means any locations other than the Designated Depots or an Alternative Depot where the Operator and the TMM have agreed on a safe method of access to enable the TMM to provide any of the TSA Services from that Outstation;

**Owned Spares** means the Owner Owned Spares and the Operator Owned Spares;

**Owner** means Cross London Trains Limited or any New Owner (other than a notional person referred to in paragraph (b) of the definition of New Owner);

**Owner Accommodation** means office accommodation within each of the Maintenance Sheds for use by the Owner together with access to and use of toilets, washroom and mess room facilities;

**Owner Aggregate Liability Cap** means [●]<sup>234</sup>

**Owner Base Case DB** has the meaning given to it in the definition of Data Book;

**Owner Bond** means the bond provided to the Owner in relation to the TMM's obligations under the MSA in the form set out in schedule 20.3 (*Agreed Form of Owner Bond*) of the MSA and shall include any replacement bond for an Owner Bond issued pursuant to clause 11 (*Operator Bond, Advance Payment Bond and Owner Bond*) of the MSA;

[●]<sup>235</sup>

[●]<sup>236</sup>

[●]<sup>237</sup>

**Owner Contract** means any Contract to which the Owner is party;

**Owner Escrow Documents** means the Owner Financial Model and the Data Book in respect of the Owner Financial Model containing the Record of Owner Assumptions (each such copy in electronic format on CD-ROM and in hard format);

**Owner Financial Model** means [●]<sup>238</sup>

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<sup>230</sup> Redaction.

<sup>231</sup> Redaction.

<sup>232</sup> Redaction.

<sup>233</sup> Redaction.

<sup>234</sup> Redaction.

<sup>235</sup> Redaction.

<sup>236</sup> Redaction.

<sup>237</sup> Redaction.

**Owner Financial Model Trigger Event** means [●]<sup>239</sup>

[●]<sup>240</sup>

[●]<sup>241</sup>;

**Owner Liquidated Damages Rate** means [●]<sup>242</sup>

**Owner Modification** has the meaning given to it in paragraph 3.1 of schedule 7 (*Modifications*) of the Lease;

**Owner MSA Liabilities** means the outstanding amounts due to the TMM by the Owner under the MSA and related matters as initially set out by the TMM in the Initial LOTE TMM Statement and as such amounts and matters are subsequently updated by the Updated LOTE TMM Statement;

**Owner Owned Spares** means the Initial Spares and the Critical Spares;

**Owner Owned Spares Acceptance Certificate** means a Spares Acceptance Certificate issued by the Owner in relation to any Owner Owned Spares;

**Owner Owned Spares Price** means the aggregate price for all of the Owner Owned Spares supplied under the MSA, calculated in accordance with and subject to the limitation in paragraph 3.1 of schedule 7.2 (*Spares*) of the MSA;

**Owner Owned Spares Rental** means for each Rental Payment Date in respect of the Owner Owned Spares, the amount for that Rental Payment Date set out in schedule 3.5 (*Owner Owned Spares Rental Amounts*) of the Lease;

**Owner Owned Spares Term** means, in relation to each Owner Owned Spare, the period commencing on the Delivery Date and ending on the Expiry Date applicable to such Owner Owned Spare;

**Owner Security Interest** means, with respect to the Units and/or the Associated Equipment, the Owner Owned Spares, Special Tools and Simulators (as applicable) any Mortgage and any other Security Interest in respect of the Lease and/or TSA or the Units or the Associated Equipment, the Owner Owned Spares, Special Tools or the Simulators (as applicable) whatsoever from time to time created by or through the Owner in favour of a Financier;

[●]<sup>243</sup>

**Owner Succession Date** means the date on which a New Owner assumes the Owner's obligations under each of the Applicable Replacement Contracts and the Applicable Relevant Contracts pursuant to a New Owner Accession Arrangement required by the Secretary of

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<sup>238</sup> Redaction.

<sup>239</sup> Redaction.

<sup>240</sup> Redaction.

<sup>241</sup> Redaction.

<sup>242</sup> Redaction.

<sup>243</sup> Redaction.

State in accordance with paragraph 2 (*Novation of Contracts*) of schedule 2.8 (*Transfer of Rolling Stock and Contracts upon Termination*) of the Umbrella Agreement;

**Owner's Contract Manager** has the meaning given to it in paragraph 2.1 of schedule 9 (*Contract Management*) of the TSA;

**Owner's Group** means the Owner and its ultimate Holding Company (if any) from time to time, any company which is from time to time a Subsidiary of that Holding Company and any company which is from time to time a Subsidiary of the Owner, which entities comprise, at the date of this Agreement, the Owner, HoldCo, HoldCo 2 and FinCo;

**Owner's Variation Expenditure Threshold** means [●]<sup>244</sup>

**Part** means any:

- (a) Owned Spare, TMM Owned Spare, Supplier Owned Spare or other part, including any Redesigned Part, Redesigned Part (TSSSA), Key Component or other component (which in either case, may comprise a number of parts), assembly and sub-assembly, consumable part, paint or surface finish attached to or used in respect of a Unit, Vehicle, Owned Spare, TMM Owned Spare, Supplier Owned Spare or Simulator from time to time, which, in each case, is incorporated in, or fixed to, or is designated for incorporation in or fixing to any Unit, Vehicle, Owned Spare, TMM Owned Spare, Supplier Owned Spare or Simulator; or
- (b) furnishing or equipment furnished with such Unit, Vehicle, Owned Spare, TMM Owned Spare, Supplier Owned Spare or Simulator;

**Part Contract Year** means, in relation to any Contract Year that occurs in whole or part in:

- (a) the Ramp-up Period, that part of that Contract Year that falls into the Ramp-up Period, up to and including the date of termination, expiry or transfer of the TSA (as the case may be); and
- (b) the Steady State Period, that part of that Contract Year that falls into the Steady State Period, up to and including the date of termination, expiry or transfer of the TSA (as the case may be);

**Part Diagram Leg** means more than 40 per cent. of the mileage of a Diagram Leg;

[●]<sup>245</sup>

[●]<sup>246</sup>

**Party** means:

- (a) in respect of the Umbrella Agreement, each of the Secretary of State, the Owner, the TMM and the Initial Operator, and **Parties** shall mean all of them;

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<sup>244</sup> Redaction.

<sup>245</sup> Redaction.

<sup>246</sup> Redaction.

- (b) in respect of the MSA, each of the Owner, the TMM and the Initial Operator, and **Parties** shall mean all of them;
- (c) in respect of the TSA, each of the Owner, the TMM and the Initial Operator, and **Parties** shall mean all of them;
- (d) in respect of the Lease, each of the Owner and the Initial Operator, and **Parties** shall mean all of them;
- (e) in respect of the TSSSA, each of the Owner, the TMM and the Initial Operator, and **Parties** shall mean all of them;
- (f) in respect of the Conditions Precedent Agreement, each of the Secretary of State, the Owner, the TMM and the Initial Operator, and **Parties** shall mean all of them;
- (g) in respect of this Agreement, each of the Secretary of State, the Owner, the TMM and the Initial Operator, and **Parties** shall mean all of them;
- (h) in respect of the Lenders' Direct Agreement, each of the Secretary of State, the Owner, the TMM, the Operator, the Intercreditor Agent, FinCo, HoldCo, HoldCo 2, [●]<sup>247</sup>, Siemens AG and the Security Trustee for and on behalf of the Senior Lenders, and **Parties** shall mean all of them;

including, in respect of each, all permitted successors and assignees;

**Passenger Licence** has the meaning given to it in section 83(1) of the Act;

**Payee** means a Party to whom payments are due from the Payer in accordance with clause 18.18 of the TSA or clause 17.10 of the MSA as applicable;

**Payer** means a Party that is required by law to make any deduction or withholding from any payment under either of the MSA or TSA;

**Paying Party** has the meaning given to it in clause 10.5 of the Lease;

**Payment Instruction** means, in respect of any Unit, Owner Owned Spare, Special Tool or Simulator, the irrevocable payment instruction issued by:

- (a) the Owner to its bank to make payment of the relevant Milestone Payment to the TMM in accordance with clause 17.5 of the MSA; or
- (b) where paragraph 7.3(a) of Part 2 (*Lease Owner Termination Events*) of Schedule 2.4 (*Early Termination of the Lease*) of the Umbrella Agreement applies, the Secretary of State in accordance with that paragraph 7.3(a) of Part 2 of schedule 2.4 of the Umbrella Agreement and clause 17.5 of the MSA;

**Performance Bond** means each of the Operator Bond, the Advance Payment Bond, the Owner Bond, the Restated Owner Bond and the Post-Minimum Fleet Third Party Bond (as applicable);

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<sup>247</sup> Redaction.

**Performance Core** means those routes or parts of routes on the Thameslink Network that fall within the area bounded by the Performance Core Boundary Recording Points;

**Performance Core Boundary Recording Points** mean each of the Recording Points which monitor the timing of trains, located at or most proximate to West Hampstead station, Finsbury Park station, Elephant and Castle station and the new Corbett's Lane Junction, approximately 2.5 kilometres east of London Bridge station;

**Performance Core Station** means a station located within the Performance Core;

[●]<sup>248</sup>

**Performance Liquidated Damages** means the payments to be made by the TMM to the Operator under the TSA Performance Regime;

**Performance Payments** means Availability Payments, Cancellation Payments, Delay Payments and SQM Payments;

**Performance Regime** means, as the context requires, the TSA Performance Regime and/or the TSSSA Performance Regime;

**Performance Regime Targets** means the availability, delay and service quality measures which are specified in the TSA Performance Regime;

**Performance Remedial Plan** means a remedial plan to be issued by the TMM to the Operator and/or the Owner and implemented by the TMM in accordance with schedule 8 (*Performance Remedial Plans*) of the TSA with the objective of ensuring that the MSPA will be equal to or better than the Acceptable Performance Level by that plan's Target Date;

**Performance Remedial Plan Associated Equipment** means any Associated Equipment that is the subject of a Performance Remedial Plan and which is, pursuant to the terms of that Performance Remedial Plan, scheduled on any relevant day during the term of the Performance Remedial Plan to undergo the rectification work contemplated by that Performance Remedial Plan;

**Performance Remedial Plan Key Milestone** has the meaning given to it in paragraph 4.1(b) of schedule 8 (*Performance Remedial Plans*) of the TSA;

**Performance Remedial Plan Key Milestone Date** means the date specified in a Performance Remedial Plan by which the relevant Performance Remedial Plan Key Milestone is to be achieved;

**Performance Remedial Plan Level** means [●]<sup>249</sup>

**Performance Remedial Plan Modification** means any Modification to be carried out pursuant to a Performance Remedial Plan;

**Performance Remedial Plan Unit** means any Unit that is the subject of a Performance Remedial Plan and which is, pursuant to the terms of that Performance Remedial Plan,

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<sup>248</sup> Redaction.

<sup>249</sup> Redaction.

scheduled on any relevant day during the term of the Performance Remedial Plan to undergo the rectification work contemplated by that Performance Remedial Plan;

**Performance Rental Adjustment** means, where either of the circumstances specified in paragraph 2.1 of schedule 3.10 (*Rental Reductions*) of the Lease apply, the reduction in Rental specified in that paragraph;

**Performance Report** means a report in substantially the form set out in the Appendix (*Form of Performance Report*) to schedule 9 (*Contract Management*) of the TSA;

**Performance Review Meeting** has the meaning given to it in paragraph 5 (*Performance Review Meetings*) of schedule 9 (*Contract Management*) of the TSA;

**Periodic Balancing Cost Payment** means the payment specified in paragraph 2.1 of schedule 6.1 (*Service Payments*) of the TSA (or, while the TSSSA is in force, paragraph 2.1 of schedule 6.1 (*Service Payments*) of the TSSSA);

**Periodic TMM Payment** means the payment specified in paragraph 2.2 of schedule 6.1 (*Service Payments*) of the TSA;

**Periodic Maintenance Charge** means:

- (a) any payment that the Owner is required to make to the TMM out of the Balancing Payments Account pursuant to paragraph 13 (*Periodic Maintenance Changes*) of schedule 6.6 (*Balancing Payments Account*) of the TSA; or
- (b) when the relevant provisions of schedule 9 (*Balancing Payments Account*) of the Lease is in effect, including when the TSSSA is in force any payment that the Owner is required to make to the Operator, a Third Party Maintainer or the TMM (as the case may be) out of the Balancing Payments Account pursuant to paragraph 13 (*Periodic Maintenance Changes*) of schedule 9 (*Balancing Payments Account*) of the Lease;

[•]<sup>250</sup>

**Permitted Borrowing** means, without double-counting, any:

- (a) advance to the Owner under the Senior Finance Documents (including any such advance made in accordance with paragraphs (i) to (iv) (inclusive) of the definition of Additional Permitted Borrowing);
- (b) Additional Permitted Borrowing; and
- (c) interest and, in respect of the original Senior Finance Documents only (as entered into at the date of this Agreement prior to any subsequent amendment), other amounts accrued or payable under the terms of such original Senior Finance Documents,

except where the amount referred to in paragraphs (a) to (c) inclusive is or is being used to fund a payment of Default Interest on any Additional Permitted Borrowing;

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<sup>250</sup> Redaction.

**Permitted Change (MSA)** means the permitted changes to the Specification and the dates by which a request for any such change needs to be made as set out in the Permitted Changes Schedule;

**Permitted Change (TSA)** has the meaning given to it in clause 20.1 of the TSA;

**Permitted Changes Schedule** means the list of Permitted Changes (MSA) agreed by the TMM and the Operator together with (where relevant) the date by which such agreement must be reached, as set out in schedule 15 (*Permitted Changes*) of the MSA;

**Permitted Contractor Payment** means a payment that the TMM is permitted to receive in respect of a Contractor Claim from:

- (a) the Owner, where:
  - (i) such payment is made in accordance with the terms of the Contracts; and
  - (ii) no Step-In Period has commenced and is continuing; or
- (b) the Security Trustee, following the Senior Discharge Date, in accordance with the terms of the Intercreditor Deed;

**Permitted Contracts Restructuring Arrangement** means a restructuring arrangement between the Applicable Transferor and the Approved Transferee with the consent of all other counterparties involving entry into (a) an Applicable Deed of Accession and (b) the Applicable Replacement Contracts in each case in compliance with the requirements of clause 6 (*Disposal of this Agreement and the Contracts*) of the Umbrella Agreement and pursuant to which all the rights and/or obligations and interests of the Applicable Transferor under all the Applicable Relevant Contracts are novated (in the case of the Applicable Relevant Contracts) to the Approved Transferee and contemporaneously the Applicable Replacement Contracts come into full force and effect;

**Permitted Delay** means any delay or failure in the performance of some, all or those specified of the TMM's obligations under, and in accordance with, the MSA and the Contract Programme due to the occurrence of any of the following:

- (a) [•]<sup>251</sup>
- (b) [•]<sup>252</sup>
- (c) [•]<sup>253</sup>
- (d) [•]<sup>254</sup>
- (e) [•]<sup>255</sup>

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<sup>251</sup> Redaction.

<sup>252</sup> Redaction.

<sup>253</sup> Redaction.

<sup>254</sup> Redaction.

<sup>255</sup> Redaction.

- (f) [●]<sup>256</sup>
- (g) [●]<sup>257</sup>
- (h) [●]<sup>258</sup>
- (i) [●]<sup>259</sup>
- (j) [●]<sup>260</sup>

except to the extent that any of those events have occurred due to any act, omission, neglect or default of the TMM or any of its Sub-Contractors or the employees or suppliers of any of them, or due to the TMM's performance, non-performance or purported performance of its obligations under the MSA, the TSA, the TSSSA or any of the documentation to be entered into by the TMM in relation to the Designated Depots;

***Permitted Depot Delay*** has the meaning given to it in the relevant Depot Agreement for Lease as at the date of this Agreement;

***Permitted/Licensed Use*** means any uses or purposes necessary so as to enable the TMM to comply with its obligations pursuant to the TSA;

***Permitted Lien*** means:

- (a) any Security Interest for Taxes not assessed or, if assessed, not yet due and payable or being contested in good faith by appropriate proceedings;
- (b) any Security Interest of a repairer, mechanic, workman or storage facility provider or other similar Security Interest in respect of obligations which are not overdue or are being contested in good faith by appropriate proceedings provided that the same arises in the ordinary course of business by operation of law and not by way of contract; and
- (c) any Owner Security Interest,

but only if (in the case of both paragraph (a) and (b)) in the opinion of the Owner (acting reasonably) that:

- (i) adequate resources have been provided by the Operator for the payment of the Taxes or obligations; and
- (ii) such proceedings or the continued existence of the Security Interest do not give rise to any likelihood of the sale, forfeiture or other loss of the Units, the Owner Owned Spares, the Special Tools or the Simulators which are the subject of the Security Interest or any interest in such Units, the Owner

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<sup>256</sup> Redaction.

<sup>257</sup> Redaction.

<sup>258</sup> Redaction.

<sup>259</sup> Redaction.

<sup>260</sup> Redaction.

Owned Spares, the Special Tools or the Simulators or of criminal liability of the Owner;

**Permitted Use (Lease)** means the use to which the Units, the Associated Equipment and the Simulators may be put during the Unit Term as more particularly set out in the Appendix (*Permitted Use*) to schedule 5 (*Operational and Maintenance Undertakings*) of the Lease;

**Permitted Use (MSA)** means the operation of the Units on the Thameslink Network and on such other parts of the Network as any authority to operate, with or without passengers, issued by the relevant Government Authority may permit, so long as such operation is in accordance with all Applicable Laws and Standards, the Manuals and the Maintenance Plan and Relevant Approvals;

**Placed in Escrow** means:

- (a) in respect of each Financial Model, delivery of such Financial Model:
  - (i) dated the date of the Umbrella Agreement;
  - (ii) adjusted to the extent necessary to reflect any time elapsed between the actual date of the Umbrella Agreement and the date assumed to be the date of the Umbrella Agreement in the applicable of the Record of Owner Assumptions and the Record of TMM Assumptions; and
  - (iii) audited following the applicable of a Run of the Owner Financial Model, a Run of the TMM Financial Model or a Run of the TSSSA Financial Model and updated with any Revised Owner Inputs, Revised TMM Inputs or Revised TSSSA Inputs (as applicable); and
- (b) in respect of each Data Book, including the applicable of the Record of Owner Assumptions and the Record of TMM Assumptions, delivery thereof,

in the case of the Owner Financial Model, in accordance with schedule 5.4 (*Identity of the Owner Financial Model*) of the Umbrella Agreement, in the case of the TMM Financial Model, in accordance with schedule 5.5 (*Identity of the TMM Financial Model*) of the Umbrella Agreement and in the case of the TSSSA Financial Model, in accordance with schedule 5.7 (*Identity of the TSSSA Financial Model*) of the Umbrella Agreement;

**Plan** means in respect of each Designated Depot the plan attached to the Depot Agreement for Leases relating to such Designated Depot;

**Plan of the Day** means, during the TSA Term, the railway passenger services to be operated on that day in accordance with the passenger timetable to be operated by the Operator pursuant to the Franchise Agreement, or as notified to the Operator by Network Rail from time to time prior to 2200 hours on the previous day;

**Planned Annual Average Mileage Per Unit** means in relation to any Unit Type, the planned annual average mileage to be run by the Operator in any Reference Contract Year during the Steady State Period by each Unit of that Unit Type, as calculated by the Operator in accordance with paragraph 2.2 of schedule 6.3 (*Steady State Period Service Payments*) of the TSA;

**Planned Equivalent Annual Average Mileage Per Unit** means in relation to any Unit Type, the planned equivalent annual average mileage to be run by the Operator in any Reference

Contract Year during the Ramp-Up Period by each Unit of that Unit Type, as calculated by the Operator in accordance with paragraph 2.2 of schedule 6.2 (*Ramp-Up Period Service Payments*) of the TSA;

**Platform Base Data** has the meaning given to it in clause 6.17(c) of the MSA;

[●]<sup>261</sup>

[●]<sup>262</sup>

[●]<sup>263</sup>

[●]<sup>264</sup>

**Potential Design Defect** means a defect which has arisen on more than one of:

- (a) the Units;
- (b) the Key Components of a particular type; or
- (c) [●]<sup>265</sup>

which a Party, acting reasonably, believes is evidence that a Design Defect has occurred in relation to the Units, the Simulators or the Key Components of that type, provided that if there are design variances between Units, the Simulators or the Key Components of that type, references to the Units, the Simulators or to a Key Component shall be deemed to be references to the Units, the Simulators or the Key Components of that type that share a common design;

**Potential Permitted Delay** has the meaning given to it in paragraph 1.1 of schedule 13 (*Permitted Delay Procedure*) of the MSA;

**Potential SQM/Fault Event** means an incident which is capable of being classified as both a Fault and an SQM Fault;

**Pre-Acceptance Maintenance Plan** means the programme for the maintenance, prior to Acceptance, of the Units, Vehicles, Spares (to the extent these require maintenance), Special Tools and Parts encompassing, as appropriate, repairing and overhauling, light and heavy maintenance and periodic examinations, such programme to be consistent with the Units, Vehicles, Spares, Special Tools and Parts being maintained following Acceptance in accordance with the Maintenance Plan;

**Preceding Rental Payment Date** means, in relation to any Rental Payment Date, the immediately preceding Rental Payment Date;

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<sup>261</sup> Redaction.

<sup>262</sup> Redaction.

<sup>263</sup> Redaction.

<sup>264</sup> Redaction.

<sup>265</sup> Redaction.

**Preconditions** has the meaning given to it in paragraph 4.1(i) of schedule 6 (*Delivery and Acceptance*) of the MSA;

**Preconditions Timetable** has the meaning given to it in paragraph 4.1(ii) of schedule 6 (*Delivery and Acceptance*) of the MSA;

**Pre-Contract Design Agreement** means the information contained in schedule 1.5 (*Pre-Contract Design Agreement*) of the MSA;

[●]<sup>266</sup>;

[●]<sup>267</sup>;

[●]<sup>268</sup>;

[●]<sup>269</sup>;

[●]<sup>270</sup>;

**Prepayment Waiver** has the meaning given to it in paragraph 4.11(b)(i) of schedule 4.3 (*Secretary of State Authorisation of Variations*) of the Umbrella Agreement;

[●]<sup>271</sup>

[●]<sup>272</sup>

[●]<sup>273</sup>

**Pre-Refinancing Equity IRR** means [●]<sup>274</sup>

**Prescribed Particulars** means [●]<sup>275</sup>:

(a) [●]<sup>276</sup>;

(b) a summary in reasonable detail of the grounds for forfeiture, rescission or termination under each of the Relevant Defaulted Contracts; and

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<sup>266</sup> Redaction.

<sup>267</sup> Redaction.

<sup>268</sup> Redaction.

<sup>269</sup> Redaction.

<sup>270</sup> Redaction.

<sup>271</sup> Redaction.

<sup>272</sup> Redaction.

<sup>273</sup> Redaction.

<sup>274</sup> Redaction.

<sup>275</sup> Redaction.

<sup>276</sup> Redaction.

- (c) details of (i) the amounts, if any, owed by the Owner to the Operator, (ii) the amounts owed by the Owner to the Secretary of State and any other existing unperformed obligations or liabilities on the part of the Owner owed to the Operator under each of the Relevant Defaulted Contracts of which the Operator is aware (having made reasonable enquiry) and such amounts to be provided in relation to (A) the position as at the time of the Lease Owner MR/EFV Termination Event Notice and (B) any further amounts which will fall due on or prior to the end of the Required Period;

**Priced Option** means any of the priced options set out in schedule 17 (*Priced Options*) of the MSA;

**Primarily Liable** means that the Secretary of State will be liable as principal obligor for the performance and observation of all obligations and liabilities (in each case subject to any rights or provisions defining, reducing or limiting that liability or obligation under the relevant Transaction Document) by:

- (a) the Public Sector Operator as the Operator; or
- (b) the Secretary of State Nominee as Owner,

in each case under the relevant Transaction Documents, notwithstanding (in the case of a Public Sector Operator) the existence of any sublease, or the fact that the Secretary of State is not themselves a Party to the relevant Transaction Document;

**Primary Minutes Delay** means [●]<sup>277</sup>

[●]<sup>278</sup>

[●]<sup>279</sup>;

[●]<sup>280</sup>;

**Proceedings** has the meaning given to it in clause 23.2 of the Lenders' Direct Agreement;

**Proceeds Account** has the meaning given to it in the Senior Finance Documents;

**Prohibited Act** has the meaning given to it in clause 16.1 of the Umbrella Agreement;

**Project** means the programme, procured by the Department of Transport, for the upgrade of infrastructure, procurement of rolling stock, procurement of depots, network expansion and increase of service frequency on the Thameslink Network;

**Project Entity** has the meaning given to it in the Railways (Interoperability) Regulations 2011;

[●]<sup>281</sup>;;

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<sup>277</sup> Redaction.

<sup>278</sup> Redaction.

<sup>279</sup> Redaction.

<sup>280</sup> Redaction.

**Project Standard** has the meaning given to it in clause 5.12 of the MSA;

**Projected Post FALD Funding Deficiency Amount** means the aggregate amount of funding that is projected to be required to fund the remaining activities of the Owner following the occurrence of the Funding Availability Longstop Date;

**Proposed New Owner** means the Secretary of State, Secretary of State Nominee or other person to whom the Secretary of State proposes the Train Assets are transferred, the Applicable Relevant Contracts novated and by whom the Applicable Replacement Contracts be entered into upon or following the termination of the Owner's participation in the Project, as notified pursuant to paragraph 2.5(c) of schedule 2.8 (*Transfer of Rolling Stock and Contracts upon Termination*) of the Umbrella Agreement;

**Proposed Owner Succession Date** has the meaning given to it in paragraph 2.5(a) of schedule 2.8 (*Transfer of Rolling Stock and Contracts upon Termination*) of the Umbrella Agreement;

**Proposed Owner Succession Notice** has the meaning given to it in paragraph 2.5 of schedule 2.8 (*Transfer of Rolling Stock and Contracts upon Termination*) of the Umbrella Agreement;

**Proposing Party** has the meaning given to it in paragraph 1.1 of schedule 4.2 (*Variation Proposals*) of the Umbrella Agreement;

**Provisional Acceptance** means the provisional acceptance of a Unit by the Owner under the MSA in accordance with paragraph 3 (*Provisional Acceptance*) of schedule 6 (*Delivery and Acceptance*) of the MSA, evidenced by the Owner's signature of a Provisional Acceptance Certificate;

**Provisional Acceptance Certificate** means a certificate in the form of Appendix 2 (*Form of Provisional Acceptance Certificate*) to schedule 6 (*Delivery and Acceptance*) of the MSA;

[●]<sup>282</sup>;

[●]<sup>283</sup>;

[●]<sup>284</sup>;

**Public Sector Operator** means any person (other than a franchisee or franchise operator in relation to the services provided or operated under its franchise agreement) who provides railway passenger services on the Thameslink Network pursuant to or under section 30 of the Act or section 6 of the Railways Act 2005 or who is appointed by the Secretary of State to provide such services otherwise than pursuant to a Franchise Agreement;

[●]<sup>285</sup>

[●]<sup>286</sup>

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<sup>281</sup> Redaction.

<sup>282</sup> Redaction.

<sup>283</sup> Redaction.

<sup>284</sup> Redaction.

<sup>285</sup> Redaction.

[●]<sup>287</sup>

[●]<sup>288</sup>

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[●]<sup>292</sup>

[●]<sup>293</sup>

[●]<sup>294</sup>

[●]<sup>295</sup>

[●]<sup>296</sup>

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[●]<sup>299</sup>

[●]<sup>300</sup>

***Qualification Criteria*** means the criteria that the Secretary of State requires tenderers to meet as part of the Tender Process which (subject to compliance with procurement regulations) shall be:

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<sup>286</sup> Redaction.

<sup>287</sup> Redaction.

<sup>288</sup> Redaction.

<sup>289</sup> Redaction.

<sup>290</sup> Redaction.

<sup>291</sup> Redaction.

<sup>292</sup> Redaction.

<sup>293</sup> Redaction.

<sup>294</sup> Redaction.

<sup>295</sup> Redaction.

<sup>296</sup> Redaction.

<sup>297</sup> Redaction.

<sup>298</sup> Redaction.

<sup>299</sup> Redaction.

<sup>300</sup> Redaction.

- (a) acceptance by the tenderer of the terms of the Applicable Replacement Contracts (including a Replacement Lease that, in accordance with paragraph (b) of such definition, is on the same terms and conditions as the applicable Reference Lease save only for amendments required to reflect the change in identity of the Owner) and the Applicable Relevant Contracts;
- (b) that the tenderer is bidding on the basis that it is receiving title to the Rolling Stock and entering into the Asset Transfer Agreement and accepts the terms of that Agreement;
- (c) that a tenderer has undertaken the level of legal, technical, financial and specialist due diligence in relation to the Rolling Stock, the Asset Transfer Agreement and the Applicable Replacement Contracts and the Applicable Relevant Contracts that would ordinarily be expected in the market at that time for a project of the magnitude and complexity of the Project;
- (d) that the assumptions (disclosed in or evident from the tender) on which the tender is based are reasonable in view of the nature of the Project and market conditions;
- (e) that the tenderer is not owned or controlled by, and is acting independently of and not in consort or collusion with, the Crown or any other tenderer;
- (f) that the tenderer or any of its sub-contractors has at least four years' experience appropriate to performing the role of the Owner under the Applicable Replacement Contracts and the Applicable Relevant Contracts; and
- (g) any other tender criteria agreed by the Secretary of State and the Owner;

***Qualified Provisional Acceptance*** means the qualified provisional acceptance of a Unit by the Owner under the MSA in accordance with paragraph 4 (*Qualified Provisional Acceptance*) of schedule 6 (*Delivery and Acceptance*) of the MSA, evidenced by the Owner's signature of a Qualified Provisional Acceptance Certificate;

***Qualified Provisional Acceptance Certificate*** means a certificate in the form set out in Appendix 3 (*Form of Qualified Provisional Acceptance Certificate*) to schedule 6 (*Delivery and Acceptance*) of the MSA;

***Qualifying Bank Transaction*** means:

- (a) the syndication by a Senior Lender, in the ordinary course of its business, of any of its rights or interests in the Senior Finance Documents;
- (b) the grant by a Senior Lender of any rights of participation, or the disposition by a Senior Lender of any of its rights or interests (other than as specified in paragraph (a)), in respect of the Senior Finance Documents in favour of:
  - (i) any other Senior Lender;
  - (ii) any institution which is recognised or permitted under the law of any member state of the EEA to carry on the business of a credit institution pursuant to Council Directive 2001/12/EC relating to the taking up and pursuit of the

business of credit institutions or which is otherwise permitted to accept deposits in the United Kingdom or any other EEA member state;

- (iii) a local authority or public authority;
- (iv) a trustee of a charitable trust which has (or has had at any time during the previous two years) assets of at least £10 million (or its equivalent in any other currency at the relevant time);
- (v) a trustee of an occupational pension scheme or stakeholder pension scheme where the trust has (or has had at any time during the previous two years) at least 50 members and assets under management of at least £10 million (or its equivalent in any other currency at the relevant time);
- (vi) an EEA or Swiss Insurance Undertaking (as defined in the rules from time to time of the Financial Conduct Authority);
- (vii) a Regulated Collective Investment Scheme (as defined in the rules from time to time of the Financial Conduct Authority); and/or
- (viii) any other institution in respect of which the prior written consent of the Secretary of State has been given; and/or
- (c) the grant by a Senior Lender of any other form of benefit or interest in either the Senior Finance Documents or the revenues or assets of the Owner, whether by way of security or otherwise, in favour of:
  - (i) any other Senior Lender;
  - (ii) any institution specified in paragraphs (b)(ii) to (vii) inclusive; or
  - (iii) any other institution in respect of which the prior written consent of the Secretary of State has been given;

***Qualifying Change in Law*** means:

- (a) a Discriminatory Change in Law;
- (b) a Specific Change in Law; and/or
- (c) a General Change in Law which comes into effect after [●]<sup>301</sup>;

***Qualifying Lease*** has the meaning given to it in paragraph 6.13 of schedule 2.1 (*Section 54 Undertakings*) of the Umbrella Agreement;

***Qualifying Refinancing*** means any Refinancing that is not an Exempt Refinancing;

[●]<sup>302</sup>

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<sup>301</sup> Redaction.

<sup>302</sup> Redaction.

**Qualifying Tax Loan** has the meaning given to it in clause 2.1 (*Definitions*) of the loan agreement appended as the Appendix to schedule 2.1 (*Section 54 Undertakings*) of the Umbrella Agreement and entitled “Tax Loan Facility”;

**Quality Plan** means the quality plan set out in schedule 5 (*Quality Plan*) of the MSA;

**Question** has the meaning given to it in paragraph 6.14(a) of schedule 2.1 (*Section 54 Undertakings*) of the Umbrella Agreement;

**RAIB** means The Railway Accident Investigation Branch;

**Railway Business** has the meaning set out in section 95(3) CAA 2001;

**Railway Group Standards** means, to the extent applicable to the Units, any Special Tool, any Owned Spare, any TMM Owned Spare, any Supplier Owned Spare or any Part, and their maintenance and operation, those standards to which railway assets or equipment used on or as part of railway assets must conform, and operating procedures with which the operators of railway assets must comply, known generally as Railway Group Standards and which are established and maintained by RSSB;

**Railway Period** means a period of 28 consecutive days, provided that:

- (a) the first such period during the TSA Term or the TSSSA Term shall exclude any days up to but not including the date of the TSA or the TSSSA Commencement Date (as appropriate);
- (b) the first and last such period in any Contract Year or Contract Year (TSSSA) (as appropriate) may be varied by up to seven days by notice from the Operator to the TMM or Supplier (as appropriate);
- (c) each such period shall start on the day following the last day of the preceding such period; and
- (d) the last such period during the TSA Term or the TSSSA Term shall end at the end of the TSA Term or TSSSA Term (as appropriate);

**Railway Safety Certificate** means the certificate issued by the ORR under the Safety Regulations, certifying its acceptance of the Operator’s safety management system (as defined in those regulations) and the provisions adopted by the Operator to meet the requirements that are necessary to ensure safe operation on the Thameslink Network;

**Railway Year** means the year commencing on 1 April and ending on 31 March;

**Railways (Interoperability) Regulations 2006** means the regulations made by the Secretary of State pursuant to section 247 of the Transport Act 2000, as set out in Statutory Instrument 2011 no 3066;

**Ramp-up Period** means the period commencing on the date the First Unit achieves Provisional Acceptance or Qualified Provisional Acceptance and ending on the first occurrence of 31 March following the date the Last Unit achieves Provisional Acceptance or Qualified Provisional Acceptance;

[●]<sup>303</sup>;

[●]<sup>304</sup>;

[●]<sup>305</sup>;

**Recipient** has the meaning given to it in Clause 16.1 of the Lenders' Direct Agreement;

**Recipient Party** has the meaning given to it in paragraph 1.1 of schedule 4.2 (*Variation Proposals*) of the Umbrella Agreement;

**Reconciled Annual Service Payment** means:

- (a) in the case of the Ramp-Up Period, the payment calculated in accordance with, as appropriate, paragraph 4.8 or 4.9 of schedule 6.3 (*Ramp-up Period Service Payments*) of the TSA; and
- (b) in the case of the Steady State Period, the payment calculated in accordance with, as appropriate, paragraph 4.8 or 4.9 of schedule 6.3 (*Steady State Period Service Payments*) of the TSA;

**Reconciliation Daily Service Charge** means in relation to any Type 1 Unit and Type 2 Unit, the charge determined in accordance with, as appropriate:

- (a) paragraph 4.5 or 4.6 respectively of schedule 6.2 (*Ramp-Up Period Service Payments*) of the TSA; or
- (b) paragraph 4.5 or 4.6 respectively of schedule 6.3 (*Steady State Period Service Payments*) of the TSA;

**Record of Owner Assumptions** means that part of the Data Book in respect of the Owner Financial Model headed Record of Owner Assumptions updated pursuant to paragraph 5 (*Assumptions in the Record of Owner Assumptions*) of schedule 5.2 (*Runs of the Owner Financial Model*) of the Umbrella Agreement;

**Record of TMM Assumptions** means that part of the Data Book in respect of the TMM Financial Model headed Record of TMM Assumptions updated pursuant to paragraph 5 (*Assumptions in the Record of TMM Assumptions*) of schedule 5.3 (*Runs of the TMM Financial Model*) of the Umbrella Agreement;

**Record of TSSSA Assumptions** means that part of the Data Book in respect of the TSSSA Financial Model headed Record of TSSSA Assumptions updated pursuant to paragraph 5 (*Assumptions in the Record of TSSSA Assumptions*) of schedule 5.6 (*Runs of the TSSSA Financial Model*) of the Umbrella Agreement;

**Recording Point** shall have the meaning given to such term in the Track Access Agreement;

[●]<sup>306</sup>

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<sup>303</sup> Redaction.

<sup>304</sup> Redaction.

<sup>305</sup> Redaction.

**Redelivery Condition Bond** means a bond or cash security guarantee provided by the Operator to the Owner pursuant to paragraph 6.3 or 6.4 of schedule 5 (*Operational and Maintenance Undertakings*) of the Lease;

**Redelivery Condition (Lease)** means the condition that the Owner requires the Units, the Owner Owned Spares, the Special Tools and the Simulators respectively to be in at the date of their redelivery to the Owner, in each case, as specified in schedule 13 (*Redelivery Condition Schedule*) of the Lease;

**Redelivery Condition Schedule** means schedule 14 (*Redelivery Condition Schedule*) of the TSA;

**Redelivery Condition (TSA)** means, as appropriate, at:

- (a) the end of the TSA Term; or
- (b) the date on which a Successor Operator accedes to the terms of the TSA in accordance with clause 6 (*Disposal of this Agreement and the Contracts*) of the Umbrella Agreement; or
- (c) the end of a sub-lease during which the sub-lease Units continued to be maintained under the TSA

with respect to the Units, Vehicles, Associated Equipment and Simulators which are to be redelivered under the TSA, that the same shall be in a condition which is consistent with paragraph 5 (*Redelivery Condition*) of the Redelivery Condition Schedule of the TSA;

**Redelivery Location** means a Designated Depot, or such other location which is agreed in writing between the Owner, the Operator and, while the TSA is continuing, the TMM;

**Redesigned Part** has the meaning given to it in clause 10.29 of the TSA;

**Redesigned Part (TSSSA)** has the meaning given to it in the TSSSA;

**Reduced Payment** has the meaning given to it in clause 11.2(b) of the Lease;

**Referee** means an appropriately experienced partner in the London office of a non-conflicted major accountancy firm, such firm to be promptly and jointly selected by the Secretary of State and the Owner, each acting reasonably and such partner shall be selected by the senior partner of the firm chosen pursuant to this provision. If within 30 days of a referral to the Referee, the Secretary of State and the Owner cannot agree on the selection of an accounting firm, the President of the Institute of Chartered Accountants in England and Wales shall select a non-conflicted major accountancy firm and his selection shall be binding on both Parties;

**Reference Contract** means, in respect of any Applicable Replacement Contract, the applicable Contract that was in force immediately prior to such Replacement Contract coming into force;

**Reference Contract Year** means the Contract Year in respect of which any calculation is performed pursuant to the Service Payments Schedule;

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<sup>306</sup> Redaction.

**Reference Financial Exercise** means an indicative financial exercise performed pursuant to paragraph 5 (*Reference Financial Exercises*) of schedule 4.2 (*Variation Proposals*) of the Umbrella Agreement and in accordance with, as appropriate, schedule 5.1 (*Changes to Equipment Prices*), schedule 5.2 (*Runs of the Owner Financial Model*), schedule 5.3 (*Runs of the TMM Financial Model*) and/or schedule 5.6 (*Runs of the TSSSA Financial Model*) of the Umbrella Agreement, in each case to determine the financial effects of a Variation Proposal;

**Reference Lease** means, in respect of any Replacement Lease, the Lease that was in force immediately prior to such Replacement Lease coming into force;

**Reference Performance Period** means:

- (a) for the purposes of paragraph 2.2(a) of schedule 8 (*Performance Remedial Plans*) of the TSA, any period of six consecutive Railway Periods ending with a Reference Railway Period, including, where the last day of the Reference Railway Period occurs less than six Railway Periods after the Fleet Performance Date, such of those Railway Periods that commence prior to Fleet Performance Date as are necessary in order that the Reference Performance Period constitutes six Railway Periods, ending with that Reference Railway Period; and
- (b) for the purposes of paragraph 2.2(b) of schedule 8 (*Performance Remedial Plans*) of the TSA, any period of thirteen consecutive Railway Periods ending with a Reference Railway Period and including no less than eight Reference Railway Periods;

**Reference Railway Period** has the meaning given to it in paragraph 2.2 of schedule 8 (*Performance Remedial Plans*) of the TSA;

**Referral Notice** has the meaning given to it in paragraph 2 (*Referral Notice*) of schedule 8.1 (*Contract Disputes*) of the Umbrella Agreement;

**Refinancing** means:

- (a) any amendment, variation, novation, supplement or replacement of any Senior Finance Document;
- (b) the exercise of any right, or the grant of any waiver or consent, under any Senior Finance Document;
- (c) the disposition of any rights or interests in, or the creation of any rights of participation in respect of, the Senior Finance Documents, or the creation or granting of any other form of benefit or interest in either the Senior Finance Documents or the contracts, revenues or assets of the Owner, whether by security or otherwise; or
- (d) any other arrangement which has an effect which is similar to any of the arrangements in paragraphs (a) to (c) inclusive;

**Refinancing Gain** means any amount greater than zero which is the sum of  $(A - B - C - D)$ , where:

A means the NPV of the Distributions by the Owner projected immediately prior to the Refinancing (taking into account the effect of the Refinancing and using the Owner

Financial Model as updated (including as to the performance of the Project) so as to be current immediately prior to the Refinancing) to be made to each Investor following the Refinancing and until the Backstop Date;

B means the NPV of the Distributions by the Owner projected immediately prior to the Refinancing (but without taking into account the effect of the Refinancing and using the Owner Financial Model as updated (including as to the performance of the Project) so as to be current immediately prior to the Refinancing) to be made to each Investor following the Refinancing and until the Backstop Date; and

C [●]<sup>307</sup>; and

D [●]<sup>308</sup>;

**Refinancing Notice** has the meaning given to it in paragraph 2.1 of schedule 6 (*Refinancing*) of the Umbrella Agreement;

[●]<sup>309</sup>;

**Refinancing Process Monitor** means:

- (a) any representative of the Secretary of State; or
- (b) any other person appointed by the Secretary of State for such purpose,

in each case, nominated by the Secretary of State to monitor a Refinancing Process as described in paragraph 2.8(b) of schedule 6 (*Refinancing*) of the Umbrella Agreement;

[●]<sup>310</sup>;

**Refund Clauses** means paragraphs 2.1(a) and (b) of Part 1 (*Consequential Termination Provisions Pre-Minimum Fleet*) of schedule 19.2 (*Consequential Termination Provisions*) and paragraph 2.1 of Part 2 (*Consequential Termination Provisions Following MSA TMM Event of Default Post-Minimum Fleet*) of schedule 19.2 (*Consequential Termination Provisions*) of the MSA;

**Registration Event** has the meaning given to it in paragraph 8.5 of schedule 5 (*Operational and Maintenance Undertakings*) of the Lease;

**Reinsurances** has the meaning given to it in paragraph 1.2(b) of Part 1 of schedule 8.2 (*Insurance Requirements*) of the Lease;

**Relevant Approval** means a consent or approval granted or required to be granted (as the context may require) by a Government Authority in relation to the Units in order to permit the operation of such Units with or without passengers on the Thameslink Network, including the Operator's Railway Safety Certificate;

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<sup>307</sup> Redaction.

<sup>308</sup> Redaction.

<sup>309</sup> Redaction.

<sup>310</sup> Redaction.

**Relevant Assumptions** means the assumptions that the sale of the Owner is on the basis that there is no, as applicable, Secretary of State Default or voluntary termination by the Secretary of State, the sale is on a going concern basis, that no restrictions exist on the transfer of share capital, that no Additional Permitted Borrowing has taken place and therefore that the effect of the Additional Permitted Borrowing on the calculation of such amount is disregarded, but that otherwise the actual state of affairs of the Owner and the Project is taken into account;

**Relevant Compensation Provisions** has the meaning given to it in paragraph 2.1 of schedule 3.5 (*Calculation and Payment of Early Termination Sums*) of the Umbrella Agreement;

**Relevant Contracts** means the applicable Contracts for the Applicable Transferor or the Existing Operator listed in:

- (a) for the purposes of a Permitted Contracts Restructuring Arrangement or an Operator Accession, Part B of the Annex to the Applicable Deed of Accession; or
- (b) for the purposes of an Operator Transfer Scheme, Part B of the Annex to the Transfer Scheme Certificate,

in each case as applicable;

**Relevant Default** means the default(s) under the Relevant Defaulted Contracts set out in the Prescribed Particulars;

**Relevant Defaulted Contracts** means the Contracts detailed in the Prescribed Particulars which the Operator proposes to forfeit, rescind or terminate;

**Relevant Delay Incident** means [●]<sup>311</sup>

**Relevant Income** has the meaning given to it in clause 11.8(b) of the Lease;

**Relevant Margin Change** means [●]<sup>312</sup>

**Relevant Payment** has the meaning given to it in clause 11.2 of the Lease;

**Relevant Sum** has the meaning given to it in clause 11.8(a) of the Lease;

**relevant tax returns** has the meaning given to it in paragraph 6.4(a)(iii) of schedule 2.1 (*Section 54 Undertakings*) of the Umbrella Agreement;

**Relevant Termination Date** means:

- (a) [●]<sup>313</sup>;
- (b) in relation to a termination of the Contracts pursuant to clauses 14.6 and 14.9 of the Umbrella Agreement, the date for termination of the Lease set out in the Secretary of State's notice delivered in accordance with clause 14.6(d) of the Umbrella Agreement;

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<sup>311</sup> Redaction.

<sup>312</sup> Redaction.

<sup>313</sup> Redaction.

- (c) in relation to a termination of the Contracts pursuant to schedule 2.7 (*Voluntary Termination of Contracts by the Secretary of State*) of the Umbrella Agreement, the date for termination of the Contracts specified in the Secretary of State's notice delivered in accordance with paragraph 1(a) of schedule 2.7 of the Umbrella Agreement;
- (d) in relation to a termination of the Contracts pursuant to clause 17 (*Secretary of State Default*) of the Umbrella Agreement, the date on which the Contracts terminate in accordance with clause 17.2 of the Umbrella Agreement;
- (e) [●]<sup>314</sup>;
- (f) [●]<sup>315</sup>;
- (g) [●]<sup>316</sup>
- (h) [●]<sup>317</sup>
- (i) in relation to a termination of the Contracts pursuant to paragraph 4 (*Circumstances where all Contracts are terminated following MSA Force Majeure Event*) of schedule 2.6 (*Termination of Contracts for Force Majeure*) of the Umbrella Agreement, the date of termination of the MSA in accordance with paragraph 3.2(a) of schedule 2.6 of the Umbrella Agreement;
- (j) [●]<sup>318</sup>;
- (k) [●]<sup>319</sup>;
- (l) in relation to a termination of the TSA pursuant to paragraph 8 (*Termination or Continuation of the TSA*) of schedule 2.6 (*Termination of Contracts for Force Majeure*) of the Umbrella Agreement, the date set out in the notice delivered under paragraph 8.1 of schedule 2.6 of the Umbrella Agreement; or
- (m) [●]<sup>320</sup>

**Relevant Time** has the meaning given to it in paragraph 11.26 of the MSA;

**Relevant Utilisation** has the meaning given to it in paragraph 4.11(a)(i) of schedule 4.3 (*Secretary of State Authorisation of Variations*) of the Umbrella Agreement;

[●]<sup>321</sup>

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<sup>314</sup> Redaction.

<sup>315</sup> Redaction.

<sup>316</sup> Redaction.

<sup>317</sup> Redaction.

<sup>318</sup> Redaction.

<sup>319</sup> Redaction.

<sup>320</sup> Redaction.

[●]<sup>322</sup>

[●]<sup>323</sup>

[●]<sup>324</sup>

[●]<sup>325</sup>

**Relief** means any relief, allowance, exemption, set-off, deduction, right of repayment, loss or credit of a similar nature granted by or available in relation to Tax pursuant to any legislation or otherwise;

**Rental** means:

- (a) in respect of the Fleet, the Fleet Rental;
- (b) in respect of the Owner Owned Spares, the Owner Owned Spares Rental;
- (c) in respect of the Special Tools, the Special Tools Rental; and
- (d) in respect of the Simulators, the Simulators Rental;

[●]<sup>326</sup>;

**Rental Payment Date** means the first day of each Monthly Period on which Rental is payable by the Operator to the Owner in accordance with schedule 3 (*Rental Schedule*) of the Lease;

**Rental Reduction Amount** means the amount deducted in any period in accordance with schedule 3.10 (*Rental Reductions*) of the Lease from the Fleet Rental which would otherwise have been payable from the Operator to the Owner in respect of the Units;

[●]<sup>327</sup>

**Rental Schedule** means schedule 3 (*Rental Schedule*) of the Lease;

[●]<sup>328</sup>

**Repair Procedures** means the agreed procedures for repair of the Units, the Associated Equipment and the Simulators, as set out in the Manuals and the Maintenance Plan;

**Repayment Date** means any 30 June or 31 December after the Assumed Final Unit Date;

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<sup>321</sup> Redaction.

<sup>322</sup> Redaction.

<sup>323</sup> Redaction.

<sup>324</sup> Redaction.

<sup>325</sup> Redaction.

<sup>326</sup> Redaction.

<sup>327</sup> Redaction.

<sup>328</sup> Redaction.

**Repeat Dispute** has the meaning given to it in paragraph 3.1 of schedule 8.2 (*Expert Determination*) of the Umbrella Agreement;

**Replaced Part** has the meaning given to it in clause 10.29 of the TSA;

**Replacement Contracts** means the Replacement Lease and the applicable replacement Contracts in the form of the Applicable Reference Contracts to be entered into by the Applicable Transferee or the Successor Operator listed in:

- (a) for the purposes of a Permitted Contracts Restructuring Arrangement or an Operator Accession, Part A of the Annex to the Applicable Deed of Accession; or
- (b) for the purposes of an Operator Transfer Scheme, Part A of the Annex to the Transfer Scheme Certificate,

in each case as applicable;

**Replacement Copy** has:

- (a) in the case of the Owner Escrow Documents, the meaning given to it in paragraph 2.2(a) of schedule 5.4 (*Identity of the Owner Financial Model*) of the Umbrella Agreement;
- (b) in the case of the TMM Escrow Documents, the meaning given to it in paragraph 2.2(a) of schedule 5.5 (*Identity of the TMM Financial Model*) of the Umbrella Agreement; and
- (c) in the case of the TSSSA Escrow Documents, the meaning given to it in paragraph 2.2(a) of schedule 5.7 (*Identity of the TSSSA Financial Model*) of the Umbrella Agreement;

**Replacement Lease** means a lease agreement for the Rolling Stock on the same terms and conditions as the applicable Reference Lease save only for amendments required to reflect the change in identity of the Operator or the Owner (as the case may be) which do not adversely affect the other Party to the Replacement Lease, and:

- (a) (in the case of a Successor Operator), such lease agreement having an expiry date specified by the Secretary of State in accordance with paragraph 6.1 of schedule 2.1 (*Section 54 Undertakings*) of the Umbrella Agreement and being entered into by the Owner and a Successor Operator on an Operator Succession Date; or
- (b) (in the case of either (i) a lease agreement entered into by the Operator and a New Owner as a result of the exercise by the Secretary of State of his rights under paragraph 1.1 of schedule 3.1 (*Termination Sum Payable on Termination for Owner Default*) of the Umbrella Agreement and the operation of paragraph 2 (*Retendering Procedure*), or (ii) the notional lease agreement that would be entered into by the Operator and a Suitable Substitute Owner for the purposes of paragraph 3 (*No Retendering Procedure*) of schedule 3.1 of the Umbrella Agreement), such lease agreement having a scheduled expiry date that is identical to that which applied in the applicable Reference Lease and being entered into on the Lease Primary Period Termination Date;

in each case, with a Rental Schedule conforming to the then current Owner Financial Model;

**Replacement Part** has the meaning given to it in paragraph 3.5 of schedule 14 (*Design Life, Warranties and MSA Fault Rectification*) of the MSA;

[●]<sup>329</sup>

**Replacement Unit** means a Unit that the TMM offers to the Operator for service on any day in a Railway Period to replace any Unit that is Unavailable or suffers a Cancellation;

**Report Proposals** has the meaning given to the term in clause 7.2 of the Lenders' Direct Agreement;

**Representative** means:

- (a) the Security Trustee, the Intercreditor Agent, any Senior Lender and/or any of their respective Affiliates;
- (b) an administrator, administrative receiver, receiver or receiver and manager of the Owner appointed under the Security Documents;
- (c) a person directly or indirectly owned or controlled by the Security Trustee, the Intercreditor Agent and/or any Senior Lender(s); or
- (d) any other person approved by the Secretary of State (such approval not to be unreasonably withheld or delayed);

**Requests for Information** shall have the meaning set out in the FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term “request” shall apply);

[●]<sup>330</sup>

[●]<sup>331</sup>

**Required Return Date** has the meaning given to it in paragraph 4(b) of schedule 3.10 (*Rental Reductions*) of the Lease;

**Required Variation** means a Variation required by a Change in Law, including a Variation to the extent that it contemplates a Mandatory Modification;

**Residual Value** means the ability of the Owner to earn revenue reasonably forecast in the Owner Financial Model during the period after the Backstop Date until the end of the forecast economic life of the Rolling Stock;

[●]<sup>332</sup>

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<sup>329</sup> Redaction.

<sup>330</sup> Redaction.

<sup>331</sup> Redaction.

<sup>332</sup> Redaction.

[●]<sup>333</sup>

[●]<sup>334</sup>

[●]<sup>335</sup>

[●]<sup>336</sup>

[●]<sup>337</sup>

[●]<sup>338</sup>

[●]<sup>339</sup>

[●]<sup>340</sup>

[●]<sup>341</sup>

***Restructuring Closing Date*** has the meaning given to that expression in clause 6.8(d) of the Umbrella Agreement;

***Restructuring Document*** means, in relation to any Permitted Contracts Restructuring Arrangement, Operator Accession or Operator Transfer Scheme:

- (a) the Applicable Deed of Accession or Transfer Scheme Certificate (as the case may be);
- (b) the Applicable Replacement Contracts;
- (c) the Applicable Relevant Contracts; and
- (d) 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);

***Retained Obligations*** means:

- (a) the obligations of the Operator 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

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<sup>333</sup> Redaction.

<sup>334</sup> Redaction.

<sup>335</sup> Redaction.

<sup>336</sup> Redaction.

<sup>337</sup> Redaction.

<sup>338</sup> Redaction.

<sup>339</sup> Redaction.

<sup>340</sup> Redaction.

<sup>341</sup> Redaction.

the Lease, clause 25 (*Advertising and Confidentiality*) of the TSSSA and clause 4 (*Confidentiality*) of the Umbrella Agreement, in relation to relevant information that was disclosed to it prior to the Operator Succession Date;

- (b) the obligations of the Operator to make payments of compensation under paragraph 4 (*Default Payments*) of schedule 10 (*Operator Termination Events*) of the Lease in relation to the term of the Lease ending on the Operator Succession Date;
- (c) subject to paragraphs 6.27 and 6.28 of schedule 2.1 (*Section 54 Undertakings*) of the Umbrella Agreement, the obligations of the Operator under schedule 13 (*Redelivery Condition (Lease) Schedule*) of the Lease in relation to the condition of the Units and the Associated Equipment at the end of the term of the Lease ending on the Operator Succession Date;
- (d) the obligations of the Operator to indemnify the Owner or the TMM under clause 24.15 of the MSA, clause 27.3 of the TSA or clause 12 of the Lease in relation to or arising from an event, action or omission that occurred prior to the Operator Succession Date; and
- (e) the obligation of the Operator to effect and maintain insurance relating to the Units after the Operator Succession Date under paragraph 5.1 of part 1 of schedule 8.2 (*Insurance Requirements*) of the Lease;

***Retained Rights*** means:

- (a) the rights of the Operator 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 relation to relevant information that was disclosed by it prior to the Operator Succession Date; and
- (b) the rights of the Operator to seek indemnification from the TMM under clauses 24.1, 24.2 or 26.6 of the MSA or clauses 16.11 or 27.1 of the TSA in relation to or arising from an event, action or omission that occurred prior to the Operator Succession Date;
- (c) any other rights accrued to the Existing Operator under the Transaction Documents before the Operator Succession Date; and
- (d) any other rights of the Existing Operator under the Transaction Documents that are expressed to survive the Operator Succession Date;

[●]<sup>342</sup>;

[●]<sup>343</sup>;

[●]<sup>344</sup>;

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<sup>342</sup> Redaction.

<sup>343</sup> Redaction.

[●]<sup>345</sup>;

[●]<sup>346</sup>;

**Revised Owner Inputs** has the meaning given to it in paragraph 2.1 of schedule 5.2 (*Runs of the Owner Financial Model*) of the Umbrella Agreement;

[●]<sup>347</sup>

[●]<sup>348</sup>;

**Revised Senior Debt Termination Amount** means, subject to paragraph 4.9 of schedule 4.3 (*Secretary of State Authorisation of Variations*) of the Umbrella Agreement:

- (a) the Outstanding Debt at the Relevant Termination Date in respect of Permitted Borrowing, including (other than in respect of Additional Permitted Borrowing) Default Interest accrued as at that date; and
- (b) all amounts including costs of early termination of interest rate hedging arrangements and other breakage costs, payable by the Owner to the Senior Lenders as a result of a prepayment in respect of Permitted Borrowing, or, in the case of early termination of interest rate hedging arrangements only, as a result of termination of the Lease, subject to the Owner and the Senior Lenders mitigating all such costs to the extent reasonably possible,

less, to the extent it is a positive amount, the aggregate of (without double counting in relation to the calculation of the Revised Senior Debt Termination Amount or the following amounts):

- (i) all credit balances on any bank accounts held by or on behalf of the Owner (other than the Balancing Payments Account, the [●]<sup>349</sup> and the Joint Insurance Account) on the Relevant Termination Date;
- (ii) any amounts claimable on or after the Relevant Termination Date in respect of Contingent Funding Liabilities;
- (iii) all amounts, including costs of early termination of interest rate hedging arrangements and other breakage costs, payable by the Senior Lenders to the Owner as a result of prepayment of amounts outstanding in respect of Permitted Borrowing, or, in the case of early termination of interest rate hedging arrangements only, as a result of termination of the Lease;
- (iv) all other amounts received by the Senior Lenders on or after the Relevant Termination Date and before the date on which any compensation is payable

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<sup>344</sup> Redaction.

<sup>345</sup> Redaction.

<sup>346</sup> Redaction.

<sup>347</sup> Redaction.

<sup>348</sup> Redaction.

<sup>349</sup> Redaction.

by the Secretary of the State to the Owner as a result of enforcing any other rights they may have; and

- (v) all APB Distributions;

**Revised TMM Inputs** has the meaning given to it in paragraph 2.1 of schedule 5.3 (*Runs of the TMM Financial Model*) of the Umbrella Agreement;

**Revised TSSSA Inputs** has the meaning given to it in paragraph 2.1 of schedule 5.6 (*Runs of the TSSSA Financial Model*) of the Umbrella Agreement;

[●]<sup>350</sup>;

**Revised Unit Rentals** means the revised Unit Rentals that apply following a PT Run, as recalculated in accordance with the Rental Schedule, and the PT Run carried out in accordance with schedule 5.2 (*Runs of the Owner Financial Model*) of the Umbrella Agreement;

**Rolling Stock** means the Units, Vehicles, the Associated Equipment, the Simulators and any other rolling stock, including any part of such rolling stock and any spares and tools supplied with such rolling stock, which is:

- (a) procured or to be procured pursuant to the MSA by the Owner from the TMM; and
- (b) leased to the Operator under a Lease for operation on the Thameslink Network,

and shall not include any other rolling stock or equipment (or supply or service relating to such other rolling stock) leased by the Owner to the Operator, provided that, for the purposes of schedule 3.1 (*Termination Sum Payable on Termination for Owner Default*) of the Umbrella Agreement only, **Rolling Stock** shall include those Units, Vehicles, items of Associated Equipment and Simulators in respect of which, as appropriate, a Provisional Acceptance Certificate or Qualified Provisional Acceptance Certificate, Spares Acceptance Certificate, Special Tools Acceptance Certificate, or Mock-up and Simulators Acceptance Certificate has not been issued;

**Rolling Stock Supply** means any arrangement for the sale, leasing, hiring or other supply of Rolling Stock to the Owner or to the Operator or any arrangement for the supply of maintenance or parts in relation to the Rolling Stock or for the enforcement of warranties relating to the manufacture of Rolling Stock;

**RPI** means the retail prices index for the whole economy of the United Kingdom and for all items (series CHAW) as published from time to time by the Office for National Statistics;

**RSSB** means the Rail Safety and Standards Board Limited (a company limited by guarantee and registered in England and Wales under number 04655675);

**Rule Book** means the rules entitled Master Rule Book (document reference GE/RT 8000 (including all applicable modules as defined in GE/RT 8051)) maintained and issued by RSSB from time to time;

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<sup>350</sup> Redaction.

***Run of the Owner Financial Model*** means an operation of the Owner Financial Model which complies with the applicable requirements of schedule 5.2 (*Runs of the Owner Financial Model*) of the Umbrella Agreement and which is either:

(a) [●]<sup>351</sup>

(b) [●]<sup>352</sup>

as the context requires;

***Run of the TMM Financial Model*** means an operation of the TMM Financial Model with the Revised TMM Inputs and which complies with the requirements of schedule 5.3 (*Runs of the TMM Financial Model*) of the Umbrella Agreement;

***Run of the TSSSA Financial Model*** means an operation of the TSSSA Financial Model with the Revised TSSSA Inputs and which complies with the requirements of schedule 5.6 (*Runs of the TSSSA Financial Model*) of the Umbrella Agreement;

***Safety and Security Plan*** means the Safety and Security Plan specific to the TSA produced by the TMM and attached at schedule 1.3 (*Safety and Security Plan*) of the TSA;

***Safety Regulations*** means The Railways and Other Guided Transport Systems (Safety) Regulations 2006;

***SAG*** means Siemens AG, a company established in Berlin (registration Berlin-Charlottenburg, HRB 12300) and Munich (registration Munich, HRB 6684);

[●]<sup>353</sup>

[●]<sup>354</sup>

[●]<sup>355</sup>

***Scheduled Franchise Expiry Date*** means:

- (a) in respect of the Lease to which the Initial Operator is a Party as at the Effective Date, 2.00 a.m. on 15 September 2013, subject to extension by the Secretary of State in accordance with paragraph 3 of schedule 2.1 (*Section 54 Undertakings*) of the Umbrella Agreement, provided that the latest Scheduled Franchise Expiry Date shall be 31 March 2014; or
- (b) in respect of any Replacement Lease, the date notified to the Owner by the relevant Operator in the Lease Conditions Precedent Certificate that such Operator delivers in accordance with clause 4.2(a) of the Lease upon the commencement of that Replacement Lease;

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<sup>351</sup> Redaction.

<sup>352</sup> Redaction.

<sup>353</sup> Redaction.

<sup>354</sup> Redaction.

<sup>355</sup> Redaction.

***Scheduled Hand Back Time*** means: (i) in relation to any Unit, the time at which that Unit is scheduled to be Handed Back, in accordance with the Hand Back Procedure, prior to the first Entry Time of that Unit following its Hand Back; and (ii) in relation to any Simulator, the time at which that Simulator is scheduled to be Handed Back, in accordance with the Simulator Hand Back Procedure, such time not to be later than the start of Simulator Operational Hours after the Scheduled Hand Over Time for such Simulator;

***Scheduled Hand Over Time*** means: (i) in relation to any Unit, the time at which that Unit is scheduled to be Handed Over, in accordance with the Hand Over Procedure after the last Exit Time of that Unit prior to its Hand Over; and (ii) in relation to any Simulator, the time at which that Simulator is scheduled to be Handed Over, in accordance with the Simulator Hand Over Procedure;

***Scheduled Rental Start Date*** means:

- (a) in relation to any Unit, its Expected Delivery Date;
- (b) in relation to any item of Associated Equipment that is specified in the list agreed in accordance with clause 4.5(a), (b) or (c) of the MSA as being due for delivery on or before the Associated Equipment Rental Start Date, the Associated Equipment Rental Start Date;
- (c) in relation to any other item of Associated Equipment, its Expected Delivery Date; or
- (d) in relation to any Simulator, the Expected Delivery Date of the second Simulator to be Accepted;

***Scheduled TSA Term*** means the period commencing upon the date of the TSA and continuing until [●]<sup>356</sup>;

***Science Reference Library*** means the British Library Science, Technology and Business Collection situated at 96 Euston Road, London NW1 2AJ;

***SECA Definitions*** has the meaning given to it in paragraph 1.4;

[●]<sup>357</sup>

***Second Currency*** means the currency into which the First Currency has to be converted for any one or more of the purposes set out in clauses 10.5(a) to (c) of the Lease inclusive;

[●]<sup>358</sup>

[●]<sup>359</sup>

[●]<sup>360</sup>

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<sup>356</sup> Redaction.

<sup>357</sup> Redaction.

<sup>358</sup> Redaction.

<sup>359</sup> Redaction.

[●]<sup>361</sup>

[●]<sup>362</sup>

[●]<sup>363</sup>

[●]<sup>364</sup>

[●]<sup>365</sup>

**Secretary of State** means the Secretary of State for Transport;

[●]<sup>366</sup>;

[●]<sup>367</sup>;

**Secretary of State Contract** means any Contract to which the Secretary of State or a Secretary of State Nominee is a Party;

**Secretary of State Default** means one of the following events:

- (a) an expropriation, sequestration or requisition of a material part of the Equipment and/or shares of the Owner by the Secretary of State or other Government Authority;
- (b) a breach by the Secretary of State of its obligations under paragraph 1 (*Section 54 Undertaking*) of schedule 2.1 (*Section 54 Undertakings*) of the Umbrella Agreement;
- (c) a breach by the Secretary of State of clause 6.10 of the Umbrella Agreement;
- (d) a failure by the Secretary of State to make payment of any amount of money [●]<sup>368</sup> that is due and payable by the Secretary of State (and which is not the subject of a bona fide Contract Dispute);
- (i) pursuant to clause 14.2 or clause 14.6 of the Umbrella Agreement, in respect of amounts that would have been payable under an Operator Insurance had that insurance continued to be available on the terms and conditions as required under schedule 8 (*Events of Loss and Insurance Requirements*) of the Lease;

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<sup>360</sup> Redaction.

<sup>361</sup> Redaction.

<sup>362</sup> Redaction.

<sup>363</sup> Redaction.

<sup>364</sup> Redaction.

<sup>365</sup> Redaction.

<sup>366</sup> Redaction.

<sup>367</sup> Redaction.

<sup>368</sup> Redaction.

- (ii) pursuant to paragraph 8.1 of schedule 2.1 (*Section 54 Undertakings*) of the Umbrella Agreement, in respect of any outstanding liability of an Existing Operator in excess of the Operator Exposure Limit as at the relevant Operator Succession Date;
- (iii) in respect of the obligations of an Operator during an Operator Default Indemnity Period under the Umbrella Agreement; or
- (iv) in respect of any [●]<sup>369</sup>;
- (v) [●]<sup>370</sup>

within 5 Working Days of service of a formal written demand by the Owner or the TMM, where that amount fell due and payable 5 (or more) Working Days prior to the date of service of the written demand; or

- (e) [●]<sup>371</sup>
- (f) [●]<sup>372</sup>

[●]<sup>373</sup>;

**Secretary of State Nominee** means an entity, firm or company nominated by the Secretary of State to either:

- (a) [●]<sup>374</sup>; or
- (b) assume the Owner's rights and obligations under the Applicable Relevant Contracts and the Applicable Replacement Contracts as a New Owner in accordance with paragraph 2 of schedule 2.8 (*Transfer of Rolling Stock and Contracts upon Termination*) of the Umbrella Agreement;

[●]<sup>375</sup>

**Secretary of State Voluntary Termination Notice** has the meaning given to it in paragraph 1.2 of schedule 13.6 (*Secretary of State Voluntary Termination Rights*) of the TSA;

**Security Interest** means:

- (a) any right of ownership, lien, mortgage, charge, pledge, hypothecation, attachment, security interest, assignment by way of security, right of possession, right of detention, right of set off or other encumbrance;

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<sup>369</sup> Redaction.

<sup>370</sup> Redaction.

<sup>371</sup> Redaction.

<sup>372</sup> Redaction.

<sup>373</sup> Redaction.

<sup>374</sup> Redaction.

<sup>375</sup> Redaction.

- (b) any other preferential arrangement resulting in a secured transaction or having the same economic or legal effect as any of the foregoing;
- (c) any agreement to give any of the foregoing;
- (d) any arrangement to prefer one creditor over another creditor;
- (e) the interest of the vendor or lessor under any conditional sale agreement, lease, hire purchase agreement or other title retention arrangement; or
- (f) any interest described in paragraphs (a) to (e) (inclusive) of this definition over any interest described in paragraphs (a) to (e) (inclusive);

**Security Interest Holder** means any person to whom the Owner has granted an Owner Security Interest;

[•]<sup>376</sup>

**Senior Finance Documents** means the documents listed in limbs (a) to (k) of the definition of Finance Document in the Common Terms Agreement as at the date of this Agreement, or as amended with the prior written approval of the Secretary of State pursuant to paragraph 4.10 of schedule 4.3 (*Secretary of State Authorisation of Variations*) of the Umbrella Agreement;

**Senior Lender** means a Financier providing finance to the Owner, FinCo or an Affiliate of the Owner under the Senior Finance Documents;

[•]<sup>377</sup>

**Senior Representative** means:

- (a) in the case of any Party other than the Secretary of State, the Senior Representative of such Party or the nominee appointed by such Party's Senior Representative for the purposes of the Contract Dispute in question; and
- (b) in the case of the Secretary of State, a senior civil servant at the Department for Transport (or its successor from time to time);

**Service Failure** means a Unit suffers:

- (a) a Relevant Delay Incident; or
- (b) a Cancellation;

**Service Payments** means the payments to be made by the Operator to the TMM and the Owner in respect of the provision of the Standard Services as set out in the Service Payments Schedule of the TSA;

**Service Payments Schedule** means schedule 6 (*Service Payments*) of the TSA;

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<sup>376</sup> Redaction.

<sup>377</sup> Redaction.

***Service Quality Measures*** means a qualitative measure of the TMM's service quality performance specified in column 4 of the Appendix (*SQMs and SQM Scorecard*) to schedule 5.4 (*SQM Regime*) of the TSA;

***Service Standards*** means all Applicable Laws and Standards, the Maintenance Plan, the TSA Quality Plan, the Safety and Security Plan, the Sustainability and Environmental Management Plan and the Manuals;

***Services*** means, as the context requires, the TSA Services and/or the TSSSA Services;

***Servicing and Cleaning Manual*** has the meaning given to it in clause 10.10 of the MSA;

***SFS*** means Siemens Financial Services GmbH;

***Shareholder Contributions*** means, at any time, the aggregate amount of equity or subordinated debt then contributed by the Shareholders to the Owner at such time;

***Shareholder Equity Contribution Agreement*** means the shareholder equity contribution agreement dated on or about the date of this Agreement between, amongst others, the Owner, HoldCo, HoldCo 2, FinCo, the Shareholders and the Intercreditor Agent;

***Siemens Entities*** means SAG, [●]<sup>378</sup> and the TMM;

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[●]<sup>387</sup>

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<sup>378</sup> Redaction.

<sup>379</sup> Redaction.

<sup>380</sup> Redaction.

<sup>381</sup> Redaction.

<sup>382</sup> Redaction.

<sup>383</sup> Redaction.

<sup>384</sup> Redaction.

<sup>385</sup> Redaction.

<sup>386</sup> Redaction.

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**Simulator** means the equipment described in Part 2 of schedule 7.5 (*Simulators*) of the MSA;

**Simulator Acceptance Certificate** means the acceptance certificate issued by the Owner in relation to the Simulators in the form set out in Appendix 10 (*Form of Simulator Acceptance Certificate*) to schedule 6 (*Delivery and Acceptance*) of the MSA;

**Simulator Delivery Documentation** means the simulator conformance certificate issued by the TMM substantially in the form set out in the Appendix (*Form of Simulator Delivery Documentation*) to schedule 7.5 (*Simulators*) of the MSA;

[●]<sup>394</sup>

**Simulator Hand Back Certificate** means the certificate populated by the TMM in accordance with paragraph 6.3 of schedule 2.1 (*Hand Back and Hand Over*) of the TSA in relation to a Simulator and made available to the Operator when that Simulator is Handed Back;

**Simulator Hand Back Procedure** has the meaning given to it in clause 5.15 of the TSA;

**Simulator Hand Back Time** means, in relation to any Simulator, the time at which that Simulator is Handed Back;

**Simulator Hand Over Certificate** means the certificate populated by the Operator in accordance with paragraph 6.7 of schedule 2.1 (*Hand Back and Hand Over*) of the TSA in relation to a Simulator and made available to the TMM when that Simulator is Handed Over;

**Simulator Hand Over Procedure** has the meaning given to it in clause 5.15 of the TSA;

**Simulator Hand Over Time** means, in relation to any Simulator, the time at which that Simulator is Handed Over;

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<sup>387</sup> Redaction.

<sup>388</sup> Redaction.

<sup>389</sup> Redaction.

<sup>390</sup> Redaction.

<sup>391</sup> Redaction.

<sup>392</sup> Redaction.

<sup>393</sup> Redaction.

<sup>394</sup> Redaction.

**Simulator Operational Hours** means 0700 hours to 2000 hours on each day of the week;

**Simulator Software** means the computer programs that comprise part of a Simulator;

**Simulator Specification** means schedule 7.5 (*Simulators*) of the MSA;

**Simulators Agreed Value** means the value set out in paragraph 1 of Appendix 2 (*Agreed Values*) to schedule 8.2 (*Insurance Requirements*) of the Lease;

**Simulators Price** means the price set out in paragraph 2 (*Simulators Price*) of schedule 11 (*Schedule of Prices*) of the MSA;

**Simulators Rental** means for each Rental Payment Date in respect of the Simulators, the amount for that Rental Payment Date set out in schedule 3.9 (*Simulators Rental Amounts*) of the Lease;

**Simulators Term** means in relation to each Simulator, the period commencing on the Delivery Date and ending on the Expiry Date applicable to such Simulator;

**Software Escrow Agreement** means an agreement to be entered into between the Owner, the Operator, the TMM and the Escrow Agent substantially in the form set out in schedule 22 (*Form of Software Escrow Agreement*) of the MSA;

[•]<sup>395</sup>;

**SoS Control Date** has the meaning given to it in paragraph 6.2 of Part 2 (*Lease Owner Termination Events*) of schedule 2.4 (*Early Termination of the Lease*) of the Umbrella Agreement;

[•]<sup>396</sup>

**SoS OPT Project Termination Notice** means a notice issued by the Secretary of State pursuant to paragraph 2.2 of schedule 2.8 (*Transfer of Rolling Stock and Contracts upon Termination*) of the Umbrella Agreement of his election not to implement a New Owner Accession Arrangement in the event of a termination of the Owner's participation in the Project in one of the circumstances set out in paragraph 2.1 of schedule 2.8 of the Umbrella Agreement;

**SoS Purchase Price** means [•]<sup>397</sup>

[•]<sup>398</sup>

**Source Code** means the source code for all MSA Software and, where applicable, the TSA Software, and shall include the source code for each item of such MSA Software and, where applicable, TSA Software;

[•]<sup>399</sup>

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<sup>395</sup> Redaction.

<sup>396</sup> Redaction.

<sup>397</sup> Redaction.

<sup>398</sup> Redaction.

***Spare Parts Catalogue*** means the spare parts catalogue to be supplied by the TMM for each and every system on the Units and the Simulators which shall contain illustrations of the relevant parts and illustrate the relevant system with a line diagram and identify all part numbers, quantity per Unit or Simulator and per system and where sub-contracted parts are used the Sub-Contractor's part number or unique identifier;

***Spares*** means all spare parts of any description including fluids, parts and assemblies, required in connection with the Units supplied or to be supplied by the TMM under the MSA, the TSA or the TSSSA, and includes any Spare which is an Owned Spare, a TMM Owned Spare or Redesigned Part;

***Spares Acceptance Certificate*** means:

- (a) in relation to the Owner Owned Spares, an acceptance certificate issued by the Owner; and
- (b) in relation to the Operator Owned Spares, an acceptance certificate issued by the Operator,

in each case, in the form set out in Appendix 6 (*Form of Spares Acceptance Certificate*) to schedule 6 (*Delivery and Acceptance*) of the MSA;

***Spares Delivery Documentation*** means the spares conformance certificate issued by the TMM substantially in the form set out in the Appendix (*Form of Spares Delivery Documentation*) to schedule 7.2 (*Spares*) of the MSA;

***Special Tools*** means the Maintenance Special Tools and the Operator Special Tools;

***Special Tools Acceptance Certificate*** means an acceptance certificate issued by the Owner in relation to the Special Tools in the form set out in Appendix 7 (*Form of Special Tools Acceptance Certificate*) to schedule 6 (*Delivery and Acceptance*) of the MSA;

***Special Tools Delivery Documentation*** means the special tools conformance certificate issued by the TMM substantially in the form set out in the Appendix (*Form of Special Tools Delivery Documentation*) to schedule 7.1 (*Special Tools*) of the MSA;

***Special Tools Price*** means the aggregate price for all of the Special Tools supplied under the MSA, calculated in accordance with and subject to the limitation in paragraph 1.3 of schedule 7.1 (*Special Tools*) of the MSA;

***Special Tools Rental*** means for each Rental Payment Date in respect of the Special Tools, the amount for that Rental Payment Date set out in schedule 3.7 (*Special Tools Rental Amounts*) of the Lease;

***Special Tools Term*** means in relation to each Special Tool, the period commencing on the Delivery Date and ending on the Expiry Date applicable to such Special Tool;

***Specific Change in Law*** means any Change in Law which relates only to the railway industry, a particular section of the railway industry or the provision of services to the railway industry and not to other transport modes or to industries other than the railway industry;

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<sup>399</sup> Redaction.

**Specification** means the specifications for the Units, Vehicles, Owned Spares, Parts and Special Tools, in each case, comprising:

- (a) the TTS and the Pre-Contract Design Agreement;
- (b) the TIIS;
- (c) any design descriptions produced pursuant to clause 5.17 of the MSA; and
- (d) the TTD,

or such specification, as the context requires, as may be amended from time to time by the Applicable Variation Procedure or by a Permitted Change (MSA);

**SQM Audit** means any audit carried out by the Operator of the TMM's service quality performance by populating a SQM Scorecard in the form set out in the Appendix (*SQMs and SQM Scorecard*) to schedule 5.4 (*SQM Regime*) of the TSA;

**SQM Audit Fault** means the existence of any failure of any of the Service Quality Measures listed in column 4 of the Appendix (*SQMs and SQM Scorecard*) to schedule 5.4 (*SQM Regime*) of the TSA on a Unit or Vehicle, recorded during the carrying out of any SQM Audit, but excluding any Potential SQM/Fault Event that is classified as a Fault pursuant to paragraph 6 of schedule 5.4 (*SQM Regime*) of the TSA;

**SQM Deduction** means a deduction calculated in accordance with paragraph 3.2 of schedule 5.4 (*SQM Regime*) of the TSA that comprises part of an SQM Payment;

**SQM Failure** has the meaning given to it in paragraph 1 (*SQM Failures*) of schedule 5.4 (*SQM Regime*) of the TSA;

**SQM Fault** means an SQM Audit Fault or an SQM Non-Audit Fault;

**SQM Fault Rectification Period** means, as appropriate, the period commencing at the time and on the date:

- (a) the Operator notifies the TMM of any SQM Audit Fault and ending 48 hours after such notification;
- (b) the Operator notifies the TMM of any SQM Non-Audit Fault and ending 48 hours after such notification; or
- (c) the TMM otherwise first becomes aware of any failure of any of the Service Quality Measures listed in column 4 of the Appendix (*SQMs and SQM Scorecard*) to schedule 5.4 (*SQM Regime*) of the TSA and ending 48 hours after such awareness first arose,

provided that, in each case, if the relevant SQM Fault is caused by an Allowable Failure, the period for rectification of such fault shall be the period which the Parties agree (each acting reasonably) is required for the rectification of the relevant matter;

**SQM Non-Audit Fault** means the failure of any of the Service Quality Measures listed in column 4 of the Appendix (*SQMs and SQM Scorecard*) to schedule 5.4 (*SQM Regime*) of the TSA, not recorded during the carrying out of any SQM Audit, but excluding any Potential

**SQM/Fault Event** that is classified as a Fault pursuant to paragraph 6 of schedule 5.4 (*SQM Regime*) of the TSA;

**SQM Payment** means the payment due to the Operator for any Railway Period calculated in accordance with paragraph 3 (*Calculation of SQM Payments*) of schedule 5.4 (*SQM Regime*) of the TSA;

**SQM Regime** means that part of the TSA Performance Regime that relates to the ambiance and functionality of certain aspects of the Units and functioning of on-board equipment, set out in schedule 5.4 (*SQM Regime*) of the TSA and measured against the Service Quality Measures specified in the Appendix (*SQMs and SQM Scorecard*) to that schedule;

**SQM Register** means the register that the TMM shall maintain pursuant to paragraph 7.4 of schedule 5.5 (*TSA Performance Regime General Provisions*) of the TSA;

**SQM Scorecard** means the scorecard, in the form of the scorecard set out in the Appendix (*SQMs and SQM Scorecard*) to schedule 5.4 (*SQM Regime of the TSA*) of the TSA, on which any SQM Fault shall be recorded which is identified during the carrying out of any SQM Audit, or otherwise by the Operator during the course of any Diagram;

**Stabling Point** means, with respect to a Unit, the place on a Diagram where such Unit is to be kept for storage when not in service;

**Standard Services** has the meaning given to it in paragraph 1.2 of schedule 2.3 (*The Standard Services*) of the TSA;

**Steady State Period** means the period occurring on the day after the expiry of the Ramp-up Period and continuing for the remainder of the TSA Term;

**Step-In Date** means the date on which the Security Trustee procures that an Appointed Representative assumes, jointly and severally with the Owner, all of the Owner's rights under the Owner Contracts pursuant to clause 8.2(a)(i) or (ii) of the Lenders' Direct Agreement;

**Step-In Period** means the period from the Step-In Date up to and including the earlier of:

- (a) the Step-Out Date;
- (b) the date of any transfer under clause 12 of the Lenders' Direct Agreement;
- (c) the date of any termination for breach under clause 10 of the Lenders' Direct Agreement; and
- (d) the Backstop Date;

**Step-In Voluntary Termination Window** means, after the Acceptance Anniversary, a Voluntary Termination Window:

- (a) commencing on the date that any Franchise Agreement commences by the issue of a Commencement Certificate (as defined therein) by the Secretary of State during the TSA Term and the rights and obligations expressed to be for the benefit and responsibility respectively of the Operator under the TSA are transferred to an Operator pursuant to clause 6 (*Disposal of this Agreement and the Contracts*) of the Umbrella Agreement; and

- (b) ending on the date occurring 12 months after the date of such commencement and transfer;

**Step-Out Date** means the date falling 30 days after the date of the notice given under clause 11 (*Step-Out*) of the Lenders' Direct Agreement;

**Sterling, Pounds** or £ means the lawful currency for the time being of the United Kingdom;

**Stop Order** means any prohibition issued by a Government Authority prohibiting a person from operating rolling stock vehicles;

**Sub-Contractor** means in the context of:

- (a) the MSA, means any person with whom the TMM has entered into a contract, written or unwritten, for any work to be performed or for the supply of Parts, Spares, Special Tools, Simulators or materials as part of, or in connection with, the performance of the TMM's obligations under the MSA and, unless the context in the MSA requires otherwise, includes an Approved Sub-Contractor (MSA) and a sub-contractor or supplier of any Sub-Contractor;
- (b) the TSA, means any person with whom the TMM has entered into a contract, written or unwritten, for any services (including the maintenance services provided by the TMM pursuant to the TSA) or work to be performed for the supply of Parts, Special Tools, Owner Owned Spares or Simulators or materials as part of, or in connection with, the performance of the TMM's obligations under the TSA and, unless the context in the TSA requires otherwise, includes an Approved Sub-Contractor (TSA) and a sub-contractor or supplier of any such person; and
- (c) the TSSSA has the meaning given to it in the TSSSA;

[●]<sup>400</sup>;

**Subsidiary** means:

- (a) a subsidiary as defined in section 1159 of the Companies Act 2006;
- (b) a subsidiary undertaking as defined in Section 1162 of the Companies Act 2006; and
- (c) any partnership (whether limited or unlimited) more than 50 per cent of whose profits are attributable to the partner which is its Holding Company;

**Successor Operator** means an entity nominated by the Secretary of State to assume the Operator's obligations under each of the Applicable Replacement Contracts and each of the Applicable Relevant Contracts pursuant to an Operator Accession or an Operator Transfer Scheme on the Operator Succession Date and being:

- (a) a franchisee or franchise operator (other than a defaulting Existing Operator), either of which operate railway passenger services pursuant to a Franchise Agreement; or

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<sup>400</sup> Redaction.

- (b) a Public Sector Operator;

**Suitable Substitute Owner** means a person approved by the Secretary of State (such approval not to be unreasonably withheld or delayed) as:

- (a) having the legal capacity, power and authority to become a Party to and perform the obligations of the Owner under the Contracts;
- (b) employing persons having the appropriate qualifications, experience and technical competence and having the resources available to it (including being capable of accessing committed financial resources and sub-contracts) which are sufficient to enable it to perform the obligations of the Owner under the Contracts; and
- (c) being a suitable owner of the Rolling Stock, having regard to their duties under section 4 of the Act;

**Supplier** means the TMM in its capacity as supplier of technical support and spares and special tools services under the TSSSA;

**Supplier Event of Default** has the meaning given to it in the TSSSA;

**Supplier Owned Spares** has the meaning given to it in the TSSSA;

**Supply Losses** comprise such costs, losses, expenses and damages as:

- (a) the Owner and/or the Operator shall each certify (accompanied by reasonably detailed supporting written evidence) that they have each respectively incurred or will reasonably and properly incur as a direct result of a MSA TMM Event of Default or the total [•]<sup>401</sup> termination of the MSA; and
- (b) fall into any one or more of the following categories of direct costs, losses, expenses and damages incurred by the Owner, the Operator and/or the Secretary of State:

[•]<sup>402</sup>

**Sustainability and Environmental Management Plan** means the plan so entitled specific to the TSA and attached at schedule 1.4 (*Sustainability and Environmental Management Plan*) of the TSA;

**Target Date** means, in relation to any Performance Remedial Plan, the last day of any Railway Period nominated by the TMM (or such date as agreed by the TMM and the Operator) in that Performance Remedial Plan by which the MSPA will be equal to or better than the Acceptable Performance Level;

**Target Nominal Equity IRR** means [•]<sup>403</sup>

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<sup>401</sup> Redaction.

<sup>402</sup> Redaction.

<sup>403</sup> Redaction.

**Taxes, Tax and Taxation** means all present and future taxes, charges, imposts, duties or levies of any kind whatsoever, payable at the instance of or imposed by any Government Authority, together with any penalties, additions, fines, surcharges or interest, if and to the extent that any of the said penalties, additions, fines, surcharges or interest arises as a consequence of the act or omission of the Party who indemnifies another Party under the Contract in respect of the Tax to which such penalty, addition, fine, surcharge or interest relates;

**Tax Loan** means any Non-qualifying Tax Loan or Qualifying Tax Loan advanced by the Secretary of State under a Tax Loan Facility;

**Tax Loan Facility** has the meaning given to it in paragraph 6.15(a) of schedule 2.1 (*Section 54 Undertakings*) of the Umbrella Agreement;

**Technical Library** has the meaning given to it in clause 10.6(a) of the MSA;

**Technical Records** means:

- (a) the Manuals;
- (b) the Maintenance Plan;
- (c) the Maintenance Records (TSA);
- (d) TMM's work records for each Unit in relation to work performed at a Designated Depot, Outstation or elsewhere;
- (e) information relating to Units or Simulators in respect of which warranty work has been carried out by the TMM or its Sub-Contractors, or, in respect of Units or Simulators in relation to which the Operator has self-performed or used a Third Party Maintainer to carry out warranty work, such work records as have been delivered to the TMM in relation to such work;
- (f) technical records relating to any incident which is reportable in accordance with any requirements issued from time to time by any Government Authority or Network Rail;
- (g) any other records that the Owner and the TMM from time to time agree (both acting reasonably) shall be classed as Technical Records;
- (h) any other records that relate to work undertaken by third Parties at the request of the TMM;
- (i) variations to new issues of the Manuals;
- (j) any data called for under the relevant parts of the TSA or in any of the above paragraphs;
- (k) the records of any Modifications carried out by the TMM or its Sub-Contractors or, in respect of Units in respect of which the Operator has used a Third Party Maintainer to carry out Modification, such records in relation to such Modification as are provided by the relevant Third Party Maintainer; and
- (l) object code of any TSA Software.

**Technical Records Database** means the rolling stock database systems known as DRUID, EQUINOX and CORMAP or such substitute system as the TMM, the Owner and the Operator may from time to time agree in writing;

**Technical Resource Materials** means all:

- (a) design documents relating to the Units, the Vehicles, the Spares, any Parts, the Special Tools, the Mock-up, the Simulators, and/or any Test Equipment;
- (b) design calculations (including the Models);
- (c) Manufacturing Documents;
- (d) CAD Materials;
- (e) register of Manufacturing Tooling;
- (f) configuration control records;
- (g) basic design parameters; and
- (h) any documentation prepared by the TMM or any of its Sub-Contractors and submitted to obtain any Relevant Approval;

**Technical Schedules** means:

- (a) schedule 1 (*The Specification*) of the MSA;
- (b) schedule 2 (*Design*) of the MSA;
- (c) schedule 3 (*Approvals*) of the MSA;
- (d) schedule 4 (*Testing*) of the MSA; and
- (e) schedule 5 (*Quality Plan*) of the MSA;

**Technical Validation** has the meaning given to it in paragraph 5.1(c) of schedule 23 (*Design Authority*) to the MSA;

**Tender Costs** means any reasonable and proper costs incurred in carrying out the Tender Process and/or in connection with any calculation of the Estimated Fair Value of the Rolling Stock;

**Tender Process** means the process by which the Secretary of State, pursuant to paragraph 2.2 (*Retendering Procedure*) of schedule 3.1 (*Termination Sum Payable on Termination for Owner Default*) of the Umbrella Agreement:

- (a) requests tenders from any Parties interested in entering into replacement Contracts and acceding to the terms of the Umbrella Agreement; and
- (b) evaluates the responses from those interested Parties in relation to the entry into of replacement Contracts and the accession to the terms of the Umbrella Agreement in accordance with paragraph 2 (*Retendering Procedure*) of

schedule 3.1 (*Termination Sum Payable for Termination for Owner Default*) of the Umbrella Agreement;

***Tender Process Monitor*** means a third party appointed by the Owner under paragraph 2.8 schedule 3.1 (*Termination Sum Payable on Termination for Owner Default*) of the Umbrella Agreement;

***Term*** has the meaning given to it in section 70YF CAA 2001 as at the date of this Agreement, and for the avoidance of doubt, shall include any subsequent periods which meet the conditions in section 70YF(2) CAA 2001 as at the date of this Agreement;

***Term Loan Duration Fee Amount*** has the meaning given to it in clause 18.5 of the Umbrella Agreement;

***Term Loan Facility Agreement*** means the document so titled entered into on or about the date of this Agreement between, inter alia, the Owner, the Intercreditor Agent, the Security Trustee and the Senior Lenders (other than European Investment Bank);

***Term Loan Facility Agreement Definitions*** has the meaning given to it in paragraph 1.10;

[●]<sup>404</sup>

***Termination Performance Level*** means [●]<sup>405</sup>

***Termination Sum*** means any compensation payable by the Secretary of State to the Owner and/or the TMM on an early termination of the Contracts under schedule 2.6 (*Termination of Contracts for Force Majeure*), schedule 2.7 (*Voluntary termination of Contracts by the Secretary of State*) or paragraph 1 (*Determination and payment of Lease termination sum*) of schedule 3.1 (*Termination Sum Payable on Termination for Owner Default*) of the Umbrella Agreement;

***Termination Step*** has the meaning given to that term in clause 8.1A of the Lenders' Direct Agreement;

***Test Equipment*** means the equipment developed to test the dimensions, functionality and input and output parameters of the Units and the equipment fitted thereto;

***Testing Period*** has the meaning given to it in clause 8.11(a) of the MSA or such longer period as calculated in accordance with clause 8.14 of the MSA;

***Testing Track Access Agreement*** means the track access agreement that may be entered into between the Initial Operator and Network Rail pursuant to clause 8.10(a) of the MSA in respect of testing of the Units on the Network;

***Testing Units*** has the meaning given to it in clause 8.11 of the MSA;

***TFR*** has the meaning given to it in schedule 2.1 (Design Review Process) of the MSA;

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<sup>404</sup> Redaction.

<sup>405</sup> Redaction.

**Thameslink Core** means the section of the Thameslink Network between the new Canal Tunnels Junction and Blackfriars Junction including St Pancras, Farringdon, City Thameslink and Blackfriars stations;

**Thameslink Network** means the routes set out in Annex B (*List of Routes*) to the TIIS;

**Third Party Maintainer** means any person, other than the TMM, carrying out Maintenance and Repairs or Modifications on the Vehicles, the Units, the Owned Spares, the Spares, the Special Tools and/or the Simulators, as approved by the Owner and the Operator;

**Threshold Equity IRR** means [●]<sup>406</sup>;

**TIIS** means the Train Infrastructure Interface Specification set out in schedule 1.2 (*Train Infrastructure Interface Specification*) of the MSA;

**TMM Associated Equipment Insurance** has the meaning given to it in paragraph 1.1(a) of Part 1 (*Insurance Requirements*) of schedule 10.4 (*Spares and Special Tools Insurance*) of the TSA;

**TMM Base Case DB** has the meaning given to it in the definition of Data Book;

[●]<sup>407</sup>;

[●]<sup>408</sup>

**TMM Default Remediation Notice** has the meaning given to it in paragraph 3.1 of schedule 13.1 (*TMM Events of Default*) of the TSA;

**TMM Default Remediation Plan** has the meaning given to it in paragraph 3.1(b) of schedule 13.1 (*TMM Events of Default*) of the TSA;

[●]<sup>409</sup>;

[●]<sup>410</sup>;

[●]<sup>411</sup>;

[●]<sup>412</sup>;

**TMM Equipment Price Restatement Trigger Event** means:

- (a) the execution of a Contract Amendment Agreement or a new Contract (not in force on the date of this Agreement), in each case, executed pursuant to an

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<sup>406</sup> Redaction.

<sup>407</sup> Redaction.

<sup>408</sup> Redaction.

<sup>409</sup> Redaction.

<sup>410</sup> Redaction.

<sup>411</sup> Redaction.

<sup>412</sup> Redaction.

Authorisation to Vary which, in each case, amends the terms of the Umbrella Agreement and/or any other Contract and requires a restatement of any Equipment Price under schedule 5.1 (*Changes in Equipment Prices*) of the Umbrella Agreement, including a Contract Amendment Agreement or new Contract in respect of a Required Variation made pursuant to paragraph 2 (*Agreement or Determination of Required Variations*) of schedule 4.5 (*Change in Law*) of the Umbrella Agreement due to the occurrence of a Qualifying Change in Law;

- (b) an increase any of the Owner Liquidated Damages Rates as a result of a Run of the Owner Financial Model that occurs before the Acceptance of the Last Unit and upon the occurrence of an event specified as requiring a Run of the Owner Financial Model in schedule 6 (*Refinancing*) of the Umbrella Agreement; or
- (c) any other event specified in the Umbrella Agreement or other Contract that expressly requires a restatement of any Equipment Price under schedule 5.1 of the Umbrella Agreement,

but in each case, [●]<sup>413</sup>;

**TMM Escrow Documents** means the TMM Financial Model and the Data Book containing the Record of TMM Assumptions (each such copy in electronic format on CD-ROM and in hard format);

**TMM Financial Model** means the TMM's financial model setting out the Service Payments and Periodic Maintenance Charges payable under the TSA and costs incurred by the TMM in performing the Standard Services under the TSA, as identified as such and Placed in Escrow in accordance with schedule 5.5 (*Identity of the TMM Financial Model*) of the Umbrella Agreement and as updated from time to time pursuant to and in accordance with schedule 5.3 (*Runs of the TMM Financial Model*) of the Umbrella Agreement;

**TMM Financial Model Trigger Event** means:

- (a) the execution of a Contract Amendment Agreement or a new Contract (not in force on the date of this Agreement), in each case, executed pursuant to an Authorisation to Vary which, in each case, amends the terms of the Umbrella Agreement and/or any other Contract and, in each case, requires a restatement of the Service Payments, Additional Services Payments and/or the amounts of deposits into and withdrawals from the Balancing Payments Account, in each case under schedule 5.3 (*Runs of the TMM Financial Model*) of the Umbrella Agreement, including a Contract Amendment Agreement or new Contract in respect of a Required Variation made pursuant to paragraph 2 (*Agreement or Determination of Required Variations*) of schedule 4.5 (*Change in Law*) of the Umbrella Agreement due to the occurrence of a Qualifying Change in Law;
- (b) [●]<sup>414</sup>;
- (c) [●]<sup>415</sup>;

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<sup>413</sup> Redaction.

<sup>414</sup> Redaction.

- (d) [●]<sup>416</sup>;
- (e) [●]<sup>417</sup>
- (f) [●]<sup>418</sup>;
- (g) the TMM exercising its right to require a Run of the TMM Financial Model upon the occurrence of an event specified in paragraph 2.8 of schedule 6.2 (*Ramp-up Period Service Payments*) of the TSA or paragraph 2.8 of schedule 6.3 (*Steady State Period Service Payments*) of the TSA;
- (h) subject to paragraph 7.2 of schedule 6.3 of the TSA, [●]<sup>419</sup> have suffered an Event of Loss since either (i) the commencement of TSA Services under the TSA, or subsequently (ii) the last Run of the TMM Financial Model for such reason; or
- (i) [●]<sup>420</sup>

***TMM Insolvency Default*** means an MSA TMM Event of Default under paragraph 1.1(a) of schedule 19.1 (*TMM Events of Default*) of the MSA;

[●]<sup>421</sup>;

[●]<sup>422</sup>;

[●]<sup>423</sup>

[●]<sup>424</sup>

***TMM Liability Insurance*** has the meaning given to it in paragraph 1.1(b) of Part 1 (*Insurance Requirements*) of schedule 10.4 (*Spare and Special Tools Insurance*) of the TSA;

***TMM Maintenance Team*** has the meaning given to it in clause 2.2(c) of the TSA;

[●]<sup>425</sup>

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<sup>415</sup> Redaction.

<sup>416</sup> Redaction.

<sup>417</sup> Redaction.

<sup>418</sup> Redaction.

<sup>419</sup> Redaction.

<sup>420</sup> Redaction.

<sup>421</sup> Redaction.

<sup>422</sup> Redaction.

<sup>423</sup> Redaction.

<sup>424</sup> Redaction.

<sup>425</sup> Redaction.

**TMM MSA Clause 25.4(b) Claims** means claims made by or available to the Owner for the matters specified in clause 25.4(b) of the MSA;

**TMM MSA Insurances** has the meaning given to it in clause 24.4 of the MSA;

[●]<sup>426</sup>

**TMM Non-Insolvency Default** means an MSA TMM Event of Default other than a TMM Insolvency Default;

**TMM Owned Spares** means those additional Spares procured by the TMM in accordance with clause 10 (*Spares*) of the TSA;

**TMM Owned Special Tools** means those additional special tools procured by the TMM in accordance with clause 11 (*Special Tools*) of the TSA;

**TMM Payment** means, in relation to any Railway Period, that part of the Service Payment for that Railway Period that is calculated in accordance with paragraph 1.3 of schedule 6.1 (*Service Payments*) of the TSA;

[●]<sup>427</sup>

[●]<sup>428</sup>

**TMM Substitution Date** has the meaning given to it in paragraph 1.2 of schedule 1.3 (*Deed of TMM Accession*) of the Umbrella Agreement;

[●]<sup>429</sup>

**TMM TSA Insurances** has the meaning given to it in paragraph 1.1 of Part 1 (*Insurance Requirements*) of schedule 10.4 (*Spares and Special Tools Insurance*) of the TSA;

**TMM Used Areas** has the meaning given to it in clause 12.14 of the TSA;

**TMM's Contract Manager** has the meaning given to it in paragraph 3.1 of schedule 9 (*Contract Management*) of the TSA;

**TMM's Group** means the TMM and its ultimate Holding Company (if any) from time to time, any company which is, from time to time, a Subsidiary of that Holding Company, and any company which is, from time to time, a Subsidiary of the TMM;

[●]<sup>430</sup>

**Total Contract Price** means the aggregate of the Contract Price of the Initial Units;

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<sup>426</sup> Redaction.

<sup>427</sup> Redaction.

<sup>428</sup> Redaction.

<sup>429</sup> Redaction.

<sup>430</sup> Redaction.

**Total Loss** means the actual, agreed, constructive, arranged or compromised total loss or destruction of any Unit, Vehicle, Owned Spare, Special Tool, Mock-up or Simulator or any damage to any Unit, Vehicle, Owned Spare, Special Tool, Mock-up or Simulator rendering repair of such Unit impractical or uneconomic, or such Unit, Vehicle, Owned Spare, Special Tool, Mock-up or Simulator, as the case may be, being rendered permanently unfit for its intended and normal use;

**Track Access Agreement** means the track access agreement entered into or to be entered into between Network Rail and the Operator in relation to the Thameslink Network;

**Train Assets** means:

- (a) all Units (including any Vehicle forming part of any Unit);
- (b) all Owner Owned Spares;
- (c) all Special Tools;
- (d) the Simulators;
- (e) the Balancing Payments Account;
- (f) the Joint Insurance Account; and
- (g) [●]<sup>431</sup>

**Train Crew Manuals** has the meaning given to it in clause 10.10 of the MSA;

**Train Management System** means the SIBAS Profinet control systems, including servers, switches and I/O interface modules;

**Train Operator** means any of:

- (a) a franchisee or franchise operator either of which operate railway passenger services pursuant to a franchise agreement; or
- (b) a Public Sector Operator;

**Train Plan** means the train plan to be produced by the Operator in accordance with the Train Plan Parameters and clauses 5.1 to 5.7 inclusive of the TSA, specifying the Diagrams that the Operator intends to operate during the tenure of that Train Plan;

**Train Plan Parameters** means the parameters set out in schedule 1.1 (*Train Plan and Train Plan Parameters*) of the TSA;

**Train Services Agreement** or **TSA** means the train services agreement dated on or about the date of this Agreement entered into between the TMM, the Initial Operator and the Owner;

[●]<sup>432</sup>

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<sup>431</sup> Redaction.

<sup>432</sup> Redaction.

**Transaction Documents** means the Umbrella Agreement, the MSA, the TSA, the Lease, the TSSSA, any documentation to be entered into by any of the Parties in relation to the Designated Depots and all of the notices, consents, certificates and other documents and agreements to which the TMM, the Owner and the Operator are a Party to be issued pursuant to or in connection with the Umbrella Agreement, the MSA, the TSA, the Lease, the TSSSA and any documentation to be entered into by any of the Parties in relation to the Designated Depots but in each case excluding:

- (a) the Senior Finance Documents (other than the Lenders' Direct Agreement);
- (b) any documents entered into by the Depot SPC and no other of the Parties to this Agreement in relation to the financing of the Designated Depots; and
- (c) the Subordinated Financing Agreements;

**Transfer Documents** has the meaning given to it in the Asset Transfer Agreement;

**Transfer Scheme** means a transfer scheme pursuant to section 12 and schedule 2 of the Railways Act 2005;

**Transfer Scheme Certificate** means a certificate in the form contained in schedule 1.5 (*Transfer Scheme Certificate*) of the Umbrella Agreement, as amended and approved in accordance with the provisions of paragraph 2 (*Process*) of schedule 2.1 (*Section 54 Undertaking*) of the Umbrella Agreement;

**TRUST** means Network Rail's data handling system which is used to record train delays in service;

**TSA Bond** means the bond provided to the Operator in relation to the TMM's obligations under the TSA in the form set out in schedule 15 (*Form of TSA Bond*) of the TSA;

**TSA Fault** means, in relation to any Vehicle, Unit, Part or any item of Associated Equipment, any Simulator or any Operator Owned Spare, that it:

- (a) does not comply with the details of the Applicable Specification;
- (b) is not Fit for Purpose (TSA); or
- (c) does not comply with the Maintenance Plan or the Maintenance Manual,

in each case whether in consequence of faulty design, faulty materials, bad workmanship, negligence of the TMM or its employees, Sub-Contractors or suppliers or the employees of any of them, or for any other reason attributable to the TMM or its employees, Sub-Contractors or suppliers or the employees or any of them arising out of the performance or non performance of the TMM's obligations under the TSA, but excluding any SQM Fault that is not within any of paragraphs (a) to (c), but not to the extent that such TSA Fault could be an MSA Fault within the relevant Warranty Period (MSA);

**TSA FM Consultation Period** has the meaning given to it in paragraph 7.1 of schedule 2.6 (*Termination of Contracts for Force Majeure*) of the Umbrella Agreement;

[●]<sup>433</sup>

**TSA Operator Event of Default** means any of the events of default set out in paragraph 1 (*Events*) of schedule 13.2 (*Operator Events of Default*) of the TSA;

**TSA Operator Termination Notice** shall have the meaning given to it in paragraph 3 (*Termination*) of schedule 13.2 (*Operator Events of Default*) of the TSA;

**TSA Owner Event of Default** means the event of default set out in paragraph 1 (*Event*) of schedule 13.3 (*Owner Event of Default*) of the TSA;

**TSA Owner Termination Notice** has the meaning given to it in paragraph 3 (*Termination*) of schedule 13.3 (*Owner Events of Default*) of the TSA;

**TSA Performance Regime** means the performance regime set out in schedule 5 (*Performance Regime*) of the TSA;

**TSA Performance Termination Event Notice** has the meaning given to it in paragraph 1 (*Operator Right to Terminate*) of schedule 13.4 (*Performance Termination Event*) of the TSA;

**TSA Quality Plan** means the quality plan specific to the TSA produced by the TMM and attached at schedule 1.2 (*TSA Quality Plan*) of the TSA;

[●]<sup>434</sup>

[●]<sup>435</sup>

**TSA Services** means the services, work and activities set out in schedule 2 (*Services*) of the TSA to be carried out, subject to the terms of the TSA, by the TMM in relation to the Units, the Vehicles, the Associated Equipment, the Simulators and the Operator Owned Spares;

**TSA Software** means all computer programs used to maintain or diagnose problems on or perform the TSA Services in respect of Units, Vehicles, Parts, Spares or Special Tools, specifically produced by the TMM, any member of the TMM's Group or any Sub-Contractor for the TSA or which is proprietary to the TMM or to a member of the TMM's Group or to a Sub-Contractor and without which a replacement maintainer of the Units would be unable to perform services equivalent to the TSA Services, but in any event excluding the software comprising the Technical Records Database;

**TSA Term** means the period commencing upon the date of the TSA and ending on the last day of the Scheduled TSA Term, as may be extended by written agreement between the Parties, subject to earlier termination of the TSA or part thereof pursuant to clause 24 (*Force Majeure Events*), clause 37.5, schedule 13.1 (*TMM Events of Default*), schedule 13.2 (*Operator Events of Default*), schedule 13.4 (*Performance Termination Event*), schedule 13.5 (*Voluntary Termination Right*) or schedule 13.6 (*Secretary of State Voluntary Termination Rights*), in each case of the TSA;

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<sup>433</sup> Redaction.

<sup>434</sup> Redaction.

<sup>435</sup> Redaction.

**TSA Termination Notice** means any of:

- (a) a TSA TMM Termination Notice;
- (b) a TSA Operator Termination Notice;
- (c) a TSA Performance Termination Event Notice;
- (d) an Operator TSA Voluntary Termination Notice; and
- (e) a Secretary of State Voluntary Termination Notice;

**TSA Termination Reference Period** has the meaning given to it in paragraph 2.3 of schedule 3.2 (*Termination Sum payable on Force Majeure Termination*) of the Umbrella Agreement;

**TSA TMM Event of Default** means any of the events set out in paragraph 1 (*Events*) of schedule 13.1 (*TMM Events of Default*) of the TSA;

**TSA TMM Termination Notice** shall have the meaning given to it in paragraph 4.1 of schedule 13.1 (*TMM Events of Default*) of the TSA;

**TSI** has the meaning given to it in schedule 1.4 (*Relevant Standards*) of the MSA;

**TSSSA** means the technical support and spares supply agreement dated on or about the date of this Agreement between TMM (as Supplier), the Initial Operator and the Owner;

**TSSSA Commencement Date** means the date from which the Supplier is required to provide the TSSSA Services, which shall be, where a TSSSA Requirement Notice is served by the Operator pursuant to clause 26.2 of the TSA, the date on which the TSA terminates in accordance with its terms;

**TSSSA Escrow Documents** means the TSSSA Financial Model and the Data Book containing the Record of TSSSA Assumptions (each such copy in electronic format on CD-ROM and in hard format);

**TSSSA Financial Model** means the Supplier's financial model setting out the Service Payments and Periodic Maintenance Charges payable under the TSSSA and costs incurred by the TMM (in its role as Supplier) in performing the Standard Services under the TSSSA, as identified as such and Placed in Escrow in accordance with schedule 5.7 (*Identity of the TSSSA Financial Model*) of the Umbrella Agreement and as updated from time to time pursuant to and in accordance with schedule 5.6 (*Runs of the TSSSA Financial Model*) of the Umbrella Agreement;

**TSSSA Financial Model Trigger Event** means:

- (a) the execution of a Contract Amendment Agreement or a new Contract (not in force on the date of this Agreement), in each case, executed pursuant to an Authorisation to Vary which, in each case, amends the terms of the Umbrella Agreement and/or any other Contract and, in each case, requires a restatement of the Service Payments or Additional Services Payments under the TSSSA and/or the amounts of deposits into and withdrawals from the Balancing Payments Account, in each case under schedule 5.6 (*Runs of the TSSSA Financial Model*) of the Umbrella Agreement, including a Contract Amendment Agreement or new Contract in respect of a Required Variation

made pursuant to paragraph 2 (*Agreement or Determination of Required Variations*) of schedule 4.5 (*Change in Law*) of the Umbrella Agreement due to the occurrence of a Qualifying Change in Law;

- (b) any Run of the TMM Financial Model in accordance with schedule 5.3 (*Runs of the TMM Financial Model*) of the Umbrella Agreement;
- (c) the TMM (in its role as Supplier) exercising its right to require a Run of the TMM Financial Model upon the occurrence of an event specified in paragraph 2.8 of schedule 6.2 (*Base TSSSA Service Payments*) of the TSSSA; or
- (d) subject to paragraph 7.3 of schedule 6.2 of the TSSSA, three or more Units have suffered an Event of Loss since either (i) the commencement of TSA Services under the TSA, or subsequently (ii) the last Run of the TMM Financial Model for such reason;

***TSSSA Operator Event of Default*** has the meaning ascribed to it in paragraph 1 of schedule 12.2 of the TSSSA;

***TSSSA Operator Termination Notice*** has the meaning ascribed to it in paragraph 3 of schedule 12.2 of the TSSSA;

***TSSSA Operator Voluntary Termination Notice*** means a notice to be provided in accordance with paragraph 2.3 of schedule 12.4 of the TSSSA;

***TSSSA Owner Event of Default*** has the meaning ascribed to it in the TSSSA;

***TSSSA Performance Regime*** means the performance regime set out in schedule 5 of the TSSSA;

***TSSSA Requirement Notice*** has the meaning given to it in clause 26.2 of the TSA;

***TSSSA Services*** has the meaning given to it in the TSSSA;

***TSSSA Supplier Event of Default*** means a Supplier Event of Default as defined in the TSSSA;

***TSSSA Term*** has the meaning given to it in the TSSSA;

***TTD*** means the technical description set out in schedule 1.3 (*Train Technical Description*) of the MSA;

***TTS*** means the specification set out in schedule 1.1 (*Train Technical Specification*) of the MSA and comprising part of the Specification;

***TUPE*** means The Transfer of Undertakings (Protection of Employment) Regulations 2006 as may be amended or replaced from time to time;

***Turnaround*** means the period specified in the Train Plan between the completion by a Unit of a Diagram Leg and the commencement of that Unit's next Diagram Leg;

***Type 1 Rental*** means, for each Rental Payment Date in respect of the Type 1 Units comprising the Fleet, the aggregate amount of Type 1 Unit Rentals for that Rental Payment

Date calculated in accordance with paragraph 2 (*Type 1 Unit Rental*) of schedule 3.2 (*Fleet Rental*) of the Lease;

**Type 1 Unit** means the nominal 240 metres formation of outer suburban, dual voltage, electric trains;

**Type 1 Unit Rental** means the monthly rental payable for a Type 1 Unit, as specified in paragraph 1 (*Type 1 Units*) of schedule 3.3 (*Unit Type Rental Amounts*) of the Lease;

**Type 1 Unit Service Payment** means that part of a Service Payment that relates to Type 1 Units and is calculated in accordance with (as appropriate):

- (a) paragraph 3.1 of schedule 6.2 (*Ramp-up Period Service Payments*) of the TSA during the Ramp-up Period; and
- (b) paragraph 3.1 of schedule 6.3 (*Steady State Period Service Payments*) of the TSA during the Steady State Period;

**Type 2 Rental** means, for each Rental Payment Date in respect of the Type 2 Units comprising the Fleet, the aggregate amount of Type 2 Unit Rentals for that Rental Payment Date calculated in accordance with paragraph 3 (*Type 2 Unit Rental*) of schedule 3.2 (*Fleet Rental*) of the Lease;

**Type 2 Unit** means the nominal 160 metres formation of outer suburban, dual voltage, electric trains;

**Type 2 Unit Rental** means the monthly rental payable for a Type 2 Unit, as specified in paragraph 2 (*Type 2 Units*) of schedule 3.3 (*Unit Type Rental Amounts*) of the Lease;

**Type 2 Unit Service Payment** means that part of a Service Payment that relates to Type 2 Units and is calculated in accordance with (as appropriate):

- (a) paragraph 3.2 of schedule 6.2 (*Ramp-up Period Service Payments*) of the TSA during the Ramp-up Period; and
- (b) paragraph 3.2 of schedule 6.3 (*Steady State Period Service Payments*) of the TSA during the Steady State Period;

**UA Variation Procedure** means the procedure for varying this Agreement and/or the other Contracts, set out in schedule 4 (*Variations and Changes in Law*) of the Umbrella Agreement;

**Umbrella Agreement** the umbrella agreement entitled “Thameslink Umbrella Agreement” dated on or about the date of this Agreement between the Secretary of State, the Owner, the Operator and the TMM;

**Unacceptable Performance Level** means [●]<sup>436</sup>

**Unauthorised Contract** means a Contract Amendment Agreement which has not been authorised by the Secretary of State in accordance with paragraph 3.2 of schedule 4.3 (*Secretary of State Authorisation of Variations*) of the Umbrella Agreement;

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<sup>436</sup> Redaction.

**Unavailable** has the meaning given to it in paragraph 1.2 of schedule 5.1 (*Availability Regime*) of the TSA;

**Uninsurable Risk** means, in relation to any risk or part of any risk (including a level of coverage specified in schedule 8.2 (*Insurance Requirements*)) of the Lease covered by the insurances referred to in schedule 8.2 of the Lease, and the other required terms of those insurances, that:

- (a) the requisite insurance or required term is not available to the Operator in respect of the Units or the Simulator(s) within the worldwide insurance market from insurers of good financial standing and reputation in respect of that risk;
- (b) (in respect of risks) the insurance premium payable for insuring that risk is at such a level that the risk is not generally being insured against in the worldwide insurance market with insurers of good financial standing and reputation in respect of that risk, by companies operating similar businesses to the Operator in the United Kingdom; or
- (c) (in respect of required terms) the insurance premium payable for insurance incorporating such term is at such a level that the term is not generally being incorporated in insurance procured in the worldwide insurance market with insurers of good financial standing and reputation in respect of that risk, by companies operating similar businesses to the Operator in the United Kingdom;

**Uninsured Force Majeure Events** means any of the matters described in paragraphs (a), (b), (d) or (e) of the definition of Force Majeure Event in this Agreement;

**Unit** means:

- (a) any Type 1 Unit or Type 2 Unit comprising the Initial Units; or
- (b) if and to the extent the Owner or the Operator exercises a Priced Option and the Parties agree in accordance with the Applicable Variation Procedure that the relevant Optional Units should be the subject of the Contracts, any Optional Unit that is the subject of that Priced Option,

but in each case excluding any Unit which suffers an Event of Loss;

**Unit Design Life** has the meaning given to it in paragraph 4.1 of schedule 14 (*Design Life, Warranties and MSA Fault Rectification*) of the MSA;

**Unit Failure** has the meaning given to it in paragraph 6.1 of schedule 2.3 (*The Standard Services*) of the TSA;

**Unit Preparation Period** means, in relation to any Unit, the period in which the Operator carries out the train preparation procedures specified in the Driver's Manual for that Unit, commencing at the Scheduled Hand Back Time and ending at the first Entry Time, in each case of that Unit, following its Hand Back;

**Unit Record Book** means the electronic files for each Vehicle forming part of a Unit that record the configuration, modification, open item list, test and commissioning results, quality milestone and maintenance status of such Vehicle;

**Unit Rental** means the Type 1 Unit Rental or the Type 2 Unit Rental, as the case may be;

**Unit Term** means, in relation to each Unit, the period commencing on the Delivery Date and ending on the Expiry Date applicable to such Unit (and there shall be no extension to such period);

**Unit Type** means any of the Type 1 Units or the Type 2 Units;

[●]<sup>437</sup>

[●]<sup>438</sup>;

[●]<sup>439</sup>;

[●]<sup>440</sup>;

[●]<sup>441</sup>;

[●]<sup>442</sup>

[●]<sup>443</sup>;

[●]<sup>444</sup>;

[●]<sup>445</sup>;

[●]<sup>446</sup>;

[●]<sup>447</sup>;

**Useful Life of the Units** means the period of [●]<sup>448</sup> from the applicable Acceptance Date;

**Utilities Contracts Regulations** means the Utilities Contracts Regulations 2006 (SI 2006/6) as amended by the Utilities Contracts Regulations 2009 (SI 2009/3100) and as further amended from time to time;

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<sup>437</sup> Redaction.

<sup>438</sup> Redaction.

<sup>439</sup> Redaction.

<sup>440</sup> Redaction.

<sup>441</sup> Redaction.

<sup>442</sup> Redaction.

<sup>443</sup> Redaction.

<sup>444</sup> Redaction.

<sup>445</sup> Redaction.

<sup>446</sup> Redaction.

<sup>447</sup> Redaction.

<sup>448</sup> Redaction.

**Value Added Tax** or **VAT** means value added tax as provided for in the Value Added Tax Act 1994 and legislation (whether delegated or otherwise) supplemental thereto, or in any primary or secondary legislation promulgated by the European Union or any official body or agency of the European Union, and any similar sales, consumption or turnover tax replacing or introduced in addition to the foregoing;

**Variation** means a variation to the terms of any Contract in accordance with the Applicable Variation Procedure;

**Variation Proposal** means a written proposal made by any Party to amend any Contract and/or enter into any new Contract in accordance with:

- (a) prior to the expiry or termination of the Umbrella Agreement, schedule 4.2 (*Variation Proposals*) of the Umbrella Agreement; or
- (b) after the expiry or termination of the Umbrella Agreement, schedule 5.2 (*Variation Proposals*) of the Maintenance Direct Agreement;

**Variations Dispute** means a dispute between any Parties to the Umbrella Agreement (or, after expiry or termination of the Umbrella Agreement, the Maintenance Direct Agreement) as to any matters under the Applicable Variation Procedure;

**VAT Payment** has the meaning given to it in paragraph 14.1 of schedule 6.6 (*Balancing Payments Account*) of the TSA;

**Vehicle** means any of the individual vehicles which forms part of a Unit, or other vehicles to be leased under the Lease (including, if and to the extent any relevant Priced Option is exercised and the Parties agree in accordance with the Applicable Variation Procedure that the relevant Optional Vehicles should be the subject of the Contracts, the Optional Vehicles that are the subject of that Priced Option) and where the context permits, shall include Parts relating to those individual vehicles and Technical Records (where such Technical Records have been supplied by the TMM under the TSA);

**Voluntary Termination Window** means the period during which the Operator may terminate the TSA pursuant to paragraph 2.1 or 4.1 of schedule 13.5 (*Voluntary Termination Right*) of the TSA;

**Warranty Period (MSA)** means:

- (a) with respect to each Unit or Vehicle, the period commencing on Acceptance of that Unit or the Unit of which that Vehicle forms part, and expiring [●]<sup>449</sup> after the date of Acceptance of, as appropriate, that Unit or the Unit of which that Vehicle forms part;
- (b) with respect to each Part, the period commencing on Acceptance of the Unit upon which such Part is installed and expiring [●]<sup>450</sup> after the date of Acceptance of the Unit upon which that Part is installed;

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<sup>449</sup> Redaction.

<sup>450</sup> Redaction.

- (c) with respect to each Owned Spare, the period commencing on Acceptance of that Owned Spare and expiring [●]<sup>451</sup> after the date on which such Owned Spare is Accepted;
- (d) with respect to each Special Tool, the period commencing on Acceptance of that Owned Spare and expiring [●]<sup>452</sup> after the date on which such Special Tool is Accepted;
- (e) with respect to each Simulator, the period commencing on Acceptance of that Simulator and expiring [●]<sup>453</sup> after the date of Acceptance of that Simulator; or
- (f) with respect to any item of Integration Laboratory Train Equipment, the period commencing on Acceptance of the Integration Laboratory Train Equipment and expiring on [●]<sup>454</sup>;

**Warranty Period (TSA)** means the period ending on the earlier to occur of:

- (a) the date [●]<sup>455</sup> from the date that a Part (excluding consumables) which is supplied under the TSA is fitted or that workmanship is undertaken on a Unit, Vehicle, Part, Owned Spare or Special Tool; or
- (b) where the TSA either:
  - (i) expires by effluxion of time at the end of the Scheduled TSA Term without having been terminated by notice; or
  - (ii) is terminated as a result of TSA Operator Event of Default in accordance with schedule 13.2 (*Operator Events of Default*) of the TSA without either the Operator being replaced by a Successor Operator or the TMM otherwise being appointed to maintain the Units on terms substantially the same as the TSA, in either case within [●]<sup>456</sup> of such termination,

the date [●]<sup>457</sup> after the date of expiry or termination of the TSA;

**Wider Thameslink Network** means that part of the Thameslink Network that does not comprise the Performance Core;

**Wider Thameslink Network Station** means a station located on the Wider Thameslink Network; and

**Withdrawal Notice** has the meaning given to it in paragraph 3.1 of schedule 4.4 (*Implementing and Withdrawing Variations*) of the Umbrella Agreement;

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<sup>451</sup> Redaction.

<sup>452</sup> Redaction.

<sup>453</sup> Redaction.

<sup>454</sup> Redaction.

<sup>455</sup> Redaction.

<sup>456</sup> Redaction.

<sup>457</sup> Redaction.

**Withholding** has the meaning given to it in clause 11.2(a) of the Lease;

**Work Rates** are set out in the Appendix (*Work Rates*) to schedule 5.1 (*Changes to Equipment Prices*) of the Umbrella Agreement; and

**Working Day** means a weekday (other than a Saturday or Sunday) on which banks are open for domestic business in the City of London; and

[•]<sup>458</sup>.

1.2 Unless where the context otherwise requires, the words and expressions defined in clause 1.1 of the Common Terms Agreement dated on or about the date of this Agreement (the **CTA Definitions**) (a copy of which in the agreed terms is exhibited for ease of reference (the **Exhibited CTA Terms**)) shall apply to all of the Contracts and other documents to which this Schedule 1 is expressed to apply and this Agreement (each as amended from time to time) and shall be binding on all Parties, subject further to the provisions of clause 1.2 of this Agreement.

1.3 Unless where the context otherwise requires, the words and expressions defined in clause 1.1 of the Security Trust and Intercreditor Deed dated on or about the date of this Agreement (the **Intercreditor Deed Definitions**) (a copy of which in the agreed terms is exhibited for ease of reference (the **Exhibited Intercreditor Deed Terms**)) shall apply to all of the Contracts and other documents to which this Schedule 1 is expressed to apply and this Agreement (each as amended from time to time) and shall be binding on all Parties, subject further to the provisions of clause 1.2 of this Agreement.

1.4 Unless where the context otherwise requires, the words and expressions defined in clause 1.1 of the Shareholder Equity Contribution Agreement dated on or about the date of this Agreement (the **Exhibited SECA Definitions**) (a copy of which in the agreed terms is exhibited for ease of reference (the **Exhibited SECA Terms**)) shall apply to all of the Contracts and other documents to which this Schedule 1 is expressed to apply and this Agreement (each as amended from time to time) and shall be binding on all Parties, subject further to the provisions of clause 1.2 of this Agreement.

1.5 Unless where the context otherwise requires, the words and expressions defined in clause 1.1 of the Account Bank Agreement (the **Account Bank Agreement Definitions**) (a copy of which in the agreed terms is exhibited for ease of reference (the **Exhibited Account Bank Agreement Terms**)) shall apply to all of the Contracts and other documents to which this Schedule 1 is expressed to apply and this Agreement (each as amended from time to time) and shall be binding on all Parties, subject further to the provisions of clause 1.2 of this Agreement.

1.6 [•]<sup>459</sup>

1.7 [•]<sup>460</sup>

1.8 [•]<sup>461</sup>

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<sup>458</sup> Redaction.

<sup>459</sup> Redaction.

<sup>460</sup> Redaction.

1.9 [•]<sup>462</sup>

1.10 Unless where the context otherwise requires, the words and expressions defined in clause 1.1 of the Term Loan Facility Agreement dated on or about the date of this Agreement (the **Term Loan Facility Agreement Definitions**) (a copy of which in the agreed terms is exhibited for ease of reference (the **Exhibited Term Loan Facility Agreement Terms**)) shall apply to all of the Contracts and other documents to which this Schedule 1 is expressed to apply and this Agreement (each as amended from time to time) and shall be binding on all Parties, subject further to the provisions of clause 1.2 of this Agreement.

## 2. PRINCIPLES OF INTERPRETATION AND CONSTRUCTION

2.1 Unless otherwise expressly provided in the Contracts (as amended and restated from time to time):

- (a) headings in the Contracts are only for convenience and shall not affect interpretation;
- (b) a reference to a **Recital**, **clause**, **schedule**, or **Part** of a **schedule** or **Appendix** to a **schedule** shall be to a Recital, clause, schedule or, as the case may be, Part of a schedule or Appendix to a schedule, in each case of, the relevant Contract and references to such Contract include its Recitals, clauses, schedules, Parts of schedules and Appendices to schedules;
- (c) subject to clause 1.2 and paragraphs 1.2 to 1.4, references to (or to any specified provision of) any Contract or any other document shall be construed as references to the applicable Contract, that provision or that document as in force for the time being and as from time to time amended in accordance with the terms of such relevant Contract or that other document and, where applicable, the Applicable Variation Procedure;
- (d) references to a **person** (including the **Owner**, the **TMM** and the **Operator**) shall be construed as including references to an individual, firm, company, corporation, unincorporated association or body of persons or any Government Authority or any of its agencies;
- (e) the costs of performing an obligation under any Contract shall be borne by the Party required to perform such obligation;
- (f) wherever in any Contract provision is made for the giving or issuing of any notice, consent, approval, certificate or determination by any person, then unless otherwise specified, such notice, consent, approval, certificate or determination shall be in writing and the words **notify**, **certify** or **determine** shall be construed accordingly;
- (g) references to a document being **in writing** include electronic mails;
- (h) where appropriate, the singular includes the plural and vice versa;
- (i) without prejudice to the application of the Applicable Variation Procedure in relation to a Change in Law, references to a **statute** shall include any subordinate legislation

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<sup>461</sup> Redaction.

<sup>462</sup> Redaction.

made from time to time under it and shall be construed so as to refer to such statute as it is amended or modified from time to time;

- (j) without prejudice to the application of the Applicable Variation Procedure in relation to a Change in Law, references to a **regulation** include any present or future regulation, rule, directive, requirement, request or guideline (in each case having the force of law) of any Government Authority;
- (k) without prejudice to the application of the Applicable Variation Procedure in relation to a Change in Law, reference to Applicable Laws and Standards or Industry Standards also includes a reference to such Applicable Laws and Standards or Industry Standards as from time to time amended, extended or re-enacted;
- (l) references to **irrecoverable VAT** are references to VAT which a party or a member of its VAT group is unable to recover by way of credit or repayment;
- (m) reference to a **Party** or **person** or **body** shall include their successors, transferees, legal and personal representatives and permitted assignees;
- (n) words importing the masculine gender include the feminine and vice-versa;
- (o) references to **days** shall be references to calendar days;
- (p) words and expressions defined in Part I of the Act have the same meanings when used therein, provided that, except to the extent necessary stated, **railway** shall not have the wider meaning attributed to it in section 81(2) of the Act;
- (q) the words **include**, **including** and **in particular** are to be construed without limitation;
- (r) words and expressions defined in the Interpretation Act 1978 have the same meanings when used in this Agreement or in any of the Contracts;
- (s) **electronic form** and **electronic** shall be construed in accordance with section 1168 of the 2006 Act; and
- (t) references to a document being **in the agreed terms** shall mean being in the form signed or initialled for the purposes of identification by the Parties who will, or whose sub-contractors, agents or other representatives will, be party to such document.

## SCHEDULE 2

### COMMON TERMS

#### 1. NEW CURRENCY

If Sterling is replaced as the lawful currency of the United Kingdom by another currency (the *New Currency*) all payments shall be made in the New Currency, in accordance with the practice adopted by the Operator or the Owner (as appropriate) to implement any legally applicable measures to introduce the New Currency, including measures relating to the conversion of Sterling into the New Currency.

#### 2. LANGUAGE

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

#### 3. FURTHER ASSURANCE

In respect of each Initial Contract to which it is a Party, each Party hereto agrees that it shall do and execute, or arrange for the doing and executing of, each necessary act, document and thing reasonably within its power and as may be reasonably requested of it to implement and/or give effect to such Initial Contract and the Transactions contemplated by it.

#### 4. ENTIRE AGREEMENT

##### Entire Agreement

4.1 Each of the Initial Contracts and any document incorporated by reference into such Initial Contract constitute the entire agreement and understanding between the Parties relating thereto.

##### No reliance

4.2 Each Party agrees that:

- (a) it has not entered into any of the Initial Contracts in reliance upon any representation, warranty or undertaking of any other Party which is not expressly set out or referred to in one of the Initial Contracts; and
- (b) except in respect of an express representation or warranty under any of the Initial Contracts, it shall not have any claim or remedy in respect of any misrepresentation or breach of warranty (whether in equity, contract, delict or tort, under the Misrepresentation Act 1967 or in any other way and whether made prior to or in any of the Transaction Documents) or untrue statement by any other Party.

##### Breach of duty

4.3 Nothing in this clause shall have the effect of limiting or restricting any liability of a Party arising as a result of any breach of duty.

## **5. APPLICATION OF COMMON TERMS**

### **Separate parties**

5.1 Where any person which is a party to any Initial Contract acts in more than one capacity, the provisions of these common terms and each of the Initial Contracts shall apply to such person as though it were a separate party in each such capacity, except to the extent such person is required in one capacity to give any notice or information to itself in another capacity.

### **Inconsistency**

5.2 If a provision of any Initial Contractor is inconsistent with any provision of this Agreement which are incorporated by reference therein, the provision of the relevant Initial Contract shall prevail.

## **6. EXERCISE OF RIGHTS AND REMEDIES**

### **No waiver**

6.1 A failure to exercise or delay in exercising a right or remedy provided by any Initial Contract or by law does not constitute a waiver of the right or remedy or a waiver of other rights or remedies. No single, partial or defective exercise of a right or remedy provided by any Initial Contract or by law prevents further exercise of the right or remedy or the exercise of another right or remedy.

### **Rights and remedies cumulative**

6.2 Except where any Initial Contract specifically provides otherwise, the rights and remedies contained in an Initial Contract are cumulative and not exclusive of rights or remedies provided by law.

## **7. PARTIAL INVALIDITY**

The invalidity, illegality or unenforceability of a provision of a Initial Contract does not affect or impair the continuation in force of the remainder of such Initial Contract.

## **8. NO PARTNERSHIP OR AGENCY**

Except where any Initial Contract specifically provides otherwise, no provision of any Transaction Document creates a partnership between any of the Parties or makes a Party the agent of another Party for any purpose. Except where any Initial Contract provides otherwise, a Party has no authority or power to bind, to contract in the name of, or to create a liability for another Party in any way or for any purpose.

## **9. CONTINUATION OF OBLIGATIONS**

Except to the extent that they have been performed and except where any Initial Contract specifically provides otherwise, the warranties, representations, indemnities, and obligations contained in any Initial Contract remain in force after the date on which they were expressed to take effect.

### **SCHEDULE 3**

#### **INITIAL CONTRACTS**

1. Umbrella Agreement between the Secretary of State, the Owner, the TMM and the Operator;
2. Manufacture and Supply Agreement between the TMM, the Owner and the Operator;
3. Train Services Agreement between the TMM, the Owner and the Operator;
4. Lease between the Owner and the Operator;
5. Technical Support and Spares Supply Agreement between the TMM (as Supplier), the Owner and the Operator; and
6. Conditions Precedent Agreement between the Secretary of State, the Owner, the TMM and the Operator.

**SCHEDULE 4**

[●]<sup>463</sup>

- 1. [●]<sup>464</sup>
- 2. [●]<sup>465</sup>
- 3. [●]<sup>466</sup>
- 4. [●]<sup>467</sup>
- 5. [●]<sup>468</sup>
- 6. [●]<sup>469</sup>
- 7. [●]<sup>470</sup>
- 8. [●]<sup>471</sup>
- 9. [●]<sup>472</sup>

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<sup>463</sup> Redaction.

<sup>464</sup> Redaction.

<sup>465</sup> Redaction.

<sup>466</sup> Redaction.

<sup>467</sup> Redaction.

<sup>468</sup> Redaction.

<sup>469</sup> Redaction.

<sup>470</sup> Redaction.

<sup>471</sup> Redaction.

<sup>472</sup> Redaction.

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

The corporate seal of  
THE SECRETARY OF STATE FOR  
TRANSPORT is hereunto affixed.

[•]<sup>473</sup>

Authenticated by authority of the  
Secretary of State for Transport



SEAL REF NO 7670

[•]<sup>474</sup>

SIGNED as a deed for and on behalf of  
CROSS LONDON TRAINS  
LIMITED

DIRECTOR:

[•]<sup>475</sup>

DIRECTOR/SECRETARY:

[•]<sup>476</sup>



[•]<sup>477</sup>

[•]<sup>478</sup>

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<sup>473</sup> Redaction.

<sup>474</sup> Redaction.

<sup>475</sup> Redaction.

<sup>476</sup> Redaction.

<sup>477</sup> Redaction.

<sup>478</sup> Redaction.

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

ATTORNEY:

[•]<sup>479</sup>

In the presence of:

Witness' Signature: [•]<sup>480</sup>

Witness' Name: [•]<sup>481</sup>

Witness' Address: [•]<sup>482</sup>

[•]<sup>487</sup>

[•]<sup>488</sup>

ATTORNEY:

[•]<sup>483</sup>

In the presence of:

Witness' Signature: [•]<sup>484</sup>

Witness' Name: [•]<sup>485</sup>

Witness' Address: [•]<sup>486</sup>

**SIGNED** as a deed for and on behalf of

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<sup>479</sup> Redaction.

<sup>480</sup> Redaction.

<sup>481</sup> Redaction.

<sup>482</sup> Redaction.

<sup>483</sup> Redaction.

<sup>484</sup> Redaction.

<sup>485</sup> Redaction.

<sup>486</sup> Redaction.

<sup>487</sup> Redaction.

<sup>488</sup> Redaction.

<sup>489</sup> Redaction.

<sup>490</sup> Redaction.

<sup>491</sup> Redaction.

**FIRST CAPITAL CONNECT  
LIMITED**

DIRECTOR:

[●]<sup>489</sup>

[●]<sup>490</sup>

DIRECTOR/SECRETARY:

[●]<sup>491</sup>

[●]<sup>492</sup>

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<sup>492</sup> Redaction.