

Dated 27 June 2013

SIEMENS PLC

FIRST CAPITAL CONNECT LIMITED

CROSS LONDON TRAINS LIMITED

TRAIN SERVICES AGREEMENT



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⁴ Redaction

⁵ Redaction

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⁹ Redaction

¹⁰ Redaction

¹¹ Redaction

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THIS AGREEMENT is made on 27 June 2013

BETWEEN:

- (1) **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**);
- (2) **FIRST CAPITAL CONNECT LIMITED** (Registered Number 05281077), a company incorporated in England and Wales whose registered office is 50 Eastbourne Terrace, London W2 6LG (the **Initial Operator**); and
- (3) **CROSS LONDON TRAINS LIMITED** (Registered Number 07813033), a company incorporated in England and Wales whose registered office is at 210 Pentonville Road, London, N1 9JY (the **Owner**).

WHEREAS

- (A) The TMM (as manufacturer), the Owner and the Initial Operator have entered into an agreement dated today's date for the manufacture and supply of the Units, the Associated Equipment, the Operator Owned Spares and the Simulators (the **MSA**).
- (B) The Owner and the Initial Operator have entered into a lease agreement in relation to the leasing of the Units, the Associated Equipment and the Simulators dated today's date (the **Lease**).
- (C) The TMM, the Initial Operator and the Owner have agreed that the TMM shall maintain the Units, the Associated Equipment and the Simulators manufactured and supplied under the MSA in accordance with the terms of this Agreement.

IT IS AGREED

1. DEFINITIONS, INTERPRETATION AND COMMON TERMS

Definitions

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

Interpretation and Construction

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

- (a) references to any **system** shall be construed as references to that system as in force from time to time and any amended or replacement system;
- (b) a Unit, Vehicle or Simulator shall be deemed to be in the **care, custody and control** of the TMM until Hand Back occurs in relation to that Unit, Vehicle or Simulator. That Unit, Vehicle or Simulator shall then be deemed to be in the **care, custody and**

control of the Operator until Hand Over occurs in relation to that Unit, Vehicle or Simulator;

- (c) responsibility for the **care, custody and control** of the Associated Equipment during the TSA Term shall be determined in accordance with Clause 23.2;
- (d) without prejudice to the rights and obligations set out in this Agreement, any reference to an internal policy of the TMM shall be deemed to be to such policy as amended or restated from time to time; and
- (e) any reference to a person acting **under the direction** of another person shall not include any actions that contravene any Applicable Laws and Standards or the Manuals unless the relevant person can demonstrate that an express instruction or direction was given to take the relevant action.

Contract Precedence

1.3 In the case of any inconsistency or discrepancy between the documents forming part of this Agreement, the following order of precedence shall apply:

- (a) clauses 1 (*Definition and Interpretation*) to 51 (*Survival*) inclusive;
- (b) Schedule 2 (*Services*);
- (c) Schedule 5 (*Performance Regime*); and
- (d) all other Schedules.

MSA

1.4 References to and the incorporation of definitions or clauses in the MSA in this Agreement shall survive the termination or expiry of the MSA.

Common Terms

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

2. CONDITIONS PRECEDENT AND COVENANTS

Conditions Precedent

2.1 Save in relation to clauses 1, 2, 3, 31 to 37 (inclusive), 39 to 41 (inclusive), 44 and 46 to 51 (inclusive), which shall be effective on and from the date of this Agreement, the rights and obligations of the Parties to this Agreement shall commence on the Effective Date.

TMM Covenants

2.2 The TMM covenants with the Operator and the Owner that:

- (a) no later than 120 days before the Expected Delivery Date of the First Unit, the TMM shall update the Owner and the Operator of its progress in obtaining the consents and licences required to be obtained under clause 2.2(b)(i);
- (b) no later than 60 days in the case of clause 2.2(b)(i) and no later than 28 days in the case of clause 2.2(b)(ii), in each case before the Expected Delivery Date of the First Unit, the TMM shall provide evidence reasonably satisfactory to the Owner and the Operator that:
 - (i) all material and relevant consents and licences necessary for the TMM to perform its obligations under this Agreement and in respect of the obligations contemplated hereby, have been obtained or effected and remain in full force and effect; and
 - (ii) the TMM has complied with its insurance obligations under clause 23 (*Insurance and Risk*);
- (c) the TMM shall procure that a team of appropriate size comprising specified, appropriately experienced full time employees of the TMM, having regard to the TMM's obligations under this Agreement (the **TMM Maintenance Team**) is located at the Designated Depots []¹². The TMM shall procure that the TMM Maintenance Team works with the Operator to understand the demands of the Operator's existing fleet maintenance, control room practices, consequences of train failures and delays and other operational requirements as determined between the TMM and the Operator; and
- (d) the TMM shall:
 - (i) without limiting clause 2.2(c), provide the necessary number of persons with adequate knowledge of the operations and work required to perform its obligations under this Agreement;
 - (ii) employ or cause to be employed in connection with this Agreement and in supervision of its performance, only persons who are careful, skilled, qualified and experienced in their profession; and
 - (iii) ensure that all staff involved in safety critical work are trained to the required level, assessed as competent and hold appropriate certification.

Operator Covenants

2.3 The Operator covenants with the Owner and the TMM that it shall no later than 28 days before the Expected Delivery Date of the First Unit, provide evidence reasonably satisfactory to the Owner and the TMM that the Operator has complied with its insurance obligations under clause 23.1.

3. TSA TERM

This Agreement shall continue for the TSA Term.

¹² Redaction.

4. [NOT USED]

5. PLANS AND PROCEDURES

Initial Train Plan

5.1 The Operator shall consult with the TMM in the development of the Train Plan, which shall:

- (a) allow maximum flexibility and operational robustness; and
- (b) allow reasonable time for maintenance in accordance with the Maintenance Plan and the Train Plan Parameters.

5.2 The Operator shall provide the Owner and the TMM with a Train Plan no later than six months before the Expected Delivery Date of the First Unit.

5.3 It shall be possible for the Operator to amend the Train Plan from time to time (including in accordance with Network Rail timetabling parameters to accommodate timetable changes). The consequences of mileage changes resulting from such amendments shall be determined in accordance with Schedule 6 (*Service Payments*).

5.4 The TMM and Operator shall use reasonable endeavours to agree changes to the Train Plan as Permitted Changes (TSA), without the need for a Variation.

Process to amend Train Plan

5.5 If changes to the Train Plan are required, where the revised Train Plan will remain within the Train Plan Parameters, the Operator shall submit to the TMM the revised Train Plan twenty-eight days prior to the required implementation date of the revised Train Plan.

5.6 If changes to the Train Plan are required, where the revised Train Plan will not remain within the Train Plan Parameters, the TMM and Operator shall negotiate in good faith to agree the terms of a Variation Proposal in response to the changes to the revised Train Plan.

Ad-Hoc Changes to the Train Plan

5.7 If there is:

- (a) renewal, maintenance or repair work being carried out on the Thameslink Network, or
- (b) the Operator requires additional 'ad hoc' services or minor changes (for example, the introduction of an emergency timetable) such that a revised Train Plan cannot be issued seven days in advance of the planned implementation date,

the Operator and the TMM shall use reasonable endeavours to agree a temporary Train Plan in accordance with the principles above set out in clause 5.1 without a Variation and with a defined duration, and no Party shall be required to submit any Variation Proposal nor secure any Authorisation to Vary from the Secretary of State in relation to that temporary Train Plan.

5.8 The TMM shall deliver the Units to the Operator in accordance with the Train Plan and the Hand Back Procedure.

Hand Back Procedure and Hand Over Procedure

5.9 The TMM shall provide the Operator with a draft Hand Back procedure and Hand Over procedure relating to the Units no later than six months before the Expected Delivery Date of the First Unit which shall include:

- (a) provisions for Hand Over and Hand Back of Units at the Designated Depots (including Hand Over Points and Hand Back Points) and for the Operator to provide TMM with safe access to the Units at other locations ¹³, as required;
- (b) the scheduling of Units for Hand Over and Hand Back within the limitations of the Train Plan and Maintenance Plan; and
- (c) a process for planning the scheduling of Units for Hand Over and Hand Back with a view to giving the Operator notice to be able to allocate on any day, Units to Diagrams and for the TMM to carry out the Standard Services on the Units without disruption to the railway passenger services due to be operated on that day on the Thameslink Network.

5.10 The Operator, acting reasonably, shall notify the TMM of any amendments required to the draft Hand Back procedure and Hand Over procedure within 30 Working Days of receiving the Hand Back procedure and Hand Over procedure from the TMM and the TMM shall incorporate such amendments.

5.11 The TMM shall provide the Operator with the final version of the Hand Back procedure and Hand Over procedure, incorporating only these amendments (in hard copy and electronic copy form) within 14 days of the Operator notifying the TMM of any amendments and this shall be the **Hand Back Procedure** and **Hand Over Procedure**, as defined for the purposes of this Agreement.

5.12 To the extent not provided for in the Hand Back Procedure or the Hand Over Procedure, the TMM and the Operator shall agree robust and efficient procedures in relation to Hand Back and Hand Over of Units including the format of Hand Back Certificates and Hand Over Certificates (which may be electronic) no later than three months prior to the Expected Delivery Date of the First Unit.

Simulator Hand Back Procedure and Simulator Hand Over Procedure

5.13 The TMM shall provide the Operator with a draft Simulator Hand Back procedure and Simulator Hand Over procedure no later than four months before the Expected Delivery Date of the first Simulator which shall include:

- (a) provisions for Hand Over and Hand Back of Simulators;
- (b) the scheduling of Simulators for Hand Over and Hand Back within the limitations of the Maintenance Plan; and
- (c) a process for planning the scheduling of Simulators for Hand Over and Hand Back so that the TMM can carry out the Standard Services on the Simulators without

¹³ Redaction.

disruption to the training and competency testing due to take place at that Simulator on that day.

5.14 The Operator, acting reasonably, shall notify the TMM of any amendments required to the draft Simulator Hand Back procedure and Simulator Hand Over procedure within 30 Working Days of receiving the Simulator Hand Back procedure and Simulator Hand Over procedure from the TMM and the TMM shall incorporate such amendments.

5.15 The TMM shall provide the Operator with the final version of the Simulator Hand Back procedure and Simulator Hand Over procedure, incorporating only these amendments (in hard copy and electronic copy form) within 14 days of the Operator notifying the TMM of any amendments and this shall be the ***Simulator Hand Back Procedure*** and ***Simulator Hand Over Procedure***, as defined for the purposes of this Agreement.

5.16 To the extent not provided for in the Simulator Hand Back Procedure or the Simulator Hand Over Procedure, the TMM and the Operator shall agree robust and efficient procedures in relation to Hand Back and Hand Over including the format of Simulator Hand Back Certificates and Simulator Hand Over Certificates (which may be electronic) no later than three months prior to the Expected Delivery Date of the first Simulator.

6. THE SERVICES

Agreement to carry out the Services

6.1 The TMM agrees with the Operator and the Owner that it shall carry out or procure the carrying out of the TSA Services in respect of each Unit, Vehicle, Simulator, Part, Spare and Special Tool that has been Accepted.

Service Provision

6.2 The TMM agrees with the Operator and the Owner that it shall carry out or procure the carrying out of the TSA Services in relation to the Units, Vehicles, Parts, Simulators, Spares and Special Tools:

- (a) so as to enable the Operator to perform each Diagram, including delivering the Units to the Operator at the relevant Scheduled Hand Back Times and the relevant Hand Back Points in accordance with the Train Plan and the Hand Back Procedure;
- (b) so as to enable the Operator to operate the Simulators during Simulator Operational Hours, including delivering the Simulators to the Operator at the relevant Scheduled Hand Back Times in accordance with the Simulator Hand Back Procedure; and
- (c) in accordance with the Service Standards,

so as to ensure that the Units, Vehicles, Parts, Simulators, Spares and Special Tools are Fit for Purpose (TSA), except where the sole reason a Unit or Simulator is not Fit for Purpose (TSA) is either:

- (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 Sub-Contractors,

and in a condition which is consistent with the Redelivery Condition Schedule as and when required by the Redelivery Condition Schedule.

6.3 The TMM agrees with the Owner and the Operator that it shall use all relevant knowledge obtained by it in designing, building and maintaining the Units and designing, building and maintaining other rolling stock vehicles with similar characteristics to the Units in the performance of its obligations under this Agreement.

6.4 The TMM agrees with the Owner and the Operator that it shall carry out the TSA Services in such a manner that no act or omission of the TMM hereunder shall cause any Relevant Approval, the Operator's Railway Safety Certificate or any Authorisation For Placing Into Service to be withdrawn or amended.

6.5 The TMM agrees that it will obtain all necessary approvals, other than those which can only be obtained by a Train Operator, and that it will provide the Operator with the necessary information and support to enable the Operator to obtain any necessary approvals that only it can obtain and to up-date the requisite certificates and the rolling stock library registration.

Standard of Performance

6.6 Throughout the TSA Term, the TMM shall:

- (a) perform its obligations under this Agreement with the degree of diligence, care and skill reasonably to be expected of a competent maintainer of rolling stock vehicles with demonstrable experience in carrying out work of a similar scope, type, nature and complexity to the TSA Services and by suitably qualified and trained personnel;
- (b) ensure that its personnel are competent in accordance with relevant Industry Standards;
- (c) ensure that the Units, Vehicles, Parts, all TMM Owned Spares, any other Spares, the Simulators and the Special Tools each comply with all Applicable Laws and Standards;
- (d) ascertain and comply with all Applicable Laws and Standards including the Health and Safety at Work, etc. Act 1974, the Transport and Works Act 1992 and any HMRI requirements;
- (e) comply, where appropriate, with the Operator's Railway Safety Certificate and comply with and maintain the Authorisation For Placing Into Service so as to comply with any conditions required to operate a Vehicle with passengers by a Government Authority and any other relevant approvals;
- (f) where there is an extension or an amendment to the Thameslink Network, assist the Operator, at the cost of the Operator, in obtaining a revised Operator's Railway Safety Certificate, but subject to an Authorisation to Vary being issued where applicable;

- (g) comply, where applicable, with any reasonable requirements of the Owner and/or the Operator not otherwise provided for in this Agreement, but subject to an Authorisation to Vary being issued;
- (h) ensure that the TSA Software is designed, and that the design process is documented, in accordance with the standard industry practice, and using standard industry quality control methods;
- (i) retain copies of the object code of the TSA Software in the Technical Library and retain copies of the Source Code and object code of the TSA Software in escrow as part of the Escrow Materials;
- (j) retain for the TSA Term, copies of all software used in the design and production of the TSA Software; and
- (k) ensure that all copies of software, Source Code and object code to the TSA Software retained in accordance with clauses 6.6(i) and (j) are updated as necessary, as soon as reasonably practicable to incorporate any amendments carried out by the TMM or any Sub-Contractor.

[]¹⁴

6.7 []¹⁵.

Annual Mileage of Units

6.8 The TMM acknowledges the Operator's obligations to ensure no Unit exceeds []¹⁶ (or such other mileage as may be proposed by the Operator and agreed by the TMM, acting reasonably) in any Contract Year and shall, subject to its obligations under this Agreement (including the rectification of Faults), use its reasonable endeavours to plan and implement its performance of the TSA Services in such a manner as to assist the Operator in complying with those obligations.

7. MANUALS AND MAINTENANCE RECORDS

TMM obligations to maintain Manuals, Maintenance Records and Technical Records

7.1 With respect to each Unit, Vehicle, Part, Special Tool, Simulator, Owner Owned Spare and TMM Owned Spare (if applicable) throughout the TSA Term, the TMM shall provide, maintain and update all Technical Records in accordance with the provisions of this Agreement and all Applicable Laws and Standards.

7.2 The TMM shall keep and maintain for the TSA Term, clear, adequate and accurate records and documentation evidencing to the Operator's and the Owner's reasonable satisfaction that the TSA Services have been and are being carried out in accordance with the Service Standards.

¹⁴ Redaction.

¹⁵ Redaction.

¹⁶ Redaction.

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

7.4 The TMM shall maintain records of all individual Spares and Parts, such records to include the serial numbers, details of those Spares and Parts fitted on Vehicles or Simulators as the case may be and the number of Vehicles serviced including a maintenance, overhaul and repair history in respect of each Vehicle and the Simulators.

7.5 The TMM shall maintain the Technical Records and the Technical Records Database.

TMM obligations to deliver up Manuals and Maintenance Records on Termination

7.6 The TMM shall, upon the expiry or earlier termination, for any reason, of the TMM's obligations to carry out the TSA Services under this Agreement, free of charge, deliver up all Technical Records and all those records required to be kept by the TMM under clauses 7.1 to 7.4 inclusive, to:

- (a) while the Owner remains a party to this Agreement, the Owner, (who shall give access to the Operator to enable the Operator to give access to any person sub-leasing the Units in accordance with the Lease or carrying out maintenance activities in relation to the Units (including the TMM under the TSSSA, if applicable) for so long as the Operator leases the Units under the Lease); or
- (b) if the Owner's participation in this Agreement has been terminated prior to such expiry or early termination of this Agreement, the Operator.

7.7 The TMM shall not destroy any of the records referred to in clauses 7.1 to 7.4 inclusive without the prior written consent of the Owner and the Operator. The provisions of this clause 7.7 will continue to apply after the termination or expiry of this Agreement.

Ownership of Manuals and Maintenance Records

7.8 The Manuals and Maintenance Records (TSA) (but not the Intellectual Property Rights comprised therein) and all those records required to be kept by the TMM under clauses 7.1 to 7.4 inclusive shall be the property of the Owner and title thereto shall be vested in the Owner:

- (a) in the case of the Manuals, on their delivery pursuant to clause 10.10 of the MSA; and
- (b) in the case of the Maintenance Records (TSA) and the records required to be kept under clauses 7.1 to 7.4 inclusive, upon their creation.

Technical Library

7.9 The TMM agrees that it shall maintain for the TSA Term, the Technical Library to which the Owner and the Operator shall have access in accordance with clause 10.6(f) of the MSA. The Owner and the Operator shall be free to add materials to the Technical Library, provided these are in readable format when presented. Save as expressly provided otherwise in the MSA or this Agreement, the TMM shall have no responsibility for the content of, or for up-dating any such materials added to the Technical Library by the Owner or the Operator, other than:

- (a) at the request of the Owner or the Operator, replacing such materials with up-dated or new information or materials provided by the Owner or Operator; or
- (b) converting or otherwise up-dating the format of the materials as reasonably necessary to ensure they continue to be accessible with the rest of the Technical Library.

7.10 Without prejudice to the TMM's obligations in respect of design in accordance with the MSA, the TMM agrees that it will act as the design authority for the TSA Term, and in that capacity, the TMM will, in respect of an amendment to the Specification of a Unit, update all relevant documents in the Technical Library:

- (a) where carried out by the TMM pursuant to the MSA, promptly following such amendment; and
- (b) where carried out by a Third Party Maintainer, promptly following receipt by the TMM of the relevant information in relation to that amendment.

Maintenance Management and Document Management System

7.11 The TMM will maintain records of the maintenance and repairs it and its Sub-Contractors carry out using DRUID, EQUINOX and/or CORMAP or any such substitute system as the TMM, the Operator and the Owner shall agree.

7.12 The TMM will provide computer equipment adequate to enable it to comply with its obligations under this Agreement. The TMM shall bear all costs associated with the input, processing, transmission and support of DRUID, EQUINOX and/or CORMAP or any agreed substitute system in relation to this Agreement.

7.13 The TMM shall input all required data into DRUID, EQUINOX and/or CORMAP (or the relevant substitute system agreed under clause 7.12) as soon as reasonably practicable and in any case no later than five Working Days after the completion of the activity to which the relevant data relates, or such later time as may be agreed by the Operator.

7.14 The TMM shall have all necessary registrations and authorisations to use DRUID, EQUINOX and/or CORMAP as required by this Agreement and it shall at all times during the TSA Term, do all things necessary to maintain such registrations and authorisations.

7.15 The TMM shall notify the Owner and the Operator immediately in writing should any third party threaten to revoke any such registrations or authorisations and shall take all steps within the TMM's power to ensure that such registrations and authorisations are not revoked.

Access to electronic records

7.16 The TMM will provide the Operator and the Owner with unlimited, real time access (whether at either of the Designated Depots, []¹⁷ or, by way of a licensed software application for use on compatible hardware provided by the relevant Party, remotely) to the information stored on DRUID, EQUINOX and/or CORMAP, including providing such access to:

- (a) the Operator's representative;

¹⁷ Redaction.

- (b) the Owner's representative carrying out an inspection or audit at any Maintenance Shed pursuant to clause 30.3;
- (c) only where such person is accompanying the Owner's representative on an inspection or audit in accordance with paragraph (b) to observe such inspection or audit, the Lenders' Technical Adviser,

such provision of access to include providing 12 relevant software licences for remote access to the Operator and 10 relevant software licences for remote access to the Owner (which remote access the Owner shall be entitled to share with the Lenders' Technical Adviser by way of assignment of one of the Owner's software licences).

8. SUB-CONTRACTORS AND THIRD PARTIES

Sub-Contractors

8.1 Subject to clauses 8.3 and 8.4, the TMM may use and shall only use those Sub Contractors listed in Schedule 3 (*Approved Sub Contractors*) (as such list may be updated in agreement with the Operator and the Owner twelve weeks prior to the Expected Delivery Date of the First Unit, or subsequently pursuant to clause 8.2) (each an **Approved Sub-Contractor (TSA)**) to carry out the TSA Services in accordance with a specified scope of work, as agreed with the Operator and the Owner, provided that the TMM shall not be permitted to hereby sub-contract all of its obligations under this Agreement to Approved Sub-Contractors (TSA). Any change to such list or use of an alternative Sub-Contractor in accordance with any of this clause 8.1 or clauses 8.2 to 8.4 shall not constitute a Variation, and no Party shall be required to obtain an Authorisation to Vary in respect of such action.

8.2 If the TMM wishes to amend the list in Schedule 3 (whether by adding or removing a Sub-Contractor, or by changing the scope of TSA Services specified in relation to a particular Approved Sub-Contractor (TSA)), it may do so with the prior written consent (such consent not to be unreasonably withheld or delayed) from both the Owner and the Operator. In seeking consent to add a sub-contractor or change their scope, the TMM shall provide to the Operator and the Owner reasonable evidence of the proposed Sub-Contractor's qualifications, competence and suitability to carry out the specified TSA Services.

8.3 The TMM shall not use any Approved Sub-Contractor (TSA) to carry out any of the TSA Services other than the TSA Services specified in Schedule 3 in relation to that Approved Sub-Contractor (TSA), or any other Sub-Contractor to carry out the TSA Services unless, in each case, the TMM obtains prior written consent (such consent not to be unreasonably withheld or delayed) from both the Operator and the Owner (in the case of safety critical work) and the Operator only (in all other cases). In seeking such consent, the TMM shall provide to the Operator and the Owner or the Operator alone (as appropriate) reasonable evidence of the proposed Sub-Contractor's qualifications, competence and suitability to carry out the specified TSA Services.

8.4 If both the Operator and Owner (in the case of an amendment to the list in Schedule 3 pursuant to clause 8.2 or the performance of safety critical work pursuant to clause 8.3) or the Operator only (in all other cases under clause 8.3) fail to respond within:

- (a) seven Working Days in relation to a request under clause 8.2; or
- (b) 72 hours in relation to a request under clause 8.3,

in each case of receiving a relevant written request from the TMM that provides the reasonable evidence referred to in clause 8.2 or clause 8.3 (as applicable), that request will be deemed to be approved.

8.5 The TMM shall retain responsibility in full for all of its obligations under this Agreement, and any act, omission, breach of contract or negligence of any Sub-Contractors, agents or employees under its control shall, for the purposes of this Agreement, be deemed to be the act, omission, breach of contract or negligence of the TMM, save that the TMM's responsibility for such acts, omissions, breaches of contract or negligence to which any relevant provisions of this Agreement or any of the other Contracts (including clause 31.5 of this Agreement or clause 16.3 of the Umbrella Agreement) apply shall be as set out in those provisions, in accordance with their terms. The TMM shall ensure that each of its Sub-Contractors who perform any of the obligations of the TMM under this Agreement effect and maintain employers' liability insurance covering liability for death, bodily injury to or disease of any employee of such Sub-Contractor in an amount not less than £10,000,000 per occurrence or such greater amount as may be required by Applicable Laws and Standards, at all times that such Sub-Contractor is performing any obligations of the TMM hereunder.

8.6 The TMM agrees that any Sub-Contractors who supply safety critical materials or services will be approved by the TMM in accordance with Railway Group Standard GM/RT2450 and ACOP/EC/01003.

Independent Supplier

8.7 The TMM is an independent supplier and is not and shall not hold itself out as, and shall procure that none of its employees or Sub-Contractors or their employees hold themselves out as agent of either the Operator or the Owner. All personnel used by the TMM in the performance of its obligations under this Agreement shall be employees of the TMM or a Sub-Contractor or agent of the TMM.

Provision of Services by Permitted Third Parties

8.8 The Owner or the Operator shall only be entitled to place any of the TSA Services with a Third Party Maintainer in circumstances where:

- (a) there is a TSA TMM Event of Default which is continuing, and the Owner and/or the Operator have an express right under this Agreement to rectify the TSA TMM Event of Default;
- (b) the TMM is unable to carry out such TSA Services (but in circumstances where the reason that the TMM is unable to carry out the TSA Services is due to a Force Majeure Event, only for so long as that Force Majeure Event exists);
- (c) the TMM refuses to carry out any such TSA Service or in the case of an Additional Service other than any Generally Approved Additional Service only, does not agree, within 48 hours of a request by the Operator to carry out such Additional Service (provided that, in the case of an Additional Service other than any Generally Approved Additional Service only, where the TMM fails to respond within 48 hours of such request, the TMM will be deemed to have refused to carry out such Additional Service);
- (d) that Third Party Maintainer is to carry out warranty work under clause 15.5;

- (e) the Operator determines pursuant to clause 8.11 or paragraph 1.5 of Schedule 2.4 (*The Additional Services*) to place any of the TSA Services with that Third Party Maintainer; or
- (f) any such TSA Service is a Cosmetic Repair,

provided that the Owner shall not place any Standard Services with a third party unless it has first agreed with the Operator in respect of such proposed course of action.

8.9 The TMM shall have no liability in respect of any TSA Services that have been carried out by the Owner or the Operator or a third party, save where the TMM has been given an opportunity to supervise the carrying out of those TSA Services or the Owner and/or the Operator provides evidence to the satisfaction of the TMM (acting reasonably) that the relevant TSA Services have been carried out in accordance with the Maintenance Plan and each relevant Manual. Any such TSA Service which is duly carried out by a Third Party Maintainer in place of the provision by the TMM of the equivalent TSA Service shall not vitiate the TSA Guarantee or the TSA Bond or vitiate or in any other way affect any other part of the TSA Services carried out by the TMM save where expressly provided for otherwise under this Agreement.

8.10 Subject to clauses 27.15 to 27.17 (inclusive) and to each of the Operator's and the Owner's respective duty to mitigate any Losses it suffers hereunder, the TMM shall pay to the Owner or the Operator as appropriate:

- (a) the costs, in respect of Standard Services; or
- (b) the incremental costs above those that would have been payable to the TMM in respect of Additional Services,

(in each case as demonstrated by reasonable supporting evidence) incurred by the Owner and/or the Operator (as appropriate) in placing the performance of any TSA Services with a Third Party Maintainer in accordance with clause 8.8(a), 8.8(b) (except where the reason that the TMM is unable to carry out the relevant TSA Services is due to a Force Majeure Event), 8.8(c) or 8.8(d).

Performance of Cosmetic Repairs and Additional Services by the Operator

8.11 If, subject to paragraph 2 (*Generally Approved Additional Services*) of Schedule 2.4 (*The Additional Services*), the Operator determines, in its sole discretion that the performance by the TMM of any Additional Service or Cosmetic Repair in respect of a Unit or a Simulator which has not been Handed Over does not best meet the Operator's requirements, as set out in paragraph 1.4 of Schedule 2.4, then the Operator shall be entitled to either:

- (a) self-perform such Additional Service or Cosmetic Repair; or
- (b) place such Additional Service or Cosmetic Repair with a Third Party Maintainer in accordance with clause 8.8(e) or 8.8(f) respectively.

8.12 If the Operator determines to self-perform or procure a Third Party Maintainer to perform any Additional Service or Cosmetic Repair in accordance with clause 8.11:

- (a) the Operator shall promptly notify the TMM of that determination in relation to any Additional Service;

- (b) the TMM shall, promptly following the Operator's written request, supply to the Operator (or the Third Party Maintainer notified to the TMM by the Operator) such Owner Owned Spares as are necessary to carry out that Additional Service or Cosmetic Repair, provided that:
 - (i) in the case of a Cosmetic Repair, the Operator has insufficient Operator Owned Spares available for such purposes;
 - (ii) if any relevant Owner Owned Spare is a Critical Spare, the Owner, the Operator and the TMM shall (each acting reasonably) agree whether such Critical Spare should be replaced in accordance with clause 10.16; and
 - (iii) if any relevant Owner Owned Spare is an Initial Spare, the TMM shall not be obliged to supply such Initial Spare if that supply would prevent the TMM from carrying out the TSA Services, and any Initial Spare supplied for these purposes shall be replaced in accordance with clause 10.13 at the Operator's cost;
- (c) the TMM shall have no obligation to perform such Additional Service or Cosmetic Repair in accordance with this Agreement;
- (d) the Operator shall perform or procure the performance of such Additional Service or Cosmetic Repair in accordance with the Manuals at its own cost;
- (e) the Operator shall promptly notify the TMM when such Additional Service or Cosmetic Repair is complete and shall provide all documentation relating to such work that the Operator and the TMM (each acting reasonably) agree is required for the purposes of clause 7.2; and
- (f) immediately following notification by the Operator in accordance with clause 8.12(e) and receipt of the relevant documentation, the TMM shall update the Maintenance Records (TSA) accordingly.

8.13 A Cosmetic Repair performed by the Operator pursuant to clause 8.11 shall not be a TSA Service for the purposes of this Agreement.

8.14 The TMM shall have no liability arising due to any act, omission, neglect or default of:

- (a) the Operator in the self performance by the Operator; or
- (b) any Third Party Maintainer acting on the Operator's behalf in the performance by that Third Party Maintainer,

in either case, of any Additional Service or Cosmetic Repair pursuant to clause 8.11 or any Operator Own Service.

9. EXONERATING EVENTS

Events

9.1 If the TMM claims that any of the occurrences set out in clauses 9.1(a) to 9.1(m) inclusive has occurred (except to the extent that any of those occurrences have arisen due to a Fault or any 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 (save where such non-performance is permitted under this Agreement) or purported performance of its obligations under this Agreement, the MSA or any Depot Agreement for Leases, or the Depot SPC's performance, non-performance or purported performance of its obligations under any Depot Agreement for Leases or any Depot Headlease) (each an ***Exonerating Event***) the Operator shall, acting reasonably, determine in accordance with this clause 9 whether the TMM has been prevented or delayed in performing its obligations under this Agreement, and if so to what extent the TMM is relieved from carrying out its obligations under this Agreement:

- (a) ☐¹⁸
- (b) ☐¹⁹
- (c) ☐²⁰
- (d) ☐²¹
- (e) ☐²²
- (f) ☐²³
- (g) ☐²⁴
- (h) ☐²⁵
- (i) ☐²⁶
- (j) ☐²⁷
- (k) ☐²⁸
- (l) ☐²⁹
- (m) ☐³⁰

¹⁸ Redaction.

¹⁹ Redaction.

²⁰ Redaction.

²¹ Redaction.

²² Redaction.

²³ Redaction.

²⁴ Redaction.

²⁵ Redaction.

²⁶ Redaction.

²⁷ Redaction.

²⁸ Redaction.

²⁹ Redaction.

Exonerating Event Procedure

9.2 Any application for, consideration or grant of an Exonerating Event shall be undertaken in accordance with the procedure set out in Schedule 4 (*Exonerating Event Procedure*).

10. SPARES

General Obligations

10.1 The TMM warrants that the Initial Spares which are agreed to be provided by the TMM pursuant to clause 4.5 of the MSA will be sufficient to enable it to meet its obligations under this Agreement in relation to the Standard Services and that, in the event that there are insufficient Initial Spares for the performance of the Standard Services, the TMM shall procure the necessary additional spares and such additional spares shall be **TMM Owned Spares**. Subject to compliance by the Operator with its obligations in clause 10.7, if a Spare is not available and this prevents the TMM performing the Standard Services under this Agreement, there shall be no relief granted to the TMM under this Agreement.

10.2 If the TMM has to procure TMM Owned Spares pursuant to clause 10.1, the TMM shall notify the Owner and the Operator in writing of the TMM Owned Spares required and the cost thereof. Upon the termination or expiry of this Agreement then:

- (a) unless the termination occurs as a result of a TSA Operator Termination Notice that is delivered after the expiry or termination of the Umbrella Agreement, the Operator shall have the option to purchase such additional TMM Owned Spares from the TMM at a price which both Parties agree is appropriate for each such spare, provided that within twenty eight days of the termination or expiry of this Agreement, the Operator notifies the TMM that it will exercise this option; and
- (b) if and to the extent that the Operator does not exercise its option under paragraph (a), the TMM shall notify the Owner accordingly and the Owner shall have an option to purchase any remaining TMM Owned Spares from the TMM at a price which both Parties agree is appropriate for each such spare, provided that the Owner notifies the TMM that it will exercise this option within twenty eight days of the expiry of the period in which the Operator has the option to notify the TMM pursuant to paragraph (a).

10.3 The TMM shall at its own risk maintain adequate stocks of Spares and other materials to enable it to perform its obligations under this Agreement.

10.4 If the TMM's obligations to provide the TSA Services under this Agreement are terminated, the TMM agrees:

(a) ☐³¹.

(b) ☐³².

³⁰ Redaction.

³¹ Redaction.

³² Redaction.

10.5 The TMM shall at its own risk be responsible for all necessary safety approvals required under any Applicable Laws and Standards with respect to Spares.

10.6 The TMM shall maintain all Spares (other than the Operator Owned Spares) in accordance with the Manuals and the Maintenance Plan and shall ensure that those Spares remain at all times Fit for Purpose (TSA).

10.7 The Operator shall, provided the same shall have been delivered to and Accepted by the Owner under the MSA and delivered to the Operator under the Lease, without prejudice to any rights the Owner or the Operator may have against the TMM for breach of its obligations under the MSA, make the Owner Owned Spares available to the TMM for the TSA Term at the risk and expense of the TMM and on each such date, the TMM shall take possession of those Owner Owned Spares.

10.8 The Operator shall:

- (a) subject to the approval of the Operator pursuant to Schedule 2.4 (*The Additional Services*) for the TMM to use any Operator Owned Spares in the performance of any Additional Service; and
- (b) provided those Operator Owned Spares shall have been delivered to and accepted by the Operator under the MSA or under clause 10.21, without prejudice to any rights the Operator may have against the TMM for breach of its obligations under, as appropriate, the MSA or this Agreement,

promptly make those Operator Owned Spares available to the TMM for the purpose of performing that Additional Service and on such date, the TMM shall take possession of those Operator Owned Spares.

10.9 During the TSA Term, the TMM undertakes to the Owner and the Operator that it shall:

- (a) not attempt to hold itself out as having any power to sell, charge, pledge, mortgage lease or otherwise encumber or dispose of the Owned Spares or any of them, nor create any Security Interest over any of the Owned Spares;
- (b) not do any act or thing which might jeopardise the title, rights and interest of the Owner in any of the Owner Owned Spares or the Operator in the Operator Owned Spares;
- (c) not use, permit to be used or part with possession of any of the Owned Spares except in the performance of the TSA Services in accordance with the provisions of this Agreement;
- (d) not do any act or thing which might have an adverse effect upon the functionality or residual value of the Owned Spares;
- (e) store all Owner Owned Spares (and those Operator Owned Spares that the Operator and the TMM have agreed (each acting reasonably having regard to the capacity available for such storage) the TMM will store at a Designated Depot) in a safe and orderly manner and at a safe location (notified to the Owner and the Operator), including any locations agreed pursuant to clause 13.15, identified as Owner Owned Spares or Operator Owned Spares, as appropriate, and capable of being differentiated from any other Spares; and

- (f) not, except to the extent permitted by this Agreement or as otherwise agreed by the Owner or the Operator, as appropriate, remove or permit the removal of any of the Owned Spares from such location.

10.10 The TMM shall monitor and record the usage by the TMM and its Sub-Contractors of each Owner Owned Spare (and those Operator Owned Spares that the Operator and the TMM have agreed, in accordance with clause 10.9(e), the TMM will store at a Designated Depot) and make such information available to the Owner and the Operator as reasonably directed by them from time to time.

10.11 The Owner and the Operator shall be entitled to audit the TMM's usage and storage of Spares, including consumables in accordance with their rights under clause 30 (*Access, Inspection, Audit and Accommodation*).

Owner Owned Spares

10.12 Title to any Owner Owned Spare shall pass from the TMM to the Owner in accordance with clause 21.2, 21.3 or 21.4 (as applicable) of the MSA.

10.13 The TMM shall replace any Initial Spare which it installs upon a Unit or which it supplies to the Operator in accordance with clause 8.12(b), in each case with an identical new or overhauled Spare (the ***New Initial Spare***) as soon as is reasonably practicable in accordance with good industry practices after the date upon which that Initial Spare was installed or supplied. Such New Initial Spare shall be provided:

- (a) at the Operator's cost where that New Initial Spare is provided to replace an Initial Spare supplied in accordance with clause 8.12(b); and
- (b) otherwise at the TMM's cost.

10.14 Title to such New Initial Spare shall pass to the Owner, without further act, upon installation of the original Initial Spare to the relevant Unit, or such later date as it is replaced in accordance with clause 10.13, provided that, where any further action is required by the TMM to transfer title, the TMM shall be obliged to complete any necessary documentation to effect the transfer. If such New Initial Spare is an overhauled Spare, the TMM shall overhaul it in accordance with the agreed procedures set out in the Maintenance Plan. The Operator shall make the New Initial Spares available to the TMM throughout the TSA Term for the purposes of providing the TSA Services.

10.15 On the termination or expiry of this Agreement, the TMM shall deliver possession to the Owner of the Initial Spares or to the extent Initial Spares have been replaced with New Initial Spares, such New Initial Spares, in either case, in compliance with the Redelivery Condition (TSA). To the extent that such Initial Spares and New Initial Spares are not in the Redelivery Condition (TSA) for whatever reason upon such termination or expiry of this Agreement, the provisions of Schedule 14 (*Redelivery Condition Schedule*) shall apply both in relation to Initial Spares and New Initial Spares.

10.16 The TMM shall, subject to clause 8.12(b), replace any Critical Spare installed upon a Unit with an identical new or overhauled spare (the ***New Critical Spare***) as soon as is reasonably practicable in accordance with good industry practices after the date upon which that Critical Spare was installed. Such New Critical Spare shall be provided:

- (a) at the Operator's cost (unless the Owner and the Operator agree otherwise) where that New Critical Spare is provided to replace a Critical Spare that is installed upon a Unit

as part of the provision of the Additional Services (whether by the TMM, the Operator or a Third Party Maintainer pursuant to clause 8.12), provided that where the TMM is providing the relevant Additional Service(s), this provision shall be satisfied by the Operator's payment of the applicable Additional Services Payment(s); and

- (b) otherwise at the TMM's cost.

10.17 Title to such New Critical Spare shall pass to the Owner, without further act, upon installation of the original Critical Spare upon the Unit or such later date as it is replaced in accordance with clause 10.16, provided that where any further action is required by the TMM to transfer title, the TMM shall be obliged to complete any necessary documentation to effect the transfer. If such New Critical Spare is an overhauled Spare, the TMM shall overhaul it in accordance with agreed procedures set out in the Maintenance Plan.

10.18 On the termination or expiry of this Agreement, the TMM shall deliver possession to the Owner of the Critical Spares or to the extent Critical Spares have been replaced with New Critical Spares, such New Critical Spares, in either case, in compliance with the Redelivery Condition (TSA). To the extent that such Critical Spares and New Critical Spares are not in the Redelivery Condition (TSA) for whatever reason upon such termination or expiry of this Agreement, the provisions of Schedule 14 (*Redelivery Condition Schedule*) shall apply both in relation to Critical Spares and New Critical Spares.

Operator Owned Spares

10.19 On written request from the Operator, and:

- (a) subject to the lead times as set out in paragraph 4 (*Operator Owned Spares*) of schedule 7.2 (*Spares*) of the MSA; and
- (b) at a price of:
- (i) ³³
- (ii) ³⁴

the TMM shall replenish the Operator's stocks of Operator Owned Spares.

10.20 Title to any Operator Owned Spare shall pass from the TMM to the Operator in accordance with clause 21.7 of the MSA.

10.21 The TMM shall ensure, at its own risk, that the Operator Owned Spares supplied in accordance with clause 10.19 are delivered to the relevant locations as notified by the Operator where any Additional Services or Cosmetic Repairs may be carried out by the Operator or a Third Party Maintainer, and the TMM shall be obliged to complete any necessary documentation to effect transfer in each such case.

10.22 Title to such Operator Owned Spare shall pass from the Operator to the Owner, without further act, upon installation of the Operator Owned Spare on a Unit, provided that

³³ Redaction.

³⁴ Redaction.

where any further action is required by the Operator to transfer title, the Operator shall be obliged to complete any necessary documentation to effect the transfer.

10.23 The Operator shall monitor and record the usage of Operator Owned Spares and make such information available to the TMM when issuing a written request in accordance with clause 10.19.

10.24 The Operator shall insure those Operator Owned Spares that the TMM is obliged to store at a Designated Depot in accordance with clause 10.9(e).

TMM Owned Spares

10.25 The TMM shall ensure, at its own risk, that the TMM Owned Spares are delivered to the relevant Designated Depot where the TSA Services are to be carried out (or another appropriate location, if the Parties agree) four weeks before the Expected Delivery Date of the First Unit.

10.26 The TMM shall at its own risk maintain adequate stocks of TMM Owned Spares and other materials to enable it to perform its obligations under this Agreement.

10.27 Title to a TMM Owned Spare shall, on installation in or on a Unit, Vehicle or, as the case may be, Part, vest in the Owner without further act (with full title guarantee and free from all Security Interests other than those created by or attributable to the Owner or the Operator) provided that where any further action is required by the TMM to transfer title, the TMM shall be obliged to complete any necessary documentation to effect the transfer. Title to any Part which is replaced by a TMM Owned Spare shall pass to the TMM at the same time title to such TMM Owned Spare vests in the Owner in accordance with this clause 10.27, free of all Security Interests other than those created by or attributable to the TMM.

10.28 The TMM shall monitor and record the usage of TMM Owned Spares and make such information available to the Owner and the Operator as reasonably directed by them from time to time.

Redesigned Parts

10.29 Subject to the Engineering Change Control Procedure, if at any time during the TSA Term, any Owner Owned Spare, TMM Owned Spare, Operator Owned Spare or Special Tool is redesigned or substituted (the **Replaced Part**) by another Spare or, as the case may be, another Special Tool (whether by reason of obsolescence, unavailability of the original or any other reason) (a **Redesigned Part**):

- (a) the TMM shall promptly notify the Owner and the Operator, giving the reasons for, and details of, the redesign/substitution, including compliance with all Applicable Laws and Standards or to satisfy any conditions relating to the Operator's Railway Safety Certificate or the Authorisation For Placing Into Service, and details of any necessary consequential modifications to any Owner Owned Spare, TMM Owned Spare, Operator Owned Spare or Special Tool;
- (b) such Redesigned Part shall be designed:
 - (i) as to fit, as far as reasonably practicable, into the same space envelope as the Replaced Part; and

- (ii) to have compatible connections and shall have no worse functionality or performance than the Replaced Part;
- (c) at the same time as the TMM removes any Replaced Part, it shall replace that Replaced Part with the relevant Redesigned Part at the TMM's risk and simultaneously upon such removal and replacement, title to such:
 - (i) Replaced Part shall pass to the TMM; and
 - (ii) Redesigned Part shall pass to the Owner without further action, provided that where any further action is required by the TMM to transfer title, the TMM shall be obliged to complete any necessary documentation to effect the transfer;
- (d) where any Replaced Part is required by the TMM pursuant to this clause 10.29, the Owner shall return that Replaced Part to the TMM at the TMM's risk and expense;
- (e) any Intellectual Property Rights created in such Redesigned Part shall vest in the TMM or where such Intellectual Property Rights are created by a Sub-Contractor, the TMM shall procure that such Intellectual Property Rights are assigned to the TMM or licensed to the TMM with the right for the TMM to grant such licences to the Intellectual Property Rights as are set out in this Agreement. When the Owner takes title to any Redesigned Part hereunder, the TMM shall license any Intellectual Property Rights in such Redesigned Part as follows:
 - (i) to the extent that such Intellectual Property Rights are created in Licensed Non-Design Documents, those Intellectual Property Rights shall be licensed to the Owner and Operator in accordance with clause 26.9 of the MSA;
 - (ii) to the extent that such Intellectual Property Rights are created in Licensed Design Documents or Equipment, those Intellectual Property Rights shall be licensed to the Owner and Operator in accordance with clause 26.10 of the MSA; and
 - (iii) to the extent that such Intellectual Property Rights are created in Technical Resource Materials, those Intellectual Property Rights shall be licensed to the Owner and Operator in accordance with clauses 26.12 to 26.18 (inclusive) of the MSA; and
- (f) the TMM shall promptly carry out all up-dates and amendments to the Manuals, the Maintenance Plan and Maintenance Records (TSA) and all those records required to be kept by the TMM under this Agreement, which are necessary as a result of the introduction of a Redesigned Part such that there is no loss of continuity of the Operator's authority to operate the Units with passengers.

11. SPECIAL TOOLS

Use of Maintenance Special Tools

11.1 The Operator shall, provided the same shall have been delivered to and Accepted by the Owner under the MSA and delivered to the Operator under the Lease, and without prejudice to any rights the Owner or the Operator may have against the TMM for breach of its obligations under the MSA, make the Maintenance Special Tools available to the TMM for the TSA Term at the risk and expense of the TMM. The Operator shall be entitled to use any

Maintenance Special Tools required for the purposes of performing Additional Services, subject to the Operator and the TMM, both acting reasonably, agreeing mutually acceptable conditions for such use of the Maintenance Special Tools by the Operator.

11.2 The TMM warrants that the Maintenance Special Tools which are agreed to be provided by the TMM pursuant to clause 4.5 of the MSA will be sufficient to enable it to meet its obligations under this Agreement in relation to the Standard Services and that, in the event that there are insufficient Maintenance Special Tools for the performance of the Standard Services, the TMM shall procure the necessary additional special tools in accordance with clause 11.5. Subject to compliance by the Operator with its obligations in clause 11.1, if a Maintenance Special Tool is not available (other than by reason of such Maintenance Special Tool being in the possession of the Operator) and such unavailability prevents the TMM performing the Standard Services under this Agreement, there shall be no relief granted to the TMM under this Agreement.

Use of Operator Special Tools

11.3 The Operator shall, provided the same shall have been delivered to and Accepted by the Owner under the MSA and the Operator under the Lease, and without prejudice to any rights the Owner or the Operator may have against the TMM for breach of its obligations thereunder, make the Operator Special Tools that are required by the TMM for the performance of any Additional Services that the TMM performs in accordance with Schedule 2.4 available to the TMM for the TSA Term at the risk and expense of the TMM. The Operator shall be entitled to use any Operator Special Tools required for the performance of Operator Own Services or Additional Services that are not performed by the TMM.

Maintenance of Special Tools

11.4 During the TSA Term, the TMM undertakes to the Owner and the Operator that it shall maintain the Special Tools in accordance with the Manuals and the Maintenance Plan and it shall ensure that the Special Tools remain at all times Fit for Purpose (TSA).

Additional Special Tools

11.5 If the TMM has to procure additional special tools in addition to the Special Tools, the TMM shall notify the Owner and the Operator in writing of the special tools required and the cost thereof. Such additional special tools procured by the TMM shall be ***TMM Owned Special Tools***. The Owner shall have the option to purchase such TMM Owned Special Tools from the TMM upon the termination or expiry of this Agreement at a price which both Parties agree is appropriate for that special tool, provided that within twenty eight days of the termination or expiry of this Agreement, the Owner notifies the TMM that it will exercise this option.

11.6 The Operator shall be entitled to require the TMM to provide it with additional Operator Special Tools at a price of:

(a) ☐³⁵

(b) ☐³⁶

³⁵ Redaction.

³⁶ Redaction.

11.7 On the termination or expiry of this Agreement, the TMM shall deliver possession to the Owner of the Special Tools and TMM Owned Special Tools (to the extent purchased by the Owner pursuant to clause 11.5) in compliance with the Redelivery Condition (TSA).

11.8 Any Intellectual Property Rights created in any TMM Owned Special Tools shall vest in the TMM or, where such Intellectual Property Rights are created by a Sub-Contractor, the TMM shall procure that such Intellectual Property Rights are assigned to the TMM or licensed to the TMM with the right for the TMM to grant such licences to the Intellectual Property Rights as are set out in this Agreement. In relation to any TMM Owned Special Tools that the Owner purchases pursuant to clause 11.6, the TMM shall license any Intellectual Property Rights in such TMM Owned Special Tools as follows:

- (a) to the extent that such Intellectual Property Rights are created in Licensed Non-Design Documents, those Intellectual Property Rights shall be licensed to the Owner and the Operator in accordance with clause 26.9 of the MSA;
- (b) to the extent that such Intellectual Property Rights are created in Licensed Design Documents or such TMM Owned Special Tool, those Intellectual Property Rights shall be licensed to the Owner and the Operator in accordance with clause 26.10 of the MSA; and
- (c) to the extent that such Intellectual Property Rights are created in Technical Resource Materials, those Intellectual Property Rights shall be licensed to the Owner and the Operator in accordance with clause 26.12 to 26.18 (inclusive) of the MSA.

11.9 If the TMM's obligations to provide the TSA Services under this Agreement are terminated, the TMM agrees:

- (a) to assign, insofar as it is able, the benefit of any contracts which it has in place in relation to Special Tools provided that, following such assignment the TMM shall be relieved of its obligations and liabilities under this Agreement in so far as they relate to the system or element of the Unit to which the assigned contracts relate; and
- (b) to use reasonable endeavours to facilitate the Owner's and/or the Operator's ability to obtain future special tools that are similar to the Special Tools at market rates.

11.10 During the TSA Term, the TMM undertakes to the Owner and the Operator that it shall:

- (a) not attempt to hold itself out as having any power to sell, charge, pledge, mortgage lease or otherwise encumber or dispose of the Special Tools or any of them, nor create any Security Interest over any of the Special Tools;
- (b) not do any act or thing which might jeopardise the title, rights and interest of the Owner in any of the Maintenance Special Tools or the Operator in the Operator Special Tools;
- (c) not use, permit to be used or part with possession of any of the Special Tools except in the performance of the TSA Services in accordance with the provisions of this Agreement;
- (d) not do any act or thing which might have an adverse effect upon the functionality or residual value of the Special Tools;

- (e) store all Maintenance Special Tools (and those Operator Special Tools that the Operator and the TMM have agreed (each acting reasonably having regard to the capacity available for such storage) that the TMM will store at a Designated Depot) in a safe and orderly manner and at a safe location (notified to the Owner and the Operator), identified as Maintenance Special Tools or Operator Special Tools, as appropriate, and capable of being differentiated from any other special tools; and
- (f) not, except to the extent permitted by this Agreement or as otherwise agreed by the Owner or the Operator, as appropriate, remove or permit the removal of any of the Special Tools from such location.

11.11 The TMM shall at its own risk be responsible for all necessary safety approvals required under any Applicable Laws and Standards with respect to Maintenance Special Tools.

11.12 The TMM shall monitor and record the usage by the TMM and its Sub-Contractors of each Maintenance Special Tool and make such information available to the Owner and the Operator as reasonably directed by them from time to time.

12. DEPOT ARRANGEMENTS

No Relief if Designated Depots Late

12.1 The TMM will not be entitled to:

- (a) any relief from its obligations under this Agreement (by way of a claim for an Exonerating Event or otherwise), the Performance Regime Targets or the Maintenance Plan; or
- (b) any Variation (including an increase in the amount of the Service Payments or the Additional Services Payments),

in either case, in the event that:

- (i) there is any delay in the construction or availability or up-grading of the Designated Depots for the provision of the TSA Services; or
- (ii) the Designated Depots do not have suitable facilities to carry out the TSA Services,

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TMM licence to occupy

12.7 From the applicable Commencement Date in respect of each Designated Depot and subject to the Operator's right to access and use the Operator Accommodation and the Owner's right to access and use the Owner Accommodation the Operator hereby grants to the TMM (or shall procure the grant to the TMM of) a non-exclusive licence to occupy the Maintenance Sheds so as to enable the TMM to perform its obligations hereunder until such time as this Agreement is terminated together with:

- (a) the right to use the Common Parts for gaining access to and egress from the Maintenance Sheds from and to the public highway and from and to all other routes of access to and egress from the Designated Depots;
- (b) the right to use and access conduits and any other parts of the Designated Depots (including equipment and apparatus thereon) reasonably required for the performance of the TMM's obligations hereunder; and
- (c) to the extent that such rights are granted to the Operator the right of access to and egress from the Designated Depots along or across neighbouring property together with the right to use conduits lying on, under or above such neighbouring property.

12.8 During the period of occupation, the TMM shall be a mere licensee of the Operator and not a tenant and as such the TMM shall have no legal or proprietary interest in the Designated Depot.

12.9 Any right to use and/or occupy the whole or any part(s) of the Maintenance Sheds and the licence granted by clause 12.7 shall be without prejudice to the Operator's right to:

- (a) exercise or grant rights of occupation and/or use of the Maintenance Sheds; and/or
- (b) grant any non-exclusive licence(s) to occupy the whole or any part(s) of the Maintenance Sheds,

PROVIDED THAT the grant of such rights or licence(s) by the Operator does not materially adversely impact upon the TMM's ability to perform its obligations under this Agreement.

12.10 If the Operator's right to use and/or occupy the whole or any part(s) of any Designated Depot is lawfully suspended or interrupted due to any lawful act or entry by any superior landlord in accordance with the terms of any superior lease of any Designated Depot, the licence and the rights granted by the Operator to the TMM by virtue of clause 12.7 shall

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be suspended or interrupted to the corresponding extent until and to the extent that such suspension or interruption of the Operator's rights to use and/or occupy the relevant Designated Depot ends.

12.11 In the event that any Depot Headlease is forfeited or terminated by either the lessor or the lessee pursuant to any right to so determine contained in such Depot Headlease (save for the right during the first twenty years of the term of such Depot Headlease for the lessor to determine such Depot Headlease in the absence of Significant Uninsured Damage (as defined in such Depot Headlease) following receipt of a notice from the Secretary of State requiring such termination) which has the effect of determining the Operator's lease of the relevant Designated Depot, the licence granted by the Operator to the TMM by virtue of clause 12.7 in respect of the relevant Designated Depot shall be suspended until the Operator is granted sufficient proprietary interest and rights in the relevant Designated Depot to be able to grant the licence and the rights to the TMM in accordance with this clause 12.

12.12 In the event of any suspension or interruption pursuant to clause 12.10 or 12.11, the Operator shall use all reasonable endeavours to keep such suspension or interruption to a minimum.

12.13 For the avoidance of doubt no rates, access charge, utility charges or other outgoings in respect of the Designated Depots or any part thereof shall be payable by the TMM (whether pursuant to Condition F or N of the Thameslink Depot Access Conditions for the relevant Designated Depot or otherwise), and to the extent that any such rates, access charge, utility charges or other outgoings are charged to the TMM, the Operator shall indemnify the TMM (and keep the TMM indemnified) in full.

12.14 During any period or periods of occupation of the Maintenance Sheds (or part(s) thereof) and/or use and/or temporary occupation of any other area of the Designated Depots by the TMM in connection with the provision of the TSA Services (*TMM Used Areas*), the TMM shall:

- (a) not make any alteration or addition to the Maintenance Sheds (save as otherwise specifically authorised by the Operator (such authorisation not to be unreasonably withheld or delayed));
- (b) without prejudice to the access rights granted to the Owner and the Operator under clause 30.6, not grant anyone else a right to occupy or share occupation of any part of the Maintenance Sheds save that the TMM shall be entitled to allow its employees, agents, contractors, Sub-Contractors and the like to use the Maintenance Sheds (or any part(s) thereof) in order to facilitate the TMM's performance of its obligations under this Agreement **PROVIDED THAT:**
 - (i) no exclusive right of use and/or occupation of the Maintenance Sheds (or any part(s) thereof) is afforded to such persons; and
 - (ii) no landlord and tenant relationship is established;
- (c) keep the Maintenance Sheds clean, tidy and clear of rubbish;
- (d) not use the Maintenance Sheds other than for the Permitted/Licensed Use;
- (e) not do or permit to be done on its behalf on or in the Maintenance Sheds anything which is illegal or which constitutes an actionable nuisance or which (save in the proper performance of its obligations under this Agreement) materially interferes with

the Operator's or any other lawful user's use and occupation of the Designated Depots or causes physical damage to the Designated Depots;

- (f) not bring anything on to or do or omit to do anything on (or allow any of its employees agents contractors sub-contractors and the like to bring anything on to or do or omit to do anything on) the Maintenance Sheds or the TMM Used Areas:
 - (i) that constitutes a breach of any Necessary Consents affecting the Maintenance Sheds or the TMM Used Areas; or
 - (ii) increases the premiums payable for any insurance(s) effected by the Operator (pursuant to its insurance obligations in the Depot Access Conditions) or the Depot SPC (and notified to the TMM) in respect of the Designated Depots from time to time; or
 - (iii) that:
 - (A) vitiates or invalidates in whole or in part any insurance(s); or
 - (B) renders wholly or partly irrecoverable the monies which otherwise would have been payable under any insurance(s),

effected by the Operator (pursuant to its insurance obligations in the Depot Access Conditions) or the Depot SPC (and notified to the TMM) in respect of the Designated Depots from time to time, and in the event that the TMM is in breach of its obligations in this clause 12.14(f)(iii), the TMM shall pay to the Operator:
 - (I) any shortfall in the proceeds of any insurance taken out by the Operator (pursuant to its insurance obligations in the Depot Access Conditions) which would have otherwise been recoverable by the Operator; and
 - (II) any sum which the Operator is liable to pay to the Depot SPC in respect of any shortfall in the proceeds of any insurance that would have otherwise been recoverable by the Depot SPC;
- (g) not do anything in breach of any laws and/or the reasonable requirements of the relevant suppliers relating to the supply of electricity, gas, water, sewage, telecommunications and data and other services and utilities to or from the Maintenance Sheds;
- (h) observe any reasonable rules and regulations that the Operator makes and notifies to the TMM from time to time governing the TMM's use of the Maintenance Sheds and the Common Parts **PROVIDED THAT** such rules and regulations do not materially adversely impact upon the TMM's ability to perform its obligations under this Agreement; and
- (i) not do anything on or in relation to the Maintenance Sheds that causes the Operator to be in breach of the tenant covenants and the conditions imposed on the Operator contained within its lease of the relevant Designated Depot.

12.15 During the subsistence of this Agreement, the TMM shall:

- (a) only be entitled to protect its occupation by way of unilateral notice on the register to the leasehold title of the Operator and shall not send (or permit to be sent) a copy of this Agreement to the Land Registry; and
- (b) not apply for any planning permission in respect of the Maintenance Sheds without the prior written consent of the Operator (such consent not to be unreasonably withheld or delayed).

12.16 During the subsistence of this Agreement the Operator shall:

- (a) comply with its obligations pursuant to any lease(s) of (or other derivative interest(s) in) the Designated Depots to the extent required for the proper enjoyment by the TMM of the licence and rights granted to the TMM in clause 12.7;
- (b) comply with its obligations in relation to the repair and maintenance of the Designated Depots (and access and services thereto) in accordance with the applicable Depot Access Conditions and the Depot Annexes; and
- (c) where the tenant under any Depot Headlease is neither the TMM nor a member of the TMM's Group, use reasonable endeavours to procure the repair and maintenance of the Designated Depot demised by such Depot Headlease (and access and services thereto) by others with responsibility for such repair and maintenance under the applicable Depot Access Conditions and the Depot Annexes, at no cost to the TMM.

12.17 On any termination of this Agreement, the TMM shall forthwith:

- (a) vacate the Maintenance Sheds, remove all its possessions from them and leave them clean, tidy and clear of rubbish; and
- (b) remove any unilateral notice made pursuant to clause 12.15(a) to protect its licence or any rights/interest contained in it at the Land Registry or any entry made at the Land Charges Department.

12.18 In the event of the TMM leaving any of its possessions in the Maintenance Sheds for more than 14 days after the termination of this Agreement (or such longer period (if any) as may previously have been agreed in writing between the Operator and the TMM), the Operator (as agent of the TMM) may dispose of them in any way in which it thinks fit and in the event of any sale of any of such possessions by the Operator the balance of any proceeds (after deduction of any expenses reasonably incurred by the Operator) shall be sent by cheque to the TMM by the Operator at the TMM's registered office.

12.19 The Operator gives no warranty that the Maintenance Sheds possess the Necessary Consents or that they can lawfully be used for the Permitted/Licensed Use.

12.20 The Operator gives no warranty that the Maintenance Sheds are fit for the Permitted/Licensed Use.

13. OPERATOR'S OBLIGATIONS

Units

13.1 The Operator shall operate the Units and the Simulators in accordance with Applicable Laws and Standards, the Manuals and the Operator's Railway Safety Certificate and make its drivers of the Units aware of the contents of the Driver's Manual. The Operator

shall ensure that any Third Party Maintainer that it appoints in accordance with clause 8.8 complies with the contents of the Maintenance Manual.

13.2 The Operator shall use all reasonable endeavours to deliver the Units to the TMM in accordance with the Train Plan and the Train Plan Parameters or as otherwise agreed.

13.3 If a Unit's Train Management System provides an indication that the Train Management System has relayed details of a Fault to the TMM, the TMM shall be deemed to have notice of that Fault or SQM Fault, as appropriate, and the Operator's obligation to notify the TMM under clause 13.20 shall have been discharged in respect of that Fault.

Payments

13.4 The Operator shall comply with its obligations to:

- (a) pay the TMM for the performance of any TSA Services (other than the BPA Maintenance Activities) in accordance with clause 18 (*Payments*); and
- (b) make Balancing Cost Payments to the Owner in accordance with clause 18 (*Payments*) and paragraph 12 (*Balancing Cost Payments*) of Schedule 6.6 (*Balancing Payments Account*).

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Railway Safety Certificate

13.14 Where any documentation related to the Operator's Railway Safety Certificate has to be amended following any change in the scope or periodicity of maintenance, the TMM shall be responsible for ensuring such amendment is made and the Operator shall, as requested by the TMM:

- (a) provide all co-operation in signing any relevant applications (where the TMM is unable to do so on the Operator's behalf); and
- (b) supply any necessary information, which is in the Operator's sole possession, to promptly update the Operator's Railway Safety Certificate.

Facilities, access and free travel

13.15 The TMM and the Operator shall have good faith discussions concerning the provision of secure storage facilities for Owner Owned Spares or TMM Owned Spares which are to be stored at the Operator's stations and facilities (at the cost and risk of the TMM) for the TMM's out-based staff at the requisite Operator stations.

13.16 The Operator shall provide the TMM's representative with sufficient office facilities in the same building as the Operator's representative with responsibility for train control for the TMM to comply with its obligations under paragraph 8.7 of Schedule 2.3 (*The Standard Services*).

13.17 The Operator shall provide free travel on the Operator's rail services for employees of the TMM whilst on business relating to the provision of the TSA Services to the Units whose names and job specifications are notified to and agreed by the Operator from time to time.

13.18 The Operator shall provide such reasonable free access by road and foot (on reasonable prior notice) to stations and property under the control of the Operator as the TMM may reasonably require for the performance of its obligations under this Agreement.

Fault notification

13.19 If the TMM provides the appropriate hardware, the Operator shall promptly procure the connection of the TMM to the Network Monitoring System at the TMM's cost.

13.20 The Operator agrees to notify the TMM (and send a copy to the Owner), in accordance with the Fault Notification Procedure (or, if applicable, Schedule 5.4 (*SQM Regime*)), of any Faults or SQM Faults allocated to a Unit under any train recording systems (subject to clause 13.3) or the Network Monitoring System, where such Faults occur to any of the Units whilst the Units are in the care, custody and control of the Operator. Where a Fault notified by the Operator in accordance with this clause 13.20 is an MSA Fault, the Operator shall be deemed to have given notice of that MSA Fault in accordance with paragraph 3.1 of

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schedule 14 (*Design Life, Warranties and Fault Rectification*) of the MSA, and the Operator's obligation to notify the TMM under paragraph 3.1 of schedule 14 of the MSA shall have been discharged in respect of that MSA Fault.

Annual Mileage of Units

13.21 Subject to the TMM complying with clause 6.8, the Operator shall ensure that no Unit exceeds []⁵⁵ (or such other mileage as may be proposed by the Operator and agreed by the TMM, acting reasonably) in any Contract Year.

13.22 The Operator shall ensure that no individual Unit shall operate a mileage in any Contract Year that []⁵⁶.

13.23 If any of the annual limits referred to in clauses 13.21 and 13.22 is exceeded by a Unit in any Contract Year:

(a) []⁵⁷

(b) []⁵⁸

Rescue of Units which fail on the Thameslink Network

13.24 The Operator will be responsible for the removal of rolling stock vehicles which have ceased to be operable whilst on the Thameslink Network in accordance with its obligations under its Track Access Agreement[]⁵⁹.

Co-operation obtaining authority

13.25 If any Modification is made to a Unit or Vehicle, Owned Spare or Special Tool, the Operator shall take whatever steps (if any) as are reasonable in order to ensure that:

- (a) those approvals for authority to operate such Unit in revenue-earning passenger service which can only be obtained by a Train Operator are obtained from the relevant Government Authority; and
- (b) the registration of the Unit or Vehicle in the rolling stock library maintained by Network Rail reflects (to the extent necessary) such Modification.

Notification of Updated Relevant Approvals

13.26 Subject to clauses 13.14 and 13.25, if the Operator is aware that any Relevant Approval has been issued, modified, updated or amended (including, without limitation, the issuance of an Operator's Railway Safety Certificate for a Successor Operator), and that the TMM has not been involved in the process of such issue, modification, updating or amendment, the Operator shall, as soon as reasonably practicable, provide a copy of the

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issued, modified, updated or amended Relevant Approval to the TMM. If such issued, modified, updated or amended Relevant Approval requires changes to the TSA Services, the Operator shall make a Variation Proposal in accordance with the Applicable Variation Procedure.

Notification of Loss or Damage

13.27 Where the Operator becomes aware (otherwise than by way of notice of such loss or damage provided by the TMM or the Owner) of any material loss or damage sustained in respect of a Unit or a Simulator (when in its care custody and control), it shall notify the other Parties of the same as soon as reasonably practicable and the Operator shall provide a written report of any such event to the Owner and the TMM on the Hand Over Certificate relating to that Unit or the Simulator Hand Over Certificate relating to that Simulator when the Unit or Simulator is next Handed Over.

Notification of Safety Critical Issues

13.28 Where the Operator becomes aware (otherwise than by way of notice of such issue provided by the TMM or the Owner) of any safety critical issues in respect of a Unit, Vehicle, Simulator, Owner Owned Spare or Special Tool, it shall notify the TMM and the Owner in writing (and providing full details) within two hours of so becoming aware.

Operator Owned Spares

13.29 The Operator shall store all Operator Owned Spares (other than those to be stored by the TMM pursuant to clause 10.9(e)) in a safe and orderly manner and at a safe location, and capable of being differentiated from spare parts provided by other suppliers.

Agents or Employees

13.30 The Operator shall retain responsibility in full for all of its obligations under this Agreement and any act, omission, breach of contract or negligence of any agents or employees under its control or of any other Train Operator to whom the Units are sub-leased shall for the purposes of this Agreement be deemed to be the act, omission, breach of contract or negligence of the Operator, save that the Operator's responsibility for such acts, omissions, breaches of contract or negligence to which any relevant provisions of this Agreement or any of the other Contracts (including clauses 31.5 or 31.7 of this Agreement or clause 16.3 of the Umbrella Agreement) apply shall be as set out in those provisions, in accordance with their terms.

Sub-leasing

13.31 The Operator may not sub-lease the Units unless:

- (a) it has given prior written notice of such proposed sub-lease to the TMM and the Owner; and
- (b) the TMM has given its prior written consent to such sub-lease, such consent not to be unreasonably withheld or delayed, except that such prior consent shall not be required if the sub-leasing satisfies the conditions in clause 13.32; and
- (c) the Owner has given its prior written consent to such sub-lease under paragraph 5.1 of schedule 5 (*Operational and Maintenance Undertakings*) of the Lease (or has acknowledged that such consent is not required in accordance with that paragraph),

and any notice given by the Operator under paragraph (a) shall be deemed to be a Variation Proposal by the Operator which shall not be implemented unless and until the Secretary of State issues an Authorisation to Vary in respect of such proposal pursuant to schedule 4.3 (*Secretary of State Authorisation of Variations*) of the Umbrella Agreement (or, after the Umbrella Agreement has expired or terminated, schedule 5.3 (*Secretary of State Authorisation of Variations*) of the Maintenance Direct Agreement).

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

- (a) for so long as this Agreement is in force, any such sub-leased Units continue to be maintained under and in accordance with this Agreement and the TSA Services continue to be provided in relation to those Units in the Designated Depots, in which case the TSA Performance Regime shall continue to apply to such Units;
- (b) the mileage of each Unit operated by that Train Operator pursuant to the sub-lease shall be consistent with the mileage bands that relate to the Unit Type of that Unit in Schedule 6.3 (*Steady State Period Service Payments*) and clause 13.21;
- (c) the operation of the relevant Units by that franchised Train Operator is in accordance with the Permitted Use (Lease) and does not require any alteration to the Train Plan Parameters; and
- (d) the Operator shall insure or procure the insurance of the Units in accordance with the terms of Schedule 10 (*Insurance*) and schedule 8 (*Insurance*) of the Lease.

13.33 [NOT USED]

Sub-lessee rights

13.34 The TMM and the Owner acknowledge that, if any of the Units are sub-leased in accordance with clause 13.31, the sub-lessee shall, subject to clause 41.15, be entitled to exercise some rights of the Operator under this Agreement that arise from and relate to the operation and physical possession of such Units in place of the Operator (including, without limitation, the right to require the performance by the TMM of the TSA Services under paragraph 6 (*Unit Failure*) of Schedule 2.3 (*The Standard Services*) in relation to the sub-leased Units), at all times subject to the terms and conditions of this Agreement. The Parties shall, acting reasonably, seek to agree the extent of such rights that a sub-lessee shall be entitled to exercise prior to the TMM and the Owner giving their respective consent to the relevant sub-lease in accordance with clause 13.31, and subject to securing the consent of the Secretary of State to the proposed arrangements by way of the issue of an Authorisation to Vary pursuant to schedule 4.3 (*Secretary of State Authorisation of Variations*) of the Umbrella Agreement (or, after the Umbrella Agreement has expired or terminated, schedule 5.3 (*Secretary of State Authorisation of Variations*) of the Maintenance Direct Agreement).

Sub-leasing and the TSA Performance Regime

13.35 If any Units are the subject of a sub-lease in accordance with clause 13.31, the provisions of:

- (a) paragraph 3.9 of Schedule 5.1 (*Availability Regime*) and paragraph 1(d) of Schedule 5.5 (*Performance Regime General Provisions*) shall apply in relation to the application of the TSA Performance Regime during such sub-lease; and

- (b) paragraph 2.3 of Schedule 8 (*Performance Remedial Plans*) shall apply in relation to the application of the Fleet Performance Calculations during such sub-lease.

Redelivery Condition at the end of a sub-lease

13.36 If any sub-leased Units cease to be subject to a sub-lease, the Operator, the Owner and the TMM shall carry out an inspection of such sub-leased Units (and the Technical Records that relate to such Units), in a manner consistent with paragraph 3.1 of Schedule 14 (*Redelivery Condition Schedule*), in order to verify whether such Units are in the Redelivery Condition (TSA) at such time. To the extent that any such Units are not in the Redelivery Condition (TSA), the Operator shall be liable for the costs of bringing those Units into the Redelivery Condition (TSA), unless and to the extent such failure is due to the existence of Faults.

Simulators

13.37 The Operator shall operate the Simulators in accordance with Applicable Laws and Standards and the Manuals. The Operator shall ensure that any Third Party Maintainer that it appoints in accordance with clause 8.8 complies with the contents of the Maintenance Manuals.

13.38 The Operator will not relocate either Simulator from the Designated Depot in which it is supplied (or to which it is relocated in accordance with clause 4.15 of the MSA) without the prior written agreement of the TMM.

14. OWNER'S OBLIGATIONS

Payments

14.1 The Owner shall comply with its obligations to pay to the TMM the Periodic Maintenance Charges in accordance with paragraph 13 (*Periodic Maintenance Charges*) of Schedule 6.6 (*Balancing Payments Account*).

Balancing Payments Account

14.2 The Owner shall comply with its obligations to establish and maintain the Balancing Payments Account in accordance with Schedule 6.6.

Notification of Loss or Damage

14.3 Where the Owner becomes aware (otherwise than by way of notice of such loss or damage provided by the TMM or the Operator) of any material loss or damage sustained in respect of a Unit or Simulator, it shall notify the other Parties of the same as soon as reasonably practicable and the Owner shall provide a written report of such event to the TMM and the Operator as soon as possible following such event.

Notification of Safety Critical Issues

14.4 Where the Owner becomes aware (otherwise than by way of notice of such issue provided by the TMM or the Operator) of any safety critical issues in respect of a Unit, Vehicle, Simulator, Owner Owned Spare, Operator Owned Spare or Special Tool, it shall notify the TMM and the Operator in writing (and providing full details of the Owner's knowledge of the relevant issue, without being required to make further investigation) within two hours of so becoming aware.

Agents or Employees

14.5 The Owner shall retain responsibility in full for all of its obligations under this Agreement and any act, omission, breach of contract or negligence of any agents or employees under its control shall for the purposes of this Agreement be deemed to be the act, omission, breach of contract or negligence of the Owner, save that the Owner's responsibility for such acts, omissions, breaches of contract or negligence to which any relevant provisions of this Agreement or any of the other Contracts (including clause 16.3 of the Umbrella Agreement or, in relation to any agents, clauses 31.5, 31.7 and 41.9 of this Agreement) apply shall be as set out in those provisions, in accordance with their terms.

15. WARRANTIES

Notification

15.1 The Owner or the Operator shall notify the TMM in writing as soon as reasonably practicable after it becomes aware of a Fault other than where the Owner's or the Operator's awareness arises by way of notice of such issue provided by the TMM or the other Party.

Rectification of Faults during Warranty Period (TSA)

15.2 Without prejudice to the Owner's and the Operator's rights under the TSA Performance Regime, but subject to clauses 15.4, 15.9 and 15.11 and (if the Fault is an SQM Fault) the provisions of Schedule 5.4 (*SQM Regime*), the TMM shall as soon as reasonably practicable and in any event within seven days of being notified by the Owner or Operator or otherwise first becoming aware (including by virtue of a re-designation of a No Fault Found as a Fault pursuant to paragraph 3.5(d) of Schedule 1.5 (*Fault Notification Procedure*)) of, in each case, the occurrence of any Fault which occurs in any Unit, Vehicle, Simulator, Part, Owned Spare or Special Tool during the appropriate period described in clause 15.4:

- (a) rectify that Fault (including supplying and fitting such parts as are necessary); or
- (b) propose a plan (a ***Fault Rectification Plan***) for rectification of that Fault (including supplying and fitting such parts as are necessary),

provided that if the TMM is required under this Agreement to rectify any Fault which constitutes an Endemic Defect, Epidemic Defect or Design Defect the time periods specified in the MSA for rectification of that Fault shall apply to the exclusion of the time periods specified in this Agreement.

15.3 If the TMM proposes a Fault Rectification Plan in accordance with clause 15.2(b), each of the Operator and the Owner shall, acting reasonably, review the proposed plan and confirm to the TMM whether or not they agree the proposed plan, as soon as reasonably practicable after their receipt of the proposed Fault Rectification Plan. If the Owner fails to respond within seven days of its receipt of a proposed Fault Rectification Plan, it shall be deemed to have agreed to such plan. The TMM shall not implement any Fault Rectification Plan unless and until the Operator has confirmed in writing that it agrees to such plan. If the Operator fails to respond within seven days of its receipt of a proposed Fault Rectification Plan, such failure shall constitute an Exonerating Event from the seventh day after the Operator's receipt of the plan until it delivers its response. Once a Fault Rectification Plan has been agreed in accordance with this clause 15.3, the TMM shall implement such plan in accordance with its terms.

15.4 The TMM's warranty and its obligations to rectify any Fault under clause 15.2 shall terminate:

- (a) in the case of an MSA Fault, upon the earlier of the expiry of the applicable warranty under the MSA and the end of the TSA Term; and
- (b) in the case of any other Fault, on the expiry of the applicable Warranty Period (TSA) under this Agreement.

Operator and Owner rights to rectify Faults

15.5 In respect of a Fault, if either:

- (a) such Fault is not remedied or the TMM has not put forward a Fault Rectification Plan satisfactory to the Owner and the Operator (each acting reasonably) for rectification of such Fault, in each case, within seven days of either:
 - (i) the Fault being notified to the TMM by the Owner or the Operator; or
 - (ii) the TMM otherwise first becoming aware of its occurrence; or
- (b) where the TMM has put forward a Fault Rectification Plan that is agreed in accordance with clause 15.3, the Fault is not remedied within the time period specified in the Fault Rectification Plan,

then the Owner and the Operator (acting jointly) may proceed to rectify or procure the rectification of the Fault in accordance with clause 8.8(d) and, except where such failure is due to the occurrence of a Force Majeure Event, shall be entitled to recover from the TMM the costs reasonably and properly incurred in so doing pursuant to clause 8.10.

15.6 If the Owner and the Operator (acting jointly) rectify or procure the rectification of a Fault, the TMM's warranty obligations under clause 15.2 or clause 15.8 shall not apply to such rectification works carried out by any person other than the TMM nor to any Fault which is solely consequential upon the rectification work being carried out by any person other than the TMM, but shall otherwise not affect any other rights which the Owner or the Operator may have against the TMM concerning the affected Unit(s), Vehicle(s), Simulator(s), Part(s), Owned Spare(s) or Special Tool(s), including the TMM's obligation to provide the TSA Services and to comply with the Performance Regime Targets.

15.7 If the Owner and the Operator (acting jointly) exercise their rights under clause 15.5 in accordance with clause 8.8(d), the Owner and the Operator agree to use all reasonable endeavours to ensure that any third party who has remedied a Fault allows an independent auditor of maintenance systems and practices appointed by the TMM access to the maintenance records to allow the auditor to establish that the relevant Manuals and the Maintenance Plan had been followed (or otherwise) in relation to the rectification of that Fault. If the auditor determines that the relevant Manuals and the Maintenance Plan had not been followed in relation to the rectification of that Fault, the Operator and the Owner shall bear the cost of any work necessary by the third party to ensure that the affected Unit(s), Vehicle(s), Simulator(s), Part(s), Owned Spare(s) or Special Tool(s) are placed in the condition they should have been in had the original Fault been rectified in accordance with the relevant Manuals and the Maintenance Plan.

Components

15.8 Without prejudice to schedule 14 (*Design Life, Warranties and Fault Rectification*) of the MSA, where any of the components listed in this clause 15.8 (the **Components**) is overhauled, the TMM shall warrant the workmanship on the overhaul of the Component and the Parts used in such overhaul []⁶⁰

List of Components

[]⁶¹

Scope of Rectification Obligations

15.9 The TMM's obligations under clause 15.2 or clause 15.8 in respect of any Fault []⁶².

15.10 []⁶³

Latent Faults

15.11 Subject to the rights of the Owner and the Operator in respect of requiring the rectification of Faults under:

- (a) clauses 15.1 to 15.8;
- (b) the MSA;
- (c) (if a TSSSA Requirement Notice is delivered) under the TSSSA; or
- (d) Schedule 2.3 (*Standard Services*),

the TMM shall, provided that this Agreement has terminated and no TSSSA is in force, have no liability, and no actions or proceedings shall be commenced against the TMM under this Agreement in respect of any Latent Fault in any Vehicle, Unit, Simulator, Part, Owner Owned Spare, Special Tool or a Component that is notified to the TMM after the date falling []⁶⁴ after the end of the relevant Warranty Period (TSA) or, in the case of a Component, []⁶⁵ after the relevant warranty period under clause 15.8.

Extension of warranties

15.12 []⁶⁶.

⁶⁰ Redaction.

⁶¹ Redaction.

⁶² Redaction.

⁶³ Redaction.

⁶⁴ Redaction.

⁶⁵ Redaction.

⁶⁶ Redaction.

Rectification of MSA Faults

15.13 If:

- (a) the TMM rectifies or procures the rectification of an MSA Fault in accordance with clause 15.2; or
- (b) the Owner and the Operator rectify or procures the rectification of an MSA Fault in accordance with clause 15.5,

then any expense incurred or arising as a result of that rectification work by the TMM or on behalf of the TMM shall be deemed to have been incurred or have arisen in accordance with schedule 14 of the MSA.

15.14 Any expense incurred by the TMM or any Sub-Contractor in relation to the rectification of any MSA Fault or arising therefrom shall not be included for the purposes of determination of the TMM's annual liability in accordance with clauses 27.15 to 27.17 (inclusive).

Overruns

15.15 Without prejudice to the TMM's other obligations under this Agreement, if:

- (a) the TMM takes a Unit of any Unit Type out of service for the purpose of rectifying an MSA Fault, Endemic Defect, Epidemic Defect or Design Defect pursuant to the MSA, whether or not the TMM is also carrying out TSA Services on that Unit at the same time; and
- (b) the number of Units of that Unit Type that are Available on any such day is less than the Availability Benchmark for that Unit Type and that day,

then liquidated damages shall be payable by the TMM to the Operator under the provisions of paragraph 8.1 of schedule 14 of the MSA and not under the terms of the TSA Performance Regime.

Full and final satisfaction

15.16 The repair, replacement or rectification of any Fault by the TMM in accordance with this clause 15 shall be the sole remedy of the Owner and the Operator in relation to such Fault and the consequences thereof under this Agreement, provided that this clause 15.16 shall not affect the following express rights of the Operator and/or the Owner pursuant to this Agreement:

- (a) the rights of the Owner and/or the Operator to appoint a third party to remedy a Fault where they are entitled to do so in accordance with clause 15.5; or
- (b) the obligations of the TMM in relation to the production or implementation of any Performance Remedial Plans in accordance with this Agreement; or
- (c) the rights of the Operator under the TSA Performance Regime; or
- (d) the rights of the Owner and/or the Operator under Schedule 14 (*Redelivery Condition Schedule*); or

- (e) the rights of the Owner and/or the Operator under clause 27 (*Liability, Indemnities*); or
- (f) the rights of the Owner and the Operator under Schedule 13.1 (*TMM Events of Default*) or Schedule 13.4 ([]⁶⁷).

Survival

15.17 Subject to clause 15.11, the TMM's obligations under this clause 15 shall survive this termination or expiry of this Agreement.

16. INTELLECTUAL PROPERTY RIGHTS

Ownership

16.1 The Intellectual Property Rights in any materials supplied by:

- (a) the Owner to the TMM shall remain the property of the Owner and the Owner hereby grants the TMM a right to use such Intellectual Property Rights solely for the purpose of performing the TSA Services; and
- (b) the Operator to the TMM shall remain the property of the Operator and the Operator hereby grants the TMM a right to use such Intellectual Property Rights solely for the purpose of performing the TSA Services.

16.2 Nothing in this Agreement shall affect the TMM's ownership of the Intellectual Property Rights which it owns and which are dealt with (and licensed to the Operator and the Owner) in accordance with clause 26 (*Intellectual Property Rights*) of the MSA.

16.3 The TMM hereby grants (and shall procure the grant of) to each of the Operator and the Owner an unconditional, irrevocable, perpetual, transferable, royalty free licence (together with the right to sub-license) to use all the Intellectual Property Rights in the object code for the TSA Software:

- (a) to maintain, service, repair, refurbish and overhaul the Equipment; and
 - (i) while this Agreement is subsisting, to have such actions performed by a third party where and to the extent entitled to do so pursuant to clause 8.8; or
 - (ii) after the TMM's obligation to provide the TSA Services under this Agreement has terminated, to have such actions performed by a third party ; and
- (b) to copy and modify such TSA Software only to the extent necessary in connection with the matters described in paragraph (a).

16.4 [NOT USED]

⁶⁷ Redaction.

Licensed Non-Design Documents and Licensed Design Documents

16.5 The Performance Reports will be Licensed Non-Design Documents for the purposes of the MSA. The Owner and Operator shall be permitted to use and access the Licensed Design Documents and to use the Licensed Non-Design Documents on and subject to the terms and conditions set out in the MSA. The Owner and the Operator shall have the benefit of the warranties and the indemnities (subject to the same provisos) and shall owe the TMM the same obligation in respect of such Licensed Design Documents and the Licensed Non-Design Documents as set out in clause 26 of the MSA.

Source Codes

16.6 The TMM undertakes to lodge, and shall use reasonable endeavours to ensure that there remain lodged, duly updated as necessary as soon as reasonably practical in accordance with the Software Escrow Agreement, Source Codes (including the updates to such Source Codes applicable to the provision of the TSA Services under this Agreement) until the later to occur of:

- (a) the expiry of the Unit Design Life of the Last Unit; or
- (b) the expiry of the Design Life of all Key Components.

16.7 The Escrow Materials shall be released to the Owner and Operator in accordance with the Software Escrow Agreement.

Data protection

16.8 All Parties shall be obliged at all times in respect of this Agreement to comply with the Data Protection Act 1984 and the Data Protection Act 1998 and any other relevant legislation.

Intellectual Property Indemnity

16.9 The TMM hereby warrants that it is or shall be by the time it commences any TSA Services under this Agreement or, if later, by the date on which the relevant materials are supplied under this Agreement, the owner, or the licensee (with a right to sub-license) of all Intellectual Property Rights in those elements of the Licensed Design Documents, Licensed Non-Design Documents, the Technical Resource Materials and the Escrow Materials which relate to documents created under this Agreement and in any Spares, Special Tools, TSA Software or other Equipment supplied under this Agreement and anything else provided by the TMM pursuant to or in connection with this Agreement and that the use of those elements of the Licensed Design Documents, Licensed Non-Design Documents, the Technical Resource Materials or the Escrow Materials which relate to documents created under this Agreement, such Spares, Special Tools, TSA Software or other Equipment or anything else provided by the TMM pursuant to or in connection with this Agreement by the Owner or the Operator as permitted under this Agreement shall not infringe any Intellectual Property Rights, including those of any third party .

16.10 The TMM shall be liable to the Owner and the Operator for any infringement or alleged infringement of any Intellectual Property Rights:

- (a) including those rights of any third party and the consequences thereof arising out of a breach by the TMM or its Sub-Contractors of its obligations or warranties under this Agreement;

- (b) arising out of a permitted use under this Agreement by the Owner or the Operator of a Unit, Vehicle, Part, the Special Tools, the TSA Software, the Licensed Design Documents, Licensed Non-Design Documents, Technical Resource Materials or Escrow Materials or anything else provided by the TMM pursuant to or in connection with this Agreement; or
- (c) arising out of the exercise by the Owner and the Operator of their respective rights under this Agreement.

16.11 The TMM hereby indemnifies and shall keep indemnified and hold harmless the Owner and the Operator against all actions, claims, Loss and damages and costs (including legal costs) arising from or claimed by, any third party in relation to any infringement or alleged infringement referred to in clause 16.10 (whether or not reasonably foreseeable as a result of the infringement or alleged infringement referred to in clause 16.10). If any such infringement or alleged infringement occurs, the TMM shall at the TMM's choice and cost:

- (a) procure a licence, as permitted under this Agreement, for the Owner and the Operator, together with a right to sub-license (on terms which reflect the terms of the licences given under the MSA or which are otherwise acceptable to them both) for the use of the relevant Equipment, the TSA Software and those elements of the Licensed Design Documents, the Licensed Non-Design Documents, the Technical Resource Materials and the Escrow Materials which relate to the documents created under this Agreement or any other thing provided by the TMM pursuant to or in connection with this Agreement; or
- (b) as appropriate, remedy any infringement so as to further avoid that infringement or certify to the Owner and the Operator that the alleged infringement is not an infringement, in each case in order to enable the Owner and the Operator to continue to use, as permitted under this Agreement, the Equipment, the TSA Software and those elements of the Licensed Design Documents, the Licensed Non-Design Documents, the Technical Resource Materials and the Escrow Materials which relate to the documents created under this Agreement or any other thing provided by the TMM pursuant to, or in connection with, this Agreement and licensed to them.

16.12 The indemnity given in clause 16.11 by the TMM shall not apply to the Owner or the Operator to the extent that the relevant actions, claims, Loss or damages and costs (including legal costs) are due to a breach by the Owner or the Operator (as appropriate) of any of their respective obligations under this Agreement or any modifications or additions made by the Owner or the Operator (as appropriate) to the Equipment, TSA Software Licensed Design Documents, Licensed Non-Design Documents, Technical Resource Materials or the Escrow Materials. The Owner and the Operator shall each be under a duty to mitigate any Losses they seek to claim under this clause 16.

16.13 The provisions of clauses 27.6 to 27.17 (inclusive) shall apply to any claims against the Owner or the Operator for which the Owner or the Operator is indemnified by the TMM under clause 16.11.

16.14 The provisions of this clause 16 shall survive termination of this Agreement for whatever reason.

17. PERFORMANCE REGIME

Obligations under the Performance Regime

17.1 The TMM shall comply with the TSA Performance Regime including the Performance Regime Targets.

17.2 The Operator shall comply with its obligations under the TSA Performance Regime.

Performance Payments

17.3 If the TMM fails to comply with its obligations under clause 17.1, then subject to the provisions of this Agreement, the TMM shall pay to the Operator Performance Payments (as compensation for loss and not as a penalty) calculated in accordance with the TSA Performance Regime.

17.4 Amounts payable by the TMM under clause 17.3 shall be calculated and paid (subject to paragraph 12.7 of Schedule 5.5 (*Performance Regime General Provisions*)) in accordance with the TSA Performance Regime and clauses 18.16 to 18.28 (inclusive).

18. PAYMENTS

Amount of Ramp-up Period Service Payments

18.1 During the Ramp-up Period, the Operator shall pay to the TMM and the Owner, Service Payments in respect of each Type 1 Unit and Type 2 Unit that has been Accepted, calculated in accordance with Schedule 6.2 (*Ramp-up Period Service Payments*) and in the proportions referred to in clause 18.7.

18.2 The TMM and the Owner shall each submit an invoice to the Operator in relation to the proportion of each Service Payment that the TMM and the Owner respectively are entitled to receive pursuant to clause 18.1 and 18.7, in each case, at the address specified in clause 39 (*Notices*) within five Working Days of the last day of each Railway Period, or as soon as possible thereafter. The Operator shall, subject to receipt by it of an appropriate invoice in accordance with this clause 18.2, pay the amount set out in any undisputed invoice or any undisputed part thereof, in arrears, no later than 28 days following receipt of the invoice.

18.3 The Operator shall notify the TMM or the Owner (as appropriate) in writing of any disputed amounts or invoices stating the reasons for such dispute within 5 Working Days of receipt of such invoice.

Amount of Steady State Period Service Payments

18.4 During the Steady State Period, the Operator shall pay to the TMM and the Owner Service Payments in respect of the Fleet, calculated in accordance with Schedule 6.3 (*Steady State Period Service Payments*) and in the proportions referred to in clause 18.7.

18.5 The TMM and the Owner shall each submit an invoice to the Operator in relation to the proportion of each Service Payment that the TMM and the Owner respectively are entitled to receive pursuant to clause 18.4 and 18.7, in each case, at the address specified in clause 39 within five Working Days of the last day of each Railway Period, or as soon as possible thereafter. The Operator shall, subject to receipt by it of an appropriate invoice in accordance with this clause 18.5, pay the amount set out in any undisputed invoice or any undisputed part thereof, in arrears, no later than 28 days following receipt of each such invoice.

18.6 The Operator shall notify the TMM or the Owner (as appropriate) in writing of any disputed amounts or invoices stating the reasons for such dispute within 5 Working Days of receipt of such invoice.

Balancing Cost Payments and TMM Payments

18.7 Out of any relevant Service Payment, the Operator shall pay during the TSA Term:

□⁶⁸.

Periodic Maintenance Charges

18.8 During the TSA Term, the Owner shall pay to the TMM the Periodic Maintenance Charges in accordance with paragraph 13 (*Periodic Maintenance Charges*) of Schedule 6.6 (*Balancing Payments Account*) in respect of the supply of the BPA Maintenance Activities by the TMM to the Owner. □⁶⁹

Payment for Additional Services

18.9 At the end of each Railway Period, the TMM will calculate the payment due from the Operator for Additional Services on the basis of Additional Services performed by the TMM in that Railway Period, at the rates set out in Schedule 6.4 (*Additional Services Payments*) (the *Additional Services Payments*).

18.10 The TMM shall submit an invoice for the Additional Services Payments to be made in any Railway Period to the Operator at the address specified in clause 39 within five Working Days of the last day of that Railway Period, or as soon as possible thereafter. The invoice shall detail the Additional Services performed in that Railway Period and shall specify the full amount of the Additional Services Payments to be paid and shall show the net total amount of all Additional Services Payments payable for that Railway Period.

18.11 The Operator shall, subject to receipt by it of an appropriate invoice in accordance with clause 18.10, pay to the TMM any undisputed invoice or any undisputed part thereof in arrears, no later than 28 days following receipt of such an invoice.

18.12 The Operator shall notify the TMM in writing of any disputed amounts or invoices stating the reasons for such dispute within 10 Working Days of receipt of such invoice.

Adjustments to Service Payments

18.13 The Service Payments will be subject to the application of the following:

- (a) the Indexation Adjustment Formula in Schedule 6.5 (*Indexation Adjustment Formula*);
- (b) Variations affecting Service Payments in accordance with the Applicable Variation Procedure, provided that the application of the Applicable Variation Procedure shall be limited in accordance with clause 20.12 in relation to any Mandatory Modification required pursuant to any Change in Law; and

⁶⁸ Redaction.

⁶⁹ Redaction.

- (c) the reconciliation provisions set out in paragraphs 4 (*Reconciliations in respect of the Ramp-Up Period*) and 4.15 (*Reconciliations on Termination, Expiry or Transfer to a Successor Operator*) of Schedule 6.2 and paragraphs 4 (*Reconciliations in respect of the Steady State Period*) and 5 (*Reconciliations on Termination, Expiry or Transfer to a Successor Operator*) of Schedule 6.3.

18.14 [NOT USED]

18.15 [NOT USED]

Method of Payment

18.16 All payments required to be made under this Agreement (including TMM Payments, Balancing Cost Payments, Periodic Maintenance Charges, Simulator Service Payments, Additional Services Payments and Performance Payments) will be made for value on the due date in cleared funds to such account at a bank in the United Kingdom as the payee shall have notified to the payer (except Balancing Cost Payments for which clause 18.7(a) applies in relation to the relevant account) by not less than three Working Days' notice, free and clear of any deduction, withholding, set off or counterclaim whatsoever, except to the extent any deduction is required by any Applicable Laws and Standards, or is in accordance with the express provisions of this Agreement.

18.17 If the due date for any payment falls on a day which is not a Working Day, payment shall be made on the next Working Day thereafter unless such day would fall in another Railway Period, in which case payment shall be made on the immediately preceding Working Day.

18.18 If any Party is required by law to make any deduction or withholding from any payment hereunder (such Party referred to herein as the **Payer**), it shall do so and the sum due from the Payer in respect of such payment shall be increased to the extent necessary to ensure that, after the making of such deduction or withholding, the Party to whom such payment is due (such Party referred to herein as the **Payee**) receives and retains (free of any liability in respect of any such deduction or withholding) a net sum equal to the sum it would have received and retained had no deduction or withholding been required to be made.

18.19 If following the making of any deduction or withholding in respect of sums payable hereunder and the payment by the Payer of any increased amount in accordance with the provisions of clause 18.18, the Payee receives or is granted a credit against, remission for or repayment of any Tax payable by it, which credit, remission or repayment is referable to that increased amount so paid by the Payer, the Payee shall, to the extent that it is satisfied that it can do so without prejudice to the retention of such credit, remission or repayment, reimburse the Payer with such amount as the Payee shall certify to be the proportion of such credit, remission or repayment as will leave the Payee (after such reimbursement and taking into account the time any Taxation was payable and any such credit, remission or repayment was received by the Payee) in no worse or no better position (after Taxation) than it would have been in had there been no such deduction or withholding from the said sums payable by the Payer hereunder. Such reimbursement shall be made as soon as possible upon such credit or remission or repayment having, in the reasonable opinion of the Payee, been received or granted.

Value Added Tax

18.20 All payments made or to be made under this Agreement are deemed to be exclusive of any Value Added Tax chargeable thereon or by reference thereto. If any such payment

constitutes the whole or part of the consideration for a taxable or deemed taxable supply (whether that supply is taxable pursuant to the exercise of an option or otherwise), the Party making the supply shall provide the Party which receives it with an appropriate Value Added Tax invoice in respect thereof, and an amount shall be paid at the time of such payment by the Party which receives the supply to the Party making such supply in addition to that payment which is equal to the amount of Value Added Tax which is chargeable in respect of the taxable or deemed taxable supply in question.

18.21 Where under this Agreement one Party has agreed to reimburse or indemnify another Party in respect of any payment made or cost incurred by such other Party, then the first Party shall also reimburse the Value Added Tax paid by such other Party which forms part of its payment made or cost incurred to the extent that such Value Added Tax is not available for credit (whether by way of set-off or repayment) by such other Party under sections 24 to 26 (inclusive) of the Value Added Tax Act 1994 or any regulations made thereunder or under any similar or equivalent legislation replacing or introduced in addition to the same.

Default Interest

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

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

Payments Inclusive

18.24 Save as expressly provided otherwise in this Agreement, the Service Payments, Simulator Service Payments, Additional Services Payments and Balancing Cost Payments, in each case payable by the Operator, and the Periodic Maintenance Charges payable by the Owner, are inclusive of all costs, expenses and disbursements incurred by the TMM and the Owner in connection with this Agreement.

Payments in Sterling

18.25 The Service Payments, the Additional Services Payments, Simulator Service Payments and the Performance Payments are denominated in, and shall (together with all other payments payable by any Party under this Agreement) be made in, Sterling.

New Currency

18.26 If Sterling is replaced by a 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.

Taxes on indemnity payments

18.27 If and to the extent that any sums payable by one Party to another under this Agreement by way of indemnity prove to be insufficient, by reason of any Taxation suffered

thereon, for the receiving party to discharge its corresponding liability to a third party, the paying party shall on the receiving Party's demand, pay to the receiving party such additional sum as (after taking into account any Relief to which the receiving party is entitled as a result of the liability which gives rise to the indemnity and any Taxation suffered by the receiving party on the additional sum and the time that the same is suffered) shall be required to make up the relevant deficit.

18.28 If and to the extent that any Indemnity Sum is treated as taxable in the hands of the First Party, the paying party shall on demand pay to the First Party the Compensation Sum. In calculating any amounts due under this clause 18.28, the First Party shall take into account any Relief to which it becomes entitled as a result of the liability which gives rise to the indemnity.

Sole remuneration

18.29 Unless otherwise specified in this Agreement:

- (a) the cost of all activities in relation to the Standard Services shall be borne by the TMM, and the TMM's sole remuneration in relation to the Standard Services shall be the TMM Payments and the Periodic Maintenance Charges to which it is entitled in accordance with this Agreement; and
- (b) the cost of all the TMM's (and its Sub-Contractors') activities in relation to the Additional Services shall be borne by the TMM and the TMM's sole remuneration in relation to the Additional Services shall be the Additional Services Payments to which it is entitled in accordance with this Agreement.

19. BPA MAINTENANCE ACTIVITIES AND THE BALANCING PAYMENTS ACCOUNT

The operation of the Balancing Payments Account and payments in respect of BPA Maintenance Activities shall be undertaken in accordance with Schedule 6.6 (*Balancing Payments Account*).

20. PERMITTED CHANGES, VARIATIONS AND CHANGES IN LAW

Permitted Changes

20.1 The following shall be *Permitted Changes (TSA)*:

- (a) the permitted changes to the Specification and the dates by when a request for any such change needs to be made as set out in the Permitted Changes Schedule of the MSA; and
- (b) any change to the Train Plan where the Train Plan will remain within the Train Plan Parameters, which is implemented in accordance with clause 5.5.

20.2 The Operator and the Owner may request the Permitted Change (TSA) specified in clause 20.1(a) and the Operator alone may request the Permitted Change (TSA) specified in clause 20.1(b), in each case from time to time and by issuing a written request to the TMM, which request shall specify the relevant Permitted Change (TSA). The TMM shall not be entitled to any Variation to or relief from its obligations under this Agreement, the Performance Regime Targets, the TSA Performance Regime or to any additional payment whatsoever in respect of the implementation of a Permitted Change, and such change shall not

constitute a Variation to the terms of this Agreement, nor shall any Party be required to seek or obtain any Authorisation to Vary from the Secretary of State.

20.3 A request for a Permitted Change (TSA) shall be effective upon receipt by the TMM and upon the date of such receipt, the Specification and/or the Train Plan, as appropriate, shall be amended to reflect the terms of such Permitted Change (TSA).

20.4 The TMM shall promptly comply with all Permitted Changes (TSA) which are requested.

Restriction On The Right To Vary

20.5 The Parties shall not vary the terms of this Agreement and no such agreement purporting to vary the terms of this Agreement shall be enforceable between the Parties other than Variations entered into in accordance with clauses 20.6 and 20.7.

Applicable Variation Procedure

20.6 Save as expressly stated to the contrary in the Contracts, the Applicable Variation Procedure shall apply in relation to the issuing, consideration of, authorisation and implementation of Variations to this Agreement, including Variations to the TSA Services, the Service Payments and/or Additional Services Payments, any Applicable Specification (to the extent such amendment has an impact on the TMM's ability to perform the TSA Services under this Agreement), the TSA Performance Regime, the Train Plan Parameters, the Maintenance Manual, the Maintenance Plan, steps, if any, necessary to overcome an Exonerating Event, any Modification or the rights and/or obligations of the TMM, the Operator or the Owner under this Agreement, and where the Applicable Variation Procedure does so apply, the Parties shall comply with their obligations under the terms of the Applicable Variation Procedure.

Obligation to enter into a Contract Amendment Agreement

20.7 The Parties shall enter into a Contract Amendment Agreement amending the terms of this Agreement in accordance with any Authorisation to Vary requiring the same, promptly after receipt of that Authorisation to Vary from the Secretary of State pursuant to schedule 4.3 (*Secretary of State Authorisation of Variations*) of the Umbrella Agreement (or, after the Umbrella Agreement has expired or terminated, schedule 5.3 (*Secretary of State Authorisation of Variations*) of the Maintenance Direct Agreement). Any Contract Amendment Agreement shall not be valid or binding on any Party to this Agreement unless and until the Secretary of State has issued an Authorisation to Vary in respect of such Contract Amendment Agreement.

Mandatory Modifications

20.8 The TMM shall be responsible for taking such actions as are necessary within any time limits set out in Applicable Laws and Standards, including performing the TSA Services differently, to ensure that the TSA Services continue to be carried out to the Units, the Vehicles, the Owned Spares and the Special Tools in accordance with all Applicable Laws and Standards following completion of any Mandatory Modification. The Operator shall be responsible for securing the approval of the Secretary of State pursuant to schedule 4.3 (*Secretary of State Authorisation of Variations*) of the Umbrella Agreement (or, after the Umbrella Agreement has expired or terminated, schedule 5.3 (*Secretary of State Authorisation of Variations*) of the Maintenance Direct Agreement) to such Required

Variations and the TMM shall not be obliged to implement any such Variation until the Secretary of State has issued an Authorisation to Vary in respect of such Required Variation.

Priced Options

20.9 If the Owner exercises any Priced Option in accordance with clause 29.1 of the MSA, Schedule 7.1 (*Priced Option Variations*) of this Agreement shall apply and the Applicable Variation Procedure shall apply in accordance with schedule 17 (*Priced Options*) of the MSA.

Engineering Change Control Procedure

20.10 The Engineering Change Control Procedure shall apply in relation to:

- (a) any amendments to the Manuals and the Maintenance Plan (including changes to the Repair Procedures in accordance with paragraph 3 (*Repairs*) of Schedule 2.3 (*The Standard Services*); and
- (b) the redesign or substitution of any Spare in accordance with clause 10.29,

and may be applied either as part of the Applicable Variation Procedure or, where the Applicable Variation Procedure is expressly stated not to apply, to another Variation to this Agreement.

Change in Law

20.11 The provisions of schedule 4.5 (*Change in Law*) of the Umbrella Agreement (or, after the Umbrella Agreement has expired or terminated, schedule 5.5 (*Change in Law*) of the Maintenance Direct Agreement) and the Applicable Variation Procedure shall apply in relation to any Change in Law, including a Qualifying Change in Law that requires a Mandatory Modification.

20.12 If any Change in Law which is not a Qualifying Change in Law occurs, including one that requires a Mandatory Modification, the Applicable Variation Procedure shall apply, provided that the TMM shall not be entitled to any relief from compliance with its obligations under this Agreement, including any delay in the performance of the TSA Services, or any additional payment in respect of, the implementation of that Change in Law, whether or not a Mandatory Modification is required, save only as provided in the relevant Authorisation to Vary.

Amendments to Maintenance Plan

20.13 The TMM shall be entitled to amend the Maintenance Plan or the Repair Procedures or effect the redesign or substitution of a Spare in accordance with clause 10.29 without the Applicable Variation Procedure applying in respect of such amendment, redesign or substitution but in accordance with clauses 20.14 to 20.17 (inclusive), provided that:

- (a) ⁷⁰;
- (b) ⁷¹;

⁷⁰ Redaction.

⁷¹ Redaction.

- (c) []⁷²;
- (d) []⁷³;
- (e) []⁷⁴;
- (f) []⁷⁵;
- (g) []⁷⁶;
- (h) []⁷⁷.

20.14 Where the TMM proposes to amend the Maintenance Plan or the Repair Procedures, or to effect the redesign or substitution of a Spare in accordance with clause 10.29, in each case in accordance with clause 20.13, the Engineering Change Control Procedure shall apply and the TMM shall give to the Owner and the Operator not less than 30 days' written notice of the TMM's intention to introduce the proposed amendment, setting out reasonable details of the proposal sufficient to demonstrate that each of the conditions set out in clause 20.13 is satisfied in relation to that proposal. The Owner and the Operator shall each respond in writing to the TMM, within 30 days of their receipt of the TMM's proposal, stating whether or not they believe that each of the conditions in clause 20.13 is satisfied in relation to the TMM's proposal.

20.15 If:

- (a) the Operator or the Owner responds pursuant to clause 20.14 to the effect that it does not believe that each of the conditions in clause 20.13 is satisfied in relation to the TMM's proposal to amend the Maintenance Plan or the Repair Procedures, or to effect the redesign or substitution of a Spare in accordance with clause 10.29, any Party shall be entitled to; or
- (b) the Operator or the Owner fails to respond to a proposal within 30 days pursuant to clause 20.14, the TMM shall (if it wishes to pursue its proposal),

refer the dispute to an Expert pursuant to the Applicable Expert Determination Provisions for an interim decision under those Applicable Expert Determination Provisions, and the Expert shall determine whether the TMM's proposal satisfies the conditions in clause 20.13.

20.16 If either:

- (a) both the Owner and the Operator respond pursuant to clause 20.14 that they agree that each of the conditions in clause 20.13 is satisfied in relation to the TMM's proposal to amend the Maintenance Plan or the Repair Procedures, or to effect the redesign or substitution of a Spare in accordance with clause 10.29; or

⁷² Redaction.

⁷³ Redaction.

⁷⁴ Redaction.

⁷⁵ Redaction.

⁷⁶ Redaction.

⁷⁷ Redaction.

- (b) it is determined by an Expert pursuant to a referral made under clause 20.15 that each of the conditions in clause 20.13 are satisfied in relation to the TMM's proposal to amend the Maintenance Plan or the Repair Procedures, or to effect the redesign or substitution of a Spare in accordance with clause 10.29,

the TMM shall be entitled to implement its proposed amendment to the Maintenance Plan, or the Repair Procedures, or its proposed redesign or substitution of a Spare without submitting a Variation Proposal, such amendment, redesign or substitution shall not constitute a Variation under the Applicable Variation Procedure, and no person shall be required to seek or obtain an Authorisation to Vary in respect of such amendment, redesign or substitution.

20.17 If it is determined by an Expert pursuant to a referral made under clause 20.15 that any of the conditions in clause 20.13 are not satisfied in relation to the TMM's proposal to amend the Maintenance Plan or the Repair Procedures, or to the effect the redesign or substitution of a Spare, the TMM shall either:

- (a) withdraw the proposed amendment, redesign or substitution and continue to implement the then current Maintenance Plan or Repair Procedures, or to use the Spares in their then current design; or
- (b) request that its proposal be considered as a Variation Proposal under the Applicable Variation Procedure.

Simulator Modifications

20.18 The Parties agree that, if the implementation of any Variation includes the making of any Modification (including a Performance Remedial Plan Modification) to the Units, the Simulator shall be modified in a manner which is consistent with that Modification, such that the Simulators are upgraded and maintained to the correct configuration level for the Fleet, and that any such modification of a Simulator may be effected without the Applicable Variation Procedure applying and no Party shall be required to seek or obtain an Authorisation to Vary in respect of such modification, provided that the Engineering Change Control Procedure applies to such modification.

21. PERFORMANCE REMEDIAL PLANS

The provisions of Schedule 8 (*Performance Remedial Plans*) shall apply in relation to the requirement to prepare and implement any Performance Remedial Plan.

22. CONTRACT MANAGEMENT

Contract Management Obligations

22.1 Each of the Owner, the Operator and the TMM agrees to comply with their respective obligations under Schedule 9 (*Contract Management*).

Nominated Representatives

22.2 The provisions of clause 5 (*Nominated Representatives*) of the Umbrella Agreement shall apply in relation to the appointment of Nominated Representatives, provided that ***Nominated Representatives*** shall include the Operator's Contract Manager, the TMM's Contract Manager and the Owner's Contract Manager appointed in accordance with Schedule 9.

23. INSURANCE AND RISK

Operator Insurance

23.1 The Operator agrees with the TMM that the Operator shall insure the Vehicles and Simulators in accordance with Schedule 10.1 (*Vehicle or Simulator Events of Loss*) and Schedule 10.2 (*Vehicle and Simulator Insurance*) and schedule 8 of the Lease.

TMM Insurance

23.2 The TMM shall insure the Associated Equipment and Parts and effect third party public/products and employers' liability insurance all in accordance with the provisions of Schedule 10.3 (*Spares and Special Tools Events of Loss*) and Schedule 10.4 (*Spares and Special Tools Insurance*). Except during any period where an Owner Owned Spare or Part is fitted to and incorporated within a Vehicle or Simulator, each item of Associated Equipment and each Part shall be deemed to be in the care, custody and control of the TMM from the date of Acceptance of that item of Associated Equipment or Part and for the remainder of the TSA Term and accordingly, except during any period where an Owner Owned Spare or Part is fitted to a Vehicle or Simulator, the Associated Equipment and Parts are at the risk of the TMM from the date of such Acceptance and for the remainder of the TSA Term. The TMM also to maintain such other insurances as required by law.

24. FORCE MAJEURE

The provisions of Schedule 11 (*Force Majeure*) shall apply in relation to the occurrence of a Force Majeure Event.

25. NOT USED

26. TERMINATION AND THE TSSSA

Termination of this Agreement

26.1 The provisions of Schedule 13 (*Termination*) shall apply in relation to the termination of this Agreement.

TSSSA Requirement Notice

26.2 If a TSA Termination Notice is served, the Operator:

- (a) may, but shall not be obliged to, on the date of service of that TSA Termination Notice (other than where that TSA Termination Notice is a TSA Operator Termination Notice, an Operator TSA Voluntary Termination Notice or a Secretary of State Voluntary Termination Notice), provided that the Operator may not serve a TSSSA Requirement Notice in any relevant circumstances where the Operator has put in place a New Maintenance Agreement that is in force from the date and time of the termination of the TSA and that satisfies the conditions set out in paragraph 3.4 of schedule 12.2 (*Termination of the TSA*) of the Lease;
- (b) may not where that notice a TSA Operator Termination Notice or a Secretary of State Voluntary Termination Notice; and
- (c) shall on the date of service of that TSA Termination Notice, where that notice is an Operator TSA Voluntary Termination Notice,

serve a notice on the TMM (with a copy to the Owner) (the ***TSSSA Requirement Notice***) requiring the TMM (as supplier) to:

- (i) assist in the transfer of the responsibility for the performance of certain of the TMM's obligations under this Agreement to the Operator and/or its nominee; and
- (ii) provide the TSSSA Services on and as from the TSSSA Commencement Date.

Compliance

26.3 The Parties shall be entitled to exercise their respective rights and shall comply with their respective obligations, in each case, under the TSSSA from the date of receipt of any TSSSA Requirement Notice.

Owner obligations to deliver up Manuals and Maintenance Records on TSSSA Commencement Date

26.4 Where a TSSSA Requirement Notice has been served pursuant to clause 26.2, the Owner shall deliver up to the TMM, free of charge (who shall give access to the Operator for so long as it is a party to the TSSSA) on the TSSSA Commencement Date, copies of all Technical Records and all those records required to be kept by the TMM under clauses 7.1 to 7.4 inclusive.

Balancing Payments Account

26.5 To the extent the Operator has served a TSSSA Requirement Notice pursuant to clause 26.2:

- (a) the balance standing to the credit of the Balancing Payments Account on the date of termination of this Agreement, after payments from that account that were due and payable as a result of that termination in accordance with paragraph 15 (*Termination Sum*) of Schedule 6.6 (*Balancing Payments Account*) and the relevant part of Schedule 13 (*Termination*) have been made, shall:
 - (i) ⁷⁸
 - (ii) ⁷⁹
- (b) ⁸⁰.

27. LIABILITY, INDEMNITIES

General TMM Indemnity

27.1 Subject to clauses 27.2, 27.5, 27.6 and 27.13 to 27.17 inclusive, and without prejudice to clauses 27.7 to 27.12 (inclusive), the TMM shall be liable for and shall indemnify on an

⁷⁸ Redaction.

⁷⁹ Redaction.

⁸⁰ Redaction.

after-tax basis each of the Owner and/or the Operator, as the case may be, including any of its/their respective employees, servants, agents, sub-contractors, sub-lessees, directors and officers from and against all Losses whatsoever incurred by the Owner and/or the Operator and/or their respective employees servants, agents, sub-contractors, sub-lessees, directors and officers in respect of:

- (a) ☐ ⁸¹
- (b) ☐ ⁸²;
- (c) ☐ ⁸³;
- (d) ☐ ⁸⁴.

27.2 The benefit of the indemnities in clauses 27.1 shall not apply to the Party seeking indemnification thereunder to the extent that the Losses suffered or incurred by that Party:

- (a) arise as a direct result of instructions given by that Party to the TMM pursuant to this Agreement;
- (b) in respect of the Operator only, are of such nature as is intended to be compensated by the payment of Performance Liquidated Damages pursuant to this Agreement;
- (c) are compensated for under another provision of this Agreement;
- (d) are in excess of the relevant limits (if any) on the TMM's liability under this Agreement; or
- (e) the Losses suffered or incurred by that Party are not to be indemnified by the TMM in full as provided in clause 27.13.

Operator Indemnity

27.3 The Operator shall, subject to clauses 27.4, 27.5, 27.13, 27.14 and 27.19 and without prejudice to clauses 27.7 to 27.12 (inclusive), be responsible for, and shall indemnify on an after-tax basis each of the TMM, the Owner and their respective employees, servants, agents, sub-contractors, directors and officers from and against all Losses incurred by the TMM, the Owner and/or their respective employees, servants, agents, sub-contractors, directors and officers in respect of:

- (a) death or personal injury to any employee, servant, agent, sub-contractor, director or officer of the TMM or the Owner or any employee, servant, director or officer of an agent or sub-contractor of the TMM or the Owner;
- (b) any loss of or damage to property belonging to the Owner or the TMM respectively, or for which either of them is responsible, to the extent that, in the case of the

⁸¹ Redaction.

⁸² Redaction.

⁸³ Redaction.

⁸⁴ Redaction.

Associated Equipment, the TMM is unable to recover under the insurance referred to in Schedule 10.4; and

- (c) any third party action, claim, demand, cost, charge and expense (including legal expenses on an indemnity basis) relating to death or personal injury or loss of or damage to property belonging to a third party ,

in each case arising out of (i) the operation of the Units by the Operator or any other Train Operator to whom the Operator sub-leases the Units pursuant to the Lease, or (ii) the performance, non-performance or purported performance by the Operator or any of those sub-lessees or their respective employees, servants or agents, of the Operator's obligations under this Agreement, or (iii) the acts or omissions of the Operator, a sub-contractor of the Operator or their respective employees or agents at the Designated Depots or any other location owned or managed by the TMM or its Sub-Contractors, or (iv) the breach by Network Rail of its obligations under the Track Access Agreement.

27.4 The benefit of the indemnities in clause 27.3 shall not apply to the Party seeking indemnification thereunder to the extent that the Losses suffered or incurred by that Party:

- (a) are due to the acts, omissions, negligence or wilful misconduct of that Party or any of its employees, servants, agents, sub-contractors, directors or officers;
- (b) are due to the breach by that Party of its obligations under this Agreement;
- (c) arise as a direct result of the Operator acting on instructions given by that Party to the Operator pursuant to this Agreement;
- (d) are compensated for under another provision of this Agreement; or
- (e) are in excess of the relevant limits (if any) on the Operator's liability under this Agreement.

No Double Recovery

27.5 ⁸⁵

27.6 No Party to this Agreement shall be entitled to recover (by way of indemnity or otherwise) more than once in respect of the same loss or damage suffered by that Party under any Transaction Document. There shall be no duplication solely by reason of there being multiple beneficiaries to a claim hereunder and each Party acknowledges that the other Parties may each suffer different losses which each shall be entitled to recover to the extent permitted hereunder.

Notification of claims procedures and assistance in defending claims

27.7 Any Party who has (or claims to have) the benefit of an indemnity under this Agreement (for the purposes of these clauses 27.7 to 27.12, the **Beneficiary**) shall, if it receives any notice, demand, letter or other document concerning any claim for which it appears that the Beneficiary is, or may become entitled to indemnification under this Agreement, notify the Party giving the relevant indemnity under this Agreement (for the

⁸⁵ Redaction.

purposes of these clauses 27.7 to 27.12, the *Indemnifier*) as soon as reasonably practicable after its receipt of the same.

27.8 Subject to clauses 27.9, 27.10 and 27.11, on the giving of a notice by the Beneficiary pursuant to clause 27.7, where it appears that the Beneficiary is or may be entitled to indemnification from the Indemnifier in respect of all (but not part only) of the liability arising out of the claim, the Indemnifier shall (subject to the Indemnifier agreeing to pay the Beneficiary for all reasonable costs and expenses that the Beneficiary may incur by reason of such action) be entitled to dispute the claim in the name of the Beneficiary at the Indemnifier's own expense, and take conduct of any defence, dispute, compromise or appeal of the claim and of any incidental negotiations. The Beneficiary shall give the Indemnifier all reasonable co-operation, access and assistance for the purposes of considering and resisting such claim.

27.9 With respect to any claim conducted by the Indemnifier pursuant to clause 27.8, the Indemnifier:

- (a) shall keep the Beneficiary fully informed and consult with it about the conduct of the claim;
- (b) shall not bring the name of the Beneficiary into disrepute.

27.10 The Beneficiary shall be free to pay or settle any claim on such terms as it thinks fit and without prejudice to its rights and remedies under this Agreement if the Indemnifier:

- (a) is not entitled to take conduct of the claim in accordance with clause 27.8;
- (b) fails to notify the Beneficiary of its intention to take conduct of the relevant claim within 20 Working Days of its receipt of the notice from the Beneficiary under clause 27.7 or notifies the Beneficiary that it does not intend to take conduct of the claim; or
- (c) fails to comply in any material respect with clause 27.9.

27.11 The Beneficiary shall be free at any time to give notice to the Indemnifier that it is retaining or taking over (as the case may be) the conduct of any defence, dispute, compromise or appeal of any claim (or of any incidental negotiations) to which clause 27.8 applies. On receipt of such notice, the Indemnifier shall promptly take all steps necessary to transfer the conduct of such claim to the Beneficiary, and shall provide to the Beneficiary all reasonable co-operation, access and assistance for the purposes of considering and resisting such claim. If the Beneficiary gives any notice pursuant to this clause 27.11 then the Indemnifier shall be released from any liability in relation to that claim under the relevant indemnity and, without prejudice to any accrued liabilities, any liability for the Beneficiary's costs under clause 27.8 in respect of such claim.

27.12 Where it appears that either:

- (a) the Beneficiary is or may be entitled to indemnification from more than one Indemnifier in respect of the liability arising out of a single claim; or
- (b) the Beneficiary will otherwise not be entitled to indemnification from the Indemnifier in respect of all the liability arising out of the claim,

the Parties shall comply with the requirements of any insurer of any of them who has an obligation to provide an indemnity in respect of such claim, and agree that, in respect of any

claim involving the Operator, the CAHA shall apply in relation to such claim, provided that as between the Parties to this Agreement, in the event of any conflict between the terms of the CAHA and this Agreement, the terms of this Agreement shall prevail.

Mitigation

27.13 In all cases, the Party establishing or alleging a breach of, or requiring indemnification under, this Agreement shall be under a duty to use reasonable endeavours to avoid or mitigate the Losses which have occurred or may occur as a result thereof, and in respect of which the relevant claim is made, and the Party against which such claim is made shall not be liable in respect of any incremental Losses to the extent that they are incurred as a result of the Party making such claim failing to comply with its duty under this clause 27.13.

Consequential Losses

27.14 ☐⁸⁶, no Party shall be liable to another Party to this Agreement by way of indemnity, or by reason of any breach of this Agreement, breach of statutory duty or by reason of tort (including negligence) or otherwise for any consequential or indirect losses or loss of profit, loss of revenue, loss of use, loss of production, interruption of operations, loss of information or data, loss of interest or loss of contracts which may arise in connection with this Agreement.

Limit on TMM's Liability

27.15 ☐⁸⁷

27.16 The TMM's liability:

- (a) ☐⁸⁸;
- (b) ☐⁸⁹;
- (c) ☐⁹⁰.

27.17 Save as provided in clauses 27.15 and 27.16, the TMM's annual liability to the Owner and the Operator under this Agreement whether arising by way of indemnity, in contract, tort (including negligence), breach of statutory duty or otherwise, including liability under clause 27.1(d) and its obligation to pay Performance Payments, shall, ☐⁹¹ be in aggregate in any Contract Year limited to ☐⁹².

⁸⁶ Redaction.

⁸⁷ Redaction.

⁸⁸ Redaction.

⁸⁹ Redaction.

⁹⁰ Redaction.

⁹¹ Redaction.

⁹² Redaction.

27.18 The limitations on liability set out in clauses 27.15 to 27.17 (inclusive) are without prejudice to the Owner's and the Operator's rights to terminate this Agreement under Schedule 13.1 (*TMM Events of Default*).

□⁹³

27.19 □⁹⁴

27.20 The limitations on liability set out in clause 27.19 are without prejudice to the TMM's right to terminate the Operator's participation in this Agreement under Schedule 13.2 (*Operator Events of Default*) and, where applicable, to require the replacement of the Operator in accordance with schedule 2.1 (*Section 54 Undertakings*) of the Umbrella Agreement.

□⁹⁵

27.21 □⁹⁶

27.22 The Owner's liability under Schedule 13.3 (*TSA Owner Events of Default*) shall be limited as set out in paragraph 4.3 of that Schedule.

27.23 The limitations on liability in clauses 27.21 and 27.22 shall not operate to exclude or limit the Owner's liability in respect of the following:

- (a) personal injury or death;
- (b) use or enabling or permitting any third party to use any materials in which Intellectual Property Rights are vested in the TMM or a member of the TMM's Group or any of its Sub-Contractors, in breach of the terms of this Agreement;
- (c) payments required to be made by the Owner to the TMM in respect of the Balancing Payments Account in accordance with clause 19 and Schedule 6.6; and
- (d) any amounts of interest payable by the Owner in accordance with clause 18.22.

27.24 The limitations on liability set out in clauses 27.21 and 27.22 are without prejudice to the TMM's right to terminate the Owner's participation in this Agreement under Schedule 13.3 (*TSA Owner Events of Default*).

28. EMPLOYMENT ARRANGEMENTS

Each of the Parties will comply with their respective obligations in Schedule 17 (*Employment Arrangements*).

29. REDELIVERY CONDITION

The provisions of Schedule 14 (*Redelivery Condition*) shall apply.

⁹³ Redaction.

⁹⁴ Redaction.

⁹⁵ Redaction.

⁹⁶ Redaction.

30. ACCESS, INSPECTION, AUDIT AND ACCOMMODATION

Access

30.1 Upon the Operator and/or the Owner giving reasonable notice to the TMM (unless a TSA TMM Event of Default has occurred and is outstanding, in which case no notice shall be required) the TMM shall for the purpose set out in clause 30.3:

- (a) give the Operator and the Owner, and each of their respective sub-contractors, unrestricted access by road and foot to any part of a Maintenance Shed and/or the TMM's premises and/or stabling sites, including providing such accommodation as is properly required to enable the Owner and the Operator to exercise their respective rights under clause 30.3; and
- (b) use its best efforts to procure that all of its Sub-Contractors shall give unrestricted access to the Operator and the Owner by road and foot to each of the Sub-Contractor's premises at which the TSA Services are performed, including providing such accommodation as is properly required to enable the Owner and the Operator to exercise their respective rights under clause 30.3.

30.2 The Owner and the Operator shall each agree:

- (a) not to unreasonably disrupt the commercial operation of the TMM's or any Sub-Contractor's business;
- (b) to comply with the TMM's and/or that Sub-Contractor's reasonable safety and security requirements; and
- (c) to respectively indemnify the TMM against any claims in respect of death or personal injury to persons and loss of or damage to property caused as a direct result of Owner's or, as the case may be, the Operator's acts or omissions whilst in any part of the premises referred to in clause 30.1 for the purposes of monitoring the TMM's performance of its obligations under this Agreement.

Inspection and Audits

30.3 The Owner and/or Operator shall be entitled to inspect and/or audit the TMM to ensure compliance with the terms of this Agreement, including inspecting and/or auditing:

- (a) the performance of any aspect of the TSA Services;
- (b) the Manuals, Maintenance Records (TSA) and/or other records used in or relate to the performance of the TSA Services, the Units, Vehicles, Simulators, Parts, Spares or Special Tools; and/or
- (c) the information stored on DRUID, EQUINOX and/or CORMAP or any such substitute system as agreed in accordance with clause 7.11.

30.4 The TMM shall provide all reasonable assistance to the Operator and/or, as the case may be, the Owner in carrying out any inspection or audit pursuant to clause 30.3. Each of the Owner and the Operator shall be responsible for its respective costs incurred in carrying out such inspection or audit, unless, in the case of any such audit, that audit shows that the TMM is not compliant with the terms of this Agreement, in which case the TMM shall

reimburse the Owner and the Operator for all of their additional respective reasonable costs incurred, provided such non-compliance is material.

[]⁹⁷

30.5 []⁹⁸.

Access to and use of the Operator Accommodation and the Owner Accommodation

30.6 The TMM shall allow:

- (a) the Operator access to and use of the Operator Accommodation at all times; and
- (b) the Owner access to and use of the Owner Accommodation at all times,

PROVIDED THAT the Operator and the Owner respectively exercise such right of access with due care and attention and with as little disruption or inconvenience to the TMM as is reasonably practicable and in accordance with such reasonable and proper rules and regulations as the TMM notifies to the Operator and the Owner, and PROVIDED FURTHER THAT each of the Operator and the Owner forthwith makes good to the reasonable satisfaction of the TMM any damage to the TMM's plant and equipment that it causes in exercising such right of access.

31. ADVERTISING AND CONFIDENTIALITY

Confidential Information

31.1 In this clause 31, **Confidential Information** shall mean the terms of this Agreement, all documents related hereto and all data and information furnished hereunder and all information or data concerning the Intellectual Property Rights, designs, operations, commercial or financial arrangements or affairs of any of the TMM, Owner, Operator and includes, in the case of information furnished by the TMM, the Licensed Design Documents, the Licensed Non-Design Documents, the Technical Resource Materials and other Escrow Materials.

Prohibition on Advertising

31.2 No Party shall without the other Parties' prior consent in writing, such consent not to be unreasonably withheld, advertise, announce or otherwise publish the fact of the existence of this Agreement or that it is a party to, and is carrying out, this Agreement for the other Parties.

31.3 No Party shall issue any press release or undertake other similar communication with or to be published by or in the media concerning this Agreement without the prior written approval of the other Parties.

⁹⁷ Redaction.

⁹⁸ Redaction.

Prohibition on Disclosure

31.4 Each of the TMM, the Owner and the Operator agrees that it shall keep confidential the Confidential Information of each of the other Parties supplied to it in connection with this Agreement and save as provided in clauses 31.5 and 31.7, a Party receiving Confidential Information (whether the TMM, the Owner or the Operator as the case may be) shall not reveal that Confidential Information to any third party save with the prior written consent of the Party who owns the Confidential Information.

31.5 The restrictions in clause 31.4 shall not apply in respect of the disclosure of an item of Confidential Information referred to above:

- (a) to the Secretary of State, whose obligations in relation to Confidential Information are set out in clause 4 (*Confidentiality*) of the Umbrella Agreement;
- (b) to ORR, the Prudential Regulation Authority, the Financial Conduct Authority, the Competition Commission or the London Stock Exchange or the Bank of England where that item is required to be disclosed by law or by any written requirements of any taxation authority;
- (c) to:
 - (i) any solvent Affiliate of the disclosing Party or other solvent member of the group of companies of which the disclosing Party is a member (in each case excluding for these purposes any person or other entity described in paragraph (b)(ii) or paragraph (c) of the definition of Affiliate in the Master Definitions Agreement which is not a direct or indirect shareholder of the Owner or a member of the Owner's Group) or any direct or indirect shareholder of the Owner or a member of the Owner's Group;
 - (ii) any lawyers, accountants, insurers or others providing professional services (other than any engineering or design services (including the provision of such services by train manufacturers)) to the TMM, the Owner, the Operator or another person described under sub-clause (i) above;
 - (iii) any financier of the Operator, the TMM or any Financier of any member of the Owner's Group;
 - (iv) any Sub-Contractor or any permitted sub-contractor of the Owner or the Operator (including, in the case of the Operator, any person who sub-leases the Units in accordance with the terms of the Lease and the TSA);
 - (v) ⁹⁹
 - (vi) ¹⁰⁰

provided that in any such case:

⁹⁹ Redaction.

¹⁰⁰ Redaction.

- (A) disclosure is necessary in order to enable the relevant recipient to perform its role in relation to the Project, or the disclosing Party needs to make such disclosure in order to run its business; and
- (B) the disclosing Party agrees that:
 - (I) it shall use reasonable endeavours to obtain an undertaking of confidentiality (which is directly enforceable by the owner of such Confidential Information against the relevant recipient) on substantially the same terms as this clause 31 from each relevant third party recipient of the Confidential Information; and
 - (II) save where the relevant recipient has provided to the owner of the Confidential Information an undertaking of confidentiality that is directly enforceable by the owner of such Confidential Information in accordance with subparagraph (I), the disclosing Party shall be responsible for any breach of the provisions of this clause 31 by any relevant persons referred to in clauses 31.5(c)(i) to (vi) inclusive to whom disclosures are made;
- (d) where the item is fleet reliability data (of the nature that all operators of trains in the United Kingdom are required to provide by the Association of Train Operating Companies) that the Operator is required to provide to ReFocus;
- (e) where the item is required in connection with any litigation provided that the disclosing Party shall reveal only such Confidential Information as is reasonably necessary for such litigation and shall seek to minimise both the number of third party recipients of such Confidential Information and the amount of Confidential Information disclosed;
- (f) where the item is in the public domain other than as a result of the breach of any obligation of confidentiality;
- (g) which is required in connection with an assignment, transfer or other disposition of rights permitted hereunder where the proposed assignee or transferee has agreed in writing to be bound by the provisions of this clause 31;
- (h) which is required in connection with a sale or other disposition of shares or other interest in the TMM, the Operator, any member of the Owner's Group or any parent company (or other entity which is a direct or indirect shareholder of any member of the Owner's Group) of those persons, provided always that any recipient of such information has provided an undertaking of confidentiality in substantially the same form as set out in this clause 31; or
- (i) where the item was made available to the disclosing Party on a non confidential basis.

31.6 Each of the TMM, the Owner and the Operator agrees that it shall require its employees who have access to the Confidential Information to be subject to appropriate confidentiality undertakings. The disclosing Party (whether the TMM, the Owner or the Operator (as the case may be)) shall be responsible to the Party that owns the Confidential Information for any abuse by the recipient employee of such Confidential Information.

Intellectual Property Rights

31.7 Subject to clause 41.9, where the Owner or the Operator is entitled to instruct third parties and/or use the Intellectual Property Rights of the TMM under this Agreement or the MSA and in order to do so wishes to disclose the Confidential Information of the TMM to a third party, the following provisions shall apply:

- (a) the Owner or the Operator (as the case may be) shall reveal the Confidential Information of the TMM only as reasonably necessary and shall at all times seek to minimise both the number of such third party recipients and the amount of Confidential Information of the TMM passed to such third parties as far as is reasonably possible;
- (b) the Owner or the Operator (as the case may be) shall use reasonable endeavours to obtain an undertaking of confidentiality (which is directly enforceable by the TMM against the relevant recipient) on substantially the terms of this clause 31 from each relevant third party recipient of the Confidential Information;
- (c) save where the relevant recipient has provided to the TMM an undertaking of confidentiality that is directly enforceable by the TMM in accordance with clause 31.7(b), the Owner shall be responsible for any breach of the provisions of this clause 31 by any third party recipient of such Confidential Information to whom disclosures are made by the Owner and the Operator shall be responsible for any breach of the provisions of this clause 31 by any third party recipient of such Confidential Information to whom disclosures are made by the Operator; and
- (d) the Owner or the Operator (as the case may be) shall not require any consent of the TMM to disclose the Confidential Information where permitted to do so under this clause 31.7 or the MSA.

31.8 If the TMM wishes to obtain a patent, send a technical disclosure bulletin to the Science Reference Library, register a design or trade mark, or obtain other similar protection in respect of the work to be performed under this Agreement, the obligations of confidentiality referred to in this clause shall not prevent the TMM from disclosing the information necessary to obtain such protection.

Standard of Care

31.9 In fulfilling its obligations under this clause 31, each Party shall be required to use a proper standard of care, which shall in no event be less than the same degree of care to prevent unauthorised disclosure of the Confidential Information as it would use to prevent the disclosure of its own commercial and financial information of the same or similar nature and which it considers proprietary or confidential.

Remedies

31.10 The Parties acknowledge and agree that a breach of the provisions of clauses 31.2 to 31.9 may cause the owner of Confidential Information to suffer irreparable damage that could not be adequately remedied by an action at law. Accordingly, each Party agrees that the owner of Confidential Information that is disclosed in breach of clauses 31.2 to 31.9 may be entitled to specific performance of those provisions to enjoin a breach or attempted breach thereof and to any other remedy, including, *inter alia*, damages and injunctive relief, awarded by the English courts.

Survival

31.11 The obligations of the Parties under this clause 31 shall survive the expiry or the termination of this Agreement for whatever reason.

32. MISCELLANEOUS

Licences, Fees etc

32.1 To the extent that the same are under its respective control, each Party shall give all notices and pay all fees required (including licence application and renewal fees required to be given or paid by any Applicable Laws and Standards) in relation to the performance of its respective obligations under this Agreement and provision of the TSA Services.

Noise and Disturbance etc.

32.2 All operations necessary for the execution of the TMM's duties and obligations under this Agreement shall be carried on without unreasonable noise and disturbance and so as not to interfere unnecessarily or improperly with traffic or the convenience of the public or the access to, use and occupation of, public or private roads or footpaths to or of properties, whether in the possession of the Operator or of any other person.

No Alcohol or Drugs

32.3 The TMM shall not, at any of the Designated Depots ¹⁰¹, at any time give, sell or barter any alcoholic liquors or drugs or permit or suffer any such sale, gift or barter to be made by any Sub-Contractor, or any employee or agent of the TMM or any Sub-Contractor. The TMM and its employees and agents shall observe and comply, and shall ensure that its Sub-Contractors, their employees and agents observe and comply, with the Operator's policy and rules on alcohol and drugs, as amended from time to time. The Operator shall provide the TMM with a copy of the Operator's policy within six weeks of the date of this Agreement and as amended from time to time.

Emergency Procedure

32.4 The TMM shall participate in any emergency training operations where reasonably required by the Operator, free of charge to the Operator.

33. CORRUPT GIFTS, COMMISSION AND REPUTATION

The TMM shall not:

- (a) give, offer to give or agree to give to any person in the Operator's or the Owner's organisation (including any employee of the Operator or the Owner or any director, officer, agent, consultant or contractor of the Operator or the Owner) any gift or consideration (other than of a trifling nature) as an inducement or reward for doing or forbearing to do or having done or forborne to do any act in relation to the obtaining or execution of this Agreement or for showing or forbearing to show favour or disfavour to any person in relation to this Agreement; or

¹⁰¹ Redaction.

- (b) enter into this Agreement or any other agreement with the Operator or the Owner in connection with which commission has been paid or agreed to be paid by it or on its behalf or to its knowledge to any employee of the Operator or the Owner unless, before this Agreement or such other agreement is made, particulars of any such commission and of the terms and conditions of any agreement for its payment have been disclosed in writing to the Operator or the Owner and the Operator or the Owner has approved it in writing.

34. WAIVER AND VARIATION

Except as expressly stated in this Agreement, no failure or delay by any of the Parties to this Agreement at any time to enforce any of the provisions of this Agreement shall be construed as a waiver by such Party of such provision or in any way affect the validity of this Agreement or any part of it. The respective rights of the Parties (whether arising under this Agreement or under the general law) shall not be capable of being waived or varied otherwise than by an express waiver or variation in writing.

35. LANGUAGE

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

36. ENTIRE AGREEMENT

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

36.2 Each Party acknowledges that it has not been induced to enter into this Agreement by any representation, warranty or undertaking not expressly incorporated into it. So far as permitted by law and except in the case of fraud, each Party agrees and acknowledges that its only rights and remedies in relation to any representation, warranty or undertaking made or given in connection with this Agreement shall be a breach of the terms of this Agreement, to the exclusion of all other rights and remedies (including those in tort or arising under statute).

37. SEVERABILITY AND ILLEGALITY

Severance

37.1 Without prejudice to Schedule 13 (*Termination*), if at any time any one or more of the provisions of this Agreement becomes invalid, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

Unlawful Performance or Breach of Applicable Laws and Standards

37.2 If, at any time after the date of this Agreement, the introduction, imposition, variation or change of any Applicable Laws and Standards makes it unlawful or impossible, without breaching such Applicable Laws and Standards, for any Affected Party to give effect to its

obligations under this Agreement, then the Affected Party shall notify the other Parties of the nature of the circumstances on becoming aware of them and their likely impact.

Mitigation

37.3 Without prejudice to any other terms of this Agreement, the Parties shall discuss in good faith any reasonable methods of avoiding the effects of any such introduction, imposition, variation or change referred to in clause 37.2, including, subject to obtaining any necessary consents, transferring its rights and obligations under the relevant document to any other person, acceptable to the other Parties (at such other Parties' absolute discretion) not affected by that introduction, imposition, variation or change of any Applicable Laws and Standards.

37.4 Save in respect of claims for which Performance Liquidated Damages are payable, the TMM, the Operator and the Owner shall be under a duty to mitigate any damages and losses in respect of which they make a claim under an indemnity or otherwise pursuant to this Agreement.

Failure to Avoid Illegality

37.5 If, notwithstanding the provisions of clause 37.3, the Affected Party is unable to avoid the matters contemplated by clause 37.2, or the Parties hereto fail to agree on a proposal to avoid its effects, this Agreement in relation to the provision of TSA Services may be terminated by the Affected Party and each Party will bear its own costs.

38. TMM TO INFORM ITSELF FULLY

The TMM shall be deemed to have inspected and examined all documents and specifications and terms, and all established Applicable Laws and Standards, associated specifications and material requirements and to have obtained for itself all necessary information as to risks, contingencies and other circumstances which may influence or affect its ability to perform its obligations under this Agreement. The Owner or the Operator shall not grant any extension of time or additional payment on grounds of misunderstanding or misinterpretation of any such matter, nor, subject to Schedule 11 (*Force Majeure*) and without prejudice to the application of the Applicable Variation Procedure in relation to a Change in Law, shall the TMM be released from any of the risks accepted or obligations undertaken by it in relation to this Agreement on the grounds that it did not or could not have reasonably foreseen any matter which might affect or have affected the provision of the TSA Services pursuant to this Agreement including but not limited to the availability of a Designated Depot at which to carry out the TSA Services.

39. NOTICES

39.1 Any notice, notification or other communication under or in connection with:

- (a) Schedule 13 (*Termination*);
- (b) any proposed or actual assignment, transfer or novation of a Party's rights and obligations under this Agreement; or
- (c) any Contract Dispute under or in connection with this Agreement,

shall be in writing and shall be delivered by hand or recorded delivery or sent by pre-paid first class post to the relevant Party at the address for service set out below, or to such other

address in the United Kingdom as each Party may specify by notice in writing to the other Party.

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

- (a) in accordance with clause 39.1; or
- (b) by electronic data transfer,

except that it shall be marked for the attention of the TMM's Contract Manager, the Operator's Contract Manager or the Owner's Contract Manager as appropriate.

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

TMM :	Address:	Siemens plc 2 Queen Anne's Gate Buildings Dartmouth Street London SW1H 9BP
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Name: ¹⁰²

Email: ¹⁰³

Operator:	Address:	First Capital Connect Hertford House 1 Cranwood Street London EC1U 9QS
------------------	----------	--

Name: ¹⁰⁴

Email: ¹⁰⁵

¹⁰² Redaction.

¹⁰³ Redaction.

¹⁰⁴ Redaction.

¹⁰⁵ Redaction.

Owner:

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

Name: Managing Director

Email: ¹⁰⁶

Eversholt:

Address: 210 Pentonville Road
London N1P 2AR

Name: Company Secretary and Head of Projects and
Procurement

Email: ¹⁰⁷

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

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

39.5 Any notice or communication sent under this Agreement to the Owner shall be copied to Eversholt at the address for service set out in clause 39.3 or such other address as the Owner may specify by notice in writing to the TMM and the Operator.

40. COSTS

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

41. ASSIGNMENT AND SUB-CONTRACTING

TMM assignment etc.

41.1 While clause 6 (*Disposal of this Agreement and the Contracts*) of the Umbrella Agreement remains in force, the TMM may not:

- (a) assign or transfer or otherwise dispose of its rights and/or obligations under this Agreement, or sell any Rolling Stock, save by way of a Permitted Contracts

¹⁰⁶ Redaction.

¹⁰⁷ Redaction.

Restructuring Arrangement in accordance with clause 6 of the Umbrella Agreement;
or

- (b) create or agree to create or permit to exist any Security Interest on or over Rolling Stock or this Agreement, without the prior written consent of the Secretary of State.

41.2 If clause 6 of the Umbrella Agreement is no longer in force, then subject to clause 41.3, the TMM shall not assign, transfer or novate its rights and/or obligations under this Agreement or any part thereof without the prior written consent of the other Parties (such consent not to be unreasonably withheld or delayed).

41.3 If clause 6 of the Umbrella Agreement is no longer in force, then the TMM may assign, transfer or novate all (but not part only) of its rights, title and obligations under this Agreement to another member of the TMM's Group, provided that:

- (a) all of the TMM's rights, title and obligations under the MSA and the Umbrella Agreement at such time (if any) are assigned, transferred or novated to the same person at the same time, and such member of the TMM's Group executes a deed of accession substantially in the form contained in schedule 1 (*Deed of Accession*) of the Umbrella Agreement;
- (b) the TSA Guarantee remains in full force and effect following the relevant assignment, transfer or novation; and
- (c) the relevant assignee, transferee or novatee is not such that the assignment, transfer or novation would have amounted to a breach of clause 7 (*Change of Control*) of the Umbrella Agreement had the ownership and direction of the TMM so changed.

Owner assignment etc.

41.4 While clause 6 (*Disposal of this Agreement and the Contracts*) of the Umbrella Agreement remains in force, then subject to clauses 6.7(a), 6.7(b), 6.7(e), 6.7(f) and 6.7(h) of the Umbrella Agreement, the Owner may not:

- (a) assign or transfer or otherwise dispose of its rights and/or obligations under this Agreement, or sell any Rolling Stock, save by way of a Permitted Contracts Restructuring Arrangement in accordance with clause 6 of the Umbrella Agreement;
- (b) create or agree to create or permit to exist any Security Interest on or over Rolling Stock or this Agreement, without the prior written consent of the Secretary of State;
or
- (c) subject to clause 41.7, sub-contract its rights and/or obligations under this Agreement or any part thereof without the prior written consent of the other Parties (such consent not to be unreasonably withheld or delayed).

41.5 If clause 6 of the Umbrella Agreement is no longer in force, then subject to clauses 41.6 and 41.7, the Owner shall not assign, transfer, novate or sub-contract its rights and/or obligations under this Agreement or any part thereof without the prior written consent of the other Parties (such consent not to be unreasonably withheld or delayed).

41.6 If clause 6 of the Umbrella Agreement is no longer in force, then the Owner may, without the consent of the other Parties, assign, transfer or novate all (but not part) of its

rights and/or obligations under this Agreement to any entity which acquires title to all (but not part) of the Equipment previously owned by the Owner.

Owner Sub-Contracting

41.7 Subject to clauses 41.8 and 41.9, the TMM and the Operator each acknowledge that the Owner proposes to sub-contract the performance of some (but not all) of its obligations under this Agreement to Eversholt pursuant to the Eversholt Services Agreement.

41.8 The Owner shall retain responsibility in full for all of its obligations under this Agreement, and any act, omission, breach of contract or negligence of Eversholt or any other of its sub-contractors, agents or employees under its control shall, for the purposes of this Agreement, be deemed to be the act, omission, breach of contract or negligence of the Owner, save that the Owner's responsibility for such acts, omissions, breaches of contract or negligence to which any relevant provisions of this Agreement or any of the other Contracts (including clauses 31.5, 31.7 or 41.9 of this Agreement or clause 16.3 of the Umbrella Agreement) apply shall be as set out in those provisions, in accordance with their terms.

41.9 ☐¹⁰⁸

41.10 ☐¹⁰⁹

Operator assignment etc.

41.11 While clause 6 (*Disposal of this Agreement and the Contracts*) of the Umbrella Agreement remains in force, and save as provided in clause 6.7(h) of the Umbrella Agreement, the Operator may not create any Security Interest over the Rolling Stock or assign or transfer or otherwise dispose (whether by Legislation or any transfer scheme pursuant to any Legislation or otherwise) of its rights and/or obligations under this Agreement, save by way of an Operator Accession or Operator Transfer Scheme that the Secretary of State effects in accordance with its undertaking under paragraph 1.1 (*Section 54 Undertaking*) of schedule 2.1 (*Section 54 Undertakings*) of the Umbrella Agreement.

41.12 If clause 6 of the Umbrella Agreement is no longer in force, then, subject to clause 41.13, the Operator shall not assign, transfer or novate its rights and/or obligations under this Agreement or any part thereof without the prior written consent of the other Parties (such consent not to be unreasonably withheld or delayed).

41.13 If clause 6 of the Umbrella Agreement is no longer in force, then the Operator may, without the consent of the other Parties, assign, transfer or novate all (but not part) of its rights and/or obligations under this Agreement to any person who becomes or is appointed by the Secretary of State as a Train Operator in succession to the Operator, whose arrangements to operate relevant train services will involve the use of the Units.

Operator Sub-Contracting

41.14 Subject to clause 41.15, the Operator may sub-contract the performance of part (but not all) of its obligations under this Agreement without the prior written consent of the TMM and the Owner, provided that the proposed sub-contractor is:

¹⁰⁸ Redaction.

¹⁰⁹ Redaction.

- (a) not a competitor of the TMM or any member of the TMM's Group; and
- (b) reasonably experienced and competent in carrying out the relevant obligations, of which the Operator shall produce reasonable evidence upon the reasonable request of the TMM or the Owner,

otherwise the prior written consent of the TMM and the Owner shall be required to any sub-contracting by the Operator, such consent not to be unreasonably withheld or delayed.

Operator Responsibility for sub-contractors and sub-lessees

41.15 The Operator shall retain responsibility in full for all of its obligations under this Agreement, and any act, omission, breach of contract or negligence of any of its sub-contractors, agents or employees under its control and any Train Operator to whom the Units are sub-leased shall, for the purposes of this Agreement, be deemed to be the act, omission, breach of contract or negligence of the Operator, save that the Operator's responsibility for such acts, omissions, breaches of contract or negligence to which any relevant provisions of this Agreement or the other Contracts (including clauses 31.5 or 31.7 of this Agreement or clause 16.3 of the Umbrella Agreement) apply shall be as set out in those provisions, in accordance with their terms.

Operator consent

41.16 It shall be reasonable for the Operator to withhold its consent under clauses 41.1 or 41.4 where any assignment, transfer or novation of any of the rights and/or obligations under this Agreement is to be made to a company which would reasonably be regarded as a competitor of the Operator or its group in connection with its UK railway franchise business or as an Affiliate of such a company.

42. TSA BOND

Provision of the Initial TSA Bond

42.1 The TMM shall procure that there shall be a valid and effective TSA Bond in place:

- (a) ☐¹¹⁰
- (b) substantially in the form set out in Schedule 15 (*Form of TSA Bond*);
- (c) duly executed and delivered by a Bond Provider; and
- (d) having a value of ☐¹¹¹.

Voluntary Provision of Replacement TSA Bond

42.2 The TMM may replace the TSA Bond that is in force and effect at any time prior to the expiry or termination of the relevant TSA Bond in accordance with its terms, provided that such replacement TSA Bond is:

¹¹⁰ Redaction.

¹¹¹ Redaction.

- (a) substantially in the form set out in Schedule 15 (or any other form acceptable to the Operator in its discretion);
- (b) duly executed and delivered by a Bond Provider; and
- (c) for an amount that is consistent with the amount specified in clause 42.1(d) but reduced to take account of any amounts called under any previous TSA Bond.

Claims under the TSA Bond

42.3 The Operator may issue a written demand to the Bond Provider under the TSA Bond upon the issue of a TSA TMM Termination Notice.

Characteristics of Bond Provider

42.4 In determining whether a Bond Provider under any replacement TSA Bond is acceptable, the Operator shall not be obliged to accept as the Bond Provider, any Bond Provider of a previous TSA Bond unless that Bond Provider is an Acceptable Bank at the time of that determination.

42.5 The TMM shall provide such information relating to any Bond Provider or proposed Bond Provider as the Operator may reasonably require from time to time, and shall further provide reasonable information as to the form of the replacement TSA Bond prior to the instrument coming into effect.

□¹¹²

42.6 □¹¹³

42.7 □¹¹⁴

42.8 □¹¹⁵

Return of TSA Bond upon Termination

42.9 If this Agreement or the Project is terminated:

- (a) as a result of the issuance of a MSA TMM Pre-Minimum Fleet Termination Notice in accordance with paragraph 4 (*Termination of MSA upon TMM Default prior to supply of Minimum Fleet*) of Part 1 (*TMM Default of MSA*) of schedule 2.2 (*Early Termination of the MSA*) of the Umbrella Agreement; or
- (b) pursuant to paragraph 4 (*Circumstances where Lease and TSA are terminated following MSA Force Majeure Event*) of schedule 2.6 (*Termination of Contracts for Force Majeure*) of the Umbrella Agreement;
- (c) pursuant to Schedule 13.5 (*Operator Voluntary Termination Right*);

¹¹² Redaction.

¹¹³ Redaction.

¹¹⁴ Redaction.

¹¹⁵ Redaction.

- (d) pursuant to a TSA Operator Termination Notice that is issued after the expiry or termination of the Umbrella Agreement, if the Secretary of State does not require the implementation of an Operator Accession or an Operator Transfer Scheme in accordance with clause 8.1 of the Maintenance Direct Agreement;
- (e) pursuant to Schedule 13.6 (*Secretary of State Voluntary Termination Rights*) of this Agreement and schedule 2.7 (*Voluntary Termination of Contracts by the Secretary of State*) of the Umbrella Agreement;
- (f) pursuant to clause 17.2 of the Umbrella Agreement; or
- (g) ☐¹¹⁶

then, ☐¹¹⁷, the Operator shall return the TSA Bond to the TMM promptly following the termination of this Agreement.

43. TSA GUARANTEE

Provision of the Initial TSA Guarantee

43.1 In order to secure the performance of its obligations under this Agreement, the TMM shall procure that there shall be a valid and effective TSA Guarantee in place:

- (a) ☐¹¹⁸
- (b) in the agreed form set out in Schedule 16 (*Form of TSA Guarantee*); and
- (c) duly executed and delivered by Siemens AG or an alternative Guarantor acceptable to the Operator and the Owner.

☐¹¹⁹

43.2 ☐¹²⁰

Operator Succession

43.3 If, in each case during the period during which the TSA Guarantee is required in accordance with clause 43.1:

- (a) the Operator is replaced in this Agreement by a Successor Operator to whom all of the Operator's rights, title and interest in this Agreement are assigned, transferred or novated in accordance with clause 41.11 or 41.13;
- (b) the Operator is replaced in this Agreement by a Successor Operator who accedes to this Agreement as Operator in accordance with clause 41.11,

¹¹⁶ Redaction.

¹¹⁷ Redaction.

¹¹⁸ Redaction.

¹¹⁹ Redaction.

¹²⁰ Redaction.

the TMM shall procure that the Guarantor immediately issues a Notice of Acknowledgement of Assignment (as defined in the TSA Guarantee) upon receipt of a Notice of Assignment (as defined in the TSA Guarantee).

Return of TSA Guarantee upon Termination

43.4 If this Agreement or the Project is terminated:

- (a) pursuant to a MSA TMM Pre-Minimum Fleet Termination Notice in accordance with paragraph 4 (*Termination of MSA upon TMM Default prior to supply of Minimum Fleet*) of Part 1 (*TMM Default of MSA*) of schedule 2.2 (*Early Termination of the MSA*) of the Umbrella Agreement; or
- (b) pursuant to paragraph 4 (*Circumstances where Lease and TSA are terminated following MSA Force Majeure Event*) of schedule 2.6 (*Termination of Contracts for Force Majeure*) of the Umbrella Agreement; or
- (c) pursuant to Schedule 13.5 (*Operator Voluntary Termination Right*);
- (d) pursuant to a TSA Operator Termination Notice that is issued after the expiry or termination of the Umbrella Agreement, if the Secretary of State does not require the implementation of an Operator Accession or an Operator Transfer Scheme in accordance with clause 8.1 of the Maintenance Direct Agreement;
- (e) pursuant to Schedule 13.6 (*Secretary of State Voluntary Termination Rights*) of this Agreement and schedule 2.7 (*Voluntary Termination of Contracts by the Secretary of State*) of the Umbrella Agreement;
- (f) pursuant to clause 17.2 of the Umbrella Agreement; or
- (g) ¹²¹

then:

- (i) ¹²²

each of the Owner and the Operator shall return its original of the TSA Guarantee to the TMM, (or, where such return is not possible, execute a deed of release or such other notices as the Guarantor may reasonably require in order to recognise and give effect to the release of the relevant guarantee), ¹²³.

44. DISPUTES AND EXPERT DETERMINATION

44.1 Save:

- (a) where this Agreement provides for the determination of matters by an expert; and
- (b) where otherwise expressly provided for in this Agreement,

¹²¹ Redaction.

¹²² Redaction.

¹²³ Redaction.

a Contract Dispute shall be resolved pursuant to the Applicable Dispute Resolution Provisions.

44.2 Where this Agreement provides for the determination of matters by an expert, the further provisions of the Applicable Expert Determination Provisions shall apply.

45. CHANGE OF CONTROL

The provisions of clause 7 (*Change of Control*) of the Umbrella Agreement shall apply in relation to any Change of Control.

46. SET OFF

Except where this Agreement expressly states otherwise, no Party is entitled to set-off any amounts owed by any other Party under this Agreement against any amounts owed as between those Parties under the MSA or this Agreement.

47. ACCRUED RIGHTS

Termination of the obligations to provide TSA Services under this Agreement shall not affect any accrued rights and obligations under this Agreement as at the date of termination.

48. COUNTERPARTS

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

49. GOVERNING LAW AND JURISDICTION

Governing Law

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

Jurisdiction

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

- (a) the creation, validity, effect, interpretation, performance or non-performance of, or the legal relationships established by, this Agreement; and
- (b) any non-contractual obligations arising out of or in connection with this Agreement,

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

50. CONTRACT (RIGHTS OF THIRD PARTIES) ACT 1999

50.1 Save as provided in clause 50.2 or 50.3, the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement, and no person other than the Parties to this Agreement shall have any rights under this Agreement.

50.2 The Secretary of State shall have the right under the Contracts (Rights of Third Parties) Act 1999 to enforce paragraphs 1.1, 1.2, 1.5, 6, (*No Waiver*), 9 (*Access and Audit Rights*) and 11.3(a) of Schedule 6.6 (*Operation of the Balancing Payments Account*) and paragraph 5.8 of Schedule 5.4 (*SQM Regime*), but no other provisions of this Agreement.

50.3 The TMM's Sub-Contractors and companies within the TMM's Group shall have the right under the Contracts (Rights of Third Parties) Act 1999 to enforce the relevant provisions of Schedule 17 (*Employment Arrangements*) against the Operator.

51. SURVIVAL

51.1 The Parties acknowledge that certain provisions of this Agreement shall survive termination of this Agreement, including each of clauses 1, 7.6, 7.7, 14, 15, 16, 18, 23, 26, 27, 28, 29, 31, 34, 36, 37, 39, 42.9, 43.4, 44, 49, 50 and this clause 51, Schedule 6, Schedule 10, Schedule 13, Schedule 14, Schedule 17 and Schedule 18 and any other provision of this Agreement which expressly or by implication is intended to come into or continue in force on or after termination of this Agreement, in each case in accordance with and subject to the terms of the relevant provision.

51.2 Any termination of this Agreement or the termination of a Party's participation in this Agreement (for whatever cause) shall not affect any accrued rights or liabilities under this Agreement to which any of the Parties may be entitled or be subject as at the date of such termination, which shall remain in full force and effect upon such termination.

IN WITNESS WHEREOF this Agreement is executed the day and date referred to above.

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

EXECUTED for and on behalf of
SIEMENS PLC acting by its duly
authorised attorneys:

ATTORNEY:

¹²⁴

} ¹³²
} ¹³³

In the presence of:
Witness' Signature: ¹²⁵
Witness' Name: ¹²⁶
Witness' Address: ¹²⁷

ATTORNEY:

¹²⁸

In the presence of:
Witness' Signature: ¹²⁹
Witness' Name: ¹³⁰
Witness' Address: ¹³¹

¹²⁴ Redaction.

¹²⁵ Redaction.

¹²⁶ Redaction.

¹²⁷ Redaction.

¹²⁸ Redaction.

¹²⁹ Redaction.

¹³⁰ Redaction.

¹³¹ Redaction.

¹³² Redaction.

¹³³ Redaction.

EXECUTED FOR AND ON
BEHALF OF
**FIRST CAPITAL CONNECT
LIMITED BY:**

DIRECTOR:

[REDACTED]¹³⁴

} [REDACTED]¹³⁶
[REDACTED]¹³⁷

DIRECTOR/SECRETARY:

[REDACTED]¹³⁵

EXECUTED FOR AND ON
BEHALF OF
**CROSS LONDON TRAINS
LIMITED BY:**

DIRECTOR:

[REDACTED]¹³⁸

} [REDACTED]¹⁴⁰
[REDACTED]¹⁴¹

DIRECTOR/SECRETARY:

[REDACTED]¹³⁹

¹³⁴ Redaction.

¹³⁵ Redaction.

¹³⁶ Redaction.

¹³⁷ Redaction.

¹³⁸ Redaction.

¹³⁹ Redaction.

¹⁴⁰ Redaction.

¹⁴¹ Redaction.

SCHEDULE 1

SERVICE AND OPERATIONAL PROCEDURES AND PLANS

Schedule 1.1:	Train Plan and Train Plan Parameters
Schedule 1.2:	TSA Quality Plan
Schedule 1.3:	Safety and Security Plan
Schedule 1.4:	Sustainability and Environmental Management Plan
Schedule 1.5:	Fault Notification Procedure

SCHEDULE 1.1

Train Plan and Train Plan Parameters

Please see separate redacted Schedule 1.1.

SCHEDULE 1.1

Train Plan and Train Plan Parameters

1. TRAIN PLAN

1.1 The Operator in consultation with the TMM will prepare a Train Plan, which shall set out the scheduled arrival and departure times of each Diagram at each Designated Depot on each day, including Saturdays and Sundays. The scheduled arrival and departure times shall accord with the operating Diagrams and the Plan of the Day.

1.2 In preparing the Train Plan, the Operator shall make adequate provision for Units to be Handed Over and Handed Back, during which time, the TMM can perform the Standard Services within the constraints of the Train Plan Parameters.

2. TRAIN PLAN PARAMETERS

2.1 The Train Plan Parameters as set out in the table in paragraph 2.7 below specify:

- (a) the minimum number of Units of each Unit Type which the Operator shall make available at the Maintenance Shed during any day;
- (b) windows of time in day-time and night-time periods within which the Operator shall Hand Over Units to the TMM in order for the TMM to perform the Standard Services; and
- (c) windows of time in day-time and night-time periods within which the TMM shall Hand Back Units to the Operator following the performance of Standard Services in order for those Units to be considered as Available for the next period of service.

2.2 During each day-time and night-time period, the Units shall be Handed Over or Handed Back at a reasonable rate.

2.3 For the purposes of this Agreement, the maximum number of Units which may be diagrammed by the Operator in any one day shall be the number equivalent to the Availability Benchmark for that day.

2.4 The parameters in the table in paragraph 2.7 are only for Units that are planned to be Handed Over and Handed Back for scheduled exams. The Hand Over and/or Hand Back of unplanned or ad-hoc Units may be undertaken outside of the parameters in the table in paragraph 2.7.

2.5 In addition to the Units stated in the table in paragraph 2.7 the ¹ Units ², which are over and above the maximum Availability Benchmark quantity will normally be Handed Over to the TMM. The Hand Over and Hand Back of these Units can be undertaken outside of the parameters in the table in paragraph 2.7.

2.6 The Operator shall ensure that each Unit is Handed Over at either Designated Depot for the TMM to undertake scheduled maintenance in accordance with the Maintenance Plan and in any event,

¹ Redaction.

² Redaction.

not more than []³ miles with a tolerance of []⁴ miles after each such Unit's previous scheduled maintenance exam.

³ Redaction.

⁴ Redaction.

2.7 The table below sets out the parameters at the Maintenance Shed for each of the Designated Depots:

Parameters	Designated Depot Three Bridges		Designated Depot Hornsey	
	Type 1 Units	Type 2 Units	Type 1 Units	Type 2 Units
Minimum number of Units Handed Over to TMM during each night-time period	[REDACTED] ⁵	[REDACTED] ⁶	[REDACTED] ⁷	[REDACTED] ⁸
Minimum number of Units handed over to TMM during each day-time period	[REDACTED] ⁹	[REDACTED] ¹⁰	[REDACTED] ¹¹	[REDACTED] ¹²
[REDACTED] ¹³	[REDACTED] ¹⁴	[REDACTED] ¹⁵	[REDACTED] ¹⁶	[REDACTED] ¹⁷
Stabling capacity required out with the Maintenance Shed for TMM's purposes.	[REDACTED] ¹⁸	[REDACTED] ¹⁹	[REDACTED] ²⁰	[REDACTED] ²¹
First scheduled night-time Hand Over to TMM.	[REDACTED] ²²	[REDACTED] ²³	[REDACTED] ²⁴	[REDACTED] ²⁵
Last scheduled night-time Hand Over to TMM.	[REDACTED] ²⁶	[REDACTED] ²⁷	[REDACTED] ²⁸	[REDACTED] ²⁹

⁵ Redaction.

⁶ Redaction.

⁷ Redaction.

⁸ Redaction.

⁹ Redaction.

¹⁰ Redaction.

¹¹ Redaction.

¹² Redaction.

¹³ Redaction.

¹⁴ Redaction.

¹⁵ Redaction.

¹⁶ Redaction.

¹⁷ Redaction.

¹⁸ Redaction.

¹⁹ Redaction.

²⁰ Redaction.

²¹ Redaction.

²² Redaction.

²³ Redaction.

²⁴ Redaction.

²⁵ Redaction.

²⁶ Redaction.

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First scheduled night-time Hand Back from TMM.	□ ³⁰	□ ³¹	□ ³²	□ ³³
Last scheduled night-time Hand Back from TMM.	□ ³⁴	□ ³⁵	□ ³⁶	□ ³⁷
First scheduled day-time Hand Over to TMM.	□ ³⁸	□ ³⁹	□ ⁴⁰	□ ⁴¹
Last scheduled day-time Hand Over to TMM.	□ ⁴²	□ ⁴³	□ ⁴⁴	□ ⁴⁵
First scheduled day-time Hand Back from TMM.	□ ⁴⁶	□ ⁴⁷	□ ⁴⁸	□ ⁴⁹
Last scheduled day-time Hand Back from TMM.	□ ⁵⁰	□ ⁵¹	□ ⁵²	□ ⁵³

27 Redaction.

28 Redaction.

29 Redaction.

30 Redaction.

31 Redaction.

32 Redaction.

33 Redaction.

34 Redaction.

35 Redaction.

36 Redaction.

37 Redaction.

38 Redaction.

39 Redaction.

40 Redaction.

41 Redaction.

42 Redaction.

43 Redaction.

44 Redaction.

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47 Redaction.

48 Redaction.

49 Redaction.

50 Redaction.

51 Redaction.

52 Redaction.

53 Redaction.

SCHEDULE 1.2

TSA Quality Plan

Please see separate redacted Schedule 1.2.

TSA Schedule 1.2

Quality Plan

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1 Introduction

1.1 Definitions

BMS	business management system
BQF	British Quality Foundation
CAR	corrective action report
EFQM	European Foundation of Quality Management
HSQE	health, safety, quality & environment
R4E	Recognised for Excellence (EFQM)
TMM Rail Systems	Siemens plc, Infrastructure & Cities Sector, Rail Systems Division

1.2 Scope

This Quality Plan shall set out the methods by which the obligations under the Agreement will be performed in a manner that will ensure the quality of such performance.

2 Quality Policy

2.1 Quality Objectives and Targets

The TMM will agree and set quality objectives and targets in conjunction with Owner and Operator within four months of the date of signature of this Agreement in order to achieve the goal set out in paragraph 1.2.

2.2 Quality Policy Document

The TMM will prepare a quality policy document which will set out the practical steps to be taken to achieve the objectives and targets in paragraph 2.1 within six months of the date of signature of this Agreement.

The quality policy document shall align with the quality policy of TMM Rail Systems and the Operator's safety management system (as defined in Railways and Other Guided Transport Systems (Safety) Regulations 2006) and will meet the minimum requirements of such documents.

The quality policy document will be signed by the managing director of TMM and copies of it will be posted at each Designated Depot and other relevant sites where Services are performed.

2.3 Management Commitment to Continuous Improvement

[]¹

3 Quality Management System

3.1 Quality Management System

The quality management system already in place for the TMM Rail Systems will be used as the depositary for all documentation relating to quality with respect to this Agreement.

Based on the agreed quality objectives and targets and the quality policy document, the TMM will develop a quality management system within eight months of the signature of this Agreement. Both the general quality management system already in place for the TMM Rail Systems and the quality management system developed for this Agreement shall govern the TMM's actions under this Agreement.

The quality management system will be managed in accordance with the quality assurance principles set out in BS EN ISO 9001:2008. Certification will be gained through an accreditation body within 12 months of the signature of this Agreement. Until full certification is gained, the TMM will work in the spirit of BS EN ISO 9001:2008.

¹ Redaction.

TMM's obligations under this Agreement will be implemented and managed according to the quality management system.

3.2 Business Management System

The TMM operates an intranet based BMS which brings together the quality, safety and environment management systems to form the TMM Rail Systems' integrated BMS. The quality management system created pursuant to paragraph 3.1 will be included in this integrated BMS.

4 Processes, Procedures and Documentation

4.1 Document Structure

The document structure (showing interdependency of and relations between items of documentation) of all technical, management and commercial documentation relating to the performance of this Agreement, including the Technical Records, will be shown in the TMM's BMS. Access to and communication with the BMS will be available to all TMM personnel. The Owner and Operator will be allowed access to the BMS.

4.2 Relevant Documents in the Public Domain

The TMM will provide its staff with internet access to documents in the public domain that are relevant to or specified in this Agreement, such as Technical Specifications for Interoperability (TSI), National Notified Technical Rules (NNTR), and Euro Norms.

4.3 Identification of Processes

Within eight months of the signature of this Agreement, the TMM will identify the processes needed for the quality management system created pursuant to paragraph 3.1 and their application throughout the life of this Agreement. The sequence and interaction of processes will be clearly defined.

4.4 Production of Processes

The procedures and processes documentation required to fulfil the obligations of this Agreement (including an appropriate procedure to address new and amended documentation) will meet the standards set by the Owner and Operator set out in the quality policy document referred to in paragraph 2.2 and will comply with the BMS document structure requirements.

All procedure and process documentation prepared by the TMM will be agreed with the Owner and Operator during their development, and, prior to any significant change, through the document approval and control process.

4.5 Measurement of processes

All documentation in relation to the implementation of this Agreement will follow a continuous improvement cycle. As part of this cycle, the TMM together with the Owner and Operator will measure and analyse processes used in the implementation of this Agreement and, where necessary, actions will be taken to achieve planned results. The aim of measuring processes will

be to continually improve, identify best practice in relation to, and review the effectiveness of all such processes.

4.6 Quality Documentation Control System

All technical, management and commercial documentation relating to the performance of this Agreement will be controlled. All proposed changes will be reviewed and approved prior to issue. A record of all changes to documents and data will be held. All users of the documentation will be informed of any changes when accessing such documentation through the BMS.

Documents and data which are controlled will be given a unique TMM reference number. All documents and data that carry a unique number will have the "master" held in the BMS or the Technical Library. All controlled documents and data will be reviewed and approved prior to being approved for use. A record of the current issue of all controlled documents and data will be held in the BMS or in the Technical Library. If the TMM, Owner or Operator removes a document from the BMS or Technical Library, a record shall be kept in the BMS or Technical Library of the recipient of such document, and if any changes are made to the document in the BMS or the Technical Library, the recorded recipient shall be informed of such changes.

Obsolete documents and data will be removed from all places of use. Where a previous issue must be retained then this copy will be clearly marked to indicate that it is not the current issue.

4.7 Control, Archiving and Retention of Records

All records relating to the Services, including the Technical Records, Technical Library and HSQE records will be controlled, maintained and archived in accordance with clause 7 of this Agreement and Applicable Laws and Standards.

An audit of this area and its systems are subject to an annual review. The Owner and Operator will be invited to attend the audit.

5 Human Resources

5.1 Project Organisation

Details of the organisational structure within the TMM used to fulfil this Agreement will be prepared by the TMM and made available to the Owner and Operator on the BMS within three months of the signature of this Agreement.

5.2 Roles and Responsibilities

Clearly defined roles, responsibilities and authorities within such organisational structure will be set out by the TMM and these will be held on the BMS.

5.3 Resources

The TMM will ensure that the necessary human resources and associated logistical support will be provided to fulfil this Agreement.

5.4 Competence, Awareness and Training

Within 12 months of the signature of this Agreement, a 'competence management system' will be introduced and used by the TMM to identify the skills and training required for all activities that may have an impact on quality.

The TMM will identify all specific training requirements and arrange/coordinate training as required through the TMM's training department.

Only staff that have shown and demonstrated their competence within the scope of the task they are expected to perform will be allowed to perform those tasks.

The TMM will be responsible for ensuring that the safety critical activities of the employees are reviewed on a monthly basis. The employees will be open to reassessments within specified mandatory timescales and identify new training needs.

Local training records will be retained and maintained by the TMM supported by the TMM's training department.

The training and competence management system will be subject to an annual audit maintained by the TMM's HSQE department. The Owner and Operator will be invited to attend these audits.

5.5 Responsibility and Authority

The TMM will be responsible for regular monitoring and reporting of issues under this Quality Plan to the TMM's senior management.

6 Control of Assets

6.1 Design, Development and Control

All engineering changes will conform to the requirements of the Engineering Change Control Procedure.

All aspects of the TMM's design activity will be under the control of the BMS procedures and processes.

The TMM's head of technical services will hold overall responsibility for the control of the design documentation and records.

6.2 Control of Owner or Operator supplied / owned assets

Any asset supplied and / or owned by the Owner (including Associated Equipment) or the Operator (including Operator Owned Spares) will be identified as such, managed and subject to the TMM's annual audit regime.

6.3 Equipment control and calibration

The TMM will ensure that:

- inspection, measuring and test equipment are, where necessary, calibrated to ensure they are fit for purpose and records of such calibration are retained. Management of this process will be in accordance with specific procedures included in the BMS;
- items of inspection, measuring or test equipment are uniquely identified and listed, whether subject to calibration or not;
- for each item that requires regular calibration, the calibration interval is clearly defined and reviewed according to usage and calibration results;
- such equipment is adequately stored in between use to prevent damage;
- a calibrated and Special Tool asset list is created and maintained; and
- calibration certificates confirm that calibration is traceable to an appropriate independent standard.

7 Control of Approved Sub-Contractors.

All Approved Sub-Contractors used for the Services will be monitored using the following criteria.

- The TMM will ensure that all Sub-Contractors comply with the quality assurance requirements of the Quality Plan.
- Sub-Contractors will be required to deliver individual quality plans, which will be scrutinised and, if acceptable, accepted by the TMM before permission to start work is granted.
- The list of Approved Sub-Contractors in Schedule 3 of this Agreement will be maintained by the TMM's procurement department. Any changes to the list will be performed in accordance with clause 8 of this Agreement.
- Inspections and audits on the work performed by Sub-Contractors will be in accordance with a TMM annual audit. The Owner and Operator will be invited to attend these audits.
- Work carried out by Sub-Contractors will be the subject of regular inspection by the TMM. Work performed and progress will be recorded in a daily log sheet. The Owner and Operator will be given access to the daily log sheets.
- Complaints received about a Sub-Contractor relating to the Services will be passed to the TMM's HSQE department immediately, and the means of resolution agreed in accordance with the TMM's customer complaints procedure. The Owner and Operator will be given access to the resolution records.

8 Measurement, analysis and improvement.

8.1 Internal Audits

The adequacy of documentation for all processes created pursuant to paragraph 4.4, as well as compliance with such documentation when processes are being carried out, will be subject to regular scheduled internal audits by trained internal auditors. The audit schedule will be maintained by the TMM.

Any non-conformances found during an internal audit will be recorded and subjected to corrective and preventive action within agreed timescales and with agreed actions. The timescale will reflect the significance of the action raised and the effort required to successfully close out the action. Results from internal audits shall be made available to the Owner and Operator on request.

8.2 External Audits

The TMM is registered to external accreditation bodies, BQF (EFQM) and Achilles (Link Up), who conduct regular third party assessments of the TMM Rail Systems' quality management system to ensure compliance. The quality management system will be audited during these audits.

Any non-conformances found during an external audit will be recorded and subjected to corrective and preventive action within agreed timescales and with agreed actions. The timescale will reflect the significance of the action raised and the effort required to successfully close out the action. Results from external audits shall be made available to the Owner and Operator on request.

8.3 Owner and Operator Audits

As the holder of a Railway safety management System (as defined in ROGS), the Operator is required to ensure that the TMM is effectively undertaking Services in such a manner so as to ensure the health and safety of all. To this end the Operator will perform a programme of robust and targeted audits of the TMM to ensure compliance with the Operator's Safety Management System and the continuous improvement in line with ISO 9001, ISO 14001 and OHSAS 18001.

The Owner and the Operator will regularly conduct second party reviews of the TMM's quality management system. The TMM will provide all reasonable assistance to the Owner and the Operator, including access to any relevant Technical Records and BMS procedures and processes, for the purpose of these reviews.

Any non-conformances found during an Owner / Operator audit will be recorded and subjected to corrective and preventive action within agreed timescales and will be managed by the TMM's audit procedure. Corrective actions will be agreed between the TMM, the Owner and the Operator and monitored at the Performance Review Meetings as set out in Schedule 9 (*Contract Management*).

The Owner and Operator will be invited by the TMM at agreed intervals to undertake surveillance audits on processes and procedures related to the provision of the Services.

9 Product Assurance

9.1 Product Assurance Process

The TMM will introduce a product assurance process to demonstrate conformity of the items subject to the Maintenance Plan with the Specification.

The product assurance process will be used to;

- ensure checks of the Maintenance Plan are conducted, controlled and actioned in a consistent manner;
- ensure conformity of the quality management system with BS EN ISO 9001:2008;
- continually improve the effectiveness of the quality management system; and
- ensure the items subject to the Maintenance Plan are Fit for Purpose.

The product assurance process will include the determination of applicable methods, including statistical techniques and the extent of their use, as well as the monitoring, measurement, analysis and improvement processes needed. The product assurance process will be monitored on a monthly basis by the TMM and subject to audit annually.

9.2 Non-conforming Parts

Non-conforming Parts will be clearly identified, segregated and quarantined where possible in accordance with the product assurance process, pending resolution of any investigation.

10 Maintenance Integrity

The TMM will employ a maintenance integrity model, which seeks to assure the highest standards for the Maintenance Plan throughout the definition, execution and supervision of the work performed by the TMM's own staff as well as Sub-Contractors.

This will be achieved through a continual audit and review regime specifically focusing the Maintenance Plan activities and technical controls e.g. Engineering Change Control Procedure, dispensations, concessions and maintenance management programmes. The model examines root and branch levels of the TMM's maintenance control and compares success and failure to other fleet maintenance projects the TMM currently manages.

The maintenance integrity model deployment, review and initiatives shall be led by the TMM's maintenance integrity working group.

The Services will be included within the scope of this model.

SCHEDULE 1.3

Safety and Security Plan

Please see separate redacted Schedule 1.3.

TSA Schedule 1.3

Safety and Security Plan

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1 Definitions

1.1 General

BMS	business management system
CAR	corrective action report
Depot Operator	has the meaning given to the term “Operator” in the DAfL
Depot SPC	has the meaning given to it in the DAfL
HSQE	health, safety, quality and environment
OLE	overhead line equipment
TMM Rail Systems	Siemens plc, Infrastructure and Cities Sector, Rail Systems Division
ROGS	The Railway and Other Guided Transport Systems (Safety) Regulations 2006
COSHH	Control of Substances Hazardous to Health Regulations
PPE	personal protective equipment

2 Safety and Security Policy

2.1 Safety and Security Objectives and Targets

The TMM in conjunction with the Owner and Operator will agree and set safety and security objectives and targets within four months of the date of signature of this Agreement.

2.2 Safety and Security Policy Statement

The TMM will prepare a safety and security policy statement in accordance with the objectives and targets set out under paragraph 2.1 and submit it to the Owner and Operator for approval within four months of the date of signature of this Agreement. The final statement shall be agreed within six months of the date of signature of this Agreement.

The safety and security policy statement shall align with the TMM's safety and security policy, the Depot SPC safety and security requirements, the Operator's safety management system (as defined in ROGS) and will meet the minimum requirements of such documents.

The safety and security policy will also meet Applicable Laws and Standards.

The safety and security policy document will be signed by the TMM's Rail Systems managing director and it will be posted at each Designated Depot and, where relevant and appropriate, other sites where this Agreement is performed.

2.3 Management Commitment to Health, Safety and Security Responsibilities

[]¹

2.4 Scope of Safety and Security Plan

This scope of the Safety and Security Plan and the documentation produced pursuant to it lay out the safety and security foundation for all TMM's staff, the Operator's staff and Sub-Contractors working on any of the Designated Depots and other relevant sites where this Agreement is performed.

The TMM will be responsible for overall compliance with the Safety and Security Plan.

¹ Redaction.

3 Safety and Security Management System OHSAS 18001

3.1 General

The safety management system already in place for the TMM Rail Systems will be used as the depositary for policies relating to safety and security.

Based on the agreed safety and security objectives and targets in paragraph 2.1, the TMM will develop a safety and security management system within eight months of the signature of this Agreement.

The safety and security management system will be designed to reflect the principles of OHSAS 18001. The TMM currently holds registration to OHSAS 18001 accredited by Det Norske Veritas (DNV).

3.2 Safety and Security Management System

The safety and security management system will be designed to reflect the principles of OHSAS 18001 thus:-

- health and safety policy supported by sufficient resources to enable the policy to be implemented in an efficient and effective manner;
- planning to enable the identification of hazards through risk assessment techniques to enable control of risk to be achieved;
- identification of legal and other requirements to enable the TMM to meet its various legal, moral and organisational requirements;
- the implementation of a health and safety management programme;
- provide a framework for the TMM to consistently identify and control its health and safety risks;
- checking of performance in relation to safety and security matters and implementation of corrective actions; and
- management review in relation to safety and security matters.

The safety and security management system will be aligned to the principle of “plan”, “do”, “check”, and it is intended that this cycle will be used to achieve continuous improvement in the TMM’s safety performance.

3.3 General Health and Safety Issues

It is the TMM’s policy to identify, accept and discharge responsibilities under Applicable Laws and Standards, and other necessary requirements, in order to ensure the reduction of health and safety risks to its employees and all others who may be affected by its activities. The TMM’s safety and security policy statement will be complied with, at all times.

- All personnel that are to work at or enter a Designated Depot will receive an induction on site and will be issued with a site security identification pass. This will be performed by the Operator and / or the TMM, depending on the Designated Depot’s relevant site rules.

- The TMM will operate a safety competency management system in accordance with paragraph 6.4.
- The TMM will enforce a drugs and alcohol policy incorporating as a minimum the requirements of clause 32.3 of this Agreement.
- Working time and fatigue management will be managed by the TMM.
- Occupation health will be managed by the TMM.

3.4 Business Management System

The TMM operates an intranet-based BMS which brings together the quality, safety and environment management systems to form the TMM Rail Systems integrated BMS. The intended safety and security management system will be included in this integrated BMS.

4 Processes, Procedures and Documentation

4.1 Document Structure

The document structure (showing interdependency of and relations between items of documentation) of all documentation relating to safety and security, including the Technical Records, will be shown in the TMM's BMS. Access to and communication with the BMS will be available to all TMM personnel. The Owner and Operator will be allowed access to the BMS.

4.2 Relevant Documents in the Public Domain

The TMM will provide its staff with internet access to documents in the public domain that are relevant to or specified in this Agreement, such as Health and Safety at Work Act, Electricity at Work Regulations, Euro Norms, etc.

4.3 Safety and Security Records

The TMM will ensure that the following safety and security related information is kept at the Designated Depots:

- Safety and Security Plan;
- risk assessment records;
- method statements;
- Designated Depot site drawings and photographs;
- accident and lost working time records;
- RIDDOR reports to ORR;
- independent safety audit reports; and
- minutes of safety review meetings.

The retained safety and security information shall be relevant to the Designated Depots and all other sites where this Agreement is performed and shall be made available for audit/ inspection by

the Owner, Operator and any other personnel authorised by law or by agreement of the Owner, Operator and TMM.

5 Communication and Co-operation

5.1 Safety Co-Operation and Co-Ordination with Partners

The TMM will operate the safety and security policy statement and safety and security management system openly and honestly with the Owner, Operator, Depot SPC and other stakeholders. The TMM will partake in regular safety and security reviews and discussions and will ensure that it shares information with such stakeholders in the continual improvement of all safety and security matters.

To provide a forum for employee consultation the TMM will introduce and implement arrangements via an employee council.

The TMM will utilise a number of methods to enable clear communication of health, safety and security requirements to its employees including amongst others.

- TMM briefings;
- health and safety committee and working group meetings;
- employee council meetings;
- TMM newsletters;
- TMM HSQE newsletters; and
- TMM intranet.

The TMM will be responsible for the onward communication of urgent safety and security information to all affected stakeholders.

All significant events relating to safety and security will be shared with the Owner, Operator and other TMM projects so that lessons can be learnt and reoccurrence of adverse effects mitigated, provided that details of such events shall be limited to the extent necessary to comply with relevant data protection and confidentiality restrictions.

5.2 Communication at all levels

The TMM will communicate at all levels in accordance with Schedule 9, paragraph 4 of this Agreement to ensure that policies and objectives relating to safety and security reach all stakeholders.

The TMM's annual HSQE strategy including safety and security targets will be published and displayed at each Designated Depot. Monthly reviews will be carried out for progression of this HSQE strategy.

On an annual basis, at each Designated Depot, the TMM will carry out a review of the safety and security targets and initiatives achieved over the past year. These include accident reduction, safety tours, safety orientated meetings and briefings. The outcome of each of these reviews will be measured against the TMM's HSQE annual strategy. The Owner and Operator will be invited to participate in this review.

The TMM will hold a number of structured meetings including the health and safety committee meetings, which will take place quarterly. Local HSQE meetings will be held at depot level. Project meetings will be held periodically to discuss relevant health, safety and security issues with the Owner and Operator.

The TMM will carry out an annual management review which reports progression on health and safety performance.

Regular safety and security meetings will be arranged between the TMM, Owner and Operator. The key top-line agenda at these meetings will be health and safety performance. The TMM will work closely with all stakeholders to implement safety culture tools and techniques across all of its facilities, including the Designated Depots.

5.3 Staff Involvement and Representation

TMM employees will be encouraged to be proactively involved in matters relating to their health and safety whilst at work and to become actively involved in helping the management execute its legal and moral duty.

Near Miss Reporting – The TMM's and Operator's staff will be encouraged to report near misses to management using a simple near miss / incident reporting form. Through the TMM's entropy database, trends will be monitored with appropriate campaigns introduced to improve performance.

Accident and Incident reporting – management will actively encourage the reporting of accidents, incidents. This will be not only to ensure compliance with legal requirements but also to ensure that effective monitoring is carried out.

On an annual basis, the TMM will feedback to the Operator and TMM employees, the accidents, incidents and near misses that took place the previous year. The intention will be to highlight what went wrong, common failings and action taken to prevent re-occurrence.

The TMM's representatives of employee safety will be actively encouraged to become involved in issues relating to safety and health.

6 Human Resources

6.1 Project Organisation

Details of the TMM's safety and security personnel will be made available for inclusion in the organisation chart held on the BMS within three months of the signature of this Agreement.

6.2 Organisation and Responsibilities

The TMM's managing director has ultimate responsibility for health, safety and security across the TMM Rail Systems. Executive authority for the operational management of health, safety and security is delegated to the TMM's HSQE director.

The day to day responsibility for safety management will be the responsibility of the TMM.

6.3 Safety Critical Duties

All personnel whose duties impact on the railway will be defined as performing safety critical duties.

All staff to be employed on safety critical duties will undergo a pre-employment medical to ensure they are fit to perform these duties.

All staff to be employed on safety critical duties will be required to undertake approved training courses appropriate to their position and skills. These will include, but are not limited to, relevant technical and professional training courses, and initial training for new starters leading up to safety critical assessment.

6.4 Safety Competence

The TMM will operate a safety competency management system. Only staff that have shown and demonstrated their competence within the scope of the task they are expected to perform will be allowed to perform those tasks.

The TMM will be responsible for ensuring that the safety critical activities of the employees are reviewed on a monthly basis. The employees will be open to reassessments within specified mandatory timescales and identify new training needs.

Local training records will be retained and maintained by the TMM supported by the TMM Training department.

The training and competence management system will be subject to an audit, maintained by the TMM's HSQE department. The Owner and Operator will be invited to attend these audits.

6.5 Health and Safety Responsibilities

The TMM's Representative shall:

- ensure that the Operator's and TMM's obligations on all areas of the Designated Depots and sites where this Agreement is performed are fully understood and communicated to all TMM personnel;
- follow the good examples set by members of the TMM's Rail Systems safety management board in creating a robust health, safety and security culture;
- set an example by its employees' actions and activities;
- ensure that staff are capable and competent to undertake the tasks allocated to them;
- communicate and encourage feedback on safety and security issues;
- undertake appropriate disciplinary action for any breach of safety and security;
- investigate accidents or incidents to determine basic causes and feedback information both up and down the organisation;
- ensure adequate safety equipment is to hand and is used by employees;
- undertake safety and security tours or inspections and take action where deficiencies are observed;
- when unable to rectify or remedy unsafe situations either stop work if the risk is too high and/or report the deficiency (and involve HSQE department) to the appropriate member of the TMM's Rail Systems senior management team for action;
- promote and use the BMS to control and manage work;
- understand the safety and security risks involved in any activity they control and ensure any mitigation designated to control that risk are effectively operated/implemented;
- be prepared and be competent to manage any emergency situations in accordance with the local business continuity plan;
- become involved in any worksafe problem and help resolve that problem;
- maintain their competence to manage their own safety and security responsibilities and contribute to their direct competence to manage their safety and security responsibilities; and
- ensure continuous improvement of the job and activities in line with the TMM's values.

The TMM's HSQE department shall support the TMM by:

- implementation of the safety and security policy statement;
- implementation of safety and security objectives and targets;
- providing support and guidance to the TMM for all safety and security matters;
- preparing and amending existing safety procedures or work instructions as required and investigating all safety and security matters arising;
- initiating regular formal and informal audits and inspections on activities or premises and report the findings to the TMM;
- investigating of accidents and incidents, and notifying those under Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (**RIDDOR**) 1995 to the enforcing authorities;
- coordinating all safety and security matters as they affect the Designated Depot facility and associated Services work ensuring the BMS supports the Designated Depot requirements;
- preparing and amending existing safety procedures or work instructions as required and investigating all health, safety and security complaints and refer all Designated Depot matters arising to the Depot SPC;

- initiating regular formal and informal safety and environmental audits and inspections on Designated Depot premises including any work activities and report the findings to the Depot SPC. Supporting third party audits of Designated Depot work activities including assisting in the closing out of appropriate CARs;
- ensuring that risk assessments are performed on the Designated Depot and updated to the satisfaction of the Depot SPC, to comply with the requirements of the ROGS, other UK relevant legislation;
- investigating and monitoring accident records and statistics and notify those qualifying under the RIDDOR to the enforcing authorities as appropriate;
- helping to promote a safety and security culture within the working environment; and
- conducting safety and security training courses and approving persons as safe/competent for that particular activity being trained. Attending and actively contribute to all meetings called to discuss safety and security issues.

7 Risk Management

7.1 Specific Risks Management

Health and safety hazards relating to the Services and the Designated Depots will be identified and, where required, containment will be implemented and documented.

All hazards shall be identified and recorded by the Operator and / or the TMM, depending on the Designated Depot's relevant site rules.

Throughout the Designated Depot's mobilisation and into the maintenance phase, a hazard identification workshop and hazard identification matrix will be undertaken and produced by the TMM, Operator and Depot SPC and monitored to ensure risks are contained and deficiencies closed out so far as is reasonably practicable.

7.2 Risk Assessments

The TMM will be responsible for ensuring that all safety and security risks are assessed and are recorded.

The TMM (supported by its HSQE department) will ensure that all risks to safety and security are reviewed regularly.

7.3 Mitigation of Risks

In accordance with a risk assessment, the activities carried out by the TMM will be assessed to identify those operations where control measures need to be applied, or where further control measures require adopting in light of accident / near miss history. Thereafter arrangements will be implemented and maintained, and where it is deemed appropriate they shall include the establishment of documented procedures covering the following subjects:

- stipulate specific operating criteria;

- the maximum number of employees likely to be present in the workplace at any time;
- inexperienced workers, employees with disabilities or special health problems;
- shift-work, out-of-hours working;
- contractors and visitors;
- workplace hazards and risks (including any specific risks, e.g. hazardous substances, manual handling, vibration);
- previous accident records and statistics;
- the proximity of emergency medical services;
- pregnant workers;
- young persons;
- buildings, plant and processes;
- fire; and
- security.

The TMM shall be responsible for reviewing risk assessments to ensure they are still applicable to the work being performed.

8 Security

8.1 Personnel Security

Within twelve months of the signature of this Agreement, security arrangements will be introduced for personnel within the Designated Depot and other relevant sites where this Agreement is performed.

These will be introduced by the Operator and / or the TMM, depending on the Designated Depot's relevant site rules.

The arrangements will detail the access arrangements for TMM, Owner and Operator personnel as well as Sub-Contractors and other visitors.

Sub-Contractors will be required to agree to abide by the site rules and procedures.

Security arrangements will be reviewed annually during the review of the crisis / contingency management processes detailed below.

8.2 Emergency Procedures and Continuity Plans

Incident management policy and general arrangements, crisis management and continuity plans will be introduced within eight months of the signature of this Agreement.

These will be introduced by the Operator and / or the TMM, depending on the Designated Depot's relevant site rules.

The arrangements will be developed by the Operator and / or the TMM and shared with the Owner and Depot SPC before being published and communicated to all personnel at the relevant location.

An on call roster will be introduced and published weekly for all out of hours events to be communicated.

9 Control of Approved Sub-Contractors.

All Approved Sub-Contractors (TSA) used for the Services will be monitored using the following criteria.

- The TMM will ensure that all Sub-Contractors comply with the requirements of the Safety and Security Plan.
- Sub-Contractors will be required to deliver individual method statements, which will be scrutinised and, if acceptable, accepted by the TMM before permission to start work is granted.
- The list of Approved Sub-Contractors (TSA) in Schedule 3 of this Agreement will be maintained by the TMM's procurement department. Any changes to the list will be performed in accordance with clause 8 of this Agreement.
- Inspections and audits on the work performed by Sub-Contractors will be in accordance with a TMM annual audit. The Owner and Operator will be invited to attend these audits.
- Work carried out by Sub-Contractors will be the subject of regular inspection by the TMM. Work performed and progress will be recorded in a daily log sheet. The Owner and Operator will be given access to the daily log sheets.
- Complaints received about a Sub-Contractor relating to the Services will be passed to the TMM's HSQE department immediately, and the means of resolution agreed in accordance with the TMM's customer complaints procedure. The Owner and Operator will be given access to the resolution records.
- The employee arrangements of Schedule 17, paragraph 1 of this Agreement will apply to all Approved Sub-Contractors.

Sub-Contractors or individuals who fail to conform to stated safety and security requirements will be dismissed from the site and not permitted to perform any further work until satisfactory standards are implemented to comply with stated safety and security requirements. A serious breach may lead to a Sub-Contractor being permanently dismissed from the site and removed from the list of Approved Sub-Contractors after consultation with the Owner and Operator. Individuals who breach these requirements will be dismissed from the site and may not be permitted to return, dependent on the severity of the breach.

10 Employee Welfare

10.1 General Welfare

Adequate arrangements for general welfare will be implemented during the life of this Agreement, the significance of which will be reviewed regularly.

10.2 Reporting of Accidents and Incidents

The Operator and the TMM shall undertake investigation into all accidents on the Designated Depots and sites where this Agreement is performed and will achieve the following goals.

- Immediate action will be taken to make the area safe, capture evidence and record details.
- Initial risk assessments in the light of new information provided will be reviewed.

- Corrective action will be managed to control the level of risk back to an acceptable level.
- Investigation of immediate, basic and root causes behind the accident will be performed.
- A risk assessment review of any proposed corrective and preventive actions to identify potential conflicts between existing safe systems of work and proposed changes or new systems will be performed.
- The implementation of corrective and preventive actions, which are commensurate with the level of risk encountered will be carried out.
- The effective close out of corrective and preventive actions will be carried out.
- Maintained and documented changes to procedures and safe systems of work resulting from corrective / preventive action will be appropriately managed.

Investigations will be conducted and an accident/incident report compiled. Records will be held by the TMM on the entropy database.

10.3 Working Time and Fatigue Management – Safety Critical Workers

Safety may be compromised if excessive working time is undertaken. Therefore, except in an unforeseen situation TMM employees and Sub-Contractors will:

- work not more than 13 turns of duty within any 14 consecutive days;
- work not more than 72 hours within 7 consecutive days;
- have a minimum rest period of 12 hours between consecutive shifts; and
- in any one shift, work not more than 12 hours.

TMM employees and Sub-Contractors' employees will only work beyond these hours if an unforeseen situation has occurred which has the potential to impact the safe and continued operation of the Units. Appropriate authorisation will be sought where hours are exceeded or unavoidable due to emergencies or operational requirements.

Fatigue management will be managed in accordance with ROGS and arrangements that will be detailed in the TMM's fatigue management policy. These arrangements will be monitored, recorded and subject to an annual audit programme.

Suitable records will be kept of site working hours and working shifts and patterns and these will be monitored by the TMM.

10.4 Drugs and Alcohol

The TMM will enforce a drugs and alcohol policy incorporating as a minimum the requirements of clause 32.3 of this Agreement.

All TMM staff will be open to an initial drugs and alcohol test prior to employment. The TMM and its Sub-Contractors shall comply with the requirements of the policy when undertaking any activities on the Services.

Where an incident or accident is reported the involved parties will be required to be screened for drugs and alcohol.

The TMM will maintain an annual random drug and alcohol testing regime, where 5% of safety critical and 5% of other personnel (including Sub-Contractors) are tested. This process will be managed impartially by the TMM's HSQE department.

10.5 Manual Handling

All personnel required to lift or carry loads will receive manual handling training.

All personnel will ensure that:

- risks of injury arising from manual handling of loads will be minimised by avoidance of such tasks, whenever possible;
- suitable mechanical lifting plant is used whenever possible;
- ergonomic techniques will be used for all lifting and carrying tasks;
- for repetitive lifting tasks, regular rest breaks will be planned and taken to avoid the onset of fatigue;
- the carrying routes will be free from obstructions; and
- personal protective equipment such as gloves is used.

10.6 Hazardous Materials and Substances

All hazardous substances or processes used within the activities of the Services will be subjected to appropriate COSHH assessments.

All COSHH assessments, and manufacturer safety data sheets where appropriate, will be available for inspection at the point of use and on the TMM's entropy system. The TMM will ensure any control measures that are identified in the COSHH assessments are implemented.

Areas for the storage of materials and substances within the Designated Depots, whether the material is hazardous or not, will be designated.

10.7 Storage

All materials required for the Services will be stored in a safe location and safe manner. The TMM will identify the area for storage of materials and will ensure that appropriate signage is erected to identify any hazard connected with the material. Where required the storage area will be securely fenced to prevent unauthorised removal or disturbance of material from the storage location. All materials and equipment will be placed in a position that does not affect the safe operation of the railway or the safe access or movement of persons walking or working. All material will be secured to prevent unauthorised removal or disturbance of that material.

10.8 Electrical Systems and Electricity

All personnel performing Services must be aware of the provisions made under The Electricity at Work Regulations 1989. The TMM will ensure there is an appropriate permit to work issued and in place prior to work commencing on electrical systems.

All personnel performing Services must be aware of the procedures to isolate power supplies to OLE catenary and electrified third rail equipment and this work must only be undertaken by authorised operatives who will be suitably qualified and trained to carry out such work.

All portable electrical appliances used on the Designated Depots will be subject to an annual inspection. Defective electrical items will be withdrawn from service immediately either for repair and/or replacement.

10.9 Personal Protective Equipment

PPE will be worn as required by employees of the TMM and as identified through appropriate risk assessments.

10.10 First Aid

Three months before the Designated Depots are made available under licence to the TMM, first aid arrangements on the Designated Depot sites and other sites where this Agreement is performed shall be identified within the first aid risk assessment and an adequate number of a suitably trained personnel and first aid equipment shall be made available.

This will be provided by the Operator and / or the TMM, depending on the Designated Depot's relevant site rules.

11 Designated Depot Safety and Security Rules and Procedures

11.1 Designated Depot Site Rules and Procedures

Within twelve months of the signature of this Agreement, Designated Depot site rules and operating procedures will be developed, implemented and reviewed by the Operator, the TMM, Depot SPC and other stakeholders in order to satisfy the safety and security policy document.

Specific documentation identifying safety procedures will be adhered to by all TMM and Operator staff, Sub-Contractors and visitors to ensure the safe operation of the site. This will also include any developed primary operational control procedures, such as:

- depot protection control system;
- depot movement control;
- OLE and third rail isolation; and
- safe access into and egress from Units.

11.2 Designated Depot Equipment Management

Within twelve months of the signature of this Agreement, an inspection regime shall be implemented for each piece of equipment according to the risk the equipment presents to site personnel. A record of all plant and equipment inspections will be maintained.

This will be performed by the Operator and / or the TMM, depending on the Designated Depot's relevant site rules.

12 Monitoring Arrangements

12.1 Internal Audits, Tours and Inspections.

Measurement of the TMM safety and security performance will be undertaken regularly throughout the TMM organisation.

Monitoring of this data will be conducted to enable the following to be obtained.

- a qualitative measurement to determine whether the standard of information being provided may be continuously improved to enable general improvements in the safety management system with the aim of eliminating health and safety risks where reasonably practicable or their remediation through use of other ongoing control measures;
- validation of such data with the aim of assuring TMM senior management that a robust system is in place and functioning;

- progress in achieving TMM's health and safety objectives as detailed in the TMM HSQE department's targets and objectives;
- monitoring of incidents, accidents and ill health occurrences;
- an analysis of the corrective and preventive action undertaken;
- a comparison of safety and security performance with other TMM contracts (subject to relevant confidentiality restrictions);
- an analysis of any other evidence of safety and security performance; and
- the monitoring of the safety and security management system by the use of safety tours and inspections at all levels of management.

12.2 External Audits

The TMM is registered to external accreditation bodies, who conduct regular third party assessments of the TMM's Rail Systems health, safety and security management system, to ensure compliance. The safety and security management system will be audited during these audits.

Any non-conformances with the safety and security policy document found during an external audit will be recorded and subjected to corrective and preventive action within agreed timescales and with agreed actions. The timescale will reflect the significance of the action raised and the effort required to successfully close out the action. Results from external audits shall be made available to the Owner and Operator on request.

12.3 Owner and Operator Audits

As the holder of a Railway safety management system (as defined in ROGS), the Operator is required to ensure that the TMM is effectively undertaking Services of its operated Units and other Equipment in such a manner so as to ensure the health and safety of all. To this end the Operator will perform a programme of robust and targeted audits of the TMM to ensure compliance with the Operator's Safety Management System and the continuous improvement in line with OHSAS 18001.

The Owner and the Operator will regularly conduct second party reviews of the TMM's safety and security management system. The TMM will provide all reasonable assistance to the Owner and the Operator, including access to any relevant Technical Records and BMS procedures and processes, for the purpose of these reviews.

Any non-conformances found during an Owner / Operator audit will be recorded and subjected to corrective and preventive action within agreed timescales and will be managed by the TMM's audit procedure. Corrective actions will be agreed between the TMM, the Owner and the Operator and monitored at the Performance Review Meetings.

In addition to this, safety inspections and tours will be planned at a local level by the TMM. The Owner and Operator will be invited to participate in the planned safety inspections and tours.

A schedule of safety audits and inspections will be maintained by the TMM.

Any identified corrective and preventive actions will be controlled by the TMM. The TMM will be responsible for monitoring the close out of corrective actions and ensuring that effective preventive action has been taken. This will be an agenda item at the monthly TMM management meeting.

The results of the safety audits shall be used to measure the health, safety and security performance of the TMM.

12.4 Internal Audits

The TMM's safety and security management system will be subject to regular internal audits to ensure the adequacy of the system and its effectiveness in supporting the safety and security targets included in the TMM's HSQE strategy, the objectives and targets referred to in paragraph 2.1, the safety and security policy statement referred to in paragraph 2.2 and the safety and security management system referred to in paragraph 3.

Any non-conformances to the safety and security management system found during an internal audit will be recorded and subjected to corrective and preventive action within agreed timescales and with agreed actions. The timescale will reflect the significance of the action raised and the effort required to successfully close out the action. Results from internal audits shall be made available to the Owner and Operator on request.

12.5 Audits of Sub-Contractors

Safety audits will be conducted on any Approved Sub-Contractors by the TMM. The audits will look at the safety capability and competence of the Sub-Contractor. The Owner and Operator will be invited to attend these audits.

12.6 Management Review

The TMM will regularly review all aspects of its safety and security management system. Actions will be assigned to individuals to ensure efficient and timely resolution of all items arising from the review. An annual management review will be conducted.

Adverse trends will be monitored and appropriate action taken to ensure that the TMM safety and security policy document is effectively implemented.

The TMM will ensure that management reviews include the following information:

- results of audits;
- accidents, incidents and near misses;
- training and competence requirements;
- status of preventive and corrective actions;
- follow up actions from previous management reviews;
- changes that could affect the safety and security management system;

- recommendations for improvement; and
- information obtained through collaboration with the Owner and Operator.

Output from management reviews will include any decisions and actions relating to:

- improvement of the effectiveness of the safety and security management system and its processes; and
- resource needs.

A local review of the safety and security management system will be conducted covering the following subjects:

- results of audits and safety tours;
- accidents, incidents and near misses;
- training and competence requirements;
- status of preventive and corrective actions;
- follow up actions from previous management reviews;
- changes that could affect the safety and security management system;
- recommendations for improvement;
- planned internal audits, safety tours and external audits; and
- review of developing trends.

Review dates will be published and minutes of meetings publicised within the TMM's organisation.

SCHEDULE 1.4

Sustainability and Environmental Management Plan

Please see separate redacted Schedule 1.4.

TSA Schedule 1.4

Sustainability and Environmental Management Plan

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1 Definitions

1.1 General

BMS	business management system
CAR	corrective action report
Green Mile	TMM's continuous training package of environmental subjects
HSQE	health, safety, quality and environment
TMM Rail Systems	Siemens plc, Infrastructure and Cities Sector, Rail Systems Division
ROGS	The Railway and Other Guided Transport Systems (Safety) Regulations 2006

2 Sustainability and Environmental Policy

2.1 Sustainability and Environmental Objectives and Targets

The TMM's Representative in conjunction with Owner and Operator will agree and set sustainability and environmental objectives and targets within four months of the date of signature of this Agreement.

2.2 Sustainability and Environmental Policy Statement

The TMM's Representative will prepare a sustainability and environmental policy statement and submit it to the Owner and Operator for approval within four months of the date of signature of this Agreement. The final statement shall be agreed within six months of the date of signature of this Agreement.

The sustainability and environmental policy shall align with the TMM's sustainability and environmental policy, the Operator's safety management system (as defined in ROGS) and meet minimum legislative requirements.

The sustainability and environmental policy document will be signed by TMM Rail Systems' managing director and it will be posted at each Designated Depot and other relevant sites where this Agreement is performed.

2.3 Management Commitment to Sustainability and Environmental Responsibilities

[]¹

2.4 Scope of Sustainability and Environmental Management Plan

This scope of this Sustainability and Environmental Management Plan lays out the sustainability and environmental foundation for all TMM's staff, the Operator's staff and Sub-Contractors working on any of the Designated Depots and other sites where this Agreement is performed.

The TMM will be responsible for overall compliance with the Sustainability and Environmental Plan.

3 Sustainability and Environmental Management System ISO 14001:2004

3.1 General

The sustainability and environmental management system already in place for the TMM Rail Systems will be used as the depositary for all policies and documentation relating to sustainability and environmental matters.

Based on the agreed sustainability and environmental objectives and targets in paragraph 2.1, the TMM will develop a sustainability and environmental management system within eight months of the signature of this Agreement.

¹ Redaction.

The sustainability and environmental management system will be designed according to the principles of ISO 14001:2004. The TMM currently holds registration to ISO 14001:2004 accredited by Det Norske Veritas (DNV).

Levels of action within the environmental management system can fall into one of the following categories:

- investigate, monitor or measure the environmental aspect to evaluate potential control measures;
- implement processes to control the environmental aspect;
- implement training and awareness to control the environmental aspect;
- carry out physical changes to control the environmental aspect; and/or
- environmental review.

3.2 Business Management System

The TMM operates an intranet based BMS which brings together the quality, safety and environment management systems of TMM to form the TMM Rail Systems integrated BMS. The sustainability and environmental management system in paragraph 3.1 will be included in this integrated BMS.

4 Planning and Execution

4.1 Environmental Aspects

Environmental aspects of the Services shall be identified under normal and emergency operating conditions within twelve months of the date of signature of this Agreement, in accordance with the following;

- aspect number;
- location;
- date;
- activity;
- environmental aspect;
- quantities;
- legislation;
- risk under normal conditions (including impact assessment of environmental aspects (paragraph 4.2 below) and control measures); and
- risk under emergency, start up and shut down conditions (including impact assessment of environmental aspects (paragraph 4.2 below) and control measures).

4.2 Assessment of Environmental Aspects

Each environmental aspect shall be assessed to determine the level of risk using a 5 x 5 matrix methodology where $RISK = LIKELIHOOD \times SEVERITY$

The definitions of likelihood and severity are as follows:

Likelihood of the impact occurring:

- 1 - remote: less than once during the project
- 2 - possible: once during the project
- 3 - occasional: once every month to year during the project
- 4 - regular: once every week to month during the project
- 5 - common: every day during the project

Severity (or probability of loss) of impact:

- 1 - negligible environmental damage
 - 2 - environmental damage up to []²
 - 3 - environmental damage up to []³ or breach of legislation
 - 4 - environmental damage up to []⁴ or remedial action required by Government Authority
 - 5 - environmental damage of at least []⁵ or operations shut down by Government Authority
- Amounts of damage above refer to the cost of rectification as reasonably estimated by the TMM.*

Environmental aspects will be considered to be “significant” if they must be reported to a Government Authority or have a risk score of []⁶ or higher. All “significant” aspects shall be controlled by the production of a documented risk assessment by a competent person with the implementation of appropriate control measures.

Environmental aspects shall be continually reviewed during this Agreement if the scope, activities or method of the Services change.

4.3 Legal and Other Requirements

The TMM is committed to complying with Applicable Laws and Standards relating to environmental matters. The TMM’s HSQE engineer is responsible for identifying, and informing the TMM of, all environmental legislation and other requirements.

Any environmental consents, licences or permissions identified will be obtained by the Operator and / or the TMM, depending on the Designated Depot’s relevant site rules.

² Redaction.
³ Redaction.
⁴ Redaction.
⁵ Redaction.
⁶ Redaction.

4.4 Environmental Management Programmes

Depending on the Designated Depot's relevant site rules, the Operator and / or the TMM will be responsible for evaluating each environmental objective and target and determining a programme of action, timescales and the resources required.

A progress review on objectives and targets shall be made at regular intervals throughout the life of this Agreement.

As actions are completed a record shall be made.

5 Implementation and Operation

5.1 Sustainability and Environmental Responsibility

The TMM's Representative will:

- ensure that the Operator's and TMM's obligations in relation to sustainability and environmental matters in all areas of the Designated Depots and relevant sites where this Agreement is performed are fully understood and communicated to all TMM personnel;
- ensure the Sustainability and Environmental Management Plan is implemented to a satisfactory standard;
- ensure the necessary resources are made available for the implementation of the sustainability and environmental policy statement;
- ensure compliance with environmental Applicable Laws and Standards;
- be responsible for environmental issues for which the TMM is responsible;
- liaise with the Owner and the Operator on environmental issues;
- ensure all licences, permissions and consents for which the TMM is responsible are obtained prior to work covered by such licences, permissions and consents commencing; and
- ensure that all environmental accidents and incidents are reported.

The TMM's HSQE engineer will:

- be the environmental representative for the TMM;
- review and maintain a record of environmental communications;
- maintain a log of all environmental accidents and incidents;
- identify environmental Applicable Laws and Standards applicable to the TMM;
- monitor environmental performance;
- report on environmental issues to the Operator and TMM teams;
- conduct environmental audits;
- assist in responding to environmental communications;

- identify environmental training requirements;
- communicate with the TMM to ensure awareness of relevant environmental issues;
- identify environmental baseline constraints;
- identify environmental aspects and impacts and pollution control; and
- ensure the Sustainability and Environmental Management Plan implementation programme is achieved and the Sustainability and Environmental Management Plan is maintained.

5.2 Training, Awareness and Competence

It shall be the responsibility of the TMM (with the assistance of the HSQE engineer) to ensure that all members of the TMM management team are made aware of the environmental issues associated with the fulfilment of this Agreement. All the TMM employees are required to complete the Green Mile internal environmental training programme.

5.3 Communication

The TMM shall be responsible for dealing with any communications on environmental issues for which the TMM is responsible. This will include liaison with the Owner and the Operator and other relevant entities.

6 Environmental Control Arrangements

6.1 Document Control

All documentation referred to in this Sustainability and Environmental Management Plan shall be controlled in accordance with the Quality Plan.

6.2 Operational Control

The method of operational control in relation to an environmental aspect is identified in the register of environmental aspects referred to in paragraph 4.1. Control measures can take the form of physical measures, written or verbal instructions, training or maintenance.

Depending on the Designated Depot's relevant site rules and the local planning conditions, the environmental aspects of the Designated Depots shall be controlled by the Operator and / or TMM as follows:

6.2.1 Waste Management and Minimisation

To meet the requirements of the Environmental Protection Act 1990 and the Hazardous Waste Regulations 2005 all waste arising from the Services shall be identified by the Operator's or TMM's HSQE engineer and shall be managed and disposed of correctly, in line with Applicable Laws and Standards including local planning conditions.

Where possible any materials or equipment that are recovered during maintenance shall be recycled or reused. All waste and recycling shall be monitored by the TMM on a monthly basis.

The Operator's or TMM's HSQE engineer shall ensure that all waste is classified correctly, waste contractors have a waste carriers licence and disposal sites have the appropriate waste management licence.

The Designated Depot sites are required to hold a Hazardous Waste Producers Licence, which is the responsibility of the Operator's or TMM's HSQE engineer to arrange.

6.2.2 Storage and Handling of Hazardous Materials

All hazardous materials (as defined in the Hazardous Waste (England and Wales) Regulations 2005) used at the Designated Depots will be identified and managed in accordance with Applicable Laws and Standards including local planning conditions. Adequate storage facilities to prevent potential pollution incidents will be provided. Guidance for appropriate storage will be provided by the Operator's or TMM's HSQE engineer.

6.2.3 Nuisance

Any nuisance such as noise, vibration, dust, light etc will be investigated, and minimised as far as reasonably practical. If nuisance is considered a significant environmental aspect, appropriate mitigation measures will be identified and implemented.

The Operator's and / or TMM's HSQE engineer will carry out environmental audits and visits to ensure continued compliance with Applicable Laws and Standards including local planning conditions.

In all instances received complaints will follow the Operator's and / or TMM's complaints procedure.

6.2.4 Discharge to Drains, Springs and Watercourses

The Operator or TMM shall establish the presence of drains, springs or watercourses as part of the environmental baseline constraints.

The Operator's and / or TMM's HSQE engineer shall ensure that any necessary consents to discharge water into such drains, springs or watercourses are established with the local authority and relevant agencies.

The Operator's and / or TMM's Representative is responsible for ensuring that a regular review of discharge water is carried out and continued compliance with any relevant consent to discharge is maintained. Records of the reviews shall be retained.

6.2.5 Lighting

The Operator's and / or TMM's HSQE engineer will carry out environmental audits and visits to ensure continued compliance to Applicable Laws and Standards, including the local planning

conditions, on the use of the lights in the Designated Depots and other relevant sites where this Agreement is performed.

7 Response to Environmental Accidents

The TMM is committed through the Sustainability and Environmental Management Plan to the prevention of pollution arising from its activities.

All the TMM's or its Sub-Contractor's environmental accidents shall be reported and investigated. The resultant actions required will be monitored by the TMM's Representative with guidance and advice from the HSQE engineer.

All environmental accidents will be reported to the Operator.

8 Checking and Corrective Action

8.1 Monitoring and Measuring

Any plant or equipment used to monitor environmental performance shall be maintained and calibrated appropriately by the TMM.

8.2 Non-conformance and Corrective and Preventive Action

Where an environmental non-conformance is identified it shall be investigated by the TMM and the appropriate action to reinstate conformance shall be taken.

9 Records

Environmental records will be maintained in the TMM's BMS and shall include but not be limited to:

- environmental plans and documents referred to in paragraphs 2.1, 2.2 and 3;
- the register of environmental aspects referred to in paragraph 4.1;
- audit reports including CARs;
- Owner and/or Operator complaints and plaudits;
- method statements as received from Sub-Contractors employed by the TMM;
- site inspection records; and
- waste management records.

10 Sustainability and Environmental Management System Audit

Environmental audits shall be conducted on a regular basis. These will be undertaken at the same time as the audits under the Safety and Security Plan and tracked via the TMM's Rail Systems annual audit plan.

11 Management Review

Environmental issues shall be discussed at regular tripartite meetings between the TMM, Owner and Operator.

The TMM's Representative and HSQE engineer will be responsible for collating all appropriate information for those environmental aspects for which the TMM is responsible. The following will be discussed at the tripartite meetings:-

- relevant environmental aspects of the Services;
- Applicable Laws and Standards relevant to this Sustainability and Environmental Management Plan;
- Environmental audit results;
- outstanding CARs in relation to sustainability and environmental matters;
- changes to processes and procedures in relation to sustainability and environmental matters;
- environmental accidents; and
- resources and training requirements.

SCHEDULE 1.5

Fault Notification Procedure

Please see separate redacted Schedule 1.5.

TSA Schedule 1.5

Fault Notification Procedure

1. SCOPE

This Fault Notification Procedure is applicable to the reporting, investigation and allocation of responsibility for any alleged Fault or No Fault Found. This Fault Notification Procedure is not applicable to SQM Faults, which are addressed in Schedule 5.4 (*SQM Regime*).

2. DEFINITIONS

Confirmed Fault means a Confirmed MSA Fault or a Confirmed TSA Fault.

Confirmed MSA Fault means a MSA Fault that is confirmed as such in accordance with this Fault Notification Procedure.

Confirmed TSA Fault means a TSA Fault that is confirmed as such in accordance with this Fault Notification Procedure.

System Level DRACAS means the Thameslink System Level Defect Reporting and Corrective Action System which will be established by Network Rail in order to track the investigation and resolution of alleged and confirmed defects in the Thameslink infrastructure and rolling stock, including the Units.

TMM Investigation has the meaning given to it in paragraph 3.2 below.

3. PROCEDURE

Reporting of a Fault

- 3.1(a) The Owner and Operator shall report alleged Faults in accordance with clause 15.1. If the TMM or any of its employees, agents or subcontractors becomes aware of an alleged Fault (whether through an automated reporting system or through other means), such alleged Fault shall be deemed to have been reported to the TMM under clause 15.1.
- (b) In the event that the TMM receives multiple reports in relation to a single alleged Fault, the TMM shall agree with the Operator to consolidate such multiple reports into a single report of the alleged Fault.
- (c) Each report in relation to an alleged Fault produced pursuant to paragraph 3.1(a) or 3.1(b) shall be investigated by the TMM in accordance with paragraph 3.2.

Investigation of an alleged Fault

- 3.2(a) The TMM shall carry out an investigation into each alleged Fault in accordance with its own internal procedure (a **TMM Investigation**).
- (b) Each TMM Investigation shall begin as soon as reasonably practicable, but in any event within 3 (three) days of a report in relation to an alleged Fault being produced pursuant to paragraph 3.1(a) or 3.1(b).

- (c) Each TMM Investigation shall last no longer than is reasonably required to investigate the alleged Fault, but shall last no longer than 33 (thirty three) days from a report in relation to an alleged Fault being produced pursuant to paragraph 3.1(a) or 3.1(b) until the TMM's notification under paragraph 3.2(g), unless paragraph 3.2(d) applies.
- (d) If the TMM believes (acting reasonably) that a period longer than that referred to in paragraph 3.2(c) will be required to complete the TMM Investigation to a standard satisfactory to TMM and Operator, then:
 - (i) the TMM may, no later than 5 (five) Business Days after the report in relation to the alleged Fault being produced pursuant to paragraph 3.1(a) or 3.1(b):
 - (A) propose a reasonable period of time within which the TMM Investigation can be completed to a standard satisfactory to TMM and Operator; and
 - (B) provide all relevant information to the Operator in relation to the request for such extension of time; and
 - (ii) if the TMM makes a proposal under paragraph 3.2(d)(i)(A) the Operator will, within 3 (three) Business Days of receipt of the TMM's proposal, acting reasonably:
 - (A) agree to such proposal for an extension of time to complete the TMM Investigation if the information provided by TMM under paragraph 3.2(d)(i)(B) does indicate that the TMM Investigation cannot be completed to a standard satisfactory to TMM and Operator within 33 (thirty three) days; or
 - (B) reject such proposal for an extension of time to complete the TMM Investigation if the information provided by TMM under paragraph 3.2(d)(i)(B) does not indicate that the TMM Investigation cannot be completed to a standard satisfactory to TMM and Operator within 33 (thirty three) days.
- (e) Subject to paragraph 3.2(f) below, each TMM Investigation shall produce one of four determinations in relation to the alleged Fault:
 - (i) Confirmed MSA Fault;
 - (ii) Confirmed TSA Fault;
 - (iii) no Fault; or
 - (iv) in the event that the cause of the alleged Fault is not definitively understood, No Fault Found.

- (f) In the case of a Unit during a relevant period of Fault Free running required pursuant to paragraph 1 of schedule 4.1 (*Requirements for Agreed Testing Programme*) of the MSA, each TMM Investigation shall produce one of two determinations in relation to the alleged Fault:
- (i) Confirmed MSA Fault; or
 - (ii) no Fault.
- (g) The TMM shall promptly notify the Operator and the Owner of any determination pursuant to paragraph 3.2(e) or 3.2(f).
- (h) Notwithstanding any other provision of this Schedule 1.5, if the TMM Investigation is not completed within:
- (i) in the case of a TMM Investigation in relation to which:
 - (A) no request pursuant to paragraph 3.2(d)(i)(A) is made, or
 - (B) a request pursuant to paragraph 3.2(d)(i)(A) is rejected under 3.2(d)(ii)(B),33 (thirty three) days from a report in relation to an alleged Fault being produced pursuant to paragraph 3.1(a) or 3.1(b) until the TMM's notification under paragraph 3.2(g);
 - (ii) in the case of a TMM Investigation in relation to which the Operator agrees to an extension of time under 3.2(d)(ii)(A), such period as is agreed between the Operator and the TMM; and
 - (iii) in the case of a TMM Investigation in relation to which a request pursuant to paragraph 3.2(d)(i)(A) is made and the Operator neither agrees to nor rejects such request within 3 (three) Business Days of receipt of the TMM's request, such period as was requested by the TMM,

then the alleged Fault to be investigated during such TMM Investigation shall be considered either a Confirmed MSA Fault or a Confirmed TSA Fault (at the Operator's sole discretion) and no subsequent evidence or analysis produced by the TMM (whether as part of the TMM Investigation or otherwise) shall be capable of affecting such classification of the alleged Fault as a Confirmed Fault.

Confirmed Faults

3.3 If the TMM Investigation finds an alleged Fault to be a Confirmed Fault (or an alleged Fault is considered to be a Confirmed Fault in accordance with paragraph 3.2(h), or an alleged Fault is agreed to be a Confirmed Fault in accordance with paragraph 3.4(b)(iii) or 3.5(b)(iii), or an alleged Fault is determined to be a Confirmed

Fault in accordance with paragraph 3.4(b)(iv) or 3.5(b)(iv)), such Fault shall be rectified in accordance with clause 15.

No Fault

- 3.4 (a) If the TMM Investigation determines that the alleged Fault is not a Fault (for example, where the TMM is able to demonstrate that the alleged Fault occurred because of an operational error, defective infrastructure or an external cause such as vandalism or misuse), the TMM shall, within 5 (five) Working Days of the TMM's notification under paragraph 3.2(g), provide all reasonably requested evidence in relation to the TMM Investigation to the Operator (including all relevant evidence from onboard diagnostic systems).
- (b) The Operator shall, within 5 (five) Working Days of receiving such evidence, notify the TMM whether or not it agrees with the result of the TMM Investigation.
- (i) If the Operator agrees with the result of the TMM Investigation under paragraph 3.4(a), then the alleged Fault shall not be considered a Fault.
 - (ii) If the Operator does not agree with the result of the TMM Investigation under paragraph 3.4(a), the TMM and the Operator shall jointly re-examine the evidence in relation to the alleged Fault (including the TMM providing the Operator with any information which the Operator reasonably requires and the Operator providing the TMM with any information which the TMM reasonably requires) for a period of no more than 5 (five) Working Days starting from the notification of the Operator's disagreement with the result of the TMM Investigation.
 - (iii) If at the end of the period referred to in paragraph 3.4(b)(ii) the TMM and the Operator agree that the alleged Fault is a Confirmed MSA Fault, a Confirmed TSA Fault, not a Fault or a No Fault Found (or, in the case of a Unit during a relevant period of Fault Free running required pursuant to paragraph 1 of schedule 4.1 (*Requirements for Agreed Testing Programme*) of the MSA, a Confirmed MSA Fault or not a Fault), then the alleged Fault shall be considered a Confirmed MSA Fault, a Confirmed TSA Fault, not a Fault or a No Fault Found (as applicable).
 - (iv) If at the end of the period referred to in paragraph 3.4(b)(ii) the TMM and the Operator have not agreed on whether the alleged Fault is a No Fault Found, a Confirmed MSA Fault, a Confirmed TSA Fault or not a Fault, the alleged Fault shall be referred for expert determination pursuant to schedule 8.2 of the Umbrella Agreement as to whether such alleged Fault is a No Fault Found, a Confirmed MSA Fault, a Confirmed TSA Fault or not a Fault (or, in the case of a Unit during a relevant period of Fault Free running required pursuant to paragraph 1 of schedule 4.1 (*Requirements for Agreed Testing Programme*) of the MSA, whether such alleged Fault is a Confirmed MSA Fault or not a Fault).

No Fault Found

- 3.5(a) If the TMM Investigation determines that the alleged Fault is a No Fault Found, the TMM shall, within 5 (five) Working Days of the TMM's notification under paragraph 3.2(g), provide all reasonably requested evidence in relation to the TMM Investigation to the Operator (including all relevant evidence from onboard diagnostic systems).
- (b) The Operator shall, within 5 (five) Working Days of receiving such evidence, notify the TMM whether or not it agrees with the result of the TMM Investigation.
- (i) If the Operator agrees with the result of the TMM Investigation, then the alleged No Fault Found shall be classified as a No Fault Found.
 - (ii) If the Operator does not agree with the result of the TMM Investigation, then the TMM and the Operator shall jointly re-examine the evidence in relation to the alleged Fault (including the TMM providing the Operator with any information which the Operator reasonably requires and the Operator providing the TMM with any information which the TMM reasonably requires) for a period of no more than 5 (five) Working Days starting from the notification of the Operator's disagreement with the result of the TMM Investigation.
 - (iii) If at the end of the period referred to in paragraph 3.5(b)(ii) the TMM and the Operator agree that the alleged Fault is a Confirmed MSA Fault, a Confirmed TSA Fault, not a Fault or a No Fault Found, then the alleged Fault shall be considered a Confirmed MSA Fault, a Confirmed TSA Fault, not a Fault or a No Fault Found (as applicable).
 - (iv) If at the end of the period referred to in paragraph 3.5(b)(ii) the TMM and the Operator have not agreed on whether the alleged No Fault Found is a No Fault Found, a Confirmed MSA Fault, a Confirmed TSA Fault or not a Fault, the alleged No Fault Found shall be referred for expert determination pursuant to schedule 8.2 of the Umbrella Agreement as to whether such alleged No Fault Found is a No Fault Found, a Confirmed MSA Fault, a Confirmed TSA Fault or not a Fault.
- (c) Any alleged Fault that is classified as a No Fault Found will be managed by the TMM as an integral part of the fleet reliability improvement process. Such management will include analysis and reporting to the Owner and Operator of No Fault Found reports in order to identify possible improvement actions for both processes and procedures aimed at reducing incidents of No Fault Found.
- (d) If an alleged Fault is classified as a No Fault Found pursuant to paragraph 3.5(b) and such alleged Fault reoccurs (whether on the same Unit or another Unit) within:

- (i) the same Railway Period as the last reported occurrence of such No Fault Found in the report under paragraph 3.1 which led to such original alleged Fault being classified a No Fault Found; or
- (ii) the two Railway Periods following the Railway Period referred to in paragraph 3.5(d)(i),

then the original alleged Fault (which was previously classified as a No Fault Found) and the second alleged Fault shall both be considered Confirmed Faults and such Faults shall be rectified in accordance with clause 15.

- (e) If an alleged Fault classified as a No Fault Found pursuant to paragraph 3.4(b)(iii) or 3.5(b) does not reoccur within the same Railway Period as the last reported occurrence of such Fault in the report under paragraph 3.1 which led to such alleged Fault being classified a No Fault Found or the next two Railway Periods, such No Fault Found shall be deemed to not be a Fault from the end of the last Railway Period referred to in paragraph 3.5(d).
- (f) If an alleged Fault classified as a No Fault Found pursuant to paragraph 3.4(b)(iii) or 3.5(b) is subsequently classified as not a Fault pursuant to paragraph (f) and then reoccurs (whether on the same Unit or another Unit), when such final occurrence of the alleged Fault is reported under paragraph 3.1, then such alleged Fault shall, for the purposes of this Fault Notification Procedure, be deemed to have been reported for the first time under paragraph 3.1.
- (g) If two alleged Faults are considered Confirmed Faults pursuant to paragraph 3.5(d), then both Confirmed Faults shall be considered Confirmed TSA Faults unless:
 - (i) a TMM Investigation finds the second occurrence of the alleged Fault to be a Confirmed MSA Fault; or
 - (ii) the second occurrence of the alleged Fault is considered to be a Confirmed MSA Fault in accordance with paragraph 3.2(h),
 - (iii) the second occurrence of the alleged Fault is agreed to be a Confirmed MSA Fault in accordance with paragraph 3.4(b)(iii) or 3.5(b)(iii); or
 - (iv) the second occurrence of the alleged Fault is determined to be a Confirmed MSA Fault in accordance with paragraph 3.4(b)(iv) or 3.5(b)(iv),

in which case both Confirmed Faults shall be considered Confirmed MSA Faults.

4. TIMING OF FAULTS

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5. RECLASSIFICATION OF FAULTS

If the Owner, Operator and TMM agree during a Performance Review Meeting that a MSA Fault or a TSA Fault should be reclassified as a TSA Fault or a MSA Fault (respectively) then such reclassification shall be deemed valid pursuant to this Fault Notification Procedure.

6. SYSTEM LEVEL DRACAS

In the event that an alleged Fault relating to Automatic Train Operation, ERTMS or any other system where the Operator deems it appropriate from time to time is reported, such alleged Fault shall be processed through the System Level DRACAS in addition to this Fault Notification Procedure.

¹ Redaction.

SCHEDULE 2

SERVICES

Schedule 2.1:	Hand Back and Hand Over
Schedule 2.2:	The Services
Schedule 2.3:	The Standard Services
Schedule 2.4	The Additional Services

SCHEDULE 2.1

Hand Back and Hand Over

1. HAND BACK OF UNITS

Offering Units for service

1.1 The TMM shall, following performance of the TSA Services, offer Units to the Operator at the relevant Scheduled Hand Back Time and Hand Back Point on each relevant day for operation in service, in each case:

- (a) in accordance with the Train Plan and the Hand Back Procedure;
- (b) with a Hand Back Certificate that complies with paragraph 1.3; and
- (c) Fit for Service,

at which time, subject to the terms of this Schedule 2.1, Hand Back of that Unit shall be deemed to have occurred.

Hand Back Certificates

1.2 At the Hand Back Time of any Unit, the TMM shall submit a Hand Back Certificate to the Operator in relation to that Unit.

1.3 Each Hand Back Certificate shall in relation to any Unit:

- (a) identify the Scheduled Hand Back Time and the Hand Back Time;
- (b) identify the number of that Unit;
- (c) identify the relevant Diagrams that that Unit will deliver;
- (d) identify the first Entry Time and Entry Point following Hand Back;
- (e) identify the Hand Over Time;
- (f) where appropriate identify the agreed TSA Services (including any Additional Services) that have been performed by the TMM in relation to that Unit; and
- (g) certify the following conditions:
 - (i) that that Unit is Fit for Service;
 - (ii) that that Unit has received its scheduled maintenance, and any repairs and work arising in accordance with both the Maintenance Manual and the standard of performance specified in clause 6.6; and
 - (iii) that any Concessions for outstanding Faults and deferred repairs have been agreed and accepted by the Operator.

1.4 The Operator shall review the Hand Back Certificate in relation to each Unit and shall have the right to satisfy itself that the conditions specified in paragraph 1.3(g) have been correctly certified by means of inspection of the relevant Unit and the related Maintenance Records (TSA), provided that the Operator has no obligation to undertake any such inspections.

2. REJECTION OF UNITS

2.1 The Operator shall be entitled (but not obliged) to reject a Unit that the TMM has offered to it for service if:

- (a) that Unit is not Fit for Service, including where that Unit is not Fit for Service due to the discovery of any Faults during its Unit Preparation Period;
- (b) that Unit is not offered for service to the Operator at its Scheduled Hand Back Time; and/or
- (c) the TMM:
 - (i) has not provided a Hand Back Certificate with that Unit; or
 - (ii) has provided a Hand Back Certificate with that Unit, but the Operator is not satisfied, acting reasonably, that the conditions specified in paragraph 1.3(g) in relation to that certificate have been met.

2.2 Any Unit that the Operator rejects in accordance with paragraph 2.1 shall mean that that Unit is Unavailable for the purposes of Schedule 5.1 (*Availability Regime*).

3. CONCESSIONS

3.1 Where a Fault occurs on a Unit, but the Operator, in its sole discretion, determines that that Unit:

- (a) is capable of operating in service; and
- (b) provides acceptable ambience, comfort, noise, capacity, operational and ride standards for passengers,

then, without limiting the Operator's right to reject a Unit offered for service pursuant to paragraph 2 (*Rejection of Units*), the Operator may issue a Concession to the TMM, thereby allowing that Unit to enter, or continue in, service.

3.2 Each Concession issued by the Operator shall specify:

- (a) the Unit or Units to which it relates;
- (b) the Fault or Faults to which it relates;
- (c) the date and time from which that Concession is to apply; and
- (d) the date and time on which that Concession shall cease to apply.

3.3 The issue of a Concession in relation to a Unit:

- (a) shall mean that that Unit is Available at its Hand Back Time and each Entry Time that occurs during the continuing application of that Concession (but only insofar as that Unit remains otherwise Fit for Service during the continuing application of that Concession);
- (b) shall not excuse the TMM of its obligation under clause 15 (*Warranties*) to rectify the Fault on that Unit that is the subject of that Concession; and
- (c) shall not exclude the application of the Delay Regime to that Unit, unless and to the extent that that Unit is affected by an Allowable Failure.

3.4 The Concession shall continue in force until the date and time specified under paragraph 3.2(d) unless the Fault to which it applies has been remedied to the satisfaction of the Operator, in which case the Concession shall be removed at such earlier date and time as TMM and Operator shall agree.

3.5 If the Fault to which the Concession applies is not remedied to the satisfaction of the Operator by the date and time specified under paragraph 3.2(d) then:

- (a) such Unit shall be deemed to have been rejected by the Operator under paragraph 2.1 at such date and time; and
- (b) TMM shall either remedy the Fault to the satisfaction of the Operator and offer the Unit for operation in service under paragraph 1.1 or request that the Operator issue a further Concession in accordance with paragraph 3.1.

4. REPLACEMENT UNITS

Offering Replacement Units for service

4.1 Where a Unit is:

- (a) Unavailable on any day; or
- (b) suffers a Cancellation,

the TMM may subsequently offer for service to the Operator a Replacement Unit on that day for the delivery of any Diagram Leg that the Unit that was Unavailable or Cancelled (as appropriate) was originally to deliver.

Acceptance and Rejection of Replacement Units

4.2 Where a Unit is Unavailable or suffers a Cancellation and the TMM offers a Replacement Unit to the Operator for service, the Operator may reasonably decide, including deciding in a timely manner, whether to:

- (a) accept that Replacement Unit to complete the Diagram of the Unit that is Unavailable or suffered the Cancellation (as appropriate), and following such decision, the Operator shall procure:
 - (i) that a driver and requisite train crew attend such Unit at the point agreed for entry into service; and

- (ii) the commencement of operation of that Replacement Unit at the time agreed for entry into service; or
- (b) reject that Replacement Unit for any of the reasons specified in paragraph 2 (*Rejection of Units*), provided that the Operator shall also be entitled to reject any such Unit where it is not reasonably practicable for that Replacement Unit to be operated on the day in question, having regard to the location of that Replacement Unit and the time that is available to the Operator.

5. HAND OVER OF UNITS

Hand Over of Units

5.1 The Operator shall, following operation in service, make Units available to the TMM on each relevant day at the relevant Scheduled Hand Over Time and Hand Over Point for the performance of the TSA Services in accordance with the Train Plan and the Hand Over Procedure with a Hand Over Certificate that complies with paragraph 5.3, at which time, subject to the terms of this Schedule 2.1, Hand Over of that Unit shall be deemed to have occurred and the TMM shall accept that Unit.

Hand Over Certificates

5.2 At the Hand Over Time of any Unit, the Operator shall submit a Hand Over Certificate to the TMM in relation to that Unit.

5.3 Each Hand Over Certificate shall in relation to each Unit:

- (a) identify the Scheduled Hand Over Time and the Hand Over Time;
- (b) identify the number of that Unit;
- (c) identify the relevant Diagrams that that Unit has delivered;
- (d) identify the relevant Exit Time and Exit Point;
- (e) identify whether that Unit is being Handed Over for the performance of scheduled maintenance and/or the rectification of a Fault by the TMM;
- (f) identify any Faults and/or SQM Faults of which the Operator is aware and which have not already been notified to the TMM and which the Train Management System is not capable of identifying in accordance with the Specification; and
- (g) certify the following, as appropriate:
 - (i) that that Unit has been operated in accordance with the Driver's Manual;
 - (ii) that the Operator is not aware of any Faults and/or SQM Faults which have not already been notified to the TMM and which the Train Management System is not capable of identifying in accordance with the Specification; and
 - (iii) that the Operator is not aware of any Rule Book conditions which may restrict or prevent that Unit from being returned to service.

5.4 The TMM shall review the Hand Over Certificate in relation to each Unit and shall have the right to satisfy itself that the conditions specified in paragraph 5.3(g) have been correctly certified by means of inspection of the relevant Unit, provided that the TMM has no obligation to undertake any such inspections.

6. HAND BACK AND HAND OVER OF SIMULATORS

Hand Back of Simulators

6.1 The TMM shall, following the performance of TSA Services, offer a Simulator to the Operator at the relevant Scheduled Hand Back Time on each relevant day:

- (a) in accordance with the Simulator Hand Back Procedure;
- (b) with a Simulator Hand Back Certificate that complies with paragraph 6.3; and
- (c) Fit for Purpose (TSA),

at which time, subject to the terms of this Schedule 2.1, Hand Back of that Simulator shall be deemed to have occurred.

Simulator Hand Back Certificates

6.2 At the Simulator Hand Back Time of a Simulator, the TMM shall submit a Simulator Hand Back Certificate to the Operator in relation to that Simulator.

6.3 Each Simulator Hand Back Certificate shall, in relation to a Simulator:

- (a) identify the Scheduled Hand Back Time and the Simulator Hand Back Time;
- (b) identify the Simulator;
- (c) identify the Simulator Hand Over Time;
- (d) where appropriate, identify the TSA Services that have been performed by the TMM in relation to that Simulator, and any maintenance work that has been deferred; and
- (e) certify the following conditions:
 - (i) that that Simulator is Fit for Purpose (TSA); and
 - (ii) that that Simulator has received its scheduled maintenance and any repairs and work arising in accordance with both the Maintenance Manual and the standard of performance specified in clause 6.6.

6.4 The Operator shall review the Simulator Hand Back Certificate in relation to each Simulator and shall have the right to satisfy itself that the conditions specified in paragraph 6.3(e) have been correctly certified by means of inspection of the relevant Simulator and the related Maintenance Records (TSA), provided that the Operator has no obligation to undertake any such inspections.

Hand Over of Simulators

6.5 The Operator shall make a Simulator available to the TMM at the Scheduled Hand Over Time on each relevant day for the performance of TSA Services in accordance with the Simulator Hand Over Procedure with a Simulator Hand Over Certificate that complies with paragraph 6.6, at which time, subject to the terms of this Schedule 2.1, Hand Over of that Simulator shall be deemed to have occurred.

Simulator Hand Over Certificates

6.6 At the Simulator Hand Over Time of any Simulator, the Operator shall submit a Simulator Hand Over Certificate to the TMM in relation to that Simulator.

6.7 Each Simulator Hand Over Certificate shall, in relation to a Simulator:

- (a) identify the Scheduled Hand Over Time and the Simulator Hand Over Time;
- (b) identify the Simulator;
- (c) identify whether the Simulator is being Handed Over for the performance of scheduled maintenance and/or the rectification of any Fault by the TMM;
- (d) identify any Faults of which the Operator is aware and which have not already been identified to the TMM; and
- (e) certify the following, as appropriate:
 - (i) that that Simulator has been operated in accordance with the relevant Manual; and
 - (ii) that the Operator is not aware of any Faults which have not already been identified to the TMM.

6.8 The TMM shall review the Simulator Hand Over Certificate in relation to each Simulator and shall have the right to satisfy itself that the conditions specified in paragraph 6.7(e) have been correctly certified by means of inspection of the relevant Simulator, provided that the TMM has no obligation to undertake any such inspections.

SCHEDULE 2.2

The TSA Services

1. GENERAL OBLIGATIONS

1.1 In this Agreement the *TSA Services* means:

- (a) the Standard Services (as described in Schedule 2.3 (*The Standard Services*)); and
- (b) the Additional Services (as described in Schedule 2.4 (*The Additional Services*)).

1.2 The TSA Services include the following general obligations:

- (a) the TMM shall be responsible for the provision, in each case, whether of a temporary or permanent nature, of:
 - (i) all labour (including supervisory and managerial labour);
 - (ii) the Maintenance Sheds ¹⁴²;
 - (iii) plant, goods (subject to the Operator making the Owner Owned Spares available for use by the TMM in accordance with clause 10.7), materials and equipment (subject to the Operator making the Special Tools available for use by the TMM in accordance with clause 11.1);
 - (iv) road vehicles;
 - (v) work facilities; and
 - (vi) support services and other resources,in each case, as required for the performance of its obligations under this Agreement;
- (b) whenever any Unit or Simulator is under the care, custody and control of the TMM, the TMM shall manage, maintain and service such Unit or Simulator in accordance with the Maintenance Plan;
- (c) in performing the TSA Services, the TMM shall fit on the Units and/or Simulators only materials which are:
 - (i) listed in the document entitled Spare Parts Catalogue (as set out in) schedule 7.2 (*Spares*) of the MSA; or
 - (ii) where not so listed, compliant with Railway Group Standards.

Additional or alternative materials may only be fitted with the prior written approval of the Operator and the Owner obtained in accordance with clauses 20.13 to 20.17 or, where those clauses do not apply, if an Authorisation to Vary has been issued by the Secretary of State in accordance with the Applicable Variation Procedure. The TMM

¹⁴² Redaction.

shall provide a service for handling, management, control and stewardship of the Spares; and

- (d) the TMM shall provide the TSA Services in respect of the Units and Simulators to be supplied to the Owner and which have been Accepted, in each case, under the terms and conditions of the MSA.

SCHEDULE 2.3

The Standard Services

1. STANDARD SERVICES

1.1 In relation to each Unit and Simulator which has been Accepted, the TMM shall carry out all the Standard Services including inspection and maintenance (which itself includes major or minor defect rectification, repair, overhaul work and testing as to whether such Unit or Simulator is Fit for Purpose (TSA)) in accordance with the Maintenance Plan and the Manuals at the locations (whether a Designated Depot, Outstation or elsewhere) agreed by the TMM and the Operator from time to time.

1.2 The *Standard Services* are:

- (a) carrying out maintenance (as set out in paragraph 2 (*Maintenance*));
- (b) carrying out repairs (as set out in paragraph 3 (*Repairs*));
- (c) work arising (as set out in paragraph 4 (*Work Arising*));
- (d) overhauls and refurbishment (as set out in paragraph 5 (*Overhauls and Refurbishments*));
- (e) dealing with Unit Failures (as set out in paragraph 6 (*Unit Failure*));
- (f) reporting (as set out in paragraph 7 (*Reporting*)); and
- (g) other services (as set out in paragraph 8 (*Other Standard Services*)).

1.3 Where any of the TSA Services specified in paragraph 1.2 constitute Additional Services and are not therefore Standard Services, the TMM shall, subject to clause 8.11, undertake the work and recover the costs from the Operator as Additional Services in accordance with Schedule 2.4 (*The Additional Services*).

2. MAINTENANCE

2.1 The TMM will inspect and maintain each Unit and the Simulators in accordance with:

- (a) the Maintenance Plan and Maintenance Manual;
- (b) all Applicable Laws and Standards;
- (c) the Manuals for carrying out the exams referred to in the Maintenance Plan at the intervals specified therein; and
- (d) this Schedule 2.3.

2.2 The TMM shall co-operate with the Operator in relation to maintenance control and planning activities.

3. REPAIRS

The TMM will undertake any repairs, including rectifying all Faults, in accordance with the agreed Repair Procedures. All changes to the Repair Procedures will be subject to approval by the Owner and the Operator in accordance with the Engineering Change Control Procedure, such approval not to be unreasonably withheld, and shall be made in accordance with clauses 20.13 to 20.17 inclusive (in which case the TMM shall not be required to submit a Variation Proposal), or otherwise in accordance with the Applicable Variation Procedure, in which event the TMM shall not implement the change until it has received the Authorisation to Vary signed by the Secretary of State pursuant to schedule 4.3 (*Secretary of State Authorisation of Variations*) of the Umbrella Agreement (or, after the Umbrella Agreement has expired or terminated, schedule 5.3 (*Secretary of State Authorisation of Variations*) of the Maintenance Direct Agreement).

4. WORK ARISING

The TMM shall conduct the exams referred to in the Maintenance Plan and shall undertake all work arising from such exams.

5. OVERHAULS AND REFURBISHMENT

5.1 The TMM shall undertake or procure the undertaking of the overhauls in accordance with the Maintenance Plan.

5.2 The TMM shall undertake or procure the undertaking of the periodic refurbishment of the Units in accordance with the Maintenance Plan, including all work required to:

- (a) repair corrosion damage to body shell;
- (b) repair any water leaks in body shell;
- (c) re-seal windows/doors where necessary;
- (d) replace double glazed windows where necessary;
- (e) replace all failed lighting/lumens including fluorescent tubes, incandescent bulbs, LEDs, neon indicators and lighting electronic power units;
- (f) replace saloon floor coverings including vestibules, toilets, gangways;
- (g) replace soft furnishings, seat moquette fabric wall coverings, curtains;
- (h) repair/replace gangway seats;
- (i) re-paint/re-finish interior hard surfaces, tables, vestibule surrounds, exterior door interior panels;
- (j) re-finish exterior door treat plates;
- (k) cab interior panelling re-paint/re-finish;
- (l) re-paint/re-finish toilet interior and exterior panelling;
- (m) re-paint/re-finish saloon interior ceiling panels;

- (n) overhaul exterior door mechanisms;
- (o) overhaul interior door mechanisms;
- (p) overhaul gangway components;
- (q) overhaul, check, test PA system;
- (r) overhaul, check, test PEA system;
- (s) overhaul, check, test CCTV system;
- (t) overhaul, check, test PIS;
- (u) overhaul, check, test heating and ventilation system;
- (v) overhaul passenger loading equipment;
- (w) overhaul, check and test the ERTMS;
- (x) overhaul, check and test the Automatic Train Operation System; and
- (y) overhaul, check and test the Train Management System.

5.3 Refurbishment shall be undertaken on a like-for-like basis unless the Owner or the Operator request a Variation in respect of enhancements or other changes to be undertaken during any such refurbishment, in which event the TMM shall not implement that Variation until it has received the Authorisation to Vary signed by the Secretary of State pursuant to schedule 4.3 (*Secretary of State Authorisation of Variations*) of the Umbrella Agreement (or, after the Umbrella Agreement has expired or terminated, schedule 5.3 (*Secretary of State Authorisation of Variations*) of the Maintenance Direct Agreement).

6. UNIT FAILURE

Unit Failure

6.1 Where any Unit fails or is unable to move under its own power, including as a result of breakdown, damage or derailment, or for any other reason or is otherwise not able to continue operating on the Thameslink Network for any reason (a ***Unit Failure***), then the TMM shall provide all or any of the services specified in this paragraph 6 in accordance with the relevant terms of this paragraph 6, including within any specific timescales expressly stated, and in any event, promptly following request from the Operator after the occurrence of any such Unit Failure, irrespective of any dispute as to which Party should bear responsibility for and should pay the costs of any such Unit Failure (which disputes shall be dealt with at the next Performance Review Meeting in accordance with Schedule 9 (*Contract Management*)):

- (a) provide competent engineers to attend such Unit;
- (b) investigate and evaluate the causes of the relevant Unit Failure;
- (c) represent and protect the Operator's and Owner's interests in respect of such Unit;
- (d) effect repairs to any Unit, including the isolation of that Unit; and

- (e) effect non-rail transportation of Units where requested.

24 Hours Contact Number

6.2 The TMM shall provide a telephone service staffed 24 hours per day to receive reports of Unit Failures and deal with requests made by the Operator for provision of the services referred to in paragraph 6.1.

Response Times

6.3 The TMM shall attend a Unit in respect of which a Unit Failure has been reported as soon as reasonably practicable in the circumstances and will use all reasonable endeavours to comply with the following response times in respect of any Unit Failures reported to it:

- (a) the provision of advice and assistance by telephone within two minutes; and
- (b) the provision of an engineer on site within one hour.

Information

6.4 Where the Operator requests any of the services referred to in paragraph 6.1 in respect of a Unit Failure, the Operator shall provide the TMM with such available information as the TMM may reasonably require concerning such Unit Failure, including the cause of such Unit Failure (where known). The Operator shall ensure that all such information is as complete and accurate as possible.

Consultation

6.5 The Operator and the TMM shall discuss in good faith to agree the most efficient method of effecting the repairs to the relevant Unit referred to in paragraph 6.1(d), the deployment of available resources and the steps to mitigate the effects of such Unit Failure. The TMM and the Operator shall implement any agreed method, deployment and/or mitigation.

Instructions

6.6 The Operator shall comply with the reasonable instructions and reasonable requests of any of the TMM's staff who are responsible for providing the services referred to in paragraph 6.1, and shall ensure that its train crew present at the location where such services are required, provide to the TMM such co-operation and assistance as the TMM shall reasonably require.

Costs Incurred by the Operator

6.7 Without limiting the TMM's obligation to pay Performance Payments to the Operator under clause 17.3 in relation to any Unit Failure, the TMM shall reimburse the Operator in respect of all reasonable and proper costs and expenses reasonably incurred by the Operator in connection with any train recovery on a Unit Failure which is agreed or determined to be the responsibility of the TMM.

Costs incurred by the TMM

6.8 Where it is agreed or determined that a Unit Failure is not the responsibility of the TMM, the Operator shall reimburse the TMM in respect of all reasonable and proper costs

and expenses reasonably incurred by the TMM, at the Agreed Labour Rate, in connection with that Unit Failure, including those costs and expenses that the Operator requires the TMM to incur as an Additional Service pursuant to Schedule 2.4 (*The Additional Services*) in relation to rectifying any Fault on the Unit that suffered that Unit Failure.

7. REPORTING

Notification of Loss or Damage to Vehicles

7.1 Where any of the Parties becomes aware (otherwise than by way of notice of such loss or damage provided by the other Parties) of any material loss or damage sustained in respect of a Unit or Simulator (when in its care, custody and control) it shall notify the other Parties of the same as soon as reasonably practicable and shall provide a written report of any such event to the other Parties as soon as possible following such event.

Notification of Safety Critical Issues

7.2 Where any of the Parties becomes aware (otherwise than by way of notice of such issue provided by the other Parties) of any safety critical issues in respect of a Unit, Vehicle, Simulator, Owner Owned Spare, Operator Owned Spare or Special Tool, it shall notify the other Parties within two hours of so becoming aware and shall provide full written details as soon as practicable thereafter.

Notification of Faults

7.3 The TMM shall notify the Operator (and send a copy to the Owner) of any Faults in accordance with the Fault Notification Procedure (or, if the Fault is both a Fault and an SQM Fault, paragraph 7.4 of Schedule 5.5 (*Performance Regime General Provisions*)) which occur to any of the Units or Simulators whilst the Units or Simulators are in the care, custody and control of the TMM. Where a Fault notified by the TMM in accordance with this paragraph 7.3 is a MSA Fault, the TMM shall be deemed to have given notice of that MSA Fault in accordance with paragraph 3.1 of schedule 14 (*Design Life, Warranties and Fault Rectification*) of the MSA, and the TMM's obligation to notify the Operator and Owner under paragraph 3.1 of schedule 14 of the MSA shall have been discharged in respect of that MSA Fault.

Periodic Reports

7.4 The TMM shall provide reports every Railway Period to the Operator and Owner as reasonably required by the Operator and the Owner to include:

- (a) interpretative analysis of material supply performance (to include unsatisfied demand against firstpick; failure analysis reports from original equipment manufacturers; statistical analysis of materials failure; recommendations for long term material stock levels);
- (b) fleet performance (to include train casualties, train mileages and non-service affecting failures);
- (c) modification reports;
- (d) monitoring against any Service Quality Measures agreed by the Parties from time to time which as at the date of this Agreement comprise the TSA Performance Regime;

- (e) the information required in clauses 10.10 and 10.28;
- (f) forecasts of work and services to be undertaken in the next Railway Period so as to enable the Operator to plan train movements in such period;
- (g) progress against any remedial plan; and
- (h) all other matters required in the Performance Reports described in Schedule 9 (*Contract Management*).

Simulators and Simulator Software modifications and updates

7.5 Where a Modification occurs that the TMM reasonably determines is likely to require, as appropriate, a consequential modification, redesign, substitution and/or update of any Simulator in accordance with clause 20.18, then the TMM shall promptly:

- (a) notify the Operator in writing, providing reasons for and details of such consequential modification, redesign, substitution and/or update; and
- (b) where the TMM reasonably determines that such Modification requires an amendment or update to the Simulator Software, co-operate following such notification with the reasonable requirements of the Operator to make that amendment or update to the Simulator Software as soon as reasonably practicable after such notification in a manner which is consistent with the aforementioned Modification, such that the Simulator Software is amended or updated to the correct configuration level for the Fleet, and that any such amendment or update may be effected without the Applicable Variation Procedure applying and no Party shall be required to seek or obtain an Authorisation to Vary in respect of such amendment or update, provided that the Engineering Change Control Procedure applies to such amendment or update.

Energy Monitoring Reporting

7.6 The TMM shall monitor the energy consumption of each Unit, preparing a report each Railway Period showing:

- (a) the total energy consumed by each Unit in the Railway Period;
- (b) the total energy regenerated by each Unit in the Railway Period;
- (c) the net energy used by each Unit in the Railway Period;
- (d) the average net energy used per mile operated by that Unit in the Railway Period;
- (e) the average net energy used per mile operated by the Type 1 Units and Type 2 Units, in each case presented graphically for each month since the Acceptance Date of the first Type 1 Unit or Type 2 Unit (as applicable);
- (f) the average net energy used per mile operated by the Fleet, presented graphically for each month since the Acceptance Date of the First Unit; and
- (g) trend analysis.

8. OTHER STANDARD SERVICES

General Engineering Support and Advice

8.1 The TMM shall at all times provide the Operator and the Owner with such professional engineering and technical support and advice in relation to the then current design of the Units as the Operator and/or the Owner may reasonably require, including to enable the Operator to comply with the terms of the Operator's Railway Safety Certificate.

Manual Development

8.2 The TMM shall support the continued development of the Manuals to include:

- (a) liaising with the Operator to understand any concerns or problems the Operator has with the Manuals as supplied by the TMM in accordance with the MSA and progressing these to ensure that they are adequately addressed;
- (b) developing, amending and/or maintaining the Manuals in the light of experience gained maintaining the Units and ensure that any amendment is in accordance with the Railway Group Standards;
- (c) developing, amending and/or updating and validating "balanced" maintenance examinations and supporting documentation as reasonably required by the Operator from time to time;
- (d) amending and/or updating and validating the Manuals to accommodate any changes to the working practices and procedures described therein which are adopted by the TMM in the performance of maintenance and/or overhaul of the Units; and
- (e) amending and/or updating and validating the Manuals (and the As Built Drawings where applicable) to accommodate any changes to the working practices and procedures described in the Manuals (or the Vehicles as depicted in the As-Built Drawings) which result from any Modification, provided that, in relation to any Modification that is not carried out by the TMM or one of its Sub-Contractors on the TMM's behalf, (i) the TMM shall only be obliged to perform the TSA Services described in this paragraph 8.2(e) if, and to the extent that, the TMM is provided with the relevant information, (ii) the TMM shall, subject to clause 7.9, have no responsibility for the content of such information, and (iii) the Operator shall reimburse the TMM in respect of all reasonable and proper costs and expenses reasonably incurred by the TMM, at the Agreed Labour Rate, in connection with its performance of the services under this paragraph 8.2(e).

8.3 The TMM shall consolidate and update each copy of the Manuals which the TMM is required to supply to the Owner under the MSA and reissue such copies to the Owner and the Operator promptly after the end of each Contract Year, if there have been significant changes to the relevant Manual since the previous such reissue. The Applicable Variation Procedure shall not apply and no Party shall be required to seek or obtain an Authorisation to Vary in respect of updates to the Manuals in accordance with this paragraph 8.3.

Monitoring Changes in Law

8.4 The TMM shall monitor all Changes in Law relating to rolling stock which may affect its ability to perform its obligations under this Agreement, and shall advise the Owner and the Operator accordingly. The Operator shall monitor all Changes in Law relating to the

operation of the Units and shall advise the Owner and the TMM accordingly. The provisions of the Applicable Variation Procedure shall apply in relation to any Change in Law.

Provision of Technical Services and Technical Investigations

8.5 In the usual course and promptly following a reasonable request by the Operator, the TMM shall undertake technical investigations in relation to the Units and Simulators, including investigations in relation to the condition or performance of any Unit or to determine whether such Unit is Fit for Purpose (TSA) and any investigations in relation to defects, incidents and accidents in relation to the Units and/or Simulators and shall provide written reports on the results of such investigations to the Operator.

8.6 The TMM shall provide the following technical support services:

- (a) investigation into the cause of Faults;
- (b) the monitoring of reliability, in service performance and compliance with the requirements of Relevant Approvals, provided that the performance of such service in relation to modified, updated or amended Relevant Approvals where the TMM is not involved in the process of such modification, updating or amendment, shall be subject to the Operator's provision of that Relevant Approval in accordance with clause 13.26;
- (c) provide all necessary documentation to enable amendment to be made to the safety case documentation;
- (d) provide management and administrative resources to plan and manage maintenance teams and maintenance schedules; and
- (e) develop and implement a strategy for in-service support of the Fleet in accordance with the TMM's obligation to provide the TSA Services, including in respect of Faults.

Provision of Staff

8.7 Without prejudice to its obligations to provide a management team in relation to the performance of this Agreement, the TMM shall provide sufficient staff to provide one person on a 24 hours, 7 days a week basis to support control room activities and assist the Operator with workload planning.

Tyre Turning

8.8 The TMM shall perform or procure the performance of all planned and unplanned tyre turning in respect of the Units including all inspection and certification in respect of such tyre turning.

Quality Assurance

8.9 The TMM shall devise and implement a quality assurance scheme covering all aspects of performing the TSA Services on the Units in accordance with ISO9000/ISO14001.

Record Keeping

8.10 The TMM shall:

- (a) provide the Operator and the Owner with access to the Technical Records and the Technical Records Database for the TSA Term; and
- (b) document all maintenance work undertaken on the Units in accordance with the quality assurance scheme and as required by the Railway Group Standards.

8.11 If the Technical Records are required to be kept so as not to invalidate any continuing warranty, the TMM shall ensure that the recommendations of any applicable seller, supplier, sub-contractor or any other maintenance performer or repairer are complied with.

Spares

8.12 The TMM shall:

- (a) as appropriate, procure, manage and store consumables, repairables and Owner Owned Spares and where requested to do so by the Operator as an Additional Service, Operator Owned Spares; and
- (b) replenish consumables and other Spares as required to support the performance of the TSA Services (including the Operator Owned Spares in accordance with clause 10.19).

Train Management System

8.13 The TMM shall provide the Operator and other entities nominated by the Operator unlimited, free of charge, free of licence, access to the TMM's COM@RL server infrastructure as set out under this paragraph 8.13. Such access shall be available via a commercially available internet browser application running on the Operator's client computer. The Operator and other entities nominated by the Operator shall be able to download all necessary information from and, where applicable upload data to, the following Unit equipment through such server infrastructure:

- (a) passenger information system;
- (b) on-train data recorder;
- (c) all CCTV systems;
- (d) energy metering system;
- (e) passenger loading and passenger counting systems;
- (f) near real-time Unit status, Unit location and fault reports including low adhesion reports and fire alarms; and
- (g) driver advisory system (periodic and real-time timetable updates and occasional updates to the trainborne infrastructure database).

8.14 The requirements for initiating and managing data upload or download between the Operator's systems and Units will be agreed during the Design Review Process.

8.15 The TMM shall provide all relevant software and training of the Operator's employees for the purpose of accessing and interpreting such data.

8.16 The availability of the COM@RL server shall be in accordance with the server provider's standard terms and conditions and shall be typical of commercially available services for the hosting of business IT systems, including prior notification of maintenance downtimes and agreed failure response times.

8.17 The Operator shall provide subscriber identity module (SIM) cards for installation in the Unit's RDA-RT data modems (four per Unit). The Operator shall establish and maintain data communication contracts with a telecommunications service provider and be responsible for the payment of all data communications charges associated with the RDA-RT data modems.

8.18 The TMM shall install and maintain Wi-Fi facilities at the Designated Depots. Such Wi-Fi facilities shall provide for data communication with Units stabled in these locations. Additional Wi-Fi communication facilities may be installed by the Operator at strategic points on the Thameslink Network.

8.19 By means of the Design Review Process the TMM and the Operator shall agree an information assurance protocol that describes how the security of information assets will be ensured.

8.20 Should the Design Review Process identify services to be provided by the TMM via the COM@RL infrastructure over and above that required to comply with the Specification, such additional services may be the subject of a Variation Proposal.

Energy Monitoring

8.21 The TMM shall support the Operator in accordance with paragraph 8.22 in maintaining and improving the energy efficiency of the Fleet.

8.22 The TMM shall work with the Operator to identify activities which will reduce net energy consumption through rectification of Faults, alternative maintenance techniques, optimisation and refinement of energy management and traction drive systems, changes to driving style and driver information and through engineering changes to the Units, incorporating new technology where appropriate.

8.23 The TMM and the Operator shall negotiate in good faith to agree whether and how such activities and changes shall be implemented. The implementation of any such activities and changes shall be pursuant to clauses 20.13 to 20.17, or where those clauses do not apply, pursuant to the Applicable Variation Procedure. Where the Applicable Variation Procedure does apply, neither the Operator nor the TMM shall implement that Variation until the Secretary of State has issued an Authorisation to Vary in respect of such Variation pursuant to schedule 4.3 (*Secretary of State Authorisation of Variations*) of the Umbrella Agreement (or, after the Umbrella Agreement has expired or terminated, schedule 5.3 (*Secretary of State Authorisation of Variations*) of the Maintenance Direct Agreement).

SCHEDULE 2.4

The Additional Services

1. THE ADDITIONAL SERVICES

1.1 If the TMM becomes aware that any Additional Services need to be undertaken in respect of any Unit or a Simulator then the TMM shall, subject to paragraph 2 (*Generally Approved Additional Services*), immediately submit a written request by e-mail to the Operator's control centre, requesting authority to undertake Additional Services.

1.2 If the Operator becomes aware that any Additional Services need to be undertaken in respect of any Unit or a Simulator, then the Operator shall immediately notify the TMM of such and the TMM shall submit a written request to the Operator in accordance with paragraph 1.3, provided that where the requirement for such Additional Services is detailed on the Hand Over Certificate that is returned with that Unit (or the Simulator Hand Over Certificate that is delivered) to the TMM, no further notification by the Operator to the TMM shall be required.

1.3 The written request referred to in paragraphs 1.1 and 1.2 shall include all relevant details of the circumstances requiring Additional Services and the details of the Additional Services required, including the cost of such Additional Services, calculated in accordance with Schedule 6.4 (*Additional Services Payments*) and the timescale within which the TMM will undertake to perform such Additional Services.

1.4 Whenever there is a requirement for the performance of Additional Services, the TMM shall liaise with the Operator in order to establish a solution which, so far as practicable, best meets the Operator's requirements in terms of cost, the effects on the Standard Services and, in the case of Units, the impact on the Train Plan and the Diagrams, including the suitability of using any Operator Owned Spares at the Operator's disposal and the location at which those Additional Services shall be performed (whether at a Designated Depot, Outstation or elsewhere).

1.5 Following such liaison, if the Operator determines, in its sole discretion, that the performance by the TMM of the Additional Services in respect of a Unit or a Simulator which has not been Handed Over:

- (a) does best meet the Operator's requirements as set out in paragraph 1.4, then the remainder of this Schedule 2.4 shall apply; and
- (b) does not best meet the Operator's requirements as set out in paragraph 1.4, then clause 8.11 shall apply.

1.6 Additional Services ordered by the Operator and implemented by the TMM pursuant to this Schedule 2.4 shall not constitute Variations nor shall an Authorisation to Vary be required from the Secretary of State pursuant to schedule 4.3 (*Secretary of State Authorisation of Variations*) of the Umbrella Agreement (or, after the Umbrella Agreement has expired or terminated, schedule 5.3 (*Secretary of State Authorisation of Variations*) of the Maintenance Direct Agreement).

2. GENERALLY APPROVED ADDITIONAL SERVICES

2.1 The TMM shall promptly commence and diligently carry out and complete (without specific approval from the Operator) any Additional Services (the **Generally Approved Additional Services**) the cost (labour and materials) of which, calculated in accordance with Schedule 6.4 (*Additional Services Payments*), is less than []¹⁴³, doing so, as far as reasonably practicable, before the relevant Unit or Simulator is scheduled to be Handed Over at a Designated Depot []¹⁴⁴ in accordance with the Maintenance Plan, provided that:

- (a) the aggregate cost of all Generally Approved Additional Services carried out by the TMM under this Schedule 2.4 shall not exceed []¹⁴⁵ per Railway Period or such other amount as the Operator may from time to time notify to the TMM by not less than five days notice given prior to the commencement of the Railway Period in which the costs adjustment is to be effective, it being acknowledged that the Operator may from time to time reduce such amount to nil if it so chooses;
- (b) the carrying out of those Generally Approved Additional Services does not materially affect the timely performance of the Standard Services;
- (c) those Generally Approved Additional Services can be carried out in the time that the relevant Unit or Simulator is available to the TMM on that occasion for the performance of the TSA Services; and
- (d) those Generally Approved Additional Services can be carried out using resources available to the TMM for the performance of the TSA Services.

2.2 The TMM shall promptly inform the Operator if it is unable to carry out any Additional Service as a Generally Approved Additional Service. Where the TMM carries out any Generally Approved Additional Service, it shall, as soon as reasonably practicable, advise the Operator of all relevant information including any information that may be relevant pursuant to paragraph 1 (*The Additional Services*).

3. INFORMATION FROM THE TMM : ADDITIONAL SERVICES

Where the Operator requests the TMM to carry out any Additional Service (other than Generally Approved Additional Services) in relation to a Simulator, a Unit or any Vehicle comprised in that Unit, or where the TMM notifies the Operator that any Additional Service (other than Generally Approved Additional Services) are required in respect of a Simulator, a Unit, or any Vehicle comprised in that Unit, the TMM shall, as soon as reasonably practicable, advise the Operator of all relevant information including:

- (a) the identity of the affected Simulator or the affected Unit and Vehicles;
- (b) the nature and extent of the requirement for that Additional Service;
- (c) the TMM's proposals for carrying out that Additional Service, including as appropriate:

¹⁴³ Redaction.

¹⁴⁴ Redaction.

¹⁴⁵ Redaction.

- (i) the time (including the TMM's response time from the time the proposal is approved by the Operator to commence that Additional Service) and place for carrying out that Additional Service;
 - (ii) any Parts to be replaced or refurbished;
 - (iii) any effects on the Spares which are held, or which it will be necessary or desirable to hold, following the carrying out of that Additional Service;
 - (iv) any effects on the Standard Services, the Train Plan or the Diagrams;
 - (v) the cost of that Additional Service, calculated in accordance with Schedule 6.4 (*Additional Services Payments*), but recognising that, where it is not possible to identify a fixed cost, the TMM will provide its best estimate of the costs and its proposed basis for calculating the actual cost;
 - (vi) the time when the affected Simulator, Unit or Vehicle would be delivered back to the Operator (if any amendment is required to the then current Diagrams);
 - (vii) any restrictions or limitations which may apply to the affected Simulator, Unit or Vehicle pending carrying out that Additional Service;
 - (viii) any additional track or other access requirements necessary to facilitate the carrying out of that Additional Service; and
 - (ix) the level of labour resources required to carry out that Additional Service; and
- (d) if the carrying out of that Additional Service will result in the TMM incurring additional costs and expenses in performing the Standard Services, the nature and extent of those costs and expenses and the reason for the causal link.

4. PERFORMANCE

4.1 Where the Operator approves a proposal from the TMM in accordance with paragraph 3 for carrying out an Additional Service (other than a Generally Approved Additional Service) the Operator shall so notify the TMM by e-mail and on receipt of such notification the TMM shall promptly commence and diligently carry out and complete that Additional Service in accordance with the approved proposal insofar as reasonably practicable, before the relevant Unit or Simulator is scheduled to be Handed Back at a Designated Depot ¹⁴⁶ in accordance with the Maintenance Plan and, where any Operator Owned Spares have been made available by the Operator to the TMM for that purpose pursuant to clause 10.8, utilising those Operator Owned Spares.

4.2 If the TMM fails to complete any Additional Services to a Unit within the period of time specified in the approved proposal in accordance with paragraph 4.1 and fails to provide the Operator with both:

- (a) due notice of such failure; and

¹⁴⁶ Redaction.

(b) adequate evidence as to the cause of such failure,

then any relief from the TSA Performance Regime in accordance with this Agreement shall cease from the time for completion of the Additional Services specified in the approved proposal in accordance with paragraph 4.1.

4.3 The TMM shall undertake all Additional Services with the degree of diligence, care and skill reasonably to be expected of a certified maintainer of rolling stock vehicles with demonstrable experience in carrying out work of a similar scope, type, nature and complexity to the Additional Services and by suitably qualified and trained personnel. All such Additional Services shall be completed in such a way as to minimise the effect on the Train Plan.

5. APPROVAL OF THE ADDITIONAL SERVICES

5.1 If the Operator does not agree to such Additional Services, then it shall so inform the TMM by e-mail.

5.2 If the Operator fails to respond to a written request of the TMM for authority to undertake Additional Services within 24 hours then, if such Additional Services are necessary for safety-related reasons or because the TMM reasonably believes that the relevant Simulator or Unit cannot be Handed Back to the Operator unless and until such Additional Services are completed, then the TMM shall perform such Additional Services without delay and thereafter TMM and the Operator will negotiate in good faith to agree responsibility for such Additional Services and liability for the costs of such Additional Services.

5.3 Any disputes relating to the Additional Services shall, in the first instance, be discussed at the Performance Review Meetings in accordance with Schedule 9 (*Contract Management*).

5.4 Where repairs and/or other work need to be undertaken as a result of the occurrence of any of the events referred to in the definition of Additional Services while the relevant Unit or Simulator is in the TMM's or any Sub-Contractor's care, custody and control (other than any vandalism, misuse, loss, accident or damage caused by any employee, agent or sub-contractor of the Operator (other than the TMM), unless at the time of the relevant event the employee, agent or sub-contractor was acting under the direction of the TMM or a Sub-Contractor), those repairs and/or that other work shall be carried out as Standard Services and not Additional Services and the TMM shall perform such TSA Services promptly after the occurrence of any such event.

5.5 All Additional Services that the TMM performs pursuant to this Schedule 2.4 shall be at the cost and expense of the Operator. The TMM shall invoice the Operator directly in respect of all such Additional Services. Such invoices shall be discussed at the Performance Review Meetings in accordance with Schedule 9 (*Contract Management*).

SCHEDULE 3

APPROVED SUB-CONTRACTORS (TSA)

Schedule 3:

Approved Sub-Contractors (TSA)

TSA - Schedule 3 – Approved Sub-Contractors

1 Approval of Sub-Contractors

Where it is necessary to purchase Parts from original equipment manufacturers, the TMM will identify Sub-Contractors from Schedule 8 (*Key Systems & Approved Sub-Contractors*) of the MSA from whom the Parts shall be obtained and after internal TMM approval of each Sub-Contractor the TMM will seek consent from the Owner and the Operator to include them on the list of Approved Sub-Contractors to supply Parts to the TMM as set out in section 2 of this Schedule 3.

Where it is not necessary to purchase Parts from original equipment manufacturers or where Services are required to be performed by skilled Sub-Contractors, the TMM will identify further Sub-Contractors and after internal TMM approval of each Sub-Contractor the TMM will seek consent from the Owner and the Operator for consent to include them on the list of Approved Sub-Contractors to supply Parts (section 2 of this Schedule 3) or Services (section 3 of this Schedule 3) to the TMM.

The lists may be populated and/or amended from time to time with the consent of the Owner and the Operator and maintained by the TMM in accordance with the Agreement.

Notwithstanding any other provision of this Schedule 3, the TMM shall only be permitted to manage Sub-Contractors in accordance with Clause 8 of this Agreement.

List of Approved Sub-Contractors for Parts

Components/Material	Aproved Sub-Contractor
Car body	
Vehicle Cab	
Windscreen incl. Screen Heater	
Wiper System (drive / drive motor / arms & blades etc.)	
Under Run Protection Device / Obstacle Deflector / Part of Crash Module	
Drivers Desk Complete	
Drivers Seat	
Co-Driver's Tip-up Seat	
Driver's Door between Cab and Saloon	
Driver's Side Door right	
Driver's Side Door left	
Complete Cab fully fitted	
Cab lighting	
Further Cab-equipment, to be further detailed	
Vehicle signal equipment and exterior lighting	
Exterior Lighting	
Signal horn	
Further signal-spares, to be further detailed	
Intercar Construction	
Intercar gangway complete	
Further gangway-spares, to be further detailed	
Vehicle Connection Equipment (Train & Impact Equip.)	
Automatic Centre coupler (car end coupler) complete	
Further centre coupler-spares, to be fur-	

SIEMENS

Components/Material	Aproved Sub-Contractor
ther detailed	
Articulation, Semi-Permanent Coupler	
Intermediate coupler part A	
Intermediate coupler part B	
Intermediate Energy Absorbing Tube	
Intercar/ Jumper cables	
Further coupler-spares, to be further de- tailed	
Doors / Entrance (Boarding Equipment)	
External doors (incl. Door leafs, frames, sealing)	
Door operator/ Drive assembly	
Door operator / Rail assembly	
Motorisation	
Door leaf assembly	
Door leaf assembly / Window assembly	
Lock out device	
Internal unlocking device	
External unlocking device	
Door cabling layout	
Electronic door control unit	
Further door-spares, to be further detailed	
Side Windows	
Fixed windows	
Vehicle Fittings	
Assembly - Car Final assembly	
B & C Components	
Floor complete	
Floor Covering	
Further floor related-spares, to be further detailed	
Ceiling Modules	
Ceiling Equipment	

Components/Material	Aproved Sub-Contractor
Luggage Provision	
Luggage Racks - complete set	
Luggage Stacks	
Seats	
1. class seats	
2. class seats	
Tip-up Seats	
Further seat-related spares, to be further detailed (e.g. seat cushions etc.)	
Handrails, handhold	
Handrails - sets	
Interior Side Wall and End Wall	
Side Panelling	
Door Post Panelling	
End Wall Panelling Intermediate Ends	
End Wall Panelling Cab Ends	
Further wall-related spares, to be further detailed (e.g. fixings etc.)	
Ceilings Saloon	
Set Ceiling Panels - Side	
Ceilings complete (Gangway, UWC, SWC)	
Flat Ceiling (Pantograph Well)	
Draught Screens Entrance	
Glass Screens	
Interior Doors Saloon	
Gangway doors (Deployable Partitions)	
Interior Doors First Class	
Further spares related to interior doors, to be further detailed	
Interior Lighting (incl. Illuminant)	
Lighting incl. Power supply unit	
Emergency lighting incl. Battery	
Sanitary Equipment (Toilet and Water	

Components/Material	Aproved Sub-Contractor
System)	
Standard WC complete	
Universal WC complete	
Vacuum toilet module	
Further spares related to the toilet systems, to be further detailed (e.g. valves etc.)	
Air Conditioning (Heating / Ventilation / Air Conditioning)	
Drivers Cab Compact air conditioning unit	
Saloon Compact air conditioning unit	
Control electronics	
Further spares related to the HVAC systems, to be further detailed (e.g. compressors etc.)	
Chassis Technology	
Bogies	
Wheel	
Axle Bogie	
Wheelset Bearing (motor bogie)	
Wheelset Bearing (trailer bogie)	
Further spares related to the bogie, to be further detailed (e.g. bearings etc.)	
Powered Bogie	
Powered bogies with brake parts without motor& gearbox	
Frame Motor Bogie	
Power wheelset (without gearbox)	
Motor coupler	
Motor coupler for spare bogies	
Gearbox	
Gearbox for spare bogies	
Trailer Bogie	
Trailer bogies with brake parts	

SIEMENS

Components/Material	Aproved Sub-Contractor
Frame trailer bogies	
Trailer wheelset	
Brakes	
Compressed air supply incl. Compressor	
Compressor	
Air Dryer	
Brake Control Unit	
Smart Valve	
Gateway Valve	
Smart Valve	
Brake Disc	
Disc Brake calliper unit	
Block Brake Unit	
Block Brake Unit with Spring Accumulator	
Sanding Module	
Sanding Unit	
Compressor Set	
Further spares related to the brakes, to be further detailed	
Power Supply	
Power Supply for Drive System	
Pantograph	
DC Shoe gear assembly	
Shoe Arm Assembly	
Energy Meter AC	
Energy Meter DC	
Main Circuit Breaker	
Vacuum Circuit Breaker 25kV with earthing switch	
High speed circuit breaker	
High Voltage Components	
Voltage transformer	

SIEMENS

Components/Material	Aproved Sub-Contractor
Current transformer	
Line filter	
Line filter	
Transformer	
Transformer 8 car incl. Container	
Transformer 12 car incl. Container	
Cooling unit	
Traction equipment	
Power (traction) Converter incl. Drive Control Unit (ASG)	
Traction converter	
Compact Converter Core TBK4	
Compact Converter Core TBK9	
4QS	
Compact Converter Core TBK13	
Further spares related to the traction converters, to be further detailed	
Braking resistor	
Braking resistor	
Electrical Drive Unit	
Electrical Traction Motor incl. Temperature sensors	
Electrical Traction Motor for spare bogies	
Further spares related to the motor / drive unit, to be further detailed	
Auxiliary systems	
Compressed Air	
Auxiliary Compressor	
Sanding Reservoir	
Further spares related to the compressor, to be further detailed	
Wheel Flange Lubrication Reservoir	
Wheel flange lubrication container with mounting on the car body	

Components/Material	Aproved Sub-Contractor
Further spares related to the lubrication system, to be further detailed	
Electric Network	
Auxiliary Inverter	
Shore Supply - Equipment	
Depot Connection Socket Housing	
Electrical Cabinets	
Electrical Cabinet Cab	
Energy distribution electrical network (cabinet)	
Further spares related to the electrical cabinets, to be further detailed	
Underfloor container	
Electro underfloor container (motor car)	
Further spares related to the electrical containers, to be further detailed	
Battery System	
Battery block (incl. Frame and container) Including Battery charger	
Battery Crate	
Further spares related to the battery system, to be further detailed	
Control & Communications System	
Train Control System	
SIBAS PN 12 car set	
SIBAS PN 8 car set	
System Controller SP CS	
System Server SP SR	
Display SITET® PN T10	
Comm. Box DFÜ RDA-RT	
WTB-Link	
Further spares related to the Train Control System, to be further detailed	
TCN- Bus System (HW)	

Components/Material	Aproved Sub-Contractor
Guard Operation Panel	
Further spares related to the TCN, to be further detailed	
Control Panel Drivers Desk	
Diagnostic display	
Driver / Brake switch incl. automatic safety device (SIFA)	
Passenger Information, Entertainment, Monitoring, Communication System	
Main PIS-Controller	
Train destination display - Cab display external (if not contained under 01-02-23)	
Train destination display - External side display	
System controller	
Car controller advcs concept DPIS	
Passenger Alarm Unit	
Call for Aid Toilette and Wheelchair	
Interior loudspeaker	
Cab loudspeaker	
Driver Control Panel incl Handset	
Ethernet switch end car	
Ethernet switch intermediate car	
Multimedia Server	
TfT Monitors	
Further spares related to the PIS, to be further detailed	
CCTV System	
Saloon Dome Camera	
Digital video recorder	
Hard Disks Cassette	
Coding Plug cameras	
Front Facing camera	
DOO cameras incl. Deflector	

Components/Material	Aproved Sub-Contractor
DOO Monitors	
Further spares related to the CCTV system, to be further detailed	
Communication Equipment	
Sibas RDA incl GPS + Antenne	
Further spares related to the communication equipment, to be further detailed	
Passenger Counting System	
Passenger Counting System Set	
Further spares related to the passenger counting system, to be further detailed	
Fire Detection System	
Fire Detection Saloon	
Further spares related to the fire detection system, to be further detailed	
Operating Control Technology / Automatic Train Control (Train Safety System)	
TPWS / AWS (complete system inc. Antenna)	
Driver Foot switch	
APC Antenne	
DRA-Switch	
DSD Foot pedal	
Further spares related to the operationg systems, to be further detailed	
ETCS	
ETCS+GSM-R Data+Antenne+HMI	
ATO	
Further spares related to the ETCS system, to be further detailed	
Other train safety systems	
JRU	
Train radio telecommunications system (control equipment, operating unit,	

SIEMENS

Components/Material	Aproved Sub-Contractor
aerial & cable & console)	
GSM-R Radio	
Further spares related to the Radio system, to be further detailed	

3 List of Approved Sub-Contractors for Services

Services	Approved Sub-Contractor(s)
Car body and Cab	
Glazing - replacing damaged glass components including windows	
Crash / Collision Damage	
Painting	
Bogies	
Wheel turning - Wheel Lathe	
Ultrasonic Inspection	
Simulators	

SCHEDULE 4

EXONERATING EVENT PROCEDURE

Schedule 4:	Exonerating Event Procedure
	Appendix 1: Notice of Minor Exonerating Event
	Appendix 2: Notice of Major Exonerating Event
	Appendix 3: Notice of Particulars of Claim relating to a Major Exonerating Event
	Appendix 4: Notice of Interim Particulars relating to a Major Exonerating Event
	Appendix 5: Notice of Grant of Minor Exonerating Event
	Appendix 6: Notice of Grant of Major Exonerating Event
	Appendix 7: Notice of Rejection of Minor Exonerating Event
	Appendix 8: Notice of Rejection of Major Exonerating Event

SCHEDULE 4

Exonerating Event Procedure

1. POTENTIAL EXONERATING EVENTS

Notice of Potential Exonerating Events

1.1 As soon as the TMM believes or knows that any of the occurrences set out in clause 9.1 may occur or has occurred, it will, as soon as reasonably practicable, notify the Operator and the Owner of the same in writing.

Administration of Potential Exonerating Event claims

1.2 On receipt of any notice under paragraph 1.1, the Operator's Contract Manager shall allocate a unique number to the claim (which he shall notify to the TMM and to the Owner) and he shall also maintain a sequentially numbered register of all claims made, and relief granted, under this Schedule 4 in relation to any Exonerating Event. All subsequent correspondence between the Parties in relation to any claim made under this Schedule 4 in respect of any Exonerating Event shall bear the relevant allocated number.

2. OBLIGATION TO MITIGATE AND OVERCOME

The TMM shall use all reasonable endeavours to mitigate and overcome the effect of any Exonerating Event, other than in respect of clause 9.1(f), and shall continue to perform the TSA Services and comply with the Performance Regime Targets to the best of its ability following any such occurrence.

3. PARTICULARS OF CLAIM

Minor Exonerating Events

3.1 If, in the reasonable opinion of the TMM, a potential Exonerating Event notified pursuant to paragraph 1.1 will result in the TMM being unable to carry out part of the TSA Services or being unable to fully comply with the TSA Performance Regime for a period of 10 days or less (a **Minor Exonerating Event**), the TMM shall give written notice as soon as reasonably practicable to the Operator's Contract Manager and send a copy to the Owner (to be substantially in the form set out in Appendix 1 (*Notice of Minor Exonerating Event*)) of the occurrence and the following details in respect of the Minor Exonerating Event and the adverse effect on the TSA Services:

- (a) full and detailed particulars of the Minor Exonerating Event;
- (b) the TMM's reasonable current view of the likelihood and probable extent of the adverse impact on the TMM's ability to meet the Performance Regime Targets which it is required to meet under the TSA Performance Regime and inability to carry out the TSA Services in respect of the Minor Exonerating Event; and
- (c) details of the measures which the TMM has adopted and/or proposes to adopt to avoid or reduce the effects of the Minor Exonerating Event on its ability duly to comply with its obligations under this Agreement.

Major Exonerating Events

3.2 If, in the reasonable opinion of the TMM, the Exonerating Event will result in the TMM being unable to carry out all or part of the TSA Services or being unable to fully comply with the Performance Regime Targets for a period of more than 10 days (a **Major Exonerating Event**), the TMM shall give written notice to the Operator's Contract Manager and send a copy to the Owner (to be substantially in the form set out in Appendix 2 (*Notice of Major Exonerating Event*)) of the occurrence and details in respect of the Major Exonerating Event and the adverse effect on the TSA Services.

3.3 Any notice given under paragraph 3.2 shall not in any event be given later than five Working Days after the TMM becomes aware of the occurrence of any such Major Exonerating Event (or if the event was originally a Minor Exonerating Event, within one day of the event ceasing to be a Minor Exonerating Event and becoming a Major Exonerating Event), and in either case that notice shall:

- (a) state the TMM's current view of the likelihood and probable extent of the adverse impact on the provision of the TSA Services or the adverse impact on the TMM's ability to meet the Performance Regime Targets; and
- (b) specify whether the TMM is of the view that it is, or may become, entitled to treat such Major Exonerating Event as a reason not to carry out the TSA Services and/or comply with the Performance Regime Targets to any particular extent.

3.4 As soon as practicable, but, in any event within 10 Working Days after the date by which the notice is under paragraph 3.2 is required to be given under paragraph 3.3, the TMM shall submit further written notice to the Operator's Contract Manager and send a copy to the Owner (to be substantially in the form set out in Appendix 3 (*Notice of Particulars of Claim relating to a Major Exonerating Event*)) giving:

- (a) full and detailed particulars of the Major Exonerating Event;
- (b) details of the documents that will be relied upon to support any claim of the TMM to be relieved of its obligations to carry out all or part of the TSA Services and/or fully comply with the Performance Regime Targets to any particular extent; and
- (c) details of the measures which the TMM has adopted and/or proposes to adopt to avoid or reduce the effects of the Major Exonerating Event on its ability duly to comply with its obligations under this Agreement.

3.5 Where either a Major Exonerating Event has a continuing effect or the TMM is unable to determine whether the effect of a Major Exonerating Event will actually cause it not to be able to fully comply with its obligations under this Agreement, such that it is not practicable for the TMM to submit full and detailed particulars in accordance with paragraph 3.4(a), then, within 10 Working Days after the date by which notice is required to be given under paragraph 3.2 and 3.3, the TMM shall instead submit to the Operator's Contract Manager (with a copy to the Owner):

- (a) a statement to that effect (substantially in the form set out in Appendix 4 (*Notice of Interim Particulars relating to a Major Exonerating Event*)) with reasons, together with interim written particulars (including details of the likely consequences of a Major Exonerating Event on the TMM's ability to fully comply with its obligations under this Agreement and an estimate of how long this is likely to be for); and

- (b) thereafter, at intervals of not more than 10 Working Days, further interim written particulars until the actual consequence caused (if any) is ascertainable, whereupon the TMM shall as soon as practicable, but in any event within 10 Working Days, submit to the Operator's Contract Manager (with a copy to the Owner) the items referred to in paragraph 3.4.

4. GRANTING EXONERATING EVENTS

Minor Exonerating Events

4.1 If the Operator's Contract Manager, acting reasonably, considers that the TMM is entitled to treat a Minor Exonerating Event as a reason not to carry out some or all of the TSA Services and/or fully comply with the Performance Regime Targets, then, as soon as reasonably practicable in the circumstances, but in any event so as not to further disrupt the TSA Services, after receipt of full and detailed particulars pursuant to paragraph 3.1, the Operator's Contract Manager shall:

- (a) acting reasonably, determine, grant and notify to the TMM the relevant relief by written notice (to be substantially in the form set out in Appendix 5 (*Notice of Grant of Minor Exonerating Event*)); and
- (b) in any such notice, detail the extent to which the TMM is relieved from carrying out the TSA Services and/or complying with the Performance Regime Targets and the time period for which such relief shall apply.

Major Exonerating Events

4.2 If the Operator's Contract Manager, acting reasonably, considers that the TMM is fairly entitled to treat the Major Exonerating Event as a reason not to carry out some or all of the TSA Services and/or fully comply with the Performance Regime Targets, then, as soon as reasonably practicable, but in any event within five Working Days after:

- (a) receipt of final, full and detailed particulars of the cause and actual effect of any Major Exonerating Event pursuant to paragraph 3.4(a); or
- (b) where a Major Exonerating Event has a continuing effect or where the Operator's Contract Manager anticipates a significant delay before the actual effect of a Major Exonerating Event becomes ascertainable and the Operator's Contract Manager considers that an interim relief should be granted, subject to receipt of such particulars pursuant to paragraph 3.4 as, in the Operator's Contract Manager's reasonable opinion, are sufficient for him to determine whether the TMM is fairly entitled to such interim relief,

the Operator's Contract Manager acting reasonably shall determine, grant and notify to the TMM details of that relief by written notice (to be substantially in the form set out in Appendix 6 (*Notice of Grant of Major Exonerating Event*)) and shall detail the extent to which the TMM is relieved from carrying out some or all the TSA Services and/or fully complying with the Performance Regime Targets and the time period for which such relief shall apply.

4.3 In determining any relief under paragraph 4.2, the Operator's Contract Manager shall take into account all the circumstances known to him at that time.

4.4 If the Operator can show, to the satisfaction of the TMM, that the Operator or, as the case may be, the Owner is only partially responsible for an Exonerating Event occurring, the Operator or, as the case may be, the Owner agrees to negotiate in good faith with the TMM to agree appropriate responsibility for carrying out the TSA Services.

Separate claims

4.5 Any relief given by the Operator's Contract Manager under this Schedule 4 shall not of itself entitle the TMM to any other relief under this Agreement. The TMM must make a separate claim under this Schedule 4 for relief each time an Exonerating Event occurs or the TMM believes an Exonerating Event will occur.

Relief from performance sole remedy

4.6 Any relief granted by the Operator's Contract Manager to the TMM shall be in full compensation and satisfaction for any Loss sustained or sustainable by the TMM in respect of any matter or thing in connection with which that relief is granted.

5. NO RELIEF

The TMM may not make a claim for relief under this Schedule 4 in circumstances where the occurrence of an Exonerating Event has resulted in the Owner, the Operator or the TMM (as the case may be) issuing a Variation Proposal in respect of that Exonerating Event which results in an Authorisation to Vary. In those circumstances, any claim for relief shall be made, and any relief shall be granted, in accordance with the Applicable Variation Procedure.

6. REJECTION OF POTENTIAL EXONERATING EVENT CLAIMS

Minor Exonerating Events

6.1 If the Operator's Contract Manager decides that the TMM is not entitled to relief from its obligations to carry out the TSA Services and/or comply with the Performance Regime Targets, the Operator's Contract Manager shall notify the TMM accordingly in writing (to be substantially in the form set out in Appendix 7 (*Notice of Rejection of Minor Exonerating Event*)). This decision may be based on (but shall not be limited to) the Operator's Contract Manager's opinion, acting reasonably, that the event constitutes a Major Exonerating Event.

Major Exonerating Events

6.2 If the Operator's Contract Manager acting reasonably decides that the TMM is not entitled to relief from its obligations to carry out the TSA Services and/or comply with the Performance Regime Targets, the Operator's Contract Manager shall notify the TMM accordingly as soon as reasonably practicable, but in any event within five Working Days in writing (to be substantially in the form set out in Appendix 8 (*Notice of Rejection of Major Exonerating Event*)) after the particulars set out in paragraph 4.2(a) or (b) have been provided.

6.3 The TMM shall not be entitled to relief for any Major Exonerating Event if it fails to give notification to the Operator (with a copy to the Owner) within 10 Working Days of the TMM becoming aware of such Major Exonerating Event, unless the Major Exonerating Event is of latent effect in which case the Operator shall act reasonably in considering it.

7. DISPUTES

If the TMM believes that a decision of the Operator's Contract Manager under this Schedule 4 is unreasonable and/or and not made in accordance with the terms of this Agreement, the Applicable Dispute Resolution Provisions shall apply.

APPENDIX 1 TO SCHEDULE 4

Notice of Minor Exonerating Event

Claim Number:.....

[To be allocated by the [Operator's Contract Manager] on receipt of this notice]

To: [Operator's Contract Manager]

From: [] (the **TMM**)

1. In accordance with paragraph 3.1 of Schedule 4 (*Exonerating Event Procedure*) of the Train Services Agreement between the TMM, [Operator] and [Owner], dated [] (the **TSA**) the TMM hereby submits to the [Operator's Contract Manager]:

(a) full and detailed particulars of the event preventing the carrying out of the TSA Services or compliance by the TMM with the TSA Performance Regime:

.....
.....
.....
.....
(use continuation sheet if necessary)

(b) details of the likelihood and probable extent of the adverse impact on the TSA Performance Regime and inability to carry out the services:

.....
.....
.....
.....
(use continuation sheet if necessary)

(c) details of the measures which the TMM has adopted and/or proposes to adopt to avoid or reduce the effects of the Minor Exonerating Event on its ability to carry out the TSA Services and/or comply with the TSA Performance Regime:

.....
.....
.....
.....
(use continuation sheet if necessary)

2. Capitalised terms used in this notice shall, unless expressly defined in this notice, have the meanings given to them in the TSA.

Signed by:.....[Name and position]

For and on behalf of []

Dated.....

APPENDIX 2 TO SCHEDULE 4

Notice of Major Exonerating Event

Claim Number:.....

To: The Operator's Contract Manager and the Owner

From: [] (the *TMM*)

1. In accordance with paragraph 3.2 of Schedule 4 (*Exonerating Event Procedure*) of the Train Services Agreement made between the TMM, [*Operator*] and [*Owner*], dated [] (the *TSA*) the TMM hereby gives notice to the Operator's Contract Manager and the Owner that the following Major Exonerating Event is liable to prevent the TMM from carrying out the TSA Services or complying with the TSA Performance Regime:

Details of Major Exonerating Event:

.....
.....
.....
.....

Affected part of the TSA Services/affected part of the TSA Performance Regime:

.....
.....
.....
.....

2. The Major Exonerating Event mentioned above:

- (a) has occurred (paragraph 3.3(a)); and
- (b) is foreseen by the TMM (paragraph 3.3(b)).

3. This notice is served not later than [] Working Days after the TMM became aware of the occurrence of such Major Exonerating Event.

4. The TMM's view at the date of this notice of the likelihood and probable extent of the TMM being prevented from carrying out the TSA Services or complying with the TSA Performance Regime is as follows:

.....
.....
.....
.....
.....
(use continuation sheet if necessary)

5. The TMM considers that it is/may become entitled to treat the Major Exonerating Event as a Major Exonerating Event.

6. The TMM hereby confirms that it has used and will continue to use all reasonable endeavours to avoid or reduce the effects or likely effects of the Major Exonerating Event and to carry out the TSA Services and/or comply with the TSA Performance Regime.

7. The TMM agrees that:

- (a) as soon as practicable, and in any event within [_____] Working Days of the date by which service of this notice is required to be given under paragraph 3.2 and 3.3 of Schedule 4 of the TSA, it shall submit to the Operator's Contract Manager and the Owner a completed form providing further details of the Major Exonerating Event; or
- (b) within [_____] Working Days of the date by which service of this notice is required to be given under paragraph 3.2 and 3.3 of Schedule 4 of the TSA, it shall submit to the Operator's Contract Manager and the Owner a completed form stating why further details of the Major Exonerating Event cannot be submitted.

8. If within the period set out in paragraph 7(b), the relevant cause of the Major Exonerating Event ends, the TMM shall submit a written notice to the Operator's Contract Manager and the Owner to this effect within [_____] days of the end of the Major Exonerating Event.

9. Capitalised terms used in this notice shall, unless expressly defined in this notice, have the meanings given to them in the TSA.

Signed by: *[Name and position]*

For and on behalf of [_____]

Dated:

APPENDIX 3 TO SCHEDULE 4

Notice of Particulars of Claim Relating to a Major Exonerating Event

Claim Number:.....

To: The Operator's Contract Manager and the Owner

From: [] (the *TMM*)

Claim Number:

1. In accordance with paragraph 3.4 of Schedule 4 (*Exonerating Event Procedure*) of the Train Services Agreement between the TMM, [*Operator*] and [*Owner*], dated [] the (the *TSA*) and further to the Notice of Major Exonerating Event served on the Operator's Contract Manager and the Owner on [], the TMM hereby further submits to the Operator's Contract Manager and the Owner:

- (a) full and detailed particulars of the event preventing the carrying out of the TSA Services or compliance by the TMM with the TSA Performance Regime:

.....
.....
.....
.

(use continuation sheet if necessary)

- (b) details of the documents relied on to support the claim of the TMM to be relieved of its obligations to carry out all or part of the TSA Services or to comply with the TSA Performance Regime based on the Major Exonerating Event:

.....
.....
.....

(use continuation sheet if necessary)

- (c) details of the measures which the TMM has adopted and/or proposes to adopt to avoid or reduce the effects of the Major Exonerating Event on its ability to carry out the TSA Services and/or comply with the TSA Performance Regime:

.....
.....
.....

(use continuation sheet if necessary)

2. Capitalised terms used in this notice shall, unless expressly defined in this notice, have the meanings given to them in the TSA.

Signed by: [*Name and position*]

For and on behalf of []

Dated:

APPENDIX 4 TO SCHEDULE 4

Notice of Interim Particulars Relating to a Major Exonerating Event

Claim Number:.....

To: The Operator’s Contract Manager and the Owner

From: [] (the *TMM*)

Claim Number:

1. In accordance with paragraph 3.5(a) of Schedule 4 (*Exonerating Event Procedure*) of the Train Services Agreement made between the TMM, [*Operator*] and [*Owner*], dated [] (the *TSA*), and further to the Notice of Major Exonerating Event served on the Operator’s Contract Manager and the Owner on [] the TMM hereby further submits to the Operator’s Contract Manager and the Owner:

(a) reasons why the TMM is not able to submit full and detailed particulars to the Operator’s Contract Manager and the Owner in accordance with paragraphs 3.2 and 3.3 of Schedule 4 of the TSA:

.....
.....
.....
.....

(use continuation sheet if necessary)

(b) [*further*] interim written particulars (including details of the likelihood and likely consequences of the Major Exonerating Event on the TMM’s ability to carry out the TSA Services and/or comply with the TSA Performance Regime and an estimate of the duration of the event):

.....
.....
.....
.....

(use continuation sheet if necessary)

2. Further interim written particulars are to follow these interim particulars at intervals of not more than [] Working Days, until the impact upon the TMM carrying out the TSA Services and/or complying with the TSA Performance Regime (if any) is ascertainable, whereupon the TMM shall as soon as practicable, but in any event within [] Working Days, submit to the Operator’s Contract Manager and the Owner the items referred to in paragraph 3.4(a) to (c) of Schedule 4 of the TSA.

3. Capitalised terms used in this notice shall, unless expressly defined in this notice, have the meanings given to them in the TSA.

Signed by: [*Name and position*]

For and on behalf of the TMM

Dated:

APPENDIX 5 TO SCHEDULE 4

Notice of Grant of Minor Exonerating Event

Claim Number:.....

To: [_____]

From: [*Operator's Contract Manager*]

1. The [*Operator's Contract Manager*] gives notice in accordance with paragraph 4.1 of Schedule 4 (*Exonerating Event Procedure*) of the Train Services Agreement made between [*the TMM*], [*Operator*] and [*Owner*], dated [_____] (the **TSA**) of the grant of an Exonerating Event to the TMM in respect of the TSA Services and/or the aspects of the TSA Performance Regime as identified in the related Notice of Minor Exonerating Event.

2. The extent to which pursuant to this notice the TMM is relieved from carrying out the TSA Services and/or complying with the TSA Performance Regime as set out above and the time for which such relief will apply are as follows:

.....
.....
.....
.....

This shall constitute an Exonerating Event for the purposes of the TSA.

3. Capitalised terms used in this notice shall, unless expressly defined in this notice, have the meanings given to them in the TSA.

Signed by the [*Operator's Contract Manager*]:

.....

Dated:.....

APPENDIX 6 TO SCHEDULE 4

Notice of Grant of Major Exonerating Event

Claim Number:.....

To: [_____]

From: The Operator's Contract Manager

1. The Operator's Contract Manager gives notice in accordance with paragraph 4.2 of Schedule 4 (*Exonerating Event Procedure*) of the Train Services Agreement made between [*the TMM*] , [*Operator*] and [*Owner*], dated [_____] (the *TSA*) of the grant of a Major Exonerating Event to the TMM in respect of the following TSA Services and/or the following aspects of the TSA Performance Regime:

.....
.....
.....
.....

2. The extent to which pursuant to this notice the TMM is relieved from carrying out the TSA Services and/or complying with the TSA Performance Regime as set out above and the time for which such relief will apply are as follows:

.....
.....
.....
.....

3. This shall constitute a Major Exonerating Event for the purpose of the TSA.

4. This grant of a Major Exonerating Event is an interim/final decision.

5. Defined terms used in this notice have the meaning given to them in the TSA.

Signed by the Operator's Contract Manager:

.....

Dated:

APPENDIX 7 TO SCHEDULE 4

Notice of Rejection of Minor Exonerating Event

Claim Number:.....

To: [_____]

From: [*Operator's Contract Manager*]

The [*Operator's Contract Manager*] hereby gives notice in accordance with paragraph 6.1 of Schedule 4 (*Exonerating Event Procedure*) of the Train Services Agreement made between [*the TMM*], [*Operator*] and [*Owner*], dated [_____] (the **TSA**) of the [*Operator's Contract Manager's*] decision not to grant an Exonerating Event to the TMM in relation to this claim under paragraph 3.1 of Schedule 4 of the TSA.

The reasons for the [*Operator's Contract Manager's*] decision are as follows:

.....
.....
.....
.....
.....

Capitalised terms used in this notice shall, unless defined in this notice, have the meanings given to them in the TSA.

Signed by the [*Operator's Contract Manager*]:

.....

Dated:

APPENDIX 8 TO SCHEDULE 4

Notice of Rejection of Major Exonerating Event

Claim Number:.....

To: [_____]

From: The Operator's Contract Manager

Claim Number:

1. The Operator's Contract Manager hereby gives notice in accordance with paragraph 6.2 of Schedule 4 (*Exonerating Event Procedure*) of the Train Services Agreement made between [*the TMM*], [*Operator*] and [*Owner*], dated [_____] (the *TSA*) of the Operator's Contract Manager's decision not to grant a Major Exonerating Event to the TMM in relation to its claim under paragraph 3.2 of Schedule 4 the TSA, set out in a notice dated [_____].

2. The reasons for the Operator's Contract Manager's and the Owner's decision are as follows:

.....
.....
.....
.....

3. Defined terms used in this notice have the meanings given to them in the TSA.

Signed by the Operator's Contract Manager

.....

Dated

SCHEDULE 5

PERFORMANCE REGIME

Schedule 5.1:	Availability Regime
Schedule 5.2:	Cancellations Regime
Schedule 5.3:	Delay Regime
Schedule 5.4:	SQM Regime
	Appendix: SQMs and SQM Scorecard
Schedule 5.5:	Performance Regime General Provisions

SCHEDULE 5.1

Availability Regime

1. AVAILABILITY OF UNITS

Available Units

1.1 Subject to paragraph 3 (*Concessions*) of Schedule 2.1 (*Hand Back and Hand Over*), a Unit is **Available** on any day where, as appropriate:

- (a) in the case of a Unit that is Handed Back, that Unit is Fit for Service at the Scheduled Hand Back Time on that day; and
- (b) in the case of a Unit that has not been Handed Over, that Unit is Fit for Service at its allocated Entry Time on that day.

Unavailable Units

1.2 Each Unit that:

- (a) the TMM has not, subject to paragraph 1.3, Handed Back on any day; or
- (b) the TMM offers to the Operator for service on any day, but the Operator rejects pursuant to and in accordance with paragraph 2 (*Rejection of Units*) of Schedule 2.1; or
- (c) is not Fit for Service at the first Entry Time of any day up to and including the day that Unit is Handed-Over,

is, in each case, a Unit that is **Unavailable**.

Deemed Available Units

1.3 Each Unit that would be Available but for an Allowable Failure, is a Unit that shall be treated as if it were Available, each such Unit being **Deemed Available**. For the purpose of the Availability Payment calculations made pursuant to paragraph 3 (*Calculation of Availability Payments*), a Unit that is Deemed Available on any day shall be aggregated with those Units that were Available on that day.

Concessions

1.4 The provisions of paragraph 3 of Schedule 2.1 shall apply in relation to any Unit that the TMM offers for service on any day which the Operator elects not to reject pursuant to paragraph 2 of Schedule 2.1.

Replacement Units

1.5 The provisions of paragraph 4 (*Replacement Units*) of Schedule 2.1 shall apply in relation to any Replacement Unit that the TMM offers for service at the Scheduled Hand Back Time or any Entry Time on any day.

Testing Units

1.6 Each Testing Unit that was to deliver a Diagram on a day and which was removed from service pursuant to clause 8.11 of the MSA shall be disregarded in accordance with the Availability Payment calculations made pursuant to paragraph 3.2 for the relevant period specified in paragraph 1(c) of Schedule 5.5 (*Performance Regime General Provisions*).

2. AVAILABILITY PAYMENT

The Availability Payment for any Railway Period shall be calculated by the Operator within five Working Days of the end of each such Railway Period in accordance with this Schedule 5.1 and invoiced in accordance with paragraph 12 (*Indexation, Payment and Liability*) of Schedule 5.5 (*Performance Regime General Provisions*).

3. []¹⁴⁷.

¹⁴⁷ Redaction.

APPENDIX TO SCHEDULE 5.1

Availability Benchmark Table

Type 1 Units:

Number of Type 1 Units with a Provisional Acceptance Certificate or Qualified Provisional Acceptance Certificate	Availability Benchmark for Type 1 Units: Monday to Friday inclusive	Availability Benchmark for Type 1 Units: Saturday	Availability Benchmark for Type 1 Units: Sunday
1	[REDACTED] ¹⁴⁸	[REDACTED] ¹⁴⁹	[REDACTED] ¹⁵⁰
2	[REDACTED] ¹⁵¹	[REDACTED] ¹⁵²	[REDACTED] ¹⁵³
3	[REDACTED] ¹⁵⁴	[REDACTED] ¹⁵⁵	[REDACTED] ¹⁵⁶
4	[REDACTED] ¹⁵⁷	[REDACTED] ¹⁵⁸	[REDACTED] ¹⁵⁹
5	[REDACTED] ¹⁶⁰	[REDACTED] ¹⁶¹	[REDACTED] ¹⁶²
6	[REDACTED] ¹⁶³	[REDACTED] ¹⁶⁴	[REDACTED] ¹⁶⁵

¹⁴⁸ Redaction.

¹⁴⁹ Redaction.

¹⁵⁰ Redaction.

¹⁵¹ Redaction.

¹⁵² Redaction.

¹⁵³ Redaction.

¹⁵⁴ Redaction.

¹⁵⁵ Redaction.

¹⁵⁶ Redaction.

¹⁵⁷ Redaction.

¹⁵⁸ Redaction.

¹⁵⁹ Redaction.

¹⁶⁰ Redaction.

¹⁶¹ Redaction.

¹⁶² Redaction.

¹⁶³ Redaction.

¹⁶⁴ Redaction.

¹⁶⁵ Redaction.

Number of Type 1 Units with a Provisional Acceptance Certificate or Qualified Provisional Acceptance Certificate	Availability Benchmark for Type 1 Units: Monday to Friday inclusive	Availability Benchmark for Type 1 Units: Saturday	Availability Benchmark for Type 1 Units: Sunday
7	¹⁶⁶	¹⁶⁷	¹⁶⁸
8	¹⁶⁹	¹⁷⁰	¹⁷¹
9	¹⁷²	¹⁷³	¹⁷⁴
10	¹⁷⁵	¹⁷⁶	¹⁷⁷
11	¹⁷⁸	¹⁷⁹	¹⁸⁰
12	¹⁸¹	¹⁸²	¹⁸³
13	¹⁸⁴	¹⁸⁵	¹⁸⁶
14	¹⁸⁷	¹⁸⁸	¹⁸⁹

¹⁶⁶ Redaction.

¹⁶⁷ Redaction.

¹⁶⁸ Redaction.

¹⁶⁹ Redaction.

¹⁷⁰ Redaction.

¹⁷¹ Redaction.

¹⁷² Redaction.

¹⁷³ Redaction.

¹⁷⁴ Redaction.

¹⁷⁵ Redaction.

¹⁷⁶ Redaction.

¹⁷⁷ Redaction.

¹⁷⁸ Redaction.

¹⁷⁹ Redaction.

¹⁸⁰ Redaction.

¹⁸¹ Redaction.

¹⁸² Redaction.

¹⁸³ Redaction.

¹⁸⁴ Redaction.

¹⁸⁵ Redaction.

¹⁸⁶ Redaction.

Number of Type 1 Units with a Provisional Acceptance Certificate or Qualified Provisional Acceptance Certificate	Availability Benchmark for Type 1 Units: Monday to Friday inclusive	Availability Benchmark for Type 1 Units: Saturday	Availability Benchmark for Type 1 Units: Sunday
15	□ ¹⁹⁰	□ ¹⁹¹	□ ¹⁹²
16	□ ¹⁹³	□ ¹⁹⁴	□ ¹⁹⁵
17	□ ¹⁹⁶	□ ¹⁹⁷	□ ¹⁹⁸
18	□ ¹⁹⁹	□ ²⁰⁰	□ ²⁰¹
19	□ ²⁰²	□ ²⁰³	□ ²⁰⁴
20	□ ²⁰⁵	□ ²⁰⁶	□ ²⁰⁷
21	□ ²⁰⁸	□ ²⁰⁹	□ ²¹⁰

187 Redaction.

188 Redaction.

189 Redaction.

190 Redaction.

191 Redaction.

192 Redaction.

193 Redaction.

194 Redaction.

195 Redaction.

196 Redaction.

197 Redaction.

198 Redaction.

199 Redaction.

200 Redaction.

201 Redaction.

202 Redaction.

203 Redaction.

204 Redaction.

205 Redaction.

206 Redaction.

207 Redaction.

208 Redaction.

209 Redaction.

Number of Type 1 Units with a Provisional Acceptance Certificate or Qualified Provisional Acceptance Certificate	Availability Benchmark for Type 1 Units: Monday to Friday inclusive	Availability Benchmark for Type 1 Units: Saturday	Availability Benchmark for Type 1 Units: Sunday
22	□ ²¹¹	□ ²¹²	□ ²¹³
23	□ ²¹⁴	□ ²¹⁵	□ ²¹⁶
24	□ ²¹⁷	□ ²¹⁸	□ ²¹⁹
25	□ ²²⁰	□ ²²¹	□ ²²²
26	□ ²²³	□ ²²⁴	□ ²²⁵
27	□ ²²⁶	□ ²²⁷	□ ²²⁸
28	□ ²²⁹	□ ²³⁰	□ ²³¹

²¹⁰ Redaction.

²¹¹ Redaction.

²¹² Redaction.

²¹³ Redaction.

²¹⁴ Redaction.

²¹⁵ Redaction.

²¹⁶ Redaction.

²¹⁷ Redaction.

²¹⁸ Redaction.

²¹⁹ Redaction.

²²⁰ Redaction.

²²¹ Redaction.

²²² Redaction.

²²³ Redaction.

²²⁴ Redaction.

²²⁵ Redaction.

²²⁶ Redaction.

²²⁷ Redaction.

²²⁸ Redaction.

²²⁹ Redaction.

²³⁰ Redaction.

²³¹ Redaction.

Number of Type 1 Units with a Provisional Acceptance Certificate or Qualified Provisional Acceptance Certificate	Availability Benchmark for Type 1 Units: Monday to Friday inclusive	Availability Benchmark for Type 1 Units: Saturday	Availability Benchmark for Type 1 Units: Sunday
29	□ ²³²	□ ²³³	□ ²³⁴
30	□ ²³⁵	□ ²³⁶	□ ²³⁷
31	□ ²³⁸	□ ²³⁹	□ ²⁴⁰
32	□ ²⁴¹	□ ²⁴²	□ ²⁴³
33	□ ²⁴⁴	□ ²⁴⁵	□ ²⁴⁶
34	□ ²⁴⁷	□ ²⁴⁸	□ ²⁴⁹
35	□ ²⁵⁰	□ ²⁵¹	□ ²⁵²
36	□ ²⁵³	□ ²⁵⁴	□ ²⁵⁵

²³² Redaction.

²³³ Redaction.

²³⁴ Redaction.

²³⁵ Redaction.

²³⁶ Redaction.

²³⁷ Redaction.

²³⁸ Redaction.

²³⁹ Redaction.

²⁴⁰ Redaction.

²⁴¹ Redaction.

²⁴² Redaction.

²⁴³ Redaction.

²⁴⁴ Redaction.

²⁴⁵ Redaction.

²⁴⁶ Redaction.

²⁴⁷ Redaction.

²⁴⁸ Redaction.

²⁴⁹ Redaction.

²⁵⁰ Redaction.

²⁵¹ Redaction.

²⁵² Redaction.

Number of Type 1 Units with a Provisional Acceptance Certificate or Qualified Provisional Acceptance Certificate	Availability Benchmark for Type 1 Units: Monday to Friday inclusive	Availability Benchmark for Type 1 Units: Saturday	Availability Benchmark for Type 1 Units: Sunday
37	<input type="checkbox"/> ²⁵⁶	<input type="checkbox"/> ²⁵⁷	<input type="checkbox"/> ²⁵⁸
38	<input type="checkbox"/> ²⁵⁹	<input type="checkbox"/> ²⁶⁰	<input type="checkbox"/> ²⁶¹
39	<input type="checkbox"/> ²⁶²	<input type="checkbox"/> ²⁶³	<input type="checkbox"/> ²⁶⁴
40	<input type="checkbox"/> ²⁶⁵	<input type="checkbox"/> ²⁶⁶	<input type="checkbox"/> ²⁶⁷
41	<input type="checkbox"/> ²⁶⁸	<input type="checkbox"/> ²⁶⁹	<input type="checkbox"/> ²⁷⁰
42	<input type="checkbox"/> ²⁷¹	<input type="checkbox"/> ²⁷²	<input type="checkbox"/> ²⁷³
43	<input type="checkbox"/> ²⁷⁴	<input type="checkbox"/> ²⁷⁵	<input type="checkbox"/> ²⁷⁶

²⁵³ Redaction.

²⁵⁴ Redaction.

²⁵⁵ Redaction.

²⁵⁶ Redaction.

²⁵⁷ Redaction.

²⁵⁸ Redaction.

²⁵⁹ Redaction.

²⁶⁰ Redaction.

²⁶¹ Redaction.

²⁶² Redaction.

²⁶³ Redaction.

²⁶⁴ Redaction.

²⁶⁵ Redaction.

²⁶⁶ Redaction.

²⁶⁷ Redaction.

²⁶⁸ Redaction.

²⁶⁹ Redaction.

²⁷⁰ Redaction.

²⁷¹ Redaction.

²⁷² Redaction.

²⁷³ Redaction.

²⁷⁴ Redaction.

²⁷⁵ Redaction.

Number of Type 1 Units with a Provisional Acceptance Certificate or Qualified Provisional Acceptance Certificate	Availability Benchmark for Type 1 Units: Monday to Friday inclusive	Availability Benchmark for Type 1 Units: Saturday	Availability Benchmark for Type 1 Units: Sunday
44	<input type="checkbox"/> ²⁷⁷	<input type="checkbox"/> ²⁷⁸	<input type="checkbox"/> ²⁷⁹
45	<input type="checkbox"/> ²⁸⁰	<input type="checkbox"/> ²⁸¹	<input type="checkbox"/> ²⁸²
46	<input type="checkbox"/> ²⁸³	<input type="checkbox"/> ²⁸⁴	<input type="checkbox"/> ²⁸⁵
47	<input type="checkbox"/> ²⁸⁶	<input type="checkbox"/> ²⁸⁷	<input type="checkbox"/> ²⁸⁸
48	<input type="checkbox"/> ²⁸⁹	<input type="checkbox"/> ²⁹⁰	<input type="checkbox"/> ²⁹¹
49	<input type="checkbox"/> ²⁹²	<input type="checkbox"/> ²⁹³	<input type="checkbox"/> ²⁹⁴
50	<input type="checkbox"/> ²⁹⁵	<input type="checkbox"/> ²⁹⁶	<input type="checkbox"/> ²⁹⁷

²⁷⁶ Redaction.

²⁷⁷ Redaction.

²⁷⁸ Redaction.

²⁷⁹ Redaction.

²⁸⁰ Redaction.

²⁸¹ Redaction.

²⁸² Redaction.

²⁸³ Redaction.

²⁸⁴ Redaction.

²⁸⁵ Redaction.

²⁸⁶ Redaction.

²⁸⁷ Redaction.

²⁸⁸ Redaction.

²⁸⁹ Redaction.

²⁹⁰ Redaction.

²⁹¹ Redaction.

²⁹² Redaction.

²⁹³ Redaction.

²⁹⁴ Redaction.

²⁹⁵ Redaction.

²⁹⁶ Redaction.

²⁹⁷ Redaction.

Number of Type 1 Units with a Provisional Acceptance Certificate or Qualified Provisional Acceptance Certificate	Availability Benchmark for Type 1 Units: Monday to Friday inclusive	Availability Benchmark for Type 1 Units: Saturday	Availability Benchmark for Type 1 Units: Sunday
51	□ ²⁹⁸	□ ²⁹⁹	□ ³⁰⁰
52	□ ³⁰¹	□ ³⁰²	□ ³⁰³
53	□ ³⁰⁴	□ ³⁰⁵	□ ³⁰⁶
54	□ ³⁰⁷	□ ³⁰⁸	□ ³⁰⁹
55	□ ³¹⁰	□ ³¹¹	□ ³¹²

²⁹⁸ Redaction.

²⁹⁹ Redaction.

³⁰⁰ Redaction.

³⁰¹ Redaction.

³⁰² Redaction.

³⁰³ Redaction.

³⁰⁴ Redaction.

³⁰⁵ Redaction.

³⁰⁶ Redaction.

³⁰⁷ Redaction.

³⁰⁸ Redaction.

³⁰⁹ Redaction.

³¹⁰ Redaction.

³¹¹ Redaction.

³¹² Redaction.

Type 2 Units:

Number of Type 2 Units with a Provisional Acceptance Certificate or Qualified Provisional Acceptance Certificate	Availability Benchmark for Type 2 Units: Monday to Friday inclusive	Availability Benchmark for Type 2 Units: Saturday	Availability Benchmark for Type 2 Units: Sunday
1	³¹³	³¹⁴	³¹⁵
2	³¹⁶	³¹⁷	³¹⁸
3	³¹⁹	³²⁰	³²¹
4	³²²	³²³	³²⁴
5	³²⁵	³²⁶	³²⁷
6	³²⁸	³²⁹	³³⁰
7	³³¹	³³²	³³³

³¹³ Redaction.

³¹⁴ Redaction.

³¹⁵ Redaction.

³¹⁶ Redaction.

³¹⁷ Redaction.

³¹⁸ Redaction.

³¹⁹ Redaction.

³²⁰ Redaction.

³²¹ Redaction.

³²² Redaction.

³²³ Redaction.

³²⁴ Redaction.

³²⁵ Redaction.

³²⁶ Redaction.

³²⁷ Redaction.

³²⁸ Redaction.

³²⁹ Redaction.

³³⁰ Redaction.

³³¹ Redaction.

³³² Redaction.

³³³ Redaction.

Number of Type 2 Units with a Provisional Acceptance Certificate or Qualified Provisional Acceptance Certificate	Availability Benchmark for Type 2 Units: Monday to Friday inclusive	Availability Benchmark for Type 2 Units: Saturday	Availability Benchmark for Type 2 Units: Sunday
8	<input type="checkbox"/> ³³⁴	<input type="checkbox"/> ³³⁵	<input type="checkbox"/> ³³⁶
9	<input type="checkbox"/> ³³⁷	<input type="checkbox"/> ³³⁸	<input type="checkbox"/> ³³⁹
10	<input type="checkbox"/> ³⁴⁰	<input type="checkbox"/> ³⁴¹	<input type="checkbox"/> ³⁴²
11	<input type="checkbox"/> ³⁴³	<input type="checkbox"/> ³⁴⁴	<input type="checkbox"/> ³⁴⁵
12	<input type="checkbox"/> ³⁴⁶	<input type="checkbox"/> ³⁴⁷	<input type="checkbox"/> ³⁴⁸
13	<input type="checkbox"/> ³⁴⁹	<input type="checkbox"/> ³⁵⁰	<input type="checkbox"/> ³⁵¹
14	<input type="checkbox"/> ³⁵²	<input type="checkbox"/> ³⁵³	<input type="checkbox"/> ³⁵⁴
15	<input type="checkbox"/> ³⁵⁵	<input type="checkbox"/> ³⁵⁶	<input type="checkbox"/> ³⁵⁷

³³⁴ Redaction.

³³⁵ Redaction.

³³⁶ Redaction.

³³⁷ Redaction.

³³⁸ Redaction.

³³⁹ Redaction.

³⁴⁰ Redaction.

³⁴¹ Redaction.

³⁴² Redaction.

³⁴³ Redaction.

³⁴⁴ Redaction.

³⁴⁵ Redaction.

³⁴⁶ Redaction.

³⁴⁷ Redaction.

³⁴⁸ Redaction.

³⁴⁹ Redaction.

³⁵⁰ Redaction.

³⁵¹ Redaction.

³⁵² Redaction.

³⁵³ Redaction.

³⁵⁴ Redaction.

³⁵⁵ Redaction.

Number of Type 2 Units with a Provisional Acceptance Certificate or Qualified Provisional Acceptance Certificate	Availability Benchmark for Type 2 Units: Monday to Friday inclusive	Availability Benchmark for Type 2 Units: Saturday	Availability Benchmark for Type 2 Units: Sunday
16	<input type="checkbox"/> ³⁵⁸	<input type="checkbox"/> ³⁵⁹	<input type="checkbox"/> ³⁶⁰
17	<input type="checkbox"/> ³⁶¹	<input type="checkbox"/> ³⁶²	<input type="checkbox"/> ³⁶³
18	<input type="checkbox"/> ³⁶⁴	<input type="checkbox"/> ³⁶⁵	<input type="checkbox"/> ³⁶⁶
19	<input type="checkbox"/> ³⁶⁷	<input type="checkbox"/> ³⁶⁸	<input type="checkbox"/> ³⁶⁹
20	<input type="checkbox"/> ³⁷⁰	<input type="checkbox"/> ³⁷¹	<input type="checkbox"/> ³⁷²
21	<input type="checkbox"/> ³⁷³	<input type="checkbox"/> ³⁷⁴	<input type="checkbox"/> ³⁷⁵
22	<input type="checkbox"/> ³⁷⁶	<input type="checkbox"/> ³⁷⁷	<input type="checkbox"/> ³⁷⁸

³⁵⁶ Redaction.

³⁵⁷ Redaction.

³⁵⁸ Redaction.

³⁵⁹ Redaction.

³⁶⁰ Redaction.

³⁶¹ Redaction.

³⁶² Redaction.

³⁶³ Redaction.

³⁶⁴ Redaction.

³⁶⁵ Redaction.

³⁶⁶ Redaction.

³⁶⁷ Redaction.

³⁶⁸ Redaction.

³⁶⁹ Redaction.

³⁷⁰ Redaction.

³⁷¹ Redaction.

³⁷² Redaction.

³⁷³ Redaction.

³⁷⁴ Redaction.

³⁷⁵ Redaction.

³⁷⁶ Redaction.

³⁷⁷ Redaction.

³⁷⁸ Redaction.

Number of Type 2 Units with a Provisional Acceptance Certificate or Qualified Provisional Acceptance Certificate	Availability Benchmark for Type 2 Units: Monday to Friday inclusive	Availability Benchmark for Type 2 Units: Saturday	Availability Benchmark for Type 2 Units: Sunday
23	<input type="text" value="379"/>	<input type="text" value="380"/>	<input type="text" value="381"/>
24	<input type="text" value="382"/>	<input type="text" value="383"/>	<input type="text" value="384"/>
25	<input type="text" value="385"/>	<input type="text" value="386"/>	<input type="text" value="387"/>
26	<input type="text" value="388"/>	<input type="text" value="389"/>	<input type="text" value="390"/>
27	<input type="text" value="391"/>	<input type="text" value="392"/>	<input type="text" value="393"/>
28	<input type="text" value="394"/>	<input type="text" value="395"/>	<input type="text" value="396"/>
29	<input type="text" value="397"/>	<input type="text" value="398"/>	<input type="text" value="399"/>
30	<input type="text" value="400"/>	<input type="text" value="401"/>	<input type="text" value="402"/>

³⁷⁹ Redaction.

³⁸⁰ Redaction.

³⁸¹ Redaction.

³⁸² Redaction.

³⁸³ Redaction.

³⁸⁴ Redaction.

³⁸⁵ Redaction.

³⁸⁶ Redaction.

³⁸⁷ Redaction.

³⁸⁸ Redaction.

³⁸⁹ Redaction.

³⁹⁰ Redaction.

³⁹¹ Redaction.

³⁹² Redaction.

³⁹³ Redaction.

³⁹⁴ Redaction.

³⁹⁵ Redaction.

³⁹⁶ Redaction.

³⁹⁷ Redaction.

³⁹⁸ Redaction.

³⁹⁹ Redaction.

⁴⁰⁰ Redaction.

Number of Type 2 Units with a Provisional Acceptance Certificate or Qualified Provisional Acceptance Certificate	Availability Benchmark for Type 2 Units: Monday to Friday inclusive	Availability Benchmark for Type 2 Units: Saturday	Availability Benchmark for Type 2 Units: Sunday
31	<input type="text" value="403"/>	<input type="text" value="404"/>	<input type="text" value="405"/>
32	<input type="text" value="406"/>	<input type="text" value="407"/>	<input type="text" value="408"/>
33	<input type="text" value="409"/>	<input type="text" value="410"/>	<input type="text" value="411"/>
34	<input type="text" value="412"/>	<input type="text" value="413"/>	<input type="text" value="414"/>
35	<input type="text" value="415"/>	<input type="text" value="416"/>	<input type="text" value="417"/>
36	<input type="text" value="418"/>	<input type="text" value="419"/>	<input type="text" value="420"/>
37	<input type="text" value="421"/>	<input type="text" value="422"/>	<input type="text" value="423"/>

401 Redaction.

402 Redaction.

403 Redaction.

404 Redaction.

405 Redaction.

406 Redaction.

407 Redaction.

408 Redaction.

409 Redaction.

410 Redaction.

411 Redaction.

412 Redaction.

413 Redaction.

414 Redaction.

415 Redaction.

416 Redaction.

417 Redaction.

418 Redaction.

419 Redaction.

420 Redaction.

421 Redaction.

422 Redaction.

423 Redaction.

Number of Type 2 Units with a Provisional Acceptance Certificate or Qualified Provisional Acceptance Certificate	Availability Benchmark for Type 2 Units: Monday to Friday inclusive	Availability Benchmark for Type 2 Units: Saturday	Availability Benchmark for Type 2 Units: Sunday
38	<input type="text"/>	<input type="text"/>	<input type="text"/>
39	<input type="text"/>	<input type="text"/>	<input type="text"/>
40	<input type="text"/>	<input type="text"/>	<input type="text"/>
41	<input type="text"/>	<input type="text"/>	<input type="text"/>
42	<input type="text"/>	<input type="text"/>	<input type="text"/>
43	<input type="text"/>	<input type="text"/>	<input type="text"/>
44	<input type="text"/>	<input type="text"/>	<input type="text"/>
45	<input type="text"/>	<input type="text"/>	<input type="text"/>

⁴²⁴ Redaction.

⁴²⁵ Redaction.

⁴²⁶ Redaction.

⁴²⁷ Redaction.

⁴²⁸ Redaction.

⁴²⁹ Redaction.

⁴³⁰ Redaction.

⁴³¹ Redaction.

⁴³² Redaction.

⁴³³ Redaction.

⁴³⁴ Redaction.

⁴³⁵ Redaction.

⁴³⁶ Redaction.

⁴³⁷ Redaction.

⁴³⁸ Redaction.

⁴³⁹ Redaction.

⁴⁴⁰ Redaction.

⁴⁴¹ Redaction.

⁴⁴² Redaction.

⁴⁴³ Redaction.

⁴⁴⁴ Redaction.

⁴⁴⁵ Redaction.

Number of Type 2 Units with a Provisional Acceptance Certificate or Qualified Provisional Acceptance Certificate	Availability Benchmark for Type 2 Units: Monday to Friday inclusive	Availability Benchmark for Type 2 Units: Saturday	Availability Benchmark for Type 2 Units: Sunday
46	[REDACTED] ⁴⁴⁸	[REDACTED] ⁴⁴⁹	[REDACTED] ⁴⁵⁰
47	[REDACTED] ⁴⁵¹	[REDACTED] ⁴⁵²	[REDACTED] ⁴⁵³
48	[REDACTED] ⁴⁵⁴	[REDACTED] ⁴⁵⁵	[REDACTED] ⁴⁵⁶
49	[REDACTED] ⁴⁵⁷	[REDACTED] ⁴⁵⁸	[REDACTED] ⁴⁵⁹
50	[REDACTED] ⁴⁶⁰	[REDACTED] ⁴⁶¹	[REDACTED] ⁴⁶²
51	[REDACTED] ⁴⁶³	[REDACTED] ⁴⁶⁴	[REDACTED] ⁴⁶⁵
52	[REDACTED] ⁴⁶⁶	[REDACTED] ⁴⁶⁷	[REDACTED] ⁴⁶⁸

⁴⁴⁶ Redaction.

⁴⁴⁷ Redaction.

⁴⁴⁸ Redaction.

⁴⁴⁹ Redaction.

⁴⁵⁰ Redaction.

⁴⁵¹ Redaction.

⁴⁵² Redaction.

⁴⁵³ Redaction.

⁴⁵⁴ Redaction.

⁴⁵⁵ Redaction.

⁴⁵⁶ Redaction.

⁴⁵⁷ Redaction.

⁴⁵⁸ Redaction.

⁴⁵⁹ Redaction.

⁴⁶⁰ Redaction.

⁴⁶¹ Redaction.

⁴⁶² Redaction.

⁴⁶³ Redaction.

⁴⁶⁴ Redaction.

⁴⁶⁵ Redaction.

⁴⁶⁶ Redaction.

⁴⁶⁷ Redaction.

⁴⁶⁸ Redaction.

Number of Type 2 Units with a Provisional Acceptance Certificate or Qualified Provisional Acceptance Certificate	Availability Benchmark for Type 2 Units: Monday to Friday inclusive	Availability Benchmark for Type 2 Units: Saturday	Availability Benchmark for Type 2 Units: Sunday
53	<input type="text"/>	<input type="text"/>	<input type="text"/>
54	<input type="text"/>	<input type="text"/>	<input type="text"/>
55	<input type="text"/>	<input type="text"/>	<input type="text"/>
56	<input type="text"/>	<input type="text"/>	<input type="text"/>
57	<input type="text"/>	<input type="text"/>	<input type="text"/>
58	<input type="text"/>	<input type="text"/>	<input type="text"/>
59	<input type="text"/>	<input type="text"/>	<input type="text"/>
60	<input type="text"/>	<input type="text"/>	<input type="text"/>

⁴⁶⁹ Redaction.

⁴⁷⁰ Redaction.

⁴⁷¹ Redaction.

⁴⁷² Redaction.

⁴⁷³ Redaction.

⁴⁷⁴ Redaction.

⁴⁷⁵ Redaction.

⁴⁷⁶ Redaction.

⁴⁷⁷ Redaction.

⁴⁷⁸ Redaction.

⁴⁷⁹ Redaction.

⁴⁸⁰ Redaction.

⁴⁸¹ Redaction.

⁴⁸² Redaction.

⁴⁸³ Redaction.

⁴⁸⁴ Redaction.

⁴⁸⁵ Redaction.

⁴⁸⁶ Redaction.

⁴⁸⁷ Redaction.

⁴⁸⁸ Redaction.

⁴⁸⁹ Redaction.

⁴⁹⁰ Redaction.

SCHEDULE 5.2

Cancellations Regime

1. CANCELLATION PAYMENT

The Cancellation Payment for any Railway Period shall be calculated by the Operator within five Working Days of the end of each such Railway Period in accordance with this Schedule 5.2 and invoiced in accordance with paragraph 12 (*Indexation, Payment and Liability*) of Schedule 5.5 (*Performance Regime General Provisions*).

2. ☐⁴⁹³

3. ☐⁴⁹⁴

4. ☐⁴⁹⁵

⁴⁹¹ Redaction.

⁴⁹² Redaction.

⁴⁹³ Redaction.

⁴⁹⁴ Redaction.

⁴⁹⁵ Redaction.

SCHEDULE 5.3

Delay Regime

1. DELAY PAYMENT

The Delay Payment for any Railway Period shall be calculated by the Operator within five Working Days of the end of each such Railway Period in accordance with this Schedule 5.3 and invoiced in accordance with paragraph 12 (*Indexation, Payment and Liability*) of Schedule 5.5 (*Performance Regime General Provisions*).

2. []⁴⁹⁶

3. []⁴⁹⁷

⁴⁹⁶ Redaction.

⁴⁹⁷ Redaction.

SCHEDULE 5.4

□⁴⁹⁸

⁴⁹⁸ Redaction.

APPENDIX TO SCHEDULE 5.4

□⁴⁹⁹

Date of Audit: [_____]

⁴⁹⁹ Redaction.

SCHEDULE 5.5

Performance Regime General Provisions

1. SCOPE

The TSA Performance Regime in this Schedule 5 shall apply to each Unit in respect of which a Provisional Acceptance Certificate or Qualified Provisional Acceptance Certificate has been issued under the MSA, provided that where a Unit is:

- (a) a Conditional QPAC Unit, then:
 - (i) no Availability Deduction shall be made pursuant to paragraph 3.4 of Schedule 5.1 (*Availability Regime*) in relation to a Conditional QPAC Unit where it is Unavailable on any day and the number of Units of the same Unit Type that is Available and Deemed Available on that day is less than the Availability Benchmark for that Unit Type and that day; but
 - (ii) the Availability, Deemed Availability or Unavailability (as appropriate) of a Conditional QPAC Unit on any day shall be taken account of in the comparison of aggregate Availability and Deemed Availability of the relevant Unit Type on that day against the Availability Benchmark for that Unit Type and that day pursuant to paragraph 3.4 of Schedule 5.1 to determine whether:
 - (A) an Availability Deduction should be made in relation to other Units of that Unit Type that are Unavailable on that day; and
 - (B) liquidated damages are payable under paragraph 4.10 of schedule 6 (*Delivery and Acceptance*) of the MSA by the TMM to the Operator in relation to that Conditional QPAC Unit;
- (b) an MSA Fault Unit, then:
 - (i) no Availability Deduction shall be made under this Agreement in relation to an MSA Fault Unit where it is Unavailable on any day and the number of Units of the same Unit Type that is Available and Deemed Available on that day is less than the Availability Benchmark for that Unit Type and that day; but
 - (ii) the Availability, Deemed Availability or Unavailability (as appropriate) of an MSA Fault Unit on any day shall be taken account of in the comparison of aggregate Availability and Deemed Availability of the relevant Unit Type on that day against the Availability Benchmark for that Unit Type and that day pursuant to paragraph 3.4 of Schedule 5.1 to determine whether:
 - (A) an Availability Deduction should be made in relation to other Units of that Unit Type that are Unavailable on that day; and
 - (B) liquidated damages are payable under paragraph 8.1 of schedule 14 (*Design Life, Warranties and Fault Rectification*) of the MSA by the TMM to the Operator in relation to that MSA Fault Unit; or

- (c) a Testing Unit, the TSA Performance Regime shall not apply during the period that that Testing Unit is subject to ERTMS/ATO testing in accordance with clause 8.11 of the MSA or, if later, until the date when the Testing Unit is returned to the TMM by the Operator; or
- (d) subject to a sub-lease in relation to which it is intended that the relevant Units are to be maintained at depots other than a Designated Depot, then, unless:
 - (i) the Owner and the TMM have each given their consent to such sub-leasing in accordance with clause 13.31;
 - (ii) an Authorisation to Vary has been issued by the Secretary of State pursuant to schedule 4.3 (*Secretary of State Authorisation of Variations*) of the Umbrella Agreement (or, after the Umbrella Agreement has expired or terminated, schedule 5.3 (*Secretary of State Authorisation of Variations*) of the Maintenance Direct Agreement); and
 - (iii) the Operator can demonstrate to the reasonable satisfaction of the TMM and the Owner that it would be reasonable, given the nature of the sub-leasing, including the stopping pattern of the railway passenger services for which the sub-leased Units shall be used and the maintenance arrangements, for those Units to continue to be subject to the TSA Performance Regime,

the TSA Performance Regime shall not apply to such Unit until the Unit ceases to be subject to such sub-lease and either:

- (A) if the inspection of that Unit under clause 13.36 confirms such Unit is in the Redelivery Condition (TSA), completion of that inspection; or
- (B) otherwise, such Unit has been brought into the Redelivery Condition (TSA).

2. PROCEDURES FOR IMPLEMENTATION

2.1 The Operator and the TMM shall jointly develop, implement and administer procedures which properly and fairly implement this TSA Performance Regime (including relevant procedures relating to the subsequent re-designation of a No Fault Found as a Fault pursuant to paragraph 3.5(d) of Schedule 1.5 (*Fault Notification Procedure*)), such procedures to be agreed no later than one month prior to the Provisional Acceptance or Qualified Provisional Acceptance of the First Unit.

2.2 Without limiting paragraph 2.1, the TMM and the Operator shall each make available as reasonably required, a representative based at each Designated Depot ⁵⁰⁰ who will liaise with each other and with both the Operator's and the TMM's control offices in relation to all matters arising in connection with the operation and implementation of each of the Availability Regime, the Cancellations Regime, the Delay Regime and the SQM Regime set out in this Schedule 5.5.

2.3 The TMM and the Operator shall each create and maintain all appropriate records necessary to effectively administer the procedures agreed under paragraph 2.1.

⁵⁰⁰ Redaction.

3. DUTIES

3.1 The Operator and the TMM shall act in good faith in the performance of their respective rights and obligations under the TSA Performance Regime in this Schedule 5.5.

3.2 The Operator shall exercise a balanced judgment to reconcile the potentially conflicting objectives that it has of:

- (a) acting in best interests of all passengers; and
- (b) acting to minimise disruption to the Timetable (as defined in the Franchise Agreement) in withdrawing any Unit from service and disembarking passengers from that Unit, in each case following a Cancellation.

3.3 The TMM acknowledges that in the case of any such withdrawal and disembarkation, the Operator shall be acting in the best interests of passengers and so as to minimise disruption to the Timetable where such withdrawal has been required by Network Rail in accordance with the terms of the Track Access Agreement.

4. AVAILABILITY RECORDING

The Operator shall on each day in a Railway Period, on an aggregated and a Diagram - by - Diagram basis, record in the Daily Performance Record for that day:

- (a) the number of Units that are:
 - (i) Available;
 - (ii) Unavailable; and
 - (iii) Deemed Available,

in each case, at their respective Entry Times on that day; and

- (b) where any Unit is Unavailable on that day:
 - (i) the reason why that Unit is Unavailable;
 - (ii) the number of Diagram Legs comprised in the relevant Diagram and the point and time at which that Unavailable Unit was scheduled to enter service for the first time on that Diagram (or any other Diagram agreed with the TMM, together, where relevant, with the number of Diagram Legs comprised in such other Diagram agreed with the TMM); and
 - (iii) whether any Replacement Unit was made available by the TMM, details of the Unavailable Unit which it replaced and the number of Diagram Legs that were operated by the Replacement Unit.

5. CANCELLATIONS RECORDING

The Operator shall on each day in a Railway Period, record, and where appropriate, allocate, in the Daily Performance Record for that day:

- (a) the number of Cancellations that occur in the Performance Core;

- (b) the number of Cancellations that occur in the Wider Thameslink Network;
- (c) within each of those numbers, the number of Cancellations involving the disembarkation of passengers, as appropriate, within the Performance Core and within the Wider Thameslink Network and whether each such disembarkation was at a station or otherwise; and
- (d) whether any Replacement Unit was made available by the TMM, details of the Cancelled Unit which it replaced and the number of Diagram Legs that were operated by the Replacement Unit.

6. RELIABILITY RECORDING

Daily Recording and Reporting

6.1 The Operator shall on each day in a Railway Period, on an aggregated and, where appropriate, a Diagram - by - Diagram basis, record and, where appropriate, allocate in the Daily Performance Record for that day:

- (a) the number of Delay Incidents and Relevant Delay Incidents;
- (b) the number of Primary Minutes Delay arising from each Relevant Delay Incident;
- (c) the total number of Primary Minutes Delay separately attributable to MSA Faults, Faults and to No Fault Found;
- (d) the total number of Operator Minutes Delay;
- (e) the total number of Network Rail Minutes Delay; and
- (f) the total number of Non-Service Affecting Faults.

Agreement of Allocation of Primary Minutes Delay

6.2 The Operator and the TMM shall each use all reasonable endeavours to agree within two Working Days of any Minutes Delays being notified to the TMM under paragraph 6.1:

- (a) whether the Primary Minutes Delay, the Operator Minutes Delay or Network Rail Minutes Delay allocated by the Operator in paragraph 6.1 are correctly allocated; and
- (b) whether the Network Rail data provided under the Network Monitoring System is correct in allocating Minutes Delay to the Operator, and if so, to what extent those Minutes Delay resulted from an Allowable Failure.

Disputes

6.3 Any disputes as to the allocation of any Primary Minutes Delay or Minutes Delay shall be referred to an Expert pursuant to the Applicable Expert Determination Provisions for an interim decision under those Applicable Expert Determination Provisions.

7. SQM RECORDING

SQM Faults

7.1 To the extent the Operator carries out an SQM Audit in relation to any Unit on any day in a Railway Period or otherwise believes an SQM Non-Audit Fault has occurred on that Unit, it shall record in the Daily Performance Record for that day by means of electronic data transfer, the number of SQM Audit Faults and alleged SQM Non-Audit Faults it has observed on that Unit (identifying the Vehicles comprising that Unit to which those SQM Audit Faults and alleged SQM Non-Audit Faults relate) on and in accordance with the requirements of a SQM Scorecard (in the case of an SQM Audit Fault) and on the basis of the information required on by an SQM Scorecard (in the case of an SQM Non-Audit Fault).

7.2 The Operator shall notify the TMM of the results of any SQM Audit promptly upon the completion of that SQM Audit notwithstanding the requirement pursuant to paragraph 7.1 to record those results in the relevant Daily Performance Record.

7.3 The Operator shall not be required to separately notify the TMM of any alleged SQM Non-Audit Fault to the extent that the Operator has recorded the relevant data in the relevant Daily Performance Record in accordance with paragraph 7.1.

SQM Register

7.4 The TMM shall maintain the SQM Register and record each day on it:

- (a) all SQM Faults notified to it on that day by the Operator in accordance with paragraphs 7.1 and 7.2;
- (b) all other SQM Faults that the TMM otherwise becomes aware of on that day;
- (c) the date and time that the TMM was notified by the Operator pursuant to paragraph 7.1 or 7.2 or otherwise first became aware of each such SQM Fault;
- (d) the date and time that the TMM challenged the notification by the Operator of an alleged SQM Non-Audit Fault;
- (e) the date and time within which each such SQM Fault is to be rectified; and
- (f) the date and time that each such SQM Fault has been rectified by the TMM.

7.5 The Operator shall have unrestricted access to the SQM Register to verify that all SQM Faults are being registered and/or that any such SQM Fault has been rectified within the permitted rectification period.

8. DAILY PERFORMANCE RECORD

8.1 The Operator shall prepare a Daily Performance Record containing all the information required by this Schedule 5.5 to be recorded in the Daily Performance Record. The TMM shall assist the Operator in preparing each Daily Performance Record by, in a timely manner:

- (a) contributing all performance data that the TMM is aware of that will be the subject matter of the relevant Daily Performance Record; and

(b) updating any previous performance data that the TMM had advised of.

8.2 The Operator shall provide each Daily Performance Record, including any relevant performance data that the Operator has received from Network Rail and it otherwise possesses, to the TMM (with a copy to the Owner) on the next Working Day after each such record has been compiled by the Operator.

9. PERFORMANCE REPORTS

The provisions of paragraph 6 (*Performance Reports*) of Schedule 9 (*Contract Management*) shall apply in relation to the content, submission and discussion of any performance data that relates to the TMM's performance under this TSA Performance Regime.

10. CHALLENGE

Where the TMM wishes to challenge any part of Daily Performance Record provided by the Operator pursuant to this Schedule 5.5, the TMM shall promptly (and in any event, within two Working Days of receipt) provide the Operator with the details and reasons for that challenge. Any Party may subsequently refer any dispute relating to such challenge to an Expert pursuant to the Applicable Expert Determination Provisions for an interim decision under those Applicable Expert Determination Provisions.

11. OPERATOR'S NOMINEE

11.1 Where in this Schedule 5.5, the Operator is entitled to exercise a right or obliged to carry out any obligation in relation to the recording and reporting of any aspect of the TMM's performance under this TSA Performance Regime, that right or obligation, as the case may be, may be exercised or carried out on behalf of the Operator by a nominee notified to the TMM by the Operator from time to time.

11.2 To the extent the Operator does appoint a nominee pursuant to paragraph 11.1 the Operator shall procure that that nominee exercises any such right or carries out any such obligation in accordance with the relevant terms of this Schedule 5.5.

12. INDEXATION, PAYMENT AND LIABILITY

Indexation

12.1 Each currency value stated in this TSA Performance Regime shall be adjusted on the first day of April each year by the application of the Indexation Adjustment Formula set out in Schedule 6.5 (*Indexation Adjustment Formula*), with the resulting figure being rounded up to the nearest whole pound.

Payment

12.2 Within 20 Working Days of the end of each Railway Period, the Operator shall deliver to the TMM a statement setting out all sums payable by the TMM to the Operator under this TSA Performance Regime (including amounts arising from incidents' previously considered No Fault Found re-designated as Faults pursuant to paragraph 3.5(d) of Schedule 1.5 (*Fault Notification Procedure*)), together with such supporting information as is reasonably required to verify the figures shown in the statement.

12.3 The TMM shall notify the Operator whether or not it agrees with the Operator's statement within 10 Working Days of receipt of that statement. In the event of any dispute, or

if the TMM does not provide a notification to the Operator pursuant to this paragraph 12.3 within 10 Working Days of the TMM's receipt of the Operator's statement in accordance with clause 39.4, either Party may subsequently refer the matter to an Expert pursuant to the Applicable Expert Determination Provisions for an interim decision under those Applicable Expert Determination Provisions, and paragraph 12.4 shall apply.

12.4 If, when any payment falls to be made in accordance with the provisions of this TSA Performance Regime, relevant data remains disputed between the Parties, such payment shall be made on the basis that the disputed data as provided by the Operator, is correct and any appropriate adjustment to any such payment shall be made when the dispute over that data is resolved.

12.5 The Operator shall, within 5 Working Days of the TMM's notification (or, in the absence of a notification from the TMM, the end of the 10 Working Day period under paragraph 12.3), submit an invoice (that takes into account any matters raised in the TMM's notification in accordance with paragraph 12.4) to the TMM in relation to the Performance Payments that the Operator is entitled to receive, in each case at the address specified in clause 39 (*Notices*). The TMM shall pay the amount set out in the invoice, in arrears, no later than 28 days following receipt of the invoice.

12.6 The provisions of clauses 18.16 to 18.28 (inclusive) shall apply in relation to all Performance Payments.

12.7 The Operator shall be entitled to set-off any undisputed amounts of Performance Payments payable to it by the TMM, which are not paid on the due date and remain unpaid, against the next TMM Payment payable by it to the TMM.

Liability

12.8 The TMM's maximum liability to pay Performance Payments under this TSA Performance Regime shall not in the aggregate exceed in any Contract Year the limit specified in clause 27.17, provided that:

(a) ☐⁵⁰¹

(b) ☐⁵⁰²

(c) ☐⁵⁰³

(d) ☐⁵⁰⁴

(e) ☐⁵⁰⁵

12.9 ☐⁵⁰⁶

⁵⁰¹ Redaction.

⁵⁰² Redaction.

⁵⁰³ Redaction.

⁵⁰⁴ Redaction.

⁵⁰⁵ Redaction.

Performance Regime: No double remedy

12.10 Subject to:

- (a) any other express right of the Operator and/or the Owner pursuant to this Agreement and/or the MSA; and
- (b) each of the Operator's and the Owner's rights to claim, on or after termination of this Agreement, amounts from the TMM pursuant to paragraph 5.1 of Schedule 13.1 (*TMM Events of Default*) or paragraph 2.1 of Schedule 13.4 ([⁵⁰⁷]),

the sole remedy of the Operator in respect of service performance failures of the kind described in the TSA Performance Regime shall be the sums payable by the TMM under the TSA Performance Regime, and such sums shall be full and final satisfaction of the TMM's liability to the Operator under this Agreement for the effects of such failures, such that the TMM shall not be liable to the Operator in respect of any loss of revenue or other losses described in clause 27.14 arising from any such failure save in relation to the payment of relevant sums under the TSA Performance Regime. The Owner shall not be entitled to treat the TMM's failure to comply with the TSA Performance Regime as a TSA TMM Event of Default unless the limits set out in paragraph 12.8 have been reached.

⁵⁰⁶ Redaction.

⁵⁰⁷ Redaction.

SCHEDULE 6

SERVICE PAYMENTS

Schedule 6.1:	Service Payments
Schedule 6.2:	Ramp-up Period Service Payments
Schedule 6.3:	Steady State Period Service Payments
Schedule 6.4:	Additional Services Payments
Schedule 6.5:	Indexation Adjustment Formula
Schedule 6.6:	Operation of the Balancing Payments Account

SCHEDULE 6.1

Service Payments

1. SERVICE PAYMENTS AND TMM PAYMENTS

Service Payments

1.1 The Service Payment for any Railway Period shall be an amount equal to:

□⁵⁰⁸

Balancing Cost Payment

1.2 The Balancing Cost Payment for any Railway Period shall be an amount equal to:

□⁵⁰⁹

TMM Payment

1.3 The TMM Payment for any Railway Period shall be an amount equal to:

□⁵¹⁰

2. CALCULATION OF SERVICE PAYMENTS

Periodic Balancing Cost Payment

2.1 The Periodic Balancing Cost Payment for any Railway Period:

(a) during the Ramp-Up Period shall be an amount equal to:

□⁵¹¹

Periodic TMM Payment

2.2 The Periodic TMM Payment for any Railway Period shall be an amount equal to:

□⁵¹²

Base Standard Service Payment

2.3 The Base Standard Service Payment for any Railway Period shall be an amount equal to:

⁵⁰⁸ Redaction.

⁵⁰⁹ Redaction.

⁵¹⁰ Redaction.

⁵¹¹ Redaction.

⁵¹² Redaction.

[]⁵¹³

2.4 Where a Reference Contract Year starts or ends during a Railway Period, £SP shall be determined as if references in paragraph 1 (*Service Payments and TMM Payments*) and this paragraph 2 to a Railway Period were to the part of the Railway Period which falls within that Reference Contract Year, and the relevant calculations shall treat such part of the relevant Railway Period as a complete Railway Period comprising the number of days within that Railway Period that fall within the relevant Reference Contract Year.

2.5 []⁵¹⁴

3. PAYMENTS

3.1 For each Railway Period, the TMM shall prepare and submit an invoice to the Operator in accordance with clause 18 (*Payments*), setting out the calculation of the TMM Payment for that Railway Period in accordance with paragraph 1.3.

3.2 For each Railway Period, the Owner shall prepare and submit an invoice to the Operator in accordance with clause 18 (*Payments*) setting out the determination of the Balancing Cost Payment for that Railway Period in accordance with paragraph 1.2.

3.3 The Operator shall pay to the TMM the TMM Payment that is payable for each Railway Period in accordance with the payment terms set out in clause 18.

3.4 The Operator shall pay to the Owner the Balancing Cost Payment that is payable for each Railway Period in accordance with the payment terms set out in clause 18 and paragraph 12 (*Balancing Cost Payments*) of Schedule 6.6 (*Balancing Payments Accounts*).

3.5 The Owner shall pay to the TMM the Periodic Maintenance Charge that is payable for each Railway Period in accordance with the payment terms set out in clause 18 and paragraph 13 (*Periodic Maintenance Charges*) of Schedule 6.6.

⁵¹³ Redaction.

⁵¹⁴ Redaction.

SCHEDULE 6.2

Ramp-up Period Service Payments

1. GENERAL

1.1 During the Ramp-Up Period, Type 1 Unit Service Payments and Type 2 Unit Service Payments shall each be calculated on the basis of a Daily Service Charge (TSA).

1.2 The amount of any Daily Service Charge (TSA) for a Unit Type shall vary each Reference Contract Year by the mileage band into which the Planned Equivalent Annual Average Mileage Per Unit for that Unit Type and that Reference Contract Year falls. A reconciliation procedure will then be applied:

- (a) at the end of each Reference Contract Year that occurs during the Ramp-Up Period in accordance with paragraph 4 (*Reconciliations in respect of the Ramp-Up Period*); and
- (b) upon the termination of this Agreement, where this occurs during the Ramp-Up Period, in accordance with paragraph 5 (*Reconciliation on Termination*).

1.3 If any calculation of the Planned Equivalent Annual Average Mileage Per Unit or the Equivalent Annual Average Mileage Per Unit for a Unit Type in any Reference Contract Year that is carried out pursuant to this Schedule 6.2 results in an average mileage that is not a whole number, the number of miles shall be rounded down to the nearest complete mile for the purposes of determining the Daily Service Charge (TSA) or the Reconciliation Daily Service Charge relating to that Unit Type in that Reference Contract Year.

2. SETTING DAILY SERVICE CHARGE (TSA) FOR YEARS DURING RAMP-UP PERIOD

Notice of Planned Equivalent Annual Average Mileage Per Unit

2.1 By 1 March in the Contract Year that immediately precedes each Reference Contract Year that occurs during the Ramp-Up Period, the Operator shall, having regard to:

- (a) the Train Plan or Train Plans that it intends to operate and the Expected Delivery Dates of Units that will occur, in each case, during that Reference Contract Year, calculate the Planned Equivalent Annual Average Mileage Per Unit for Type 1 Units and Type 2 Units for that Reference Contract Year in accordance with paragraph 2.2; and
- (b) the tables in paragraphs 2.6 and 2.7,

notify the TMM of the mileage band into which each such Planned Equivalent Annual Average Mileage Per Unit will fall for that Reference Contract Year.

Calculation of Planned Equivalent Annual Average Mileage Per Unit

2.2 The Operator shall calculate the Planned Equivalent Annual Average Mileage Per Unit for each Reference Contract Year that occurs during the Ramp Up Period:

- (a) for Type 1 Units in accordance with the following:

$$T_1\text{PEAAM} = \frac{\sum_{i=1}^{N_{AT_1U}} (UPM_i)}{\sum_{i=1}^{N_{AT_1U}} (UFD_i)} \times \text{RCYD}$$

Where:

$T_1\text{PEAAM}$ means the Planned Equivalent Annual Average Mileage Per Unit for that Reference Contract Year in relation to all Type 1 Units that are forecast to have been Accepted on or prior to the last day of that Reference Contract Year;

N_{AT_1U} means the number of Type 1 Units that are forecast to have been Accepted on or prior to the last day of that Reference Contract Year;

UPM_i means the aggregate mileage planned to be run by the i 'th Type 1 Unit in that Reference Contract Year; and

UFD_i means where the i 'th Type 1 Unit was, or is forecast to be, Accepted:

- (a) prior to the start of that Reference Contract Year, RCYD; or
- (b) during that Reference Contract Year, the number of days commencing on the day after the forecast Acceptance Date of that Type 1 Unit and ending on and including the last day of that Reference Contract Year; and

RCYD means the number of days in that Reference Contract Year.

(b) for Type 2 Units in accordance with the following:

$$T_2\text{PEAAM} = \frac{\sum_{i=1}^{N_{AT_2U}} (UPM_i)}{\sum_{i=1}^{N_{AT_2U}} (UFD_i)} \times \text{RCYD}$$

where

$T_2\text{PEAAM}$ means the Planned Equivalent Annual Average Mileage Per Unit for that Reference Contract Year in relation to all Type 2 Units that are forecast to have been Accepted on or prior to the last day of that Reference Contract Year;

N_{AT_2U} means the number of Type 2 Units that are forecast to have been Accepted on or prior to the last day of that Reference Contract Year;

UPM_i means the aggregate mileage planned to be run by the i 'th Type 2 Unit in that Reference Contract Year; and

UFD_i means where the i 'th Type 2 Unit was, or is forecast to be, Accepted:

- (a) prior to the start of that Reference Contract Year, RCYD; or
- (b) during that Reference Contract Year, the number of days commencing on the day after the forecast Acceptance Date of that Type 2 Unit and ending on and including the last day of that Reference Contract Year; and

RCYD means the number of days in that Reference Contract Year.

Revising the BPA Statement

2.3 ⁵¹⁵

2.3A On the next Working Day after each Railway Period that occurs during the Ramp-Up Period, the TMM shall separately calculate and notify to the Owner:

- (a) ⁵¹⁶.
- (b) ⁵¹⁷

Setting Daily Service Charges (TSA)

2.4 The Daily Service Charge (TSA) for each Unit Type in each Reference Contract Year that occurs during the Ramp-Up Period shall be:

- (a) the amount specified in Column 2 of the table in paragraph 2.6 or 2.7 (as appropriate) that corresponds to the relevant mileage band notified by the Operator pursuant to paragraph 2.1(b); or
- (b) if paragraph 2.8 applies in relation to that Unit Type, the amount agreed or determined in accordance with paragraph 2.8.

2.5 Once a Daily Service Charge (TSA) has been set for any Reference Contract Year that occurs during the Ramp-Up Period, the amount of Daily Service Charge (TSA) that applies in relation to that Reference Contract Year shall be fixed for the duration of that Reference Contract Year at that set amount unless a Run of the TMM Financial Model occurs that has effect during that Reference Contract Year.

2.6 In respect of each Contract Year during the Ramp-Up Period, the mileage bands and related Daily Service Charge (TSA) for Type 1 Units are set out in the following table:

Column 1	Column 2
Equivalent Annual Average Mileage Per Unit – Type 1 Units (miles)	Daily Service Charge (TSA) per Unit (£) (indexed in accordance with the Indexation Adjustment Formula)
 ⁵¹⁸	 ⁵¹⁹

⁵¹⁵ Redaction.

⁵¹⁶ Redaction.

⁵¹⁷ Redaction.

⁵¹⁸ Redaction.

2.7 In respect of each Contract Year during the Ramp-Up Period, the mileage bands and related Daily Service Charge (TSA) for Type 2 Units are set out in the following table:

Column 1	Column 2
Equivalent Annual Average Mileage Per Unit – Type 2 Units (miles)	Daily Service Charge (TSA) per Unit (£) (indexed in accordance with the Indexation Adjustment Formula)
□ ⁵²⁰	□ ⁵²¹

2.8 If the Planned Equivalent Annual Average Mileage Per Unit or the Equivalent Annual Average Mileage Per Unit for either Type 1 Units or Type 2 Units is either:

(a) □⁵²²

(b) □⁵²³

in relation to any Reference Contract Year during the Ramp-Up Period, any of the Operator, the Owner or the TMM shall be entitled to require that a Variation, supported by a Run of the TMM Financial Model is implemented to determine the Daily Service Charge (TSA) per Unit for that Contract Year, to ensure that the Service Payments continue to reflect the anticipated or actual (as applicable) provision of TSA Services during the Ramp-Up Period.

3. SERVICE PAYMENTS IN RESPECT OF THE RAMP-UP PERIOD

Type 1 Unit Service Payments

3.1 On the next Working Day after each Railway Period that occurs during the Ramp-Up Period, the TMM shall separately calculate the Type 1 Unit Service Payment due for that Railway Period in accordance with the following and subject, where applicable, to paragraph 7 (*Events of Loss*):

□⁵²⁴

Type 2 Unit Service Payments

3.2 On the next Working Day after each Railway Period that occurs during the Ramp-Up Period, the TMM shall separately calculate the Type 2 Unit Service Payment due for the Railway Period for which the Service Payments are calculated in accordance with the following and subject, where applicable, to paragraph 7 (*Events of Loss*):

⁵¹⁹ Redaction.

⁵²⁰ Redaction.

⁵²¹ Redaction.

⁵²² Redaction.

⁵²³ Redaction.

⁵²⁴ Redaction.

□⁵²⁵

4. RECONCILIATIONS IN RESPECT OF THE RAMP-UP PERIOD

Notice of Equivalent Annual Average Mileage Per Unit

4.1 Within 30 days of the end of each Reference Contract Year that occurs during the Ramp-Up Period, the Operator shall advise the TMM of:

- (a) the actual mileage run by each of the Type 1 Units and Type 2 Units in the Fleet in that Reference Contract Year; and
- (b) the Equivalent Annual Average Mileage Per Unit for each Type 1 Unit and Type 2 Unit in the Fleet for that Reference Contract Year, calculated in accordance with paragraphs 4.2 and 4.3,

provided that paragraph 5 (*Reconciliation on Termination*) shall also apply in relation to any such Reference Contract Year during the course of which this Agreement is terminated.

Equivalent Annual Average Mileage Per Unit for Type 1 Units

4.2 The Operator shall calculate the Equivalent Annual Average Mileage Per Unit for Type 1 Units for each Reference Contract Year that occurs during the Ramp-Up Period in accordance with the following:

□⁵²⁶

Equivalent Annual Average Mileage Per Unit for Type 2 Units

4.3 The Operator shall calculate the Equivalent Annual Average Mileage Per Unit for Type 2 Units for each Reference Contract Year that occurs during the Ramp-Up Period in accordance with the following:

□⁵²⁷

Calculation and Notification of Annual Reconciliation Adjustment

4.4 Within 14 days of receipt by the TMM of the information specified in paragraph 4.1, the TMM shall calculate, and notify to each of the Operator and the Owner, the following amounts:

- (a) the Reconciliation Daily Service Charge for each Unit Type in relation to the applicable reference Contract Year, determined in accordance with paragraphs 4.5 and 4.6;

⁵²⁵ Redaction.

⁵²⁶ Redaction.

⁵²⁷ Redaction.

- (b) the Reconciled Annual Service Payment (if any) for each Unit Type for the applicable Reference Contract Year, determined or calculated in accordance with paragraphs 4.7, 4.8 and 4.9;
- (c) if Reconciled Annual Service Payments are required pursuant to paragraph 4.7(b), the Annual Reconciliation Adjustment for the applicable Reference Contract Year, calculated in accordance with paragraph 4.10; and
- (d) if an Annual Reconciliation Adjustment applies for the applicable Reference Contract Year, the portions of that Annual Reconciliation Adjustment that are respectively:
 - (i) an Annual BCP Reconciliation Adjustment, calculated in accordance with paragraph 4.11; and
 - (ii) an Annual TMMP Reconciliation Adjustment, calculated in accordance with paragraph 4.12.

Setting Reconciliation Daily Service Charges

4.5 The Reconciliation Daily Service Charge for Type 1 Units in relation to any Reference Contract Year that occurs during the Ramp-Up Period shall be determined either:

- (a) by reference to the mileage band in Column 1 of the table in paragraph 2.6 in which the Equivalent Annual Average Mileage Per Unit for Type 1 Units falls in that Reference Contract Year; or
- (b) if the Equivalent Annual Average Mileage Per Unit for Type 1 Units for that Reference Contract Year is ⁵²⁸, in accordance with paragraph 2.8.

4.6 The Reconciliation Daily Service Charge for Type 2 Units in relation to any Reference Contract Year that occurs during the Ramp-Up Period shall be determined either:

- (a) by reference to the mileage band in Column 1 of the table in paragraph 2.7 in which the Equivalent Annual Average Mileage Per Unit for Type 2 Units falls in that Reference Contract Year; or
- (b) if the Equivalent Annual Average Mileage Per Unit for Type 2 Units for that Reference Contract Year is ⁵²⁹, in accordance with paragraph 2.8.

Reconciled Annual Service Payments

4.7 If, in any Reference Contract Year during the Ramp-Up Period:

- (a) the Reconciliation Daily Service Charge for a Unit Type in relation to that Reference Contract Year (as determined pursuant to paragraph 4.5 or 4.6 (as applicable)) is the same as the Daily Service Charge (TSA) for that Unit Type in that Reference Contract Year (as determined pursuant to paragraph 2.4), then no Reconciled Annual Service Payments shall be calculated and paragraphs 4.9 to 4.17 shall not apply in relation to that Unit Type; or

⁵²⁸ Redaction.

⁵²⁹ Redaction.

- (b) the Reconciliation Daily Service Charge for a Unit Type in relation to that Reference Contract Year (as determined pursuant to paragraph 4.5 or 4.6 (as applicable)) is different from the Daily Service Charge (TSA) for that Unit Type in that Reference Contract Year (as determined pursuant to paragraph 2.4), then the TMM shall calculate the Reconciled Annual Service Payment for that Unit Type in accordance with paragraph 4.8 or 4.9, as appropriate.

Calculation of Reconciled Annual Service Payments for Type 1 Units

4.8 The Reconciled Annual Service Payment for Type 1 Units for any Reference Contract Year that occurs during the Ramp-Up Period shall be:

□⁵³⁰

Calculation of Reconciled Annual Service Payments for Type 2 Units

4.9 The Reconciled Annual Service Payment for Type 2 Units in any Reference Contract Year that occurs during the Ramp-Up Period shall be:

□⁵³¹

Annual Reconciliation Adjustments

4.10 The Annual Reconciliation Adjustment for any Reference Contract Year in the Ramp-Up Period shall be 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 in accordance with paragraphs 3.1 and 3.2; and
- (b) the aggregate of the Reconciled Annual Service Payments for Type 1 Units and Type 2 Units for that Reference Contract Year, calculated in accordance with paragraphs 4.8 and 4.9.

4.11 □⁵³²;

4.12 □⁵³³.

Settlement of Annual Reconciliation Adjustment

4.13 If the aggregate of the Reconciled Annual Service Payments for Type 1 Units and Type 2 Units for any Reference Contract Year during the Ramp-Up Period:

- (a) is greater than the aggregate of Type 1 Unit Service Payments and Type 2 Unit Service Payments calculated for each Railway Period in that Reference Contract Year, then the provisions of paragraphs 4.14 and 4.15 shall apply; or

⁵³⁰ Redaction.

⁵³¹ Redaction.

⁵³² Redaction.

⁵³³ Redaction.

- (b) is less than the aggregate of Type 1 Unit Service Payments and Type 2 Unit Service Payments calculated for each Railway Period in that Reference Contract Year, then the provisions of paragraphs 4.16 and 4.17 shall apply.

4.14 Where paragraph 4.13(a) applies, the Operator shall, subject to paragraph 6 (*Disputes*), pay:

(a) ☐ ⁵³⁴

(b) ☐ ⁵³⁵

in each case, as provided in paragraph 4.15.

4.15 Where the Annual Reconciliation Adjustment is payable by the Operator in accordance with paragraph 4.14:

(a) ☐ ⁵³⁶

(b) ☐ ⁵³⁷

in each case relating to the Railway Period in which such amount is notified (or, if the amount is disputed pursuant to paragraph 6, the Railway Period in which such amount is determined).

4.16 ☐ ⁵³⁸.

4.17 Where paragraph 4.13(b) applies:

(a) ☐ ⁵³⁹

(b) ☐ ⁵⁴⁰

5. RECONCILIATION ON TERMINATION

5.1 If this Agreement is terminated during the course of any Reference Contract Year in the Ramp-Up Period, then:

- (a) the Operator shall advise the TMM and the Owner within 30 days of such termination of:

- (i) the actual mileage run by each of the Type 1 Units and Type 2 Units during the course of the relevant Part Contract Year; and

⁵³⁴ Redaction.

⁵³⁵ Redaction.

⁵³⁶ Redaction.

⁵³⁷ Redaction.

⁵³⁸ Redaction.

⁵³⁹ Redaction.

⁵⁴⁰ Redaction.

- (ii) the Equivalent Annual Average Mileage Per Unit in relation to Type 1 Units and Type 2 Units (as appropriate) for that Reference Contract Year;
- (b) the calculations pursuant to paragraph 4 (*Reconciliations in respect of the Ramp-Up Period*) shall be performed, provided that those calculations shall, where appropriate, be prorated by reference to the number of days, as appropriate, in each Railway Period, part Railway Period and that Part Contract Year; and
- (c) payment of the amount of any Annual Reconciliation Adjustment determined to have accrued as between the TMM, the Owner and the Operator prior to such termination shall be made as soon as reasonably practicable after the agreement or determination of that amount.

5.2 The provisions of this paragraph 5 shall survive the termination or expiry of this Agreement, however caused.

6. DISPUTES

Should the Operator, the Owner and the TMM not reach an agreement on any of the matters referred to in this Schedule 6.2 within 14 days of the Operator, the Owner or the TMM (as the case may be) notifying the other of such disagreement, then a Contract Dispute shall have arisen.

7. EVENTS OF LOSS

If a Type 1 Unit or Type 2 Unit suffers or has suffered an Event of Loss in any Reference Contract Year that occurs during the Ramp-Up Period, then no Type 1 Unit Service Payment and Type 1 Periodic Balancing Cost Payment or Type 2 Unit Service Payment and Type 2 Balancing Cost Payment (as appropriate) shall be payable in relation to that Type 1 Unit or Type 2 Unit (as appropriate) from the day after the day on which that Event of Loss occurred for the remainder of the Reference Contract Year and for each subsequent Contract Year during the TSA Term.

SCHEDULE 6.3

Steady State Period Service Payments

1. GENERAL

1.1 During the Steady State Period, Type 1 Unit Service Payments and Type 2 Unit Service Payments shall each be calculated on the basis of a Daily Service Charge (TSA).

1.2 The amount of any Daily Service Charge (TSA) for a Unit Type shall vary each Reference Contract Year by the mileage band into which the Planned Annual Average Mileage Per Unit for that Unit Type and that Reference Contract Year falls. A reconciliation procedure will then be applied:

- (a) at the end of each Reference Contract Year that occurs during the Steady State Period in accordance with paragraph 4 (*Reconciliations in respect of the Steady State Period*); and
- (b) at the end of the TSA Term in accordance with paragraph 5 (*Reconciliation on Termination or Expiry*).

1.3 If any calculation of the Planned Annual Average Mileage Per Unit or the Annual Average Mileage Per Unit for a Unit Type in any Reference Contract Year that is carried out pursuant to this Schedule 6.3 results in an average mileage that is not a whole number, the number of miles shall be rounded down to the nearest complete mile for the purposes of determining the Daily Service Charge (TSA) or the Reconciliation Daily Service Charge relating to that Unit Type in that Reference Contract Year.

2. SETTING DAILY SERVICE CHARGE (TSA) FOR YEARS DURING STEADY STATE PERIOD

Notice of Planned Annual Average Mileage Per Unit

2.1 By 1 March in the Contract Year that immediately precedes each Reference Contract Year that occurs during the Steady State Period, the Operator shall, having regard to:

- (a) the Train Plan or Train Plans that it intends to operate during that Reference Contract Year, calculate the Planned Annual Average Mileage Per Unit for Type 1 Units and Type 2 Units for that Reference Contract Year in accordance with paragraph 2.3; and
- (b) the tables in paragraphs 2.6 or 2.7,

notify the TMM of the mileage band into which each such Planned Annual Average Mileage Per Unit will fall for that Reference Contract Year.

Revising the BPA Statement

2.2 ⁵⁴¹

⁵⁴¹ Redaction.

Calculation of Planned Annual Average Mileage Per Unit

2.3 The Operator shall calculate the Planned Annual Average Mileage Per Unit for each Reference Contract Year that occurs during the Steady State Period:

(a) for Type 1 Units in accordance with the following:

$$T_1PAAM = \frac{T_1PAM}{T_1U}$$

Where:

T_1PAAM means the Planned Annual Average Mileage Per Unit for that Reference Contract Year in relation to all Type 1 Units in the Fleet;

T_1PAM means the aggregate mileage planned to be run by the Type 1 Units in that Reference Contract Year; and

T_1U means the number of Type 1 Units in the Fleet.

(b) for Type 2 Units in accordance with the following:

$$T_2PAAM = \frac{T_2PAM}{T_2U}$$

where

T_2PAAM means the Planned Annual Average Mileage Per Unit for that Reference Contract Year in relation to all Type 2 Units in the Fleet;

T_2PAM means the aggregate mileage planned to be run by the Type 2 Units in that Reference Contract Year; and

T_2U means the number of Type 2 Units in the Fleet.

Setting Daily Service Charges (TSA)



2.4 The Daily Service Charge (TSA) for each Unit Type in each Reference Contract Year that occurs during the Steady State Period shall be:

- (a) the amount specified in Column 2 of the table in paragraph 2.6 or 2.7 (as appropriate) that corresponds to the mileage band notified by the Operator pursuant to paragraph 2.1(b); or
- (b) if paragraph 2.8 applies in relation to that Unit Type, the amount agreed or determined in accordance with paragraph 2.8.



2.5 Once a Daily Service Charge (TSA) has been set for any Reference Contract Year that occurs during the Steady State Period, the amount of Daily Service Charge (TSA) that applies in relation to that Reference Contract Year shall be fixed for the duration of that

Reference Contract Year at that set amount unless a Run of the TMM Financial Model occurs that has effect during that Reference Contract Year.



2.6 In respect of each Contract Year during the Steady State Period, the mileage bands and related Daily Service Charge (TSA) for Type 1 Units are set out in the following table:

Column 1	Column 2
Annual Average Mileage Per Unit – Type 1 Units (miles)	Daily Service Charge (TSA) Per Unit (£) (indexed in accordance with the Indexation Adjustment Formula)
 ⁵⁴²	 ⁵⁴³

2.7 In respect of each Contract Year during the Steady State Period, the mileage bands and related Daily Service Charge (TSA) for Type 2 Units are set out in the following table:

Column 1	Column 2
Annual Average Mileage Per Unit – Type 2 Units (miles)	Daily Service Charge (TSA) Per Unit (£) (indexed in accordance with the Indexation Adjustment Formula)
 ⁵⁴⁴	 ⁵⁴⁵

2.8 If the Planned Annual Average Mileage Per Unit or the Actual Annual Average Mileage Per Unit for either Type 1 Units or Type 2 Units is either:

- (a) ⁵⁴⁶
- (b) ⁵⁴⁷

in relation to any Reference Contract Year during the Steady State Period, any of the Operator, the Owner or the TMM shall be entitled to require that a Variation, supported by a Run of the TMM Financial Model is implemented to determine the Daily Service Charge (TSA) per Unit for that Unit Type in that Reference Contract Year, to ensure that the Service Payments continue to reflect the anticipated or actual (as applicable) provision of Standard Services during the Steady State Period.

⁵⁴² Redaction.

⁵⁴³ Redaction.

⁵⁴⁴ Redaction.

⁵⁴⁵ Redaction.

⁵⁴⁶ Redaction.

⁵⁴⁷ Redaction.

3. PAYMENTS DURING THE STEADY STATE PERIOD

Type 1 Unit Service Payments

3.1 On the next Working Day after each Railway Period that occurs during the Steady State Period, the TMM shall separately calculate the Type 1 Unit Service Payment due for that Railway Period in accordance with the following and subject, where applicable, to paragraph 7 (*Events of Loss*):

□⁵⁴⁸

Type 2 Unit Service Payments

3.2 On the next Working Day after each Railway Period that occurs during the Steady State Period, the TMM shall separately calculate the Type 2 Unit Service Payment due for that Railway Period in accordance with the following and subject, where applicable, to paragraph 7 (*Events of Loss*):

□⁵⁴⁹

4. RECONCILIATIONS IN RESPECT OF THE STEADY STATE PERIOD

Notice of Actual Annual Average Mileage Per Unit

4.1 Within 30 days of the end of each Reference Contract Year that occurs during the Steady State Period, the Operator shall advise the TMM of:

- (a) the actual mileage run by the Type 1 Units and the actual mileage run by the Type 2 Units in the Fleet in that Reference Contract Year; and
- (b) the Actual Annual Average Mileage Per Unit for Type 1 Units and for Type 2 Units in the Fleet for that Reference Contract Year, calculated in accordance with paragraphs 4.2 and 4.3,

provided that paragraph 5 (*Reconciliation on Termination or Expiry*) shall also apply in relation to any such Reference Contract Year during the course of which this Agreement is terminated or expires.

Actual Annual Average Mileage Per Unit for Type 1 Units

4.2 The Operator shall calculate the Actual Annual Average Mileage Per Unit for Type 1 Units for each Reference Contract Year that occurs during the Steady State Period in accordance with the following:

$$T_1UAAM = \frac{UM}{T_1U}$$

where:

⁵⁴⁸ Redaction.

⁵⁴⁹ Redaction.

- T₁UAAM** means in relation to Type 1 Units, the Actual Annual Average Mileage Per Unit for that Reference Contract Year;
- UM** means the aggregate of the mileage actually run by the Type 1 Units in that Reference Contract Year; and
- T₁U** means the weighted average number of Type 1 Units in the Fleet in that Reference Contract Year, taking into account the number of days after any Unit suffered an Event of Loss.

Actual Annual Average Mileage Per Unit for Type 2 Units

4.3 The Operator shall calculate the Actual Annual Average Mileage Per Unit for Type 2 Units for each Reference Contract Year that occurs during the Steady State Period in accordance with the following:

$$T_2UAAM = \frac{UM}{T_2U}$$

where:

- T₂UAAM** means in relation to Type 2 Units, the Actual Annual Average Mileage Per Unit for that Reference Contract Year;
- UM** means the aggregate of the mileage actually run by each of the Type 2 Units in that Reference Contract Year; and
- T₂U** means the weighted average number of Type 2 Units in the Fleet in that Reference Contract Year, taking into account the number of days after any Unit suffered an Event of Loss.

Calculation and Notification of Annual Reconciliation Adjustment

4.4 Within 14 days of receipt by the TMM of the information specified in paragraph 4.1, the TMM shall calculate, and notify to each of the Operator and the Owner, the following amounts:

- (a) the Reconciliation Daily Service Charge for each Unit Type in relation to the applicable reference Contract Year, determined in accordance with paragraphs 4.5 and 4.6;
- (b) the Reconciled Annual Service Payment (if any) for each Unit Type for the applicable Reference Contract Year, determined or calculated in accordance with paragraphs 4.7, 4.8 and 4.9;
- (c) if Reconciled Annual Service Payments are required pursuant to paragraph 4.7(b), the Annual Reconciliation Adjustment for the applicable Reference Contract Year, calculated in accordance with paragraph 4.10; and
- (d) if an Annual Reconciliation Adjustment applies for the applicable Reference Contract Year, the portions of that Annual Reconciliation Adjustment that are respectively:

- (i) an Annual BCP Reconciliation Adjustment, calculated in accordance with paragraph 4.11; and
- (ii) an Annual TMMP Reconciliation Adjustment, calculated in accordance with paragraph 4.12.

Setting Reconciliation Daily Service Charges

4.5 The Reconciliation Daily Service Charge for Type 1 Units in relation to any Reference Contract Year that occurs during the Steady State Period shall be determined either:

- (a) by reference to the mileage band in Column 1 of the table in paragraph 2.6 in which the Actual Annual Average Mileage Per Unit for Type 1 Units falls in that Reference Contract Year; or
- (b) if the Actual Annual Average Mileage Per Unit for Type 1 Units in that Reference Contract Year is []⁵⁵⁰, in accordance with paragraph 2.8.

4.6 The Reconciliation Daily Service Charge for Type 2 Units in relation to any Reference Contract Year that occurs during the Steady State Period shall be determined either:

- (a) by reference to the mileage band in Column 1 of the table in paragraph 2.7 in which the Actual Annual Average Mileage Per Unit for Type 2 Units falls in that Reference Contract Year; or
- (b) if the Actual Annual Average Mileage Per Unit for Type 2 Units in that Reference Contract Year is []⁵⁵¹, in accordance with paragraph 2.8.

Reconciled Annual Service Payments

4.7 If, in any Reference Contract Year during the Steady State Period:

- (a) the Reconciliation Daily Service Charge for a Unit Type in relation to that Reference Contract Year (as determined pursuant to paragraph 4.5 or 4.6 (as applicable)) is the same as the Daily Service Charge (TSA) for that Unit Type in that Reference Contract Year (as determined pursuant to paragraph 2.4), then no Reconciled Annual Service Payments shall be calculated and paragraphs 4.8 to 4.17 shall not apply in relation to that Unit Type; or
- (b) the Reconciliation Daily Service Charge for a Unit Type in relation to that Reference Contract Year (as determined pursuant to paragraph 4.5 or 4.6 (as applicable)) is different from the Daily Service Charge (TSA) for that Unit Type in that Reference Contract Year (as determined pursuant to paragraph 2.4), then the TMM shall calculate the Reconciled Annual Service Payment for that Unit Type in accordance with paragraph 4.8 or 4.9 as appropriate.

⁵⁵⁰ Redaction.

⁵⁵¹ Redaction.

Calculation of Reconciled Annual Service Payments for Type 1 Units

4.8 The Reconciled Annual Service Payment for Type 1 Units for any Reference Contract Year that occurs during the Steady State Period shall be:

□⁵⁵²

Calculation of Reconciled Annual Service Payments for Type 2 Units

4.9 The Reconciled Annual Service Payment for Type 2 Units for any Reference Contract Year that occurs during the Steady State Period shall be:

□⁵⁵³

Annual Reconciliation Adjustments

4.10 The Annual Reconciliation Adjustment for any Reference Contract Year in the Steady State Period shall be 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 in accordance with paragraphs 3.1 and 3.2; and
- (b) the aggregate of the Reconciled Annual Service Payments for Type 1 Units and Type 2 Units for that Reference Contract Year, calculated in accordance with paragraphs 4.8 and 4.9.

4.11 □⁵⁵⁴

4.12 □⁵⁵⁵

Settlement of Annual Reconciliation Adjustment

4.13 If the aggregate of the Reconciled Annual Service Payments for Type 1 Units and Type 2 Units for any Reference Contract Year during the Steady State Period:

- (a) is greater than the aggregate of Type 1 Unit Service Payments and Type 2 Unit Service Payments calculated for each Railway Period in that Reference Contract Year, then the provisions of paragraphs 4.14 and 4.15 shall apply; or
- (b) is less than the aggregate of Type 1 Unit Service Payments and Type 2 Unit Service Payments calculated for each Railway Period in that Reference Contract Year, then the provisions of paragraphs 4.16 and 4.17 shall apply;

4.14 Where paragraph 4.13(a) applies, the Operator shall, subject to paragraph (c) (*Disputes*), pay:

⁵⁵² Redaction.

⁵⁵³ Redaction.

⁵⁵⁴ Redaction.

⁵⁵⁵ Redaction.

(a) ☐ ⁵⁵⁶

(b) ☐ ⁵⁵⁷

in each case as provided in paragraph 4.15.

4.15 Where the Annual Reconciliation Adjustment is payable by the Operator in accordance with paragraph 4.14:

(a) ☐ ⁵⁵⁸

(b) ☐ ⁵⁵⁹

in each case relating to the Railway Period in which such amount is notified (or, if the amount is disputed pursuant to paragraph 6, the Railway Period in which such amount is determined).

4.16 ☐ ⁵⁶⁰

4.17 Where paragraph 4.13(b) applies:

(a) ☐ ⁵⁶¹

(b) ☐ ⁵⁶²

5. RECONCILIATION ON TERMINATION OR EXPIRY

5.1 If this Agreement is terminated or expires during the course of any Reference Contract Year in the Steady State Period, then:

- (a) the Operator shall advise the TMM and the Owner within 30 days of such termination or expiry of:
 - (i) the actual mileage run by each of the Type 1 Units and Type 2 Units during the course of the relevant Part Contract Year; and
 - (ii) the Actual Annual Average Mileage Per Unit in relation to Type 1 Units and Type 2 Units (as appropriate) for that Reference Contract Year;
- (b) the calculations pursuant to paragraph 4 (*Reconciliations in respect of the Steady State Period*) shall be performed, provided that those calculations shall, where appropriate, be prorated by reference to the number of days, as appropriate, in each Railway Period or part Railway Period and that Part Contract Year; and

⁵⁵⁶ Redaction.

⁵⁵⁷ Redaction.

⁵⁵⁸ Redaction.

⁵⁵⁹ Redaction.

⁵⁶⁰ Redaction.

⁵⁶¹ Redaction.

⁵⁶² Redaction.

- (c) payment of the amount of any Annual Reconciliation Adjustment determined to have accrued as between the TMM, the Owner and the Operator prior to such termination or expiry shall be made as soon as reasonably practicable after the agreement or determination of that amount.

5.2 The provisions of this paragraph 5 shall survive the termination or expiry of this Agreement, however caused.

6. DISPUTES

Should the Operator, the Owner and the TMM not reach an agreement on any of the matters referred to in this Schedule 6.3 within 14 days of the Operator, the Owner or the TMM (as the case may be) notifying the other Parties of such disagreement, then a Contract Dispute shall have arisen.

7. EVENTS OF LOSS

7.1 If a Type 1 Unit or Type 2 Unit suffers or has suffered an Event of Loss in any Reference Contract Year that occurs during the Steady State Period, then no Type 1 Unit Service Payment or Type 2 Unit Service Payment (as appropriate) shall be payable in relation to that Type 1 Unit or Type 2 Unit (as appropriate) from the day after the day on which that Event of Loss occurred for the remainder of the Reference Contract Year and for each subsequent Contract Year during the TSA Term.

7.2 ⁵⁶³

⁵⁶³ Redaction.

SCHEDULE 6.4

Additional Services Payments

1. RATES

1.1 If Additional Services are specifically mentioned in paragraph 2, the rates which the TMM may charge to the Operator for such Additional Services will be those applicable rates set out in paragraph 2 (indexed in accordance with the Indexation Adjustment Formula).

1.2 If Additional Services are not specifically mentioned in paragraph 2, the rates which the TMM may charge to the Operator for such Additional Services will be:

- (a) the labour rate to be charged for Additional Services is []⁵⁶⁴ (the *Agreed Labour Rate*); and
- (b) parts used for such Additional Services will be charged []⁵⁶⁵:

⁵⁶⁴ Redaction.

⁵⁶⁵ Redaction.

2. FIXED PRICE ADDITIONAL SERVICES

Items of Work		Labour £	Material £
(A) External damage to Unit			
1	Removal of graffiti and refinish from bodyside per m2	□ ⁵⁶⁶	□ ⁵⁶⁷
2	Fill dents and Repaint bodyside per m2	□ ⁵⁶⁸	□ ⁵⁶⁹
3	Remove and renew decals per m2. Labour per m2 / Material per bodyside	□ ⁵⁷⁰	□ ⁵⁷¹
4	Remove and renew signage per item	□ ⁵⁷²	□ ⁵⁷³
5	Replacement of a broken windscreen	□ ⁵⁷⁴	□ ⁵⁷⁵
6	Replacement of a broken side light (std)	□ ⁵⁷⁶	□ ⁵⁷⁷
7	Replacement of a broken side light (emergency)	□ ⁵⁷⁸	□ ⁵⁷⁹
8	Replacement of a broken door glass	□ ⁵⁸⁰	□ ⁵⁸¹
9	Replacement of damaged headlamp unit	□ ⁵⁸²	□ ⁵⁸³

⁵⁶⁶ Redaction.

⁵⁶⁷ Redaction.

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⁵⁸¹ Redaction.

⁵⁸² Redaction.

⁵⁸³ Redaction.

10	Replacement of damaged marker/tail light unit	<input type="checkbox"/> ⁵⁸⁴	<input type="checkbox"/> ⁵⁸⁵
11	Replace damaged droplight	<input type="checkbox"/> ⁵⁸⁶	<input type="checkbox"/> ⁵⁸⁷
12	Replacement of destination glass	<input type="checkbox"/> ⁵⁸⁸	<input type="checkbox"/> ⁵⁸⁹
13	Replacement of obstacle deflector	<input type="checkbox"/> ⁵⁹⁰	<input type="checkbox"/> ⁵⁹¹
14	Replacement of front Lower Fairing	<input type="checkbox"/> ⁵⁹²	<input type="checkbox"/> ⁵⁹³
15	Replacement of passenger bodyside door leaf	<input type="checkbox"/> ⁵⁹⁴	<input type="checkbox"/> ⁵⁹⁵
16	Replacement of passenger door control panel (external)	<input type="checkbox"/> ⁵⁹⁶	<input type="checkbox"/> ⁵⁹⁷
17	Replacement of cab door leaf	<input type="checkbox"/> ⁵⁹⁸	<input type="checkbox"/> ⁵⁹⁹
18	Replacement of End Coupler, complete	<input type="checkbox"/> ⁶⁰⁰	<input type="checkbox"/> ⁶⁰¹
19	Replacement of Intermediate Coupler, complete	<input type="checkbox"/> ⁶⁰²	<input type="checkbox"/> ⁶⁰³
20	Replacement of Pantograph	<input type="checkbox"/> ⁶⁰⁴	<input type="checkbox"/> ⁶⁰⁵

⁵⁸⁴ Redaction.

⁵⁸⁵ Redaction.

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⁶⁰³ Redaction.

⁶⁰⁴ Redaction.

21	Replacement of roof-mounted HT equipment; (comprises of VCB, earthing switch, Overvoltage protection, Line voltage transducers and High voltage cabling)	<input type="checkbox"/> ⁶⁰⁶	<input type="checkbox"/> ⁶⁰⁷
22	Replacement of shoe gear, complete	<input type="checkbox"/> ⁶⁰⁸	<input type="checkbox"/> ⁶⁰⁹
23	Replacement of bogie mounted equipment (comprises yaw damper)	<input type="checkbox"/> ⁶¹⁰	<input type="checkbox"/> ⁶¹¹

⁶⁰⁵ Redaction.

⁶⁰⁶ Redaction.

⁶⁰⁷ Redaction.

⁶⁰⁸ Redaction.

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⁶¹⁰ Redaction.

⁶¹¹ Redaction.

Items of Work		Labour £	Material £
(B) Internal saloon damage to Unit			
1	Replacement of damaged partition glass	□ ⁶¹²	□ ⁶¹³
2	Replacement of damaged seat (complete)	□ ⁶¹⁴	□ ⁶¹⁵
3	Replacement of damaged cushion fully trimmed	□ ⁶¹⁶	□ ⁶¹⁷
4	Replacement of damaged seat squab	□ ⁶¹⁸	□ ⁶¹⁹
5	Replacement of damaged grab pole	□ ⁶²⁰	□ ⁶²¹
6	Replacement of damaged seat back grab handle	□ ⁶²²	□ ⁶²³
7	Replacement of damaged arm rest	□ ⁶²⁴	□ ⁶²⁵
8.1	Replacement of damaged bodyside interior panel	□ ⁶²⁶	□ ⁶²⁷
8.2	Replacement of damaged end interior panel	□ ⁶²⁸	□ ⁶²⁹
8.3	Replacement of damaged ceiling panel	□ ⁶³⁰	□ ⁶³¹

⁶¹² Redaction.

⁶¹³ Redaction.

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⁶¹⁵ Redaction.

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⁶²⁹ Redaction.

⁶³⁰ Redaction.

9	Replacement of damaged table (first class)	<input type="checkbox"/> ⁶³²	<input type="checkbox"/> ⁶³³
10	Replacement of damaged seat back folding table	<input type="checkbox"/> ⁶³⁴	<input type="checkbox"/> ⁶³⁵
11	Replacement of damaged utility module:	<input type="checkbox"/> ⁶³⁶	<input type="checkbox"/> ⁶³⁷
11a	Luggage Stack	<input type="checkbox"/> ⁶³⁸	<input type="checkbox"/> ⁶³⁹
11b	Bicycle Storage	<input type="checkbox"/> ⁶⁴⁰	<input type="checkbox"/> ⁶⁴¹
12	Replacement of damaged PIS display unit	<input type="checkbox"/> ⁶⁴²	<input type="checkbox"/> ⁶⁴³
13	Replacement of damaged CCTV camera unit	<input type="checkbox"/> ⁶⁴⁴	<input type="checkbox"/> ⁶⁴⁵
14	Replacement of damaged advertising frame	<input type="checkbox"/> ⁶⁴⁶	<input type="checkbox"/> ⁶⁴⁷
15	Replacement of damaged waste bin	<input type="checkbox"/> ⁶⁴⁸	<input type="checkbox"/> ⁶⁴⁹
16	Remove and renew signage (per item)* * indication only, subject to size of sign	<input type="checkbox"/> ⁶⁵⁰	<input type="checkbox"/> ⁶⁵¹

⁶³¹ Redaction.

⁶³² Redaction.

⁶³³ Redaction.

⁶³⁴ Redaction.

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⁶⁴⁹ Redaction.

⁶⁵⁰ Redaction.

⁶⁵¹ Redaction.

17	Remove and renew window sacrificial film, per sq metre.	<input type="checkbox"/> ⁶⁵²	<input type="checkbox"/> ⁶⁵³
18	Removal of graffiti and refinish/repaint surface, per sq m.	<input type="checkbox"/> ⁶⁵⁴	<input type="checkbox"/> ⁶⁵⁵
19	Refinish/repaint damaged panel surface, per sq m.	<input type="checkbox"/> ⁶⁵⁶	<input type="checkbox"/> ⁶⁵⁷
20	Replacement of damaged floor surface, per sq m.	<input type="checkbox"/> ⁶⁵⁸	<input type="checkbox"/> ⁶⁵⁹
21	Replacement of damaged interior lighting module	<input type="checkbox"/> ⁶⁶⁰	<input type="checkbox"/> ⁶⁶¹
22	Replacement of damaged passenger door control panel (internal)	<input type="checkbox"/> ⁶⁶²	<input type="checkbox"/> ⁶⁶³

⁶⁵² Redaction.

⁶⁵³ Redaction.

⁶⁵⁴ Redaction.

⁶⁵⁵ Redaction.

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⁶⁵⁹ Redaction.

⁶⁶⁰ Redaction.

⁶⁶¹ Redaction.

⁶⁶² Redaction.

⁶⁶³ Redaction.

Items of Work		Labour £	Material £
(C) Toilet Damage			
1	Replace toilet tissue dispenser	□ ⁶⁶⁴	□ ⁶⁶⁵
2	Replace toilet mirror (mirror only)	□ ⁶⁶⁶	□ ⁶⁶⁷
3	Replace toilet seat	□ ⁶⁶⁸	□ ⁶⁶⁹
4	Replacement of toilet bowl and seat	□ ⁶⁷⁰	□ ⁶⁷¹
5	Replacement of vanity unit, complete	□ ⁶⁷²	□ ⁶⁷³
6	Replacement of hand drier	□ ⁶⁷⁴	□ ⁶⁷⁵
7	Replacement of tap	□ ⁶⁷⁶	□ ⁶⁷⁷
8	Replacement of soap dispenser	□ ⁶⁷⁸	□ ⁶⁷⁹
9	Replacement of waste bin/dispenser	□ ⁶⁸⁰	□ ⁶⁸¹
10	Replacement of nappy change table	□ ⁶⁸²	□ ⁶⁸³

⁶⁶⁴ Redaction.

⁶⁶⁵ Redaction.

⁶⁶⁶ Redaction.

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⁶⁸¹ Redaction.

⁶⁸² Redaction.

11	Replacement of damaged door control panel	⁶⁸⁴	⁶⁸⁵
12	Replacement of damaged door locking mechanism (not incl. handles)	⁶⁸⁶	⁶⁸⁷
13	Replacement of damaged external CET discharge connector	⁶⁸⁸	⁶⁸⁹
14	Replacement of damaged external water filler connector	⁶⁹⁰	⁶⁹¹
15	Unblocking toilet (Assumes no damage to equipment and therefore no material required)	⁶⁹²	⁶⁹³

SCHEDULE 6.5

Indexation Adjustment Formula

1. INDEXATION ADJUSTMENTS

1.1 ⁶⁹⁴

1.2 ⁶⁹⁵

2. CHANGES TO THE INDICES

If the index referred to in paragraph 1 (*Indexation Adjustments*) ceases to be published, or there is a material change in the basis of the index or it, at any relevant time, there is a delay in the publication of the index, then any Party may make a Variation Proposal as to an alternative appropriate index to apply ⁶⁹⁶.

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⁶⁹¹ Redaction.

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⁶⁹³ Redaction.

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⁶⁹⁶ Redaction.

3. BASE DATE OF INDICES

If the index specified in paragraph 1 (*Indexation Adjustments*) is superseded by an index with a base date which is later than the base date of the index specified in paragraph 1, the superseding index shall be used or an index with a later base date, as the case may require.

4. PROVISIONAL INDICES

Where an index is published as “provisional” and is subsequently amended:

- (a) the calculation of any applicable adjustment may be undertaken using the published provisional index and invoices may be rendered accordingly;
- (b) any published amendment to the provisional index shall result in recalculation of any application adjustment; and
- (c) such recalculation shall be retrospective for the relevant period, and the Party disadvantaged by the amendment to the provisional index shall be entitled to recover the difference in the value of any invoice calculated on the basis of an amended provisional index.

5. CALCULATION OF INDEXATION ADJUSTMENTS

The indexation adjustments to be made to any Indexed Values shall be calculated prior to the start of each Reference Contract Year.

6. DECIMAL PLACES, ROUNDING

All calculations pursuant to this Schedule 6.5 shall be to two decimal places rounding up at 0.xx5 or above and rounding down otherwise (for example, 99.995 = 100.00 and 99.994 = 99.99).

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SCHEDULE 6.6

Balancing Payments Accounts

□⁶⁹⁸

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SCHEDULE 7

PRICED OPTIONS AND CHANGE CONTROL

Schedule 7.1:	Priced Option Variations
Schedule 7.2:	Engineering Change Control Procedure

SCHEDULE 7.1

Priced Option Variations

1. EXERCISE OF ANY PRICED OPTION

The Operator and the TMM acknowledge that the Owner shall be entitled, but shall not be required, to exercise any Priced Option pursuant to and in accordance with clause 29 (*Priced Options*) and schedule 17 (*Priced Options*) of the MSA, provided that the Owner shall not exercise such Priced Option without an Authorisation to Vary having been issued by the Secretary of State pursuant to the Applicable Variation Procedure.

2. CONSEQUENCES OF EXERCISE OF ANY PRICED OPTION

If the Owner exercises a Priced Option in accordance with the MSA, the Optional Units shall be added to the Fleet that is the subject of the TSA Services, provided that the relevant impacts of the addition of those Units under this Agreement shall be determined pursuant to the Applicable Variation Procedure, in accordance with paragraph 3.6 of schedule 17 (*Priced Options*) of the MSA.

SCHEDULE 7.2

Engineering Change Control Procedure

TSA Schedule 7.2

Engineering Change Control Procedure

1 Relevant Procedures

The TMM will develop an engineering change control procedure (the “**Engineering Change Control Procedure**”) within 24 months of signature of this Agreement.

The TMM will use as a basis for the Engineering Change Control Procedure their own engineering change control procedure, referred to as PRO/Rail Systems/111.

The TMM will align the Engineering Change Control Procedure with the Operator’s safety management system (as defined in the Railways and other Guided Systems (Safety) Regulations 2006 (“**ROGS**”)) and engineering management system.

2 Application

The Engineering Change Control Procedure shall be applied for all:

- modifications affecting the Units, Vehicles, Spares, Special Tools, Parts or Simulators;
- experiments performed on Units, Vehicles, Spares, Special Tools, Parts or Simulators;
- changes to the Maintenance Plan;
- changes to the Manuals;
- changes to the Specification;
- changes to Applicable Laws and Standards, and;
- proposed crash damage repairs of the Units.

3 Responsibilities

The TMM shall ensure that the Engineering Change Control Procedure is maintained and made available to the appropriate managers, the Owner and the Operator.

The approval of the TMM, Owner and Operator will be required before any change can be implemented in accordance with the Engineering Change Control Procedure.

4 Owner and Operator Audits of TMM

As the holder of a Railway safety management system (as defined in ROGS), the Operator shall audit the TMM to ensure compliance with the Operator's safety management system with respect to engineering change and continuous improvement in line with ISO 9001, ISO14001 and OHSAS18001.

The Owner and the Operator will conduct regular second party reviews of the Engineering Change Control Procedure and its implementation.

For the purpose of such reviews, the TMM will permit the Owner and the Operator access to any relevant Technical Records and business management system procedures and processes.

5 Concessions and Dispensations

In addition to formal changes under the Engineering Change Control Procedure, requests for concessions and dispensations can be proposed to enable temporary, interim short-term changes to normal procedures and practices after discussion and agreement between the TMM, the Owner and Operator. These will be reviewed at the Performance Review Meetings, and if any party so requests the relevant concession or dispensation shall be processed through the Engineering Change Control Procedure before being adopted on a permanent basis.

SCHEDULE 8
PERFORMANCE REMEDIAL PLANS

Schedule 8: **Performance Remedial Plans**
Appendix: ⁶⁹⁹

⁶⁹⁹ Redaction.

SCHEDULE 8

Performance Remedial Plans

1. ACKNOWLEDGEMENTS AND PURPOSE

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700 Redaction.

APPENDIX TO SCHEDULE 8

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SCHEDULE 9

CONTRACT MANAGEMENT

Schedule 9:

Contract Management

**Appendix: Form of Performance
Report**

SCHEDULE 9

Contract Management

1. OPERATOR'S OBLIGATIONS

1.1 The Operator shall appoint a contract manager (the *Operator's Contract Manager*) who shall be responsible for:

- (a) the day to day commercial administration of the Agreement on behalf of the Operator, including the Applicable Variation Procedure, Exonerating Event regime, the TSA Performance Regime and the Permitted Changes (TSA) regime;
- (b) for arranging the Performance Review Meetings detailed in paragraph 5 (*Performance Review Meetings*);
- (c) monitoring the performance of the TMM in respect of its obligations pursuant to this Agreement;
- (d) monitoring the performance of the Fleet with a view to highlighting reliability and operational improvements for elevation to the reliability team; and
- (e) providing engineering support when required.

1.2 The Operator shall also provide a senior representative, with the appropriate authority, to sit with the TMM and the Owner at the Performance Review Meeting in accordance with paragraph 5.1.

2. OWNER'S OBLIGATIONS

2.1 The Owner shall appoint a Contract Manager (the *Owner's Contract Manager*) who shall be responsible for the day to day commercial administration of the Agreement on behalf of the Owner.

2.2 The Owner shall also provide a senior representative, with the appropriate authority, to sit with the TMM and the Operator on the Performance Review Meetings as set out in paragraph 5.1.

3. THE TMM'S OBLIGATIONS

3.1 The TMM shall appoint a Contract Manager (the *TMM's Contract Manager*) who shall be responsible for the day to day commercial administration of the Agreement on behalf of the TMM. This includes the preparation of the Performance Report as set out in paragraph 6.1.

3.2 The TMM shall also provide a senior representative, with the appropriate authority, to attend on the Performance Review Meetings as set out in paragraph 5.1 with the Operator and the Owner.

4. COMMUNICATION

4.1 The Parties shall ensure that at all times the authorised Nominated Representative (to include the Owner's Contract Manager, the Operator's Contract Manager and the TMM's Contract Manager), or any other authorised representative, is available to receive, deal with,

agree, advise on and explain what the current position is concerning any issues regarding this Agreement, including safety related issues affecting the Units and day to day operational and incident management.

4.2 The Parties shall establish appropriate procedures and points of contact for such consultation, liaison and communication.

5. PERFORMANCE REVIEW MEETINGS

Requirements of Performance Review Meetings

5.1 A performance review meeting (the *Performance Review Meeting*) shall be held every Railway Period in accordance with a schedule to be agreed by the Parties acting reasonably, the first such meeting commencing in the next Railway Period after the First Unit has achieved Qualified Provisional Acceptance or Provisional Acceptance.

5.2 Each Performance Review Meeting shall be attended by at least the Operator's Contract Manager, the TMM's Contract Manager, the Owner's Contract Manager and senior representatives of each Party with relevant expertise to consider the agenda items for the Performance Review Meeting.

5.3 The Operator shall take minutes at each Performance Review Meeting which shall be approved by the Owner's Contract Manager and the TMM's Contract Manager at the following Performance Review Meeting.

5.4 The standing agenda for the meeting shall be as set out in paragraph 5.7. Each Party shall give reasonable notice to the other Parties of any other items it proposes to be added to the Performance Review Meeting agenda.

5.5 Any Party may require that a further Performance Review Meeting takes place whenever it reasonably believes that the performance of another Party's obligations has fallen below an acceptable level (the *Additional Performance Review Meeting*). Such meeting shall address initiatives to improve the performance of that other Party.

5.6 The location of any Performance Review Meetings shall be notified alternately by the Operator, the TMM and the Owner unless otherwise agreed, with the location of the first meeting to be specified by the Operator.

Standing Agenda for Performance Review Meetings

5.7 The following, where appropriate, shall constitute the standing agenda for each Performance Review Meeting:

- (a) minutes of previous meeting;
- (b) review of the content of relevant Performance Report, including performance risk evaluation;
- (c) a reconciliation of liquidated damages claims;
- (d) the amounts standing to the credit of the Balancing Payments Account;
- (e) costs incurred in the preceding Railway Period and to be incurred in the next Railway Period in relation to the performance of the Standard Services;

- (f) the status of any TMM Default Remediation Plan progress;
- (g) the status of any Performance Remedial Plan progress;
- (h) any mitigation actions that the TMM is taking;
- (i) Contract Disputes;
- (j) the status of current and proposed Variations;
- (k) a review of audits and audit plans;
- (l) a review of safety performance;
- (m) a review of amendments to the Manuals and training requirements;
- (n) a review of suppliers and Sub-Contractors;
- (o) a review of potential changes affecting this Agreement;
- (p) a review of the TMM's energy monitoring activities;
- (q) Train Plan review;
- (r) a review of Simulator operational performance, Faults relating to Simulators and Simulator maintenance status;
- (s) relationship review;
- (t) any other business; and
- (u) date and location of next meeting.

6. PERFORMANCE REPORTS

6.1 No later than two Working Days prior to each Performance Review Meeting, the TMM's Contract Manager shall ensure that the Operator and the Owner each receives two copies of the Performance Report relating to the Railway Period immediately preceding that Performance Review Meeting and which shall cover the issues set out in the Appendix (*Form of Performance Report*) to this Schedule 9. Each Performance Report shall also be copied to Eversholt.

6.2 The TMM's Contract Manager shall provide to Eversholt, the Operator and the Owner, within a reasonable time following a request, any additional performance and other reports as are reasonably required by the Owner and Operator.

7. TECHNICAL MEETINGS

7.1 The TMM's Contract Manager, the Owner's Contract Manager and the Operator's Contract Manager shall each nominate a technical manager, who shall meet on a regular basis during the TSA Term to discuss issues in relation to the execution of Schedule 1.2 (*TSA Quality Plan*), Schedule 1.3 (*Safety and Security Plan*) and Schedule 1.4 (*Sustainability and Environmental Management Plan*).

APPENDIX TO SCHEDULE 9

FORM OF PERFORMANCE REPORT

1. CONTENT OF PERFORMANCE REPORTS

Each Performance Report shall specify the following:

Performance Matter	Performance Data Categories	Performance Data
1. Maintenance	Planned Work	
	Completed Work	Number of each type of exam. Number and type of repairs Material Used
	Modifications	Planned In Progress Completed
	Work Arising	
	Additional Services	
2. Safety	Safety Incidents	
	Actions taken	
	National Incident Reports	Issued Responded
3. Audits	Internal and External: - Safety	
	Quality	
	ISO 9000 / ISO14000	
	Environment	
4. TSA Performance Regime	Availability	Number of Type 1 Units and Type 2 Units Available Number of Type 1 Units and Type 2 Units Unavailable Number of Type 1 Units and Type 2 Units Deemed Available Concessions granted Number of incidents
	Cancellations	Number of Cancellations
	Reliability (per Railway Period and annual average)	Primary Minutes Delay Operator Minutes Delay Network Rail Minutes Delay Non Service Affecting Failures
	Faults	Faults and MSA Faults
	No Faults Found	
	SQM Faults	
	Alleged SQM Non-Audit Faults	

Performance Matter	Performance Data Categories	Performance Data
	Casualties (as a moving six Railway Period average and a moving annual average)	Miles per Casualty
	Performance in relation to Acceptable Performance Level	
	Assessment of any trends in that Railway Period and over the longer term	Any relevant performance data
	Root cause analysis of reasons for the occurrence of those trends and/or any high frequency failures	
	Challenges made by TMM	Primary Minutes Delay Operator Minutes Delay Network Rail Minutes Delay Cancellations Casualties SQM Faults SQM Non-Audit Faults
5. Performance risk mitigation actions	Faults SQM Faults	Steps being taken to prevent recurrence of Faults and SQM Faults If requested two Working Days prior to Performance Review Meeting, a root cause analysis of the reasons for the occurrence of any particular Fault or SQM Fault
6. Mileage run	Fleet Unit Type Unit	Per Railway Period and as an annual average
7. Payments	Performance Liquidated Damages	
8. Technical investigations	In Progress	
9. Updates	Update of any prevailing relevant performance data from any previous Performance Report	
10. Materials	The information required in clauses 10.28 (<i>TMM Owned Spares</i>) and 11.12	
11. Balancing Payments Account	Balance standing to the credit of the Balancing Payments Account	

Performance Matter	Performance Data Categories	Performance Data
12. Energy Monitoring	Update of TMM's energy monitoring activities.	
13. Simulators	Update of status of Simulators	

SCHEDULE 10

INSURANCE

Schedule 10.1:	Vehicle or Simulator Events of Loss
Schedule 10.2:	Vehicle and Simulator Insurance
	Part 1: Insurance Requirements
	Part 2: Insurances
Schedule 10.3:	Spares and Special Tools Events of Loss
Schedule 10.4:	Spares and Special Tools Insurance
	Part 1: Insurance Requirements
	Part 2: Insurances

SCHEDULE 10.1

Vehicle or Simulator Events of Loss

1. EVENTS OF LOSS

1.1 If a Vehicle within a Unit suffers an Event of Loss after the date of Acceptance of that Unit, such Event of Loss shall for all relevant purposes be deemed to have occurred in relation to all Vehicles in that Unit, and the Operator will pay or procure that its insurers pay to the Owner, pursuant to the Lease, the Agreed Value for the entire Unit, calculated by reference to the Agreed Value for a Type 1 Unit or Type 2 Unit, depending on which Unit Type the Vehicle that has suffered an Event of Loss comprised part of.

1.2 If a Simulator suffers an Event of Loss, the Operator will pay or procure that its insurers pay the Agreed Value for that Simulator to the Owner in accordance with the terms of the Lease.

1.3 Upon the occurrence of an Event of Loss in relation to a Vehicle or a Simulator, the TMM's obligations under this Agreement in relation to the Unit of which that Vehicle forms part or in relation to that Simulator (as applicable) will immediately terminate and, except as expressly stated in this Agreement, no Party will have any further obligation or liability under this Agreement in relation to that Unit or that Simulator (as applicable).

SCHEDULE 10.2

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Part 1

□⁷⁰³

⁷⁰² Redaction.

⁷⁰³ Redaction.

Part 2

□⁷⁰⁴

⁷⁰⁴ Redaction.

SCHEDULE 10.3

Spares and Special Tools Events of Loss

1. SPARES AND SPECIAL TOOLS

If an Event of Loss occurs to an Owner Owned Spare or a Special Tool during the TSA Term, the TMM will procure that such Owner Owned Spare or such Special Tool is promptly replaced (being as soon as a replacement is required in order to enable the TMM to perform fully its obligations under this Agreement) with another like Spare or Special Tool of equal value and utility which replacement Spare or Special Tool shall immediately become an Owner Owned Spare or a Special Tool for all purposes of this Agreement and the Lease.

SCHEDULE 10.4

[]⁷⁰⁵

Part 1

[]⁷⁰⁶

1. INSURANCES

Requirement to maintain the Insurances

1.1 []⁷⁰⁷

⁷⁰⁵ Redaction.
⁷⁰⁶ Redaction.
⁷⁰⁷ Redaction.

Part 2

[REDACTED]⁷⁰⁸

[REDACTED]⁷⁰⁹

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⁷⁰⁹ Redaction.

SCHEDULE 11

FORCE MAJEURE

Schedule 11: **Force Majeure**

SCHEDULE 11

Force Majeure

1. CONSEQUENCES OF FORCE MAJEURE EVENTS

1.1 Where a party to this Agreement is an Affected Party due to the occurrence of a Force Majeure Event:

- (a) that Affected Party shall not incur any liability to any other Party under this Agreement for any losses or damage incurred by that other Party under this Agreement as a result of that Affected Party being prevented from performing any of its obligations under this Agreement; and
- (b) that other Party shall not be entitled to bring a claim against that Affected Party for non-performance of those obligations.

1.2 No Party shall be entitled to terminate this Agreement for a TSA TMM Event of Default, a TSA Owner Event of Default or a TSA Operator Event of Default if such event of default arises from a Force Majeure Event.

1.3 On the occurrence of a Force Majeure Event, the Affected Party shall notify the other Parties as soon as practicable after its occurrence. The notification shall specify details of the Force Majeure Event, including evidence of its effect on the obligations of the Affected Party and any action proposed to mitigate its effect.

2. OBLIGATION TO MITIGATE FORCE MAJEURE EVENTS

2.1 As soon as practicable following notification pursuant to paragraph 1.3, the Parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and facilitate the continued performance of the affected obligations.

2.2 The Parties shall at all times following the occurrence of a Force Majeure Event:

- (a) use all reasonable endeavours to prevent and mitigate the effects of any delay; and
- (b) take all steps in accordance with good industry practice to overcome or minimise the consequences of that Force Majeure Event upon the performance of their respective obligations under this Agreement.

3. CONTINUING FORCE MAJEURE EVENTS

3.1 If any Force Majeure Event continues or its effects are continuing such that the Affected Party is unable to comply with substantially all of its obligations under this Agreement for a period of more than 180 days, any Party may, subject to the provisions of:

- (a) if such event occurs before the expiry or termination of the Umbrella Agreement, paragraphs 7 (*Continuing Force Majeure Event under TSA*) and 8 (*Termination or Continuation of the TSA*) of schedule 2.6 (*Termination of Contracts for Force Majeure*) of the Umbrella Agreement; or

- (b) if such event occurs after the expiry of termination of the Umbrella Agreement, paragraphs 2 (*Continuing Force Majeure Event*) and 3 (*Termination or Continuation of the TSA*) of schedule 3 (*Termination of the TSA for Force Majeure*) of the Maintenance Direct Agreement,

terminate this Agreement.

3.2 If no terms are agreed in accordance with paragraph 2 on or before the date falling 120 days after the date of the commencement of the relevant Force Majeure Event and such Force Majeure Event is continuing or its effects are continuing such that the Affected Party is reasonably likely to be unable to comply with substantially all of its obligations under this Agreement for a period of more than 180 days, then the Affected Party shall notify the Secretary of State and the provisions of:

- (a) if such event occurs before the expiry or termination of the Umbrella Agreement, paragraphs 7 (*Continuing Force Majeure Event under TSA*) and 8 (*Termination or Continuation of the TSA*) of schedule 2.6 (*Termination of Contracts for Force Majeure*) of the Umbrella Agreement shall apply; or
- (b) if such event occurs after the expiry or termination of the Umbrella Agreement, paragraphs 2 (*Continuing Force Majeure Event*) and 3 (*Termination or Continuation of the TSA*) of schedule 3 (*Termination of the TSA for Force Majeure*) of the Maintenance Direct Agreement shall apply.

3.3 No Party shall be entitled to terminate this Agreement as the result of the occurrence of a Force Majeure Event except as provided in:

- (a) if such event occurs before the expiry or termination of the Umbrella Agreement, paragraph 8.1 of schedule 2.6 (*Termination of Contracts for Force Majeure*) of the Umbrella Agreement; or
- (b) if such event occurs after the expiry or termination of the Umbrella Agreement, paragraph 3.1 of schedule 3 (*Termination of the TSA for Force Majeure*) of the Maintenance Direct Agreement.

4. CESSATION OF FORCE MAJEURE EVENTS

The Affected Party shall notify the other Parties as soon as practicable after any Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Agreement. Following such notification and subject to the provisions of this Schedule 11, this Agreement shall continue to be performed on the terms existing immediately prior to the occurrence of such Force Majeure Event.

5. NO EFFECT ON LEASE

The Owner and the Operator agree that the occurrence or continuation of a Force Majeure Event shall not, save as provided in the Lease (including where the relevant event causes an Event of Loss), have any impact upon their respective rights and obligations under the Lease, including the payment of Rental thereunder.

SCHEDULE 12

[NOT USED]

SCHEDULE 13

TERMINATION

Schedule 13.1:	TMM Events of Default
Schedule 13.1	Form of TSA TMM Termination Notice
	Appendix: Form of TSA TMM Termination Notice
Schedule 13.2:	Operator Events of Default
Schedule 13.3:	Owner Events of Default
Schedule 13.4:	[REDACTED]⁷¹⁰
Schedule 13.5:	Operator Voluntary Termination Right
Schedule 13.6:	Secretary of State Voluntary Termination Right
Schedule 13.7:	Termination of the MSA
Schedule 13.8:	Uninsurability

⁷¹⁰ Redaction.

SCHEDULE 13.1

TMM Events of Default

1. EVENTS

It shall be a TSA TMM Event of Default if any of the following occurs:

- (a) the TMM fails to pay any sum due and payable under this Agreement (and which is not the subject of a bona fide Contract Dispute), the Operator or the Owner (as applicable) has given notice of such default to the TMM, and the TMM has failed to make the relevant payment within 20 Working Days of its receipt of such notice in accordance with clause 39.4;
- (b) an Insolvency Event occurs in relation to the TMM⁷¹¹;
- (c) ⁷¹²
- (d) ⁷¹³
- (e) the TMM:
 - (i) breaches any material obligation under this Agreement (other than as referred to in paragraphs 1(a) or (f) to (j) (inclusive)); or
 - (ii) persistently breaches any other obligation under this Agreement,except to the extent that the breach results from a Force Majeure Event and, provided that, in the case of the breach being capable of remedy, the TMM fails to remedy the breach after having been required to do so by notice from the Operator or the Owner by such date as is specified in such notice, which shall be at least 30 days (or as otherwise agreed in accordance with any relevant TMM Default Remediation Plan) after the TMM's receipt of such notice in accordance with clause 39.4;
- (f) the TMM either:
 - (i) ⁷¹⁴
 - (ii) ⁷¹⁵and, in either case, such failure continues for a period of ⁷¹⁶ from the date of receipt by the TMM of a notice from either the Owner or the Operator;

⁷¹¹ Redaction.

⁷¹² Redaction.

⁷¹³ Redaction.

⁷¹⁴ Redaction.

⁷¹⁵ Redaction.

⁷¹⁶ Redaction.

- (g) ☐ ⁷¹⁷
- (h) ☐ ⁷¹⁸
- (i) the TMM fails to provide the Operator with either:
- (i) an original of the duly executed TSA Guarantee within ☐ ⁷¹⁹ of the date of this Agreement; or
 - (ii) an original of the duly executed TSA Bond within ☐ ⁷²⁰ of the date on which it is required to be provided in accordance with clause 42.1;
- (j) ☐ ⁷²¹
- (k) ☐ ⁷²²
- (l) ☐ ⁷²³
- (m) ☐ ⁷²⁴
- (n) ☐ ⁷²⁵
- (o) ☐ ⁷²⁶
- (p) ☐ ⁷²⁷
- (q) ☐ ⁷²⁸
- (r) ☐ ⁷²⁹
- (s) ☐ ⁷³⁰
- (t) ☐ ⁷³¹

⁷¹⁷ Redaction.

⁷¹⁸ Redaction.

⁷¹⁹ Redaction.

⁷²⁰ Redaction.

⁷²¹ Redaction.

⁷²² Redaction.

⁷²³ Redaction.

⁷²⁴ Redaction.

⁷²⁵ Redaction.

⁷²⁶ Redaction.

⁷²⁷ Redaction.

⁷²⁸ Redaction.

⁷²⁹ Redaction.

⁷³⁰ Redaction.

(u) ☐ ⁷³²

(v) ☐ ⁷³³

(w) ☐ ⁷³⁴

2. NOTICE OF TSA TMM EVENT OF DEFAULT

Upon becoming aware of the occurrence of a TSA TMM Event of Default, the relevant party shall promptly notify the other Parties and the Secretary of State of the TSA TMM Event of Default, providing a reasonably detailed description thereof, and the provisions of:

- (a) if such event occurs prior to the expiry or termination of the Umbrella Agreement, paragraph 1 (*Notification of Secretary of State and Consent*) of Part 1 (*TMM default of TSA*) of schedule 2.3 (*Early Termination of the TSA*) of the Umbrella Agreement; or
- (b) if such event occurs after the expiry or termination of the Umbrella Agreement, clause 13 (*Termination of the TSA*) of the Maintenance Direct Agreement,

shall apply.

3. TMM REMEDIATION PLAN

3.1 Subject to either (i) if the TSA TMM Event of Default occurs prior to the expiry or termination of the Umbrella Agreement, paragraph 1.1(c) of Part 1 (*TMM default of TSA*) of schedule 2.3 (*Early Termination of the TSA*) of the Umbrella Agreement, or (ii) if such event occurs after the expiry or termination of the Umbrella Agreement, clause 13 (*Termination of the TSA*) of the Maintenance Direct Agreement, following the occurrence of a TSA TMM Event of Default, the Operator and the Owner (acting jointly) may, at any time before a TSA TMM Termination Notice is delivered to the TMM in accordance with paragraph 4 deliver to the TMM a notice (a ***TMM Default Remediation Notice***) requiring the TMM (where such TSA TMM Event of Default is capable of remedy):

- (a) to remedy or take substantial steps towards remedying that TSA TMM Event of Default within 28 days of receipt of the TMM Default Remediation Notice (or such longer period as agreed in writing by the Operator and Owner in their sole discretion); or
- (b) to submit a remediation plan to the Operator and the Owner as soon as reasonably practicable and in any event within 14 days of receipt of the TMM Default Remediation Notice, which if implemented, would ensure that within a specified reasonable period (having regard to the nature of the TSA TMM Event of Default, the steps required to remedy such default and the consequences of such default for the Operator and the Owner) the TSA TMM Event of Default is remedied to the reasonable satisfaction of the Operator (the ***TMM Default Remediation Plan***).

⁷³¹ Redaction.

⁷³² Redaction.

⁷³³ Redaction.

⁷³⁴ Redaction.

3.2 Should the Operator or the Owner (acting reasonably) wish to challenge the TMM Default Remediation Plan, then the Operator or the Owner (as the case may be) shall provide the TMM with a notice (with a copy to the other Party) setting out the reasons for such challenge within 28 days of receipt of the TMM Default Remediation Plan, failing which the Operator or the Owner (as the case may be) shall be deemed to accept the TMM Default Remediation Plan.

3.3 Following receipt of the reasons for such proposed challenge, the TMM shall update the TMM Default Remediation Plan to, as appropriate, the Operator's or the Owner's satisfaction.

3.4 The TMM shall implement any TMM Default Remediation Plan in accordance with the terms of that plan. The TMM shall not be entitled to any extension of time in relation to such implementation.

3.5 If the TMM is required to:

- (a) remedy a TSA TMM Event of Default in accordance with paragraph 3.1(a) and such TSA TMM Event of Default is not remedied prior to expiry of the relevant period; or
- (b) submit a TMM Default Remediation Plan in accordance with paragraph 3.1(b) and:
 - (i) such plan is not agreed within five Working Days of referral to the Operator's, the Owner's and the TMM's Senior Representatives in accordance with the Applicable Dispute Resolution Provisions, where such referral is necessary; or
 - (ii) after such plan has been submitted and agreed, the TMM fails to remedy the TSA TMM Event of Default within the relevant time period specified in the TMM Default Remediation Plan,

then, in any such case, the Operator or the Owner may terminate this Agreement in accordance with paragraph 4 (*Operator's and Owner's Rights to Terminate*).

4. TERMINATION

4.1 Subject to either (i) if the TSA TMM Event of Default occurs prior to the expiry or termination of the Umbrella Agreement, Part 1 (*TMM default of TSA*) of schedule 2.3 (*Early Termination of the TSA*) of the Umbrella Agreement, or (ii) if such event occurs after the expiry or termination of the Umbrella Agreement, clause 13 (*Termination of the TSA*) of the Maintenance Direct Agreement, and (in any case) paragraphs 4.2 and 4.3 below, if any TSA TMM Event of Default occurs and is continuing then the Operator or the Owner may terminate this Agreement by issuing a notice in writing in the form set out in the Appendix (*Form of TSA TMM Termination Notice*) to this Schedule 13 and signed by the Operator or the Owner (as the case may be) (a ***TSA TMM Termination Notice***) (copied to the other Party, the Bond Provider and the Guarantor), such termination to occur with immediate effect or from such later date as is specified in the TSA TMM Termination Notice.

4.2 Except where the TSA TMM Event of Default arises under paragraph 1(e)(ii) of this Schedule 13.1, if, following service of a TSA TMM Termination Notice but before termination of this Agreement in relation to the provision of the TSA Services, the relevant TSA TMM Event of Default is remedied (or, in the case of the TSA TMM Event of Default in paragraph 1(m) the relevant notice is withdrawn or deemed to be withdrawn), then the TMM shall notify the Owner and the Operator in writing and, save where the Owner and/or the

Operator disputes that the relevant TSA TMM Event of Default has been remedied within a period of 5 Working Days of such notice, that TSA TMM Termination Notice will be deemed to have been withdrawn and will no longer be continuing.

4.3 In the event of any dispute between the Parties as to whether a TSA TMM Event of Default has been remedied, the Applicable Dispute Resolution Provisions shall apply, and the relevant TSA TMM Termination Notice shall be deemed to be suspended (and the termination of this Agreement pursuant to this notice shall not occur) until it is determined that the TSA TMM Event of Default has not been remedied. If it is determined that the TSA TMM Event of Default has been remedied, the TSA TMM Termination Notice will be deemed to have been withdrawn.

5. OPERATOR'S AND OWNER'S RIGHTS FOLLOWING TMM DEFAULT

5.1 Subject to paragraph 6 of this Schedule 13.1, if the Operator or the Owner issue a TSA TMM Termination Notice pursuant to paragraph 4 (*Termination*), thereby terminating this Agreement, then on the date of termination of this Agreement:

- (a) a Party shall cease to accrue any further obligations or liabilities under this Agreement to any other Party under this Agreement, save only in respect of the Party's obligations under this paragraph 5.1, clause 31 (*Advertising and Confidentiality*), any other provision of this Agreement that survives the termination of this Agreement and any antecedent breaches of the Party's obligations or liabilities which have accrued in respect of the period up to the date of termination of this Agreement;
- (b) the TMM will, subject to paragraph 5.3, pay to the Owner all amounts due to the Owner (if any) under paragraph 4.1(b) of Schedule 14 (*Redelivery Condition*);
- (c) the Operator or the Owner (as the case may be) will have the right to place the carrying out of the TSA Services and Additional Services with the Operator and/or a Third Party Maintainer and the TMM will, subject to paragraph 5.3, pay the Operator and/or the Owner (as appropriate):
 - (i) the amount (if any) by which the proper costs, reasonably incurred by them in placing the Standard Services with the Operator and/or a third party exceed the costs which the Operator and the Owner would have paid the TMM for the same Standard Services for the remainder of the Scheduled TSA Term; and
 - (ii) the amount by which the proper costs, reasonably incurred, by them in placing with the Operator and/or a third party any Additional Services which have been agreed prior to termination to be performed by the TMM exceed the costs which the Operator would have paid to the TMM for such Additional Services;
- (d) the TMM will pay the Operator and the Owner all outstanding amounts due respectively to the Operator and the Owner under this Agreement;
- (e) unless otherwise provided for in any TSSSA entered into pursuant to clause 26.2, the TMM will deliver up possession:

- (i) to the Owner (or, as directed by the Owner if the Lease is still in force, to the Operator) of any Units, Vehicles, Owner Owned Spares, Special Tools and Parts belonging to the Owner; and
 - (ii) to the Operator of any Operator Owned Spares,
- in each case, in a condition so as to comply with the Redelivery Condition (TSA);
- (f) in relation to part-performed TSA Services and/or Additional Services:
 - (i) the Owner (or, the Operator on behalf of the Owner if the Lease remains in force) shall be entitled to enter any Maintenance Shed and the premises of the TMM and take possession of the Units, Vehicles, the Associated Equipment, the Simulators and any other Parts belonging to the Owner and take the benefit of any TSA Services and/or Additional Services part-performed on such Units and Vehicles and the Associated Equipment and the Simulators; and
 - (ii) the Operator shall be entitled to enter the Maintenance Shed and the premises of the TMM and take possession of the Operator Owned Spares and take the benefit of any TSA Services and/or Additional Services part-performed on such Spares,
- provided that, in each case, the Operator pays the TMM for the TSA Services and/or Additional Services part-performed and the Owner makes Balancing Cost Payments for the TSA Services part-performed, in each case at a price to be agreed between the Parties, and where applicable, amounts payable under Schedule 6, based on the price that would have been payable at the date for payment in respect of those TSA Services in accordance with the terms of this Agreement if this Agreement had not been terminated;
- (g) the Operator or the Owner shall be entitled to require the TMM to transfer to the Operator or Owner (as the case may be) title to the TMM Owned Spares in accordance with clause 10.2;
- (h) the TMM shall provide the Owner with the Default Package and shall comply with its other obligations under clause 7.6;
- (i) the provisions of clause 26.13 of the MSA will come into force and effect;
- (j) the TMM shall co-operate with the Operator and the Owner to minimise the disruption caused to the Operator's and the Owner's business due to the termination of this Agreement in relation to the provision of the TSA Services;
- (k) the TMM will within five Working Days of a written demand, pay the Operator and the Owner all reasonable costs incurred respectively by each of the Operator and the Owner as a result of any TSA TMM Event of Default and the loss of the provision of the TSA Services;
- (l) the TMM shall within five Working Days of a written demand, pay the Operator and the Owner all reasonable costs incurred by the Operator and the Owner in rectifying Faults arising, but not rectified prior to, the date of such termination which have not been reimbursed to the Operator and the Owner under clause 8.10 or any other provision of this Agreement or the MSA; and

- (m) the Operator and the Owner shall make provision for the aggregate amount standing to the credit of the Balancing Payments Account in accordance with the terms of schedule 9 (*Balancing Payments Account*) of the Lease.

5.2 If the Operator or the Owner issue a TSA TMM Termination Notice pursuant to paragraph 4, thereby terminating this Agreement, the TMM shall continue to perform the TSA Services and Additional Services and meet its obligations until the date upon which that termination shall become effective. The TMM shall be entitled to Service Payments for the Standard Services and Additional Services Payments for the Additional Services, in each case that it performs until the date of termination, including receiving amounts from the Balancing Payments Account in accordance with paragraph 15 (*Termination Sum*) of Schedule 6.6 (*Balancing Payments Account*).

5.3 ☐ ⁷³⁵

5.4 ☐ ⁷³⁶

5.5 The Owner's and the Operator's rights upon the occurrence of a TSA TMM Event of Default are as expressly set out in this Agreement, the Umbrella Agreement and in the MSA.

6. DAY 1 REMEDIAL PLAN

6.1 ☐ ⁷³⁷

6.2 ☐ ⁷³⁸

⁷³⁵ Redaction.

⁷³⁶ Redaction.

⁷³⁷ Redaction.

⁷³⁸ Redaction.

APPENDIX TO SCHEDULE 13.1

FORM OF TSA TMM TERMINATION NOTICE

Private & Confidential

From: [**Owner**] / [**Operator**]

To: [**TMM**]

Dated: [_____]

Terms defined in this notice shall have the same meaning as in the Train Services Agreement dated [_____] 2013 and entered into between [**TMM**], [**Owner**] and [**Operator**] (the **TSA**).

We hereby give you notice that with effect from [*select date*], the TSA is terminated as a consequence of a TSA TMM Event of Default under paragraph 1 of Schedule 13.1 (*TMM Events of Default*) of the TSA, namely:

[*specify TSA TMM Event of Default*]

The Owner and the Operator reserve the right to make a claim for any loss, expense or liability incurred by reason of such termination pursuant to paragraph 5.1 of Schedule 13.1 of the TSA. No claim pursuant to this notice shall prejudice the rights and liabilities of the Parties under paragraphs 5 and 6 of Schedule 13.1 of the TSA.

Signed by

For and on behalf of

[**Owner**] / [**Operator**]

.....
Director

.....
Director

SCHEDULE 13.2

Operator Events of Default

1. EVENTS

It shall be a TSA Operator Event of Default if any of the following occurs:

- (a) the Operator fails to insure the Vehicles or the Simulators in accordance with its obligations under clause 23.1 (*Operator Insurance*) and such failure continues for a period of three days or more from the date of receipt by the Operator of a notice from either the Owner or the TMM;
- (b) the Operator fails to pay any sum due and payable under this Agreement (and which is not the subject of a bona fide Contract Dispute), the TMM has given notice of such default to the Operator and the Operator has failed to make the relevant payment within 20 Working Days of its receipt of such notice in accordance with clause 39.4;
- (c) an Insolvency Event occurs in relation to the Operator;
- (d) the Operator breaches any material obligation under this Agreement (other than as referred to in paragraphs 1(a) or (b)), except to the extent that the breach results from a Force Majeure Event and, if, in each case, the breach is capable of remedy, the Operator fails to remedy the breach after having been required to do so by notice from the TMM by such date as is specified in such notice, which shall be at least 30 days after the Operator's receipt of such notice in accordance with clause 39.4;
- (e) any representation or statement of fact made by the Operator under:
 - (i) under clause 4.2 of the Conditions Precedent Agreement in relation to this Agreement (in the case of the Initial Operator); or
 - (ii) in a Deed of Accession (in the case of any Successor Operator),is incorrect when made or repeated and such misrepresentation has or is likely to have a material adverse effect on the ability of the Parties to perform their respective obligations under this Agreement, unless the circumstances giving rise to the misrepresentation are capable of remedy and are remedied within a period of 10 Working Days of its occurrence;
- (f) the Franchise Agreement expires or is terminated for any reason other than effluxion of time;
- (g) a Lease Operator Termination Notice is issued by the Owner;
- (h) an MSA Operator Termination Notice is issued by the TMM;
- (i) the Operator is no longer obliged to make any payment under this Agreement because the aggregate limit specified in clause 27.19(d) has been reached; or
- (j) the Operator fails to remedy an assignment, transfer or other disposal of the Operator's rights and/or obligations under this Agreement and/or any other Contract that is in breach of the Operator's obligations under clause 6.1 of the Umbrella

Agreement within 20 Working Days of its receipt of a notice from the TMM or the Owner under clause 6.11 of the Umbrella Agreement.

2. NOTICE OF TSA OPERATOR EVENT OF DEFAULT

Upon becoming aware of the occurrence of a TSA Operator Event of Default, the relevant Party shall promptly notify the other Parties and the Secretary of State of the TSA Operator Event of Default, including providing details of the circumstances thereof, and:

- (a) the provisions of paragraphs 3 and 4 below shall apply; and
- (b) if that event occurs prior to the expiry or termination of the Umbrella Agreement, the provisions of:
 - (i) paragraph 1 (*Notification of Secretary of State*) of Part 2 (*Operator default of TSA*) of schedule 2.3 (*Early Termination of the TSA*) of the Umbrella Agreement; and
 - (ii) paragraph 2 (*Secretary of State's Rights following Operator Default*) of Part 1 (*Operator Default*) of schedule 2.4 (*Early Termination of the Lease*) of the Umbrella Agreement,shall each apply; or
- (c) if that event occurs after the expiry or termination of the Umbrella Agreement, the provisions of clause 9 (*Termination of Siemens Contract*) of the Maintenance Direct Agreement shall apply.

3. TERMINATION

If any TSA Operator Event of Default occurs and is continuing, then:

- (a) if that event occurs prior to the expiry or termination of the Umbrella Agreement, subject to paragraph 2 of Part 1 of schedule 2.4 of the Umbrella Agreement; or
- (b) if that event occurs after the expiry or termination of the Umbrella Agreement, subject to the terms of the Maintenance Direct Agreement,

the TMM shall have the right to terminate the Operator's participation in this Agreement by a notice in writing specifying the TSA Operator Event of Default which has occurred and is continuing and signed by the TMM (a ***TSA Operator Termination Notice***) (copied to the Owner), such termination to occur with immediate effect or from such later date as is specified in the TSA Operator Termination Notice. If, following service of a TSA Operator Termination Notice but before termination of this Agreement in relation to the provision of the TSA Services, the relevant TSA Operator Event of Default is remedied (or, in the case of either of the TSA Operator Events of Default in paragraphs 1(g) or (h), the relevant notice is withdrawn), then that Operator Termination Notice will be deemed to have been withdrawn and will no longer be outstanding.

4. TMM'S RIGHTS FOLLOWING OPERATOR DEFAULT

4.1 Subject to paragraph 4.2, if the TMM issues a TSA Operator Termination Notice pursuant to paragraph 3 (*Termination*), thereby terminating the Operator's participation in this Agreement, then on the date of such termination:

- (a) if such termination occurs prior to the expiry or termination of the Umbrella Agreement, the provisions of schedule 2.1 (*Section 54 Undertakings*) (excluding paragraph 1.2 of that schedule) of the Umbrella Agreement shall apply, subject to the limitations set out in paragraph 1.3 of schedule 2.1 of the Umbrella Agreement;
- (b) if such termination occurs after the expiry or termination of the Umbrella Agreement and the Secretary of State elects to procure that the Equipment will continue to be used by a Train Operator for the provision of services on the Network, the provisions of clause 8 (*Secretary of State Undertaking*) and schedule 2 (*Terms of Secretary of State Undertaking*) of the Maintenance Direct Agreement shall apply, subject to the limitations set out in clause 8.2 of the Maintenance Direct Agreement;
- (c) a Party shall cease to accrue any further obligations or liabilities under this Agreement to any other Party under this Agreement, save only in respect of the Party's obligations under clause 31 (*Advertising and Confidentiality*), any other provision of this Agreement that survives the termination of this Agreement and any antecedent breaches of the Party's obligations or liabilities which have accrued in respect of the period up to the date of termination of this Agreement;
- (d) the Operator shall pay to the TMM the sum of:
 - (i) the aggregate of all TMM Payments (including the apportioned element of the period relating to the Railway Period during which the Agreement is so terminated), Additional Service Payments (including such payments in relation to Additional Services carried out in the Railway Period during which the Agreement is so terminated) and other amounts payable to the TMM which have then fallen due under this Agreement but remain unpaid;
 - (ii) such sum as represents the reasonable cost of labour and materials already incurred or committed by the TMM as at the date of termination of this Agreement in respect of TSA Services performed or provided or which would have been performed or provided but for such termination (including the cost of terminating sub-contracts and redundancy of employees);
 - (iii) the reasonable costs incurred by the TMM in preparing the Default Package; and
 - (iv) all other direct losses, costs and claims of the TMM relating to the termination of the Operator's participation in this Agreement, including without limitation, the proper and reasonable costs of the TMM in relation to agreeing and implementing an Operator Accession or an Operator Transfer Scheme, but otherwise no loss of profit or indirect consequential losses, provided that the TMM shall not be entitled to recover (by way of indemnity or otherwise) more than once in respect of the same loss or damage under this Agreement or any other Transaction Document;
- (e) the Operator shall pay to the Owner the sum of:
 - (i) the aggregate of all unpaid Balancing Cost Payments (including the apportioned element of the period relating to the Railway Period during which the Agreement is so terminated);
 - (ii) other amounts payable by the Operator to the Owner which have fallen due under this Agreement but remain unpaid; and

- (iii) all other direct losses, costs and claims of the Owner relating to the termination of the Operator's participation in this Agreement, including, without limitation, the proper and reasonable costs of the Owner in relation to agreeing and implementing an Operator Accession or an Operator Transfer Scheme, provided that the Owner shall not be entitled to recover (by way of indemnity or otherwise) more than once in respect of the same loss or damage under this Agreement or any other Contract;
- (f) the Owner shall be entitled to require the TMM to transfer to the Owner title to the TMM Owned Spares in accordance with clause 10.2; and
- (g) the Parties shall carry out a reconciliation of the Daily Service Charges (TSA) paid by the Operator in the Railway Year in which such termination occurs, in accordance with paragraph 5 of Schedule 6.2 or paragraph 5 of Schedule 6.3, as applicable.

4.2 Paragraphs 4.1(c), 4.1(d)(ii) and (iii), 4.1(f), 4.3, 4.4 and 4.5 shall not apply in the case of any termination of this Agreement pursuant to paragraph 3 (*Termination*) to which the provisions of:

- (a) if such termination occurs prior to the expiry or termination of the Umbrella Agreement, paragraph 1.1 or 1.2 of schedule 2.1 (*Section 54 Undertakings*) of the Umbrella Agreement; or
- (b) if such termination occurs after the expiry or termination of the Umbrella Agreement and the Secretary of State elects to procure that the Equipment will continue to be used by a Train Operator for the provision of services on the Network, clause 8.1 and schedule 2 (*Terms of Secretary of State Undertaking*) of the Maintenance Direct Agreement,

apply.

4.3 If the TMM issues a TSA Operator Termination Notice pursuant to paragraph 3 (*Termination*) which is not withdrawn, then following termination of this Agreement and subject to payment by the Operator to the TMM of all sums due and payable under this Agreement, the TMM will:

- (a) deliver up to the Owner (or if the Lease is still in force, to the Operator) possession of any Units, Vehicles, Owner Owned Spares, any other Spares and any other Parts belonging to the Owner complying with the Redelivery Conditions (TSA);
- (b) provide the Owner with the Default Package and shall comply with its other obligations under clause 7.6; and
- (c) transfer any materials and moveable equipment used for providing the TSA Services at a price to be agreed between the Owner and the TMM.

4.4 The Operator's maximum liability to the TMM on termination of this Agreement pursuant to paragraph 4.1 (excluding its liability under paragraph 4.1(d)(i) and under Schedule 17, Appendix 2 to Schedule 17 (*Consultation Plan*), Schedule 18 (*Pensions Arrangements*) and the Appendix to Schedule 18 (*Form of Actuaries' Letter*) which shall,

subject in each case to the terms of those provisions, be unlimited) shall not in aggregate exceed []⁷³⁹.

4.5 Subject to paragraph 4.2, the TMM agrees that it will reimburse the Operator for the duration of the existing Franchise Agreement for any amounts paid under paragraphs 4.1(d)(ii) and (iv) if the TMM is subsequently able to use the Designated Depots, the materials, or its staff and/or Sub-Contractors or recoup its margin as a result of it entering into an alternative contract and the TMM does not then suffer the losses claimed from the Operator under paragraphs 4.1(d)(ii) and (iv).

4.6 With effect from the termination or expiry of the TSA Term, the TMM shall extend to the Owner the benefit of any then subsisting guarantee, condition or warranty which may have been given to the TMM or which is implied by law in favour of the TMM in respect of the TSA Services as provided by the TMM during the TSA Term, provided that in so doing, the TMM shall be relieved of its obligations and liabilities under this Agreement in so far as the benefit of such rights are assigned to the Owner.

4.7 The TMM's rights upon the occurrence of a TSA Operator Event of Default are as expressly set out in this Agreement, the Umbrella Agreement and the MSA.

⁷³⁹ Redaction.

SCHEDULE 13.3

TSA Owner Events of Default

1. EVENTS

It shall be a TSA Owner Event of Default if any of the following occurs:

- (a) the Owner fails to pay any sum properly due and payable under this Agreement (and which is not the subject of a bona fide Contract Dispute), the TMM has given notice in writing of such default to the Owner (with a copy to the Operator) and the Owner has failed to make the relevant payment within 20 Working Days of its receipt of such notice in accordance with clause 39.4;
- (b) an Insolvency Event occurs in relation to the Owner;
- (c) ☐ ⁷⁴⁰
- (d) any representation or statement of fact made by the Owner under clause 4.3 of the Conditions Precedent Agreement in relation to this Agreement is incorrect when made or repeated and such misrepresentation has or is likely to have a material adverse effect on the ability of the Parties to perform their respective obligations under this Agreement, unless the circumstances giving rise to the misrepresentation are capable of remedy and are remedied within a period of 10 Working Days of its occurrence;
- (e) a Lease Owner Termination Notice is issued by the Operator other than as a result of a ☐ ⁷⁴¹ where the ☐ ⁷⁴² apply.

2. NOTICE OF TSA OWNER EVENT OF DEFAULT

Upon becoming aware of the occurrence of a TSA Owner Event of Default, the relevant Party shall promptly notify the other Parties and the Secretary of State of the TSA Owner Event of Default, providing a reasonably detailed description thereof, and the provisions of Part 3 (*Owner default of TSA*) of schedule 2.3 (*Early Termination of the TSA*) of the Umbrella Agreement shall apply.

3. TERMINATION

Subject to paragraph 1.2 of Part 3 (*Owner default of TSA*) of schedule 2.3 (*Early Termination of the TSA*) of the Umbrella Agreement, if any TSA Owner Event of Default occurs and is continuing, then the TMM may terminate the Owner's participation in this Agreement by a notice in writing specifying the TSA Owner Event of Default which has occurred and is continuing and signed by the TMM (a ***TSA Owner Termination Notice***) (copied to the Operator), such termination to occur with immediate effect or from such later date as is specified in the TSA Owner Termination Notice. If, following service of a TSA Owner Termination Notice but before termination of the Owner's participation of this Agreement,

⁷⁴⁰ Redaction.

⁷⁴¹ Redaction.

⁷⁴² Redaction.

the relevant TSA Owner Event of Default is remedied (or, in the case of the TSA Owner Event of Default in paragraph 1(e), that notice is withdrawn), then that TSA Owner Termination Notice will be deemed to have been withdrawn and will no longer be outstanding.

4. TMM'S AND OPERATORS' RIGHTS AND OBLIGATIONS FOLLOWING TERMINATION OF OWNER PARTICIPATION

4.1 If the TMM issues a TSA Owner Termination Notice pursuant to paragraph 3 (*Termination*) as a result of a TSA Owner Event of Default in paragraphs 1(a), 1(c) or 1(d), thereby terminating the Owner's participation in this Agreement, then on the date of that termination:

- (a) the TMM and the Operator shall cease to accrue any further obligations or liabilities to the Owner under this Agreement, save only in respect of that Party's obligations under clause 31 (*Advertising and Confidentiality*), any other provision of this Agreement that is expressed to survive the termination of this Agreement and any antecedent breaches of each Party's obligations or liabilities under this Agreement or any unpaid sums which have accrued in respect of the period up to the date of termination of the Owner's participation in this Agreement;
- (b) this Agreement shall continue as between the Operator and the TMM, save only that it shall be amended to remove the Owner's rights, obligations and liabilities hereunder;
- (c) the Owner will pay to the TMM:
 - (i) any amounts payable by the Owner to the TMM under this Agreement which have then fallen due and remain unpaid; and
 - (ii) all of the TMM's reasonable direct costs arising from the matters set out in this paragraph 4.1, but no loss of profit or indirect consequential losses; and
- (d) as between the Operator and the Owner, the provisions of schedule 9 (*Balancing Payments Account*) of the Lease shall apply in relation to the operation of the Balancing Payments Account; and
- (e) as between the Operator and the TMM, the Operator shall assume the Owner's obligation to make or procure the making of payments of Periodic Maintenance Charges from the Balancing Payments Account to the TMM in accordance with paragraph 13 (*Periodic Maintenance Charges*) of Schedule 6.6 (*Balancing Payments Account*), but the Operator shall not assume any other obligations or liabilities of the Owner under this Agreement.

4.2 If:

- (a) the TMM issues a TSA Owner Termination Notice pursuant to paragraph 3 (*Termination*) as a result of a TSA Owner Event of Default in paragraphs 1(b) or 1(e); and
- (b) the TMM and the Operator receive a notice from the Secretary of State under paragraph 2.5 of schedule 2.8 (*Transfer of rolling Stock and Contracts upon Termination*) of the Umbrella Agreement that the Secretary of State wishes a New Owner to assume the rights and obligations of the Owner under this Agreement, then,

subject to the provisions of paragraph 2 (*Novation*) of schedule 2.8 of the Umbrella Agreement, the TMM's and the Operator's obligations under this Agreement shall continue, with effect from the relevant Owner Succession Date for the benefit of the New Owner to whom the Train Assets are transferred.

4.3 ⁷⁴³

4.4 With effect from the termination or expiry of the TSA Term, the TMM shall extend to the Operator the benefit of any then subsisting guarantee, condition or warranty which may have been given to the TMM or which is implied by law in favour of the TMM in respect of the TSA Services as provided by the TMM during the TSA Term, provided that in so doing the TMM shall be relieved of its obligations and liabilities under this Agreement in so far as the benefit of such rights are assigned to the Owner.

4.5 The TMM's rights upon the occurrence of a TSA Owner Event of Default are as expressly set out in this Agreement, the MSA and the Umbrella Agreement.

⁷⁴³ Redaction.

SCHEDULE 13.4

[]⁷⁴⁴

1. OPERATOR RIGHT TO TERMINATE

Save where paragraph 3.2 applies, upon the occurrence of the []⁷⁴⁵, the Operator may, subject to clauses 9.1 to 9.5 (inclusive) of the Umbrella Agreement, terminate this Agreement by serving written notice on the Owner and the TMM (a ***TSA Performance Termination Event Notice***), such termination to have immediate effect or to be effective on such later date as is specified in the TSA Performance Termination Event Notice. If, following service of such a TSA Performance Termination Event Notice, but before termination of this Agreement, the relevant []⁷⁴⁶ is no longer continuing, then the Operator shall withdraw the TSA Performance Termination Event Notice and such notice will no longer be outstanding.

2. CONSEQUENCES OF TERMINATION

2.1 If this Agreement is terminated in accordance with paragraph 1 (*Operator Right to Terminate*) then, on the date of termination of this Agreement, paragraphs 5.1, 5.3 and 5.5 of Schedule 13.1 (*TMM Events of Default*) shall apply mutatis mutandis as if set out in full in this schedule, save that references therein to paragraph 4 (*Termination*) of Schedule 13.1 shall be deemed to be references to paragraph 1 of this schedule and paragraph 2.2 shall apply.

2.2 The TMM shall continue to perform the TSA Services and Additional Services and meet its obligations until the date upon which the termination of this Agreement in relation to the provision of the TSA Services and the Additional Services shall become effective. The TMM shall be entitled to Service Payments for the Standard Services and Additional Services Payments for the Additional Services, in each case that it performs until the date of termination, including receiving amounts from the Balancing Payments Account in accordance with paragraph 15 (*Termination Sum*) of Schedule 6.6 (*Balancing Payments Account*).

3. []⁷⁴⁷

⁷⁴⁴ Redaction.

⁷⁴⁵ Redaction.

⁷⁴⁶ Redaction.

⁷⁴⁷ Redaction.

SCHEDULE 13.5

Operator Voluntary Termination Right

1. APPLICATION OF THIS SCHEDULE 13.5

This Schedule 13.5 shall apply commencing on the Acceptance Anniversary.

2. RIGHT TO TERMINATE

2.1 Subject to paragraphs 2.2 and 4 (*Performance worse than Acceptable Performance Level*), of this Schedule 13.5 and part 5 (*TSA Operator Voluntary Termination Right*) of schedule 2.3 (*Early Termination of the TSA*) of the Umbrella Agreement, each Successor Operator (other than a Public Sector Operator) shall have the right in its sole discretion to terminate this Agreement on 12 months' notice to the TMM and the Owner (an ***Operator TSA Voluntary Termination Notice***) at any time during the Step-In Voluntary Termination Window that commences on the same date as that Successor Operator's Franchise Agreement.

2.2 No Operator shall have the right to terminate this Agreement pursuant to paragraph 2.1:

- (a) in relation to any Voluntary Termination Window other than the relevant Step-In Voluntary Termination Window; and
- (b) in relation to any Step-in Voluntary Termination Window that commences prior to the Acceptance Anniversary.

2.3 If the Operator delivers an Operator TSA Voluntary Termination Notice in accordance with paragraph 2.1, it shall, on the same date, serve a TSSSA Requirement Notice on the TMM pursuant to clause 26.2.

2.4 Where the Operator does not deliver an Operator TSA Voluntary Termination Notice pursuant to paragraph 2.1 within the relevant Step-In Voluntary Termination Window, the Operator's right to terminate this Agreement in accordance with paragraph 2.1 shall, subject to paragraph 4, lapse until the next Step-in Voluntary Termination Window.

3. CONSEQUENCES OF TERMINATION

3.1 If this Agreement is terminated in accordance with paragraph 2.1, then, on the date of termination of this Agreement:

- (a) a Party shall cease to accrue any further obligations or liabilities to the other Parties under this Agreement, save only in respect of the Party's obligations under clause 31 (*Advertising and Confidentiality*), any other provision of this Agreement that survives the termination of this Agreement and any antecedent breaches of the Party's obligations or liabilities which have accrued in respect of the period up to the date of termination of this Agreement;
- (b) the Operator shall pay to the TMM the sum of:
 - (i) the reasonable costs incurred by the TMM in relation to the demobilisation of its activities under this Agreement, including the cost of relocation of any

equipment that is owned by the TMM and used in connection with the Project;

- (ii) the aggregate of all TMM Payments (including the apportioned element of the period relating to the Railway Period during which the Agreement is so terminated), Additional Service Payments (including such payments in relation to Additional Services carried out in the Railway Period during which this Agreement is so terminated) and other amounts payable to the TMM which have then fallen due under this Agreement but remain unpaid;
 - (iii) such sum as represents the reasonable cost of labour and materials already incurred or committed by the TMM as at the date of termination of this Agreement in respect of TSA Services performed or provided or which would have been performed or provided but for such termination (including the cost of terminating sub-contracts and redundancy of employees);
 - (iv) the reasonable costs incurred by the TMM in preparing the Default Package;
 - (v) all other direct losses, costs and claims but otherwise no loss of profit or indirect consequential losses;
- (c) the Operator or the Owner shall be entitled to require the TMM to transfer to the Operator or the Owner (as the case may be) title to the TMM Owned Spares in accordance with clause 10.2; and
- (d) the provisions of clause 26.13 of the MSA will come into force and effect; and
- (e) the Operator and the Owner shall make provision for the aggregate amount standing to the credit of the Balancing Payments Account in accordance with the terms of schedule 9 (*Balancing Payments Account*) of the Lease.

3.2 The TMM shall continue to perform the TSA Services and Additional Services and meet its obligations until the date upon which the termination of this Agreement in relation to the provision of the TSA Services and the Additional Services shall become effective. The TMM shall be entitled to Service Payments for the Standard Services and Additional Services Payments for the Additional Services, in each case that it performs until the date of termination, including receiving amounts from the Balancing Payments Account in accordance with paragraph 15 (*Termination Sum*) of Schedule 6.6 (*Balancing Payments Account*).

3.3 Subject to payment by the Operator to the TMM of all sums due and payable under this Agreement, and unless otherwise provided for in any TSSSA entered into pursuant to clause 26.2, the TMM will:

- (a) deliver up to the Owner (or if the Lease is still in force, to the Operator) possession of any Units, Vehicles, Owner Owned Spares and any other Parts belonging to the Owner complying with the Redelivery Conditions (TSA);
- (b) provide the Owner with the Default Package and shall comply with its other obligations under clause 7.6; and
- (c) transfer any materials and moveable equipment used for providing the TSA Services at a price to be agreed between the Owner and the TMM and the provisions of

paragraph 5 (*Epidemic and Endemic Defects*) of Schedule 14 (*Design Life, Warranties and Fault Rectification*) of the MSA will come into force and effect.

3.4 The Operator's maximum liability to the TMM on termination of this Agreement pursuant to paragraph 3.1 (excluding its liability under paragraph 3.1(b)(ii) or under Schedule 17, Appendix 2 to Schedule 17 (*Consultation Plan*), Schedule 18 (*Pensions Arrangements*) and the Appendix to Schedule 18 (*Form of Actuaries' Letter*) which in each case shall, subject to the terms of such provisions, be unlimited) shall not in aggregate exceed £10,000,000.

4. PERFORMANCE WORSE THAN ACCEPTABLE PERFORMANCE LEVEL

4.1 If reductions are being applied to the Fleet Rental pursuant to paragraph 2.1 of schedule 3.10 (*Rental Reductions*) of the Lease during a Step-In Voluntary Termination Window, the relevant Successor Operator shall be entitled, by way of a notice delivered to the TMM and the Owner no later than the end of the Step-In Voluntary Termination Window (provided that neither (a) has the Operator already issued an Operator TSA Voluntary Termination Notice during that Step-In Voluntary Termination Window, nor (b) have the reductions to the Fleet Rental under the Lease ceased to apply at the time of such notice) to notify the Owner and the TMM that it intends to terminate this Agreement and self-maintain the Units, but that it is suspending its right to issue an Operator TSA Voluntary Termination Notice upon the terms and conditions of this paragraph 4 (an ***Operator TSA Voluntary Termination Suspension Notice***).

4.2 If an Operator issues an Operator TSA Voluntary Termination Suspension Notice, its right to issue an Operator TSA Voluntary Termination Notice shall be suspended from the date of such notice until the earlier to occur of:

- (a) the performance of the Fleet becoming equal to or better than the Acceptable Performance Level; or
- (b) the date which is the latest of:
 - (i) the second anniversary of the first day of the relevant Step-In Voluntary Termination Window;
 - (ii) the third anniversary of the introduction of Automatic Train Operation on the Thameslink Network; and
 - (iii) the third anniversary of the introduction of ERTMS on the Thameslink Network,

such period being the ***Operator TSA Voluntary Termination Suspension Period***.

4.3 At the end of the Operator TSA Voluntary Termination Suspension Period, a Voluntary Termination Window shall open for a period of 14 Working Days, during which time the Operator shall be entitled to issue an Operator TSA Voluntary Termination Notice.

4.4 Where the Operator issues an Operator TSA Voluntary Termination Notice pursuant to paragraph 4.3:

- (a) this Agreement shall terminate in accordance with paragraph 3 (*Consequences of Termination*);

- (b) the Operator shall, on the same date, serve a TSSSA Requirement Notice pursuant to clause 26.2(c); and
- (c) if the Operator TSA Voluntary Termination Suspension Period ends due to the effluxion of time in accordance with paragraph 4.2(b), then:
 - (i) the TMM shall, within 5 Working Days of the termination of this Agreement pursuant to the Operator TSA Voluntary Termination Notice, pay to the Operator the Rental Reduction Crystallisation Payment at such time; and
 - (ii) upon such payment being made, paragraph 5 (*TSA Voluntary Termination*) of schedule 3.10 (*Rental Reductions*) of the Lease shall apply.

SCHEDULE 13.6

Secretary of State Voluntary Termination Rights

1. EVENT

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

1.2 Upon receipt of a notice from the Secretary of State under paragraph 1(a) of schedule 2.7 of the Umbrella Agreement (a ***Secretary of State Voluntary Termination Notice***), the Parties agree that this Agreement shall terminate on the date specified in that notice.

2. CONSEQUENCES OF TERMINATION

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

- (a) all rights and obligations of the Parties under this Agreement will, save as expressly provided to the contrary in this Agreement or in the Umbrella Agreement, terminate with effect from the date specified in the notice delivered pursuant to paragraph 1.2; and
- (b) the provisions of paragraphs 2 (*Operator Rights upon voluntary termination by Secretary of State*) to 4 (*Compensation payable to TMM*) of schedule 2.7 (*Voluntary Termination of Contracts by the Secretary of State*) of the Umbrella Agreement shall apply.

SCHEDULE 13.7

Termination of the MSA

1. TMM MSA DEFAULT

MSA TMM Pre-Minimum Fleet Termination Notice

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

- (a) this Agreement and all rights and obligations of the Parties hereunder will, save as expressly provided to the contrary in this Agreement or in the Umbrella Agreement, terminate; and
- (b) the provisions of paragraph 4 (*Termination of MSA upon TMM Default prior to Supply of Minimum Fleet*) of Part 1 (*TMM Default of MSA*) of schedule 2.2 (*Early Termination of the MSA*) of the Umbrella Agreement shall apply.

MSA TMM Post-Minimum Fleet Termination Notice

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

- (a) all the rights and obligations of the Parties under this Agreement shall, subject to any express provision in this Agreement or the Umbrella Agreement to the contrary, continue other than in relation to any Equipment that has not been Accepted at such date; and
- (b) the provisions of paragraphs 6 (*Continuing Arrangements following MSA TMM Post-Minimum Fleet Termination Notice*) to 11 (*TMM Default Partial Termination: Elected Units*) (inclusive) and either paragraph 12 (*Termination of Owner Participation*) or paragraph 13 (*TMM Default Partial Termination*), in each case of Part 1 (*TMM Default of MSA*) of schedule 2.2 (*Early Termination of the MSA*) of the Umbrella Agreement shall apply.

□⁷⁴⁸

1.3 □⁷⁴⁹

Post-Minimum Fleet – TMM Default Partial Termination

1.4 Where paragraph 13 (*TMM Default Partial Termination*) of Part 1 (*TMM Default of MSA*) of schedule 2.2 (*Early Termination of the MSA*) of the Umbrella Agreement applies, then Part 6 (*Continuation or termination of TSA where MSA terminated before all Initial Units Accepted*) of schedule 2.3 (*Early Termination of the TSA*) of the Umbrella Agreement

⁷⁴⁸ Redaction.

⁷⁴⁹ Redaction.

shall apply in relation to the rights and obligations of the Parties under this Agreement after the TMM Default Termination Closing Date insofar as such rights and obligations relate to any Equipment that has been Accepted as at the date of the MSA TMM Post-Minimum Fleet Termination Notice, provided that paragraph 5 (*Change to Availability Benchmark*) and the Applicable Variation Procedure shall apply and a Run of the TMM Financial Model shall occur in order to give effect to the reduction in the number of Units comprising the Fleet arising from the Partial Termination of the MSA.

2. FORCE MAJEURE TERMINATION OF THE MSA

2.1 The Parties acknowledge that the provisions of schedule 2.6 (*Termination of Contracts for Force Majeure*) of the Umbrella Agreement shall apply to their rights and obligations under this Agreement.

MSA Force Majeure - Pre-Minimum Fleet Termination

2.2 If the Secretary of State or any Party to the MSA delivers a notice for the termination of the MSA pursuant to paragraph 3.1 of schedule 2.6 of the Umbrella Agreement (or such notice is deemed to have been delivered pursuant to paragraph 10.1 of schedule 2.6 of the Umbrella Agreement) in circumstances where paragraph 4 (*Circumstances where Lease and TSA are terminated following MSA Force Majeure Event*) of schedule 2.6 of the Umbrella Agreement applies then, with effect from the date set out in the relevant termination notice (or, where paragraph 10.1 of schedule 2.6 of the Umbrella Agreement applies, with effect from the date of the notice which is deemed to have been delivered pursuant to that paragraph), all rights and obligations of the Parties under this Agreement shall, save as expressly provided to the contrary in this Agreement or in the Umbrella Agreement, terminate.

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2.3 □⁷⁵¹

□⁷⁵²

2.4 □⁷⁵³

3. □⁷⁵⁴

4. □⁷⁵⁵

□⁷⁵⁶

⁷⁵⁰ Redaction.

⁷⁵¹ Redaction.

⁷⁵² Redaction.

⁷⁵³ Redaction.

⁷⁵⁴ Redaction.

⁷⁵⁵ Redaction.

⁷⁵⁶ Redaction.

5. ⁷⁵⁷

6. CHANGE TO AVAILABILITY BENCHMARK

If the number of Units that are the subject of this Agreement is reduced as a result of a Partial Termination or another partial termination of the TMM's obligations to manufacture and deliver Equipment under the MSA described in any of paragraphs 1.3(b)(i), 1.4, 2.3(b)(ii) 2.4, 3.2(c)(ii), 3.3, 4.2 or 5(b)(ii) of this Schedule 13.7, the Parties agree that:

- (a) the Availability Benchmark that shall apply after such termination shall be adjusted in accordance with sub-paragraph (ii) of the definition of Availability Benchmark in the Master Definitions Agreement; but
- (b) save for any adjustment to the level of Service Payments determined in accordance with the principles described in such paragraphs, no other amendments shall be made to this Agreement as a result of such Partial Termination or partial termination of the MSA.

⁷⁵⁷ Redaction.

SCHEDULE 13.8

Uninsurability

1. EVENT

1.1 The Parties acknowledge and agree that the Secretary of State may require termination of this Agreement at any time pursuant to clause 14.6(d) of the Umbrella Agreement.

1.2 The Parties agree that, if the Secretary of State issues a notice under clause 14.6(d), this Agreement shall terminate on the date specified in that notice.

2. CONSEQUENCES OF TERMINATION

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

- (a) all rights and obligations of the Parties under this Agreement will, save as expressly provided to the contrary in this Agreement or in the Umbrella Agreement, terminate with effect from the date specified in the notice delivered pursuant to paragraph 1.2; and
- (b) the provisions of clause 14.9 of the Umbrella Agreement shall apply.

SCHEDULE 14

REDELIVERY CONDITION SCHEDULE

Schedule 14:

Redelivery Condition Schedule

SCHEDULE 14

Redelivery Condition Schedule

1. REDELIVERY

Redelivery requirements

1.1 Upon each of:

- (a) the expiry or earlier termination of this Agreement;
- (b) the transfer of the rights and obligations of the Operator to a Successor Operator in accordance with clause 41.13; or
- (c) the end of a sub-lease during which the sub-leased Units continued to be maintained under this Agreement,

the TMM shall, subject to paragraphs 1.3, 1.4, 4.3 and 4.4, redeliver each Unit and each item of Associated Equipment and each Simulator (including in each case, its Technical Records) to the Owner at the Redelivery Location in the Redelivery Condition (TSA), provided that the Operator has delivered each Unit and Simulator in its possession to the Redelivery Location, but in each case, except to the extent that any Unit, Simulator or item of Associated Equipment has suffered an Event of Loss, in which case the provisions of paragraph 1.5 shall apply in relation to that Unit, Simulator or item of Associated Equipment, as the case may be.

1.2 If the Operator has not delivered a Unit or Simulator in its possession to the Redelivery Location at the relevant time, it shall do so as soon as reasonably practicable thereafter, and the TMM's covenant under paragraph 1.1 shall apply from the time of such delivery.

Performance Remedial Plans

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

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

Transfer of rights to a Successor Operator

1.4 Where the rights and obligations of the Operator transfer to a Successor Operator pursuant to clause 6 of the Umbrella Agreement, the Units shall (save for any Units that the Owner has previously been notified are undergoing maintenance or repair work away from the Thameslink Network) be redelivered on the Thameslink Network (or such other place as

the Operator or a sub-lessee are entitled to use such Units in accordance with paragraph 5 of schedule 5 of the Lease) and on a “where is” basis and the TMM (and in turn the Operator) shall not be obliged to redeliver the Units to the Redelivery Location.

Events of Loss

1.5 If an Event of Loss has occurred in relation to a Unit or item of Associated Equipment or Simulator, the TMM shall promptly redeliver the Technical Records that relate to that Unit or item of Associated Equipment or Simulator (as the case may be) to the Owner, but shall not be obliged to redeliver that Unit or item of Associated Equipment or Simulator (as the case may be).

Security Interests

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

2. FINAL INSPECTION AND FINAL FRANCHISE INSPECTION

2.1 Before:

- (a) the expiry of this Agreement; and
- (b) accession by a Successor Operator pursuant to clause 6 (*Disposal of this Agreement and the Contracts*) of the Umbrella Agreement,

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

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

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

3. DETAILS OF THE FINAL INSPECTION OR FINAL FRANCHISE INSPECTION

3.1 The site of the Final Inspection or Final Franchise Inspection (as applicable) shall be such premises as are reasonably specified by the TMM to the Owner, subject to:

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

3.2 The TMM shall be entitled to have a representative present at the Final Inspection or Final Franchise Inspection (as applicable).

3.3 Safe access to the site of the Final Inspection or Final Franchise Inspection (as applicable) will be provided by the TMM where that site is any Maintenance Shed and by the Operator where otherwise part of a Designated Depot or Outstation.

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

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

4. NON-COMPLIANCE

4.1 If by the date of a Final Inspection or Final Franchise Inspection (as applicable) or upon the required redelivery date for the relevant Unit or item of Associated Equipment or Simulator, the condition of that Unit or item of Associated Equipment or Simulator, as the case may be, does not meet the requirements of paragraph 5 (*Redelivery Condition*), the Owner will provide the TMM and the Operator with details of such non-compliance and, subject to paragraphs 4.3 and 4.4, the TMM will, unless otherwise expressly agreed in writing, at the Owner's option:

- (a) rectify the non-compliance as soon as possible and, to the extent necessary, this Agreement will remain in force until the non-compliance has been rectified. Following rectification by the TMM of such non-compliance, the Owner shall be entitled to carry out a further inspection of the formerly non-compliant Unit or item of Associated Equipment or Simulator, as the case may be, to determine whether that Unit or item of Associated Equipment or Simulator, as the case may be, meets the Redelivery Condition (TSA); or
- (b) redeliver the non-compliant Unit or item of Associated Equipment or Simulator, as the case may be, to the Owner on the required redelivery date and the Owner shall be entitled to make a claim against the TMM in respect of the cost of putting such non-compliant Unit or item of Associated Equipment or Simulator into the Redelivery Condition (TSA).

4.2 The Operator shall either:

- (a) authorise the carrying out by the TMM, and pay the TMM to carry out; or
- (b) carry out or procure the carrying out by a third party of,

in each case, any Additional Services and Cosmetic Repairs required (when taken with the performance of all necessary Standard Service) to put each relevant Unit and Simulator into the Redelivery Condition (TSA) by the date of a Final Inspection or Final Franchise Inspection (as appropriate) or the required redelivery date for the relevant Unit.

4.3 In carrying out the TSA Services, the TMM shall not be required to ensure that any Unit, Vehicle, Simulator, Part, Spare or Special Tool is in a condition which is consistent with the condition required under paragraph 5 to the extent and for the period of time that the TMM is unable to ensure such a condition because the Operator has failed to authorise Additional Services to be provided (or that the Operator's authorisation when provided left insufficient time prior to the date of the Final Inspection or Final Franchise Inspection (as the case may be) to enable the TMM to carry out the relevant Additional Services before the relevant inspection) or has not otherwise carried out or procured the carrying out of Additional Services and Cosmetic Repairs that the Operator decided to self-perform or procure the performance of by a Third Party Maintainer pursuant to clause 8.8, which Additional Services, if provided, would have enabled the TMM to ensure that the relevant Unit, Vehicle, Part, Spare or Special Tool were in a condition which is consistent with the Redelivery Condition Schedule.

4.4 The TMM shall have no liability in relation to any failure of a Unit or Simulator to achieve the Redelivery Condition (TSA) specified in paragraphs 5.1 to 5.3 inclusive arising due to any act, omission, neglect or default of the Operator in the self performance by the Operator, or in the performance by any Third Party Maintainer on the Operator's behalf of, in either case, any Operator Own Service, Additional Service or Cosmetic Repair pursuant to clause 8.8.

4.5 The TMM shall notify the Owner at each Performance Review Meeting if a circumstance arises where the TMM is unable to ensure on reasonable notice that a Unit, Vehicle, Simulator, Part, Spare or Special Tool can be maintained in a condition which is consistent with the condition required under paragraph 5 because the Operator has failed to authorise Additional Services to be provided by the TMM or has not otherwise carried out or procured the carrying out of Additional Services and Cosmetic Repairs that the Operator decided to self-perform or procure the performance of by a Third Party Maintainer pursuant to clause 8.8, provided that in the six months prior to the end of the TSA Term, the TMM shall notify the Owner of any such circumstance on a weekly basis.

5. REDELIVERY CONDITION

The Units

5.1 The Units shall be returned pursuant to paragraph 1 (*Redelivery*) in a condition consistent with their position within the Maintenance Plan and taking into account any items listed on a Qualified Provisional Acceptance Certificate that have not been rectified pursuant to the MSA. To the extent that such position allows, and subject to normal wear and tear, the Units and Associated Equipment and Simulators will be returned in a fully operational condition, and, in the case of the Units, in the same formation as at the Acceptance Date (unless the formation has been changed pursuant to a Variation) and with all Parts fitted and operational and free from all defects.

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

5.3 Each Unit shall be clean and free from any material damage (fair wear and tear is excepted but etching or any other damage caused by vandalism and accidental damage shall not be treated as fair wear and tear and shall be remedied in accordance with this Agreement) and each Unit shall be in an appropriate condition including:

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

provided that, the interior of each Unit shall not be returned in such winterised condition upon the transfer of the rights and obligations of the Operator under this Agreement to a Successor Operator pursuant to clause 6 (*Disposal of this Agreement and the Contracts*) of the Umbrella Agreement.

Maintenance

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

Associated Equipment

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

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

Simulators

5.7 Each Simulator shall be clean and free from any material damage (fair wear and tear excepted but etching or any other damage caused by vandalism and accidental damage shall not be treated as fair wear and tear and shall be remedied in accordance with this Agreement) and each Simulator shall be in an appropriate condition.

Technical Records

5.8 Without prejudice to clause 7.6, the TMM shall redeliver the Technical Records and a copy of the data stored on the Technical Records Database to the Owner at the expiry of the TSA Term.

Redelivery Location

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

6. DISPUTES

6.1 If there is a dispute between the Owner and the TMM as to whether any Unit, Simulator, Owner Owned Spare or Special Tool meets the Redelivery Condition (TSA), either Party may refer the dispute to an Expert pursuant to the Applicable Expert Determination Provisions.

6.2 The Expert will inspect the relevant Unit, Simulator, Owner Owned Spare or Special Tool and prepare a report which determines whether or not such Unit, Simulator, Owner Owned Spare or Special Tool meets the Redelivery Condition (TSA) within 10 Working Days of his appointment.

SCHEDULE 15
FORM OF TSA BOND

Schedule 15: **Form of TSA Bond**

 ⁷⁵⁸

⁷⁵⁸ Redaction.

SCHEDULE 16
FORM OF TSA GUARANTEE

Schedule 16: **Form of TSA Guarantee**

759

⁷⁵⁹ Redaction.

SCHEDULE 17

□⁷⁶⁰

Schedule 17

□⁷⁶¹

Appendix 1: □⁷⁶²

Appendix 2: □⁷⁶³

⁷⁶⁰ Redaction.
⁷⁶¹ Redaction.
⁷⁶² Redaction.
⁷⁶³ Redaction.

SCHEDULE 17

□⁷⁶⁴

□⁷⁶⁵

⁷⁶⁴ Redaction.

⁷⁶⁵ Redaction.

APPENDIX 1 TO SCHEDULE 17

□⁷⁶⁶

⁷⁶⁶ Redaction.

APPENDIX 2 TO SCHEDULE 17

□⁷⁶⁷

⁷⁶⁷ Redaction.

SCHEDULE 18

□⁷⁶⁸

Schedule 18

□⁷⁶⁹

Appendix: □⁷⁷⁰

⁷⁶⁸ Redaction.
⁷⁶⁹ Redaction.
⁷⁷⁰ Redaction.

SCHEDULE 18

□⁷⁷¹

⁷⁷¹ Redaction.

APPENDIX TO SCHEDULE 18

□⁷⁷²

⁷⁷² Redaction.

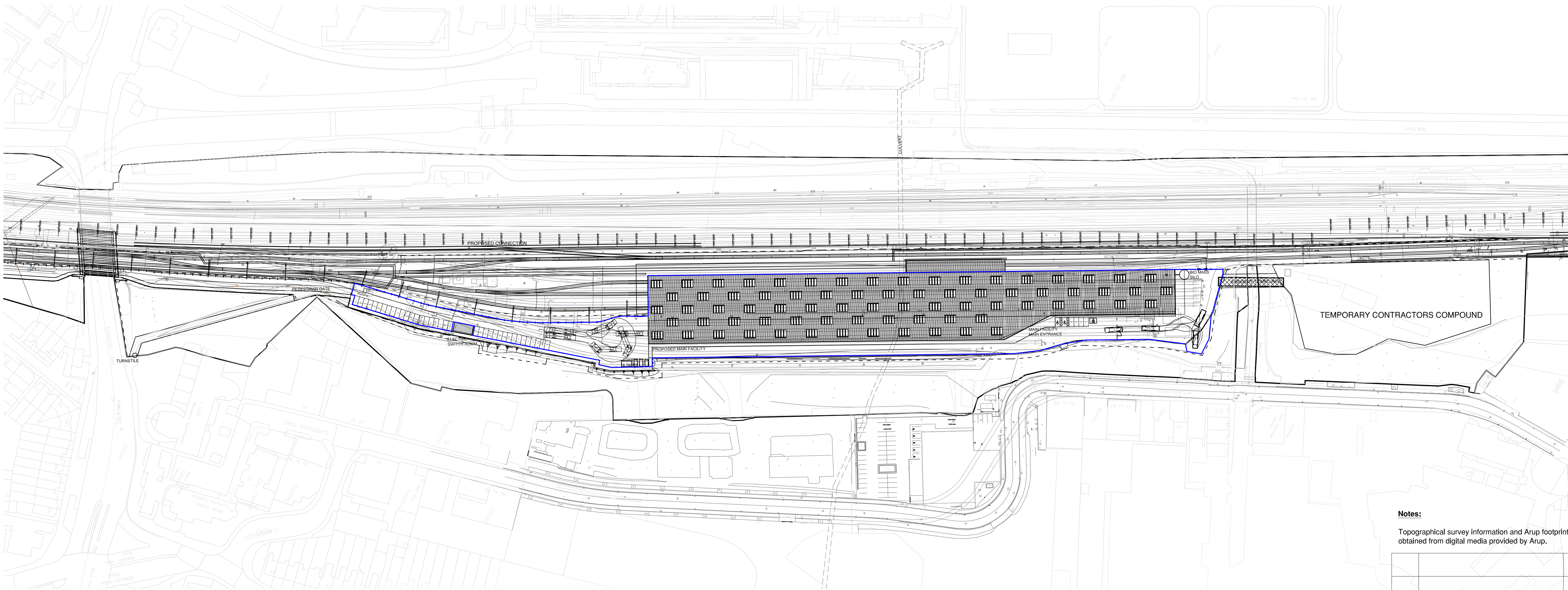
SCHEDULE 19

PLANS OF MAINTENANCE SHEDS

Schedule 19.1	Plan of Three Bridges Maintenance Shed
Schedule 19.2	Plan of Hornsey Maintenance Shed

SCHEDULE 19.1

Plan of Three Bridges Maintenance Shed



Notes:
Topographical survey information and Arup footprints
obtained from digital media provided by Arup.

rev.	description	date

approved

date

approved

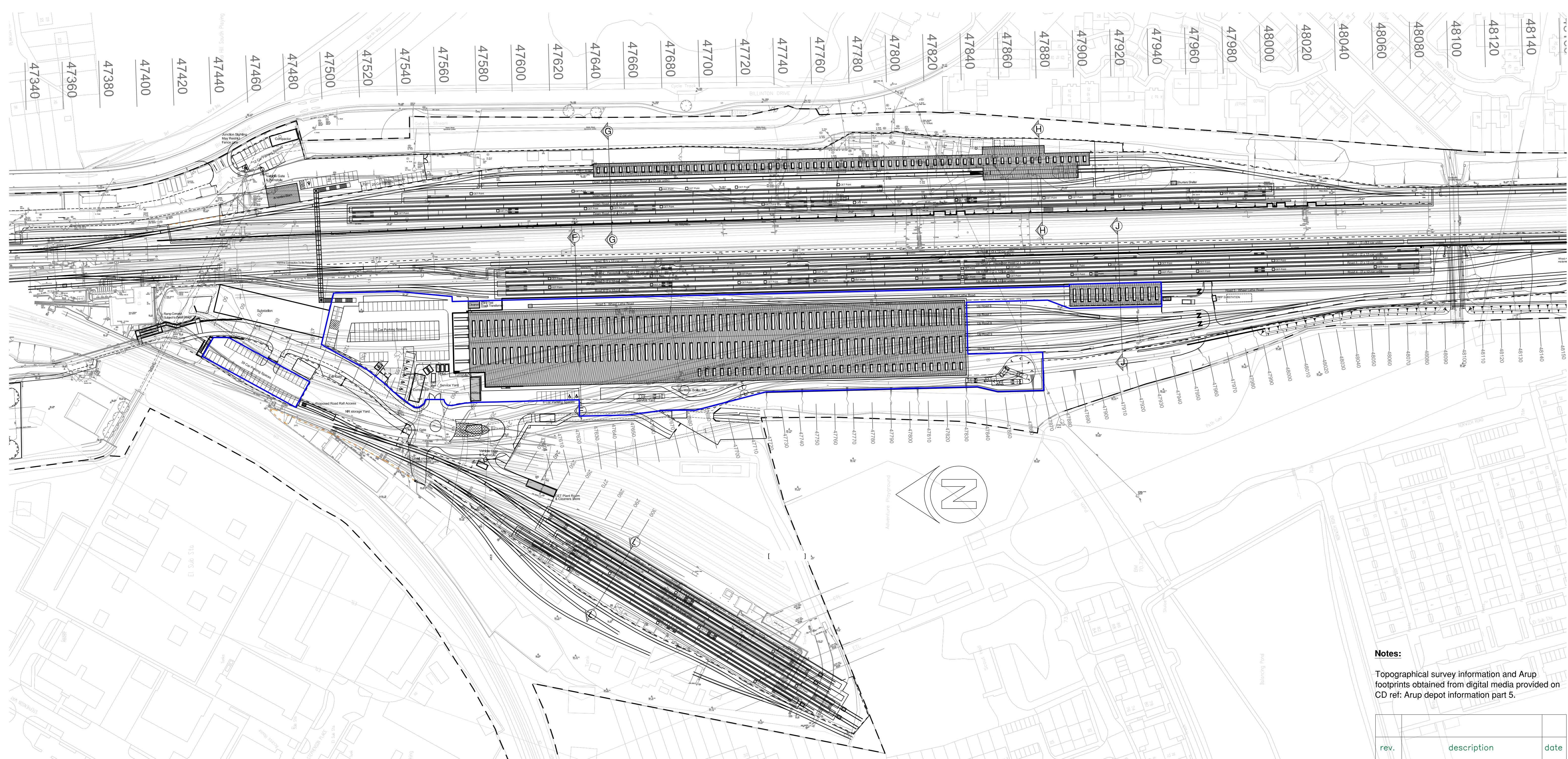
date

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project Thames Link Rolling Stock Project	
description Plan 2 TMM Lease Boundary Under Lessee	
drawn [] 1	date 15.05.2012
scale 1:1000 @ A1	
drg.no. 2011/1527/15	

SCHEDULE 19.2

Plan of Hornsey Maintenance Shed



Notes:

Topographical survey information and Arup footprints obtained from digital media provided on CD ref: Arup depot information part 5.

rev.	description	date
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SIEMENS

approved	date
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approved	date
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project

Thames Link Rolling Stock Project

description

Plan 2
TMM Lease Boundary
Under Lessee

drawn	[]	1	date	15.05.2012
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scale	1:1000 @ A1
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**15 May 2012 Draft
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