

DATED

24 JULY 2012

THE SECRETARY OF STATE FOR TRANSPORT

AGILITY TRAINS WEST LIMITED

AS AMENDED AND RESTATED ON

31st January 2014

GREAT WESTERN IEP NETWORK

MASTER AVAILABILITY AND RELIABILITY AGREEMENT



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THIS AGREEMENT is made as a deed on 24 July 2012

BETWEEN:

- (1) **The Secretary of State for Transport**, whose principal address is at 33 Horseferry Road, London, SW1P 4DR (the **Secretary of State**); and
- (2) **Agility Trains West Limited**, a company incorporated in England and Wales whose registered number is 07930606 and whose registered address is at 4th Floor, 4 Copthall Avenue, London, EC2R 7DA (the **TSP**).

WHEREAS:

- (A) The Secretary of State wishes to appoint a train service provider to design, build, own and maintain a new fleet of high speed trains for operation on the Great Western IEP Network and the East Coast IEP Network, and to make the trains available for use on one or both of these routes, and in certain circumstances on other routes on the Network, in each case by operators of railway passenger services appointed as franchisees by the Secretary of State, so as to deliver to the passenger the best railway passenger service that can be obtained from the resources that are available to each such Franchisee.
- (B) The TSP wishes to be appointed the train service provider to design, build, own, maintain and make available for operation on the Great Western IEP Network certain of the trains mentioned in Recital (A), as more fully set out in this Agreement.
- (C) On or around the date hereof, the Secretary of State and Agility Trains East shall enter into the ECML MARA pursuant to which Agility Trains East shall be appointed the train service provider to design, build, own, maintain and make available for operation on the East Coast IEP Network certain of the trains mentioned in Recital (A), as more fully set out in the ECML MARA.
- (D) This Agreement has been entered into under a project applying similar principles to the private finance initiative.

NOW THEREFORE in consideration of the provisions and mutual covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged,

IT IS AGREED as follows:

1. INTERPRETATION AND DEFINITIONS

Interpretation

1.1 In this Agreement, except to the extent the context otherwise requires:

- (a) any reference to this Agreement includes the Schedules and Appendices, each of which form part of this Agreement;
- (b) references in this Agreement to Recitals, Clauses, Schedules, Parts, Paragraphs and Appendices are to Recitals, Clauses, Schedules, Parts, Parts of Schedules, Paragraphs of Schedules and Appendices of Schedules, in each case, of this Agreement, unless expressly specified to the contrary;

- (c) references in any Schedule to this Agreement to a Part, Paragraph or Appendix are references to a Part, Paragraph or Appendix of that Schedule (or the relevant Part of a Schedule), unless expressly specified to the contrary;
- (d) references to this Agreement include this Agreement as amended or supplemented in accordance with its terms or otherwise by written agreement between the parties;
- (e) references to any enactment or statutory provision shall unless otherwise expressly specified, include any subordinate legislation made from time to time under such enactment or statutory provision and are to be construed as references to that enactment or statutory provision as for the time being amended or modified or to any enactment or statutory provision for the time being replacing or amending it and references to any subordinate legislation are to be construed as references to that legislation as for the time being amended or modified or to any legislation for the time being replacing or amending it;
- (f) references in this Agreement to any other agreement, document or instrument (other than an enactment or statutory provision) shall be construed as referring to that agreement, document or instrument as from time to time amended, varied, supplemented, replaced, assigned or novated in accordance with its terms;
- (g) the contents page, headings and references to headings are for convenience only and shall be disregarded in construing this Agreement;
- (h) the words **include**, **including** and in **particular** shall be construed without limitation;
- (i) unless otherwise stated in this Agreement or the TARA, the costs of performing an obligation under this Agreement shall be borne by the party required to perform such obligation;
- (j) words in the singular shall include the plural and vice-versa;
- (k) words importing one gender shall include other genders;
- (l) a reference to a person shall include a reference to a firm, body corporate, an unincorporated association, a partnership, limited partnership, limited liability partnership or to an individual's executors and administrators; and references to any person shall include its successors, transferees and assignees;
- (m) the terms **party** and **parties** shall refer to the Secretary of State and/or the TSP, as appropriate, and any reference to a **third party** is a reference to any person who is not a party;
- (n) references to documents "in the agreed terms" are references to documents initialled by or on behalf of the Secretary of State and the TSP;
- (o) notwithstanding any input from the Secretary of State in respect of or in connection with any obligation of the TSP pursuant to this Agreement, where Appendix D (*Design Plan*), Appendix E (*Approvals Plan*) or Appendix G (*Training*) of Schedule 1 (*Set Specification and Design*) of this Agreement, Part A (*Testing and Acceptance*) or Part C (*Contract Management*) of Schedule 2 (*Introduction into Service*) of this Agreement, or Part A (*Depot Provisions*) or Part C (*Train Maintenance and Servicing*) of Schedule 3 (*Depots*) of this Agreement, or any

document referred to within, or created pursuant to, any such Appendix or Part of this Agreement, uses the term "approve" or "sign off", or any equivalent term (not including, for the avoidance of doubt, the term "agree"), in the context of a review by the Secretary of State, such approval or sign off shall not be construed to mean that the TSP has complied with such obligation (other than any obligation to obtain such approval or sign-off);

- (p) words and expressions defined in the Interpretation Act 1978 have the same meanings when used in this Agreement;
- (q) **holding company** and **subsidiary** have the meanings given to them in section 1159 of the Companies Act 2006, and a company shall be treated, for the purposes only of the membership requirement contained in subsections 1159(1)(b) and (c), as a member of another company even if its shares in that other company are registered in the name of: (a) another person (or its nominee) by way of security or in connection with the taking of security; or (b) its nominee;
- (r) references to **railway passenger services** are to be construed subject to section 40 of the 2005 Act; and
- (s) words and expressions defined in part I of the Act have the same meanings when used herein provided that, except to the extent expressly stated, "railway" shall not have the wider meaning attributed to it by section 81(2) of the Act.

Definitions

1.2 In this Agreement the following words and expressions shall have the following meanings, except to the extent the context otherwise requires:

2,000 Miles Requirement has the meaning given to it in Paragraph 5.2(l) of Part A (*Testing and Acceptance*) of Schedule 2 (*Introduction into Service*);

2005 Act means the Railways Act 2005;

5,000 Miles Requirement has the meaning given to it in Paragraph 2.2(d) of Part A (*Testing and Acceptance*) of Schedule 2 (*Introduction into Service*);

Abnormal Costs Claim means any claim made at any time by the TSP to the Secretary of State for payment of any funding contribution payable by the Secretary of State under Paragraph 4.2 of Part A (*Depot Provisions*) of Schedule 3 (*Depots*);

Abnormal Site Costs means all proper costs actually incurred by the TSP and/or any Significant Contractor at any time until the practical completion of Stoke Gifford in:

- (a) the removal, transportation and lawful disposal of any Abnormal Site Materials from; and/or
- (b) in-situ treatment of any Abnormal Site Materials at,

the Relevant Land (including any contractors and consultants fees) in compliance with any statutory and regulatory requirements in relation to the matters in limbs (a) and (b), and any necessary payments made to the owners or operators of a landfill site;

Abnormal Site Materials means any Contamination, the removal and/or in-situ treatment of which is necessary for the purposes of the development of the land that is the subject

of the Stoke Gifford Lease as a light maintenance depot in accordance with Paragraph 2 of Part A (*Depot Provisions*) of Schedule 3 (*Depots*) or which the TSP shall otherwise require in connection with its occupation, development and/or use of such land;

Acceptable Contractor means the contractor responsible for the OHLE Works, who:

- (a) meets the Financial Standing Test; or
- (b) the parties agree in their absolute discretion shall be deemed to constitute an Acceptable Contractor notwithstanding that the contractor cannot demonstrate that it meets the Financial Standing Test;

Acceptable Warranty means a contractual warranty in respect of the OHLE Works:

- (a) from an Acceptable Contractor, the Secretary of State or Network Rail; and
- (b) substantially in the form annexed at Annex E of Appendix C (*Specific Infrastructure Acceptance Issues*) of Schedule 1 (*Set Specification and Design*) or in such other form as may be agreed by the parties in their absolute discretion;

Acceptance means the issue of an Acceptance Certificate in accordance with the Acceptance Process;

Acceptance Certificate means any of a Type Acceptance Certificate, a Qualified Type Acceptance Certificate, a Qualified Acceptance Certificate, a Final Acceptance Certificate or a Fleet Acceptance Certificate;

Acceptance Issue means, in respect of a Type of Set, that any compatibility issue set out in Annex B (*Acceptance Issues*) of Appendix C (*Specific Infrastructure Acceptance Issues*) of Schedule 1 (*Set Specification and Design*) is subsisting on the Great Western IEP Network as at the date on which the TSP presents a Set of such Type for Type Acceptance;

Acceptance Process means the process for progressive acceptance of Sets into revenue-earning passenger service and dealing with outstanding matters specified in Part A (*Testing and Acceptance*) of Schedule 2 (*Introduction into Service*) (and including Appendix B (*Fault Free Running Conditions*) thereto);

Account Bank Agreement has the meaning given to it in the CTA;

Act means the Railways Act 1993;

Actual Acceptance Date means, in relation to a Set, the date on which such Set is issued with a Final Acceptance Certificate or, where applicable, a Qualified Acceptance Certificate;

Actual Reduction has the meaning given to it in limb (b)(i) of the definition of Base Relevant Insurance Reduction;

Actual Relevant Insurance Cost means the aggregate of the annual insurance premiums reasonably incurred by the TSP to maintain the Relevant Insurance during the Insurance Review Period but excluding insurance premium tax and all broker's fees and commissions;

Actual Type Weight means, in respect of a Set of any Type, the actual weight of such Set as determined in accordance with the Testing, Commissioning and Acceptance Plan at such time as such Set is presented for Type Acceptance;

Additional Funding Requirement means any additional funding whether in respect of capital expenditure or revenue expenditure which the TSP reasonably requires so that it may implement a Variation pursuant to Schedule 8 (*Variations*), as agreed between the parties or as determined pursuant to the Dispute Resolution Agreement or pursuant to Paragraph 5 of Part A (*Scope and Consequences of Variations*) of Schedule 8 (*Variations*);

Additional Permitted Borrowing means on any date, the amount equal to any amount of principal outstanding under the Senior Financing Agreements (as the same may from time to time be amended, whether or not with the approval of the Secretary of State) in excess of the amount of principal scheduled under the Senior Financing Agreements at the Effective Date to be outstanding at that date, but only to the extent that:

- (a) this amount is less than or equal to the Additional Permitted Borrowings Limit; and
- (b) in respect of any Additional Permitted Borrowing, the Agent is not in material breach of its obligations under clause 12.4(c) of the Funder Direct Agreement as it applies to such Additional Permitted Borrowing,

and provided further that any such excess amount of principal which is:

- (i) invested as part of any Variation;
- (ii) outstanding from time to time as a result of any drawing under the Senior Financing Agreements as entered into at the Effective Date, disregarding any subsequent amendment; or
- (iii) outstanding from time to time as a result of any amendment to the Senior Financing Agreements in respect of which the Secretary of State has agreed that her liabilities on a termination may be increased pursuant to Paragraph 4(a) of Part H (*Calculation and Payment of Termination Sums*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*),

shall, in each case, not be counted as Additional Permitted Borrowing;

Additional Permitted Borrowings Limit means an amount equal to:

- (a) ten per cent. (10%) of the Original Senior Commitment for any Additional Permitted Borrowing subsisting in the period from the Effective Date to the date on which the amount outstanding under the Senior Financing Agreements is reduced to fifty per cent. (50%) or less of the Original Senior Commitment, and thereafter;
- (b) the higher of:
 - (i) five per cent. (5%) of the Original Senior Commitment; and
 - (ii) the amount of any Additional Permitted Borrowing outstanding on the last day of the period referred to in limb (a);

Adhoc Train Lending means any redeployment to or receipt from (as the case may be) any Other TARA of not more than twenty per cent. (20%) of the original Fleet size contemplated at the Effective Date;

Adhoc Train Lending Agreement has the meaning set out in Paragraph 3(e) of Part H (Adhoc Train Lending) of Schedule 8 (Variations);

Adhoc Train Lending Variation has the meaning set out in Paragraph 1 of Part H (Adhoc Train Lending) of Schedule 8 (Variations);

Adjusted Estimated Fair Value of this Agreement means the Estimated Fair Value of this Agreement, less an amount equal to the aggregate of:

- (a) where relevant any Post Termination Service Amounts paid to the TSP (if a positive number);
- (b) the Tender Costs; and
- (c) amounts that the Secretary of State is entitled to set off or deduct under Clause 26,

plus an amount equal to the aggregate of:

- (i) all credit balances on any bank accounts held by or on behalf of the TSP on the date that the Estimated Fair Value of this Agreement is calculated;
- (ii) any insurance proceeds and other amounts owing to the TSP (and which the TSP is entitled to retain), to the extent not included in limb (c)(i); and
- (iii) the Post Termination Service Amounts (if a negative number),

to the extent that:

- (A) limbs (c)(i), (ii) and (iii) have not been directly taken into account in calculating the Estimated Fair Value of this Agreement;
- (B) the Secretary of State has received such amounts in accordance with this Agreement or such amounts are standing to the credit of the Joint Insurance Account; and

- (d) to the extent that the Adjusted Highest Compliant Tender Price is greater than the Revised Base Senior Debt Termination Amount, the [REDACTED] calculated pursuant to limb (e) of the definition of New Contract discounted back to the Termination Date at the Termination Date Discount Rate;

Adjusted Highest Compliant Tender Price means the Highest Compliant Tender Price less the aggregate of:

- (a) any Post Termination Service Amounts paid to the TSP to date;
- (b) the amount of any Deductions that have accrued or are owing or due but, as at the Termination Date, have not been applied for the purposes of the TARA Payments (and, to the extent that any such Deductions are disputed by the TSP, such Deductions shall be applicable for the purposes of the Adjusted Highest Compliant Tender Price pending determination otherwise in accordance with the terms of the TARA);

- (c) the Tender Costs;
- (d) amounts that the Secretary of State is entitled to set off or deduct under Clause 26, plus an amount equal to the aggregate of:
 - (i) subject to Paragraph 9 of Part A (*Testing and Acceptance*) of Schedule 2 (*Introduction into Service*) all credit balances on any bank accounts held by or on behalf of the TSP on the date that the highest priced Compliant Tender is received;
 - (ii) any insurance proceeds and other amounts owing to the TSP, to the extent not included in limb (d)(i);
 - (iii) the Post Termination Service Amounts (if a negative number),

to the extent that:

- (A) limbs (d)(i), (ii) and (iii) have not been directly taken into account in that Compliant Tender; and
 - (B) the Secretary of State has received such amounts in accordance with this Agreement; and
- (e) to the extent that the Adjusted Highest Compliant Tender Price is greater than the Revised Base Senior Debt Termination Amount, the [REDACTED] calculated pursuant to limb (e) of the definition of New Contract discounted back to the Termination Date at the Termination Date Discount Rate.

Adjusted No Full Fleet Compensation Amount means the No Full Fleet Compensation Amount, less an amount equal to the aggregate of:

- (a) where relevant any Post Termination Service Amounts paid to the TSP (if a positive number);
- (b) the Tender Costs; and
- (c) amounts that the Secretary of State is entitled to set off or deduct under Clause 26,

plus an amount equal to the aggregate of:

- (i) any insurance proceeds and other amounts owing to the TSP (and which the TSP is entitled to retain); and
- (ii) the Post Termination Service Amounts (if a negative number),

to the extent that:

- (A) limbs (c)(i) and (ii), have not been directly taken into account in calculating the No Full Fleet Compensation Amount; and
- (B) the Secretary of State has received such amounts in accordance with this Agreement or such amounts are standing to the credit of the Joint Insurance Account;

Adjustments Assumed means the availability and reliability adjustments set out in rows 34 to 36 of tab "R01_CF" of the Effective Date Financial Model;

Advance Payment means the advance payment to be paid by the TSP to the Manufacturer in accordance with the Manufacture and Supply Agreement on or about the GWML Minimum Fleet Acceptance Date;

Affected Party means the party that is prevented from carrying out its obligations under this Agreement by a Force Majeure Event or a Relief Event;

Affiliate means in relation to any person, any holding company or subsidiary of that person or any subsidiary of such holding company, and in the case of the TSP shall include each of the Shareholders save that for the purposes of determining whether one entity is an Affiliate of another any transfer of shares by way of security or to a nominee of a transferor shall be disregarded;

Agent means Mizuho Bank, Ltd. in its capacity as intercreditor agent for the Senior Lenders under the Senior Financing Agreements;

Agility Company means the TSP and Agility Trains East;

Agility Services means the management, maintenance and provision to the Relevant Operator under the TARA of:

- (a) all Sets which have received a Qualified Acceptance Certificate or a Final Acceptance Certificate; and
- (b) where the Manufacture and Supply Agreement and Maintenance Agreement are to be novated to the Secretary of State or her nominee in accordance with the Secretary of State MSA Direct Agreement and the Secretary of State TSA Direct Agreement respectively, Sets to be delivered and maintained pursuant to the Manufacture and Supply Agreement and Maintenance Agreement;

Agility Trains East means Agility Trains East Limited, a company incorporated in England and Wales whose registered number is 07930598 and whose registered address is at 4th Floor, 4 Copthall Avenue, London, EC2R 7DA;

Agreed Form Lease means the form of depot lease attached to the Agreement for Lease initialled by the parties on the Commencement Date;

Agreed Technical Change has the meaning given to it in Paragraph 3 of Schedule 1 (*Set Specification and Design*);

Agreed Value means an amount equal to the replacement or reinstatement value of the Sets from time to time;

Agreement for Adhoc Use has the meaning set out in Paragraph 3(a) of Part H (*Adhoc Train Lending*) of Schedule 8 (*Variations*);

Agreement for Lease means, in respect of each Depot, the agreement for lease and underlease entered into between Network Rail or (in the case of North Pole only) BRBR, the TSP and the Maintainer;

Altered Risk means any material and adverse change in risk for the TSP in performing its obligations under this Agreement and any TARA to which it is party as a result of the

implementation of a Variation, but disregarding for this purpose any aspect of the Variation that comprises an aspect of Constant Risk as provided for in Paragraph 2 of Part A (*Scope and Consequences of Variations*) of Schedule 8 (*Variations*);

Ancillary Equipment means the equipment, including information technology (including hardware, software, networks and peripherals) and fixtures, together with any associated documentation produced by the Manufacturer or any of the Manufacturer's Affiliates, which is:

- (a) reasonably necessary for the use and operation of the Sets for the Permitted Use; and
- (b) exclusively available from the Manufacturer or any of the Manufacturer's Affiliates;

APA Depots means the Depots excluding North Pole;

APB Distribution means, for the period during which the Additional Permitted Borrowing subsists, an amount equal to the aggregate of all Distributions made during that period up to an amount equal to the principal of the Additional Permitted Borrowing on the first day of that period;

Applicable Derogation means any Derogation to the extent that and for so long as that Derogation applies to the TSP or the relevant Set or Sets and that Derogation has not been revoked, rescinded or expired;

Applicable Laws and Standards means all or any laws, statutes, proclamations, by-laws, directives, regulations, statutory instruments, rules, orders, rules of court, delegated or subordinate legislation, rules of common law, or any European Union legislation at any time or from time to time in force in the United Kingdom which relate to this Agreement or the obligations to be performed under it, the Sets or any agreement or document referred to in this Agreement, including Industry Standards, Environmental Laws, the Railways (Interoperability) Regulations 2011 and the ROGS, in each case to the extent that they are so applicable;

Approved Default Variation means a Default Variation which the Secretary of State has approved for the purposes of and in accordance with Part B (*Approved Default Variations*) of Schedule 8 (*Variations*);

Approvals Matrix has the meaning given to it in Paragraph 4 of Appendix E (*Approvals Plan*) of Schedule 1 (*Set Specification and Design*);

Approvals Plan means the TSP's plan for obtaining all Relevant Approvals including any required Derogations in relation to each Set, developed and implemented in accordance with Appendix E (*Approvals Plan*) of Schedule 1 (*Set Specification and Design*);

Arbitrator means the person appointed as such pursuant to the Dispute Resolution Agreement;

Asset Protection Agreement means each asset protection agreement to be entered into between Network Rail and the Manufacturer in respect of the APA Depots;

Asset Transfer Agreement means the asset transfer agreement in the form set out in Appendix A (*Form of Asset Transfer Agreement*) to Part J (*Asset Transfer*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*) dated the Commencement Date between the TSP and the Secretary of State;

Assets means:

- (a) all Sets (including any Vehicle forming part of any Set);
- (b) all Spares;
- (c) all Special Tools;
- (d) all Simulator Information; and
- (e) the Technical Library;

ATOC means the Association of Train Operating Companies;

Authority Rebate Account has the meaning given to it in the Account Bank Agreement;

Authority to Proceed has the meaning given to it in Paragraph 4.1 of Part C (*Additional Procedural Aspects of Variations*) of Schedule 8 (*Variations*);

Authority to Proceed with Redeployment Variation has the meaning given to it in Paragraph 8.4 of Part I (*Redeployment Variation*) of Schedule 8 (*Variations*);

Availability Adjustments has the meaning given to it in the Initial TARA;

Base Case Uncovered Facility means the facility to be made available to the TSP pursuant to the Uncovered Facility Agreement at the Effective Date;

Base Cost means the per annum amounts as agreed at the Effective Date and set out in the Financial Model Data Book which represents the insurance costs (which excludes amounts in respect of insurance premium tax and all brokers' fees and commissions) which are proposed to be incurred to maintain the Relevant Insurance in each Contract Year following the Effective Date, expressed in real terms as at the Effective Date;

Base Design means the design for the OHLE Works prepared by Volker Fitzpatrick Limited set out in Annex D of Appendix C (*Specific Infrastructure Acceptance Issues*) of Schedule 1 (*Set Specification and Design*);

Base Period Charge has the meaning given to it in the Initial TARA;

Base Relevant Insurance Cost means, the aggregate of the Base Costs which were at the Effective Date projected to be incurred to maintain the Relevant Insurance during the Insurance Review Period indexed by actual Retail Prices Index from the Effective Date up to the dates on which the Relevant Insurance was placed or renewed either immediately before or during the Insurance Review Period (as applicable in respect of the year in question) less any Base Relevant Insurance Reduction;

Base Relevant Insurance Reduction means the reduction to be made to the Base Relevant Insurance Cost in respect of a risk which has become Uninsurable or a term or condition which is no longer available and shall be an amount that is either:

- (a) the amount by which the Base Relevant Insurance Cost would have been a lesser amount had such a risk been Uninsurable or such a term or condition been unavailable at the Effective Date (which amount, for the avoidance of doubt, can be zero pounds Sterling (£0)); or

- (b) if it is impossible to determine an amount pursuant to limb (a), an amount that is reasonable to be deducted from the Base Relevant Insurance Cost having due regard to:
 - (i) the amount by which the Actual Relevant Insurance Cost is less than it would have been as a result of the risk becoming Uninsurable, or the term or condition becoming unavailable (the Actual Reduction);
 - (ii) the size of the Actual Reduction as a percentage of the Actual Relevant Insurance Cost immediately prior to the risk becoming Uninsurable, or the term or condition becoming unavailable; and
 - (iii) the effects of the Retail Prices Index since the Effective Date;

Base Senior Debt Termination Amount means, subject to Paragraph 4 of Part H (*Calculation and Payment of Termination Sums*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*):

- (a) all amounts outstanding at the Termination Date, including interest and interest at the Default Rate accrued as at that date, from the TSP to the Senior Lenders in respect of Permitted Borrowing (other than in respect of Additional Permitted Borrowing); and
- (b) all amounts (including the cost of early termination of interest rate hedging arrangements, foreign exchange hedging arrangements and other breakage costs) payable by the TSP to the Senior Lenders as a result of a prepayment in respect of Permitted Borrowing (other than in respect of Additional Permitted Borrowing), or, in the case of early termination of interest rate hedging arrangements and/or of foreign exchange hedging arrangements only, as a result of termination of this Agreement, subject to the TSP and the Senior Lenders mitigating all such costs to the extent reasonably possible,

less, to the extent it is a positive amount, the aggregate of (without double counting in relation to the calculation of the Base Senior Debt Termination Amount or the amounts below):

- (i) subject to Paragraph 9 of Part A (*Testing and Acceptance*) of Schedule 2 (*Introduction into Service*), all credit balances on any bank accounts (but excluding the Joint Insurance Account) held by or on behalf of the TSP on the Termination Date;
- (ii) any amounts claimable on or after the Termination Date in respect of Contingent Funding Liabilities;
- (iii) all amounts (including costs of early termination of interest rate hedging arrangements foreign exchange hedging arrangements and other breakage costs) payable by the Senior Lenders to the TSP as a result of prepayment of amounts outstanding in respect of Permitted Borrowing (other than in respect of Additional Permitted Borrowing), or, in the case of early termination of interest rate hedging arrangements and/or foreign exchange hedging arrangements only, as a result of termination of this Agreement; and

- (iv) all other amounts received by the Senior Lenders on or after the Termination Date and before the date on which any compensation is payable by the Secretary of State to the TSP as a result of enforcing other rights those lenders may have;

Baseline Integrated Programme means the initial form of the Integrated Programme provided by the TSP Delivery Manager to the Secretary of State's Representative pursuant to Paragraph 3.9 of Part C (*Contract Management*) of Schedule 2 (*Introduction into Service*);

BEAMA means BEAMA Limited, a company incorporated in England and Wales whose registered number is 84313 and whose registered address is at Westminster Tower, 3 Albert Embankment, London, SE1 7SL;

Benchmarking Date means the Market Testing Date;

Benchmarking Report has the meaning given to it in Paragraph 2.4 of Part E (*Market Testing, Benchmarking and Indexing*) of Schedule 8 (*Variations*);

Bidder Criteria has the meaning given to it in Paragraph 11.2 of Part I (*Redeployment Variation*) of Schedule 8 (*Variations*);

Bidder Review has the meaning given to it in Paragraph 11.5(b) of Part I (*Redeployment Variation*) of Schedule 8 (*Variations*);

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

Bi-Mode Set means a Half Set which is capable of operation both where the power source is provided solely by means of a twenty-five (25) Kilovolt overhead electricity supply and where the power source is required to be provided solely by means of a self-powered source;

Borrower Debenture has the meaning given to it in the Intercreditor Agreement;

BR-ATP means the automatic train protection system introduced by British Railways Board and operational as at the date of this Agreement on the Great Western IEP Network;

BRB Agreement for Lease means the agreement for lease in respect of North Pole of even date between the TSP and BRBR;

BRBR means BRB (Residuary) Limited whose registered number is 04146505 and registered address is 1 Kemble Street, London WC2B 4AN;

BRBR Direct Agreement means the direct agreement entered into on or about the Commencement Date between the Secretary of State, the TSP and BRBR;

[REDACTED]

Broker means Aon UK Limited whose registered number is 00210725 and whose registered address is at 8 Devonshire Square, Cutlers Gardens, London, EC2M 4PL;

Business Day means a day (other than a Saturday or Sunday) on which commercial banks are open for general business in London;

Business Rates means, in respect of a Redeployment Variation Depot, all outgoings that are imposed on such Redeployment Variation Depot or its owner or occupier, including all rates, taxes, charges, duties, impositions, assessments and other outgoings relating to such Redeployment Variation Depot, including new kinds of any of these;

Calibration Period has the meaning given to it in Paragraph 5.1(e) of Part A (*Scope and Consequences of Variations*) of Schedule 8 (*Variations*);

Call Option has the meaning given to it in Paragraph 1.1 of Part B (*Call Option Requirements*) of Schedule 3 (*Depots*);

Call Option Completion means the completion of the Transfers pursuant to a Call Option Notice;

Call Option Notice has the meaning given to it in Paragraph 1.5 of Part B (*Call Option Requirements*) of Schedule 3 (*Depots*);

Capital Expenditure means expenditure on property, plant and equipment and other tangible items that are:

- (a) held for use in the supply of services under this Agreement or the TARA or for administrative purposes; and
- (b) expected to be used during more than one accounting period;

Catering Equipment means any of the following items (as this list may be updated from time to time in accordance with the Design Process or schedule 12 (*Variations*) of the TARA):

- (a) combination microwave;
- (b) combination steam oven;
- (c) panini grill;
- (d) hob;
- (e) water heater;
- (f) boiler;
- (g) coffee machine;
- (h) UV steriliser;
- (i) chiller unit for Atlas carts;
- (j) refrigerated display cabinet;
- (k) toaster;
- (l) radiant grill;
- (m) Level 4 catering trolley; and

- (n) Level 4 hot water boiler;

Certificate of Satisfactory Depot means a certificate signed by a director of each of the TSP, the Maintainer and the Manufacturer declaring that, to the best of their belief and knowledge, the Depots are, at the time of Final Acceptance or Qualified Acceptance of a Set, sufficiently complete to allow the TSP to perform its obligations under the TARA in relation to that Set (and all Sets accepted in accordance with this Agreement prior to it) without any loss to the Relevant Operator of operational functionality and flexibility;

Certificate of Temporary Specific Infrastructure Acceptance Conditions means a certificate in the form set out in Annex C (*Form of Certificate of Temporary Specific Infrastructure Acceptance Conditions*) of Appendix C (*Specific Infrastructure Acceptance Issues*) of Schedule 1 (*Set Specification and Design*);

Challenge Notice has the meaning given to it in Paragraph 5.4 of Part A (*Scope and Consequences of Variations*) of Schedule 8 (*Variations*);

Changed Provisions means any provision of this Agreement, a TARA and/or any other Project Document which is replaced by a Protected Change, including any provision of the Performance Regime, the Notifiable Events regime and the Remedial Events regime;

Change in Law means the coming into effect after the Commencement Date of:

- (a) Legislation, other than any Legislation which on the Commencement Date has been published:
- (i) in a draft Bill as part of a Government departmental consultation paper;
 - (ii) in a Bill;
 - (iii) in a draft statutory instrument; or
 - (iv) as a proposal in the Official Journal of the European Union;
- (b) any Industry Standard, other than any such Industry Standard which on the Effective Date has been published (in the same form (except for non material changes) as that which comes into effect) by the relevant arbiter of that Industry Standard and which, when so published, was intended to have force of law; or
- (c) any applicable judgment of a relevant court of law which changes a binding precedent;

Change of Ownership means:

- (a) any sale, transfer or disposal of any legal, beneficial or equitable interest in any or all of the shares in the TSP, MidCo, HoldCo or RIGWL (including the control over exercise of voting rights conferred on those shares, control over the right to appoint or remove directors and/or the rights to dividends); and/or
- (b) the entering into of any other arrangements that have or may have or which result in the same effect as the arrangements referred to in limb (a);

Claim has the meaning given in Paragraph 1.12 of Schedule 10 (*Intellectual Property*);

Closed Off Matter has the meaning given to it in Paragraph 11.7 of Appendix D (*Design Plan*) of Schedule 1 (*Set Specification and Design*);

Code has the meaning given to it in Paragraph 4.8 of Schedule 11 (*Information and Confidentiality*);

Commencement Date means the date of this Agreement;

Commercially Sensitive Information means the sub-set of Confidential Information listed in column 1 of each of Appendix A (*Commercially Sensitive Contractual Provisions*) and Appendix B (*Commercially Sensitive Material*) of Schedule 11 (*Information and Confidentiality*) in each case for the period specified in column 2 of the applicable Appendix;

Common Requirements has the meaning given to it in Paragraph 5.2(a) of Appendix D (*Design Plan*) of Schedule 1 (*Set Specification and Design*);

Common Stakeholder Requirements has the meaning given to it in Paragraph 5.1(iv) of Appendix D (*Design Plan*) of Schedule 1 (*Set Specification and Design*);

Common Technical Document Requirements has the meaning given to it in Paragraph 5.1(i) of Appendix D (*Design Plan*) of Schedule 1 (*Set Specification and Design*);

Common Terms Agreement or **CTA** means the common terms agreement dated the Effective Date between, inter alios, the TSP and the Senior Lenders;

Compatibility Review Forum has the meaning given to it in Paragraph 3.3 of Appendix E (*Approvals Plan*) of Schedule 1 (*Set Specification and Design*);

Compensated Party has the meaning given to it in Paragraph 3 of Part H (*Calculation and Payment of Termination Sums*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*);

Compensating Party has the meaning given to it in Paragraph 3 of Part H (*Calculation and Payment of Termination Sums*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*);

Compensation Date means either:

- (a) if Appendix A (*Re-Tendering Procedure*) to Part D (*TSP Default*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*) applies, the earlier of:
 - (i) the date that the New Contract is entered into; and
 - (ii) the date on which the Secretary of State pays the Adjusted Highest Compliant Tender Price to the TSP;
- (b) if Appendix B (*No Re-Tendering Procedure*) to Part D (*TSP Default*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*) applies, the date that the Adjusted Estimated Fair Value of this Agreement has been agreed or determined; or
- (c) if Appendix C (*No Full Fleet Valuation Procedure*) to Part D (*TSP Default*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*) applies, the date that the Adjusted No Full Fleet Compensation Amount has been agreed or determined;

Completed Depot means any Depot that, as at the Termination Date, has obtained a Certificate of Satisfactory Depot in accordance with the terms of this Agreement;

Compliant Tender means any tender submitted by a Compliant Tenderer that meets the Qualification Criteria notified under Paragraph 1.2(b) of Appendix A (*Re-Tendering Procedure*) to Part D (*TSP Default*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*);

Compliant Tenderer means a tenderer who is a Suitable Substitute TSP;

Computer Based Training has the meaning given to it in Paragraph 8.1 of Appendix G (*Training*) of Schedule 1 (*Set Specification and Design*);

Concept Design Review Stage has the meaning given to it in Paragraph 7.2 of Appendix D (*Design Plan*) of Schedule 1 (*Set Specification and Design*);

Confidential Information means:

- (a) information that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) and may include information whose disclosure would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either party and all personal data and sensitive personal data within the meaning of the Data Protection Act 1998; and
- (b) Commercially Sensitive Information;

Configuration Database has the meaning given in Paragraph 3.1 of Schedule 10 (*Intellectual Property*);

Connection Agreements means the three (3) Connection Agreements made on the date hereof between (1) Network Rail (2) the Maintainer and (3) the TSP for the connection of each Depot to the Network Rail network;

Connection Costs means the Actual Cost (as defined in each of the Works Agreements) to the extent properly incurred by Network Rail in carrying out the Connection Works pursuant to the provisions of each Works Agreement reduced by any amounts payable by Network Rail to the Manufacturer pursuant to clause 10.4.2 of each Works Agreement;

Connection Costs Claim means either:

- (a) any claim made at any time by the TSP to the Secretary of State for payment of any funding contribution payable by the Secretary of State under Paragraph 6.2 of Part A (*Depot Provisions*) of Schedule 3 (*Depots*); or
- (b) any claim made at any time by the Secretary of State to the TSP for payment of any amount due to the Secretary of State under Paragraph 6.3 of Part A (*Depot Provisions*) of Schedule 3 (*Depots*);

Connection Works means the works the subject of, and identified in, each of the Works Agreements;

Consolidated Issues List means the list of issues to be maintained by the TSP pursuant to Paragraph 2 of Appendix A (*Form of TSP Programme Delivery Plan*) to Part C (*Contract Management*) of Schedule 2 (*Introduction into Service*);

Constant Risk means any one or more of the following aspects of a Variation when included within a Variation:

- (a) any licensed passenger operator replacing any other licensed passenger operator as party to a new TARA on terms which do not differ in any respects from the terms of the old TARA (as originally entered into or subsequently amended in accordance with Schedule 8 (*Variations*)) other than changes to reflect a change in the parties or a change in the Contract Period;
- (b) a change that is within defined Rules of the Depot limits;
- (c) a change that is within defined Rules of the Fleet limits;
- (d) any new Deployment Route where maintenance and servicing is within the Rules of the Depot and the Rules of the Fleet;
- (e) a relocation of the Fleet or portion of the Fleet on the IEP Network within Rules of the Depot;
- (f) a change where a Diagram utilises different Servicing Points provided that the different Servicing Point is capable of delivering the same level of service as the original Servicing Point and such change is within the applicable Rules of the Depot;
- (g) a change in mileage run or diesel/electric mileage change that is within the Rules of the Fleet;
- (h) a change where a fleet under a TARA is allocated between two TARAs, with an overall Diagram reduction such that each resulting "fleet" has a spares ratio for each Type of Set which is greater than or equal to the spares ratio for that Type in the original fleet under that TARA provided that either (i) there are at least two (2) spare Sets of each Type in each fleet or (ii) where there are not at least two (2) spare Sets of each Type in each fleet, there is no penalty and/or Deduction for substituting one Type of a Set for another Type of Set;
- (i) a change where there is a Remarshalling of the Fleet within the Rules of the Fleet and Rules of the Depot in accordance with the Train Technical Description and Train Technical Specification and the remarshalled fleet will be treated as a replacement Type of Sets for the Type of Sets existing immediately before the change but provided that any such change shall be subject to a recalibration of the Performance Regime, Notifiable Events and Remedial Events regimes to the extent required as a direct result of any such change, agreed between the parties or determined pursuant to the Dispute Resolution Agreement in accordance with the process set out in Paragraph 5 of Part A (*Scope and Consequences of Variations*) of Schedule 8 (*Variations*);
- (j) changes to the passenger environment of a Set (other than the addition of catering areas in a Set) in accordance with the flexibility described in the Train Technical Description and the Train Technical Specification; and
- (k) the installation of ETCS Baseline 3 on the Sets;

Construction Period Insurance means the Required Insurances as set out in Appendix B (*Insured Risks During Design and Construction Works of Depots*) to Part B (*Required Insurances*) of Schedule 5 (*Insurance*);

Contamination means the presence within any land, water or structures of all or any Hazardous Substances, including any Hazardous Substances which are Waste, the presence of which is capable of causing harm to or having a deleterious effect on the Environment;

Contemplated Variation means a Variation comprising any of the following (or any combination of the following) elements which are likely to be required by the Secretary of State from time to time to enable the Services being and to be provided by the TSP under this Agreement and any TARA to which it is a party to continue to meet the changing demands for travel by rail during the Contract Period:

- (a) a Redeployment Variation pursuant to Part I (*Redeployment Variation*) of Schedule 8 (*Variations*);
- (b) Adhoc Train Lending pursuant to Part H (*Adhoc Train Lending*) of Schedule 8 (*Variations*);
- (c) a change to the areas of the Network over which the Sets may operate;
- (d) alteration to the Rules of the Fleet and/or Rules of the Depot in respect of any of the Fleet or one or more depot location;
- (e) changes to the maintenance or Servicing Points available to Sets;
- (f) Remarshalling of a Set or Sets which retains Sets as compliant with the Train Technical Description and Train Technical Specification;
- (g) minor (that is, not material) changes to the performance capabilities of a Set or any Vehicles comprised in a Set;
- (h) changes to the passenger environment of a Set (including in respect of the catering areas in a Set);
- (i) changes required to implement ETCS Baseline 3 after the ETCS Drop Dead Date;
- (j) changes required in respect of the exercise of the Pre-Priced Option; and
- (k) an OHLE Variation;

Contemplated Variation Notice has the meaning given to it in Paragraph 1(d) of Part A (*Scope and Consequences of Variations*) of Schedule 8 (*Variations*);

Contingent Funding Liabilities means any contingent liabilities of the Shareholders in the TSP in respect of financial obligations owed under the Financing Documents triggered in connection with a termination of this Agreement including any guarantees in respect of Subordinated Financing Agreements;

Contract Train Cleaning means all cleaning (interior and exterior) required for all Sets at a Depot or other stabling location including, in accordance with any manuals or instructions issued by the Manufacturer or Maintainer and in order to ensure that the standards required by this Agreement and the TARA are met without incurring KPI Points and/or Deductions and to comply with the other requirements of the Performance Regime (including the completion of KPI Points scorecards);

Contracting Entity has the meaning given to "contracting entity" in the Railways (Interoperability) Regulations 2011;

Contract Period means the period from and including the Effective Date to the Termination Date or the Expiry Date (as applicable);

Contract Year means any period of twelve (12) months during the Contract Period beginning on 1 April and ending on 31 March, except that the first and last Contract Years may be for a period of less than twelve (12) months and the first Contract Year shall begin on the Effective Date and end on the next occurring 31 March and the last Contract Year shall begin on 1 April of the relevant year and end on the last day of the Contract Period;

Correspondence Register has the meaning given to it in Paragraph 3.3(b) of Part C (*Contract Management*) of Schedule 2 (*Introduction into Service*);

Cost Factors means the requirement for the TSP (or its Significant Contractors) to procure any goods or services in connection with a Variation that are available in the railway supply market pursuant to a competitive tender process where to do so would be likely to enhance value for money for the Secretary of State. Where the cost of any proposed order for any particular goods or services from a supplier required in connection with a Variation exceeds two hundred and fifty thousand pounds Sterling (£250,000) (Indexed) then the TSP or Significant Contractor shall (unless the Secretary of State agrees otherwise or in circumstances where the goods or services required are available only from a single source supplier due to the specific technical requirements of such goods or services or otherwise) procure such goods and services on the basis of a competitive tender process;

Cost Plan Reporting Date means the date during each month following the month during which the Indicative Cost Plan is prepared by the TSP for the purposes of Paragraph 5.1 of Part I (*Redeployment Variation*) of Schedule 8 (*Variations*) that corresponds with the date during such month of the Indicative Cost Plan or, in each case, the next following Business Day (unless otherwise agreed by the parties);

Cost to Complete means, in respect of any relevant Depot, the amount (if any) it would cost the Secretary of State to complete construction, refurbishment and/or renovation of such Depot in accordance with the relevant Depot Specification, as determined by the Secretary of State taking account of:

- (a) whether the Manufacturer in respect of such Depot novates the Depot Construction Sub-Contract in respect of such Depot to the Secretary of State or her nominee; or
- (b) where no such novation occurs, the terms on which the Secretary of State considers herself able to procure an alternative contractor to undertake construction, refurbishment and/or renovation (as applicable) of the relevant Depot, being terms that are, in the view of the Secretary of State, representative of the market at such time for contracts for the construction, refurbishment and/or renovation (as applicable) of depots that are substantially similar to the relevant Depot,

and including, in each case, any reasonable costs or expenses properly and reasonably incurred by the Secretary of State or Network Rail in clearing, securing and/or otherwise making the relevant Depot site safe during a period of no more than one hundred and eighty (180) days following termination of this Agreement;

Costs Plus Basis means:

- (a) in respect of the Damage and Vandalism Spares and the Major Incident Spares to be manufactured by a person that is not an Affiliate of the Manufacturer, the competitive, open-market price quoted by that person at the time of placing the order for those Damage and Vandalism Spares and/or the Major Incident Spares (which, in any event, shall be no more than the price that may be obtained by the TSP when placing any order for such Damage and Vandalism Spares and/or Major Incident Spares (as applicable) for its own account) [REDACTED]; and
- (b) in respect of the Damage and Vandalism Spares and the Major Incident Spares to be manufactured by the Manufacturer or an Affiliate of the Manufacturer, the competitive, open-market rate provided by that relevant manufacturer and at least as favourable as the price provided by that relevant manufacturer to any other UK customer (other than an Affiliate of the Manufacturer) for use in the rail industry in the UK and for similar quantities and on similar terms (other than in respect of price itself);

[REDACTED]

Critical Items Actions Report means the report comprising the items set out in Paragraph 2 of Appendix C (*Form of TSP Delivery Report*) to Part C (*Contract Management*) of Schedule 2 (*Introduction into Service*);

Cumulative Capital Expenditure means the aggregate of:

- (a) all Capital Expenditure that has been incurred as a result of each General Change in Law that has come into effect during the Post Design Period; and
- (b) the amount of Capital Expenditure that is agreed, or determined to be required, as a result of a General Change in Law under Clause 17;

Cure Notice has the meaning given to it in Paragraph 3.2 of Part D (*TSP Default*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*);

Cure Period has the meaning given to it in Paragraph 1.2 of Part B (*Termination, Expiry and Replacement of the Relevant TARA*) of Schedule 4 (*Train Availability and Reliability Agreements*);

Damage and Vandalism Spares means the spares as set out in the first column of Table 2 of Annex D (*Major Incidents, Damage and Vandalism Supporting Information*) of Appendix D (*Design Plan*) of Schedule 1 (*Set Specification and Design*) as such list of spares may be updated from time to time in accordance with Paragraph 13 of Appendix D (*Design Plan*) of Schedule 1 (*Set Specification and Design*);

Debt Service Reserve Account has the meaning given to it in the Account Bank Agreement;

Deduction has the meaning given to it in the TARA;


Deemed New Agreements for Lease means agreements on the same terms and conditions as each Agreement for Lease, as at the Termination Date, which is to

terminate or has terminated pursuant to the exercise of the Call Option or in accordance with its terms;

Deemed New Contract means an agreement on the same terms and conditions as this Agreement, as at the Termination Date, but with the following amendments:

- (a) if the Manufacture and Supply Agreement is not to be novated to the Secretary of State or her nominee in accordance with the terms of the Secretary of State MSA Direct Agreement, then the New TSP shall, to the extent permitted under Schedule 10 (*Intellectual Property*) and having regard to the provisions of Appendix D (*Handover Protocol*) to Part D (*TSP Default*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*), be granted a sub-licence of TSP IPR, Manufacturer IPR or Third Party IPR and/or Maintainer IPR by the Secretary of State to enable the New TSP to make its own arrangements for the maintenance of the Sets;
- (b) the term of such agreement shall be for a period equal to the term from the Termination Date to the Expiry Date;
- (c) any accrued:
 - (i) Formal Warning Notices and/or Final Warning Notices under this Agreement; and
 - (ii) Notifiable Events, Remedial Events, formal warning notices and/or final warning notices under the TARA,

shall, for the purposes of termination only (and without prejudice to the rights of the Relevant Operator to make financial Deductions) be cancelled;

- (d) the Secretary of State shall procure that all of the TSP's rights, title and interest in and to the relevant Sets (as at the point immediately prior to the Termination Date) are transferred to the New TSP;
- (e) if a Maintainer Replacement Refinancing has not occurred, the agreement shall be amended on the basis of a Maintainer Replacement Refinancing in respect of the full amount of the JBIC Facility and the NEXI Covered Facility having occurred and the provisions of Paragraphs 3, 4 and 5 of Appendix E (*Maintainer Replacement Refinancing*) to Part D (*TSP Default*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*) having been applied with the following assumptions:
 - (i) the Maintainer Replacement Refinancing occurs on the Termination Date;
 - (ii) the Maintainer Replacement Refinancing Terms are equivalent to the terms of the Uncovered Facility;
 - (iii) there are no Maintainer Event Transaction Costs;
 - (iv) there are no Maintainer Event Upfront Fees;
 - (v) ; and

(f) any other amendments which do not adversely affect the TSP;

Deemed New Leases means agreements on the same terms and conditions as each Lease, as at the Termination Date, which is to terminate or has terminated pursuant to the exercise of the Call Option or in accordance with its terms;

Deemed New TARA(s) means an agreement or agreements on the same terms and conditions as the TARA, as at the Termination Date, which is to terminate or has terminated pursuant to the relevant Default Notice;

Default Notice means a notice served on the TSP by the Secretary of State following a TSP Default, in accordance with Part D (*TSP Default*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*);

Default Option Conditions has the meaning given to it in Paragraph 1.3 of Part B (*Call Option Requirements*) of Schedule 3 (*Depots*);

Default Rate has the meaning given to it in the Intercreditor Agreement;

Default Variation means a Variation which the TSP requests the Secretary of State to initiate for purposes of and in accordance with Part B (*Approved Default Variations*) of Schedule 8 (*Variations*);

Defects means defects brought about by adverse ground conditions or by reason of subsidence, water table change or any other change to ground conditions;

Delayed Acceptance Default Event has the meaning given to it in Paragraph 5 of Part B (*Delayed Delivery and Delayed Acceptance*) of Schedule 2 (*Introduction into Service*);

Delayed Acceptance Event means any:

- (a) Force Majeure Event;
- (b) Qualifying Change in Law;
- (c) breach by the Secretary of State of her obligations under this Agreement;
- (d) failure of relevant Network Rail infrastructure to accommodate the Sets where designated as a Delayed Acceptance Event in either Paragraph 2 or 4.3 of Appendix C (*Specific Infrastructure Acceptance Issues*) of Schedule 1 (*Set Specification and Design*);
- (e) subject to Paragraph 5.5(iii) of Part A (*Testing and Acceptance*) of Schedule 2 (*Introduction into Service*), failure of the Relevant Operator to perform the obligations under the Acceptance Process, the Approvals Plan, the Training Plan or Appendix C (*Specific Infrastructure Acceptance Issues*) of Schedule 1 (*Set Specification and Design*) or Annex E (*Relevant Operator Equipment*) of Appendix D (*Design Plan*) of Schedule 1 (*Set Specification and Design*);
- (f) damage caused to any Set that is attributable to Relevant Operator Misconduct which occurs at any time such Set is being operated by the Relevant Operator pursuant to Appendix B (*Fault Free Running Conditions*) to Part A (*Testing and Acceptance*) of Schedule 2 (*Introduction into Service*);

- (g) damage caused to any Set which occurs at any time such Set is being operated by the Relevant Operator pursuant to Appendix B (*Fault Free Running Conditions*) to Part A (*Testing and Acceptance*) of Schedule 2 (*Introduction into Service*), other than where such damage is attributable to Relevant Operator Misconduct or the acts or omissions of the TSP;
- (h) Relief Event; or
- (i) withdrawal by the Secretary of State of any Contemplated Variation Notice or any Authority to Proceed pursuant to, and in the circumstances set out in, Paragraph 5(b) of Part C (*Additional Procedural Aspects of Variations*) of Schedule 8 (*Variations*) or of any Redeployment Variation Notice or any Authority to Proceed with Redeployment Variation pursuant to, and in the circumstances set out in, Paragraph 3(b) of Part J (*Additional Procedural Aspects of Redeployment Variations*) of Schedule 8 (*Variations*),

which, in each case, prevents the TSP from achieving any Acceptance Certificate on the relevant Scheduled Acceptance Date or, in circumstances where the Scheduled Acceptance Date has not been achieved in respect of any Acceptance Certificate, subsequently delays the TSP in achieving that Acceptance Certificate;

Delayed Fleet Acceptance Event means any:

- (a) Force Majeure Event;
- (b) Qualifying Change in Law;
- (c) breach by the Secretary of State of her obligations under this Agreement;
- (d) failure of the relevant Network Rail infrastructure to accommodate the Sets where designated as a Delayed Acceptance Event in either Paragraph 2 or 4.3 of Appendix C (*Specific Infrastructure Acceptance Issues*) of Schedule 1 (*Set Specification and Design*);
- (e) subject to Paragraph 5.5(iii) of Part A (*Testing and Acceptance*) of Schedule 2 (*Introduction into Service*), failure of the Relevant Operator to perform the obligations under the Acceptance Process, the Approvals Plan, the Training Plan or Appendix C (*Specific Infrastructure Acceptance Issues*) of Schedule 1 (*Set Specification and Design*) or Annex E (*Relevant Operator Equipment*) of Appendix D (*Design Plan*) of Schedule 1 (*Set Specification and Design*);
- (f) damage caused to any Set that is attributable to Relevant Operator Misconduct which occurs at any time such Set is being operated by the Relevant Operator pursuant to Appendix B (*Fault Free Running Conditions*) to Part A (*Testing and Acceptance*) of Schedule 2 (*Introduction into Service*);
- (g) damage caused to any Set which occurs at any time such Set is being operated by the Relevant Operator pursuant to Appendix B (*Fault Free Running Conditions*) to Part A (*Testing and Acceptance*) of Schedule 2 (*Introduction into Service*), other than where such damage is attributable to Relevant Operator Misconduct or the acts or omissions of the TSP;
- (h) Operator Responsible Damage;
- (i) Relief Event; or

- (j) withdrawal by the Secretary of State of any Contemplated Variation Notice or any Authority to Proceed pursuant to, and in the circumstances set out in, Paragraph 5(b) of Part C (*Additional Procedural Aspects of Variations*) of Schedule 8 (*Variations*) or of any Redeployment Variation Notice or any Authority to Proceed with Redeployment Variation pursuant to, and in the circumstances set out in, Paragraph 3(b) of Part J (*Additional Procedural Aspects of Redeployment Variations*) of Schedule 8 (*Variations*),

which, in each case, prevents the TSP from achieving a Fleet Acceptance Certificate, on or prior to the Fleet Acceptance Drop Dead Date;

Delay Minutes has the meaning given to it in the Initial TARA;

Delivery Date means, in respect of any Designated Infrastructure, the date set out in the corresponding row in column (3) of the table in Annex A (*Designated Infrastructure and Designated Infrastructure Characteristics*) of Appendix C (*Specific Infrastructure Acceptance Issues*) of Schedule 1 (*Set Specification and Design*) for the delivery of the Designated Infrastructure;

Delivery Longstop Date means:

- (a) in respect of each of the last five (5) Sets in the Fleet to obtain a Final Acceptance Certificate or a Qualified Acceptance Certificate (as the case may be), the date that is thirty (30) months after the Scheduled Acceptance Date in respect of the relevant Set; and
- (b) in respect of any other Set, the date that is twenty-four (24) months after the Scheduled Acceptance Date in respect of such Set,

or in each case such later date as may be provided pursuant to Paragraph 1.1 of Part B (*Delayed Delivery and Delayed Acceptance*) of Schedule 2 (*Introduction into Service*);

Delivery Phase means the period commencing on the Effective Date and ending on the date of Final Acceptance of the last Set in the Fleet;

Delivery Review Meeting has the meaning given to it in Paragraph 3.7(a) of Part C (*Contract Management*) of Schedule 2 (*Introduction into Service*);

Delivery Schedule means the timetable for the delivery of Sets (in each case of the relevant Type) for acceptance, and the introduction into service of the Fleet, being the timetable set out in Appendix C (*Delivery Schedule*) to Part A (*Testing and Acceptance*) of Schedule 2 (*Introduction into Service*) as amended to reflect any extension to the relevant Scheduled Acceptance Dates pursuant to Paragraph 1.7 of Part B (*Delayed Delivery and Delayed Acceptance*) of Schedule 2 (*Introduction into Service*);

Deployment Route means a Diagram that is on the IEP Network;

Depot means each of the depots at North Pole, Stoke Gifford and Swansea Maliphant to be constructed in accordance with Schedule 3 (*Depots*) and the relevant Agreement for Lease;

Depot Access Conditions means in respect of any Depot, the depot access conditions and the depot access annexes for such Depot appended to the Agreement for Lease in respect of each Depot, as each is modified from time to time;

- (a) in accordance with the terms of the Depot Access Conditions and (following the coming into force of the first depot access agreement in respect of the Depot) with the approval of the ORR; or
- (b) by the direction of the ORR in connection with the approval of a depot access agreement in respect of the Depot;

Depot Change means a Conditions Change Proposal, a Proposal for Change or a Network Rail Change Proposal (as such terms are defined in the Depot Access Conditions for the Depot or Redeployment Variation Depot concerned);

Depot Compensation Amount means an amount equal to:

- (a) in respect of any Depot that, at the Termination Date, is not a Completed Depot, the Development Cost less the Cost to Complete; or
- (b) in respect of any Completed Depot, the Net Depot Value;

Depot Connection means the development of the connection between a Depot or a Redeployment Variation Depot Site (as the case may be) and the IEP Network;

Depot Construction Sub-Contract means the sub-contract between the Manufacturer and the Depot Construction Sub-Contractor in respect of the design, construction, refurbishment and/or renovation of the Depots;

Depot Construction Sub-Contractor means each building contractor with whom the Manufacturer enters into a Depot Construction Sub-Contract;

Depot Contractor means any party other than the TSP to any Depot Lease Agreement;

Depot Design Drawings means (other than any software provided in connection with any Depot) the as built drawings, schematics and/or models (in each case, in any media) to the extent that they:

- (a) relate to the design, construction and/or modification of (in each case) the site, track, fixtures and/or buildings at each of the Depots (including anything relating to the provision of any utility for the Depots); and
- (b) are (at any time during the term of this Agreement) in the possession of the Manufacturer, the Maintainer or the TSP,

in each case including to the extent modified by or on behalf of the Manufacturer, the Maintainer or the TSP;

Depot Employees means all those persons employed at each Depot or otherwise by the Relevant Operator or any third party, whose contract of employment has been or is to be transferred to the Provider by virtue of the operation of the Transfer Regulations and **Depot Employee** means any of them;

Depot Lease Agreements means the Agreements for Lease, the Leases, the Asset Protection Agreements, the Underleases, the Connection Agreements, the Works Agreements and any supplemental documents in relation thereto;

Depot Lease Documents means the Leases, the Agreements for Lease, the Licence to Underlet and any supplemental documents in relation thereto which are entered into by the TSP;

Depot Lease Termination Event means:

- (a) in the case of each Network Rail Agreement for Lease, there has been a Lessee Material Default within clause 13.1(A) of that Agreement to Lease as defined therein; or
- (b) in the case of either the Stoke Gifford Lease or the Swansea Maliphant Lease, there has been a Termination Default Event within clause 7.1 of the Depot Letting Conditions as defined therein; or
- (c) in the case of the BRB Agreement for Lease there has been a Tenant Material Default within clause 13.2 of that Agreement to Lease as defined therein; or
- (d) in the case of the North Pole Lease, there has been a Termination Default Event within clause 6.1.1 of the North Pole Lease as defined therein;

Depot Lease Termination Notice means either:

- (a) in the case of the Network Rail Agreement for Lease, a Network Rail Termination Notice under clause 13.1(D) of that Agreement to Lease as defined therein;
- (b) in the case of the BRB Agreement for Lease, a Landlord Termination Notice under clause 13.5 of that Agreement for Lease as defined therein;
- (c) in the case of either the Stoke Gifford Lease or the Swansea Maliphant Lease, a Network Rail Termination Notice in respect of that Lease under clause 7.4 of the Depot Letting Conditions as defined therein; or
- (d) in the case of the North Pole Lease, a Landlord Termination Notice under clause 6.1.5 of that Lease as defined therein;

Depot Lease Termination Pre-Conditions means for each Depot Lease Document all the conditions which are required to be met before the Landlord shall become entitled to give a Depot Lease Termination Notice under that Depot Lease Document and which, for the avoidance of doubt, includes:

- (a) in relation to the Network Rail Agreement for Lease, all the requirements of clause 13.1(D)(3) of the Network Rail Agreement for Lease;
- (b) in relation to the BRB Agreement for Lease, all the requirements of clause 13.5.3 of the BRB Agreement for Lease;
- (c) in relation to either the Stoke Gifford Lease and/or the Swansea Maliphant Lease, all the requirements of clause 7.4(C) of the Depot Letting Conditions; and
- (d) in relation to the North Pole Lease, all the requirements of clause 6.1.5(c) of the North Pole Lease;

Depot Letting Conditions has the meaning given to it in the Stoke Gifford Lease and in the Swansea Maliphant Lease;

Depot Lifecycle Costs means the costs set out in row 58 of tab "R01_CF" of the Effective Date Financial Model;

Depot Loss means, with respect to any Depot, any destruction of, damage to or rendering unfit for normal use of such Depot, or any part or parts of such Depot, that does not occasion a Depot Total Loss;

Depot Maintenance Records means (other than any software provided in connection with any Depot) any records (in any media) to the extent that they relate to the maintenance and/or operation of (in each case) the site, track, fixtures and/or buildings at each of the Depots (including utilities), in each case including to the extent modified by or on behalf of the Maintainer;

Depot Requirements means taking into account:

- (a) the number of Depots on the IEP Network (the **Existing GW Depots**);
- (b) the capability, operational functionality and operational robustness of the Existing GW Depots; and
- (c) the number of Sets deployed on the IEP Network,

in each case, immediately prior to the date of the Redeployment Variation Notice issued in accordance with Paragraph 1 of Part I (*Redeployment Variation*) of Schedule 8 (*Variations*), and further taking into account:

- (i) the number of Redeployed Sets;
- (ii) the proposed Depot Connections; and
- (iii) the proposed routes for the Redeployed Sets,

a Redeployment Variation Depot or a Redeployment Variation Depot Site shall offer proportionately the same or substantially similar capability, operational functionality and operational robustness as the Existing GW Depots;

Depot Specification means, in respect of each Depot, the detailed specification developed by the Manufacturer and the Depot Construction Sub-Contractor pursuant to the relevant Depot Construction Sub-Contract in order to meet the standards and requirements set out in the Outline Specification and the Rules of the Depot in respect of such Depot;

Depot Total Loss means, with respect to any Depot:

- (a) the actual or constructive total loss of such Depot (including any damage to such Depot or requisition for use or hire which, in either case, results in an insurance settlement on the basis of a total loss); or
- (b) the total destruction of such Depot, or damage to such Depot such that it is beyond economic repair or rendered permanently unfit for normal use for any reason whatsoever,

and includes, in each case, the occurrence of any such event in respect of any Depot prior to the issue of a Certificate of Satisfactory Depot in respect of such Depot;

Derogation Plan has the meaning given to it in Paragraph 4.1 of Schedule 9 (*Change in Law*);

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

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

in each case permitted by the Relevant Authority or regulatory authority in relation to such Applicable Laws and Standards;

Design means the detailed design of the Sets to be developed by the TSP in accordance with the Design Plan;

Design Area has the meaning given to it in Paragraph 4.1 of Appendix D (*Design Plan*) of Schedule 1 (*Set Specification and Design*);

Design Area Breakdown Structure has the meaning given to it in Paragraph 4.1 of Appendix D (*Design Plan*) of Schedule 1 (*Set Specification and Design*);

Design Life means, in respect of any Set, thirty-five (35) years from receipt of a Qualified Acceptance Certificate or a Final Acceptance Certificate in relation to such Set, whichever is the earlier;

Design Plan means the design plan specified in Appendix D (*Design Plan*) of Schedule 1 (*Set Specification and Design*);

Design Process has the meaning given to it in Paragraph 1.1 of Appendix D (*Design Plan*) of Schedule 1 (*Set Specification and Design*);

Design Review Panel has the meaning given to it in Paragraph 3.1 of Appendix D (*Design Plan*) of Schedule 1 (*Set Specification and Design*);

Design Review Stage has the meaning given to it in Paragraph 1.3 of Appendix D (*Design Plan*) of Schedule 1 (*Set Specification and Design*);

Design Vision Style Guide means the document set out in annex E of the Train Technical Description;

Designated Acceptance Location means North Pole or such other location as may be agreed by the parties and the Relevant Operator (if applicable, acting reasonably);

Designated Body has the meaning given to "designated body" in the Railways (Interoperability) Regulations 2011;

Designated Infrastructure means a section of the Great Western IEP Network operating under specified traffic conditions, as set out in a row of column (1) of the table in Annex A (*Designated Infrastructure and Designated Infrastructure Characteristics*) of Appendix C (*Specific Infrastructure Acceptance Issues*) of Schedule 1 (*Set Specification and Design*);

Designated Infrastructure Characteristics means, in respect of any Designated Infrastructure, the infrastructure characteristics set out in the corresponding row of column (2) of the table in Annex A (*Designated Infrastructure and Designated Infrastructure Characteristics*) of Appendix C (*Specific Infrastructure Acceptance Issues*) of Schedule 1 (*Set Specification and Design*);

Detailed Design Review Stage has the meaning given to it in Paragraph 7.4 of Appendix D (*Design Plan*) of Schedule 1 (*Set Specification and Design*);

Development Cost means, in respect of any Depot, the aggregate projected cost of construction, refurbishment and/or renovation of such Depot as set out in the relevant cell within the rows 4057 to 4060 headed respectively as "Stoke Gifford (Depot)", "North Pole (Depot)", "Swansea Maliphant (Depot)" and "Worcester / Exeter / Another" in the tab "C01_Workings" of the Effective Date Financial Model;

DFO means the person who is the authorised operator of a light maintenance depot in accordance with section 6 of the Railways Act 1993;

Diagram has the meaning given to it in the Initial TARA;

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

- (a) this Agreement, the TARA or the Project and not to similar agreements or projects; and/or
- (b) the TSP and/or the Significant Contractors and not to other persons;

Dispatch Requirements has the meaning given to it in the Initial TARA;

Dispute has the meaning given to it in the Dispute Resolution Agreement;

Dispute Resolution Agreement means the dispute resolution agreement in the form set out in Schedule 13 (*Form of Dispute Resolution Agreement*) dated the date hereof between the Secretary of State, the TSP, the Relevant Operator, the Security Trustee and the Maintainer (as amended, varied and acceded to from time to time in accordance with its terms);

Distribution means:

- (a) whether in cash or in kind, any:
 - (i) dividend or other distribution in respect of share capital;
 - (ii) reduction of capital, redemption or purchase of shares or any other reorganisation or variation to share capital;
 - (iii) payments under the Subordinated Financing Agreements (whether of principal, interest, breakage costs or otherwise);
 - (iv) payment, loan, contractual arrangement or transfer of assets or rights to the extent (in each case) it was put in place after the Effective Date and was neither in the ordinary course of business nor on reasonable commercial terms; or

- (v) the receipt of any other benefit which is not received in the ordinary course of business and on reasonable commercial terms; or
- (b) the early release of any Contingent Funding Liabilities, the amount of such release being deemed to be a gain for the purposes of any calculation of Refinancing Gain,

in either case that occurs, is projected to occur or is paid by reference to circumstances subsisting during the Contract Period;

East Coast IEP Network means the sections of the IEP Network set out in the table in Part 2 (*IEP Route Definition by ELR and Start and End Mileage (East Coast)*) of Appendix F (*IEP Network*) of Schedule 1 (*Set Specification and Design*);

EBITDA means earnings before the deduction of interest, taxes, depreciation and amortisation;

ECML Bi-Mode Sets has the meaning given to "Bi-Mode Sets" in the ECML MARA;

ECML Financial Close means the effective date of the ECML MARA;

ECML MARA means the Other MARA in respect of the East Coast IEP Network;

ECML Relevant Operator has the meaning given to "Relevant Operator" in the ECML MARA;

ECML Sets has the meaning given to "Sets" in the ECML MARA;

ECML Specific Technical Document Requirements has the meaning given to it in Paragraph 5.1(iii) of Appendix D (*Design Plan*) of Schedule 1 (*Set Specification and Design*);

ECML Testing Commissioning and Acceptance Plan has the meaning given to "Testing Commissioning and Acceptance Plan" in the ECML MARA;

ECML TSP means the train service provider under the ECML MARA;

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

Effective Date means the later of the Commencement Date and the date on which all conditions precedent referred to in Clauses 2.1 and 2.2 have been satisfied (or waived or deferred in accordance with Clause 2.3);

Effective Date Financial Model has the meaning given to it in Paragraph 1.1(a) of Part F (*Identity of the Financial Model*) of Schedule 8 (*Variations*);

Effective Date Financial Model Data Book has the meaning given to it in Paragraph 1.1(a) of Part F (*Identity of the Financial Model*) of Schedule 8 (*Variations*);

Electric Set means a Full Set which is capable of operation only where the power source is provided solely by means of a twenty-five (25) Kilovolt overhead electricity supply;

Environment means:

- (a) land, including surface land, sub-surface strata, sea bed and river bed under water (as defined in limb (b)) and natural and man-made structures;
- (b) water, including coastal and inland waters, surface waters, ground waters and waters in sewers and drains;
- (c) air, including air inside buildings and in other natural and man-made structures above or below ground; and
- (d) any and all living organisms or systems supported by those media, including humans;

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

Environmental Laws means all or any laws (whether civil, criminal or administrative), statutes, proclamations, by-laws, directives, regulations, statutory instruments, rules, orders, rules of court, delegated or subordinate legislation, rules of common law at any time and from time to time in force in the United Kingdom relating to any Environmental Matters;

Environmental Matters means:

- (a) pollution or contamination or the threat of pollution or contamination of the Environment;
- (b) the generation, manufacture, processing, handling, storage, distribution, use, treatment, removal, transport, importation, exportation, disposal, release, spillage, deposit, escape, discharge, leak, emission, leaching or migration of any Hazardous Substances;
- (c) exposure of any person to Hazardous Substances or Waste;
- (d) the creation of noise, vibration, common law or statutory nuisance, or other harm to the Environment and/or the health and safety of any human being; and
- (e) the health and safety of any human being;

Equity Bridge Finance Documents has the meaning given to it in the CTA;

Escrow Documents has the meaning given to it in Paragraph 1.1 of Part F (*Identity of the Financial Model*) of Schedule 8 (*Variations*);

Estimated Change in Costs means in relation of Schedule 9 (*Change in Law*), the aggregate of any estimated increase in manufacturing costs, construction costs, maintenance costs, operating costs and financing costs less the aggregate of any estimated reduction in manufacturing costs, construction costs, maintenance costs, operating costs and financing costs, whether incurred in relation to the TSP's obligations under this Agreement or the TARA;

Estimated Fair Value of this Agreement means the amount agreed or determined in accordance with Appendix B (*No Re-Tendering Procedure*) to Part D (*TSP Default*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*) that a third party would pay to the Secretary of State as the market value of the Deemed New Contract, the

Deemed New TARA with the benefit and burden of the Deemed New Agreements for Lease and/or the Deemed New Leases (as applicable);

ETCS means the European Train Control System;

ETCS Baseline 3 has the meaning given in the draft Commission Decision of 2012 marked 'D020736/01' (to be formally issued), which amends Commission Decision 2012/88/EU on the technical specifications for interoperability relating to the control-command and signalling subsystems of the trans-European rail system;

ETCS Baseline 3 Option means the Secretary of State's option, which the Secretary of State may, in her sole discretion exercise in accordance with Appendix A (*Pre-Priced Option*) to Part A (*Scope and Consequences of Variations*) of Schedule 8 (*Variations*), to require ETCS Baseline 3 to be incorporated into the Sets;

ETCS Baseline 3 Option Exercise Date means the date falling ninety (90) days before the ETCS Drop Dead Date;

ETCS Baseline 3 Option Price means £11,056,380 (eleven million, fifty six thousand three hundred and eighty pounds Sterling);

ETCS Baseline 3 Option Revised Inputs means the Revised Inputs in respect of the Pre-Priced Option as described in Paragraph 2.1 of Appendix A (*Pre-Priced Option*) to Part A (*Scope and Consequences of Variations*) of Schedule 8 (*Variations*);

ETCS Baseline 3 Date has the meaning given to it in Paragraph 1.2 of Appendix A (*Pre-Priced Option*) to Part A (*Scope and Consequences of Variations*) of Schedule 8 (*Variations*);

ETCS Drop Dead Date means 30 June 2015;

Exceptional Cost means, for an Insurance Review Period, the extent to which there is an Insurance Cost Increase which exceeds in amount thirty per cent. (30%) of the Base Relevant Insurance Cost for that Insurance Review Period;

Exceptional Saving means, for an Insurance Review Period, the extent to which there is an Insurance Cost Decrease which exceeds in amount thirty per cent. (30%) of the Base Relevant Insurance Cost for that Insurance Review Period;

Exempt Refinancing means:

- (a) any Refinancing that was fully taken into account in the Financial Model;
- (b) a change in taxation or change in accounting treatment;
- (c) the exercise of rights, waivers, consents and similar actions which relate to day to day administrative and supervisory matters, and which are in respect of:
 - (i) breach of representations and warranties or undertakings;
 - (ii) movement of monies between the Project Accounts in accordance with the terms of the CTA;
 - (iii) late or non-provision of information, consents or licences;
 - (iv) amendments to Sub-Contracts;

- (v) approval of revised technical and economic assumptions for financial model runs (to the extent required for forecasts under the Financing Documents);
- (vi) restrictions imposed by the Senior Lenders on the dates at which the Senior Debt can be advanced to the TSP under the Senior Financing Agreements and/or amounts released from: (A) the "Disbursement Account" during the "Availability Period" or (B) the "Pre-Funding Accounts", (as such terms are defined in the CTA) and which are given as a result of any failure by the TSP to ensure that the manufacture or construction work is performed in accordance with the agreed Delivery Schedule and which are notified in writing by the TSP or the Senior Lenders to the Secretary of State prior to being given;
- (vii) changes to milestones for drawdown and/or amounts released from: (A) the Disbursement Account during the Availability Period; or (B) the Pre-Funding Accounts, set out in the CTA and which are given as a result of any failure by the TSP to ensure that manufacture or construction work is performed in accordance with the agreed Delivery Schedule and which are notified in writing by the TSP or the Senior Lenders to the Secretary of State prior to being given;
- (viii) failure by the TSP to obtain any consent by statutory bodies required by the Senior Financing Agreements; or
- (ix) voting by the Senior Lenders and the voting arrangements between the Senior Lenders in respect of the levels of approval required by them under any of the Senior Financing Agreements or the Intercreditor Agreement;
- (d) any amendment, variation or supplement of any agreement approved by the Secretary of State as part of any Variation under this Agreement;
- (e) any sale of shares in the TSP, MidCo or Holdco by the shareholders or any securitisation of the existing rights and/or interests attaching to shares in the TSP, MidCo or Holdco provided that this limb (e) shall, in respect of shares in Holdco, only apply for so long as Holdco holds one hundred per cent. (100%) of the issued share capital in the MidCo and shall, in respect of shares in MidCo, only apply for so long as MidCo holds one hundred per cent. (100%) of the issued share capital in the TSP;
- (f) any sale or transfer of the Subordinated Lenders' existing rights and/or interests under the Subordinated Financing Agreements or securitisation of the Subordinated Lenders' existing rights and/or interests under the Subordinated Financing Agreements;
- (g) any Qualifying Bank Transaction;
- (h) any Refinancing to the extent it relates to cashflow arising after the RV Date; or
- (i) any Maintainer Replacement Refinancing;

Existing Depot means an existing depot intended by the Secretary of State to be utilised in the implementation of a Redeployment Variation which is connected to the Network at the date at which the Secretary of State issues the Redeployment Variation Notice;

Expert has the meaning given to it in the Dispute Resolution Agreement;

Expiry Date means the RV Date;

Extension Day means any day by which a Scheduled Acceptance Date or Delivery Longstop Date is extended pursuant to Part B (*Delayed Delivery and Delayed Acceptance*) of Schedule 2 (*Introduction into Service*) by reason of a Delayed Acceptance Event;

Facility Default has the meaning given to it in Paragraph 1 of Part B (*Approved Default Variations*) of Schedule 8 (*Variations*);

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

Fault means the cessation or material impairment of the ability of any device, functional unit of equipment, system or component on a Set or Vehicle to perform its intended function where such cessation or material impairment arises from any failure or deficiency of the relevant device, functional unit of equipment, system or component;

Fees Regulations means The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004;

FFR-related Conditions means the conditions in respect of Final Acceptance set out in Paragraph 5.2(l) of Part A (*Testing and Acceptance*) of Schedule 2 (*Introduction into Service*);

Final Acceptance means the final acceptance of any Set pursuant to Paragraph 5 of Part A (*Testing and Acceptance*) of Schedule 2 (*Testing and Acceptance*);

Final Acceptance Certificate means a certificate of Final Acceptance of a Set in the form set out in Form 3 in Appendix D (*Forms of Acceptance Certificates*) to Part A (*Testing and Acceptance*) of Schedule 2 (*Introduction into Service*);

Final Acceptance Conditions means the conditions in respect of Final Acceptance set out in Paragraph 5.2 of Part A (*Testing and Acceptance*) of Schedule 2 (*Introduction into Service*);

Final Acceptance Preconditions has the meaning given to it in Paragraph 6.3 of Part A (*Testing and Acceptance*) of Schedule 2 (*Introduction into Service*);

Final Cost Plan means the breakdown of the Final Price for the relevant Redeployment Variation Depot which is binding save in relation to agreed Provisional Sum Items;

Final Design Review Stage has the meaning given to it in Paragraph 7.18 of Appendix D (*Design Plan*) of Schedule 1 (*Set Specification and Design*);

Final Mock-Up has the meaning given to it in Paragraph 7.10 of Appendix D (*Design Plan*) of Schedule 1 (*Set Specification and Design*);

Final Mock-Up Review has the meaning given to it in Paragraph 7.10 of Appendix D (*Design Plan*) of Schedule 1 (*Set Specification and Design*);

Final Price means the binding price as determined, implementing the procedures set down in Paragraphs 5 and 12 of Part I (*Redeployment Variation*) of Schedule 8 (*Variations*) for the performance of the Redeployment Variation Depot Works;

Final Warning Notice has the meaning given to it in Paragraph 2.2 of Part D (*TSP Default*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*);

Financial Model means the TSP's financial model that relates to payments to be made by and to the TSP and costs incurred by the TSP under the TARA and under this Agreement in relation to all TSP obligations and including payments to be made by and to the TSP and costs incurred in respect of the Assets and the Depots, as updated from time to time in accordance with this Agreement;

Financial Model Data Book means the document containing all the assumptions necessary to run the Financial Model, that is prepared by the TSP in the agreed terms, as updated from time to time in accordance with this Agreement;

Financial Standing Test means the relevant contractor's latest audited company accounts for the financial year preceding the date the Acceptable Warranty is given demonstrate minimum net assets of not less than forty million pounds Sterling (£40,000,000) and a gross debt to EBITDA ratio no greater than three point five to one (3.5:1). If the relevant contractor's latest audited company accounts are denominated in a currency other than pounds Sterling then the respective financial results shall be converted into pounds Sterling using the applicable closing mid-spot foreign exchange rate for the last day of that financial year;

Financing Default means a default under the Financing Documents;

Financing Documents means all or any of the agreements or instruments entered into or to be entered into by the TSP and/or any of its Affiliates relating to the financing of the Project (including the Initial Financing Agreements and any agreements or instruments to be entered into by the TSP or any of its Affiliates relating to the rescheduling of their indebtedness or any Refinancing);

Financing Effective Date has the meaning given to "Effective Date" in the CTA;

Finds means all objects or materials that are, or appear to be, fossils or antiquities, found on or at any Depot during the period in which the TSP is undertaking or procuring the undertaking of construction works in respect of the depot facility at that Depot;

First Cap Reduction Date has the meaning given to it in the Manufacture and Supply Agreement;

First Insurance Review Date means the first Business Day following the first anniversary of the Relevant Insurance Inception Date;

First Scheduled Handover Time means the first date on which the Redeployed Sets are to be made available by the TSP under the new, additional TARA pursuant to a Redeployment Variation;

Fleet means the fleet of Sets described in Appendix C (*Delivery Schedule*) to Part A (*Testing and Acceptance*) of Schedule 2 (*Introduction into Service*);

Fleet Acceptance Bond has the meaning given to it in Paragraph 8.1(d) of Part A (*Testing and Acceptance*) of Schedule 2 (*Introduction into Service*);

Fleet Acceptance Certificate means the fleet acceptance certificate to be issued in respect of the Fleet pursuant to Paragraph 9 of Part A (*Testing and Acceptance*) of Schedule 2 (*Introduction into Service*) excluding any Sets treated as a Total Loss;

Fleet Acceptance Date means the date on which each of the Sets within the Fleet has received either a Final Acceptance Certificate or a Qualified Acceptance Certificate (as the case may be);

Fleet Acceptance Drop Dead Date means, subject to Paragraph 9.6 of Part A (*Testing and Acceptance*) of Schedule 2 (*Introduction into Service*), the date occurring on the [REDACTED];

Fleet Acceptance Security Account has the meaning given to it in Paragraph 8.2 of Part A (*Testing and Acceptance*) of Schedule 2 (*Introduction into Service*);

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

Force Majeure Event means the occurrence after the Effective Date of any of the following:

- (a) war, armed conflict or civil war (whether declared or undeclared);
- (b) riot or civil unrest or commotion;
- (c) any act of terrorism or a specific threat of terrorism;
- (d) nuclear accident, chemical or biological contamination or ionising radiation;
- (e) lightning, earthquake or storm;
- (f) explosions, fire or flooding;
- (g) the TSP being unable to procure a supply of fuel for acceptance testing purposes in circumstances where there is a general and widespread shortage in supply; or
- (h) Industrial Action, including that relating to a Trade Dispute other than TSP Industrial Action,

if and only to the extent that such event is not caused by the Affected Party;

Force Majeure Extension Day has the meaning given to it in Paragraph 2.1(b) of Part B (*Delayed Delivery and Delayed Acceptance*) of Schedule 2 (*Introduction into Service*);

Force Majeure Rectification Plan has the meaning given to it in Paragraph 1.3 of Part B (*Force Majeure*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*);

Force Majeure Termination Sum means the sum specified in Paragraph 2.1 of Part B (*Force Majeure*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*);

Formal Warning Notice has the meaning given to it in Paragraph 2.1 of Part D (*TSP Default*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*);

Franchise Bidder means any person who has expressed an interest in bidding for the right to become the operator in relation to a Relevant Franchise Agreement and who has pre-qualified for the right to do so and been issued with an invitation to tender or similar bidding document;

Franchisee means a party to a Relevant Franchise Agreement;

Full Set means any Set consisting of more than seven (7) Vehicles but fewer than or equal to twelve (12) Vehicles to be delivered by the TSP pursuant to this Agreement and identified in Appendix C (*Delivery Schedule*) to Part A (*Testing and Acceptance*) of Schedule 2 (*Introduction into Service*), including any replacement ordered pursuant to Part I (*Total Loss*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*);

Funder Direct Agreement means the direct agreement dated the Effective Date and made between, amongst others, the Secretary of State, the TSP and the Security Trustee;

Further Redeployment Variation Notice has the meaning given to it in Paragraph 8.1 of Part I (*Redeployment Variation*) of Schedule 8 (*Variations*);

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

Glass Case Standard means the examples and samples to be presented by the TSP to the Secretary of State's Representative in accordance with Paragraph 5 of Appendix A (*Testing, Commissioning and Acceptance*) to Part A (*Testing and Acceptance*) of Schedule 2 (*Introduction into Service*) and with which each Set must comply when presented for Final Acceptance;

Glass Case Standard Plan has the meaning given to it in Paragraph 5.1 of Appendix A (*Testing, Commissioning and Acceptance*) to Part A (*Testing and Acceptance*) of Schedule 2 (*Introduction into Service*);

Good Industry Practice means that degree of skill, care, prudence and foresight and operating practice which would reasonably and ordinarily be expected from time to time of a skilled and experienced person engaged in the same type of undertaking as that of the TSP under the same or similar circumstances;

Great Western IEP Network means the sections of the IEP Network set out in the table in Part 1 (*IEP Route Definition by ELR and Start and End Mileage (Great Western)*) of Appendix F (*IEP Network*) of Schedule 1 (*Set Specification and Design*);

Great Western Relevant Approvals means all Relevant Approvals required in relation to the Great Western IEP Network;

Group Standards means, to the extent applicable to the Sets and Vehicles and their operation, those standards (including codes of practice, guidance notes and manuals) to which railway assets or equipment used on or as part of railway assets must conform (or with which it is generally accepted within the rail industry in Great Britain it is good practice to comply) in each case as prepared and updated by the RSSB;

GSM-R Monitoring System means the GSM-R Monitoring System described in paragraph 4.17.1 of the Train Technical Specification;

GWML Minimum Fleet Acceptance Date means the date on which any ten (10) Bi-Mode Sets have been issued with a Final Acceptance Certificate or a Qualified Acceptance Certificate in accordance with Paragraph 5 or Paragraph 6 respectively of Part A (*Testing and Acceptance*) of Schedule 2 (*Introduction into Service*);

GWML Specific Technical Document Requirements has the meaning given to it in Paragraph 5.1(ii) of Appendix D (*Design Plan*) of Schedule 1 (*Set Specification and Design*);

Half Set means any Set consisting of fewer than eight (8) Vehicles to be delivered by the TSP pursuant to this Agreement and identified in Appendix C (*Delivery Schedule*) to Part A (*Testing and Acceptance*) of Schedule 2 (*Introduction into Service*), including any replacement ordered pursuant to Part I (*Total Loss*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*);

Handover Programme has the meaning given to it in Paragraph 1.4(a)(i) of Annex A (*Termination of this Agreement*) of Appendix D (*Handover Protocol*) to Part D (*TSP Default*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*);

Hazardous Substance means any substance capable (whether solid, liquid, gas, ion, vapour, electromagnetic or radiation and whether alone or in combination with any other) of causing pollution or contamination, harm or damage to property or the Environment;

Highest Compliant Tender Price means the price offered by the Compliant Tenderer with the highest tender price;

Historic and Projected Debt Service Cover Ratio has the meaning given to it in the CTA and is set out in row 9078 of the tab "C01_Workings" of the Effective Date Financial Model;

Hitachi, Ltd. means Hitachi, Ltd. a company established under the laws of Japan whose registered office is at 6-6 Marunouchi, 1-chome, Chiyoda-Ku, Tokyo;

Hitachi Rail Europe Limited means Hitachi Rail Europe Limited, whose registered number is 05598549 and registered address is at 40 Holborn Viaduct, London EC1N 2PB;

HoldCo means Agility Trains West (Holdings) Limited, a company incorporated in England and Wales whose registered number is 07930508 and whose registered address is at 4th Floor, 4 Copthall Avenue, London, EC2R 7DA;

HSE means the Health & Safety Executive;

IEP Bi-Mode Sets means the Bi-Mode Sets and the ECML Bi-Mode Sets;

IEP Network means the routes specified in Appendix F (IEP Network) of Schedule 1 (*Set Specification and Design*);

IEP Plans has the meaning given to it in Paragraph 1(b) of Appendix A (*Form of TSP Programme Delivery Plan*) to Part C (*Contract Management*) of Schedule 2 (*Introduction into Service*);

IEP Relevant Operators means the Relevant Operator and the ECML Relevant Operator;

Implementation Period means, in respect of any Variation, the period of time, as agreed between the parties or determined pursuant to the Dispute Resolution Agreement, within which the TSP is expected to implement the Variation;

Implementation Risk means, in respect of any Variation, any material and adverse change in risk to the TSP in providing the Services (other than in respect of implementing the Variation) during the Implementation Period;

Implementation Timetable has the meaning given to it in Paragraph 9.2 of Part I (*Redeployment Variation*) of Schedule 8 (*Variations*);

Incident has the meaning given to it in the Initial TARA;

Independent Tender Manager has the meaning given to it in Paragraph 1.1(c)(viii) of Part E (*Market Testing, Benchmarking and Indexing*) of Schedule 8 (*Variation*);

Indexation means:

- (a) in respect of any payment set out in this Agreement that is stated to be Indexed, the grossing up of such payment by the payer to reflect any adjustment to the Retail Prices Index between the Effective Date and the date of such payment falling due and payable; and
- (b) in respect of any non-payment amount set out in this Agreement that is stated to be Indexed, the adjustment of such amount to reflect any adjustment to the Retail Prices Index between the Effective Date and the date on which reference to such amount is made,

and, in each case, Indexed shall be construed accordingly;

Indexed SAP means, in respect of a Full Set or Half Set, a Set Availability Payment indexed by indexation factor I₁, to be calculated in accordance with paragraph 2.15 of part A (*TARA Payments*) of schedule 5 (*Payment*) of the TARA;

Indicative Cost Plan means the breakdown of the Indicative Price for the relevant Redeployment Variation Depot which is indicative and non-binding only;

Indicative Price means the TSP's indicative but non-binding best estimate of the out-turn price of performing the Redeployment Variation Depot Works, as such works are defined by the Redeployment Variation Depot Specification or any specification revisions agreed thereto;

Industrial Action means industrial action of whatever nature including official and unofficial strikes, action short of a strike, work to rule, lock-outs and go-slows;

Industry Standards means all the laws, rules, regulations, recommendations and instructions including codes of practice and conduct which, from time to time, have force of law or with which it is generally accepted within the rail industry in Great Britain that it is good practice to comply with, relating to the performance of this Agreement or the Depots, Sets or Vehicles, issued by ATOC, HSE, Network Rail, the Notified Body, NRAP, ORR, RSSB, (in each case to the extent acting in its capacity as a relevant authority under the Applicable Laws and Standards) or any other Relevant Authority or person from time to

time legally authorised to set standards in respect of the rail industry and shall include the Rule Book, Group Standards and Notified Standards and, to the extent that they do not conflict with any other standard with which compliance is required in order to obtain all Relevant Approvals, the list of standards contained in annex A (*Alternative Standards*) of the Train Technical Description;

Information has the meaning given under section 84 of the Freedom of Information Act 2000;

Information Commissioner means "the Commissioner" for the purposes of, and as defined in, the Data Protection Act 1998;

Infrastructure Manager has the meaning given to "infrastructure manager" in the ROGS;

Infrastructure Monitoring Systems means the GSM-R Monitoring System, the Unattended Track Geometry Measurement System and the Unattended Overhead Line Measurement System;

Initial Depot Contractors means Network Rail and BRBR, each in its capacity as counterparty to certain Depot Lease Agreements;

Initial Financing Agreements means the documents listed in Schedule 14 (*Initial Financing Agreements*);

Initial Relevant Operator means the train operating company to be appointed by the Secretary of State, who shall be the first operator of the Sets pursuant to the Initial TARA;

Initial Significant Contractors means Hitachi Rail Europe Limited in its capacities as manufacturer and depot developer under the Manufacture and Supply Agreement and as maintainer under the Maintenance Agreement and the Depot Construction Sub-Contractor in its capacity as builder under the Depot Construction Sub-Contract;

Initial TARA means the TARA to be entered into by the TSP and the Initial Relevant Operator in the agreed form (as initialled by the parties) in accordance with this Agreement, including such agreement as amended in accordance with Schedule 8 (*Variations*);

In-Service Fault has the meaning given to it in the Initial TARA;

Installation Programme has the meaning given to it in Paragraph 1.2(b) of Annex E (*Relevant Operator Equipment*) of Appendix D (*Design Plan*) of Schedule 1 (*Set Specification and Design*);

Instalment Dates has the meaning given to it in Paragraph 1.2(a)(i)(A) of Part H (*Calculation and Payment of Termination Sums*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*);

Insurance Adviser means the Secretary of State's insurance adviser nominated by the Secretary of State from time to time and notified to the TSP;

Insurance Cost Decrease means the Insurance Cost Differential if the value thereof is less than zero, multiplied by minus one;

Insurance Cost Differential shall, subject to the Insurance Review Procedure, be determined as follows:

ICD=(ARIC – BRIC)-(±PIC)

where:

ICD is the Insurance Cost Differential;

ARIC is the Actual Relevant Insurance Cost;

BRIC is the Base Relevant Insurance Cost; and

PIC is any Project Insurance Change;

Insurance Cost Increase means the Insurance Cost Differential if the value thereof is greater than zero (0);

Insurance Cost Index means any index introduced by the United Kingdom Government or the Office of National Statistics after the Effective Date and which is anticipated to be published annually to provide an independent and objective measure of changes in prevailing market insurance costs;

Insurance Review Date means the First Insurance Review Date and, thereafter, each date falling on the second (2nd) anniversary of the previous Insurance Review Date, except where such date lies beyond the end of the Contract Period, in which case the Insurance Review Date shall be the last renewal date of the Relevant Insurance prior to the end of the Contract Period;

Insurance Review Period means a two (2) year period from the Relevant Insurance Inception Date and each subsequent two (2) year period commencing on the second (2nd) anniversary of the Relevant Insurance Inception Date except where the end of such period lies beyond the end of the Contract Period, in which case the Insurance Review Period shall be the period from the end of the penultimate Insurance Review Period to the last day of the Contract Period;

Insurance Review Procedure means the procedure set out in Paragraph 1 of Part D (*Insurance Premium Risk Sharing*) of Schedule 5 (*Insurance*);

Insurance Summary Sheet has the meaning given to it in Paragraph 1.2(c) of Part D (*Insurance Premium Risk Sharing*) of Schedule 5 (*Insurance*);

Insurance Term means any terms and/or conditions required to be included in a policy of insurance by Part A (*Insurance Provisions*) of Schedule 5 (*Insurance*) and/or Part B (*Required Insurances*) of Schedule 5 (*Insurance*) but excluding any risk;

Insurance Undertaking has the meaning given in the rules from time to time of the Financial Services Authority;

Insured Property means:

- (a) for the purposes of Paragraph 3 of Appendix A (*Insured Risks During the Operational Period*) to Part B (*Required Insurances*) of Schedule 5 (*Insurance*), the property specified in Paragraph 3.1 thereof;
- (b) for the purposes of Paragraph 4 of Appendix A (*Insured Risks During the Operational Period*) to Part B (*Required Insurances*) of Schedule 5 (*Insurance*), the property specified in Paragraph 4.1 thereof; and

- (c) for the purposes of Paragraph 3 of Appendix B (*Insured Risks During Design and Construction Works of Depots*) to Part B (*Required Insurances*) of Schedule 5 (*Insurance*), the property specified in Paragraph 3.1 thereof;

Insureds means:

- (a) for the purposes of Appendix A (*Insured Risks During the Operational Period*) to Part B (*Required Insurances*) of Schedule 5 (*Insurance*), the insureds specified in Paragraph 2 thereof;
- (b) for the purposes of Appendix B (*Insured Risks During Design and Construction Works of Depots*) to Part B (*Required Insurances*) of Schedule 5 (*Insurance*), the insureds specified in Paragraph 2 thereof; and
- (c) for all other purposes, the Insureds pursuant to limbs (a) and (b) as the context may require;

Integrated Programme has the meaning set out in Paragraph 1 of Appendix D (*Form of Integrated Programme*) to Part C (*Contract Management*) of Schedule 2 (*Introduction into Service*);

Intellectual Property Rights means patents, trade marks, service marks, rights in logos, trade names, copyright (including rights in computer software) and moral rights, database rights, semi-conductor topography rights, utility models, rights in designs, rights in get-up, rights in inventions, rights in know-how and other intellectual property rights, in each case whether registered or unregistered, and all rights or forms of protection having equivalent or similar effect anywhere in the world and registered includes registrations and applications for registration;

Intercreditor Agreement means the intercreditor agreement dated the Effective Date between, inter alios, the TSP, HoldCo, the Senior Lenders and the Secretary of State;

Interim Mock-Up has the meaning given to it in Paragraph 7.9 of Appendix D (*Design Plan*) of Schedule 1 (*Set Specification and Design*);

Interim Mock-Up Review has the meaning given to it in Paragraph 7.9 of Appendix D (*Design Plan*) of Schedule 1 (*Set Specification and Design*);

IP Escrow Agreement means the escrow agreement(s) to be entered into between the Secretary of State, Hitachi, Ltd., the TSP and NCC Escrow, in substantially the form of the standard escrow secure agreement provided by NCC Escrow, except that:

- (a) Hitachi, Ltd. shall be the "Owner";
- (b) (except as set out in this Agreement) no fees under that agreement shall be payable by the Secretary of State;
- (c) the "Material" to be deposited and potentially released shall be:
 - (i) the Non-Depot Proprietary Source Code; and
 - (ii) any Non-Depot Third Party Source Code described in Paragraph 2.3 of Schedule 10 (*Intellectual Property*);

- (d) the "Release Events" relating to that "Material" shall be as set out in Paragraph 2.4(e) of Schedule 10 (*Intellectual Property*); and
- (e) that agreement shall otherwise be amended as set out in Paragraph 2.4 of Schedule 10 (*Intellectual Property*);

IPR Assets means the Non-Depot IPR Assets and the Depot Design Drawings;

Irrecoverable VAT means input VAT incurred by the TSP on any supply which is made to it which is used or to be used exclusively in performing the obligations or provisions under this Agreement or the TARA (together with input VAT incurred as part of its overhead in relation to such activities) to the extent that the TSP is not entitled to repayment or credit from HM Revenue and Customs in respect of such input VAT;

JBIC Facility has the meaning given to it in the CTA;

JBIC/NEXI Refinancing has the meaning given to it in clause 20.3 of the CTA;

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

JL Release Date has the meaning given to it in Clause 24.3(c)(ii)(A);

John Laing Investments Limited means John Laing Investments Limited whose registered number is 00780225 and whose registered address is 1 Kingsway, London WC2B 6AN;

Joint Insurance Account means [REDACTED]

Joint Insurance Cost Report has the meaning given to it in Paragraph 1.2 of Part D (*Insurance Premium Risk Sharing*) of Schedule 5 (*Insurance*);

Junior Debt means all amounts outstanding at the Termination Date under the Subordinated Financing Agreements;

Junior Finance Documents has the meaning given to it in the Intercreditor Agreement;

KPI Payment has the meaning given to it in the Initial TARA;

KPI Points has the meaning given to it in the Initial TARA;

Labour Cost has the meaning given to it in Appendix B (*Description of Labour and Labour SPV Costs Subject to Re-basing and Process for Updating the Model following Re-basing*) to Part E (*Market Testing, Benchmarking and Indexing*) of Schedule 8 (*Variations*);

Labour SPV Cost has the meaning given to it in Appendix B (*Description of Labour and Labour SPV Costs Subject to Re-basing and Process for Updating the Model following Re-basing*) to Part E (*Market Testing, Benchmarking and Indexing*) of Schedule 8 (*Variations*);

Labour Re-basing Indexation Rate means the index [REDACTED] or, failing such publication or in the event of a fundamental change to that index, such amendment to that index or such other index as the parties may agree (in each case with the intention of putting the parties in a no better no worse position than they would have been had the index not ceased to be published or the relevant fundamental change not been made) or, in the event that no such agreement is reached between the parties, as may be determined by the Dispute Resolution Agreement;

Laing Affiliate means:

- (a) John Laing Investments Limited and any company which is its subsidiary, any holding company of John Laing Investments Limited or a subsidiary of such holding company;
- (b) any unit trust, investment fund, partnership, other fund or other entity of which any entity referred to in limb (a) or Henderson Group plc (incorporated and registered in Jersey with registered number 101484) or any of its subsidiaries is either the general partner or manager (either directly or indirectly) (a **Related Fund**);
- (c) any body corporate or other entity (whether or not having separate legal personality) in which the majority of voting or economic rights vests directly in a Related Fund;
- (d) any general partner or nominee of any entity falling within the foregoing limbs of this definition acting in such capacity (whether on a change of general partner, nominee or trustee or otherwise);
- (e) limited partners, members or investors in any Related Fund but only to the extent that such persons become so as a result of a transfer in specie to them which is a distribution on a winding up out of the assets of the trust, fund or partnerships in question; and/or
- (f) The John Laing Pension Trust Limited (registered number 00653103) (as a trustee of John Laing Pension Fund);

Landlord means Network Rail or BRBR, as appropriate;

Landlord Direct Agreement means either the BRBR Direct Agreement or the Network Rail Direct Agreement (as applicable);

Lease means the lease of each Depot to be entered into pursuant to the terms of an Agreement for Lease and all documents supplemental thereto;

Legislation means any Act of Parliament or subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, any exercise of the Royal Prerogative, and any enforceable European Union right within the meaning of section 2 of the European Communities Act 1972, in each case in the United Kingdom;

LIBOR has the meaning given to it in Uncovered Facility Agreement;

Licence Term means the longer of:

- (a) the period from the Commencement Date until the date on which the TARA that is the subject matter of this Agreement expires or is terminated;
- (b) the period from the Commencement Date until the RV Date;
- (c) from the Commencement Date in perpetuity, at all times in relation to the Intellectual Property Rights licensed under Paragraph 1.3 of Schedule 10 (*Intellectual Property*);
- (d) from the Commencement Date in perpetuity, at all times in relation to the Intellectual Property Rights licensed under Paragraphs 1.2(d), 1.2(e), 1.2(f), 1.2(g) and 1.2(h) of Schedule 10 (*Intellectual Property*); and
- (e) from the Commencement Date in perpetuity, if any Asset or Non-Depot IPR Asset is transferred to the Secretary of State (or her nominee) in accordance with Part J (*Asset Transfer*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*) (with effect from that transfer),

provided that (with the exception of the licence of Intellectual Property Rights granted under Paragraph 1.3 of Schedule 10 (*Intellectual Property*) which shall continue from the Commencement Date in perpetuity at all times as set out in limb (c)), where this Agreement is terminated before the Minimum Fleet Acceptance Date, the Licence Term will expire on the date of such termination;

Licence to Underlet means, in respect of each Depot, the licence to underlet entered into between Network Rail or (in the case of North Pole only) BRBR, the TSP and the Maintainer;

Liquid Market means that there are sufficient willing parties (being at least three (3) parties, each of whom (a) is capable of being a Suitable Substitute TSP and (b) as at the conclusion of the Secretary of State's prequalification procedure complies with limbs (i) and (j) of the definition of Qualification Criteria) in the market for contracts for the provision of services (in each case the same as or similar to this Agreement and the TARA) for the price that is likely to be achieved through a tender to be a reliable indicator of Fair Value, provided always that any vehicle controlled and established by the Senior Lenders specifically for the purposes of this Project and to which this Agreement may be novated, shall be discounted in assessing whether there are sufficient willing parties in the market for such purposes;

Loan Life Cover Ratio has the meaning given to it in the CTA and is set out in row 9182 of the tab "C01_Workings" of the Effective Date Financial Model;

Lock-In Period means the period from the Effective Date until the Responsibility Transfer Date;

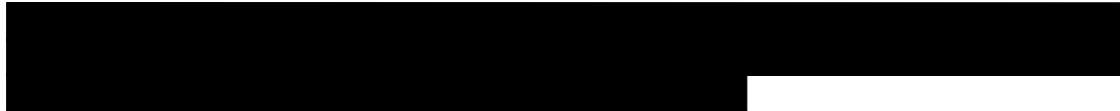
Losses means all damages, losses, liabilities, costs, expenses (including legal and other professional charges and expenses), and charges whether arising under statute, contract or at common law or in connection with judgments, proceedings, internal costs or demands and Loss shall be construed accordingly;

Maintainer means:

- (a) for the purposes of this Agreement other than Schedule 10 (*Intellectual Property*), Hitachi Rail Europe Limited (or any successor, transferee or assignee of Hitachi Rail Europe Limited); and
- (b) for the purposes of Schedule 10 (*Intellectual Property*), Hitachi Rail Europe Limited and any other person that enters into an agreement with the TSP under which that person has obligations that are identical or substantially similar to those of Hitachi Rail Europe Limited (or any successor, transferee or assignee of Hitachi Rail Europe Limited) under the Maintenance Agreement;

Maintainer Default has the meaning given to it in the Maintenance Agreement;

Maintainer Depot Agreements means the Underleases, the Asset Protection Agreements, the Works Agreement, the Connection Agreement and any supplemental documents in relation thereto;



Maintainer Event Transaction Costs means any reasonable and proper professional, due diligence and other costs reasonably and properly incurred by the TSP in relation to the procuring of the Maintainer Replacement Refinancing (including due diligence costs incurred on behalf of the existing Senior Lenders or any new providers of Senior Debt but excluding any internal management costs incurred by the TSP);

Maintainer Event Upfront Fees means any arranging, underwriting, participation and other fees incurred in connection with the Maintainer Replacement Refinancing (but excluding any Maintainer Event Transaction Costs) that, as at the date of the Maintainer Replacement Refinancing, are due and payable by the TSP to arrangers or providers of Maintainer Replacement Refinancing Debt;

Maintainer Event Variation means a Required Variation that occurs as a result of a Maintainer Trigger Event;

Maintainer Guarantee means the deed of guarantee between the Maintainer, the TSP and the Maintainer Guarantor;

Maintainer Guarantor means Hitachi, Ltd. or any provider of a replacement guarantee in accordance with the terms of the Maintenance Agreement;

Maintainer IPR means the Intellectual Property Rights, other than the Manufacturer IPR, whether existing at the Commencement Date or arising thereafter, that are owned by the Maintainer or (other than the Manufacturer) its Affiliates, in the Assets and/or the IPR Assets;

Maintainer Protected Period has the meaning given to it in Paragraph 5.3 of Part D (*TSP Default*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*);

Maintainer Replacement NPV means the sum of the discounted values, calculated as at the date of the first Maintainer Replacement Refinancing using a discount rate of six point three five per cent. (6.35%);

Maintainer Replacement Refinancing has the meaning given to it in [REDACTED];

Maintainer Replacement Refinancing Debt means any Senior Debt advanced to the TSP in connection with a Maintainer Replacement Refinancing;

Maintainer Replacement Refinancing Terms means the terms upon which the Maintainer Replacement Refinancing Debt is advanced to the TSP;

Maintainer Surrender means the deed or deeds of surrender of one or more Underleases to be entered into by the Maintainer and the TSP in a form to be agreed between the parties at the time (acting reasonably);

Maintainer Transfer means the deed or deeds of transfer and/or assignment of the Maintainer Depot Agreements (or such of them as are subsisting at the date of exercise of the Call Option) to be entered into pursuant to Paragraph 3.1(h)(ii) of Part B (*Call Option Requirements*) of Schedule 3 (*Depots*) substantially in the form set out in Appendix C (*Form TR1 for Underleases*) of Part B (*Call Option Requirements*) of Schedule 3 (*Depots*) with such amendments as the Secretary of State and the TSP may agree to reflect the Maintainer Depot Agreements to be transferred and any Change in Law;

Maintainer Trigger Event has the meaning given to it in the CTA;

Maintenance Agreement means the train services agreement between the Maintainer and the TSP dated the date hereof;

Maintenance Arrangements means the TSP's arrangements for the engineering, maintenance and servicing of the Sets, and the arrangements and processes in accordance with which the TSP shall plan, implement, maintain, develop and update such arrangements for the engineering, maintenance and servicing of the Sets, as more particularly described in the Maintenance Plan;

Maintenance Plan means the document developed and maintained in accordance with Part C (*Train Maintenance and Servicing*) of Schedule 3 (*Depots*), describing the Maintenance Arrangements;

Maintenance Plan Structure has the meaning given to it in Paragraph 4.6 of Part C (*Train Maintenance and Servicing*) of Schedule 3 (*Depots*);

Maintenance Plan Structure Area has the meaning given to it in Paragraph 4.9 of Part C (*Train Maintenance and Servicing*) of Schedule 3 (*Depots*);

Maintenance Requirements has the meaning given to it in the Maintenance Agreement;

Major (Bogie) Overhauls means the costs set out in row 57 of tab "R01_CF" of the Effective Date Financial Model;

Major Incident Spares means the spares as set out in the first column of Table 1 of Annex D (*Major Incidents, Damage and Vandalism Supporting Information*) of Appendix D (*Design Plan*) of Schedule 1 (*Set Specification and Design*) as such list of spares may be updated from time to time in accordance with Paragraph 13 of Appendix D (*Design Plan*) of Schedule 1 (*Set Specification and Design*);

Major Maintenance Works has the meaning given to it in the Maintenance Agreement;

Manufacture and Supply Agreement means the manufacture and supply agreement between the TSP and the Manufacturer dated the date hereof;

Manufacturer means Hitachi Rail Europe Limited;

Manufacturer Guarantee means the deed of guarantee between the Manufacturer Guarantor and the TSP;

Manufacturer Guarantor means Hitachi, Ltd. or any provider of a replacement guarantee in accordance with the terms of the Manufacture and Supply Agreement;

Manufacturer IPR means the Intellectual Property Rights, whether existing at the Commencement Date or arising thereafter, that are owned by the Manufacturer or (other than the Maintainer) its Affiliates, in the Assets and/or the IPR Assets and which Intellectual Property Rights: (a) exist prior to the date on which the Manufacture and Supply Agreement is entered into; and/or (b) arise as a result of, or subsist in the Assets and/or the IPR Assets as a result of, the obligations and services performed by or on behalf of the Manufacturer under or in connection with the Manufacture and Supply Agreement;

MARA Performance Review Meetings has the meaning given to it in Paragraph 3.10(a) of Part C (*Contract Management*) of Schedule 2 (*Introduction into Service*);

Market Tested Services has the meaning given to it in Appendix A (*Description of Market Tested Services and Process for Updating the Model following Market Testing*) to Part E (*Market Testing, Benchmarking and Indexing*) of Schedule 8 (*Variations*);

Market Testing Date means any of:

- (a) the tenth (10th) anniversary of the Effective Date; and
- (b) every fifth (5th) anniversary thereafter;

Market Testing Failure has the meaning given to it in Paragraph 2.1 of Part E (*Market Testing, Benchmarking and Indexing*) of Schedule 8 (*Variations*);

Market Value Availability Deduction Amount means for any Reporting Period or part of a Reporting Period, an amount equal to the aggregate of all Deductions that were made to the TARA Payments under the TARA in the Reporting Period immediately preceding the Termination Date, less an amount equal to any Deductions that were made at the Termination Date but which have subsequently ceased to be made whether as a result of the Secretary of State incurring Rectification Costs or otherwise;

Maximum Available Sets has the meaning given in the Initial TARA;

Maximum TARA Payment means, in respect of a Reporting Period, the aggregate of all TARA Payments payable during that Reporting Period before any Deductions;

MidCo means Agility Trains West (MidCo) Limited, a company incorporated in England and Wales whose registered number is 07930573 and whose registered address is at 4th Floor, 4 Copthall Avenue, London, EC2R 7DA;

Mileage Adjustment has the meaning given to it in the Initial TARA;

Minimum Fleet Acceptance Date means the date on which any ten (10) IEP Bi-Mode Sets have been issued with a Final Acceptance Certificate or a Qualified Acceptance Certificate in accordance with:

- (a) Paragraph 5 or Paragraph 6 respectively of Part A (*Testing and Acceptance*) of Schedule 2 (*Introduction into Service*); or
- (b) paragraph 5 or paragraph 6 respectively of part A (*Testing and Acceptance*) of schedule 2 (*Introduction into Service*) of the ECML MARA,

(and for the avoidance of doubt, the Minimum Fleet Acceptance Date may be achieved through any combination of such issuance between this Agreement and the ECML MARA in respect of any ten (10) IEP Bi Mode Sets in aggregate);

Mobilisation Costs means the costs set out in row 40 of tab "R01_CF" of the Effective Date Financial Model;

Mock-Up means either an Interim Mock-Up or a Final Mock-Up;

Mother Depot means North Pole or any other depot designated as a "Mother Depot" under any TARA or designated as "Mother Depot" as a consequence of any Variation;

NCC Escrow means NCC Escrow International Limited, a company incorporated in England and Wales with registered number 03081952, of Manchester Technology Centre, Oxford Road, Manchester M1 7EF;

Necessary Consents means all permits, licences, permissions, consents, approvals, certificates, registrations and authorisations (whether statutory or otherwise) which are required for the implementation of the Redeployment Variation, whether required in order to comply with Legislation or as a result of the rights of any third party;

Net Depot Value means, in respect of any relevant Depot, the Development Cost of such Depot less the aggregate of:

- (a) an amount in respect of depreciation applied from the Scheduled Acceptance Date of the first Set in the Fleet to the Termination Date at a rate of zero point two three eight per cent. (0.238%) of the Development Cost per calendar month;
- (b) prior to the Termination Date, any reasonable costs and expenses properly and reasonably incurred by the Secretary of State in exercising her rights of step-in under the relevant Landlord Direct Agreement that have not been reimbursed by the TSP;

- (c) after the Termination Date, any reasonable costs and expenses properly and reasonably incurred by the Secretary of State in exercising her rights of step-in under the relevant Landlord Direct Agreement;
- (d) any reasonable rectification costs reasonably required to be properly and reasonably incurred pursuant to the relevant Lease in respect of dilapidations to the relevant Depot where such costs or amounts have not been recovered by the relevant Landlord from the TSP pursuant to the relevant Lease;
- (e) where such Depot is not sufficiently complete to allow the TSP to perform its obligations under the TARA in relation to the Sets that have achieved Final Acceptance or Qualified Acceptance without any loss to the Relevant Operator of operational functionality and flexibility (notwithstanding that such Depot is a Completed Depot for the purposes of this Agreement), any reasonable rectification costs reasonably required to be properly and reasonably incurred to return the Depot in a state and condition which complies with the Outline Specification (or, if developed pursuant to the Depot Construction Sub-Contract, the Depot Specification) and the Rules of the Depot where such costs or amounts have not been recovered by the relevant Landlord from the TSP pursuant to the relevant Depot Lease Document; and
- (f) any outstanding amounts due, owing and payable by the TSP to the relevant Landlord under the terms of the relevant Depot Lease Documents where such costs or amounts have not been recovered by the relevant Landlord from the TSP pursuant to the relevant Depot Lease Documents, save where included in limbs (d) or (e),

and, in limbs (b) to (f) (inclusive), such costs, expenses or amounts shall be quantified at the Termination Date on the basis of actual costs, expenses or amounts (as applicable) reasonably and properly incurred where known to the Secretary of State at such date, otherwise such reasonable costs, expenses or amounts (as applicable) reasonably and properly incurred shall be determined by the Secretary of State at the Termination Date (and, to the extent that any such costs, expenses or amounts (as applicable) are disputed by the TSP, such costs, expenses or amounts (as applicable) shall be deducted for the purposes of the Net Depot Value pending agreement by the parties or determination otherwise in accordance with the Dispute Resolution Agreement);

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

Network means the IEP Network and the rest of the network in respect of which Network Rail is the facility owner (as defined in the Act) and which is situated in England, Wales and Scotland;

Network Change has the meaning given to it in the Network Code;

Network Code means the set of rules known as the network code which is incorporated into the Track Access Contract (as replaced or amended from time to time) or any equivalent code or agreement;

Network Information means all data and information collected by the Infrastructure Monitoring Systems;

Network Rail means in respect of:

- (a) the Network or any relevant facility:
 - (i) Network Rail Infrastructure Limited, a company registered in England with registered number 02904587 whose registered office is at Kings Place, 90 York Way, London N1 9AG; and
 - (ii) any successor in title to the Network or any relevant railway facility; or
- (b) any new or other sections of network or any relevant new or other railway facilities, the owner (if different to the person referred to in limb (a));

Network Rail Agreement for Lease means each of the Agreement for Lease in respect of Stoke Gifford and Swansea Maliphant of even date made between (1) Network Rail (2) the TSP and (3) the Maintainer;

Network Rail Direct Agreement means the direct agreement entered into on or about the Commencement Date between the Secretary of State, the TSP and Network Rail;


New Contract means an agreement on the same terms and conditions as this Agreement at the Termination Date, but with the following amendments:

- (a) if the Manufacture and Supply Agreement is not to be novated to the Secretary of State or her nominee in accordance with the terms of the Secretary of State MSA Direct Agreement, then the New TSP shall, to the extent permitted under Schedule 10 (*Intellectual Property*) and having regard to the provisions of Appendix D (*Handover Protocol*) to Part D (*TSP Default*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*), be granted a sub-licence of TSP IPR, Manufacturer IPR or Third Party IPR and/or Maintainer IPR by the Secretary of State to enable the New TSP to make its own arrangements for the maintenance of the Sets;
- (b) the term of such agreement shall be for a period equal to the term from the Termination Date to the Expiry Date;
- (c) any accrued:
 - (i) Formal Warning Notices and/or Final Warning Notices under this Agreement; and
 - (ii) Notifiable Events, Remedial Events, formal warning notices and/or final warning notices under the TARA,

shall, for the purposes of termination only (and without prejudice to the rights of the Relevant Operator to make financial Deductions) be cancelled;

- (d) the Secretary of State shall procure that all of the TSP's rights, title and interest in and to the relevant Sets (as at the point immediately prior to the Termination Date) are transferred to the New TSP;
- (e) if a Maintainer Replacement Refinancing has not occurred, the agreement shall be amended on the basis of a Maintainer Replacement Refinancing in respect of the full amount of the JBIC Facility and the NEXI Covered Facility having occurred and the provisions of Paragraphs 3, 4 and 5 of Appendix E (*Maintainer*

Replacement Refinancing) to Part D (*TSP Default*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*) having been applied with the following assumptions:

- (i) the Maintainer Replacement Refinancing occurs on the Termination Date;
- (ii) the Maintainer Replacement Refinancing Terms are equivalent to the terms of the Uncovered Facility;
- (iii) there are no Maintainer Event Transaction Costs;
- (iv) there are no Maintainer Event Upfront Fees; and
- (v) 

(f) the agreement shall be for the delivery of the Agility Services; and

(g) any other amendments which do not adversely affect the TSP;

New Maintenance Agreement has the meaning given to it in Paragraph 5.2(b) of Part D (*TSP Default*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*);

New Redeployment Depot means a depot intended by the Secretary of State to be utilised in a Redeployment Variation which is not connected to the Network at the date at which the Secretary of State issues the Preliminary Redeployment Variation Notice and which is to be constructed in order to implement the Redeployment Variation;

New Redeployment Depot Employees means all those persons employed by the Relevant Operator or any third party whose contracts of employment are transferred to the Provider by virtue of the operation of the Transfer Regulations in relation to services performed by the Provider at a New Redeployment Depot and New Redeployment Depot Employee means any of them;

New Results means, following a Run of the Financial Model in relation to any Variation, the restated Set Availability Payment specified in part B (*Set Retention Amount*) of schedule 5 (*Payment*) of the TARA and the restated x-factor;

new TARA has the meaning given to it in Paragraph 1.1(a) of Part C (*Usage Undertaking*) of Schedule 4 (*Train Availability and Reliability Agreements*);

New TARA(s) has the meaning given to it in Paragraph 1.1(a)(ii) of Appendix A (*Re-Tendering Procedure*) to Part D (*TSP Default*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*);

New TSP means the person who has entered or who will enter into the New Contract or the Deemed New Contract (as the case may be) with the Secretary of State;

NEXI Covered Facility has the meaning given to it in the CTA;

NFFV NPV means the aggregate of the discounted values calculated as at the Termination Date using the TARA Pre-tax Project IRR (nominal);

No Full Fleet Compensation Amount means the amount agreed or determined in accordance with Appendix C (*No Full Fleet Valuation Procedure*) to Part D (*TSP Default*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*);

Nominee has the meaning given to it in Paragraph 1.1 of Part B (*Call Option Requirements*) of Schedule 3 (*Depots*);

Non-Depot IPR Assets means the Technical Documents, the Non-Depot Software and the Non-Depot Source Code;

Non-Depot Proprietary Source Code means the source code version of the Non-Depot Software to the extent that the Intellectual Property Rights in that Non-Depot Software are owned by the Manufacturer, the Maintainer, the TSP or any of their Affiliates, which is supplied in a form capable of being read by humans, together with related installation software, compilers and interpretative documentation and materials;

Non-Depot Software means the following Software:

- (a) all Software to the extent that the Intellectual Property Rights in that Software are owned by the Manufacturer, the Maintainer, Hitachi, Ltd., the TSP or any of their Affiliates;
- (b) the traction package software;
- (c) the train management systems software;
- (d) the heating, ventilation and air conditioning system software;
- (e) the auxiliary power system (including battery chargers and auxiliary converters) software;
- (f) the engine control unit software;
- (g) the brakes systems software;
- (h) the toilet systems software; and
- (i) any other Software relating to the Assets provided by a third party in connection with the Project after the date of this Agreement, for which the Manufacturer, the Maintainer, Hitachi, Ltd., the TSP or any of their Affiliates:
 - (A) seeks to enter into a source code escrow arrangement with the relevant third party; and/or
 - (B) is entitled to deposit, or procure the deposit of, the source code in escrow on the terms of the IP Escrow Agreement,

and is granted a sub-licensable licence to use the executable object code version of that Software;

Non-Depot Source Code means the Non-Depot Proprietary Source Code and the Non-Depot Third Party Source Code;

Non-Depot Third Party Source Code means, other than the Non-Depot Proprietary Source Code, the source code version of the Non-Depot Software to the extent that:

- (a) it has been modified for the purposes of the Project and has not (at any time during the term of this Agreement) been available for off-the-shelf purchase on reasonable terms, which is supplied in a form capable of being read by humans, together with related installation software, compilers and interpretative documentation and materials; and
- (b) other than in respect of the Non-Depot Software described in limbs (a) to (e) (inclusive) of that definition, the TSP, Hitachi, Ltd., the Manufacturer, the Maintainer or any of their Affiliates is entitled to deposit, or procure the deposit of, that source code (which, for clarity, will include source code for the Software referred to in Paragraph 2.2 of Schedule 10 (*Intellectual Property*) to the extent that the Manufacturer has successfully negotiated the inclusion of the right to deposit the source code for that Software into escrow in the final version(s) of the relevant contract(s) pursuant to Paragraph 2.2 of Schedule 10 (*Intellectual Property*)) in escrow on the terms of the IP Escrow Agreement;

No Re-Tendering Procedure means the no re-tendering procedure set out in Appendix B (*No Re-Tendering Procedure*) to Part D (*TSP Default*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*);

North Pole means the depot described in the row titled "Depot Location: North Pole (London)" within the Rules of the Depot;

North Pole Lease means the lease to be granted to the TSP pursuant to the BRB Agreement for Lease;

Not Confident Response has the meaning given to it in Paragraph 3.5(c) of Part A (*Remedial Plans and Other Secretary of State Remedies*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*);

Notice Date means the later of the Termination Date and (if applicable) the date that the Adjusted Estimated Fair Value of this Agreement is agreed between the parties or determined pursuant to Appendix B (*No Re-Tendering Procedure*) to Part D (*TSP Default*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*);

Notifiable Event has the meaning given to it in the Initial TARA;

Notifiable Financings means any Refinancing described in limb (a) or (c) of the definition of Refinancing and any other arrangement which has or would have a similar effect or which has or would have the effect of limiting the TSP's or any TSP Affiliate's ability to carry out any such arrangement;

Notified Body has the meaning given to "notified body" in the Railways (Interoperability) Regulations 2011;

Notified Delayed Acceptance Event has the meaning given to it in Paragraph 1.2 of Part B (*Delayed Delivery and Delayed Acceptance*) of Schedule 2 (*Introduction into Service*);

Notified Standards has the meaning given to "notified national technical rules" in the Railways (Interoperability) Regulations 2011;

NRAP means the Network Rail Acceptance Panel;

OHLE Variation means a variation of this Agreement to require the TSP to take over the operation and maintenance of the Swansea Maliphant OHLE Infrastructure;

OHLE Works means the works required to electrify Swansea Maliphant, including the procurement, installation and commissioning of the Swansea Maliphant OHLE Infrastructure;

Old Results means the following:

- (a) as produced by a Run of the Financial Model in respect of the immediately preceding Variation; and
- (b) as at the Effective Date for the first Variation only,

the Set Availability Payments specified in part B (*Set Retention Amounts*) of schedule 5 (*Payment*) of the TARA and the restated x-factor;

old TARA has the meaning given to it in Paragraph 1.1 of Part C (*Usage Undertaking*) of Schedule 4 (*Train Availability and Reliability Agreements*);

OLE means overhead line equipment for the purpose of providing electrical power to suitably equipped rolling stock;

Open Item has the meaning given to it in Paragraph 11.1 of Appendix D (*Design Plan*) of Schedule 1 (*Set Specification and Design*);

Operating and Maintenance Manuals means the documents (including vehicle maintenance instructions, vehicle overhaul instructions, vehicle cleaning instructions, illustrated parts list, repair instructions, fault finding guides and mandatory vehicle records) relevant to the systems and equipment covered by the Primary Design Area Work Breakdown Structure and the Maintenance Plan Structure Area sufficient for a skilled reader to be able to use, operate, maintain, service, repair, modify, adapt, convert, improve, refurbish and overhaul the Sets, Vehicles, Spares, Special Tools and Software;

Operating Costs means those costs referred to in Paragraphs 4.3(b) and 4.3(c) of Part G (*Runs of the Financial Model*) of Schedule 8 (*Variations*);

Operational Day has the meaning given to it in the TARA;

Operational Period means the period commencing on and including the Actual Acceptance Date of the first Set in the Fleet (or, in respect of a Depot, if earlier the date of the Certificate of Satisfactory Depot in respect of such Depot) to and including the Termination Date or the Expiry Date (as applicable);

Operational Training Working Group has the meaning given to it in Paragraph 14.1 of Appendix G (*Training*) of Schedule 1 (*Set Specification and Design*);

Operator Responsible Damage has the meaning given to it in the Initial TARA;

Option Conditions has the meaning given to it in Paragraph 1.2 of Part B (*Call Option Requirements*) of Schedule 3 (*Depots*);

Option Period has the meaning given to it in Paragraph 3.6 of Part A (*Insurance Provisions*) of Schedule 5 (*Insurance*);

Original Transfer has the meaning given to it in Clause 24.3;

Original Senior Commitments means the amount committed under the Senior Financing Agreements as at the Effective Date (as adjusted to take into account the effects of any Authority to Proceed or Required Variation Notice);

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

Other MARA means any other master availability and reliability agreement entered into with the Secretary of State by an Agility Company;

Other Operating Costs means any other costs incurred by the TSP and not covered in Paragraph 2.1(b) of Appendix C (*No Full Fleet Valuation Procedure*) to Part D (*TSP Default*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*), in accordance with the Financial Model;

Other TARA means any other train availability and reliability agreement entered into with the Relevant Operator by an Agility Company;

Outline Specification means, in respect of each Depot, the performance and design output specification annexed hereto at Appendix A (*Outline Specification*) to Part A (*Depot Provisions*) of Schedule 3 (*Depots*);

Outstanding Amount has the meaning given to it in Paragraph 9.2(b)(i) of Part A (*Testing and Acceptance*) of Schedule 2 (*Introduction into Service*);

Outstanding Principal means the principal amount outstanding at the Termination Date of each borrowing (other than any borrowing under any equity bridge facility) under the Senior Financing Agreement;



Paragraph 5+ Procedure has the meaning given to it in Paragraph 5.2 of Part A (*Scope and Consequences of Variations*) of Schedule 8 (*Variations*);

Paragraph 5+ Termination Event has the meaning given to it in Paragraph 5.8(a) of Part A (*Scope and Consequences of Variations*) of Schedule 8 (*Variations*);

Paragraph 5+ Termination Sum has the meaning given to it in Paragraph 2.1 of Part K (*Paragraph 5+ Termination*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*);

Payment Date has the meaning given to it in the Initial TARA;

Percentage Agreed Value means the values set out in the column entitled "% of Agreed Value" in the table in Part C (*Stipulated Loss Value*) of Schedule 5 (*Insurance*);

Performance Regime means the performance regime set out in schedule 6 (*Performance Regime*) of the Initial TARA or as same may be subsequently varied pursuant to the terms of this Agreement;

Performance System means the performance monitoring system that Network Rail is required to operate as required by part B of the Network Code (which, as at the date hereof, is the TRUST system);

Permitted Borrowing means, without double-counting, any:

- (a) advance to the TSP under the Senior Financing Agreements;
- (b) Additional Permitted Borrowing;
- (c) advance to the TSP in respect of Maintainer Event Upfront Fees and Maintainer Event Transaction Costs; or
- (d) interest and, in respect of the original Senior Financing Agreements only (as entered into at the Effective Date, prior to any subsequent amendment), other amounts accrued or payable under the terms of such original Senior Financing Agreements,

except where the amount referred to in limbs (a) to (d) inclusive is or is being used to fund a payment of interest at the Default Rate on any Additional Permitted Borrowing;

Permitted Encumbrances means:

- (a) any security interest in favour of a repairer or maintainer (other than the Manufacturer or the Maintainer) of any of the relevant Assets where such security arises by way of repairers or maintainers lien or similar right; and
- (b) the security conferred by the Security Documents in favour of the Secured Creditors;

Permitted Use has the meaning given to it in the Initial TARA;

Persistent Breach has the meaning given to it in Paragraph 1.1 of Part A (*Remedial Plans and Other Secretary of State Remedies*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*);

Persistent Breach Default Event has the meaning given to it in Paragraph 2.3 of Part D (*TSP Default*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*);

Physical Damage Policies has the meaning given to it in Paragraph 2.1 of Part A (*Insurance Provisions*) of Schedule 5 (*Insurance*);

Placed in Escrow means the delivery of the Financial Model and the Financial Model Data Book in accordance with Paragraph 1.1 of Part F (*Identity of the Financial Model*) of Schedule 8 (*Variations*) together with the information required pursuant to Paragraph 1.2 of Part F (*Identity of the Financial Model*) of Schedule 8 (*Variations*);

Planning Permission means the planning permission granted in relation to each Depot or any Redeployment Variation Depot Site (as applicable) being either:

- (a) detailed planning permission; or
- (b) in the case of any Redeployment Variation Depot Site, outline planning permission subject to such approvals of reserved matters as are required to enable the TSP to commence the Redeployment Variation Depot Works in respect of the relevant Redeployment Variation Depot Site,

in every case granted by the Local Planning Authority (as defined in the Town and Country Planning Act 1990 as amended or replaced from time to time (the **Planning Act**)), the Secretary of State for Communities and Local Government (or any other

minister or authority from time to time entitled to exercise the powers contained in sections 74, 77 and 70 of the Planning Act) or an inspector appointed by him for that purpose;

Portfolio Cost Saving means any insurance cost saving which arises from the TSP changing the placement of the Required Insurances from being on a standalone project-specific basis assumed at the Effective Date and reflected in the Base Cost, to being on the basis of a policy (or policies) also covering risks on other projects or other matters which are outside the scope of the Project so as to benefit from portfolio savings. A Portfolio Cost Saving is defined to be a positive sum and cannot be less than zero (0);

Post Design Period means, in respect of any Set, the period from the date which is twelve (12) months after the Effective Date and ending on the RV Date;

Post Termination Service Amount means, for the whole or any part of a Reporting Period from the Termination Date until the Compensation Date, an amount equal to the Maximum TARA Payments which would have been payable in that Reporting Period (or that part of a Reporting Period) under the TARA had this Agreement not been terminated, less an amount equal to the aggregate of:

- (a) the Market Value Availability Deduction Amount for that Reporting Period;
- (b) the Rectification Costs incurred by the Secretary of State in that Reporting Period; and
- (c) (where relevant), the amount by which the Post Termination Service Amount in any previous Reporting Period was less than zero (0) and has not yet been carried forward and set off;

Post-Type Acceptance Network Testing has the meaning given to in Paragraph 4.2(b) of Part A (*Testing and Acceptance*) of Schedule 2 (*Introduction into Service*);

Post Variation Financial Model means the Pre Variation Financial Model updated in accordance with Paragraphs 3, 4 and 5 of Part G (*Runs of the Financial Model*) of Schedule 8 (*Variations*);

Post Variation Financial Model Data Book means the Pre Variation Financial Model Data Book updated in accordance with Paragraphs 3, 4 and 5 of Part G (*Runs of the Financial Model*) of Schedule 8 (*Variations*);

Preferred Bidder has the meaning given to it in Paragraph 11.4 of Part I (*Redeployment Variation*) of Schedule 8 (*Variations*);

Preferred Solution has the meaning given to it in Paragraph 2(c) of Part B (*Approved Default Variations*) of Schedule 8 (*Variations*);

Preliminary Redeployment Variation Notice has the meaning given to it in Paragraph 2 of Part I (*Redeployment Variation*) of Schedule 8 (*Variations*);



Pre-Priced Option means the ETCS Baseline 3 Option, to be exercised in accordance with Paragraph 9 of Part A (*Scope and Consequences of Variations*) and Appendix A (*Pre-Priced Option*) to Part A (*Scope and Consequences of Variations*), both of Schedule 8 (*Variations*);

Pre-Refinancing Equity IRR means the nominal post-tax (that is, post-tax with respect to the TSP, pre-tax with respect to Shareholders) Real Equity IRR calculated immediately prior to the Refinancing;

Pre-Type Acceptance Network Testing has the meaning given to it in Paragraph 4.2(a) of Part A (*Testing and Acceptance*) of Schedule 2 (*Introduction into Service*);

Pre Variation Financial Model means the Financial Model updated in accordance with Paragraph 2 of Part G (*Runs of the Financial Model*) of Schedule 8 (*Variations*);

Pre Variation Financial Model Data Book means the Financial Model Data Book updated in accordance with Paragraph 2 of Part G (*Runs of the Financial Model*) of Schedule 8 (*Variations*);

Primary Design Area Work Breakdown Structure means the list of primary Design Areas set out in Annex A (*Primary Design Area Work Breakdown Structure*) of Appendix D (*Design Plan*) of Schedule 1 (*Set Specification and Design*);

Principals' Meeting has the meaning given to it in Paragraph 3.12 of Part C (*Contract Management*) of Schedule 2 (*Introduction into Service*);

Prior Event Industrial Action means Industrial Action which:

- (a) arises out of or in relation to facts or circumstances which arose on or before the last Start Date of any employees or workers engaged or participating in such Industrial Action, save where such facts or circumstances are de minimis in respect of the decision to take Industrial Action; and
- (b) occurs (or, if the Industrial Action is discontinuous in nature, where the first incident of such Industrial Action occurs) on or before the date falling three (3) months after the Scheduled Acceptance Date of the last Set in the Fleet;

Profit Factors has the meaning given to it in limb (j) of the definition of the Required Response;

Prohibited Act means:

- (a) offering, giving or agreeing to give to any servant of the Crown any gift or consideration of any kind as an inducement or reward:
 - (i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other agreement with the Crown; or
 - (ii) for showing or not showing favour or disfavour to any person in relation to this Agreement or any other agreement with the Crown;
- (b) entering into this Agreement or any other contract with the Crown in connection with which commission has been paid or has been agreed to be paid by the TSP or on its behalf, or to its knowledge, unless before the relevant agreement is

entered into particulars of any such commission and of the terms and conditions of any such agreement for the payment thereof have been disclosed in writing to the Secretary of State;

- (c) committing any offence:
 - (i) under the Bribery Act 2010;
 - (ii) under Legislation creating offences in respect of fraudulent acts; or
 - (iii) at common law in respect of fraudulent acts in relation to this Agreement or any other agreement with the Crown; or
- (d) defrauding or attempting to defraud or conspiring to defraud the Crown;

Prohibited Act Shareholder has the meaning given to it in Paragraph 2.4 of Part E (*Corrupt Gifts and Fraud*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*);

Project means the project for the provision of all of the matters covered by this Agreement, including the design, manufacture, maintenance and financing of the Fleet and the Depots, and making available the Sets to any Relevant Operator pursuant to the TARA and the performance of the Services;

Project Accounts means accounts referred to in and required to be established under the Senior Financing Agreements and the Account Bank Agreement;

Project Documents means, at any point in time:

- (a) this Agreement;
- (b) the TARA;
- (c) the Relevant Operator Direct Agreement;
- (d) the Dispute Resolution Agreement;
- (e) any Depot Lease Agreement to which the TSP is a party;
- (f) each Significant Contract to which the TSP is a party;
- (g) each Sub-Contractor Direct Agreement;
- (h) the Network Rail Direct Agreement and the BRBR Direct Agreement;
- (i) the Funder Direct Agreement;
- (j) the Financing Documents; and
- (k) the Asset Transfer Agreement;

Project Insurance Change means any net increase or net decrease in the Actual Relevant Insurance Cost relative to the Base Relevant Insurance Cost, arising from:

- (a) the claims history or re-rating of the TSP or any TSP Related Party;
- (b) the effect of any change in deductible unless the following applies:

- (i) such change is attributable to circumstances generally prevailing in the Relevant Insurance Market; and
- (ii) the deductible, further to such change, is either greater than or equal to the maximum in Part B (*Required Insurances*) of Schedule 5 (*Insurance*);
or
- (c) any other issue or factor other than circumstances generally prevailing in the Relevant Insurance Market, except for any Portfolio Cost Saving,

and for the purpose of determining the Insurance Cost Differential, in the event that there is a net increase, the Project Insurance Change shall have a positive value. In the event that there is a net decrease the Project Insurance Change shall have a negative value;

Project Management Costs means the amount payable to the TSP in respect of the management of the implementation of any Redeployment Variation, being the actual costs of resourcing the management of the implementation of any Redeployment Variation, payable by the TSP, as set out in any Indicative Cost Plan (or Final Cost Plan, if any);

Project Management Fees means any fees payable to the TSP in respect of the consideration and implementation of any Redeployment Variation, calculated at a rate of not more than [REDACTED], as set out in any Indicative Cost Plan (or Final Cost Plan, if any);

Proposed Implementation Period means the period proposed by the Secretary of State to the TSP in respect of the implementation of a Redeployment Variation;

Protected Changes means the changes that are not aspects of Constant Risk that are effected by any Variation which proceeds pursuant to Paragraph 5 of Part A (*Scope and Consequences of Variations*) of Schedule 8 (*Variations*);

Protected Period has the meaning given to it in Paragraph 5.1(b) of Part A (*Scope and Consequences of Variations*) of Schedule 8 (*Variations*);

Provider means in relation to any Depot or New Redeployment Depot, whichever of the TSP, the Maintainer or any sub-contractor of the Maintainer is the DFO of that Depot or New Redeployment Depot;

Provisional Sum Items has the meaning given to it in Paragraph 5.4(c) of Part I (*Redeployment Variation*) of Schedule 8 (*Variations*);

Qualification Criteria means the criteria that the Secretary of State requires tenderers to meet as part of the Tender Process which (subject to compliance with the procurement regulations) shall be:

- (a) acceptance by the tenderer of the New Contract terms;
- (b) acceptance by the tenderer of the terms of the New TARA(s);
- (c) the Assets and the Depots will be available and used to perform the New Contract;

- (d) the term of the New Contract will be equivalent to the remaining Contract Period (if this Agreement had not been terminated) at the proposed commencement date of the New Contract;
- (e) the tenderers shall bid on the basis that they are receiving title to the Assets;
- (f) the tenderer will not be licensed any TSP IPR, Manufacturer IPR or Third Party IPR for the purposes of manufacturing any Sets utilising any such Intellectual Property Rights;
- (g) a tenderer has undertaken the level of legal, technical, financial and specialist due diligence in relation to the New Contract, the New TARA(s), the Assets and the Depots that would ordinarily be expected in the market at that time for an asset of the magnitude and complexity of the Project;
- (h) the assumptions (disclosed in or evident from the tender) on which the tender is based are reasonable in view of the nature of the project and market conditions;
- (i) the tenderer is not owned or controlled by, and is acting independently of and not in consort or collusion with, the Crown or any other tenderer;
- (j) the tenderer or any of its sub-contractors has at least four (4) years' experience of providing train maintenance services; and
- (k) any other tender criteria agreed by the Secretary of State and the TSP;

Qualified Acceptance means the qualified acceptance of a Set pursuant to Paragraph 6 of Part A (*Testing and Acceptance*) of Schedule 2 (*Introduction into Service*);

Qualified Acceptance Certificate means a certificate in the form set out in Form 4 in Appendix D (*Forms of Acceptance Certificates*) to Part A (*Testing and Acceptance*) of Schedule 2 (*Introduction into Service*);

Qualified Type Acceptance means the acceptance of a Type of Set pursuant to Paragraph 3 of Part A (*Testing and Acceptance*) of Schedule 2 (*Introduction into Service*);

Qualified Type Acceptance Certificate means a certificate in the form set out in Form 2 in Appendix D (*Forms of Acceptance Certificates*) to Part A (*Testing and Acceptance*) of Schedule 2 (*Introduction into Service*);

Qualifying Bank Transaction means:

- (a) the syndication by a Senior Lender, in the ordinary course of its business, of any of its rights or interests in the Senior Financing Agreements;
- (b) the grant by a Senior Lender of any rights of participation, or the disposition by a Senior Lender of any of its rights or interests (other than as specified in limb (a)), in respect of the Senior Financing Agreements in favour of:
 - (i) any other Senior Lender;
 - (ii) any institution which is recognised or permitted under the law of any member state of the EEA to carry on the business of a credit institution pursuant to Council Directive 2001/12/EC relating to the taking up and

pursuit of the business of credit institutions or which is otherwise permitted to accept deposits in the United Kingdom or any other EEA member state;

- (iii) a local authority or public authority;
 - (iv) a trustee of a charitable trust which has (or has had at any time during the previous two (2) years) assets of at least ten million pounds Sterling (£10,000,000) (or its equivalent in any other currency at the relevant time);
 - (v) a trustee of an occupational pension scheme or stakeholder pension scheme where the trust has (or has had at any time during the previous two (2) years) at least fifty (50) members and assets under management of at least ten million pounds Sterling (£10,000,000) (or its equivalent in any other currency at the relevant time);
 - (vi) an EEA or Swiss Insurance Undertaking;
 - (vii) a Regulated Collective Investment Scheme; or
 - (viii) any other institution in respect of which the prior written consent of the Secretary of State has been given; and/or
- (c) the grant by a Senior Lender of any other form of benefit or interest in either the Senior Financing Agreements or the revenues or assets of the TSP, whether by way of security or otherwise, in favour of:
- (i) any other Senior Lender;
 - (ii) any institution specified in limbs (b)(ii) to (vii) inclusive; or
 - (iii) any other institution in respect of which the prior written consent of the Secretary of State has been given;

Qualifying Bond Provider means a financial institution with a UK branch which is registered in an OECD member country which has a long-term unsecured, unsubordinated and unguaranteed debt obligations rating, as rated by Standard & Poor's Corporation, equal to or better than A, and that is not on creditwatch, or other equivalent rating from another rating agency of equal repute;

Qualifying Change in Law means:

- (a) a Discriminatory Change in Law;
- (b) a Specific Change in Law; and/or
- (c) a General Change in Law which comes into effect during the Post Design Period and which involves Capital Expenditure,

but in each case excluding any Change in Law in connection with those matters specified in Appendix A (*Foreseeable Changes in Law*) of Schedule 9 (*Change in Law*) that comes into force in a form foreseeable at the Commencement Date;

Qualifying Change in Law Variation has the meaning given to it in Paragraph 1.4(a) of Schedule 9 (*Change in Law*);

Qualifying Refinancing means any Refinancing that will give rise to a Refinancing Gain greater than zero that is not an Exempt Refinancing;

Real Equity IRR means the projected blended rate of return to the Shareholders over the full Contract Period, having regard to Distributions made and projected to be made as set out in cell E13 of tab "A02_Inputs" of the Effective Date Financial Model (as updated from time to time in the Pre Variation Financial Model);

Reasonable Train Service Provider has the meaning given to it in the Initial TARA;

Re-based Labour Costs has the meaning given to it in Paragraph (a) of Appendix B (*Description of Labour and Labour SPV Costs subject to Re-basing and Process for Updating the Model following Re-basing*) to Part E (*Market Testing, Benchmarking and Indexing*) of Schedule 8 (*Variations*);

Re-based Labour SPV Costs has the meaning given to it in Paragraph (b) of Appendix B (*Description of Labour and Labour SPV Costs subject to Re-basing and Process for Updating the Financial Model following Re-basing*) to Part E (*Market Testing, Benchmarking and Indexing*) of Schedule 8 (*Variations*);

Re-basing Date means:

- (a) the tenth (10th) anniversary of the Effective Date; and
- (b) every fifth (5th) anniversary thereafter;

Re-basing Indexation Factor means, in respect of each Re-basing Date, the factor calculated by dividing:

- (a) the average of either the Labour Re-basing Indexation Rate or the SPV Re-basing Indexation Rate across the Re-basing Indexation Reference Period in respect of such Re-basing Date; by
- (b) the average of either the Labour Re-basing Indexation Rate or the SPV Re-basing Indexation Rate across:
 - (i) in the case of the first Re-basing Date, the Re-basing Indexation Reference Period in respect of 01 April 2009; or
 - (ii) in the case of any subsequent Re-basing Date, the Re-basing Indexation Reference Period in respect of the immediately previous Re-basing Date;

Re-basing Indexation Reference Period means, in respect of any date, the period of twelve (12) months' duration that commences on (and includes) the month that is thirteen (13) months prior to the month during which such date falls and expires on (and includes) the month that is two (2) months prior to the month during which such date falls;

Rebate Amount has the meaning given in Paragraph 4.6 of Part G (*Runs of the Financial Model*) of Schedule 8 (*Variations*);

Receiving Operator means, in relation to any Adhoc Train Lending, the operator who will be operating additional Sets following the Adhoc Train Lending;

Receiving TSP means, in relation to any Adhoc Train Lending, the Agility Company that will be performing Routine Maintenance in respect of the Transferring Sets following the Adhoc Train Lending;

Rectification Costs means, for the purposes of any Termination Date that occurs during the Contract Period, an amount equal to the reasonable costs reasonably and properly incurred by the Secretary of State or her nominee (as the case may be) in a particular Reporting Period or part of a Reporting Period in ensuring that the TARA is performed;

Recurrent Defect means any TSP Fault that exists in at least five (5) Sets and ten per cent. (10%) or more of the Sets that have been offered for Final Acceptance;

Redeployed Sets has the meaning given to it in Paragraph 2(a) of Part I (*Redeployment Variation*) of Schedule 8 (*Variations*);

Redeployment means a redeployment on any other part of the Network of all or any part of the original Fleet contemplated at the Effective Date under the terms of a new and additional TARA to which the TSP is a party (excluding, for the avoidance of doubt, any Adhoc Train Lending);

Redeployment Variation means a Variation pursuant to limb (a) of the definition of Contemplated Variation in respect of a Redeployment;

Redeployment Variation Construction Sub-Contractor has the meaning given to it in Paragraph 11.1 of Part I (*Redeployment Variation*) of Schedule 8 (*Variations*);

Redeployment Variation Depot means a New Redeployment Depot or an Existing Depot;

Redeployment Variation Depot Lease means the lease (or leases) in respect of the relevant Redeployment Variation Depot(s), to be granted to the TSP by the Secretary of State, Network Rail, BRBR or such other person as shall have the right to grant such a lease in order for the Redeployment Variation to be implemented to be similar in form to the Agreed Form Lease and in accordance with Paragraph 10.4 of Part I (*Redeployment Variation*) of Schedule 8 (*Variations*);

Redeployment Variation Depot Site has the meaning given to it in Paragraph 2(e) of Part I (*Redeployment Variation*) of Schedule 8 (*Variations*);

Redeployment Variation Depot Site Decision Date has the meaning given to it in Paragraph 6.4 of Part I (*Redeployment Variation*) of Schedule 8 (*Variations*);

Redeployment Variation Depot Site Decision Notice has the meaning given to it in Paragraph 6.4 of Part I (*Redeployment Variation*) of Schedule 8 (*Variations*);

Redeployment Variation Depot Site Notice Date has the meaning given to it in Paragraph 6.2 of Part I (*Redeployment Variation*) of Schedule 8 (*Variations*);

Redeployment Variation Depot Specification has the meaning given to it in Paragraph 2(d) of Part I (*Redeployment Variation*) of Schedule 8 (*Variations*);

Redeployment Variation Depot Specification Decision Date has the meaning given to it in Paragraph 7.5 of Part I (*Redeployment Variation*) of Schedule 8 (*Variations*);

Redeployment Variation Depot Specification Decision Notice has the meaning given to it in Paragraph 7.5 of Part I (*Redeployment Variation*) of Schedule 8 (*Variations*);

Redeployment Variation Depot Survey means such environmental and/or geotechnical surveys as are reasonably required for the identification of any Contamination at, and for the development and use of, a Redeployment Variation Depot Site;

Redeployment Variation Depot Works means all of the construction, refurbishment, renovation and other works necessary to provide the Redeployment Variation Depot(s);

Redeployment Variation Notice means either a Preliminary Redeployment Notice or a Further Redeployment Variation Notice, as applicable;

Redeployment Variation Withdrawal Notice has the meaning given to it in Paragraph 10.8 of Part I (*Redeployment Variation*) of Schedule 8 (*Variations*);

Reference Period has the meaning given to it in Paragraph 5.1(b)(i) of Part A (*Scope and Consequences of Variations*) of Schedule 8 (*Variations*);

Refinancing means:

- (a) any amendment, variation, novation, supplement or replacement of any Financing Document (other than any Subordinated Financing Agreement);
- (b) the exercise of any right, or the grant of any waiver or consent, under any Financing Document (other than any Subordinated Financing Agreement);
- (c) the disposition of any rights or interests in, or the creation of any rights of participation in respect of, the Financing Documents (other than the Subordinated Financing Agreements) or the creation or granting of any other form of benefit or interest in either the Financing Documents (other than the Subordinated Financing Agreements) or the contracts, revenues or assets of the TSP whether by way of security or otherwise; or
- (d) any other arrangement put in place by the TSP or another person which has an effect which is similar to any of the arrangements in limbs (a) to (c) inclusive or which has the effect of limiting the TSP's or any TSP Affiliate's ability to carry out any of the arrangements in limbs (a) to (c) inclusive;

Refinancing Gain means an amount equal to the greater of zero and $[(A - B) - C]$, where:

- A. means the Net Present Value of the Distributions projected immediately prior to the Refinancing (taking into account the effect of the Refinancing and using the Financial Model as updated (including as to the performance of the Project) so as to be current immediately prior to the Refinancing) to be made to each Relevant Person over the remaining Contract Period following the Refinancing;
- B. means the Net Present Value of the Distributions projected immediately prior to the Refinancing (but without taking into account the effect of the Refinancing and using the Financial Model as updated (including as to the performance of the Project) so as to be current immediately prior to the Refinancing) to be made to each Relevant Person over the remaining Contract Period following the Refinancing; and

C. means any adjustment required to raise the Pre-Refinancing Equity IRR to the Threshold Equity IRR,

provided that any gain arising from a Refinancing relating to Sets following the RV Date shall be disregarded for the purposes of this definition;

Refinancing Notice has the meaning given to it in Paragraph 3.1 of Part A (*Refinancing*) of Schedule 7 (*Finance Arrangements*);

Regulated Collective Investment Scheme has the meaning given in the rules from time to time of the Financial Services Authority;

Reinstatement Plan has the meaning given to it in Paragraph 2.11(a) of Part A (*Insurance Provisions*) of Schedule 5 (*Insurance*);

Reinstatement Works has the meaning given to it in Paragraph 2.11(a) of Part A (*Insurance Provisions*) of Schedule 5 (*Insurance*);

Related Deliverables means the Simulator Information, the Special Tools, the Spares, the Operating and Maintenance Manuals and the Training Materials;

Related Loss has the meaning given to it in Clause 29;

Relevant Approvals means all consents, approvals, permissions, authorisations, acceptances, certifications, licences, exemptions, filings, registrations, notarisations, declarations, directions and other matters required (in each case from any Relevant Authority, pursuant to any Applicable Laws and Standards) in relation to:

(a) the Sets in order to permit the testing and operation of the Sets and Vehicles with or without passengers on the IEP Network including under the ROGS and the Railways (Interoperability) Regulations 2011; and

(b) the Depots;

Relevant Assumptions means the assumptions that the sale of the TSP is on the basis that there is no default by the Secretary of State, that the sale is on a going concern basis, that no restrictions exist on the transfer of share capital, that no Additional Permitted Borrowing has taken place and therefore that the effect of the Additional Permitted Borrowing on the calculation of such amount is disregarded, that the Secretary of State is not entitled to exercise the Call Option and that neither Network Rail nor BRBR is entitled to terminate any Agreement for Lease or Lease, but that otherwise the actual state of affairs of the TSP and the Project is taken into account and, for the avoidance of doubt, the TSP retains title to the Sets on the RV Date;

Relevant Authority means any court with the relevant jurisdiction and any local, national or supra-national agency, inspectorate, minister, ministry, official or public or statutory person or body of the government of the United Kingdom or of the European Union;

Relevant Compensation Provisions has the meaning given to it in Paragraph 2 of Part H (*Calculation and Payment of Termination Sums*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*);

Relevant Employees means the Depot Employees and the New Redeployment Depot Employees;

Relevant Fleet Acceptance Security Account Balance means, at any time prior to the issue of a Fleet Acceptance Certificate, an amount in pounds Sterling calculated by multiplying:

- (a) the aggregate number of Sets within the Fleet that, at such time, have been issued with a Qualified Acceptance Certificate but have yet to be issued with a Final Acceptance Certificate; by
- (b) [REDACTED];

Relevant Franchise Agreement means any agreement entered into, or to be entered into, with a train operating company for the provision of passenger services which will include the operation by the franchisee of Sets pursuant to a TARA;

Relevant Incident has the meaning given to it in Paragraph 2.11 of Part A (*Insurance Provisions*) of Schedule 5 (*Insurance*);

Relevant Insurance means the Required Insurance and any other insurances as may be required by law other than Construction Period Insurance;

Relevant Insurance Inception Date means the date on which the Relevant Insurance is first providing active insurance cover to the TSP, being a date no earlier than the Effective Date;

Relevant Insurance Market means the insurance market which insures the majority of all comparable assets and liabilities associated with the Project and as at the Effective Date, the Relevant Insurance Market is in the United Kingdom;

Relevant Land means:

- (a) all the land which will comprise Stoke Gifford; and
- (b) any adjacent or neighbouring land where the TSP and/or any Significant Contractor will undertake or commission any works for the benefit or use of Stoke Gifford including the land on which any road or rail connections will be constructed, upgraded or improved and any land upon which any service or utilities media serving Stoke Gifford will be undertaken;

Relevant Operator means, in relation to the TARA, the train operating company that is a party to the TARA, or:

- (a) prior to the appointment of the Initial Relevant Operator; and
- (b) prior to any replacement train operating company entering into such agreements as are required from time to time following the expiry or termination of the TARA in accordance with its terms,

the Secretary of State or any appropriate person nominated by the Secretary of State for this purpose;

Relevant Operator Direct Agreement means the direct agreement to be entered into in accordance with this Agreement by the TSP and a Relevant Operator in the form set out in Appendix A (*Form of Relevant Operator Direct Agreement*) to Part A (*Obligations to enter into the Initial TARA*) of Schedule 4 (*Train Availability and Reliability Agreements*);

Relevant Operator Equipment means any equipment, information and communications technologies (including hardware, software, networks and peripherals) and fixtures relating to:

- (a) an electronic point of sale system; and/or
- (b) a wireless internet connection system;

Relevant Operator Fault means a Fault which results wholly or mainly from:

- (a) the Relevant Operator operating the relevant Set or Vehicle other than in accordance with those obligations set out in part C (*Operator Covenants and Performance*) of schedule 1 (*General Provisions*) of the TARA; or
- (b) damage (including vandalism) to a Set whilst that Set is in the Relevant Operator's possession in accordance with Part A (*Testing and Acceptance*) of Schedule 2 (*Introduction into Service*) of this Agreement,

in each case, where such Fault does not arise as a result of any act, omission, neglect or default of the TSP, the Manufacturer, or the Maintainer, or the employees or suppliers of any of them or due to the TSP's, the Manufacturer's, or the Maintainer's, performance, non-performance or purported performance of their respective obligations under this Agreement, the Manufacture and Supply Agreement or the Maintenance Agreement (where applicable);

Relevant Operator Misconduct means conduct of the Relevant Operator which:

- (a) is not in accordance with reasonable written instructions (including email or other electronic instructions) given by the TSP to the Relevant Operator in writing and/or recorded verbal instructions given by the TSP to the Relevant Operator in accordance with the terms of the TARA;
- (b) is not in accordance with reasonable instructions and/or guidance contained in the relevant Operating and Maintenance Manuals provided to the Relevant Operator for the operation and use of the Sets;
- (c) is not in accordance with the conduct and/or operating practices to be expected of a reasonable and appropriately qualified operator of a Set; and/or
- (d) constitutes gross negligence, wilful misconduct or wilful default;

Relevant Operator Responsible Damage means "*Operator Responsible Damage*" as defined in the TARA of the Receiving Operator provided that:

- (a) such definition shall be construed as being defined in the same way as "*Operator Responsible Damage*" in the GWML TARA; and
- (b) references in that definition to "Sets" shall also be construed as references to the Transferring Sets;

Relevant Payment has the meaning given to it in Paragraph 3.6 of Part A (*Insurance Provisions*) of Schedule 5 (*Insurance*);

Relevant Person means a Shareholder and any of its Affiliates;

Relevant Proceeds has the meaning given to it in Paragraph 2.8 of Part A (*Insurance Provisions*) of Schedule 5 (*Insurance*);

Relevant TARA means any existing TARA which is to be terminated or expiring (in whole or in part) relating to Sets, some or all of which will, following such termination or expiry, be operated by a train operating company under a Relevant Franchise Agreement;

Relevant Third Parties has the meaning given to it in Paragraph 1.1 of Appendix G (*Training*) of Schedule 1 (*Set Specification and Design*);

Relevant TTS Provisions means the provisions of the Train Technical Specification listed in Appendix H (*Relevant TTS Provisions*) of Schedule 1 (*Set Specification and Design*), and Relevant TTS Provision shall be construed accordingly;

Reliability Adjustment has the meaning given to it in the Initial TARA;

Relief Event means any of the following:

- (a) any failure or shortage of power or transport;
- (b) any accidental loss or damage to the Depots or any other premises used for the manufacture, repair, maintenance and/or stabling of Sets or any roads servicing them;
- (c) failure by any statutory undertaker, utility company, local authority or any other like body to carry out works or provide services;
- (d) any blockade or embargo which does not constitute a Force Majeure Event; or
- (e) the discovery of any Finds,

if and only to the extent that such event is not caused by the Affected Party;

Remarshalling means adding Vehicles to, or removing Vehicles from, a Set in accordance with Appendix B (*Train Technical Description*) of Schedule 1 (*Set Specification and Design*);

Remedial Event has the meaning given to it in the Initial TARA;

Remedial Plan has the meaning given to it in Paragraph 1.1 of Part A (*Remedial Plans and Other Secretary of State Remedies*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*);

Remedial Plan Notice has the meaning given to it in Paragraph 1.1 of Part A (*Remedial Plans and Other Secretary of State Remedies*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*);

Replacement Copy has the meaning given to it in Paragraph 2.2(b) of Part F (*Identity of the Financial Model*) of Schedule 8 (*Variations*);

Replacement Notice has the meaning given to it in Paragraph 5.2(b) of Part D (*TSP Default*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*);

Replacement Operator has the meaning set out in Paragraph 3(d)(ii) of Part H (*Adhoc Train Lending*) of Schedule 8 (*Variations*);

Replacement Set has the meaning given to it in Paragraph 2.4 of Part I (*Total Loss*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*);

Reporting Period means a period of twenty-eight (28) days, provided that:

- (a) the first such period during the Contract Period shall exclude any days up to but not including the Effective Date;
- (b) the first and last such period in any Contract Year may be varied by up to seven (7) days by notice from the Secretary of State to the TSP;
- (c) each such period shall start on the day following the last day of the preceding such period; and
- (d) the last such period during the Contract Period shall end at the end of the Contract Period;

Requests for Information has the meaning set out in the FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term "request" shall apply);

Required Action has the meaning given to it in the TARA;

Required Insurances means the insurances and insurance policies required to be in place in accordance with Part B (*Required Insurances*) of Schedule 5 (*Insurance*);

Required Response means, in respect of any Variation, the following information that the TSP is to provide to the Secretary of State on an open book basis (that is, full disclosure of all relevant information) in respect of the TSP itself and the Significant Contractors, in each case to the extent only that such information is applicable or appropriate to them:

- (a) a detailed assessment of the scope of works required to implement a Variation and in a manner that, in respect of any aspects of the Variation that is not a Constant Risk aspect, will avoid (in so far as is reasonably possible) any material and adverse change in risk for the TSP in performing its obligations under this Agreement and any TARA to which it is party after the Variation has been implemented;
- (b) the proposed method of implementing the Variation specified in that Variation Notice, and detailed assessments of the Implementation Period (including the extent of implementation that is proposed to have occurred at any key milestone or stage), any Implementation Risk and the TSP proposals for dealing with any Implementation Risk;
- (c) if requested by the Secretary of State in a Required Variation Notice, details of any contractual incentive provisions (including liquidated damages) to incentivise the successful implementation of the objective that is the subject matter of that Variation;
- (d) a breakdown of the price between cost, contingency to reflect cost uncertainty, profit on cost and contingency if applicable, and risk pricing (which shall be nil except where a Risk Assessment is required and which shall then be reconciled to the Risk Assessment);

- (e) in relation to cost, the breakdown shall include the following as relevant to the Variation:
- (i) cost of different Types of Set (excluding Vehicles);
 - (ii) cost of different Vehicle types;
 - (iii) breakdown of subsections within the areas of bogie, bodyshell, motive power, interiors, mechanical systems, electrical systems, spares and tools;
 - (iv) design costs;
 - (v) testing and development costs;
 - (vi) material and manufacture costs;
 - (vii) assembly costs;
 - (viii) commissioning costs;
 - (ix) labour costs;
 - (x) transitional depot costs;
 - (xi) capital depot costs;
 - (xii) depot operational costs;
 - (xiii) depot resource costs;
 - (xiv) spare and special tools costs;
 - (xv) project management costs;
 - (xvi) legal costs;
 - (xvii) design and consultancy costs;
 - (xviii) TSP costs of preparing the Required Response in respect of any Variation (including the performance of its obligations pursuant to Part G (*Runs of the Financial Model*) of Schedule 8 (*Variations*));
 - (xix) overhead;
 - (xx) any costs of amending the Escrow Documents which are not covered by limb (xviii);
 - (xxi) Senior Lender due diligence costs;
 - (xxii) any applicable Sub-Contractor Breakage Costs; and
 - (xxiii) any other relevant costs;
- (f) assumptions with respect to those matters that will drive costs including a variation to such costs based on volume and the time at which the Variation is proposed during the Contract Period;

- (g) the identity of the sub-contractors and consultants (if any) which the TSP intends to engage for the purposes of effecting the proposed Variation;
- (h) a statement setting out the breakdown of any "overhead" costs of the TSP and/or Sub-Contractors claimed. The TSP will calculate overhead costs using activity based costing principles and the calculation itself should be capable of being reviewed and independently audited by the Secretary of State or her advisers as appropriate. Should "overhead" costs exceed fifty thousand pounds Sterling (£50,000) (Indexed) for any Variation, all further overhead costs above this value should be specifically listed and costed as an individual and separate item;
- (i) a statement of contingency if applicable listed by activity;
- (j) a statement of the TSP's and its Significant Contractors' required profit on the proposed Variation expressed as a percentage of cost and contingency if applicable, being the following amounts (**Profit Factors**):

Value of cost and contingency of variation	Profit on Variation
£0 to £10,000,000 (exclusive) (Indexed)	twelve per cent. (12%)
£10,000,000 (inclusive) to £50,000,000 (exclusive) (Indexed)	eleven per cent. (11%)
£50,000,000 (inclusive) to £100,000,000 (exclusive) (Indexed)	ten per cent. (10%)
£100,000,000 + (inclusive) (Indexed)	nine per cent. (9%)

- (k) any open book information in respect of the proposed Variation in relation to the TSP, its Significant Sub-contractors and its Second Tier Suppliers that is referred to in Schedule 11 (*Information and Confidentiality*);
- (l) a statement of any Additional Funding Requirement that the TSP considers arises, as may be finally determined pursuant to the Run of the Financial Model, an explanation of the reasons for this requirement and the terms of any funding of that expenditure;
- (m) equivalent transparency of pricing between related party suppliers in respect of cost, contingency on cost, and profit;
- (n) detail of risk pricing if applicable (including proposed changes to the TOC Reserve Account), in addition to the cost, contingency to reflect cost uncertainty, and profit on cost and contingency;
- (o) any changes to the terms of this Agreement and/or any existing or future TARA which the TSP proposes that it will contract on that are required to give effect to the proposed Variation;
- (p) any other relevant information that the Secretary of State may reasonably require pursuant to the Variation Notice; and
- (q) any other material consideration;

Required Variation means a requirement on the Secretary of State to give notice of a Variation following the occurrence of any of the following events or circumstances:

- (a) a Change in Law having force and effect in accordance with Paragraph 1.1 of Schedule 9 (*Change in Law*);
- (b) a Total Loss, in which case, the provisions of Paragraph 2.2 or 2.4 of Part I (*Total Loss*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*) shall also apply;
- (c) any requirement pursuant to Paragraph 3.3 of Part B (*Termination, Expiry and Replacement of the Relevant TARA*) of Schedule 4 (*Train Availability and Reliability Agreements*) in relation to any TARA that is replacing a terminated or expired TARA;
- (d) where the Secretary of State continues this Agreement pursuant to Paragraph 3.3(a) and/or (b) of Part A (*Insurance Provisions*) of Schedule 5 (*Insurance*) notwithstanding any risk usually covered by any of the Required Insurances becoming Uninsurable and the parties being unable to agree as to how to manage or share the risk;
- (e) to the extent that the Secretary of State elects:
 - (i) to fund eighty five per cent. (85%) of any Exceptional Cost pursuant to Paragraph 2 of Part D (*Insurance Premium Risk Sharing*) of Schedule 5 (*Insurance*) by way of an adjustment to the Set Availability Payment under any TARA; or
 - (ii) to receive eighty five per cent. (85%) of any Exceptional Saving pursuant to Paragraph 2 of Part D (*Insurance Premium Risk Sharing*) of Schedule 5 (*Insurance*) by way of an adjustment to the Set Availability Payment under the relevant TARA;
- (f) to the extent that the Secretary of State elects to receive a share of any Refinancing Gain pursuant to Paragraph 2 of Part A (*Refinancing*) of Schedule 7 (*Finance Arrangements*) by way of an adjustment to the Set Availability Payment under the relevant TARA;
- (g) any market testing pursuant to Paragraph 1 of Part E (*Market Testing, Benchmarking and Indexing*) of Schedule 8 (*Variations*);
- (h) any benchmarking pursuant to Paragraph 2 of Part E (*Market Testing, Benchmarking and Indexing*) of Schedule 8 (*Variations*);
- (i) any re-basing pursuant to Paragraph 3 of Part E (*Market Testing, Benchmarking and Indexing*) of Schedule 8 (*Variations*);
- (j) any change to the Performance System that effects a change to the number of Delay Minutes incurred in respect of Incidents, and/or to the delay minutes attribution regime in the Network Code as at the Commencement Date relating to the allocation of causes of failure between rolling stock causes and other causes and the attribution of delay;
- (k)

(i) change made to the Safety Management System which would not require a modification to any of the Sets but which:

(A) impacts on the Maintenance Plan other than in an immaterial way; or

(B) impacts on the ability of the TSP to comply with its obligations under this Agreement or the TARA, or the cost of compliance by the TSP with those obligations other than in an immaterial way; or

(ii) any change made to the Safety Management System which is to ensure the safe operation of the Sets (including any such change made pursuant to a change in Industry Standard), and such change would require a modification to any of the Sets.

(l) if:

(i) an unbroken series of Force Majeure Extension Days continues for more than one hundred and eighty (180) days in respect of delivery and acceptance of Sets where ninety per cent. (90%) or more of the Fleet has been accepted;

(ii) the Secretary of State believes that there is no reasonable prospect of the Manufacturer being able to complete the performance of its obligations under the Manufacture and Supply Agreement within a reasonable period of time beyond the end of the one hundred and eighty (180) day period referred to in limb (l)(i);

(iii) Hitachi Rail Europe Limited remains the Maintainer at such time and the performance by the Maintainer of its obligations under the Maintenance Agreement is not materially adversely affected as a result of the relevant Force Majeure Event; and

(iv) neither party terminates this Agreement in accordance with Part B (*Force Majeure*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*) of this Agreement,

changes to reflect the delivery and acceptance of less than one hundred per cent. (100%) of the Fleet;

(m) any changes required to reflect the consequences of the occurrence of a Depot Total Loss where the TSP, in accordance with the relevant Depot Lease Documents, does not reinstate the relevant Depot and, consequently, this Agreement continues in accordance with its terms subject to the relevant Depot no longer being a Depot for the purposes of this Agreement;

(n) any changes required to reflect the consequences of a Transferring TSP not being able to make recovery from any third party against whom it may have reasonable rights of recourse in respect of the costs of repair to a Transferring Set which is not returned by the Receiving Operator to the Transferring Operator and/or Transferring TSP (as the case shall be) in the standard and conditions required by the handback provisions agreed to be met by the Receiving Operator in accordance with Paragraph 4.1(c)(i)(E) of Part H (*Adhoc Train Lending*) of Schedule 8 (*Variations*) for expiry or termination of Adhoc Train Lending;

- (o) any changes required to reflect the consequences of a Relevant Operator not requiring a Track Access Contract in order to operate trains on the Network;
- (p) where the Maintainer and/or the TSP could reasonably be expected to have raised objections to the direction of the ORR, and the relevant party or parties have raised such objections, the ORR directs (notwithstanding any such objections) that:
 - (i) a conditions change proposal, a proposal for change or a Network Rail change proposal (as such terms are defined in the Depot Access Conditions for the Depot concerned) is approved and/or shall be implemented (as appropriate); or
 - (ii) a change to the Depot Access Conditions shall be made in connection with the approval of a depot access agreement for the Depot concerned or pursuant to a notice or any other charge issued by the ORR under Condition B6 of the Depot Access Conditions for the Depot concerned,
 and where such change is either:
 - (A) reasonably likely to have a material adverse impact on the TSP's ability to comply with its obligations and/or exercise its rights under this Agreement and/or the TARA; or
 - (B) following the implementation of the relevant change, demonstrated to have a material adverse impact on the TSP's ability to comply with its obligations and/or exercise its rights under this Agreement and/or the TARA;
- (q) any changes required to reflect the consequences of a Maintainer Replacement Refinancing, including adjustments to the Effective Date Financial Model where this Agreement continues in accordance with its terms following the occurrence of the Maintainer Replacement Refinancing;
- (r) any changes required to increase the limit of the indemnity that shall apply in the insurance policies required pursuant to Paragraph 5.2 of Appendix A (*Insured Risks During Operational Period*) to Part B (*Required Insurances*) of Schedule 5 (*Insurance*);
- (s) any changes required to increase the limit of the indemnity that shall apply in the insurance policies required pursuant to Paragraph 4.2 of Appendix B (*Insured Risks During Design and Construction Works of Depots*) to Part B (*Required Insurances*) of Schedule 5 (*Insurance*); and
- (t) any changes required to reflect the consequences of the occurrence of the events described in paragraph 2.9(a) or 2.9(b) of part A (*TARA Payments*) of schedule 5 (*Payment*) of the Initial TARA;

Required Variation Notice has the meaning given to it in Paragraph 1(g) of Part A (*Scope and Consequences of Variations*) of Schedule 8 (*Variations*);

Requirements has the meaning given to it in Paragraph 5.2(b) of Appendix D (*Design Plan*) of Schedule 1 (*Set Specification and Design*);

Requirements Capture Exercise has the meaning given to it in Paragraph 5.1 of Appendix D (*Design Plan*) of Schedule 1 (*Set Specification and Design*);

Requirements Capture Period has the meaning given to it in Paragraph 5.1 of Appendix D (*Design Plan*) of Schedule 1 (*Set Specification and Design*);

Requirements for Agreement has the meaning given to it:

- (a) in Paragraph 2.3 of Appendix E (*Approvals Plan*) of Schedule 1 (*Set Specification and Design*) for the purposes of Appendix E (*Approvals Plan*) of Schedule 1 (*Set Specification and Design*) only;
- (b) in Paragraph 2.3 of Appendix A (*Testing, Commissioning and Acceptance*) to Part A (*Testing and Acceptance*) of Schedule 2 (*Introduction into Service*) for the purposes of Paragraph 2 of Appendix A (*Testing, Commissioning and Acceptance*) to Part A (*Testing and Acceptance*) of Schedule 2 (*Introduction into Service*) only; and
- (c) in Paragraph 5.2 of Appendix A (*Testing, Commissioning and Acceptance*) to Part A (*Testing and Acceptance*) of Schedule 2 (*Introduction into Service*) for the purposes of Paragraph 5 of Appendix A (*Testing, Commissioning and Acceptance*) to Part A (*Testing and Acceptance*) of Schedule 2 (*Introduction into Service*) only;

Requirements for Approval has the meaning given to it:

- (a) in Paragraph 2.3 of Appendix E (*Approvals Plan*) of Schedule 1 (*Set Specification and Design*) for the purposes of Appendix E (*Approvals Plan*) of Schedule 1 (*Set Specification and Design*) only;
- (b) in Paragraph 2.3 of Appendix A (*Testing, Commissioning and Acceptance*) to Part A (*Testing and Acceptance*) of Schedule 2 (*Introduction into Service*) for the purposes of Paragraph 2 of Appendix A (*Testing, Commissioning and Acceptance*) to Part A (*Testing and Acceptance*) of Schedule 2 (*Introduction into Service*) only; and
- (c) in Paragraph 5.2 of Appendix A (*Testing, Commissioning and Acceptance*) to Part A (*Testing and Acceptance*) of Schedule 2 (*Introduction into Service*) for the purposes of Paragraph 5 of Appendix A (*Testing, Commissioning and Acceptance*) to Part A (*Testing and Acceptance*) of Schedule 2 (*Introduction into Service*) only;

Responsibility Transfer Date has the meaning given to it in the Manufacturer and Supply Agreement;

Restricted Share Transfer means any share transfer to any person that is or is controlled by any person or group of persons that are or have been involved in money laundering or other illegal acts or are situated in any country under any sanctions, orders or legislation from time to time promulgated by the United Nations, the European Union or the United Kingdom Government;

Restriction on Distributions means any restrictions on the making of Distributions in accordance with clause 19.5 of the CTA;

Retail Prices Index means the retail prices index for the whole economy of the United Kingdom and for all items as published from time to time by the Office for National Statistics or, if such index shall cease to be published or there is a material change in the basis of the index or if, at any relevant time, there is a delay in the publication of the index, such other retail prices index as the Secretary of State may, after consultation with the TSP and the Relevant Operator, reasonably determine to be appropriate in the circumstances as meaning the Retail Prices Index for the purposes of this Agreement;

Re-Tendering Procedure means the re-tendering procedure set out in Appendix A (*Re-Tendering Procedure*) to Part D (*TSP Default*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*);

Revised Implementation Timetable has the meaning given to it in Paragraph 9.4(b) of Part I (*Redeployment Variation*) of Schedule 8 (*Variations*);

Revised Inputs has the meaning given to it in Paragraph 3.1 of Part G (*Runs of the Financial Model*) of Schedule 8 (*Variations*);

Revised Market Tested Costs has the meaning given to it in Appendix A (*Description of Market Tested Services and Process for Updating the Model following Market Testing*) to Part E (*Market Testing, Benchmarking and Indexing*) of Schedule 8 (*Variations*);

Revised Senior Debt Termination Amount means, subject to Paragraph 4 of Part H (*Calculation and Payment of Termination Sums*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*):

- (a) all amounts outstanding at the Termination Date, including interest and (other than in respect of Additional Permitted Borrowing) interest at the Default Rate accrued as at that date, from the TSP to the Senior Lenders in respect of Permitted Borrowing; and
- (b) all amounts (including costs of early termination of interest rate hedging arrangements, foreign exchange hedging arrangements and other breakage costs, payable by the TSP to the Senior Lenders as a result of a prepayment in respect of Permitted Borrowing, or, in the case of early termination of interest rate hedging arrangements and/or foreign exchange hedging arrangements only, as a result of termination of this Agreement, subject to the TSP and the Senior Lenders mitigating all such costs to the extent reasonably possible,

less, to the extent it is a positive amount, the aggregate of (without double counting in relation to the calculation of the Revised Senior Debt Termination Amount or the amounts below):

- (i) subject to Paragraph 9 of Part A (*Testing and Acceptance*) of Schedule 2 (*Introduction into Service*), all credit balances on any bank accounts (but excluding the Joint Insurance Account) held by or on behalf of the TSP on the Termination Date;
- (ii) any amounts claimable on or after the Termination Date in respect of Contingent Funding Liabilities;
- (iii) all amounts (including costs of early termination of interest rate hedging arrangements, foreign exchange hedging arrangements and other breakage costs) payable by the Senior Lenders to the TSP as a result of

prepayment of amounts outstanding in respect of Permitted Borrowing, or, in the case of early termination of interest rate hedging arrangements and/or foreign exchange hedging arrangements only, as a result of termination of this Agreement;

- (iv) all other amounts received by the Senior Lenders on or after the Termination Date and before the date on which any compensation is payable by the Secretary of State to the TSP as a result of enforcing any other rights they may have; and
- (v) all APB Distributions;

RIGWL means Rail Investments (Great Western) Limited, a company incorporated in England and Wales whose registered number is 07915611 and whose registered address is at 1 Kingsway, London WC2B 6AN;

Risk Assessment means, in relation to a Variation, a reasoned assessment by the TSP of whether there would be a material and adverse change in risk for the TSP or a Significant Contractor in performing its obligations under this Agreement and any TARA to which it is a party after the Variation has been implemented which shall be prepared on the basis that there is no material and adverse change in risk in respect of any aspect of Constant Risk comprised in the Variation save to the extent that the TSP can demonstrate that there is a material and adverse change in risk attaching to any aspect of Constant Risk as a result of the inclusion in the Variation of any aspects that are not of Constant Risk;

ROGS means Railways and Other Guided Transport Systems (Safety) Regulations 2006 and the Railway and other Guided Transport Systems (Safety Amendment) Regulations 2011;

Rolling Horizon has the meaning given to it in Paragraph 2.3 of Appendix D (*Form of Integrated Programme*) to Part C (*Contract Management*) of Schedule 2 (*Introduction into Service*);

Rolling Stock Library has the meaning set out in Railway Group Standard GM/RT2453 (Identification of Rail Vehicles);

Routine Maintenance means maintenance provided for in the Maintenance Plan that is not Major Maintenance Work;

Routine Maintenance Plan means those elements of the Maintenance Plan relating to Routine Maintenance;

RSSB means the Rail Safety and Standards Board;

Rule Book means the document with reference GE/RT 8000 issued by the RSSB;

Rules of the Depot means, in respect of each Depot, the rules of the depot annexed to the TARA at appendix A (*Rules of the Depot: Requirement Tables*) to part A (*Dispatch Requirements*) of schedule 2 (*Availability*);

Rules of the Fleet means, in respect of each Depot, the rules of the fleet annexed to the TARA at appendix B (*Rules of the Fleet: Requirements*) to part A (*Dispatch Requirements*) of schedule 2 (*Availability*);

Run of the Financial Model means the preparation of the Pre Variation Financial Model and Pre Variation Financial Model Data Book, the calculation of the Revised Inputs and the New Results and the preparation of the Post Variation Financial Model and Post Variation Financial Model Data Book in accordance with Part G (*Runs of the Financial Model*) of Schedule 8 (*Variations*);

RV Date means the date specified in Paragraph 1.2 of Part C (*Usage Undertaking*) of Schedule 4 (*Train Availability and Reliability Agreements*);

Safety Certificate has the meaning given to "safety certificate" in the ROGS;

Safety Management System means the Relevant Operator's safety management system, as defined in, and complying with the requirements of, the ROGS, established, or to be established, as the context requires, by the Relevant Operator to ensure the safe management of the use and operation of the Sets, as the same may be amended in accordance with the terms of the TARA;

Scheduled Acceptance Date means:

- (a) in relation to a Type, the date set out in the column entitled "Type Acceptance Date" specified in the Delivery Schedule; and
- (b) in relation to any Set, the date set out in the column entitled "Scheduled Acceptance Date" specified in the Delivery Schedule,

in each case as extended and notified to the TSP pursuant to Paragraph 1.7 of Part B (*Delayed Delivery and Delayed Acceptance*) of Schedule 2 (*Introduction into Service*);

Scheduled Fleet Acceptance Date means the Scheduled Acceptance Date of the last Set in the Fleet;

Seat Weight Model means a spreadsheet of the seat weight broken down to a level of detail reasonably satisfactory to the Secretary of State to enable the Secretary of State to assess the TSP's compliance with its obligations as set out in Paragraph 7.21 of Appendix D (*Design Plan*) of Schedule 1 (*Set Specification and Design*);

Second Tier Supplier means a sub-contractor of any tier (other than a Significant Contractor) whose sub-contract contains obligations to comply with requirements equivalent to those set out in Paragraphs 1.2 to 1.4 (inclusive) of Schedule 11 (*Information and Confidentiality*);

Secretary of State Conditions Precedent means the conditions precedent set out in Part A (*Secretary of State Conditions Precedent*) of Schedule 12 (*Conditions Precedent*);

Secretary of State Default means one of the following events:

- (a) a failure by the Secretary of State to make payment of any amount (including any amount due under Paragraph 2 of Part C (*Usage Undertaking*) of Schedule 4 (*Train Availability and Reliability Agreements*)) that is due and payable by the Secretary of State to the TSP under this Agreement within thirty (30) days of service of a written demand by the TSP, where that amount fell due and payable thirty (30) (or more) days prior to the date of the written demand in circumstances where at the relevant time there are, including as a result of such failure, [REDACTED] due and payable by the Secretary of State to the TSP;

- (b) an expropriation, sequestration or requisition of a material part of the Assets, the Depots and/or shares of the TSP by the Secretary of State or other Relevant Authority;
- (c) other than a breach of Paragraph 2 of Part C (*Usage Undertaking*) of Schedule 4 (*Train Availability and Reliability Agreements*), a breach by the Secretary of State of her obligations under Part C (*Usage Undertaking*) of Schedule 4 (*Train Availability and Reliability Agreements*) occurs that has not been rectified within sixty (60) days of service of a written notice by the TSP to the Secretary of State;
- (d) a breach by the Secretary of State of her obligations under Clause 23 occurs;
- (e) a Delayed Acceptance Event continues for more than twenty-four (24) months; or
- (f) the Secretary of State or any Relevant Authority designates the rights and/or obligations of the Relevant Operator under the TARA as "Franchise Assets" as defined in section 27(11) of the Act;

Secretary of State Default Termination Sum has the meaning given to it in Paragraph 2.1 of Part C (*Secretary of State Default*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*);

Secretary of State Extension Day has the meaning given to it in Paragraph 2.1(a) of Part B (*Delayed Delivery and Delayed Acceptance*) of Schedule 2 (*Introduction into Service*);

Secretary of State Programme Delivery Plan means a corporate and organisational delivery plan in respect of the Secretary of State which shall include the information set out in Appendix B (*Form of Secretary of State Programme Delivery Plan*) to Part C (*Contract Management*) of Schedule 2 (*Introduction into Service*);

Secretary of State Property means property belonging to the Secretary of State or for which she is responsible (including any Swansea Maliphant OHLE Infrastructure prior to the implementation of an OHLE Variation (in relation to which an Authority to Proceed has been issued pursuant to Paragraph 4.1 of Part C (*Additional Procedural Aspects of Variations*) of Schedule 8 (*Variations*)) in accordance with its terms);

Secretary of State's Representative has the meaning given to it in Paragraph 1.3(a) of Part C (*Contract Management*) of Schedule 2 (*Introduction into Service*);

Secretary of State MSA Direct Agreement means a direct agreement entered into on the Commencement Date between the Secretary of State, the TSP and the Manufacturer in respect of the Manufacture and Supply Agreement;

Secretary of State TSA Direct Agreement means a direct agreement entered into on the Commencement Date between the Secretary of State, the TSP and the Maintainer in respect of the Maintenance Agreement;

Secured Creditors has the meaning given to such term in the Intercreditor Agreement;

Security Documents has the meaning given to such term in the Intercreditor Agreement;

Security Interest means any mortgage, charge, pledge, lien, assignment (including assignment by way of security) or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect;

Security Trustee means BTMU (Europe) Limited or any replacement or successor security trustee appointed from time to time pursuant to the terms of the Intercreditor Agreement;

Senior Debt means the debt advanced by the Senior Lenders to the TSP under the Senior Financing Agreements and, following the occurrence of a Maintainer Replacement Refinancing, such other debt as may be advanced to the TSP on terms equivalent to those under the Senior Financing Agreements);

Senior Financing Agreements means the NEXI Covered Facility Agreement, the Uncovered Facility Agreement, the EIB Finance Contract and the JBIC Facility Agreement (as each term is defined in the CTA) and the CTA, as at the Effective Date or as amended from time to time disregarding any amendments prohibited by Paragraph 4 of Part H (*Calculation and Payment of Termination Sums*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*);

Senior Hedging Banks has the meaning given to it in the CTA;

Senior Lender means a person providing finance to the TSP under the Senior Financing Agreements;

Senior Lenders' Financial Model has the meaning given to "Financial Model" in the CTA;

Senior Personnel has the meaning given to it in the Dispute Resolution Agreement;

Service means the design, manufacture and maintenance of the Sets for use in railway passenger service, and the making available of the Sets to operators of railway passenger services, in each case in accordance with this Agreement and the TARA;

Services Media means all pipes, sewers, drains, mains, ducts, conduits, gutters, water courses, wires, cables, meters, switches, channels, flues and all other conducting media appliances and apparatus including any fixtures, louvers, cowls and other ancillary apparatus;

Servicing Point means any facility where the TSP carries out stabling of Sets or minor and routine maintenance activities in respect of the Fleet under the Rules of the Depot;

Set means a Half Set or a Full Set;

Set Availability Payment has the meaning given to it in the Initial TARA;

Set Retention Amount has the meaning given to it in Paragraph 8.1 of Part A (*Testing and Acceptance*) of Schedule 2 (*Introduction into Service*);

Set Weight Model means a spreadsheet of Set weight broken down to a level of detail reasonably satisfactory to the Secretary of State to enable the Secretary of State to assess the TSP's compliance with its obligations pursuant to Paragraph 7.21 of Appendix D (*Design Plan*) of Schedule 1 (*Set Specification and Design*);

Shared Remedial Plan has the meaning given to it in Paragraph 2.3 of Part A (*Remedial Plans and other Secretary of State Remedies*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*);

Shareholder means any person from time to time holding share capital in the TSP or Holdco;

Significant Contract means:

- (a) the Manufacture and Supply Agreement;
- (b) the Maintenance Agreement; and
- (c) the Depot Construction Sub-Contract,

and, in each case, any further successor or replacement agreement relating to the subject matter of the foregoing, as the context requires;

Significant Contractor means the supplier of goods and/or services to the TSP pursuant to the terms of a Significant Contract;

Simulator Information has the meaning given to it in Paragraph 7.1 of Appendix G (*Training*) of Schedule 1 (*Set Specification and Design*);

Simulators means the simulators that the Relevant Operator is to procure which shall simulate accurately the functionality, design and performance of the Sets;

Software means the executable object code version of software that is:

- (a) installed in any Asset or Technical Document;
- (b) necessary for the use or operation of any Asset or Technical Document (but not, for the avoidance of doubt, software installed in assets that are not supplied by the TSP or its sub-contractors in connection with this Agreement, a TARA, the Manufacture and Supply Agreement and/or the Maintenance Agreement); and/or
- (c) used by the TSP (or its sub-contractors, including the Maintainer) for the maintenance, servicing, repairing or overhauling of the Assets and/or the Technical Documents,

that has, in each case, been modified for the purposes of the Project and has not (at any time during the term of this Agreement) been available for off-the-shelf purchase on reasonable terms;

Sole Remedial Plan has the meaning given to it in Paragraph 2.4(b) of Part A (*Remedial Plans and Other Secretary of State Remedies*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*);

Spares means those items listed in Annex D (*Major Incidents, Damage And Vandalism Supporting Information*) of Appendix D (*Design Plan*) of Schedule 1 (*Set Specification and Design*);

Special Tools means any tools or equipment that have been modified, constructed or acquired by or on behalf of the TSP to undertake a specific task in respect of the maintenance of any Vehicles or any other equipment or infrastructure (including Depot plant and equipment) and which are either:

- (a) identified as such in the list that is agreed between the parties pursuant to Paragraph 14 of Appendix D (*Design Plan*) of Schedule 1 (*Set Specification and Design*); or

- (b) used exclusively by the TSP or the Maintainer in the maintenance of the Vehicles or the Depots and which are not Depot fixtures and fittings and treated as a matter of law, as part of the land, if any;

Specification Revisions has the meaning given to it in Paragraph 3.2 of Part A (*Depot Provisions*) of Schedule 3 (*Depots*);

Specific Change in Law means any Change in Law which relates only:

- (a) to the railway industry, a particular section of the railway industry or the provision of services to the railway industry and not to other transport modes or to industries other than the railway industry; or
- (b) to the holding of shares in companies whose main business relates only to the railway industry, a particular section of the railway industry or the provision of services to the railway industry;

Specific Infrastructure Acceptance Issues means the specific infrastructure acceptance issues specified in Appendix C (*Specific Infrastructure Acceptance Issues*) of Schedule 1 (*Set Specification and Design*);

Specified Type Weight means, in respect of a Set of any Type, the amount (in tonnes) listed in respect of a Set of such Type in the column headed Specified Type Weight (tonnes) of the table set out in the definition of Type;

SPV Costs means the costs set out in row 44 of tab "R01_CF" of the Effective Date Financial Model;

SPV Insurance Costs means the costs set out in rows 38 and 39 of tab "R01_CF" of the Effective Date Financial Model;

SPV Re-basing Indexation Rate means the index [REDACTED] or, failing such publication or in the event of a fundamental change to that index, such amendment to that index or such other index as the parties may agree (in each case with the intention of putting the parties in a no better no worse position than they would have been had the index not ceased to be published or the relevant fundamental change not been made) or, in the event that no such agreement is reached between the parties, as may be determined by the Dispute Resolution Agreement;

SPZ means signal protected zone;

Stable Risk means:

- (a) in respect of a Variation that consists only of Constant Risk aspects, the conclusive presumption that the Variation will not involve any material and adverse change in risk for the TSP and the Significant Contractor(s) in performing the TSP's obligations under this Agreement and any TARA to which the TSP is party after the Variation has been implemented; and
- (b) in respect of a Variation that includes Constant Risk aspects and aspects that are not of Constant Risk, the rebuttable presumption that the Constant Risk aspects comprised in the Variation will not involve any material and adverse change in risk for the TSP and the Significant Contractor(s) in performing the TSP's obligations

under this Agreement and any TARA to which the TSP is party after the Variation has been implemented;

Stakeholder Requirements has the meaning given to it in Paragraph 5.1(b) of Appendix D (*Design Plan*) of Schedule 1 (*Set Specification and Design*);

Standard Conditions means the Standard Commercial Property Conditions (Second Edition);

Standard Considerations means the following considerations that are to be applied in all cases in appraising the cost implications for the TSP of the Variable Considerations arising in respect of any Variation:

- (a) any increase in costs relating to a Variation that is attributable to any activities, actions or omissions of the TSP which are not permitted under, or would otherwise constitute a breach of, the terms of this Agreement and/or the relevant TARA, is to be disregarded;
- (b) any reduction in costs relating to a Variation that is attributable to those activities, actions or omissions of the TSP which are not permitted under, or would otherwise constitute a breach of the terms of this Agreement and/or the relevant TARA is to be taken into account;
- (c) an assumption that the TSP will use reasonable endeavours to reduce or mitigate any costs that may arise as a consequence of a Variation;
- (d) any requirement for borrowing in respect of an Additional Funding Requirement for the TSP is dealt with in accordance with Part D (*Financing of Variations*) of Schedule 8 (*Variations*);
- (e) allowance for the likely costs and/or savings to the TSP (including costs of and savings in materials and labour and costs and savings relating to relevant Sub-Contractor arrangements) resulting from the implementation of the Variation;
- (f) any increase in or loss of revenue to the TSP likely to result from implementing the Variation in accordance with this Agreement;
- (g) an assumption that the TSP will prepare and implement the Variation in accordance with Good Industry Practice by reference to the TSP's assets and resources at the time of such Variation;
- (h) any impact on the provision of the Services of implementing the Variation in accordance with this Agreement;
- (i) any Temporary Financial Accommodation made in respect of such Variation; and
- (j) any other matters that the parties may reasonably agree;

Standby Maintenance Arrangements means the Maintainer's standby maintenance arrangements for the maintenance and servicing of the Sets to be provided pursuant to the Secretary of State TSA Direct Agreement;

Start Date means the date on which a Relevant Employee's employment is transferred to the Provider by operation of the Transfer Regulations;

Statement of Compatibility has the meaning set out in Railway Group Standard GE/RT8270 'Assessment of Compatibility of Rolling Stock and Infrastructure';

Step-in Period means the period in which the Required Action is taken;

Sterling and **£** means the lawful currency for the time being of the United Kingdom;

Stipulated Loss Value means the Percentage Agreed Value for each operational year set out in the table in Part C (*Stipulated Loss Value*) of Schedule 5 (*Insurance*);

Stoke Gifford means the depot described in the row titled "Depot Location: Stoke Gifford (Bristol)" within the Rules of the Depot;

Stoke Gifford Lease means the lease to be granted to the TSP pursuant to the Network Rail Agreement for Lease relating to Stoke Gifford;

Sub-Contract means the Manufacture and Supply Agreement and the Maintenance Agreement;

Sub-Contract Documents means the Depot Lease Agreements, the Network Rail Direct Agreement, the BRB Direct Agreement, the Sub-Contracts, Manufacturer Guarantee, the Maintainer Guarantee and such other documents that enable the Sub-Contracts to be performed to which the TSP is a party;

Sub-Contractor means the supplier of goods and/or services to the TSP pursuant to the terms of a Sub-Contract;

Sub-Contractor Breakage Costs means Losses that have been or will be reasonably and properly incurred by the TSP as a direct result of the termination of this Agreement or a Variation, but only to the extent that:

- (a) the Losses are incurred in connection with the Project and in respect of the provision of Services or the completion or carrying out of the manufacture of the Sets and/or the construction, refurbishment and/or renovation of the Depots, including:
 - (i) any materials or goods ordered or Sub-Contracts placed that cannot be cancelled without such Losses being incurred;
 - (ii) any expenditure incurred in anticipation of the provision of services or the completion of works in the future;
 - (iii) the cost of demobilisation including the cost of any relocation of equipment used in connection with the Project; and
 - (iv) redundancy payments;
- (b) the Losses are incurred under arrangements and/or agreements that are consistent with terms that have been entered into in the ordinary course of business and on reasonable commercial terms (and, in the case of Sub-Contractor loss of profit, shall include no more than one (1) year of such loss of profit in the case of the Manufacturer and no more than two (2) years of such loss of profit in the case of the Maintainer); and

- (c) the TSP and the relevant Sub-Contractor has each used its reasonable endeavours to mitigate the Losses;

Sub-Contractor Direct Agreements means the Secretary of State MSA Direct Agreement and the Secretary of State TSA Direct Agreement;

Subordinated Financing Agreements means the Equity Bridge Finance Documents and the Junior Finance Documents as at the Effective Date or as amended with the prior written approval of the Secretary of State;

Subordinated Lender means a person providing finance under a Subordinated Financing Agreement;

Suitable Substitute TSP means any person satisfying reasonable and objective criteria relating to the resources (including the financial and sub-contract resources available to that person), quantities and competencies required:

- (a) to support a tender for the New Contract and New TARA(s) at a price in the region of the Estimated Fair Value of this Agreement; and
- (b) to perform the New Contract and New TARA(s) in accordance with their terms;

Supporting Information has the meaning given to it in Paragraph 6.2 of Part C (*Train Maintenance and Servicing*) of Schedule 3 (*Depots*);

Surrender Notice has the meaning given to it in Paragraph 2.1 of Part B (*Call Option Requirements*) of Schedule 3 (*Depots*);

Swansea Mainline Electrification Date means the date on which electrification of the Great Western IEP Network up to and including Swansea station is completed such that an Electric Set can be used on the Great Western IEP Network from Swansea without using its auxillary generator unit outside of the Swansea Maliphant boundary;

Swansea Maliphant means the depot described in the row titled "Depot Location: Maliphant (Swansea)" within the Rules of the Depot;

Swansea Maliphant Lease means the lease to be granted to the TSP pursuant to the Network Rail Agreement for Lease relating to Swansea Maliphant;

Swansea Maliphant OHLE Infrastructure means all equipment and infrastructure necessary at Swansea Maliphant to ensure the delivery of a nominal twenty-five (25) Kilovolt overhead electricity supply to Swansea Maliphant (including the track connecting Swansea Maliphant to the Network) such that all Sets can operate on all sections of track at Swansea Maliphant and such connection by such means of power;

Swansea Maliphant OHLE Longstop Date means 8 June 2018;

TARA means a train availability and reliability agreement between the TSP and a Relevant Operator pursuant to which the TSP makes the Sets that are the subject matter of that TARA available to that Relevant Operator on the terms and conditions set out therein in order to allow that Relevant Operator to deliver certain railway passenger services, being (i) the Initial TARA; (ii) any successor TARA or further TARA entered into in accordance with this Agreement; (iii) any Variation of such agreement pursuant to Schedule 8 (*Variations*), including any such Variation agreed pursuant to any delegation

of authority in accordance with Paragraph 1(a1) of Part A (*Scope and Consequences of Variations*) of Schedule 8 (*Variations*);

TARA Amendment Agreement has the meaning given to it in Paragraph 3.2(a) of Part C (*Additional Procedural Aspects of Variations*) of Schedule 8 (*Variations*);

TARA Default Notification has the meaning given to it in Paragraph 1.2 of Part B (*Termination, Expiry and Replacement of the Relevant TARA*) of Schedule 4 (*Train Availability and Reliability Agreements*);

TARA Payments has the meaning given to it in the TARA;

TARA Payments (nominal) means, in relation to the TARA, the TARA Payments payable under and defined in part A (*TARA Payments*) of schedule 5 (*Payment*) of the TARA, and reflected in row 3952 of tab "C01_Workings" of the Effective Date Financial Model;

TARA Performance Report has the meaning given to "Performance Report" in the Initial TARA;

TARA Performance Review Meeting has the meaning given to "Performance Review Meeting" in the Initial TARA;

TARA Pre-tax Project IRR (nominal) means the figure set out in cell J98 of the tab titled "R04 Summary" within the Effective Date Financial Model;

TARA Principals' Meeting has the meaning given to "Principals' Meeting" in the Initial TARA;

Target Type Weight means, in respect of a Set of any Type, an amount calculated in accordance with Paragraph 2.8 of Part A (*Testing and Acceptance*) of Schedule 2 (*Introduction into Service*);

Taxation comprises all forms of taxation, duties, contributions, levies of the United Kingdom wherever imposed;

Technical Documents means the documentation setting out the requirements, plan, processes, submissions and certificates produced as part of the Acceptance Process, comprising:

- (a) Train Technical Specification;
- (b) Train Technical Description; and
- (c) Design Vision Style Guide;

Technical Document Requirements has the meaning given to it in Paragraph 5.1(a) of Appendix D (*Design Plan*) of Schedule 1 (*Set Specification and Design*);

Technical File is the file with the contents of the "technical file" for the purposes of the Railways (Interoperability) Regulations 2011;

Technical Library means the following documents, materials, databases, data and other information, other than the Technical Documents, that are in the possession of the TSP or any of its Significant Contractors and that may reasonably be required for the purposes specified in Paragraphs 1.2 and 1.3 of Schedule 10 (*Intellectual Property*), and

paragraph 2 of part A (*Contract Management*) of schedule 4 (*Contract Management and Compliance*) of the relevant TARA:

Operating and Maintenance Documentation

- (a) the Maintenance Plan;
- (b) the Operating and Maintenance Manuals;
- (c) operating and maintenance contingency procedures for likely defects (isolations and restrictions);
- (d) any documents, drawings, materials, databases, data, records and other information relating to the manufacture, operation, maintenance and/or use of the:
 - (i) Spares, the Capital Spares (as defined in the Manufacture and Supply Agreement) and any other component or part of any Vehicle;
 - (ii) Special Tools; and/or
 - (iii) Technical Documents,to the extent necessary for the Secretary of State (or her nominee) or the Relevant Operator to exercise their rights in a manner contemplated or required by this Agreement;

Training Documentation

- (e) the Training Plan;
- (f) the Training Matrix;
- (g) the Training Materials;

Approval Documentation and Configuration Control

- (h) the Relevant Approvals and Derogation documentation;
- (i) the configuration control documentation, including databases and records for each Type and Spares;
- (j) major repair records (including details of the damage, repair method and approval, and implementation sign-offs);

Design Documentation

- (k) system/equipment requirement specifications relevant to the systems and equipment covered by the Primary Design Area Work Breakdown Structure sufficient to enable the Secretary of State to exercise her rights pursuant to the licences granted under Paragraphs 1.2 and 1.3 of Schedule 10 (*Intellectual Property*);
- (l) system/equipment interface definition specifications relevant to the systems and equipment covered by the Primary Design Area Work Breakdown Structure sufficient to enable the Secretary of State to exercise her rights pursuant to the

licences granted under Paragraphs 1.2 and 1.3 of Schedule 10 (*Intellectual Property*);

- (m) system/equipment functional specifications sufficient relevant to the systems and equipment covered by the Primary Design Area Work Breakdown Structure sufficient to enable the Secretary of State to exercise her rights pursuant to the licences granted under Paragraphs 1.2 and 1.3 of Schedule 10 (*Intellectual Property*);
- (n) system/equipment software specifications and codes relevant to the systems and equipment covered by the Primary Design Area Work Breakdown Structure sufficient to enable the Secretary of State to exercise her rights pursuant to the licences granted under Paragraphs 1.2 and 1.3 of Schedule 10 (*Intellectual Property*);
- (o) manufacturing and "as made" drawings relevant to the systems and equipment covered by the Primary Design Area Work Breakdown Structure sufficient to enable the Secretary of State to exercise her rights pursuant to the licences granted under Paragraphs 1.2 and 1.3 of Schedule 10 (*Intellectual Property*);

Train performance, reliability and maintenance information

- (p) Performance Regime and reliability data;
- (q) the In-Service Fault response records;
- (r) the Maintenance Arrangement records, including task sign-off details (tasks completed and by whom);
- (s) the Maintenance Arrangement staff competence records; and
- (t) the operational/safety incident and investigation records (including, corrective actions details);

Temporary Financial Accommodation means payments to the TSP which ensure that in carrying out a Variation which is the subject of an Authority to Proceed or a Required Variation pursuant to Paragraph 4.2 of Part C (*Additional Procedural Aspects of Variations*) of Schedule 8 (*Variations*) the TSP is left cost, risk and cash-flow neutral in implementing such Variation during the period from the date of such Authority to Proceed until the date that such Variation is fully determined pursuant to the Dispute Resolution Agreement or is agreed by the parties;

Tender Costs means the reasonable and proper costs of the Secretary of State incurred in carrying out the Tender Process and/or in connection with any calculation of the Estimated Fair Value of this Agreement or the No Full Fleet Compensation Amount;

Tender Process means the process by which the Secretary of State requests tenders from any parties interested in entering into a New Contract, evaluates the responses from those interested parties and enters into a New Contract with a new train service provider, in accordance with Appendix A (*Re-Tendering Procedure*) to Part D (*TSP Default*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*);

Tender Process Monitor has the meaning given to it in Paragraph 1.5 of Appendix A (*Re-Tendering Procedure*) to Part D (*TSP Default*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*);

Termination Date means the date of early termination of this Agreement in accordance with the provisions of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*);

Termination Date Discount Rate means a discount rate expressed as:

$$(1 + \text{real base case project IRR} + \text{Gilt B} - \text{Gilt A}) * (1 + i) - 1$$

where:

real base case project IRR is the real pre-tax Project IRR as set out in cell I98 of the tab R04_Summary of the Effective Date Financial Model. For the avoidance of doubt, if limb (e) of the definition of Deemed New Contract applies, the Financial Model is the Post Variation Financial Model as defined by Paragraph 5 of Appendix E (*Maintainer Replacement Refinancing*) to Part D (*TSP Default*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*).

i is the assumed forecast rate of increase in the Retail Prices Index for the remaining term of this Agreement;

Gilt A is the real yield to maturity on a benchmark government gilt instrument of the same maturity as the average life of the outstanding Senior Debt as shown in the Effective Date Financial Model; and

Gilt B is the real yield to maturity on a benchmark government gilt instrument of the same maturity as the average life of the outstanding Senior Debt as shown in the Financial Model as on the date of termination of this Agreement;

Termination Sum means any compensation payable by the Secretary of State to the TSP on an early termination of this Agreement under:

- (a) Part B (*Force Majeure*);
- (b) Part C (*Secretary of State Default*);
- (c) Paragraph 6.5 of Part D (*TSP Default*);
- (d) Appendix B (*No Re-Tendering Procedure*) to Part D (*TSP Default*);
- (e) Paragraph 7.5 and/or Appendix C (*No Full Fleet Valuation Procedure*) to Part D (*TSP Default*);
- (f) Part E (*Corrupt Gifts and Fraud*);
- (g) Part F (*Voluntary Termination by the Secretary of State*);
- (h) Part G (*Termination for Breach of Refinancing Provisions*); or
- (i) Part K (*Paragraph 5+ Termination*),

in each case of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*);

Testing, Commissioning and Acceptance Plan means the plan for the testing, commissioning and acceptance of the Sets that are the subject matter of this Agreement, developed and implemented in accordance with Appendix A (*Testing, Commissioning and Acceptance*) to Part A (*Testing and Acceptance*) of Schedule 2 (*Introduction into Service*);

Test Path Requirements has the meaning given to it in Paragraph 5 of Appendix E (*Approvals Plan*) of Schedule 1 (*Set Specification and Design*);

Test Programme Meeting has the meaning given to it in Paragraph 3.1 of Appendix E (*Approvals Plan*) of Schedule 1 (*Set Specification and Design*);

Third Parties means those third parties, other than the Relevant Operator, as may be agreed between the parties from time to time in respect of each of the Design Plan, the Approvals Plan and the Testing, Commissioning and Acceptance Plan separately;

Third Party IPR means the Intellectual Property Rights owned by a third party in the Assets and/or the IPR Assets, whether existing at the Commencement Date or arising thereafter, other than the TSP IPR, the Manufacturer IPR and the Maintainer IPR. For the purpose of this definition a third party:

- (a) includes any sub-contractor of the TSP (apart from the Manufacturer and the Maintainer), of the Manufacturer or of the Maintainer;
- (b) excludes the TSP, the Manufacturer, the Maintainer and each of their Affiliates; and
- (c) without prejudice to limb (a), excludes the Secretary of State, the Relevant Operator, and any sub-contractor, employee or agent of either of them to the extent those Intellectual Property Rights exclusively relate to that sub-contract, employment or agency;

Threshold Equity IRR means [REDACTED];

Thunderbird means all services required in relation to the recovery of failed Sets back to the relevant Mother Depot or any other Depot specified by the Maintainer;

Timetable has the meaning given to it in the Initial TARA;

TLS Phase Mid Life Provn means the costs set out in row 37 of tab "R01_CF" of the Effective Date Financial Model;

TOC Reserve Account or **TOCRA** has the meaning given to it in the CTA;

Total Loss means, with respect to any Set:

- (a) the actual or constructive total loss of such Set (including any damage to such Set or requisition for use or hire) which, in either case, results in an insurance settlement on the basis of a total loss; or
- (b) it being destroyed, damaged beyond economic repair or rendered permanently unfit for normal use for any reason whatsoever,

and includes, in each case, the occurrence of any such event in respect of any Set prior to the issue of a Final Acceptance Certificate or a Qualified Acceptance Certificate in respect of such Set;

TPL Risk means a risk which is required to be insured under any third party liability insurance policy which the TSP is required to effect pursuant to this Agreement;

Track Access Contract has the meaning given to it in the Initial TARA;

Trade Dispute has the meaning set out in section 218 of the Trade Unions & Labour Relations (Consolidation) Act 1992 as amended from time to time;

Train the Trainer Period has the meaning given to it in Paragraph 2.2 of Appendix G (*Training*) of Schedule 1 (*Set Specification and Design*);

Train Technical Description or **TTD** means the Train Technical Description specified in Appendix B (*Train Technical Description*) of Schedule 1 (*Set Specification and Design*) as the same may be amended or supplemented by an Agreed Technical Change;

Train Technical Specification or **TTS** means the Train Technical Specification specified in Appendix A (*Train Technical Specification*) of Schedule 1 (*Set Specification and Design*) as the same may be amended or supplemented by an Agreed Technical Change;

Training Materials has the meaning given to it in Paragraph 4.1 of Appendix G (*Training*) of Schedule 1 (*Set Specification and Design*);

Training Matrix has the meaning given to it in Paragraph 13.1 of Appendix G (*Training*) of Schedule 1 (*Set Specification and Design*);

Training Methods Selection Process has the meaning given to it in Paragraph 12.1 of Appendix G (*Training*) of Schedule 1 (*Set Specification and Design*);

Training Needs has the meaning given to it in Paragraph 9.1(a)(i) of Appendix G (*Training*) of Schedule 1 (*Set Specification and Design*);

Training Needs Assessment has the meaning given to it in Paragraph 11.1 of Appendix G (*Training*) of Schedule 1 (*Set Specification and Design*);

Training Needs Assessment Sheet has the meaning given to it in Paragraph 11.2 of Appendix G (*Training*) of Schedule 1 (*Set Specification and Design*);

Training Plan means the TSP's plan for the performance of its obligations in respect of the delivery of training pursuant to Appendix G (*Training*) of Schedule 1 (*Set Specification and Design*);

Transfer means a TSP Transfer and/or a Maintainer Transfer;

Transfer Regulations or **TUPE** means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended from time to time;

Transferring Operator means, in relation to any Adhoc Train Lending, the Relevant Operator who will be operating fewer Sets following the Adhoc Train Lending;

Transferring Sets means those Sets which it is contemplated will be operated by the Receiving Operator following the Adhoc Train Lending;

Transferring TSP means, in relation to any Adhoc Train Lending, the Agility Company that will be performing less Routine Maintenance in respect of the Sets following the Adhoc Train Lending;

Transition has the meaning given to it in the Initial TARA;

Transition Plan means a plan to be prepared by the TSP detailing the TSP's arrangements and process in accordance with which it shall manage the Transition;

Transit Routes means the routes from North Pole or Stoke Gifford to any point on the Great Western IEP Network;

TRUST means the 'Train Running System TOPS' operated by Network Rail to monitor train running and punctuality on the Network;

TSA means the costs set out in row 33 of tab "R01_CF" of the Effective Date Financial Model;

TSP Affiliate means an Affiliate of the TSP;

TSP Conditions Precedent means the conditions precedent set out in Part B (*TSP Conditions Precedent*) of Schedule 12 (*Conditions Precedent*);

TSP Default means the occurrence of any of those events in Paragraph 1.1 of Part D (*TSP Default*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*);

TSP Delivery Manager has the meaning given to it in Paragraph 1.1(a) of Part C (*Contract Management*) of Schedule 2 (*Introduction into Service*);

TSP Delivery Report has the meaning given to it in Paragraph 3.8(a) of Part C (*Contract Management*) of Schedule 2 (*Introduction into Service*);

TSP Fault means any Fault other than a Relevant Operator Fault;

TSP Industrial Action means Industrial Action, including that relating to a Trade Dispute, solely involving employees of the TSP or any related company of the TSP or any of the TSP's sub-contractors or suppliers, but excluding Prior Event Industrial Action;

TSP IPR means the Intellectual Property Rights, whether existing at the Commencement Date or arising thereafter, that are owned by the TSP or its Affiliates (other than the Manufacturer and the Maintainer, and each of their Affiliates other than the TSP), in the Assets and/or the IPR Assets;

TSP Programme Delivery Plan means a corporate and organisational delivery plan in respect of the TSP which shall include the information set out in Appendix A (*Form of TSP Programme Delivery Plan*) to Part C (*Contract Management*) of Schedule 2 (*Introduction into Service*);

TSP Property has the meaning given to it in Paragraph 4.11(b) of Part C (*Contract Management*) of Schedule 2 (*Introduction into Service*);

TSP Related Party means the Manufacturer, the Maintainer and sub-contractors of any tier;

TSP Surrender means the deed or deeds of surrender of one or more Leases to be entered into by the TSP and the relevant Landlord in a form to be agreed between the parties at the time (acting reasonably);

TSP Transfer means the deed or deeds of transfer and/or assignment of the Depot Lease Documents (or such of them as are subsisting at the date of exercise of the Call

Option) to be entered into pursuant to Paragraph 3.1(h)(i) of Part B (*Call Option Requirements*) of Schedule 3 (*Depots*) substantially in the form set out in Appendix A (*Form TR1 for Leases*) to Part B (*Call Option Requirements*) of Schedule 3 (*Depots*);

TSP's Lease Surrender Rights has the meaning given to it in Paragraph 2.2 of Part B (*Call Option Requirements*) of Schedule 3 (*Depots*);

TSP's Representative means the Chief Executive Officer of the TSP;

TSP's Share means the percentage figure shown in the second column of the following table corresponding to that part of the Cumulative Capital Expenditure at the relevant time, shown in the first column of the following table:

Cumulative Capital Expenditure	TSP's Share
£0 - £2.5 million (inclusive)	100%
£2.5 million (exclusive) to £5 million (inclusive)	50%
£5 million (exclusive) to £25 million (inclusive)	5%
Above £25 million (exclusive)	0%

Type means the following type of Set:

Type	Description	Specified Type Weight (tonnes)
Bi-Mode Set	5 vehicles	249.3
Electric Set	9 vehicles	399.8

Type Acceptance means the acceptance of a Type of Set pursuant to Paragraph 2 of Part A (*Testing and Acceptance*) of Schedule 2 (*Introduction into Service*);

Type Acceptance Certificate means a certificate of Type Acceptance of a Type in the form set out in Form 1 in Appendix D (*Forms of Acceptance Certificates*) to Part A (*Testing and Acceptance*) of Schedule 2 (*Introduction into Service*);

Type Acceptance Date means, in respect of any Set, the date in the column headed Type Acceptance Date for that Set in the relevant part of Appendix C (*Delivery Schedule*) to Part A (*Testing and Acceptance*) of Schedule 2 (*Introduction into Service*), or as the same may be extended pursuant to the provisions of Paragraph 1 of Part B (*Delayed Delivery and Delayed Acceptance*) of Schedule 2 (*Introduction into Service*);

Type Acceptance Preconditions has the meaning given to it in Paragraph 3.2 of Part A (*Testing and Acceptance*) of Schedule 2 (*Introduction into Service*);

Type Weight Adjustment Factor means, in respect of a Set of any Type, an amount calculated in accordance with Paragraph 2.7 of Part A (*Testing and Acceptance*) of Schedule 2 (*Introduction into Service*);

Unattended Overhead Line Measurement System has the meaning given to it in paragraph 4.17.5 of the Train Technical Specification;

Unattended Track Geometry Measurement System has the meaning given to it in paragraph 4.17.3 of the Train Technical Specification;

Uncovered Facility Agreement means the facility agreement dated the Effective Date and made between, amongst others, the TSP, The Bank of Tokyo-Mitsubishi UFJ, Ltd., Mizuho Corporate Bank, Ltd., and the Original Uncovered Facility Lenders (as defined therein) and, for avoidance of doubt, for the purpose of the definition of Uncovered Facility Agreement in Appendix E (*Maintainer Replacement Refinancing*) to Part D (*TSP Default*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*), any amendment, modification, waiver or supplement which may be made in respect of that facility agreement after the Effective Date will be disregarded;

Uncovered Facility means the facility to be made available to the TSP pursuant to the Uncovered Facility Agreement;

Underlease means an underlease of each Depot to be entered into pursuant to the terms of an Agreement for Lease and all documents supplemental thereto;

Uninsurable means, in relation to a risk, either that:

- (a) insurance is not available to the TSP in respect of the Project in the worldwide insurance market with insurers of good financial standing and reputation in respect of that risk (which shall include, in relation to the insurance policies referred to in Paragraph 5 of Appendix A (*Insured Risks During Operational Period*) to Part B (*Required Insurances*) of Schedule 5 (*Insurance*) and Paragraph 4 of Appendix B (*Insured Risks During Design and Construction Works of Depots*) to Part B (*Required Insurances*) of Schedule 5 (*Insurance*), that such insurance policies having an indemnity limit of less than that specified in such Paragraphs are not available to the TSP); or
- (b) the insurance premium payable for insuring that risk is at such a level that the risk is not generally being insured against in the worldwide insurance market with insurers of good financial standing and reputation, by contractors in the United Kingdom;

Uninsurable TPL Risk has the meaning given to it in Paragraph 3.5(a) of Part A (*Insurance Provisions*) of Schedule 5 (*Insurance*);

Unresolved Persistent Breach has the meaning given to it in Paragraph 3.7 of Part A (*Remedial Plans and Other Secretary of State Remedies*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*);

Updated Cost Plan means the TSP's update to the Indicative Cost Plan or the previously issued Updated Cost Plan (as the case may be) prepared by the TSP in accordance with Paragraph 5 of Part I (*Redeployment Variation*) of Schedule 8 (*Variations*);

Urgent Notice has the meaning given to it in Paragraph 1 of Part B (*Approved Default Variations*) of Schedule 8 (*Variations*);

Usage Guarantee Period means the period of twenty-seven (27) years and six (6) calendar months (27.5 years) between the Actual Acceptance Date of the first Set in the Fleet and the RV Date;

User Consultation Requirements has the meaning given to it in Paragraph 8.1 of Appendix D (*Design Plan*) of Schedule 1 (*Set Specification and Design*);

Value Added Tax or **VAT** means Value Added Tax as provided for in the Value Added Tax Act 1994 and VAT Regulations 1995/2518;

Variable Considerations means in respect of any Variation, the:

- (a) costs reasonably expected to be incurred in implementing the scope of work, with regard to the Cost Factors; and
- (b) profit, with regard to the Profit Factors;

Variation means a change to the terms of this Agreement which is:

- (a) a Contemplated Variation;
- (b) a Required Variation; or
- (c) an Approved Default Variation;

Variation Notice means any of:

- (a) a Contemplated Variation Notice;
- (b) a Required Variation Notice; or
- (c) a Redeployment Variation Notice;

Variation Procedure means the procedure set out in Schedule 8 (*Variations*);

Vehicle means any vehicle of any configuration which forms part of a Set;

Vehicle Change means a Vehicle Change within the meaning of the Network Code;

Verification Assessment Procedure has the meaning given to "verification assessment procedure" in the Railways (Interoperability) Regulations 2011;

Waste means any waste involving anything which is disposed of or abandoned, unwanted or surplus, irrespective of whether it is capable of being recovered or recycled or has any value;

White Book has the meaning given to it in Paragraph 6.1 of Appendix D (*Design Plan*) of Schedule 1 (*Set Specification and Design*);

White Book Compliance Sheet has the meaning given to it in Paragraph 6.2(a) of Appendix D (*Design Plan*) of Schedule 1 (*Set Specification and Design*);

Withdrawal Notice has the meaning given to it in Paragraph 5 of Part C (*Additional Procedural Aspects of Variations*) of Schedule 8 (*Variations*) and Paragraph 3 of Part J (*Additional Procedural Aspects of Redeployment Variations*) of Schedule 8 (*Variations*);

Works Agreements means the Works Agreements made on the date hereof between (1) Network Rail and (2) the Manufacturer by which it is intended that Network Rail will undertake works to enable each of Stoke Gifford and North Pole to be connected to the Network; and

x-factor means the proportion of any Set Availability Payment that is indexed, as set out in cell G12 of tab "A02_Inputs" of the Effective Date Financial Model.

2. COMMENCEMENT AND TERM

Commencement

- 2.1 Subject to Clause 2.4, the obligations of the Secretary of State under this Agreement are subject to fulfilment of each of the Secretary of State Conditions Precedent.
- 2.2 Subject to Clause 2.4, the obligations of the TSP under this Agreement are subject to fulfilment of each of the TSP Conditions Precedent.
- 2.3 The Secretary of State Conditions Precedent have been inserted for the benefit of the Secretary of State and the TSP Conditions Precedent have been inserted for the benefit of the TSP and any such condition precedent may be waived or deferred in writing by the party which has the benefit of such condition precedent without prejudicing the right of such party to require fulfilment of such conditions, in whole or in part, with or without conditions, at any time after the Effective Date.
- 2.4 The following provisions of this Agreement shall commence, take effect and be binding upon each of the Secretary of State and the TSP on and from the Commencement Date:
- (a) Clauses 2.1 to 2.3;
 - (b) Clause 3;
 - (c) Clause 4;
 - (d) Clause 19;
 - (e) Clause 20;
 - (f) Clause 21;
 - (g) Clause 22; and
 - (h) Clause 27.

Duration and Termination

- 2.5 Following the RV Date, the following provisions of this Agreement shall survive and continue to be operative in respect of any Set in respect of which a Final Acceptance Certificate or a Qualified Acceptance Certificate has been issued, on the following terms:
- (a) Paragraph 5 of Appendix A (*Insured Risks during Operational Period*) to Part B (*Required Insurances*) of Schedule 5 (*Insurance*), in relation to such Set, for a period of two (2) years after the RV Date, such that the TSP shall, subject to Paragraph 3 to Part A (*Insurance Provisions*) of Schedule 5 (*Insurance*) continue to include the Secretary of State as an Insured on third party public and products liability during that period on the terms in that Paragraph 5 of Appendix A (*Insured Risks during Operational Period*) to Part B (*Required Insurances*) of Schedule 5 (*Insurance*); and
 - (b) Schedule 10 (*Intellectual Property*) until the end of the Licence Term.
- 2.6 This Agreement shall terminate on the earliest of:
- (a) the day immediately following the RV Date; and
 - (b) the earlier termination of this Agreement in accordance with its terms,
- save that:

- (i) the following provisions shall survive termination of this Agreement pursuant to either Clause 2.6(a) or 2.6(b):
 - (A) Clause 2.5;
 - (B) Clause 19;
 - (C) Clause 21;
 - (D) Clause 22.1;
 - (E) Clause 22.8;
 - (F) Clause 25;
 - (G) Clause 27; and
 - (H) Paragraph 4.3(b) of Part B (*Termination, Expiry and Replacement of the Relevant TARA*) of Schedule 4 (*Train Available and Reliability Agreement*) in relation to the first refinancing process following the expiry or termination of this Agreement;
- (ii) without prejudice to Clause 2.6(i), the following provisions shall survive termination of this Agreement pursuant to Clause 2.6(b) only:
 - (A) Part B (*Call Option Requirements*) of Schedule 3 (*Depots*);
 - (B) Part B (*Force Majeure*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*);
 - (C) Part C (*Secretary State of Default*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*);
 - (D) Part D (*TSP Default*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*);
 - (E) Part E (*Corrupt Gifts and Fraud*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*);
 - (F) Part F (*Voluntary Termination by the Secretary of State*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*);
 - (G) Part G (*Termination for Breach of Refinancing Provisions*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*);
 - (H) Part H (*Calculation and Payment of Termination Sums*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*); and
 - (I) Part K (*Paragraph 5+ Termination*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*);
- (iii) without prejudice to Clause 2.6(i), Paragraph 5.3 and 5.4 of Part B (*Termination, Expiry and Replacement of the Relevant TARA*) of

Schedule 4 (*Train Availability and Reliability Agreements*) shall survive termination of this Agreement pursuant to Clause 2.6(a) only; and

- (iv) Clause 12 shall survive termination of this Agreement for a period of two (2) years after the RV Date or, if earlier, the Termination Date.

3. REPRESENTATIONS AND WARRANTIES

Representations and Warranties by the TSP

The TSP makes the following representations and warranties on the Commencement Date in respect of itself, MidCo and HoldCo with reference to the facts and circumstances existing at the time. The TSP understands that the Secretary of State is relying on the representations and warranties made by the TSP and is entering into the Project Documents to which she is a party on the basis of them:

- (a) each of the TSP, MidCo and HoldCo is a company properly organised and validly existing under the laws of England and Wales as a limited liability company. Each has the power to carry on its business as it is now being conducted and has all licences, consents, approvals, permits, authorisations, exemptions, registrations and certifications required for that purpose;
- (b) each of the TSP, MidCo and HoldCo has the power to enter into and perform its obligations under the Project Documents to which it is a party. All necessary corporate, shareholder and other action has been taken to authorise the entry into, performance and delivery of the Project Documents to which each is a party and each such agreement and document constitutes, or upon execution will constitute, its legally valid, binding and enforceable obligations in accordance with its terms;
- (c) the entry by each of the TSP, MidCo and HoldCo into the Project Documents to which it is a party and the performance by each of the TSP, MidCo and HoldCo of its obligations under the Project Documents to which it is a party will not in each case:
 - (i) conflict with the Memorandum and Articles of Association of the TSP, MidCo or HoldCo (as the case may be);
 - (ii) conflict with any law or regulation applicable to the TSP, MidCo or HoldCo (as the case may be); or
 - (iii) conflict with, or result in a breach of, any existing contract which is binding on the TSP, MidCo or HoldCo (as the case may be);
- (d) the legal and beneficial ownership of the TSP, MidCo and HoldCo is as set out in Appendix C (*Ownership Structure of TSP*) of Schedule 11 (*Information and Confidentiality*) and no arrangements are in place that have or may have or result in any sale, transfer or disposal of any legal, beneficial, equitable or other interest in any or all of the shares in the TSP, MidCo or HoldCo (other than (i) any Security Interests granted over such shares in favour of the Senior Lenders pursuant to and in accordance with the Security Documents or (ii) any Change of Ownership in accordance with, and notified to the Secretary of State pursuant to Clause 24.1);

- (e) except as disclosed in writing to the Secretary of State on or before the Commencement Date, no legal proceedings are pending or, to the best of the TSP's knowledge and belief, threatened:
 - (i) against the TSP, MidCo or HoldCo which, in each case, if decided against the TSP, MidCo or HoldCo (as the case may be), would have a material adverse effect upon the financial condition, assets or business of the TSP, MidCo or HoldCo (as the case may be) or the ability of the TSP, MidCo or HoldCo (as the case may be) to perform its obligations under the Project Documents to which it is a party;
 - (ii) against the Manufacturer which, in each case, if decided against the Manufacturer would have a material adverse effect upon the Manufacturer's financial condition, assets or business or its ability to perform its obligations under the Project Documents to which it is a party; and/or
 - (iii) against the Maintainer which, in each case, if decided against the Maintainer would have a material adverse effect upon the Maintainer's financial condition, assets or business or its ability to perform its obligations under the Project Documents to which it is a party; and
- (f) no TSP Default has occurred and is continuing or is likely to occur.

4. TSP COVENANTS

Significant Contracts

- 4.1 (a) Unless the Secretary of State otherwise agrees (such agreement not to be unreasonably withheld), the TSP shall not enter into any prospective Significant Contract:
 - (i) without first obtaining the approval of the Secretary of State of:
 - (A) the identity of the Significant Contractor in relation to that prospective Significant Contract (and for the avoidance of doubt the identity of the Initial Significant Contractors is deemed approved by the Secretary of State at the Commencement Date); and
 - (B) the terms of that Significant Contract; and
 - (ii) where the Significant Contractor is the Depot Construction Sub-Contractor, unless the Significant Contractor has entered into a collateral warranty substantially in the form set out in Appendix B (*Collateral Warranties*) to Part A (*Depot Provisions*) of Schedule 3 (*Depots*); or
 - (iii) where the Significant Contractor is the Maintainer or the Manufacturer, unless that Significant Contractor has entered into a direct agreement substantially in the form of the Secretary of State TSA Direct Agreement or the Secretary of State MSA Direct Agreement (as applicable) with the Secretary of State in respect of that prospective Significant Contract providing, on a basis acceptable to the Secretary of State, amongst other things, for the continued provision of the goods and/or services supplied thereunder in the event of:

- (A) suspension, termination or expiry of such Significant Contract; or
 - (B) termination or expiry of this Agreement.
- (b) The TSP shall not, unless the Secretary of State otherwise agrees (such agreement not to be unreasonably withheld):
 - (i) terminate or agree the termination of (whether, in either case, in whole or in part) any Significant Contract or take or omit to take any action which would or might give rise to:
 - (A) repudiation or other termination of that Significant Contract; or
 - (B) any right of suspension or termination at the instance of any other party to that Significant Contract;
 - (ii) make or agree to any supplement, amendment or variation of any of the terms of any Significant Contract where such supplement, amendment or variation may have an adverse impact on the provision of the Service and/or increase the liability of the Secretary of State under the Project;
 - (iii) materially depart from the performance of its obligations under any Significant Contract, or materially waive or fail to enforce any rights it may have under any Significant Contract, or procure that any Significant Contractor materially departs from its obligations under any Significant Contract, or materially waives or fails to enforce any rights it may have under any Significant Contract; or
 - (iv) without limiting Clause 23, assign, sub-contract or transfer its rights or obligations under any Significant Contract, unless:
 - (A) the relevant document or proposed course of action has been submitted to the Secretary of State not less than ten (10) Business Days, or such shorter time as the Secretary of State may agree, before the proposed document or course of action will take effect; and
 - (B) the Secretary of State has consented in writing (such consent not to be unreasonably withheld) on such terms as she may stipulate.

Second Tier Suppliers

- 4.2 The TSP shall include in each Significant Contract to which it is a party a requirement that the Significant Contractor that is a party thereto shall:
- (a) in any request for proposal issued after the Effective Date to a potential sub-contractor of that Significant Contractor in respect of the obligations of that Significant Contractor under that Significant Contract, include a statement that if such potential sub-contractor enters into a sub-contract with that Significant Contractor in respect of those obligations that sub-contract shall include contractual obligations on that potential sub-contractor to comply with requirements equivalent to those set out in Paragraphs 1.2 to 1.4 (inclusive) of Schedule 11 (*Information and Confidentiality*); and

- (b) use reasonable endeavours to procure that such contractual obligations are accepted by any such potential sub-contractor, provided that the obligation to use reasonable endeavours does not require that Significant Contractor to incur any material additional cost or expense, or accept a product or service from such sub-contractor that in its reasonable opinion will increase the risk that the Maintainer will incur Deductions, Notifiable Events and/or Remedial Events (each as defined in the Maintenance Agreement) or otherwise result in a breach of this Agreement or the TARA.

Conduct of the TSP's business etc.

4.3 The TSP covenants that it shall, and shall procure that HoldCo and MidCo shall:

- (a) at all times carry on and conduct its affairs in accordance with Applicable Laws and Standards (save to the extent an Applicable Derogation applies);
- (b) not engage in any business, other than entering into the Project Documents, and the performance of its obligations in respect of each of them and any related and consequential transactions;
- (c) not create or have outstanding any Security Interest, other than:
 - (i) liens arising by operation of law, which shall be released by the TSP, MidCo or HoldCo (as applicable) promptly;
 - (ii) those created under the Financing Documents, including rights of set-off under or pursuant to the Financing Documents;
 - (iii) trade debts incurred in the ordinary course of business;
 - (iv) in respect of solely office equipment (and not, for the avoidance of doubt, in respect of any Asset), any Security Interest arising under any retention of title, hire purchase or conditional sale arrangement having similar effect in respect of goods supplied to the TSP in the ordinary course of trading and on the supplier's standard or usual terms of business;
 - (v) other financing arrangements to which the Secretary of State has given her prior written consent (in her absolute discretion),

in each case, on the whole or any part of its undertaking, shares or assets, present or future to secure any present or future obligations of the TSP, MidCo or HoldCo (as applicable) or of any other person;
- (d) procure that no Security Interest is created or permitted to subsist over any interest in any of the authorised share capital (issued and unissued) of the TSP, MidCo or HoldCo, except that securing permitted financing arrangements to which the Secretary of State has given her prior written consent (in her absolute discretion);
- (e) not:
 - (i) incur any financial indebtedness (other than (A) its obligations under the Financing Documents, (B) trade debts incurred in the ordinary course of business, (C) hire purchase, conditional sale arrangements or finance obligations incurred in the ordinary course of business in respect of solely

office equipment (and not, for the avoidance of doubt, in respect of any Asset) and (D) other permitted financing arrangements to which the Secretary of State has given her prior written consent (in her absolute discretion));

- (ii) form or acquire or dispose of any subsidiary or subsidiary undertaking;
- (iii) consolidate or merge with or into any other entity;
- (iv) amend its Memorandum and Articles of Association or fail to abide by the restrictions in them without, in each case, the prior written consent of the Secretary of State (in her absolute discretion);
- (v) subject to Clause 24, without limiting Clause 4.3(e)(iv), increase its authorised or issued share capital from that set out in Appendix C (*Ownership Structure of TSP*) of Schedule 11 (*Information and Confidentiality*) or enter into or permit any agreement, arrangement or obligation requiring the creation, allotment, issue, transfer, redemption or repayment of, or the grant to a person of the right (conditional or not) to require the allotment, issue, transfer, redemption or repayment of, a share in the capital of the TSP, MidCo or HoldCo (as applicable) (including an option or right of pre-emption or conversion); or
- (vi) subject to Clauses 23 and 24, sell, transfer or otherwise dispose of all or a material part (or, in the case of the TSP, of any part, not otherwise being material, the disposal of which would affect the TSP's ability to comply with its obligations under this Agreement) of the assets or undertaking, present or future, of the TSP, MidCo or HoldCo (as applicable) or of any Asset or its rights in relation to any Depot (except pursuant to and in accordance with the provisions of this Agreement, including those set out in Part D (*TSP Default*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*)), in any case either singly or in a series of transactions, or agree to do any such thing,

in each case without the Secretary of State's prior written consent; and

- (f) in relation to any due and payable invoice that the TSP, MidCo or HoldCo receives from:
 - (i) any Significant Contractor, make full and final settlement of such invoice in accordance with its terms; or
 - (ii) any other sub-contractor of any tier, make full and final settlement of such invoice in accordance with its terms or, if a shorter period of time, within thirty (30) days of receipt of such invoice,

(except in any case where the TSP, MidCo or HoldCo (as applicable) is disputing with the relevant sub-contractor in good faith any aspect of such invoice in accordance with its terms, whereupon the TSP, MidCo or HoldCo (as applicable) shall make full and final settlement of such invoice (subject to any revisions that are agreed between the TSP, MidCo or HoldCo (as applicable) and the relevant sub-contractor) within thirty (30) days of settlement of such dispute).

- 4.4 The TSP covenants that it shall have the legal and beneficial ownership of the Assets (other than, except for the TSP IPR which the TSP itself owns, the underlying Intellectual Property Rights), save for Permitted Encumbrances at all times.

PART II – TRAIN BUILD AND ACCEPTANCE

5. DESIGN, CONSTRUCTION AND INSPECTION OF SETS

TSP Obligations

- 5.1 The TSP shall, so as to comply with the timetable for the delivery of the Sets set out in the Delivery Schedule, design, manufacture, engineer, test, commission and deliver for Acceptance (as appropriate) the Sets:
- (a) in accordance with the provisions of Schedule 1 (*Set Specification and Design*);
 - (b) in accordance with the Delivery Schedules and in accordance with the provisions of Part A (*Testing and Acceptance*) of Schedule 2 (*Introduction into Service*) (provided that any failure by the TSP to perform its obligations under this Clause 5.1(b) shall not entitle the Secretary of State to claim damages from the TSP as a result of such non-performance);
 - (c) with all due skill, care, diligence, prudence and foresight that is expected of appropriately qualified and experienced professional designers and engineers who carry out work of a similar scope, type, nature and complexity to that required under this Agreement;
 - (d) in a safe manner and so that any risk:
 - (i) to the health and well being of persons using, operating, maintaining or who are involved in the management of the Sets; and
 - (ii) of pollution, nuisance, interference or hazard,is as low as reasonably practicable;
 - (e) in accordance with the prevailing best modern design and engineering principles and practices of train manufacture and procurement applicable to sets with a design life of thirty five (35) years prevailing as at the date an Acceptance Certificate is issued in relation to each Set;
 - (f) so that each Set, as at the date an Acceptance Certificate is issued in relation to that Set:
 - (i) in a condition which meets the Train Technical Specification, the Train Technical Description and the Design, each in accordance with the processes set out in Appendix D (*Design Plan*) of Schedule 1 (*Set Specification and Design*) and Appendix A (*Testing Commissioning and Acceptance*) to Part A (*Testing and Acceptance*) of Schedule 2 (*Introduction into Service*) and, subject to Appendix C (*Specific Infrastructure Acceptance Issues*) of Schedule 1 (*Set Specification and Design*) enables the Relevant Operator to operate such Set on the Great Western IEP Network in unrestricted revenue earning service with passengers in accordance with the Diagrams, the Rules of the Fleet and the Rules of the Depot;

- (ii) capable of remaining in the condition set out in Clause 5.1(f)(i) throughout its Design Life assuming that such Set is used for the Permitted Use throughout its Design Life and that such Set is maintained in accordance with the Maintenance Plan; and
- (iii) has an expected rate of deterioration not worse than that reasonably to be expected of good quality, reliable, well designed goods, materials and construction assuming that such Set is used for the Permitted Use throughout its Design Life and that such Set is maintained in accordance with the Maintenance Plan;
- (g) using materials and goods which are new and of good quality such that the Sets will be of new manufacture and of good quality; and
- (h) in accordance with all Applicable Laws and Standards, other than Applicable Laws and Standards in respect of which a Derogation applies.

5.2 All conditions, warranties and representations, expressed or implied by statute, common law or otherwise that are not set out in this Agreement, in relation to the performance, non-performance or delay in performing the TSP's obligations under this Agreement are excluded to the fullest extent permitted by law (save that nothing in this Clause shall derogate from section 12 of the Sale of Goods Act 1979 to the extent that it applies to any provision of this Agreement or the TARA).

5.3 The Scheduled Acceptance Date for any Set may be amended:

- (a) in accordance with Paragraph 1 of Part B (*Delayed Delivery and Delayed Acceptance*) of Schedule 2 (*Introduction into Service*); or
 - (b) by written agreement between the parties,
- but may not otherwise be amended.

6. TESTING

The TSP shall carry out the testing and commissioning of the Sets in accordance with the Testing, Commissioning and Acceptance Plan, to be developed and implemented in accordance with Appendix A (*Testing, Commissioning and Acceptance*) to Part A (*Testing and Acceptance*) of Schedule 2 (*Introduction into Service*).

7. TRAINING REQUIREMENTS

The TSP shall act in accordance with the Training Plan to be developed and implemented in accordance with Appendix G (*Training*) of Schedule 1 (*Set Specification and Design*).

8. ACCEPTANCE

The provisions of Schedule 2 (*Introduction into Service*) shall have effect between the parties and each party shall comply with its respective obligations thereunder.

PART III – DEPOTS

9. DEPOTS

The provisions of Schedule 3 (*Depots*) shall have effect between the parties and each party shall comply with its respective obligations thereunder.

PART IV– TRAIN AVAILABILITY

10. TRAIN AVAILABILITY AND RELIABILITY AGREEMENT

- 10.1 The TSP shall enter into a TARA in accordance with the provisions of Part A (*Obligations to enter into the Initial TARA*) of Schedule 4 (*Train Availability and Reliability Agreements*).
- 10.2 The provisions of Part B (*Termination, Expiry and Replacement of the Relevant TARA*) of Schedule 4 (*Train Availability and Reliability Agreements*) shall also apply.

11. USAGE UNDERTAKING

The Secretary of State hereby provides the usage undertaking set out in Part C (*Usage Undertaking*) of Schedule 4 (*Train Availability and Reliability Agreements*) to the TSP.

PART V – GENERAL MATTERS

12. INDEMNITY

- 12.1 The TSP shall, subject to Clause 12.2, be responsible for, and shall release and indemnify the Secretary of State, her employees, agents and contractors (other than the Relevant Operator) on demand from and against all liability for:

- (a) death or personal injury;
- (b) loss of or damage to property (including Secretary of State Property) but excluding:
 - (i) the Assets which the TSP owns and/or is responsible for providing in accordance with this Agreement; and
 - (ii) the Network, and any other infrastructure on which Sets are operated from time to time, which is not owned by the Secretary of State;
- (c) third party actions in respect of claims for breach of statutory duty; and
- (d) other third party actions, claims, demands, costs, charges and expenses (including legal expenses on an indemnity basis),

which may arise out of, or in consequence of:

- (i) the design, construction, manufacture or maintenance of the Assets or the Depots;
- (ii) the operation and use of the Assets or the Depots (other than the operation and use of the Sets during the Operational Day);
- (iii) the performance or non-performance by the TSP of its obligations under this Agreement; or
- (iv) the presence on the Secretary of State Property of the TSP, a sub-contractor of the TSP, their employees or agents, in each case in connection with this Agreement.

12.2 The TSP shall not be responsible or be obliged to indemnify the Secretary of State, her employees, agents or contractors:

(a) [REDACTED]

(b) [REDACTED]

(c) [REDACTED]

(d) [REDACTED]

(e) [REDACTED]

(f) [REDACTED]

(g) [REDACTED]

(h) [REDACTED]

12.3 An indemnity by either party under any provision of this Agreement shall be without limitation to any indemnity by that party under any other provision of this Agreement provided that nothing in this Agreement shall give either party the right to any double recovery.

12.4 Each party shall at all times take all reasonable steps to minimise and mitigate any injury or Loss for which it is entitled to bring a claim against the other party pursuant to this Agreement.

12.5 If the Secretary of State becomes aware of a matter which might give rise to a claim pursuant to Clause 12.1:

- (a) the Secretary of State shall immediately notify the TSP in writing (giving reasonable particulars);
- (b) and that matter involves, or may involve, a claim against the Secretary of State, the Secretary of State shall, at the TSP's cost:
 - (i) take such action as the TSP may reasonably request to:
 - (A) dispute, resist, appeal, compromise, defend, remedy or mitigate that claim; or
 - (B) enforce the Secretary of State's rights in relation to that claim; and

(ii)



provided that the TSP shall indemnify and hold harmless the Secretary of State against all Loss incurred by the Secretary of State as a result of such request made by the TSP;

- (c) the Secretary of State shall not admit liability in respect of or settle any claim without first obtaining the TSP's prior written consent, such consent not to be unreasonably withheld or delayed, and, if unreasonably withheld or delayed, to be the subject of indemnification by the TSP as provided for in Clause 12.5(b);
- (d) where the TSP exercises its right pursuant to Clause 12.5(b)(ii) to request exclusive conduct of any proceedings, the TSP shall keep the Secretary of State informed of the progress of the relevant claim, and shall consult with the Secretary of State prior to the TSP taking any decision material to the conduct of that claim, including any admission of liability by the TSP or the settlement or compromise by the TSP of that claim; and
- (e) where:
 - (i) the TSP does not exercise its right pursuant to Clause 12.5(b)(ii) to exclusively conduct any proceedings within thirty (30) days of the date of the notification referred to in Clause 12.5(a); or
 - (ii) the Secretary of State does not consent to the TSP exclusively conducting any such proceedings,

the TSP shall, at its own cost, provide any assistance required by the Secretary of State to:

- (A) dispute, resist, appeal, compromise, defend, remedy or mitigate the relevant claim; or
- (B) enforce the Secretary of State's rights in relation to the relevant claim,

provided that where the Secretary of State and the TSP agree that such claim is covered under any insurance maintained by the TSP in relation to the Project, the Secretary of State may (in her sole discretion):

- (I) pursue such claim under the relevant insurance and as soon as reasonably practicable notify the relevant insurer(s) of her intention to pursue such a claim;
- (II) conduct such claim in consultation with and acting on the instructions of the relevant insurer(s); and
- (III) not take any action or fail to take any reasonable action which would entitle the relevant insurer(s) to refuse to pay such claim under the relevant insurance policy.

13. INSURANCE

The provisions of Schedule 5 (*Insurance*) shall have effect between the parties and each party shall comply with its respective obligations thereunder.

14. EXPIRY, EVENTS OF DEFAULT, TERMINATION AND FORCE MAJEURE

- (a) With effect on and from the date that is six (6) months prior to the RV Date, the TSP shall comply with its obligations set out in Annex B (*Expiry of the Contract Period*) of Appendix D (*Handover Protocol*) to Part D (*TSP Default*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*).
- (b) The provisions of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*) shall have effect between the parties and each party shall comply with its respective obligations thereunder.
- (c) Notwithstanding any other provisions of this Agreement, this Agreement shall only terminate in accordance with the express provisions of this Agreement.
- (d) The provisions of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*) are subject to the Funder Direct Agreement, the Network Rail Direct Agreement and the BRBR Direct Agreement.

15. FINANCE ARRANGEMENTS

The provisions of Schedule 7 (*Finance Arrangements*) shall have effect between the parties and each party shall comply with its respective obligations thereunder.

16. VARIATIONS

The provisions of Schedule 8 (*Variations*) shall have effect between the parties and each party shall comply with its respective obligations thereunder.

17. CHANGE IN LAW

The provisions of Schedule 9 (*Change in Law*) shall have effect between the parties and each party shall comply with its respective obligations thereunder.

18. **INTELLECTUAL PROPERTY**

The provisions of Schedule 10 (*Intellectual Property*) shall have effect between the parties and each party shall comply with its respective obligations thereunder.

19. **INFORMATION AND CONFIDENTIALITY**

The provisions of Schedule 11 (*Information and Confidentiality*) shall have effect between the parties and each party shall comply with its respective obligations thereunder.

20. **DISPUTE RESOLUTION**

20.1 The parties shall enter into the Dispute Resolution Agreement on the Commencement Date and, with effect from such date, the Dispute Resolution Agreement shall have effect between the parties and each party shall comply with its respective obligations thereunder.

20.2 The Secretary of State shall procure that, upon the entering into of the Initial TARA by the Initial Relevant Operator, the Initial Relevant Operator accedes to the Dispute Resolution Agreement in accordance with its terms.

21. **NOTICES**

21.1 Any notice, notification or other communication under or in connection with the matters specified in Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*), or any 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 following addresses:

To the Secretary of State for Transport at:

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

Attention: Director – Major Projects and London

To the TSP at:

Address: 4th Floor
4 Copthall Avenue
London
EC2R 7DA

Attention: Chief Executive Officer

or such other address in the United Kingdom as each party may specify by notice in writing to the other party by giving at least five (5) Business Days' notice.

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

- (a) in accordance with Clause 21.1 (except that it shall be marked for the attention of the Secretary of State's Representative or TSP Delivery Manager as appropriate); or
- (b) by facsimile:
 - (i) if to the Secretary of State to +44 (0) 207 944 4399 marked for the attention of the Secretary of State's Representative; or
 - (ii) if to the TSP, to +44 (0) 20 3402 2734 marked for the attention of the TSP Delivery Manager; or
- (c) by email:
 - (i) to the Secretary of State's Representative at an email address to be specified for such purposes from time to time; or
 - (ii) to the TSP Delivery Manager at an email address to be specified for such purposes from time to time,

or such other address in the United Kingdom, facsimile number or email address as each party may specify by notice in writing to the other party by giving at least five (5) Business Days' notice.

Deemed Receipt

- 21.3 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 if delivered between 09.00 hours and 17.30 hours on a Business Day (otherwise on the next occurring Business Day);
 - (b) if sent by pre-paid first class post, from and to any place within the United Kingdom, three (3) Business Days after posting unless otherwise proven;
 - (c) if sent by facsimile, upon sending, subject to confirmation of completed transmission to the intended recipient; and
 - (d) if sent in electronic form, when actually received in readable form and only if addressed in such a manner as specified under Clause 21.2(c).

22. MISCELLANEOUS

Cumulative Rights

- 22.1 Each of the Secretary of State's and the TSP's rights and remedies under this Agreement are cumulative and may be exercised as often as either of them considers appropriate. Any failure to exercise or any delay in exercising any of such rights shall not operate as a waiver or variation of that or any other such right, any defective or partial exercise of any of such rights shall not preclude any other or further exercise of that or any other such right, and no act or course of conduct or negotiation on either party's part or on its behalf shall in any way preclude that party from exercising any such right or constitute a suspension or any variation of any such right.

Further Assurance

22.2 Subject to Clause 17, each of the parties agree, at its own expense, to perform (or procure the performance of) all further acts and things within its control, and execute and deliver (or procure the execution and delivery of) such further documents, as may be required by Applicable Laws and Standards (save where Applicable Derogations apply) or as may be necessary or reasonably desirable to implement and/or give effect to this Agreement and the transactions contemplated by this Agreement.

Waivers

- 22.3 (a) No term or provision of this Agreement shall be considered waived by any party to it unless a waiver is given in writing by that party.
- (b) No waiver under Clause 22.3(a) shall be a waiver of a past or future default or breach, nor shall it amend, delete or add to the terms, conditions or provisions of the remaining parts of this Agreement except where expressly provided herein.

Severability

22.4 If any term, condition or provision contained in this Agreement shall be held to be void, invalid, unlawful or unenforceable to any extent, such term, condition or provision shall not affect the validity, legality or enforceability of the remaining parts of this Agreement.

Entire Agreement

22.5 This Agreement and the other Project Documents contain the entire agreement between the parties in relation to the subject matter of this Agreement and supersede all prior agreements and arrangements between the parties. In addition, 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 for a breach of the terms of this Agreement, to the exclusion of all other rights and remedies (including those arising in tort or arising under statute).

Counterparts

22.6 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. Delivery of a counterpart of this Agreement by e-mail attachment shall be an effective mode of delivery.

Third Party Rights

22.7 A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement (but this does not affect any right or remedy of a third party which exists or is available apart from under that act).

General Obligations

- 22.8 (a) The TSP shall co-operate with the Secretary of State and act reasonably and in good faith in and about the performance of its obligations and the exercise of its rights pursuant to this Agreement.
- (b) The Secretary of State shall act reasonably and in good faith in and about the performance of her obligations and the exercise of her rights pursuant to this Agreement.

Amendment

22.9 No amendment to this Agreement shall be valid unless it is in writing and signed by both parties.

23. RESTRICTIONS ON TRANSFER

23.1 Subject to Clauses 23.2 and 23.3:

(a) neither party to this Agreement nor any Significant Contractor may assign, transfer, novate or otherwise dispose (whether by virtue of any Legislation or any scheme pursuant to any Legislation or otherwise) of any of its rights and/or obligations under this Agreement or such Significant Contract; and

(b) neither the TSP nor the Maintainer may assign, transfer, novate or otherwise dispose (whether by virtue of any Legislation or any scheme pursuant to any Legislation or otherwise) of any of its rights and/or obligations under any Depot Lease Agreement,

without the prior written consent of the other party or all other parties (as applicable), such consent not to be unreasonably withheld or delayed.

23.2 The TSP may assign and/or charge all or any of its rights under this Agreement or any Significant Contract by way of security to any bank, holder of debt securities, financial institution, hedge counterparty and/or any other person lending money or making other banking facilities available to the TSP in connection with the financing of the Project, or to any financier who provides funds on or in connection with any subsequent Refinancing, or to any person from time to time appointed by any financier to act as security trustee or security agent on behalf of such financier and, subject to the Funder Direct Agreement, any such person or financier may if permitted to do so and subject always to the terms set out in the Funder Direct Agreement, procure the transfer, novation or other disposal of the TSP's rights and obligations under this Agreement on any enforcement of the security under such finance arrangements.

23.3 The Secretary of State shall be entitled to assign, transfer, novate or otherwise dispose of any of her rights and/or obligations under the Project Documents to any person that is:

(a) a Minister of the Crown pursuant to an Order under the Ministers of the Crown Act 1975; or

(b) any other public body whose obligations under the Project Documents are unconditionally and irrevocably guaranteed (in a form reasonably acceptable to the TSP) by the Secretary of State or a Minister of the Crown having the legal capacity, power and authority to perform the obligations under that guarantee and the obligations of the Secretary of State under the Project Documents.

24. CHANGE OF OWNERSHIP

Notification of Change of Ownership

24.1 (a) The TSP shall inform the Secretary of State as soon as reasonably practicable (and in any event, within thirty (30) days) of any Change of Ownership occurring including details thereof.

- (b) The Secretary of State may, not more than twice in any Contract Year, or at any time when a TSP Default is outstanding, require the TSP to inform her, as soon as reasonably practicable and in any event within thirty (30) days of receipt of the Secretary of State's request for details, of any Change of Ownership.

24.2 The TSP's obligations under Clause 24.1 shall, except where a legal transfer of shares has occurred, be limited to the extent of the TSP's awareness, having made all reasonable enquiry.

Restrictions on Change of Ownership

24.3 No Change of Ownership may occur during the Lock-In Period other than any Change of Ownership arising as a consequence of:

- (a) the grant or enforcement of security in favour of the Senior Lenders or the Subordinated Lenders over or in relation to any of the shares of the TSP, MidCo or HoldCo, provided that any document conferring security over any shares has been approved by the Secretary of State (such approval not to be unreasonably withheld or delayed);
- (b) any change in legal or beneficial ownership of any shares that are listed on a recognised investment exchange (as defined in section 285 of the Financial Services and Markets Act 2000);

(c) in the case of:

(i) Hitachi Rail Europe Limited's shareholding in HoldCo:

(A) prior to the GWML Minimum Fleet Acceptance Date, a transfer which does not reduce Hitachi Rail Europe Limited's shareholding below a forty per cent. (40%) total shareholding; or

(B) on and after the GWML Minimum Fleet Acceptance Date, a transfer which does not reduce Hitachi Rail Europe Limited shareholding below a twenty per cent. (20%) total shareholding,

provided that where any transfer has been made by Hitachi Rail Europe Limited pursuant to Clause 24.3(c)(i)(A) and (B) which is not to an Affiliate, the transferee of any such shareholding shall not be subject to the restrictions on change of ownership set out in this Clause 24.3 and its shareholding in HoldCo shall be freely transferrable; and

(ii) John Laing Investments Limited's shareholding in RIGWL and/or RIGWL's shareholding in HoldCo:

(A) prior to the earlier of ECML Financial Close or the GWML Minimum Fleet Acceptance Date (the **JL Release Date**), a transfer which does not reduce John Laing Investments Limited's indirect shareholding in HoldCo (when the percentage of John Laing Investment Limited's direct shareholding in RIGWL is multiplied by the percentage of RIGWL's direct shareholding in HoldCo) below a fifteen per cent. (15%) total shareholding, provided that where any transfer has been made pursuant to this Clause 24.3(c)(ii)(A) which is not to an Affiliate, the transferee of any such shareholding shall not be subject to the restrictions on change of ownership set

out in this Clause 24.3 and the transferee's shareholding in RIGWL and/or the transferee's shareholding in HoldCo (as applicable) shall be freely transferrable;

- (B) after the JL Release Date, any transfer; or
- (C) any transfer to Hitachi Rail Europe Limited or a Laing Affiliate; or
- (d) any transfer by a Shareholder or a shareholder in RIGWL to an Affiliate of such transferor, provided that where this Clause 24.3(d) applies and subsequent to any such transfer (the **Original Transfer**) the transferee at any time during the Lock-In Period ceases to be an Affiliate of the original transferor, it shall be a breach of this Clause 24.3 if the shares or interests which were the subject of the Original Transfer are not within twenty (20) days of the transferee ceasing to be an Affiliate of the original transferor, transferred to that original transferor or any Affiliate of such transferor.

Restricted Share Transfer

- 24.4 The TSP shall obtain the Secretary of State's prior written consent (which may be given subject to conditions) to any Restricted Share Transfer.

25. PAYMENTS

- 25.1 If either party fails to pay any amount payable under this Agreement on the date when it is due, interest will accrue (save where expressly stated otherwise) at the Default Rate on such unpaid amount, calculated on a daily basis, from the due date for payment to the date on which payment is made. All such interest shall be calculated (save where expressly stated otherwise) on the basis of the actual number of days elapsed and a three hundred and sixty five (365) day year.
- 25.2 All payments payable under this Agreement are exclusive of VAT (if any). If, in accordance with the normal VAT regulations, VAT becomes due in respect of any amount paid by the Secretary of State to the TSP as aforesaid, the Secretary of State, on receipt of a proper VAT invoice from the TSP, shall pay the VAT arising on such amounts and shall indemnify the TSP against any claims for the same (and where appropriate the Secretary of State shall increase the payments which would otherwise be required to be made hereunder so that the TSP is left in the same position as it would have been had no VAT been payable).

26. SET-OFF

- 26.1 The TSP shall not be entitled to retain or set off any amount due to the Secretary of State by it, but, subject to Paragraph 5 of Part H (*Calculation and Payment of Termination Sums*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*), the Secretary of State may retain or set off any amount owed to her by the TSP under this Agreement which has fallen due and payable against any amount due to the TSP under this Agreement.
- 26.2 If the payment or deduction of any amount referred to in Clause 26.1 is disputed then any undisputed element of that amount shall be paid and the disputed element shall be dealt with in accordance with the Dispute Resolution Agreement and, where a dispute is decided in favour of the TSP, shall be paid with interest accrued in accordance with Clause 25.

27. GOVERNING LAW AND JURISDICTION

Governing Law

27.1 This Agreement and any non contractual obligations arising out of or in connection with this Agreement shall be governed by, and interpreted in accordance with, English law.

Jurisdiction

27.2 Except as expressly provided in this Agreement by reference to the provisions of the Dispute Resolution Agreement, the English courts shall have exclusive jurisdiction in relation to all disputes arising out of or in connection with this Agreement (including claims for set-off and counterclaims), including disputes arising out of or in connection with: (a) the creation, validity, effect, interpretation, performance or non performance of, or the legal relationships established by, this Agreement; and (b) any non contractual obligations arising out of or in connection with this Agreement. For such purposes each party irrevocably submits to the jurisdiction of the English courts and waives any objection to the exercise of such jurisdiction.

Waiver of Immunity

27.3 The Secretary of State irrevocably and unconditionally:

- (a) agrees that if the TSP brings legal proceedings against her or her assets in relation to this Agreement, no immunity from such legal proceedings (which will be deemed to include suit, attachment prior to judgement, other attachment, the obtaining of judgement, execution or other enforcement) will be claimed by or on behalf of herself or with respect to her assets;
- (b) waives any such right of immunity which she or her assets now has or may in the future acquire; and
- (c) consents generally in respect of any such proceedings to the giving of any relief or the issue of any process in connection with such proceedings including the making, enforcement or execution against any property whatsoever (irrespective of its use or intended use) of any order or judgement which may be made or given in such proceedings.

28. SOLE REMEDY

28.1 Subject to Clause 28.2, where this Agreement or the TARA provides exclusively for any sole rights or remedies in respect of the breach or exercise of the other party's obligations under this Agreement or the TARA, the entitlement to exercise those rights and remedies is to the exclusion of all other rights and remedies (other than available equitable remedies of specific performance and injunctive relief) of the first mentioned party howsoever arising under contract, at common law, under statute or in equity in respect of the circumstances relating to such exercise or breach.

28.2 Nothing in Clause 28.1 shall limit or exclude either party's liability for death or personal injury resulting from its negligence.

29. RELATED LOSS

Notwithstanding any other provisions of this Agreement, to the extent that the Secretary of State is liable to the TSP for any claim arising under this Agreement, the Secretary of

State shall not be entitled to avoid or reduce her liability to the TSP on the basis that the TSP would not (but for this Clause 29) suffer all or part of the relevant loss or damage (**Related Loss**) solely because such Related Loss is incurred by a sub-contractor (of any tier) of the TSP and the sub-contractor's rights to recover such Related Loss from the TSP are deferred, suspended, or dependent upon determination of the extent of entitlement under this Agreement or any sub-contract (of any tier).

SIGNATURE PAGE – MASTER AVAILABILITY AND RELIABILITY AGREEMENT

IN WITNESS whereof the parties hereto have executed this Agreement as a deed on the day and year first written before.

THE CORPORATE SEAL OF THE)
SECRETARY OF STATE FOR)
TRANSPORT IS HEREUNTO)
AFFIXED)

.....
Authenticated by authority of the
Secretary of State for Transport

Executed as a deed by)
AGILITY TRAINS WEST LIMITED)
by a director in the presence of a)
witness:)

Signature.....
Director

Name

Witness signature

Witness name

Witness address

SCHEDULE 1

Set Specification and Design

1. TRAIN TECHNICAL SPECIFICATION AND TRAIN TECHNICAL DESCRIPTION

- 1.1 The Train Technical Specification sets out the Secretary of State's requirements in respect of the Sets, and the TSP shall design, manufacture, engineer, supply, test, commission, deliver and provide the Sets (as appropriate) so that the Sets meet the Train Technical Specification.
- 1.2 The Train Technical Description sets out the method by which the TSP shall perform its obligations in order to achieve the Train Technical Specification and, subject to Paragraph 1.3, the TSP shall perform its obligations in accordance with the Train Technical Description.
- 1.3 The parties agree that the Train Technical Specification shall have priority over the Train Technical Description and, in the event of a conflict between the two, the Train Technical Specification shall prevail. If at any time the TSP becomes aware that there is a conflict between the Train Technical Specification and the Train Technical Description, it shall promptly inform the Secretary of State of such conflict and of the way in which it proposes to reconcile the Train Technical Description with the Train Technical Specification and any such proposal shall be considered and implemented (as proposed or in modified form as appropriate) in accordance with Paragraph 2 and the Design Plan.
- 1.4 Save in respect of a conflict between the Train Technical Specification and the Train Technical Description (to which Paragraph 1.3 shall apply and which shall prevail in any case of uncertainty) in respect of the Relevant TTS Provisions, if and to the extent that the Train Technical Description specifies how the TSP shall satisfy and/or demonstrate compliance with a Relevant TTS Provision and if the TSP designs and delivers a Set that complies with and satisfies the relevant provisions of the Train Technical Description and/or demonstrates compliance with that Relevant TTS Provision in the manner specified in the relevant provisions of the Train Technical Description (as applicable), that Relevant TTS Provision shall be satisfied.
- 1.5 The Train Technical Specification may be amended only by way of a Variation Notice issued in accordance with the Variation Procedure. The Train Technical Description may be amended only by way of a reconciliation in accordance with Paragraph 1.3 or by way of a Variation Notice issued in accordance with the Variation Procedure.

2. DEVELOPMENT OF THE DESIGN AND DESIGN REVIEW

- 2.1 The TSP shall in accordance with the Design Plan prepare and complete, or, where the preparation of the Design Plan has been commenced prior to the Effective Date, continue that preparation to achieve the completion of, the Design for the Sets in order to achieve the Train Technical Specification and (subject to Paragraph 1.3) to comply with the Train Technical Description.
- 2.2 In preparing and finalising the Design, the TSP shall in accordance with the Design Plan:
 - (a) afford the Secretary of State's Representative and the IEP Relevant Operators the opportunity to participate in such preparation and finalisation; and
 - (b) consult with the Secretary of State's Representative and the IEP Relevant Operators in relation to the preparation and finalisation of the Design (taking into

account all reasonable requests and requirements of the Secretary of State's Representative that do not conflict with the TSP's obligations under this Agreement).

3. **AGREED TECHNICAL CHANGES**

Where the TSP and the Secretary of State identify a mutually desirable change to the Design which, other than by application of this Paragraph 3 would lead to a technical breach of Paragraph 1 of this Schedule 1 (*Set Specification and Design*) ("**Agreed Technical Change**"), the parties may agree the proposed Agreed Technical Change at their absolute discretion. The parties agree that once the Agreed Technical Change has been agreed and recorded to the parties' satisfaction in the form of Form 1 set out in Annex F of Appendix D of Schedule 1 (*Set Specification and Design*), the Train Technical Specification and/or the Train Technical Description (as appropriate) and/or the Requirements shall be deemed amended or supplemented by the Agreed Technical Change.

Appendix A to Schedule 1

Train Technical Specification

The agreed form Train Technical Specification with document reference IEP-TECH-REQ-35 Issue 05, initialled for identification purposes and recorded in CD-Rom format.

Appendix B to Schedule 1

Train Technical Description



Appendix C to Schedule 1

Specific Infrastructure Acceptance Issues

1. Infrastructure Compatibility

- 1.1 Subject to the relief set out in this Appendix C (*Specific Infrastructure Acceptance Issues*), the TSP shall be responsible for demonstrating that the Sets are, when performing to the capabilities required of them by the Train Technical Specification, compatible with the infrastructure on the Great Western IEP Network without limitation, which compatibility shall be demonstrated through the Compatibility Review Forum in accordance with Applicable Laws and Standards, provided that this Appendix C (*Specific Infrastructure Acceptance Issues*) shall in no way affect the TSP's obligations in respect of Relevant Approvals pursuant to Appendix E (*Approvals Plan*) of Schedule 1 (*Set Specification and Design*) to the extent that any Acceptance Issue does not impact upon the ability of the TSP to comply with such obligations.
- 1.2 Subject only to Paragraphs 1.3 and 1.4 (and notwithstanding anything else to the contrary in this Agreement), the TSP shall not be responsible for carrying out, nor for the cost of carrying out, any upgrade or other modification of the infrastructure on the Great Western IEP Network.
- 1.3 Paragraph 1.2 is without prejudice to any circumstances where:
- (a) any Set is not compatible with any infrastructure on the Great Western IEP Network;
 - (b) the incompatibility referred to in Paragraph 1.3(a) is due to the Set not being in accordance with the terms of this Agreement; and
 - (c) without prejudice to the relief set out in the remainder of this Appendix C (*Specific Infrastructure Acceptance Issues*), the TSP and the Secretary of State agree that the TSP should carry out, or procure the carrying out of, an upgrade or other modification of the infrastructure on the Great Western IEP Network in order to remedy such incompatibility, rather than any modification of the relevant Set.
- 1.4
- (a) Paragraph 1.2 is also without prejudice to the TSP being responsible for carrying out, or for procuring the carrying out of (in each case at the cost of the TSP), any upgrade or other modification of any infrastructure (other than any Swansea Maliphant OHLE Infrastructure prior to the implementation of an OHLE Variation (in relation to which an Authority to Proceed has been issued in accordance with Paragraph 4.1 of Part C (*Additional Procedural Aspects of Variations*) of Schedule 8 (*Variations*)) in accordance with its terms) that is located within a Depot or which comprises the connection between any Depot and the Great Western IEP Network (and for the avoidance of doubt no such infrastructure shall form part of the Great Western IEP Network for the purposes of this Appendix C (*Specific Infrastructure Acceptance Issues*)).
 - (b) For the avoidance of doubt, but without prejudice to Clause 12 (*Indemnity*), the Secretary of State shall be responsible for procuring that Network Rail procures, installs, commissions, operates and maintains at its own cost all Swansea Maliphant OHLE Infrastructure and all required power supplies and connections to

the Great Western IEP Network provided that the Secretary of State shall be released from such obligation to procure that Network Rail operates and maintains all Swansea Maliphant OHLE Infrastructure in accordance with an OHLE Variation (in relation to which an Authority to Proceed has been issued in accordance with Paragraph 4.1 of Part C (*Additional Procedural Aspects of Variations*) of Schedule 8 (*Variations*)) implemented in accordance with its terms.

1.5 The Secretary of State shall not withhold the issue of any Acceptance Certificate in respect of a Type of Set or a Set solely because any Swansea Maliphant OHLE Infrastructure is not fully installed, commissioned and in operation at the time such Set is presented for Type Acceptance or Final Acceptance in accordance with Paragraph 2.1 or Paragraph 5.1 of Part A (*Testing and Acceptance*) of Schedule 2 (*Introduction into Service*) (as applicable).

2. **DELAYED DELIVERY OF DESIGNATED INFRASTRUCTURE**

It shall be a Delayed Acceptance Event if any Designated Infrastructure does not possess its Designated Infrastructure Characteristics on its Delivery Date.

3. **TEMPORARY OPERATING RESTRICTIONS**

3.1 The provisions of this Paragraph 3 shall apply where:

- (a) the TSP is not (but for this Paragraph 3) entitled to either a Type Acceptance Certificate or a Qualified Type Acceptance Certificate in respect of any Type of Set solely as a result of any one or more Acceptance Issues;
- (b) the Secretary of State considers (following consultation with the Relevant Operator and the TSP) that the relevant Type of Set is capable of operating effectively in revenue earning service on the Great Western IEP Network subject to one or more operating restrictions to account for the relevant Acceptance Issues; and
- (c) the Secretary of State proposes, following consultation with the Relevant Operator and the TSP:
 - (i) appropriate operating restrictions in respect of the relevant Type of Set (including, if appropriate, implementing speed restrictions for certain parts of the Great Western IEP Network or agreeing appropriate actions by the Relevant Operator under the Relevant Operator's Safety Management System); and
 - (ii) appropriate modifications to the Diagrams in respect of the relevant Type of Set and appropriate modifications to the Dispatch Requirements in respect of such Type of Set to reflect such modifications to the Diagrams (which shall, in each case, in all other respects comply with the requirements of the TARA).

3.2 Any Acceptance Issue, either on its own or together with any other Acceptance Issue, shall be the sole cause for the purposes of Paragraph 3.1(a) notwithstanding that other grounds have subsisted that rendered the TSP incapable of achieving the requirements for the issue of either a Type Acceptance Certificate or a Qualified Type Acceptance Certificate provided that such Acceptance Issues continue to subsist after the date on which those other grounds cease to subsist, and the provisions of this Paragraph 3 shall

apply in respect of and to the extent of such period during which the relevant Acceptance Issue continues to subsist.

3.3 Where this Paragraph 3 applies:

- (a) the Secretary of State shall not withhold the issue of any Type Acceptance Certificate (or qualify any Type Acceptance Certificate) in respect of a Type of Set solely because of one or more Acceptance Issues in respect of which appropriate operating restrictions have been proposed;
- (b) where the Secretary of State proposes to issue a Qualified Type Acceptance Certificate in respect of a Type of Set pursuant to Paragraph 3 of Part A (Testing and Acceptance) of Schedule 2 (*Introduction into Service*) the TSP shall not withhold its consent in respect of the issue of such Qualified Type Acceptance Certificate solely because of one or more Acceptance Issues in respect of which appropriate operating restrictions have been proposed by the Secretary of State pursuant to Paragraph 3.1(c)(i);
- (c) the Secretary of State shall record such operating restrictions in a Certificate of Temporary Specific Infrastructure Acceptance Conditions;
- (d) the Relevant Operator shall modify the Diagrams and the Dispatch Requirements in respect of such Type of Set in the manner proposed pursuant to Paragraph 3.1(c)(ii);
- (e) the Secretary of State shall not and the Relevant Operator shall not, withhold the issue of any Acceptance Certificate (or qualify any Acceptance Certificate) in respect of a Set of such Type solely because of one or more Acceptance Issues in respect of which appropriate operating restrictions have been recorded in a Certificate of Temporary Specific Infrastructure Acceptance Conditions; and
- (f) where the Relevant Operator proposes to issue a Qualified Acceptance Certificate in respect of such Set pursuant to Paragraph 6 of Part A (*Testing and Acceptance*) of Schedule 2 (*Introduction into Service*) the TSP shall not withhold its consent in respect of the issue of such Qualified Acceptance Certificate solely because of one or more Acceptance Issues in respect of which appropriate operating restrictions have been recorded in a Certificate of Temporary Specific Infrastructure Acceptance Conditions,

and the TSP shall at all times co-operate fully with the Relevant Operator so that the Relevant Operator may exercise any and all of its rights pursuant to the TARA in respect of each Set of a Type in respect of which a Certificate of Temporary Specific Infrastructure Acceptance Conditions has been issued, subject only to any such operating restrictions and any such modifications to the Diagrams and the Dispatch Requirements.

3.4 Any Certificate of Temporary Specific Infrastructure Acceptance Conditions shall list in appropriate detail any Acceptance Issue subsisting at the time of such Certificate of Temporary Specific Infrastructure Acceptance Conditions and the operating restrictions to be enforced in respect of the relevant Type of Set in response to such Acceptance Issue.

3.5 The Secretary of State shall issue to the TSP the Certificate of Temporary Specific Infrastructure Acceptance Conditions upon the issue by the Secretary of State of either a Type Acceptance Certificate or a Qualified Type Acceptance Certificate in respect of the

relevant Type of Set to the TSP in accordance with Part A (*Testing and Acceptance*) of Schedule 2 (*Introduction into Service*).

3.6 Following the completion of any upgrade or other modification of the Great Western IEP Network, the provisions of Paragraph 1.2 of Appendix E (*Approvals Plan*) of Schedule 1 (*Set Specification and Design*) shall apply *mutatis mutandis* and the TSP shall:

- (a) comply with all obligations in respect of Relevant Approvals arising hereunder; and
- (b) fulfil all such obligations as soon as reasonably practicable following the date on which the relevant upgrade or modification is completed, such that the relevant Acceptance Issue is no longer subsisting.

3.7 Where the TSP has complied with its obligations pursuant to Paragraph 3.6, with effect from the date that the new or amended Relevant Approvals relating to the completion of such upgrade or other modification of the Great Western IEP Network are obtained in respect of each Type of Set:

- (a) the relevant Acceptance Issues shall no longer be subsisting in respect of the Great Western IEP Network for the purposes of this Appendix C (*Specific Infrastructure Acceptance Issues*);
- (b) the TSP and the Secretary of State shall countersign an amended Certificate of Temporary Specific Infrastructure Acceptance Conditions in respect of each Type of Set in acknowledgement that the relevant Acceptance Issues are no longer subsisting, and the TSP shall provide a copy of such countersigned Certificate of Temporary Specific Infrastructure Acceptance Conditions to each of the Secretary of State and the Relevant Operator;
- (c) the Relevant Operator shall be entitled to operate each Set of such Type free and clear of any operating restrictions pertaining to the relevant Acceptance Issues (but at all times in accordance with the terms of the TARA relating to such Set); and
- (d) the Secretary of State shall procure that the Relevant Operator shall as soon as reasonably practicable further modify the Diagrams and the Dispatch Requirements in respect of the relevant Type of Set to reflect that the relevant Acceptance Issues are no longer subsisting and that any operating restrictions pertaining to such Acceptance Issues are no longer in force (provided that such Diagrams and such Dispatch Requirements shall in all other respects comply with the requirements of the TARA).

4. **NO TEMPORARY OPERATING RESTRICTIONS**

4.1 The provisions of this Paragraph 4 shall apply where:

- (a) the TSP is not entitled to either a Type Acceptance Certificate or a Qualified Type Acceptance Certificate in respect of any Type of Set solely as a result of any one or more Acceptance Issues; and
- (b) the Secretary of State considers (following consultation with the Relevant Operator) that the relevant Type of Set is not capable of operating effectively in revenue earning service on the Great Western IEP Network whether with or without one or more operating restrictions,

and in such circumstances the Secretary of State shall notify the TSP and the Relevant Operator of such fact.

4.2 Any Acceptance Issue, either on its own or together with any other Acceptance Issue, shall be the sole cause for the purposes of Paragraph 4.1(a) notwithstanding that other grounds have previously subsisted that rendered the TSP incapable of achieving the requirements for the issue of either a Type Acceptance Certificate or a Qualified Type Acceptance Certificate provided that such Acceptance Issue continues to subsist after the date on which those other grounds cease to subsist, and the provisions of this Paragraph 4 shall apply in respect of and to the extent of such period during which the relevant Acceptance Issue continues to subsist.

4.3 It shall be a Delayed Acceptance Event if and for so long as the provisions of this Paragraph 4 apply.

5. COSTS OF THE TSP

5.1 Where the TSP, in exercising its rights and performing its obligations pursuant to this Agreement and the TARA (in each case modified by Paragraph 3 or 4), reasonably incurs expenditure in excess of such expenditure that the TSP would have incurred in exercising its rights and performing its obligations pursuant to this Agreement in circumstances where no Acceptance Issue had arisen, the Secretary of State shall, on written notice accompanied by appropriate evidence, reimburse the TSP for the amount of such excess expenditure.

5.2 Without prejudice to Paragraph 5.1, where a Certificate of Temporary Specific Infrastructure Acceptance Conditions in respect of any Set specifies that sufficient electrification of the Great Western IEP Network has not been completed to allow such Set to operate on the Great Western IEP Network within the Diagrams relating to such Set, the amount of excess expenditure to be reimbursed to the TSP shall include the increased maintenance costs resulting from the increased use of the self powered mode of any Bi-Mode Set to the extent that the TSP is not reimbursed in respect of such excess expenditure through TARA Payments.

6. SWANSEA MALIPHANT OHLE INFRASTRUCTURE

6.1 The parties shall meet as regularly as is necessary to discuss and progress the OHLE Works. The parties shall act in good faith and use reasonable endeavours, by a process of iterative discussion and exchange of information, to agree any deliverables required and activities to be undertaken to progress the OHLE Works.

6.2 The Secretary of State shall procure that the TSP, the Maintainer and/or the Manufacturer has the right to comment on and raise objections in respect of the proposed design and/or procurement and/or testing and acceptance process of the proposed OHLE Works undertaken by or on behalf of Network Rail provided that the nature and scope of any such right shall be equivalent to the rights the Secretary of State has against Network Rail and its subcontractors in respect of the OHLE Works.

6.3 The Secretary of State shall use all reasonable endeavours to procure that upon the implementation of the OHLE Variation (in relation to which an Authority to Proceed has been issued in accordance with Paragraph 4.1 of Part C (*Additional Procedural Aspects of Variations*) of Schedule 8 (*Variations*)) an Acceptable Warranty is provided to the TSP, Maintainer and Manufacturer unless the subcontractor at any level engaged to provide all or a substantial element of the OHLE Works is the TSP, the Maintainer or any Affiliate of

the TSP or of the Maintainer. Provided that such Acceptable Warranty is provided where applicable and the OHLE Works have been undertaken in accordance with all Applicable Laws and Standards and are materially consistent with the Base Design the parties acknowledge and agree that there shall be no material and adverse change in risk for the TSP in performing its obligations or on its liabilities or the risk of any Deductions under this Agreement and any TARA arising from a defect in the OHLE Works.

6.4 For the purposes of Paragraph 6.3 the parties acknowledge and agree that the OHLE Works shall be materially consistent with the Base Design if any difference between the OHLE Works as built and the Base Design does not, or could not, have an adverse effect on the performance of the TSP's obligations or on its liabilities (including Deductions) under this Agreement or any TARA.

6.5 If the Secretary of State is not able to procure that upon the implementation of the OHLE Variation (in relation to which an Authority to Proceed has been issued in accordance with Paragraph 4.1 of Part C (*Additional Procedural Aspects of Variations*) of Schedule 8 (*Variations*)) an Acceptable Warranty is provided to the TSP, the Maintainer and the Manufacturer where the subcontractor at any level engaged to provide all or a substantial element of the OHLE Works is not the TSP, the Maintainer or any Affiliate of the TSP or of the Maintainer, the parties acknowledge and agree that:

- (a) there may be a change in risk for the TSP in performing its obligations under this Agreement and any TARA arising from a defect in the OHLE Works; and
- (b) to compensate the TSP for any such change in risk a Revised Input of capital cost of two million pounds Sterling (£2,000,000) shall be incorporated into the Run of the Financial Model in accordance with Part G (*Runs of the Financial Model*) of Schedule 8 (*Variations*).

6.6 The parties further acknowledge and agree that the Revised Input referred to in Paragraph 6.5(b) above is not subject to the right to refer a Revised Input to determination pursuant to the terms of the Dispute Resolution Agreement in accordance with Paragraph 6.1 of Part G (*Runs of the Financial Model*) of Schedule 8 (*Variations*).

6.7 The Secretary of State shall be responsible for and shall release and indemnify the TSP and its employees, agents and contractors (including the Sub-Contractors) on demand from and against all liability for:

- (a) death or personal injury;
- (b) loss of or damage to property belonging to the TSP, its employees, agents or contractors;
- (c) any third party action, claims, demands, costs, charges and expenses (including legal expenses on an indemnity basis); and/ or
- (d) Deductions,

which in each case may arise out of or in consequence of the OHLE Works prior to the implementation of an OHLE Variation (in relation to which an Authority to Proceed has been issued in accordance with Paragraph 4.1 of Part C (*Additional Procedural Aspects of Variations*) of Schedule 8 (*Variations*)).

- 6.8 Each of the TSP, its employees, agents and contractors (as applicable) shall take all reasonable steps to minimise and mitigate any Losses referred to in Paragraph 6.7 above.
- 6.9 The TSP shall not admit liability in respect of or settle any claim within the scope of the indemnity set out in Paragraph 6.7(a) to (c) inclusive above without first obtaining the Secretary of State's prior written consent, such consent not to be unreasonably withheld or delayed.
- 6.10 The parties acknowledge and agree that where a Deduction is allocated to the TSP in accordance with the TARA the validity and quantum of such Deduction shall not be challenged under the terms of this Agreement and the Secretary of State shall indemnify the TSP for the amount of the Deduction in accordance with Paragraph 6.7(d) above so as to put the TSP in funds on or before the date that the relevant Deduction is applied in accordance with the TARA.

Annex A of Appendix C to Schedule 1

Designated Infrastructure and Designated Infrastructure Characteristics

(1) Designated Infrastructure	(2) Designated Infrastructure Characteristics		(3) Delivery Date
Controlled infrastructure testing on the East Coast IEP Network	<p>The Transit Route to the test site is gauge cleared.</p> <p>For the purposes of SPZ testing, at least twenty (20) miles of route is gauge cleared and has the following capabilities:</p> <p>25 kV OLE available, receptive to regenerative braking;</p> <p>Capable of one hundred and twenty five miles per hour (125 mph) line speed; and</p> <p>Incorporating sections capable of one hundred and thirty seven point five miles per hour (137.5 mph) line speed to allow over-speed testing to occur.</p>		01/02/2015
Controlled infrastructure testing on the Great Western IEP Network	Diesel Operation	<p>The Transit Route to the test site is gauge cleared.</p> <p>For the purposes of SPZ testing, at least twenty (20) miles of route is gauge cleared and has the following capabilities:</p> <p>BR-ATP operational; and</p> <p>Incorporating sections capable of one hundred and twenty five miles per hour (125 mph) line speed.</p>	01/07/2015
	Electric Operation	<p>The Transit Route to the test site is gauge cleared.</p> <p>For the purposes of SPZ testing, the route between Paddington and Airport Junction is gauge cleared and has the following capabilities:</p> <p>BR-ATP operational;</p> <p>In respect of mileposts 1 to 4.5 (inclusive) line speeds are no lower than the lines speeds as at the Effective Date;</p> <p>In respect of milepost 4.5 and beyond, capable of one hundred and twenty five miles per hour</p>	01/07/2015

(1) Designated Infrastructure	(2) Designated Infrastructure Characteristics		(3) Delivery Date
		(125 mph) line speed; and 25kv OLE cleared for 125mph operation.	
Low traffic testing on the East Coast IEP Network	At least one hundred (100) miles of route is gauge cleared and has the following capabilities: <ul style="list-style-type: none"> • 25 kV OLE available, receptive to regenerative braking; and • Incorporating sections capable of one hundred and twenty five miles per hour (125 mph) line speed. 		01/09/2015
Low traffic testing on the Great Western IEP Network	At least one hundred (100) miles of route is gauge cleared, of which at least sixteen (16) miles between Airport Junction and Bristol Parkway Station is electrified, and has the following capabilities: <ul style="list-style-type: none"> • BR-ATP operational; and • Incorporating sections capable of one hundred and twenty five miles per hour (125 mph) line speed. 		01/09/2015
Normal traffic testing on the East Coast IEP Network	The following routes are all gauge cleared: <ul style="list-style-type: none"> • Kings Cross to Leeds; • Kings Cross to Inverness; and • Kings Cross to Aberdeen. 		01/03/2016
Normal traffic testing on the Great Western IEP Network	The entire Great Western IEP Network is gauge cleared, of which at least twenty (20) miles is electrified and incorporating sections (including the electrified section) capable of one hundred and twenty five miles per hour (125 mph) line speed.		01/03/2016
	BR-ATP operational where fitted.		01/03/2016
Pre-service testing on the Great Western IEP Network	The entire Great Western IEP Network is gauge cleared and has the following capabilities: <ul style="list-style-type: none"> • Sufficient electrification to allow for thirty per cent. (30%) of miles comprising the 2,000 Miles Requirement in respect of each Bi-Mode Set to be achieved using the overhead electrical power supply; and 		01/06/2016

(1) Designated Infrastructure	(2) Designated Infrastructure Characteristics	(3) Delivery Date
	<ul style="list-style-type: none"> • BR-ATP operational where fitted. 	
Electric Type testing on the Great Western IEP Network	Electrification from London Paddington station to Bristol Parkway station is complete.	01/12/2016
Stoke Gifford	Both southern Depot Connections operational.	01/03/2016
North Pole	First Depot Connection to the E&C Line operational.	01/07/2015
	Second Depot Connection to Line 1 operational.	01/06/2016
ETCS Laboratory Facility	The laboratory facility at the Hertford National Integration Facility is made available to the TSP to allow initial trials of the ETCS system.	01/11/2015
ETCS Test Track	Access to the test track, equipped with a compatible version of ETCS as the Sets, at the Hertford National Integration to allow initial trials of the ETCS system.	01/07/2016
Great Western ETCS operational	<p>At least sixteen (16) miles of Great Western IEP Network which has the following capabilities:</p> <ul style="list-style-type: none"> • 25 kV OLE available, receptive to regenerative braking; • Incorporating sections of one hundred and twenty five miles per hour (125 mph) line speed; and • Equipped with ETCS to the same version as has been agreed within the TTS or the ETCS Baseline 3 Option. 	01/09/2017

Annex B of Appendix C to Schedule 1

Acceptance Issues

Compatibility issue	Nature of incompatibility
Bridge resonance	In respect of a Type of Set whose axle spacing, axle weight and total train weight are as described in the Train Technical Description, (provided that the Train Technical Description has not been altered so as to adversely impact on the infrastructure works required to allow such Type of Set to operate without restriction on the Great Western IEP Network) that such Set is not compatible with any part of the Great Western IEP Network with respect to bridge resonance by the date on which the TSP presents a Set of such Type for Type Acceptance.
Electrification	In respect of a Type of Set, that sufficient electrification of the Great Western IEP Network has not been completed to allow such Set to operate on the Great Western IEP Network within the Diagrams relating to such Set.
Gauge	In respect of a Type of Set that generates swept envelopes that are no larger than the swept envelopes generated by the kinematic envelopes in annex F (<i>Contractual KE Details</i>) of the Train Technical Description for each case of cant, curvature and speed, that such Type of Set is not compatible with any part of the Great Western IEP Network with respect to gauge clearance by the date on which the TSP presents a Set of such Type for Type Acceptance.
Pantograph spacing	In respect of a Type of Set whose characteristics relating to the longitudinal location of the pantographs are as described in the Train Technical Description, (provided that the Train Technical Description has not been altered so as to adversely impact on the infrastructure works required to allow such Type of Set to operate without restriction on the Great Western IEP Network) that such Type of Set is not compatible with the overhead line on any part of the Great Western IEP Network with respect to the longitudinal relationship between signal positions, booster transformer overlaps and neutral sections by the date on which the TSP presents a Set of such Type for Type Acceptance.
Stepping distances	In respect of a Type of Set whose stepping distances are as described in the Train Technical Description, (provided that the Train Technical Description has not been altered so as to adversely impact on the infrastructure works required to allow such Type of Set to operate without restriction on the Great Western IEP Network) that such Type of Set is not compatible with any part of the Great Western IEP Network with respect to stepping distances by the date on which the TSP presents a Set of such Type for Type Acceptance.
Inaccessibility of part of the Great Western IEP Network	In respect of a Type of Set, that access is not available to a part of the Great Western IEP Network due to physical inaccessibility of that part of the Great Western IEP Network for a prolonged and uninterrupted period of time and other than as a result of the acts or omissions of the TSP or a Significant Contractor, such that the TSP is unable to obtain any Relevant Approvals which require access to such part of the Great Western IEP Network.

Annex C of Appendix C to Schedule 1

Form of Certificate of Temporary Specific Infrastructure Acceptance Conditions

To: Agility Trains West Limited, 4th Floor, 4 Copthall Avenue, London EC2R 7DA

Date: [●]

Dear Sirs

We refer to the Master Reliability and Availability Agreement dated [_____] 2012 (the **MARA**) between the Secretary of State for Transport (the **Secretary of State**) and Agility Trains West Limited (the **TSP**). Words and expressions defined in the MARA shall, except where otherwise defined herein, bear the same meanings when used herein.

The Secretary of State has today issued a [Qualified] Type Acceptance Certificate in respect of the following Type of Set: [_____] (the **Relevant Type of Set**) pursuant to Part A (*Testing and Acceptance*) of Schedule 2 (*Introduction into Service*) of the MARA.

As at the date hereof, the following Acceptance Issue[s] [is/are] subsisting in respect of the Great Western IEP Network:

[●]

In the circumstances set out in Paragraph 1 of Appendix C (*Specific Infrastructure Acceptance Issues*) of Schedule 1 (*Set Specification and Design*) of the MARA, the Secretary of State, the TSP and [**Relevant Operator**] have agreed the following operating restrictions in respect of Relevant Type of Set:

[●]

Yours faithfully,

By:

Name:

Title:

On behalf of the Secretary of State

The terms of the above are hereby acknowledged for and on behalf of:

Agility Trains West Limited

By:

Name:

Title:

In acknowledgement that, as at [_____] 20[_____] , the following Acceptance Issue is no longer subsisting and the operating restrictions detailed above pertaining to such Acceptance Issue are no longer in force in relation to Relevant Type of Set:

[•]

For and on behalf of:

Agility Trains West Limited

By:

Name:

Title:

Secretary of State

By:

Name:

Title:

[In acknowledgement that, as at [_____] 20[_____] , the following Acceptance Issue is no longer subsisting and the operating restrictions detailed above pertaining to such Acceptance Issue are no longer in force in relation to Relevant Type of Set:

[•]

For and on behalf of:

Agility Trains West Limited

By:

Name:

Title:

Secretary of State

By:

Name:

Title:]¹

¹ To be repeated as required in relation to further Acceptance Issues.

Annex D of Appendix C to Schedule 1
Base Design

Annex E of Appendix C to Schedule 1
Form of Acceptable Warranty

Dated 20[]

1. [CONTRACTOR]
2. [EMPLOYER]
3. **AGILITY TRAINS WEST LIMITED**
4. **[HITACHI RAIL EUROPE LIMITED]**

EMPLOYER COLLATERAL WARRANTY

Relating to Project for

The Swansea overhead lines electrification

THIS DEED is dated

20[]

BETWEEN:

- (1) **[CONTRACTOR]** (registered number: []) a company incorporated in England and Wales and whose registered office is at [] ("**the Contractor**");
- (2) **[NETWORK RAIL INFRASTRUCTURE LIMITED]** [(registered number: 02904587)], a company incorporated in England and Wales and whose registered office is at [Kings Place 90 York Way London N1 7AG ("**the Employer**")];
- (3) **AGILITY TRAINS WEST LIMITED** (registered number: 07930606), a company incorporated in England and Wales and whose registered address is at 4th Floor, 4 Cophall Avenue, London England EC2R 7DA ("**Agility**"); and
- (4) **HITACHI RAIL EUROPE LIMITED** (registered number: 0559854) a company incorporated in England and Wales and whose registered office is at 40 Holborn Viaduct London United Kingdom EC1N 2PB ("**Hitachi**").

BACKGROUND:

- (A) The Contractor has been appointed by [] (the "**Employer**") under a contract dated [] (the "**Contract**") to carry out and complete the part of the Works therein specified (the "**Works**").
- (B) The Contractor is obliged under the Contract to provide a warranty in this form in favour of Agility and Hitachi, each being a "**Beneficiary**" which expression includes its permitted successors in title and assigns.

IT IS NOW AGREED THAT in consideration of the payment of one pound (£1.00) by each Beneficiary to the Contractor, receipt of which the Contractor acknowledges:

1. **Contractor's Warranties**

- 1.1 The Contractor represents, warrants and undertakes to each Beneficiary that it has performed and will continue to perform its obligations, duties and undertakings under the Contract in accordance with the terms of the Contract, complying with all applicable laws and standards.
- 1.2 Without derogation from and in addition to clause 1.1, the Contractor warrants that it has exercised and will continue to exercise such degree of skill, care, diligence and foresight that would reasonably be expected from a skilled and experienced contractor employed to carry out works in the same or similar circumstances to those on the project and on works of a similar scope, nature, complexity and size to the Works in relation to the following:
 - (a) the selection of goods, materials, equipment or plant for the Works; and
 - (b) the satisfaction of any performance requirement or specification of or for the Works.
- 1.3 The Contractor has performed the Works in a regular and diligent manner and in accordance with the specifications (set out in the Contract).
- 1.4 The Contractor warrants, undertakes and represents to the Beneficiary that the Works:
 - (a) meet the requirements of, and are constructed in accordance with:

- (i) the Works specifications;
 - (ii) the Works Information
 - (iii) any method statements;
 - (iv) any Contractor's design; and
- (b) are constructed, manufactured, fabricated, installed and commissioned in a good and workmanlike manner using equipment plant and materials which are new, of satisfactory quality, sound and free from defects in accordance with good industry practice.

1.5 The Contractor has designed and constructed the Works in compliance with all consents, statutory requirements, statutory agreements, law, British Standard Institute Recommendations, Network Rail Requirements, requirements of Codes of Practice, manufacturer's recommendations and the requirements of the Fire Officer and any Fire Officer's Committee, and any requirements and Codes of Practice of Local Authorities affecting the Works and/or the Site current at the time the Works are carried out.

2. **Intellectual Property Rights**

2.1 In this clause:

- (a) "Intellectual Property Rights" means all current and future legal and equitable interests in patents, trade marks, design rights, copyright, know-how and other similar rights, whether or not registered or capable of registration; and
- (b) "Documents" means data, records, reports, documents, manuals, designs, drawings, plans, specifications and other works or materials of any nature in any form or medium (excluding proprietary software)

[Select appropriate option, depending on the IPR provisions in the Contract, once finalised]

[Option 1: Network Rail owns all IPR and Documents prepared under the Contract

2.2 The Employer owns all Intellectual Property Rights in the Documents prepared by or on behalf of the Employer in connection with the Works, including such Documents prepared by or on behalf of the Contractor and its subcontractors and consultants. The Employer confirms that all things necessary to confirm the assignment of the Intellectual Property Rights to the Employer have been effected.

2.3 The Employer hereby grants to each Beneficiary with effect from the date of this Deed or in the case of Documents not yet in existence with effect from the creation of such Documents, an irrevocable, royalty free, non-exclusive and perpetual licence (such licence to remain in full force and effect notwithstanding completion of the Works or the Employer's obligations under the Contract or the termination of the Contract or the determination of the Employer's engagement under the Contract or any dispute under the Contract or under this Deed) to use, copy and reproduce all Intellectual Property Rights and Documents for any purpose connected with the Works and such other purposes as are reasonably foreseeable including, but without limitation, the execution, completion, operation, maintenance, repair, extension, modification, alteration, renewal, demolition, reinstatement, training, lease, sale and advertisement of all or part of the Works. Such licence shall carry the right to grant sub-licences and will be transferable to third parties.

- 2.4 The Employer hereby waives and agrees (and shall procure that the Contractor and its subcontractors and consultants waive and agree) not to assert any moral rights in the Documents pursuant to the Copyright Designs and Patents Act 1988 or any statutory re-enactment or modification thereof.
- 2.5 The Employer agrees on reasonable request at any time and following reasonable written prior notice from a Beneficiary to give that Beneficiary or those authorised by it access to the Documents and to provide copies (including copy negatives and CAD disks) of the Documents at that Beneficiary's expense.
- 2.6 The Employer shall not be liable for the use of such documents for a purpose other than that for which they were prepared.]

[Option 2: Contractor owns the IPR and Documents under the Contract

- 2.2 The Contractor owns all Intellectual Property Rights in the Documents prepared by the Contractor in connection with the Works.
- 2.3 The Contractor hereby grants (and where the Intellectual Property Rights and/or Documents are created by a subcontractor or consultant engaged by the Contractor, the Contractor shall use reasonable endeavours to procure the grant) to each Beneficiary with effect from the date of this Deed or in the case of Documents not yet in existence with effect from the creation of such Documents, an irrevocable royalty-free, non-exclusive and perpetual licence (such licence to remain in full force and effect notwithstanding completion of the Contractor's obligations under the Contract or the termination of the Contract or the determination of the Contractor's engagement under the Contract or any dispute under the Contract or under this Deed) to use, copy and reproduce all Documents for any purpose whatsoever connected with the Works and such other purposes as are reasonably foreseeable including, but without limitation, the execution, completion, operation, maintenance, repair, extension, modification, alteration, renewal, demolition, reinstatement, training, lease, sale and advertisement of all or part of the Works. Such licence will carry the right to grant sub-licences and will be transferable to third parties.
- 2.4 The Contractor hereby waives and agrees (and shall procure that its subcontractors and consultants waive and agree) not to assert any moral rights in the Documents pursuant to the Copyright Designs and Patents Act 1988 or any statutory re-enactment or modification thereof.
- 2.5 The Contractor agrees (and shall procure that its subcontractors and consultants agree) on reasonable request at any time and following reasonable written prior notice from a Beneficiary to give that Beneficiary or those authorised by it access to the Documents and to provide copies (including copy negatives and CAD disks) of the Documents at that Beneficiary's expense.
- 2.6 The Contractor shall not be liable for the use of such documents for a purpose other than that for which they were prepared.]

3. Financial Standing

- 3.1 The Contractor warrants to each Beneficiary that on the date of this Deed it satisfies the Financial Standing Test.
- 3.2 For the purposes of this clause 3, "Financial Standing Test" means that the Contractor's latest audited company accounts for the financial year preceding the date of this Deed

demonstrate minimum net assets of not less than forty million pounds Sterling (£40,000,000) and a gross debt to EBITDA ratio no greater than three point five to 1 (3.5:1).

4. **Professional Indemnity Insurance**

4.1 The Contractor hereby covenants with each Beneficiary that it has effected professional indemnity insurance cover with a limit of indemnity of not less than £10,000,000 (Ten Million Pounds) for any one occurrence or series of occurrences arising out of any one event in relation to the Works. The Contractor shall maintain such insurance at all times until twelve (12) years after Completion (as defined in the Contract) and for such further period during which the Contractor has any liability to each Beneficiary (howsoever arising) under or in connection with this Deed provided that such cover remains available on reasonable commercial rates and terms to competent contractors with good claims records of a similar size and experience as the Contractor having regard (inter alia) to premiums required and policy terms available.

4.2 If for any period such insurance is not available on reasonable commercial rates and terms the Contractor shall inform each Beneficiary and obtain in respect of such period such reduced level of professional indemnity insurance as is available and (subject to each Beneficiary's acceptance) as would be fair and reasonable in the circumstances for the Contractor to obtain.

5. **Notices**

Any notice to be given by either party under this Deed will be sufficiently served if sent by hand, by facsimile transmission or by post to the registered office or if there is none the last known address of the party to be served. Any notice sent by hand will be deemed to be served on the date of delivery and any notice sent by facsimile transmission will be deemed to be served in full at the time recorded on the facsimile report sheet, provided that if any notice sent by hand or facsimile is sent after 4.45 pm on any day it will be deemed to be served on the next working day. Any notice sent by post will be deemed to have been duly served at the expiration of forty eight (48) hours after the time of posting if the end of that period falls before 4.45 pm on a working day and otherwise on the next working day.

6. **Assignment**

Without prejudice to the provisions of clause 7 the benefit of and the rights of any Beneficiary under this Deed may be assigned twice without the consent of the Contractor and the Beneficiary will notify the Contractor in writing following any such assignment specifying the name and address of the assignee and the date of the assignment. The Contractor will not contend that any such assignee is precluded from recovering any loss resulting from any breach of this Deed (whatever the date of such breach) by reason only that that person is an assignee and not the original Beneficiary under this Deed or by reason that the original Beneficiary or any intermediate Beneficiary escaped any loss resulting from such breach by reason of the disposal of any interest in the Site or that original Beneficiary or any intermediate Beneficiary has not suffered any or as much loss.

7. **Other Rights and Remedies**

7.1 The rights and benefits conferred upon each Beneficiary by this Deed are in addition to any other rights and remedies it may have against the Contractor including without prejudice to the generality of the foregoing any remedies in negligence.

7.2 No Beneficiary shall be entitled to make a claim against the Contractor under this Deed to the extent that the loss that is the subject of the claim has already been fully recovered by another Beneficiary under this Deed or otherwise.

8. **No Approval**

The Contractor's obligations under this Deed will not be in any way reduced or extinguished by reason of any inspection or approval of the Documents or attendance at site meetings or other enquiry or inspection which the Beneficiary may make or procure to be made for its benefit or on its behalf.

9. **Prohibited Materials**

9.1 The Contractor warrants that it has complied, and will comply, with the guidance contained in "Good Practice in the Selection of Construction Materials" 1997, by Tony Sheehan, Ove Arup & Partners, published by the British Council for Offices and the British Property Federation.

9.2 The Contractor warrants that it has not used, and will not use, any substances or materials:

(a) generally known at the time of use to be deleterious or hazardous to health and safety or detrimental to integrity or durability in the particular circumstances in which they are specified or used or recognised as deleterious by the Building Research Establishment; or

(b) which do not comply with any applicable British Standard or European Standard or any applicable code of practice

10. **Other Collateral Warranties**

Following a written request from a Beneficiary the Contractor will (unless it has already done so) execute and/or procure that its sub contractors and/or consultants execute a deed of collateral warranty in the relevant form specified in and required by the Contract in favour of that Beneficiary.

11. **Governing Law and Jurisdiction**

This Deed will be construed in accordance with English law and be in all respects subject to the non-exclusive jurisdiction of the English courts.

12. **Third Party Rights**

The parties to this Deed do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

13. **Extent of Liability**

13.1 The rights and benefits conferred upon the Beneficiaries by this Deed are in addition to any other rights and remedies any Beneficiary or the Employer may have against the Contractor including without prejudice to the generality of the foregoing in connection with the Contract or any remedies for negligence.

- 13.2 The aggregate liability of the Contractor to the Beneficiaries under this Deed shall not exceed [the Contract Sum].¹
- 13.3 The Contractor shall not be entitled to any right of set-off or counter-claim against the Beneficiary to which the Contractor may be entitled against the Employer.
- 13.4 No action or proceedings shall be commenced against the Contractor after the expiry of twelve (12) years from the date of completion of the Works as defined under the Contract.
- 13.5 The parties agree that:
- (a) in the event that the Beneficiary makes a claim for loss, liability, damages, expenses and/or commences proceedings against the Contractor under or in connection with this Deed ("**Beneficiary Claim**") and the Employer makes a claim for loss, liability, damages, expenses and/or commences proceedings against the Contractor under or in connection with the Contract ("**Employer Claim**");
 - (b) the Beneficiary Claim and the Employer Claim are made within a period of 28 days of each other (whether or not the Beneficiary Claim is made before or after the Employer Claim);
 - (c) the Beneficiary Claim and the Employer Claim arise out of substantially the same or similar events or circumstances; and
 - (d) the Beneficiary seeks for the Beneficiary Claim to be pursued and requires the Employer Claim to be sub-ordinated to the Beneficiary Claim and serves written notice to the Employer to this effect within the 28 day period referred to in clause 14.2(b),
- then:
- (e) the Beneficiary Claim shall take priority over the Employer Claim and the Employer Claim shall be subordinated to the Beneficiary Claim; and
 - (f) the Employer shall take no further action in pursuing, defending or otherwise in connection with the Employer Claim.

14. **Defects**

- 14.1 The Contractor warrants that it has complied with the defects liability provisions of the Contract. Each Beneficiary shall be entitled to enforce the Contractor's obligations to correct any defect in the Works (a "**Defect**") under the terms of the Contract as if each Beneficiary was named as a joint employer under the Contract.
- 14.2 The Contractor shall, and to suit the convenience of each of the Beneficiaries:
- (a) make good any Defects which any one of the Beneficiaries reasonably considers need making good as a matter of urgency within twenty four (24) hours of receiving such Beneficiary's notification ("**Emergency Defects**"); and
 - (b) make good any Defects which any one of the Beneficiaries reasonably considers to be serious defects or faults within seven (7) days of receiving such Beneficiary's notification ("**Serious Defects**"); and

¹ To equal the amount of the Contract Sum stated in the Contract.

- (c) make good all other Defects notified to the Contractor within four weeks of receipt of the Beneficiary's notification ("**Routine Defects**").
- 14.3 In the event of default by the Contractor, any one of the Beneficiaries shall be entitled to employ other people to correct the Defect and all reasonable, evidenced and actual costs consequent thereon or incidental thereto shall be recoverable by such Beneficiary from the Contractor as a debt.
- 14.4 Any correction works to rectify a defect by other people having to be appointed by a Beneficiary will remain the liability of the Contractor.

This document is executed as a Deed and is delivered on the date stated at the beginning of this Deed.

SIGNED as a deed by

[CONTRACTOR]

acting by a director and its company secretary or two directors

Director:

Director/Company Secretary:

HITACHI RAIL EUROPE LIMITED

acting by a director and its company secretary or two directors

Director:

Director/Company Secretary:

AGILITY TRAINS WEST LIMITED

acting by a director and its company secretary or two directors

Director:

Director/Company Secretary:

Appendix D to Schedule 1

Design Plan

1. INTRODUCTION

- 1.1 This Appendix D (*Design Plan*) is the Design Plan for the purposes of this Agreement (including, Schedule 1 (*Set Specification and Design*)) and sets out the process (the **Design Process**) for identifying and developing the Requirements and developing and completing the design of the Sets so that such design complies with the Requirements.
- 1.2 For the avoidance of doubt, the Design Process pursuant to this Appendix D (*Design Plan*) and the design process pursuant to appendix D (*Design Plan*) of schedule 1 (*Set Specification and Design*) of the ECML MARA (the **ECML Design Plan**) constitute a single process with a single set of rights, discretions and obligations (which, in the case of the TSP, may be exercised or fulfilled (as the case may be) by either the TSP or the ECML TSP in the manner set out below) and:
- (a) to the extent that the TSP or the Secretary of State exercises a right or discretion under this Appendix D (*Design Plan*), such right or discretion will be deemed to have been exercised under both this Appendix D (*Design Plan*) and in respect of the analogous right or discretion in the ECML Design Plan;
 - (b) to the extent that the ECML TSP or the Secretary of State exercises a right or discretion under the ECML Design Plan such right or discretion will be deemed to have been exercised under both the ECML Design Plan and in respect of the analogous right or discretion in this Appendix D (*Design Plan*) and the TSP shall be bound by any such exercise of the right or discretion by the ECML TSP as if it had been exercised by the TSP pursuant to this Appendix D (*Design Plan*);
 - (c) to the extent that the TSP or the Secretary of State fulfils an obligation under this Appendix D (*Design Plan*), such obligation will be deemed to have been fulfilled under both this Appendix D (*Design Plan*) and in respect of the analogous obligation in the ECML Design Plan; and
 - (d) to the extent that the ECML TSP or the Secretary of State fulfils an obligation under the ECML Design Plan, such obligation will be deemed to have been fulfilled under both the ECML Design Plan and in respect of the analogous obligation in this Appendix D (*Design Plan*).
- 1.3 The Design Process shall comprise three (3) stages (each a **Design Review Stage**):
- (a) the Concept Design Review Stage;
 - (b) the Detailed Design Review Stage; and
 - (c) the Final Design Review Stage,
- each as defined and more particularly described in Paragraph 7.
- 1.4 The Design Process establishes:
- (a) how the TSP will design the Sets so that they comply with the Requirements;

- (b) how the TSP will provide assurance to the Secretary of State that the Design complies with the Requirements;
- (c) how the TSP will consult with the Secretary of State and the Third Parties in relation to the development of the Design;
- (d) how comments from the Secretary of State on the Design shall be recorded and will either be accepted by the TSP, and the Design amended accordingly or, if not accepted, how the TSP will provide a reasoned explanation of why such comments have not been accepted; and
- (e) the actions and information required by the TSP from the Secretary of State, the IEP Relevant Operators and any other Third Parties in order for the TSP to complete the Design.

1.5 Throughout the Design Process:

- (a) the TSP shall be responsible for the Design and ensuring compliance with the Requirements;
- (b) when the Secretary of State, the IEP Relevant Operators or any other Third Party is provided with materials relating to the Design and is asked to review and comment on them, the TSP shall provide the Secretary of State, the IEP Relevant Operators and such Third Party with such period of time to review and comment on all such materials as may be specified in the relevant Paragraph of this Appendix D (*Design Plan*) relating to the provision of such materials or, if no period of time is specified in this Appendix D (*Design Plan*) in respect of the materials concerned, a period of ten (10) Business Days to review and comment on such materials, or such other period as the parties may agree;
- (c) the Secretary of State's Representative shall coordinate and manage the inputs of the Secretary of State and the IEP Relevant Operators;
- (d) the TSP Delivery Manager shall coordinate and manage the inputs of any Third Parties;
- (e) the TSP Delivery Manager shall ensure that the Secretary of State's Representative is copied in on all relevant correspondence sent by the TSP to the IEP Relevant Operators, Network Rail or any other Third Party and the TSP Delivery Manager shall, following receipt of a request from the Secretary of State's Representative in accordance with Paragraph 3.3(c) of Part C (*Contract Management*) of Schedule 2 (*Introduction into Service*), provide to the Secretary of State's Representative copies of any relevant correspondence the TSP receives from the IEP Relevant Operators, Network Rail or any other Third Party; and
- (f) the TSP Delivery Manager shall provide the Secretary of State's Representative with all materials and information necessary to enable the Secretary of State's Representative to review and understand the proposed Design and how such Design shall ensure that the Sets comply with the Requirements and any subsequent changes thereto which may impact on the ability of the Sets to comply with the Requirements or may materially impact how the Relevant Operator operates the Sets.

2. DESIGN PROGRAMME

The TSP shall undertake the Design Process in accordance with the Integrated Programme.

3. DESIGN REVIEW PANEL

3.1 The TSP shall establish a design review panel to review the Design in the context of the TSP delivering its obligations relating to the Design Process (the ***Design Review Panel***).

3.2 The Design Review Panel shall comprise representatives of the TSP as selected by the TSP Delivery Manager and representatives of the Secretary of State as selected by the Secretary of State's Representative, and such representatives shall be notified to the other party in advance of each meeting of the Design Review Panel. As a minimum, such representatives shall comprise the TSP's Delivery Manager and the Secretary of State's Representative (or their respective delegates).

3.3 The Manufacturer shall attend each meeting of the Design Review Panel.

3.4 The TSP Delivery Manager may invite any other Third Parties to attend any meetings of the Design Review Panel as considered necessary and appropriate in connection with the particular Design Areas to be considered and the technical input required, provided that the Secretary of State may (taking account of the Design Areas to be considered, the technical input required and any other relevant matters at her discretion) require that any of such third parties do not attend the relevant meeting of the Design Review Panel.

3.5 The Design Review Panel shall meet as specified in the Integrated Programme or (if otherwise agreed in accordance with this Paragraph 3.5) at any other time as reasonably requested by the TSP Delivery Manager provided that the TSP Delivery Manager must give the Secretary of State's Representative a minimum of five (5) Business Days' notice of a meeting to be held in the UK and a minimum of ten (10) Business Days' notice of a meeting to be held outside of the UK and the date of any such meeting shall be as agreed by the parties.

4. DESIGN AREAS

4.1 Prior to the first meeting of the Design Review Panel, the TSP Delivery Manager shall submit for approval by the Design Review Panel a design area breakdown structure (the ***Design Area Breakdown Structure***) which shall break down the Design into discrete design areas (each a ***Design Area***) and for each Design Area shall include a brief description defining the scope of that Design Area. The list for the primary Design Areas is attached as Annex A (*Primary Design Area Work Breakdown Structure*) to this Appendix D (*Design Plan*).

4.2 The scope of review of each Design Area shall be chosen by the TSP in order that the Design may be fully reviewed in discrete manageable packages to the maximum depth necessary in accordance with the requirements of the Design Process.

5. REQUIREMENTS CAPTURE EXERCISE

5.1 As part of the Design Process the TSP shall, during the period beginning on the Effective Date and ending on the date falling six (6) months after the Effective Date (the **Requirements Capture Period**), undertake a requirements capture exercise in order to identify all of the requirements that need to be met in order for the TSP to comply with its obligations (the **Requirements Capture Exercise**):

- (a) under the Technical Documents (the **Technical Document Requirements**);
- (b) in relation to the **Stakeholder Requirements** (being any requirements of relevant stakeholders and the IEP Relevant Operators (in each case, as collated by the Secretary of State and, in the case of the requirements of the IEP Relevant Operators, to include requirements concerning the operational rules, procedures and processes relating to the Sets and the ECML Sets) which are subsequently agreed between the TSP and the Secretary of State); and
- (c) to provide the Related Deliverables,

and, as part of the Design Process, the TSP Delivery Manager and the Secretary of State's Representative shall agree:

- (i) those Technical Document Requirements which are identical in respect of the Sets and the ECML Sets (the **Common Technical Document Requirements**);
- (ii) those Technical Document Requirements which relate only to the Sets and not to any ECML Sets (the **GWML Specific Technical Document Requirements**);
- (iii) those Technical Document Requirements which relate only to the ECML Sets and not to any Sets (the **ECML Specific Technical Document Requirements**);
- (iv) those Stakeholder Requirements which are unaffected by the ECML Specific Technical Document Requirements (the **Common Stakeholder Requirements**); and
- (v) those Stakeholder Requirements which are affected by the ECML Specific Technical Document Requirements.

5.2 For the purposes of this Agreement:

- (a) the Common Technical Document Requirements and the Common Stakeholder Requirements shall be the **Common Requirements**; and
- (b) the Common Requirements and the GWML Specific Technical Document Requirements, as the same may be amended from time to time, shall be the **Requirements**.

5.3 The TSP shall demonstrate to the Secretary of State how the Design will comply with the Requirements through the processes and procedures set out or to be set out in the Design Plan and each of the Testing, Commissioning and Acceptance Plan and the Maintenance Plan.

5.4 The Secretary of State agrees that, subject to the agreement of the parties to the contrary, the TSP shall demonstrate compliance with any Requirements in the manner set out in paragraph N119 of the Train Technical Specification.

6. REQUIREMENTS COMPLIANCE APPROVAL/AGREEMENT

6.1 The TSP shall record how it is to demonstrate and, in due course, how it has demonstrated, to the Secretary of State how the Design and the Related Deliverables comply with the Requirements by making appropriately detailed entries in a requirements compliance book (the **White Book**) and inserting references to any other relevant documentation and the TSP shall make such documentation referred to in the White Book available to the Secretary of State for review upon the Secretary of State's request.

6.2 During the development of the Design and the Related Deliverables the TSP Delivery Manager shall:

- (a) insert each Requirement into a White Book compliance sheet (each a **White Book Compliance Sheet**) which shall be substantially in the form attached as Annex B (*White Book Compliance Sheet*) to this Appendix D (*Design Plan*);
- (b) insert into each White Book Compliance Sheet the relevant references to the relevant Requirement (for example the relevant paragraph from the Train Technical Specification) and any other relevant documentation;
- (c) state in each White Book Compliance Sheet the Type(s) to which the Requirement in that White Book Compliance Sheet relates;
- (d) complete each White Book Compliance Sheet so as to demonstrate compliance in accordance with Paragraph 5.4 and shall state whether such Requirement will be demonstrated:
 - (i) on a Fleet basis, such that demonstration of compliance with the relevant Requirement for the first Type to be presented for Type Acceptance will be sufficient to demonstrate compliance with such Requirement for all subsequent Types; or
 - (ii) on a Type basis, such that compliance with the relevant Requirement will need to be demonstrated for each Type, provided that where compliance with such Requirement has been demonstrated for one Type, the Secretary of State and the TSP shall take appropriate account of any testing or other method of demonstration carried out for such Type when considering whether such Requirement is satisfied for another Type;
- (e) hold each White Book Compliance Sheet in electronic form; and
- (f) identify simulation reports, test results and technical argument, where appropriate, in accordance with the Integrated Programme.

6.3 When a Requirement has been recorded in accordance with Paragraph 6.2 through the insertion of such Requirement, together with the relevant references to such Requirement, into a White Book Compliance Sheet, the TSP Delivery Manager shall provide by email an electronic copy of such White Book Compliance Sheet to the Secretary of State's Representative for review.

- 6.4 The Secretary of State's Representative shall, (subject to Paragraph 6.5) within fifteen (15) Business Days of receiving any White Book Compliance Sheet, or such other period of time as may be agreed by the parties:
- (a) review such White Book Compliance Sheet;
 - (b) collate and review the comments of the Secretary of State and the Relevant Operator; and
 - (c) provide the TSP Delivery Manager with any comments on that White Book Compliance Sheet or confirmation that such White Book Compliance Sheet is agreed.
- 6.5 Within ten (10) Business Days of receiving comments on a White Book Compliance Sheet from the Secretary of State's Representative, or such other period of time as may be agreed by the parties, the TSP Delivery Manager shall submit a revised White Book Compliance Sheet to the Secretary of State's Representative and within ten (10) Business Days of receiving a revised White Book Compliance Sheet, or such other period of time as may be agreed by the parties, the Secretary of State's Representative shall either:
- (a) confirm that he agrees with the revised White Book Compliance Sheet; or
 - (b) advise the TSP Delivery Manager that he does not agree the revised White Book Compliance Sheet and provide the TSP Delivery Manager with his reasons for not agreeing such White Book Compliance Sheet, in which case the TSP Delivery Manager shall submit a further revised White Book Compliance Sheet to the Secretary of State's Representative within ten (10) Business Days of receiving from the Secretary of State's Representative his reasons for not agreeing the revised White Book Compliance Sheet, or such other period of time as may be agreed by the parties.
- 6.6 The process described in Paragraph 6.5 shall continue until the relevant White Book Compliance Sheet is agreed.
- 6.7 Within ten (10) Business Days of the end of the Requirements Capture Period, or such other period as may be agreed by the parties, the Secretary of State's Representative shall, if in his opinion there are Requirements for which a White Book Compliance Sheet has not been completed, notify the TSP Delivery Manager of such Requirements and the relevant reference to the Requirement.
- 6.8 Within ten (10) Business Days of the TSP Delivery Manager receiving any such notification from the Secretary of State's Representative, or such other period of time as may be agreed by the parties, the TSP Delivery Manager and the Secretary of State's Representative shall meet to discuss, in good faith, each Requirement identified within such notice.
- 6.9 If, at such meeting, the TSP Delivery Manager and the Secretary of State's Representative agree that there are Requirements for which a White Book Compliance Sheet has not been completed, the TSP Delivery Manager shall, within ten (10) Business Days of such meeting, or such other period of time as may be agreed by the parties, complete a White Book Compliance Sheet for each such Requirement in accordance with Paragraph 6.2, whereupon the provisions of Paragraphs 6.3 to 6.6 shall apply.

- 6.10 If, at such meeting, the TSP Delivery Manager and the Secretary of State's Representative are unable to agree whether there are Requirements for which a White Book Compliance Sheet has not been completed, either party shall be entitled to advise the other that a Dispute has arisen.
- 6.11 During each of the Concept Design Review Stage, the Detailed Design Review Stage and the Final Design Review Stage, the TSP shall, so far as reasonably practicable, demonstrate in the manner described by the White Book to the Secretary of State that the Design and the Related Deliverables comply or, at the Concept Design Review Stage and Detailed Design Review Stage, are capable of complying, with the Requirements and that at the date of Type Acceptance for each Type, the Sets of that Type will comply with the Requirements relevant to that Type as identified on the White Book Compliance Sheets.

7. DESIGN REVIEW AND REQUIREMENTS

- 7.1 The Design Process shall comprise the Requirements Capture Exercise, the requirements compliance process set out in Paragraph 6 and the three (3) Design Review Stages set out in Paragraphs 7.2 to 7.19 (inclusive).

Concept Design Review Stage

- 7.2 The **Concept Design Review Stage** shall demonstrate, by a series of high-level assessments of the Design (to the extent developed and as presented to the Design Review Panel during the Concept Design Review Stage), that the collective interpretations of the Requirements are consistent, and the Concept Design Review Stage submissions shall demonstrate how the Design and the Related Deliverables, through development in accordance with the Design (to the extent developed during the Concept Design Review Stage), will (when fully developed) comply with the Requirements.
- 7.3 The TSP Delivery Manager will send copies of the Concept Design Review Stage submissions for each Design Area to each member of the Design Review Panel not less than twenty (20) Business Days prior to the relevant meeting of the Design Review Panel or on such other date as may be agreed by the parties.

Detailed Design Review Stage

- 7.4 The **Detailed Design Review Stage** shall demonstrate to the Design Review Panel, by the provision of Design assurance documentation during the Detailed Design Review Stage, that the Design (to the extent developed during the Detailed Design Review Stage) and the Related Deliverables comply with the Requirements. The Detailed Design Review Stage submission shall also:
- (a) include drawings of sufficient detail to allow detailed review and understanding of the relevant Design Area;
 - (b) identify the proposed testing requirements or other methods to demonstrate compliance of the Design and the Related Deliverables with the Requirements;
 - (c) where relevant, include test specifications and such related test results as are required to demonstrate achievement of the test specifications; and
 - (d) include such other adequate Design assurance documentation as may be reasonably necessary to demonstrate compliance of the Design and the Related Deliverables with the Requirements.

- 7.5 The TSP Delivery Manager will send copies of the Detailed Design Review Stage submissions for each Design Area to each member of the Design Review Panel not less than twenty (20) Business Days prior to the relevant meeting of the Design Review Panel or on such other date as may be agreed by the parties.
- 7.6 During the Detailed Design Review Stage, the TSP Delivery Manager shall provide, as a minimum, mock-ups of the following elements of the Design:
- (a) external passenger door and door controls and exterior bodyside section;
 - (b) a full scale composite passenger interior, including representative interior details;
 - (c) a full scale bulk luggage storage area;
 - (d) a full scale cab;
 - (e) a full scale catering area;
 - (f) a full scale level 4 catering point;
 - (g) a full scale standard toilet module; and
 - (h) a full scale universally accessible toilet module.
- 7.7 The mock-ups will be constructed from materials suitable for creating an indicative and representative model (for example, wood, glass, reinforced plastic or other suitable materials). Mock-ups will not necessarily include real sub-components, such as doors, catering equipment or train systems.
- 7.8 Each such mock-up will be provided for the purpose of demonstrating the Design and the Related Deliverables, and gaining agreement from the Design Review Panel that the Design and the Related Deliverables comply with the Requirements.
- 7.9 At any time during or following the construction of any mock-up (an **Interim Mock-Up**), the TSP may convene a meeting of the Design Review Panel in accordance with Paragraph 3 in order to review such Interim Mock-Up (an **Interim Mock-Up Review**) and the Secretary of State's Representative shall provide to the TSP any comments on the Interim Mock-Up that it or its representatives have as soon as reasonably practicable following the Interim Mock-Up Review.
- 7.10 Following any one or more Interim Mock-Up Reviews and the completion of any mock-up, the TSP may designate such mock-up a **Final Mock-Up** and shall agree with the Secretary of State's Representative a date (which shall be a Business Day not less than fifteen (15) Business Days and not more than thirty (30) Business Days following such agreement) on which the Final Mock-Up shall be reviewed by the Design Review Panel in accordance with Paragraph 3, with a view to providing agreement for the purposes of Paragraph 7.11(a) (the **Final Mock-Up Review**).
- 7.11 The Secretary of State's Representative shall, within fifteen (15) Business Days of the Final Mock-Up Review and having collated and considered any comments of any other attendee of the Final Mock-Up Review, confirm to the TSP Delivery Manager in writing that:
- (a) the relevant Final Mock-Up, and the elements of the Design and the Related Deliverables relating thereto, are agreed; or

- (b) the relevant Final Mock-Up is not agreed, and shall provide its comments on that Final Mock-Up.

7.12 Where:

- (a) the Secretary of State's Representative does not confirm its agreement or provide its comments within fifteen (15) Business Days of the Final Mock-Up Review; or
- (b) the Final Mock-Up is not agreed by the Secretary of State's Representative and any comments on the Final Mock-Up provided by the Secretary of State's Representative pursuant to Paragraph 7.11(a) relate to an aspect of the Design:
 - (i) that was capable of being assessed at an earlier stage of the Design Process (including an earlier Design Review Stage or an earlier part of the Detailed Design Review Stage); and
 - (ii) in respect of which the Secretary of State's Representative has failed to raise and record in writing any concern or objection at an earlier stage of the Design Process (including an earlier Design Review Stage or an earlier part of the Detailed Design Review Stage),

the Secretary of State's Representative shall be deemed to have confirmed its agreement on the terms set out in Paragraph 7.11(a).

7.13 Where:

- (a) the Final Mock-Up is not agreed by the Secretary of State's Representative; and
- (b) the comments on the Final Mock-Up provided by the Secretary of State's Representative pursuant to Paragraph 7.11(b) relate to an aspect of the Design:
 - (i) that was not capable of being assessed at an earlier stage of the Design Process (including an earlier Design Review Stage or an earlier part of the Detailed Design Review Stage); or
 - (ii) in respect of which the Secretary of State's Representative has raised and recorded in writing any concern or objection at an earlier stage of the Design Process (including an earlier Design Review Stage or an earlier part of the Detailed Design Review Stage, including any Interim Mock-Up Review),

within ten (10) Business Days of receipt by the TSP Delivery Manager of the comments of the Secretary of State's Representative, or such longer period as may be agreed by the parties, the TSP Delivery Manager and the Secretary of State's Representative shall meet to discuss, in good faith, the comments of the Secretary of State's Representative on the Final Mock-Up.

7.14 Following any such meeting, the TSP shall revise the relevant Final Mock-Up, whereupon the relevant Final Mock-Up shall constitute an Interim Mock-Up and the process described in Paragraph 7.9 to this Paragraph 7.14 (inclusive) shall continue until a Final Mock-Up is agreed.

7.15 On any occasion during the Detailed Design Review Stage that there is a material relevant amendment and/or update to the Design, the TSP shall obtain the further agreement of the Secretary of State's Representative in accordance with Paragraphs 7.9

to 7.14 (inclusive) in respect of any Final Mock-Up that has previously been agreed by the Secretary of State's Representative pursuant to Paragraph 7.11(a) or 7.12.

- 7.16 Each Final Mock-Up Review shall take place in the United Kingdom at a location to be notified in writing by the TSP to the Secretary of State's Representative.
- 7.17 If the TSP wishes to dispose of any Mock-Up at any time, the TSP shall first offer such Mock-Up to the Secretary of State's Representative who shall, within twenty (20) Business Days of such offer, advise the TSP whether the Secretary of State wishes to acquire such Mock-Up (for a cost of one pound Sterling (£1)) and, if the Secretary of State elects to acquire any Mock-Up, the TSP shall deliver such Mock-Up to the Secretary of State's Representative in accordance with its instructions, provided that the Secretary of State shall reimburse, or shall procure that the Relevant Operator reimburses, the TSP for any material costs the TSP incurs through delivering any Mock-Up to the Secretary of State's Representative. The TSP shall be entitled to dispose of any Mock-Up that the Secretary of State elects not to acquire in accordance with this Paragraph 7.17.

Final Design Review Stage

- 7.18 The ***Final Design Review Stage*** shall demonstrate to the Design Review Panel, by the provision of Design assurance documentation during the Final Design Review Stage, that the Design (to the extent developed during the Final Design Review Stage) and the Related Deliverables comply with the Requirements. The Final Design Review Stage shall also:
- (a) include drawings of sufficient detail to allow detailed review and understanding of the relevant Design Area;
 - (b) identify the proposed testing requirements or other methods to demonstrate compliance of the Design and the Related Deliverables with the Requirements;
 - (c) where relevant, include test specifications and such related test results as are required to demonstrate achievement of the test specifications; and
 - (d) include such other adequate Design assurance documentation as may be reasonably necessary to demonstrate compliance of the Design and the Related Deliverables with the Requirements.
- 7.19 The TSP Delivery Manager will send copies of the Final Design Review Stage submissions for each Design Area to each member of the Design Review Panel not less than twenty (20) Business Days prior to the relevant meeting of the Design Review Panel or on such other date as may be agreed by the parties.

Glass Case Standard

- 7.20 The TSP shall use the Design and the Related Deliverables as a basis upon which to determine the Glass Case Standard.

Optimisation of Set weight

- 7.21 Without adding to the Requirements in respect of the weight of the Sets in the Train Technical Specification and the Train Technical Description:

- (a) throughout the Design Process, the TSP shall use reasonable endeavours to optimise the weight of the Sets, subject to compliance with the Requirements and the requirements of Applicable Laws and Standards and Applicable Derogations;
- (b) the TSP shall produce a Set Weight Model and shall provide the Set Weight Model to the Secretary of State along with the last of the Concept Design Review Stage submissions provided by the TSP in accordance with Paragraph 7.5;
- (c) the TSP shall update the Set Weight Model on a periodic basis as agreed by the parties to reflect the emerging Design;
- (d) the TSP acknowledges that members of the Design Review Panel may raise questions regarding the Set Weight Model provided by the TSP at any meeting of the Design Review Panel and that, if any question raised by a member of the Design Review Panel is not answered by the TSP's Representative to the reasonable satisfaction of that member of the Design Review Panel that question shall be logged as an Open Item and shall be dealt with by the TSP in accordance with Paragraph 11; and
- (e) the TSP will develop the seats for the Sets in a way that allows the Secretary of State to have full visibility of the weight issues relating to seats (which shall involve, as a minimum, the TSP providing the Secretary of State with a Seat Weight Model which shall be updated on a periodic basis as agreed by the parties to reflect the emerging Design), provided that in finalising the design of the seats, the TSP shall also comply with the other Requirements and the requirements of Applicable Laws and Standards and Applicable Derogations.

Engines

- 7.22 In respect of the engine to be used in the Sets, the TSP Delivery Manager shall provide to the Secretary of State's Representative as soon as reasonably practicable:
- (a) a copy of the engine specification that the TSP has provided to its engine supplier;
 - (b) in the event the engine supplier is able to offer better fuel efficiency for an additional cost, copies of any cost estimates provided by the engine supplier to the TSP in relation to any such improvements to the engine;
 - (c) copies of any test reports the TSP receives from its engine supplier demonstrating engine efficiency;
 - (d) copies of the test reports for any tests carried out by the TSP which demonstrate engine efficiency; and
 - (e) test reports demonstrating that the emissions are compliant with the Non-Road Mobile Machinery Directive (NRMM) for stage IIIb emissions.

8. PROGRESSIVE DESIGN ASSURANCE

- 8.1 Consultation with the user population will be carried out in accordance with the Integrated Programme in respect of certain Requirements (the **User Consultation Requirements**), as follows:
- (a) passenger user design requirements (for example, interior practicalities (including seat design, including comfort));

- (b) driver design requirements (for example, cab and facilities);
- (c) other staff user design requirements (for example, catering facilities (including trolley storage facilities), train guard facilities, train dispatch, cleaning and control and communication); and
- (d) interior design style requirements (for example, interior aesthetics (including seat design, including comfort)).

8.2 To the extent that any of the User Consultation Requirements relate to the interior design style of the Sets, the Design Vision Style Guide shall be used as the reference when developing relevant elements of the Design and the Related Deliverables.

8.3 To support the consultation process with the user population in respect of the User Consultation Requirements, the Secretary of State shall procure that each IEP Relevant Operator establishes, at its own cost, the following train user review groups within one (1) month of the Effective Date:

- (a) passenger user design review group (to consider issues such as interior practicalities (including seat design, including comfort));
- (b) driver design review group (to consider issues such as cab and facilities);
- (c) other train staff user design review group (to consider issues such as catering facilities (including trolley storage facilities) train guard facilities, train dispatch, cleaning and control and communication); and
- (d) interior design style review group (to consider issues such as interior aesthetics (including seat design, including comfort)),

and the Secretary of State shall, to the extent relevant and reasonably practicable, procure that the train user review groups shall be representative of the User Population (as defined in the Train Technical Specification).

8.4 The TSP shall be entitled to comment on the suitability of the members of each review group and may request that a member of a review group be replaced if, in the TSP's reasonable opinion, that member is unsuitable. So far as reasonably possible, each design review group and the constituent members of that design review group shall be retained for the duration of the design review process under Paragraphs 8.1 to 8.3 (inclusive).

8.5 Annex C (*Description of a User Review Group Process*) of this Appendix D (*Design Plan*) sets out a description of a process involving a user review group. During the period beginning on the Effective Date and ending on the date falling one (1) month after the Effective Date, the TSP shall develop a process based on similar principles as those set out in Annex C (*Description of a User Review Group Process*) in respect of consultation with the relevant user group for each of the User Consultation Requirements and shall submit a description of such processes to the Secretary of State's Representative for review and comment.

9. DESIGN REVIEW MEETING FORMAT

9.1 Design reviews shall be conducted for all the Design Areas proposed by the TSP in accordance with the Integrated Programme or (if otherwise agreed in accordance with this Paragraph 9.1) at any time as reasonably requested by the TSP Delivery Manager,

provided that the TSP Delivery Manager shall give the Secretary of State's Representative a minimum of five (5) Business Days' notice of a meeting to be held in the UK and a minimum of ten (10) Business Days' notice of a meeting to be held outside of the UK and the date of any such meeting shall be as agreed by the parties.

- 9.2 If, in the reasonable opinion of the Secretary of State's Representative, the submissions in respect of the Design Area(s) to be reviewed will require significant data review and/or modelling assessment and that such review and/or assessment cannot be completed within twenty (20) Business Days or such shorter period of time in advance of the relevant meeting of the Design Review Panel as has been agreed by the parties pursuant to Paragraph 7.3, 7.5 or 7.19 (as the case may be), the Secretary of State's Representative will notify the TSP Delivery Manager that he requires an additional period of time to complete the review and/or assessment and the parties shall agree the additional period of time required.
- 9.3 The Secretary of State's Representative will collate and review the comments of the Secretary of State and the IEP Relevant Operators and shall, not less than five (5) Business Days prior to the relevant meeting of the Design Review Panel or on such other date as may be agreed by the parties, advise the TSP Delivery Manager of any questions or matters that require clarification in relation to the compliance of the Design Area(s) with the Requirements.
- 9.4 At a meeting of the Design Review Panel the TSP's representatives shall address each of the questions or matters raised which have been advised to the TSP pursuant to Paragraph 9.3. The TSP Delivery Manager shall provide the Secretary of State with sufficient hard and/or soft copies of any additional material provided by the TSP at the meeting.
- 9.5 During each meeting of the Design Review Panel, each member of the Design Review Panel shall have the opportunity to raise further questions in relation to the Design Area(s) being reviewed at that meeting. All questions or matters raised during the meeting of the Design Review Panel shall be addressed by the TSP's representatives during the meeting and all questions and answers shall be recorded and a copy of such record shall be circulated to the Secretary of State's Representative within ten (10) Business Days of the meeting, or such other period of time as may be agreed by the parties.

10. **DESIGN REVIEW PROCESS**

Following any meeting of the Design Review Panel, the Secretary of State's Representative may, within five (5) Business Days of such meeting, or such other period of time as may be agreed by the parties, provide further comments and/or clarification questions to the TSP Delivery Manager in respect of the Design Areas considered at the meeting of the Design Panel.

11. **MANAGEMENT OF OPEN ITEMS**

11.1 Each:

- (a) question raised by a member of the Design Review Panel in relation to the compliance of the Design and the Related Deliverables with the Requirements which is not satisfactorily answered by the TSP's representatives (to the reasonable satisfaction of each member of the Design Review Panel) at a meeting of the Design Review Panel;

- (b) additional question in relation to the compliance of the Design and the Related Deliverables with the Requirements that is raised by the Secretary of State's Representative following a meeting of the Design Review Panel in accordance with Paragraph 10; and
- (c) change made by the TSP to the Design and the Related Deliverables for a Design Area after a meeting of the Design Review Panel for that Design Area has been completed (where such change affects compliance with any Requirement), in accordance with Paragraph 12.1,

shall be logged as an open item (each an **Open Item**) and shall be recorded on the relevant White Book Compliance Sheet.

- 11.2 All Open Items will be addressed by the TSP in accordance with Paragraphs 11.3 to 11.7 (inclusive).
- 11.3 The TSP Delivery Manager shall update the White Book Compliance Sheets on which any Open Items are recorded as frequently as necessary and following each meeting of the Design Review Panel.
- 11.4 Within a reasonable period of time following the addition of an Open Item to a White Book Compliance Sheet the TSP Delivery Manager shall provide to the Secretary of State's Representative either:
 - (a) such further supporting documentation as is necessary in order to demonstrate, to the reasonable satisfaction of the Secretary of State's Representative, compliance with the relevant Requirement and to allow closure of such Open Item; or
 - (b) an explanation of when and how the TSP proposes to provide further supporting documentation as necessary in order to demonstrate, to the reasonable satisfaction of the Secretary of State's Representative, compliance with the relevant Requirement and to allow closure of such Open Item. For the avoidance of doubt, the TSP Delivery Manager may propose that the further supporting documentation is to be provided in a subsequent Design Review Stage or as part of the Acceptance Process.
- 11.5 Once the TSP has provided further supporting documentation demonstrating, to the reasonable satisfaction of the Secretary of State, compliance with the relevant Requirements set out in the relevant White Book Compliance Sheet, the relevant Open Item shall be marked as closed on the relevant White Book Compliance Sheet and the Secretary of State's Representative shall sign off the relevant Open Item on the relevant White Book Compliance Sheet.
- 11.6 For the avoidance of doubt, any question raised by a member of the Design Review Panel or the Secretary of State's Representative which is not in respect of compliance with the Requirements shall be addressed pursuant to Part C (*Contract Management*) of Schedule 2 (*Introduction into Service*).
- 11.7 Subject to Paragraph 12.1, where an Open Item is to be marked as closed in accordance with Paragraph 11.5, such item shall be considered closed (a **Closed Off Matter**) and no further action will be required by the TSP to demonstrate compliance in respect of such Open Item during any remaining Design Review Stage.

12. CHANGE TO THE DESIGN

- 12.1 If, after a meeting of the Design Review Panel in respect of a Design Area has taken place (but, in any event, prior to the Actual Acceptance Date of the first Set in the Fleet), the TSP makes any change to the Design or the Related Deliverables for that Design Area without the consent of the Secretary of State's Representative:
- (a) to the extent that such change (i) affects compliance with any Requirement, (ii) alters the Sets so as to materially impact how the Relevant Operator operates the Sets and/or (iii) affects the validity of any supporting information or detailed explanation that has already been provided to the Secretary of State's Representative, that change shall be treated as an Open Item and shall be dealt with in accordance with Paragraph 11; or
 - (b) to the extent that such change does not affect compliance with any Requirement but is a material change, the TSP Delivery Manager shall provide to the Design Review Panel sufficient information to enable it to understand the change to the Design or the Related Deliverables (as applicable) and within ten (10) Business Days of such submission, or such other period of time as may be agreed by the parties, the Secretary of State's Representative may provide clarification questions to the TSP Delivery Manager in respect of such change.
- 12.2 A list of proposed changes to the Design and/or the Related Deliverables shall be provided by the TSP Delivery Manager to the Secretary of State's Representative on a bi-monthly basis in the period prior to the Actual Acceptance Date of the first Set in the Fleet.

13. MAJOR INCIDENTS, DAMAGE AND VANDALISM SUPPORTING INFORMATION

- 13.1 Together with the last set of Detailed Design Review Stage submissions to be provided by the TSP Delivery Manager to the Design Review Panel, the TSP shall provide to the Secretary of State's Representative:
- (a) a list of the number of Major Incident Spares a Reasonable Train Service Provider would hold in respect of the Fleet; and
 - (b) a list of the number of Damage and Vandalism Spares a Reasonable Train Service Provider would hold in respect of the Fleet,

in each case in a format substantially the same as the tables included at Annex D (*Major Incidents, Damage and Vandalism Supporting Information*) to this Appendix D (*Design Plan*), together with a detailed written explanation for any changes to the content of the tables set out in Annex D (*Major Incidents, Damage and Vandalism Supporting Information*) to this Appendix D (*Design Plan*) of Schedule 1 (*Set Specification and Design*).

- 13.2 Within fifteen (15) Business Days of receiving the information specified in Paragraph 13.1, or such other period of time as may be agreed by the parties, the Secretary of State's Representative shall review the information provided and shall provide the TSP Delivery Manager with any comments he has on the information provided, or confirm that the lists are agreed.
- 13.3 If the Secretary of State's Representative provides comments on the information provided, within ten (10) Business Days of the TSP receiving such comments, or such

other period of time as may be agreed by the parties, the TSP Delivery Manager and the Secretary of State's Representative shall meet to discuss such comments in good faith.

- 13.4 The TSP shall submit revised drafts of the lists specified in Paragraph 13.1, together with a supporting explanation if applicable, within ten (10) Business Days of such meeting, or such other period as may be agreed by the parties, for review by the Secretary of State's Representative.
- 13.5 Within ten (10) Business Days of receiving the revised information from the TSP, or such other period of time as may be agreed by the parties, the Secretary of State's Representative shall review the information provided and either:
 - (a) confirm that the lists are agreed; or
 - (b) provide the TSP's Delivery Manager with any further comments he has on the information provided.
- 13.6 If the Secretary of State's Representative provides further comments on the information, within ten (10) Business Days of the TSP receiving such comments, or such other period of time as may be agreed by the parties, the TSP Delivery Manager and the Secretary of State's Representative shall meet to discuss such comments in good faith, following which, within ten (10) Business Days of such meeting, or such other period of time as may be agreed by the parties, the TSP shall submit revised drafts of the lists specified in Paragraph 13.1, together with a supporting explanation if applicable, for review by the Secretary of State's Representative.
- 13.7 The TSP shall continue to revise and resubmit drafts of the lists specified in Paragraph 13.1, together with a supporting explanation if applicable, to the Secretary of State's Representative for review in accordance with Paragraphs 13.5 and 13.6 until the lists are agreed.
- 13.8 If at any time after the second re-submission of the lists specified in Paragraph 13.1 the TSP considers that the Secretary of State is unreasonably withholding agreement, the TSP shall be entitled to refer the matter for resolution in accordance with the Dispute Resolution Agreement. In determining the Dispute, the Expert and/or the Arbitrator (as applicable) shall have regard to (*inter alia*):
 - (a) in respect of the number of the Major Incident Spares and Damage and Vandalism Spares to be held by the TSP:
 - (i) the operational experience of the Relevant Operator and operators of similar passenger rail services in the United Kingdom in respect of the frequency that such spares are required;
 - (ii) the normal delivery time for such spares;
 - (iii) the cost of such spares (assessed on a Costs Plus Basis);
 - (iv) the requirements of this Agreement and the TARA; and
 - (b) in respect of the indicative time for common repairs/replacements, an observation of the actual repair/replacement task being undertaken, such observation to be carried out prior to the first Set being presented for Acceptance.

13.9 Once agreed or determined in accordance with this Paragraph 13, the lists of spares set out in Table 1 and Table 2 of Annex D (*Major Incidents, Damage and Vandalism Supporting Information*) of this Appendix D (*Design Plan*) shall be replaced with the lists as so agreed or determined.

14. ANCILLARY EQUIPMENT AND SPECIAL TOOLS

14.1 Together with the last set of Detailed Design Review Stage submissions to be provided by the TSP Delivery Manager to the Design Review Panel, the TSP shall provide to the Secretary of State's Representative a proposed list of Ancillary Equipment and Special Tools.

14.2 Within fifteen (15) Business Days of receiving the information specified in Paragraph 14.1, or such other period of time as may be agreed by the parties, the Secretary of State's Representative shall review the list provided and shall provide the TSP Delivery Manager with any comments he has on the list provided, or confirm that the list is agreed.

14.3 If the Secretary of State's Representative provides comments on the list provided, within ten (10) Business Days of the TSP receiving such comments, or such other period of time as may be agreed by the parties, the TSP Delivery Manager and the Secretary of State's Representative shall meet to discuss such comments in good faith.

14.4 The TSP shall submit a revised draft of the list specified in Paragraph 14.1, together with a supporting explanation if applicable, within ten (10) Business Days of such meeting, or such other period as may be agreed by the parties, for review by the Secretary of State's Representative.

14.5 Within ten (10) Business Days of receiving the revised list from the TSP, or such other period of time as may be agreed by the parties, the Secretary of State's Representative shall review the list provided and either:

(a) confirm that the list is agreed; or

(b) provide the TSP's Delivery Manager with any further comments he has on the list provided.

14.6 If the Secretary of State's Representative provides further comments on the list, within ten (10) Business Days of the TSP receiving such comments, or such other period of time as may be agreed by the parties, the TSP Delivery Manager and the Secretary of State's Representative shall meet to discuss such comments in good faith, following which, within ten (10) Business Days of such meeting, or such other period of time as may be agreed by the parties, the TSP shall submit a revised draft of the list specified in Paragraph 14.1, together with a supporting explanation if applicable, for review by the Secretary of State's Representative.

14.7 The TSP shall continue to revise and resubmit drafts of the list specified in Paragraph 14.1, together with a supporting explanation if applicable, to the Secretary of State's Representative for review in accordance with Paragraphs 14.5 and 14.6 until the list is agreed.

14.8 If at any time after the second resubmission of the list specified in Paragraph 14.1 the TSP considers that the Secretary of State is unreasonably withholding agreement, the TSP shall be entitled to refer the matter for resolution in accordance with the Dispute Resolution Agreement.

15. **MONITORING THE PROGRESS OF DESIGN REVIEWS**

Progress against the Integrated Programme and the Open Items will be monitored at the Delivery Review Meetings as required, and either party will be entitled to call ad hoc meetings with reasonable notice at a time reasonably convenient to both parties as required from time to time to discuss further matters relating to the Integrated Programme or the Open Items.

16. **RELEVANT OPERATOR EQUIPMENT**

In relation to Relevant Operator Equipment, the provisions of Annex E (*Relevant Operator Equipment*) of this Appendix D (*Design Plan*) shall have effect between the parties and the Relevant Operator, and each party and the Relevant Operator shall comply with its respective obligations thereunder.

17. **CATERING EQUIPMENT**

17.1 The parties agree that, subject to Paragraph 17.2, the Catering Equipment shall be the catering equipment to be provided by the TSP for the purposes of Annex B (*List of Systems to be Commissioned*) of Appendix A (*Testing, Commissioning and Acceptance*) to Part A (*Testing and Acceptance*) of Schedule 2 (*Introduction into Service*) for the purpose of obtaining Final Acceptance of each Set.

17.2 At any time prior to the conclusion of the Final Design Review Stage, the Relevant Operator may provide to the TSP in writing a revised list of catering equipment and, provided that:

- (a) the total price of the catering equipment comprising such revised list of catering equipment is no more than the total price of the Catering Equipment; and
- (b) the inclusion of such catering equipment in the Design shall not cause any delay to the Delivery Schedule,

then the TSP shall agree to the revised list of catering equipment and such catering equipment shall, from the date of such agreement, constitute the Catering Equipment for the purposes of Annex B (*List of Systems to be Commissioned*) of Appendix A (*Testing, Commissioning and Acceptance*) to Part A (*Testing and Acceptance*) of Schedule 2 (*Introduction into Service*).

17.3 Subject to Paragraph 17.2, the parties acknowledge and agree that the inclusion of any type of catering equipment that at the relevant time falls outside the definition of Catering Equipment is subject to the consent of the TSP, such consent not to be withheld unless the TSP is of the view that the inclusion of such type of Catering Equipment will increase the risk that the TSP will incur Deductions, Notifiable Events and/or Remedial Events.

Annex A of Appendix D to Schedule 1

Primary Design Area Work Breakdown Structure

1. Vehicle engineering (including flexibility, weight, noise, ride, gauging and passenger flow/stepping distance);
2. Vehicle performance (including journey time, energy consumption, current draw, acceleration and balancing speeds);
3. Vehicle body (including structure, welding, painting, corrosion protection, crashworthiness, aerodynamics, gangways and windows/windscreen);
4. Couplers (including draw gear);
5. Bogie (including running gear, wheelsets, wheel profile and VTISM);
6. Cab and facilities;
7. Doors internal and external;
8. Power collecting device (including pantograph);
9. Propulsion and auxiliary power supply system;
10. Auxiliary power distribution (including batteries);
11. Brake system (including air supply, system architecture, WSP, sanders and regenerative braking);
12. Interior fittings (including seat, table, luggage, blind, lighting and installation of PA, PIS, CCTV, passenger counting system and seat reservation system);
13. Exterior fittings (including livery, and installation of PIS, BIL and lights);
14. Water and sanitary system;
15. Heating, ventilation and air conditioning (HVAC);
16. Functional operation of the train systems (including ETCS, TPWS, BR-ATP, APC, DOO/DGO, train control including mode of operation, driver advisory system, energy consumption monitoring, GSM-R, AVI, TMS, SDO, lighting, PA, PIS, CCTV, passenger counting system, seat reservation system, BIL and vehicle end lighting);
17. Infrastructure compatibility/monitoring (including gauging, 2 pantograph operation, RA, FF CCTV and UGMS);
18. Catering facilities;
19. Train guard's facilities;
20. Fire and emergency facilities;
21. Diesel power pack including ancillary stems (e.g. exhaust, urea system and fuel tank);
22. Train-shore data communication; and

23. Software and system integration.

Annex B of Appendix D to Schedule 1

White Book Compliance Sheet

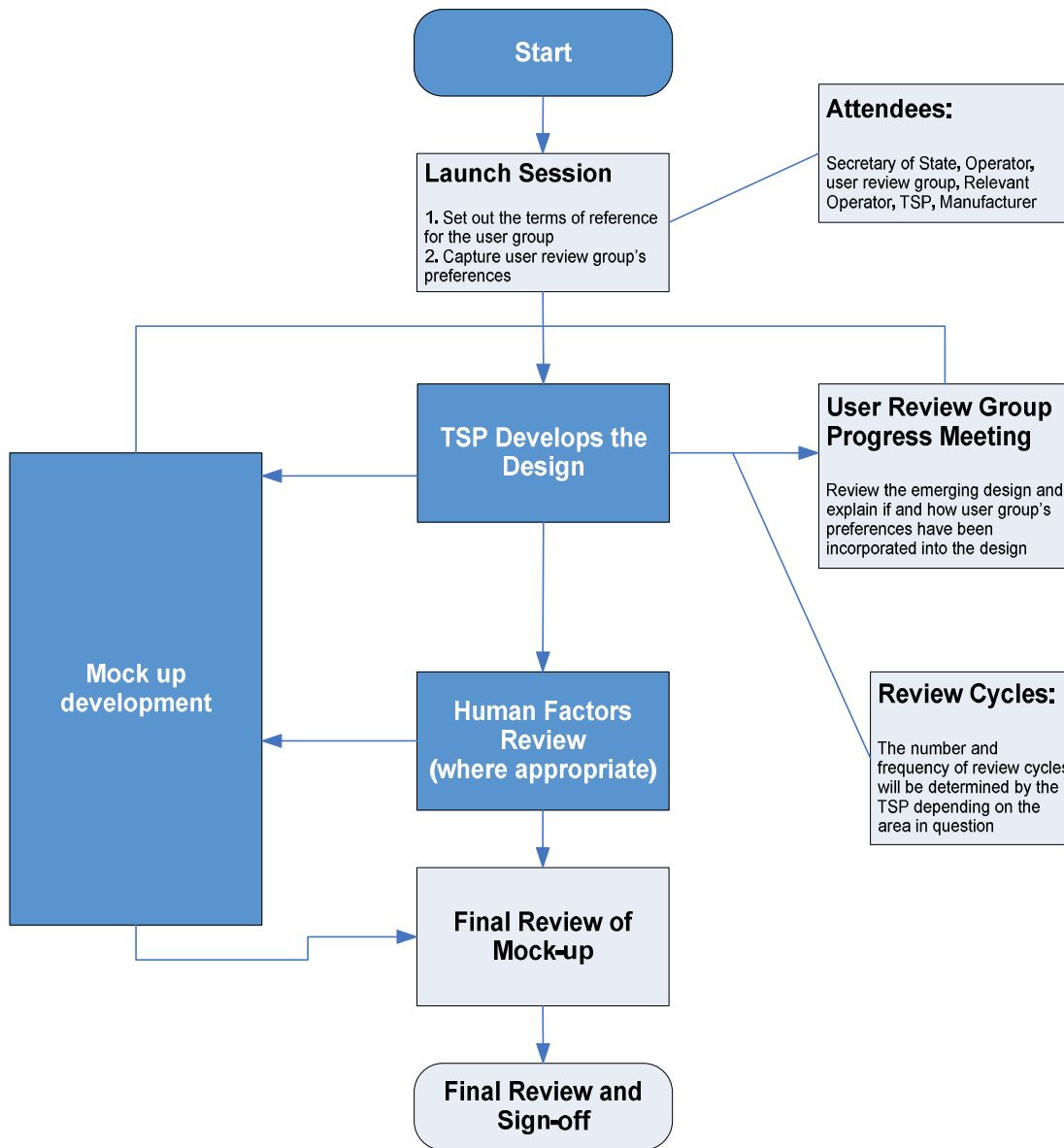
Customer Requirement Compliance Sheet	
Contract / Customer Specification Clause Number:	
Clause text:	Include text from spec.
Reference Documentation:	
System(s) / Sub-System(s) Affected	TBC, based on the Design Area Breakdown matrix.
Additional Clarification of Clause Requirements:	Specifically include assumptions we have made about how the Clause is interpreted – what certain key words mean (such as "Equivalent"); what conditions we have assumed would be in place; if there are any operational limitations or assumptions; etc.
Maintenance input/clarification in respect of this Clause:	Details to be added the Maintainer.
How Compliance will be demonstrated:	

Design Review Schedule					
What will be delivered for each stage of review					
Documentation to Demonstrate Compliance	Concept Design Review Stage	Detailed Design Review Stage	Final Design Review Stage	Train Acceptance	Sign Off
Drawings					
Simulation					

Test								
Documents								
Technical Argument								

Annex C of Appendix D to Schedule 1

Description of a User Review Group Process



Annex D of Appendix D to Schedule 1

Major Incidents, Damage and Vandalism Supporting Information

TABLE 1: LIST OF MAJOR INCIDENT SPARES	
Description of Major Incident Spare	Number
Side extrusion (window)	17
Side extrusion (no window)	9
Impact assembly L/H	9
Impact assembly R/H	9
Front end structure	9
Lower windscreen framing assembly	2
Central w/screen frame L/H	2
Central w/screen frame R/H	2
Upper w/screen area extrusion	1
Streamline assembly	3
Cab side window extrusion L/H	1
Cab side window extrusion R/H	1
Cab door frame assembly L/H	1
Cab door frame assembly R/H	1
Cab desk R/H assembly	1
Cab desk centre assembly	1
Bodyend complete	1
Override impact area extrusion L/H	1
Override impact area extrusion R/H	3
Gangway door extrusion frame	4
Misc bodyend extrusions	4
Intermediate coupler fixing extrusion	2
T Slot section 3m	5
Misc U'frame extrusions	4
3m Extrusion section L/H - R/H	2

Window extrusion frame L/H	2
Window extrusion frame R/H	2
Misc bodyside extrusions	4

TABLE 2: LIST OF DAMAGE AND VANDALISM SPARES	
Description of Damage and Vandalism Spare	Number
Gen Unit (GU)	3
GU Fuel Tank	3
Front Windscreen (Lower)	10
Front Windscreen (Upper)	10
Windscreen Side Unit (Left)	10
Windscreen Side Unit (Right)	10
Manual Swing Door (Left)	2
Manual Swing Door (Right)	2
Manual Swing Door (Saloon)	2
Pantograph Complete	10
Frame Assembly	1
Lower Arm Assembly	1
Upper Arm Assembly	1
Balancing Bellows – Pantograph	1
Head Assembly	30
Adjusting Rod Assembly	2
APIM Assembly	2
Crossing Roof Assembly	2
Mechanism Of Limitation	2
Pneumatic Valve Assembly	2
Vacuum Circuit Breaker (VCB)	5
Power Collection Control Panel	2
Inter-Car Jumper	4
Traction Converter Complete	2

Gate Control Logic Unit	1
Oil Pump	1
Blower	1
Main Transformer	2
Converter (AC/DC For DM)	1
Power Unit (Line Converter & Traction Inverter)	1
Power Unit (Line Converter, Traction Inverter And Brake Chopper)	1
Blower	2
Control Logic Unit	1
Gate Driver For Inverter	2
High Speed Circuit Breaker (HB)	1
Line Breaker (LB1)	1
Line Breaker (LB2)	1
Line Breaker (LB3)	1
Ac Charge Contactor (AK)	2
Ac Contactor (K1 And K2)	2
Auto Voltage Regulator (AVR)	2
Reactor Box (Filter L+Chopper L)	2
Induction Traction Motor (Without Coupling)	6
Filter Reactor	2
T/M Blower Fan	2
Brake Resistor	6
Discharge Resistor Box	2
Auxiliary Power Supply Completion	3
Power Unit (Inverter And Cutoff IGBT (Ivhb)	1
Control Logic Unit	1
Gate Driver For Inverter	2
Gate Driver For Ivhb	2
Line Breaker (DCK)	1
Line Breaker (BSK)	1

Line Breaker (ACK)	1
Auto Voltage Regulator (AVR)	2
AC Filter Reactor	2
Rectifier Unit	2
Ac Filter Capacitor	2
Output Transformer	2
Relay Circuit (GR)	2
Relay PCB (RY-208(F))	2
Battery	1
Voltage Detection Circuit Board	2
Contactor Box	2
Battery Charger Completion	1
Auxiliary Transformer	2
Rectifier Unit	2
Output Current Limit Resistor	2
Surge Absorber For The Rec	2
Dc Earthing Detection Circuit For The Battery Charger	2
Contactor Box	2
Contactor Panel	2
Contactor Panel	2
Relay Panel-2A	2
Relay Panel-A	2
Relay Panel-B	2
Relay Panel-1A	2
Relay Panel-1B	2
Relay Panel-1C	2
Train Control Relay Board 1A	4
Train Control Relay Board 2A	4
Train Control Relay Board 1B	4
Train Control Relay Board 2B	4

Train Control Relay Board 3A	4
Train Control Relay Board 3B	4
Switch Panel 1A (Saloon MCB Panel)	2
Switch Panel1B (Saloon MCB Panel)	2
Switch Panel 2 (Saloon MCB Panel)	2
Switch Panel 3 (Saloon MCB Panel)	2
Switch Panel A (Saloon MCB Panel)	2
Switch Panel B (Saloon MCB Panel)	2
Switch Panel (Saloon MCB Panel)	2
Brake Frame Vehicle	1
BCU Control Unit	2
Speed Sensor For Brake System (T Car)	4
Speed Sensor For Brake System (M Car)	12
Air Generation And Treatment Unit	2
Check Valve 1"	2
Pressure Switch 10,0÷6,5±0,2 Bar Set	2
Pressure Switch 10,0÷8,5±0,2 Bar Set	2
Pressure Switch 6,5÷5,4±0,2 Bar Set	2
Main Air Reservoir	4
Auxiliary Compressor	6
Suspension Reservoir	4
Reducing Valve 7,5±0,1 Bar	4
Check Valve 1"	2
Sanding Equipment Left	10
Sanding Equipment Right	10
Cut-Out Cock With Drain And 1 Micro Dn15	2
Magnet Valve Type E/Rp-2 110Vdc Without Exhaust	2
Integrate Relay Valve 110 Vdc	2
Limiting Pressure Valve Low Pressure	2
Limiting Pressure Valve High Pressure	2

Reducing Valve Type Mini Gd 6,7±0,1 Bar Set	2
Levelling Valve	8
Coupler Hatch Device	2
Magnet Valve Type E/Rp-2 110 Vdc	2
Magnet Valve Type E/Rp-1 110 Vdc	2
Cut-Out Cock With Drain And Micro Dn15	2
Magnet Valve Type E/Rp-2 110 Vdc	2
Three Switch Horn Valve	2
Antislid Panel	2
Pressure Transducer	4
Electro Magnetic Valve	4
Air Piping Unit For Coupling	2
Central Unit + OTMR	1
Terminal Unit (中間)	1
IC Card Reader/Writer	2
IC Card	2
Wind Screen Wiper System	2
Wiper Arm	20
Actuator Brot4E Twin	2
Command Module Wiping	2
Support & Linkage	2
Cab Desk Panel 1	2
Cab Desk Panel 2	2
Cab Desk Panel 3	2
Cab Desk Panel 4 (Door Control Panel)	2
Isolation Switch Panel	2
Master Controller	2
"CPBC (Combined Power Brake Controller)"	2
DSD Pedal	6

Vigilance Controller	2
Coupling/Uncoupling Pneumatic Control Box	2
Video Recorder Jet Transtore 3Cd	4
Removable Cassette With 2 Hard Disks	4
Removable Cassette With 1 Hard Disks	4
Saloon Colour Video Camera 6mm Lens	4
Saloon Colour Video Camera 8mm Lens	4
External Colour Video Camera (Doo)	4
Driver/Steward Cab Monitor Jet View 12"	2
5"5 Pal Steward Monitor	2
Colour Video Camera Front Facing 12mm Lens	2
Pilon Pc (Infocontroller)	4
Cab Communication Unit Including Handset.	2
Guards Communication Unit Including Handset.	2
Central Car Interface	4
Central Car Interface A	2
Central Car Interface B	4
Pau (Passenger Alarm Unit) Door	8
CFA For Wheelchair Position	2
Front Display External	2
Side Display External	4
Internal Double Sided Led 16X180 Dots, Pitch 4mm, Yellow Display.	4
Internal Single Sided Led 16X180 Dots, Pitch 4mm, Yellow Display.	4
Pis Display Cover	4
Front Cover Set	17
Front Skirt Set	17
Side Skirt	40
Front Cover (Fixed Department)	6
Front Cover Open And Close Device	4
Gangway Complete	2

Flexible Treadplate	2
Fixed Treadplate	2
Control Unit	2
Obstacle Deflector Assy	4
Bogie Truck Assembly (Motor)	8
Bogie Frame	4
Air Spring	8
Traction Link	6
Anti-Rolling Equipment	8
Brake Calliper	4
Brake Calliper With Parking Brake	4
Wheel Set (M)	16
Reduction Gear	12
Coupling	12
Axle Box	16
Ground Device	8
Bogie Truck Assembly (Trailer)	6
Bogie Frame	4
Brake Calliper	8
Brake Calliper With Parking Brake	8
Wheel Set (T)	16
Motor Cc – UAT door	2
Intermediate Tank	2
WC EVAC UAT	2
Door Electronic Controller	2
Vacuum Pump	2
Door Leaf UAT	2
Intermediate Tank	2
WC EVAC SST	2
Vacuum Pump	2

Door Leaf SST	2
External Passenger Sliding Door	8
Door Operating Equipment (L)	4
Rail Mechanism (L)	4
Dp-30 Door Actuator (L)	8
Magnet Valve Unit (L)	4
Door Close Detection Switch (DCS) L	4
Door Operating Equipment (R)	4
Rail Mechanism (R)	4
Dp-30 Door Actuator (R)	8
Door Close Detection Switch (Dcs) R	4
"Air-Tightening Pressing Device Ac-1E (R)"	4
"Air-Tightening Pressing Device Ac- 1 E (L) With Detection Switch"	4
Header Mechanism	8
Door Leaf, Left	4
Door Leaf, Right	4
Automatic Coupler	2
Semi Permanent Coupler Half	4
Semi Permanent Coupler Half	4
Roof Unit (Saloon Hvac)	4
Compressor (Saloon Hvac)	4
Evaporator Coil A	4
Evaporator Coil B	4
Condensor Coil A	4
Condensor Coil B	4
Converter	4
Inverter	4
Evaporator Fan	4
Condenser Fan	4

Exhaust Fan	4
Control Unit	4
Roof Unit (Cab Hvac)	2
Floor Fan Heater	6
Electric Control Unit	2
Supply Air Fan Bulkhead	2
Fire Detection Control Unit	2
Driver's Seat	10
Co-Driver's Seat	2
Std Double Seat	10
First Double Seat	4
First Single Seat	2
Tip-Up Seat+Table	2
Combination Microwave	6
Combination Steam Oven	6
Water Heater	2
Hot Water Machine For Trolley	3
Coffee Machine	6
UV Steriliser	3
Water Filter/Softener	2
Chiller For 3 Carts	2
Toaster	6
Radiant Grill	6
Plate Warming Cupboard	2
2/3 Rds Atlas Type Carts	2
"Waste Bins Trolley (2/3 Rds Atlas Type Carts)"	2
Svr400 Cab Radio	2
Antenna	10
Cable (Cab Radio- Antenna)	2
Control Panel	2

Handset	10
Loudspeaker	10
Control Unit	2
TPWS Receiver (Combined Type)	2
Power Supply	2
Control Panel	2
Temporary Isolation Switch	2
AWS Acknowledge Button	20
Alarm And Indicator	2
Drivers Machine Interface (DMI)	6
E-AWS Receiver	20
APC Interface Unit	1
Fan Rack	2
EVC Rack	1
RTM Rack	1
Power Supply For Evc/Rtm	1
GSM-R (Data) Rack	2
GSM-R Antenna	6
BSM Rack	1
Balise Antenna	2
JRU Rack	1
RLU Rack (Relay Logic Unit)	1
TIU Board (Train Interface Unit)	1
Changeover Unit	2
DMI	2
Backlight For DMI	2
Speed Sensor	10
Doppler Radar	12
Antenna With Junction Box	4
Cab Display	4

Data Entry	4
Speed Sensor	2
Std Ceiling Panel	20
Bodyend Complete	4
Misc Bodyside Extrusions	10
25KV Insulator	6
Carbon Strip	80
Add Valve Assembly	6
Earthing Braided Strap	6
Single Tone Horn High	6
Single Tone Horn Low	6
Wiper Blade With Rubber	80
Desk Illumination Selector Switch	3
Reading Light Switch	3
Cab Lighting Switch	3
Door Close/Interlock Switch	3
Open Doors Switch	3
ADD Indicator	3
Pan Up	3
Emergency Pan Down	3
Line Volt Indicator	3
VCB/MCB Indicator	3
Safety System Isolation Indicator	3
Train Wash Switch	3
Front Couple Preparation. Switch	3
Rear Couple Preparation. Switch	3
Couple Switch	3
Dimmer Switch	3
Emergency Brake Switch	3
Uncouple Switch	3

Sander Switch	3
Demister	3
Door Close/Interlock Switch	3
Door Release Switch (1)	3
Door Release Switch (2)	3
Unit Hatch Close Switch	3
Saloon Lighting Switch	3
Pantograph Selection Selector Switch	3
Cab Lighting Switch	3
Break Override Footswitch	3
Driver's Reminder Appliance (DRA)	10
BR-ATP Antenna	3
Driver's Display Unit For BR-ATP	3
APC Receiver	20
TPWS Antenna	12
Drivers Handset	3
Cab Communication Unit Including Handset.	3
Guards Communication Unit Including Handset.	3
Guard Pis Operating Panel	3
Central Car Interface	3
PAU(Passenger Alarm Unit) Door	20
CFA(Call For Aid) For Toilet	6
CFA For Wheelchair Position	6
Front Display External	6
PIS Cover	6
Handset	3
Sun Visor	3
Flexible Treadplate	3
Fixed Treadplate	3
Bellows Assembly (Gangway)	3

Head Light Unit LHS	10
Head Light Unit RHS	10
High Level Marker Light	10
Drivers Display & Switch Panel	6
Cab Step Light	10
Yaw Damper	40
Lateral Damper	40
Lateral Bump Stop Rubber	10
Brake Pad	170
Primary Vertical Damper	40
Back Flush Unit	6
Close Push-Button	6
Lock Push-Button	3
Open Push-Button	8
Hand-Dryer Push-Button	6
WC Flush Push-Button	6
Hand-Dryer	6
Coat Hook	12
Paper Dispenser	6
Lighting Glass For Fluorescents	3
Lighting Glass For Spot	3
Wash-Basin UAT	3
Soap Dispenser	6
Mirror UAT	10
Electronic Tap	6
Lower Guide	3
Baby Changing Table	6
Litter Bin UAT	3
Floor Covering (complete vehicle inc. saloon, vestibule and toilets)	3
Door Rubber	3

Indicator "Engaged"	3
Indicator "Locked"	3
Indicator "Out Of Order"	3
Door Brush	3
Handle	6
Seat And Cover WC	6
Litter Bin Cover SST	3
Wash-Basin SST	3
Mirror SST	10
Door Window	20
Door Edge Sensor	20
Emergency Egress Device (EED)	10
Egress Handle Cover	20
Emergency Access Device (EAD)	10
PAU Cover	20
Cab To Saloon Door Lock	6
Door Out Of Use Indicator (Inside)	6
Door Out Of Use Key Switch	6
Coupling Head	6
Gathering Horn	6
2 Litre Foam Extinguisher	20
2 Litre Bracket	20
2 Litre Strap	20
6 Litre Foam Extinguisher	20
6 Litre Bracket	20
Luggage Racks	3
Cab Door Lock Cylinder	6
Panini Grill	6
Hob	6
Hot Water Machine	3

Hand Wash Basin	3
Shutter For Counter	6
Driver's seat arm rests	12
Co-driver's seat arm rest	6
Driver's seat cushion	12
Co-driver's seat cushion	6
Std seat arm rest	60
1st seat arm rest	10
Bodyside window	40
Seat back tables	40
Tables	10
Window blinds	20
Seat cushions	50
Saloon litter bins	8

Annex E of Appendix D to Schedule 1

Relevant Operator Equipment

- 1.1 If the Relevant Operator wishes the TSP to install any Relevant Operator Equipment on any Set, the Secretary of State shall procure that, at least six (6) months before the Scheduled Acceptance Date of the first Set in the Fleet the Relevant Operator notifies the TSP in writing providing details of the Relevant Operator Equipment that the Relevant Operator wishes the TSP to install and the Set or Sets that are affected.
- 1.2 Within twenty (20) Business Days of receipt of such notification, the Secretary of State, the Relevant Operator and the TSP shall seek to agree:
- (a) the scope of the works the Relevant Operator requires the TSP to undertake;
 - (b) an installation programme (which shall be in accordance with Paragraph 1.3 and shall ensure that the installation of the Relevant Operator Equipment in respect of any Set is complete by the Actual Acceptance Date of such Set) (the **Installation Programme**); and
 - (c) the amount to be paid by the Relevant Operator for the installation works, and the timing of such payment.
- 1.3 The Installation Programme shall be such programme as is reasonable in the circumstances assuming that:
- (a) the TSP is not required in order to undertake the installation to employ additional resource beyond that already employed by the Manufacturer or sub-contracted by the Manufacturer for the purposes of installing Relevant Operator Equipment; and
 - (b) the Installation Programme does not affect the performance by the TSP of its obligations under this Agreement, including the delivery of the Sets for Acceptance in accordance with the Testing, Commissioning and Acceptance Plan,
- and the TSP, the Manufacturer, the Secretary of State and the Relevant Operator shall consult and cooperate with a view to agreeing and completing the Installation Programme.
- 1.4 The Secretary of State shall procure that the Relevant Operator shall:
- (a) provide to the TSP the Relevant Operator Equipment that it wishes the TSP to install;
 - (b) provide to the TSP detailed installation instructions relating to the Relevant Operator Equipment;
 - (c) have in place any consents, approvals, permissions, authorisations, acceptances, certifications, licences, exemptions, filings, registrations, notarisations, declarations and other matters required in relation to the installation and/or operation of the Relevant Operator Equipment on the Sets; and
 - (d) provide to the TSP any other information the TSP may request,
- in each case in accordance with the Installation Programme.

- 1.5 Following agreement or determination of the matters referred to in Paragraph 1.2, the TSP shall install the Relevant Operator Equipment in accordance with the agreed Installation Programme and the Relevant Operator shall reimburse the TSP for the cost of installing the Relevant Operator Equipment pursuant to one or more Reimbursable Items Adjustments (as set out in, and as defined in, the TARA).

**Annex F
of Appendix D to Schedule 1**

FORM 1: Agreed Technical Change

Part A (to be completed by the Secretary of State's Representative)		
TO:	[TSP's Representative]	FROM: [Secretary of State's Representative]
DATE:		
AGREED TECHNICAL CHANGE TITLE:		
<p>Description of Agreed Technical Change:</p> <p><i>[Include appropriate description of the potential Agreed Technical Change (including expected changes to the Train Technical Specification and the MARA/other relevant contracts and drafting in respect thereof where appropriate, and any other material considerations)]</i></p>		
Signature:	Designation:	Date:
Part B (to be completed by the TSP's Representative)		
[Either (a) confirm that the description of the potential Agreed Technical Change in Part A above appropriately describes the change or (b) provide comments regarding the description.]		
The TSP Signature: _____ Designation: _____ Date: _____		
When complete, this document must be returned to the Secretary of State's Representative		
Part C (to be completed by the Secretary of State's Representative in the event that the TSP's Representative confirms agreement with the description of the potential Agreed Technical Change contained in Part A or by the final responding party in the event that reaching agreement requires a further exchange of comments)		
To: <input checked="" type="checkbox"/> :		
We hereby confirm our agreement that this notice appropriately describes the potential Agreed Technical Change.		
Signature: _____ Designation: _____ Date: _____		

Appendix E to Schedule 1

Approvals Plan

1. INTRODUCTION

- 1.1 This Appendix E (*Approvals Plan*) sets out the requirements in accordance with which the TSP will develop and implement the Approvals Plan, which shall document the processes and programme for obtaining all Great Western Relevant Approvals.
- 1.2 Throughout the development and implementation of the Approvals Plan the TSP shall:
- (a) be responsible for identifying all Great Western Relevant Approvals including any required Derogations and shall be responsible for obtaining them, with the exception that the Relevant Operator shall be responsible for obtaining any Great Western Relevant Approvals or Derogations which as a matter of law or Industry Standard only an operator of rolling stock may apply for;
 - (b) in respect of any Great Western Relevant Approvals or Derogations which as a matter of law or Industry Standard only an operator of rolling stock may apply for, produce and provide the Relevant Operator with all materials and information (other than any materials and information in the possession, control or sole competence of the Relevant Operator) which are reasonably necessary to enable the Relevant Operator to obtain such Great Western Relevant Approvals or Derogations and shall do everything within its competence, and that is reasonable for it to do so, in order to minimise the actions required from the Relevant Operator in respect of such Great Western Relevant Approvals or Derogations;
 - (c) when the Secretary of State's Representative or the Relevant Operator is provided with materials relating to the Great Western Relevant Approvals including any required Derogations and any testing in connection therewith, provide the Secretary of State's Representative and such Relevant Operator with ten (10) Business Days, or such other period as may be agreed by the parties, to review and comment on all such materials;
 - (d) provide, as far as practical, all materials and information supplied to the Relevant Operator by the TSP to support an application in a format that will not require any further formatting or reformatting by the Relevant Operator;
 - (e) ensure that the Secretary of State's Representative is copied in on all relevant correspondence sent by the TSP to the Relevant Operator, Network Rail and any other Third Parties and shall, following receipt of a request from the Secretary of State's Representative in accordance with Paragraph 3.3(c) of Part C (*Contract Management*) of Schedule 2 (*Introduction into Service*), provide to the Secretary of State's Representative copies of any correspondence the TSP receives from the Relevant Operator, Network Rail or any other Third Party;
 - (f) provide details of the tests to be undertaken in connection with any Great Western Relevant Approvals including any required Derogations (including the conditions for such tests and the standards or required results that must be achieved) to the Secretary of State's Representative for review and comment and, where comments are raised, the TSP shall (within a reasonable period of time) provide a reasoned response to such comments;

- (g) be responsible for the control and management of technical and design issues arising from testing in order to obtain any Great Western Relevant Approvals including Derogations (for example, through updating and managing the Open Items set out on White Book Compliance Sheets) in accordance with Paragraph 11 of Appendix D (*Design Plan*) of Schedule 1 (*Set Specification and Design*) and pursuant to the procedures set out in Part C (*Contract Management*) of Schedule 2 (*Introduction into Service*);
- (h) except as otherwise expressly provided in this Agreement, procure, provide and be responsible for providing all facilities and resources that it requires to support the Approvals Plan;
- (i) be responsible for discharging all of the obligations of the Contracting Entity;
- (j) provide a copy of the draft Technical File to the Secretary of State's Representative and the ORR prior to commencement of testing on the Network; and
- (k) be responsible for arranging and managing all meetings and forums (including minute taking) required as part of the process set out in this Appendix E (*Approvals Plan*).

2. APPROVALS PLAN

- 2.1 The TSP shall develop and implement the Approvals Plan in accordance with Paragraph 1.2 and the Integrated Programme.
- 2.2 The TSP Delivery Manager shall provide to the Secretary of State's Representative, as soon as practicable and in any event within nine (9) months after the Effective Date, a first draft of the Approvals Plan, which shall:
 - (a) identify all Great Western Relevant Approvals and required Derogations;
 - (b) describe in detail when and how the TSP shall obtain, and shall enable the Relevant Operator to obtain, all Great Western Relevant Approvals including any required Derogations (including how the TSP shall demonstrate compatibility with the Great Western IEP Network and any infrastructure over which the Sets must operate to gain access to any depots that the TSP intends to use), which description shall include:
 - (i) identification of the Relevant Authority to grant such Great Western Relevant Approvals and Derogations;
 - (ii) definition of the stages required and relevant documentation for each stage; and
 - (iii) definition of the deliverables to be provided or obtained in order to implement and deliver the Approvals Plan,

and the Secretary of State's Representative and the Relevant Operator shall review and comment on all materials and applications relating to such Great Western Relevant Approvals including any required Derogations within ten (10) Business Days, or such other period of time as may be agreed by the parties, of receiving such materials and/or applications;

- (c) describe in detail any other relevant support to be provided by the TSP to the Relevant Operator to enable the Relevant Operator to obtain those Great Western Relevant Approvals or Derogations which as a matter of any Applicable Laws and Standards only an operator of rolling stock may apply for;
- (d) include details of all facilities and resources required to support and implement the Approvals Plan;
- (e) describe in detail the actions and information required by the TSP from the Secretary of State, the Relevant Operator and any other Third Parties in order for the TSP to successfully obtain all Great Western Relevant Approvals and any required Derogations, including a description of the responsibilities of all parties, and (in conjunction with the Integrated Programme) the timeframe for procuring such actions and/or information;
- (f) describe in detail when and how the TSP will consult with the Secretary of State in relation to the process for:
 - (i) identifying all Great Western Relevant Approvals including any required Derogations;
 - (ii) obtaining all Great Western Relevant Approvals, including any required Derogations, that the TSP is to obtain; and
 - (iii) supporting the Relevant Operator in obtaining those Great Western Relevant Approvals and Derogations which as a matter of any Applicable Laws and Standards only an operator of rolling stock may apply for,

and the TSP's programme for maintaining regular communication with the Secretary of State, Network Rail and other Third Parties in relation to testing and approvals;
- (g) describe in detail when and how the TSP shall:
 - (i) define all tests and test specifications required to obtain all Great Western Relevant Approvals and issue these to the Secretary of State's Representative for review and comment;
 - (ii) review all test results and produce test reports for review and comment by the Secretary of State's Representative and the Relevant Operator as appropriate; and
 - (iii) respond to any adverse test results;
- (h) include an Approvals Matrix (as defined and described in Paragraph 4);
- (i) include details of the Test Path Requirements (as defined in Paragraph 5);
- (j) describe in detail how the TSP shall manage the testing process in relation to Great Western Relevant Approvals including any required Derogations in accordance with Paragraph 6; and
- (k) describe in detail how the TSP will identify, record and manage issues arising from the process for obtaining Great Western Relevant Approvals including any required Derogations.

- 2.3 For the purposes of this Appendix E (*Approvals Plan*) only, the requirements set out in limbs (a), (d), (h), (i), (j) and (k) of Paragraph 2.2 shall be the **Requirements for Approval** and the requirements set out in limbs (b), (c), (e), (f), and (g) of Paragraph 2.2 shall be the **Requirements for Agreement**.
- 2.4 Within twenty (20) Business Days of receiving the first draft Approvals Plan from the TSP, or such other period of time as may be agreed by the parties, the Secretary of State's Representative shall:
- (a) review the draft Approvals Plan and collate the comments of the Secretary of State and the Relevant Operator; and
 - (b) provide these comments to the TSP Delivery Manager or confirm that the Approvals Plan is approved in respect of the Requirements for Approval and agreed in respect of the Requirements for Agreement.
- 2.5 Where the TSP receives comments from the Secretary of State's Representative on the draft Approvals Plan in accordance with Paragraph 2.3:
- (a) within ten (10) Business Days of receiving such comments, or such other period of time as may be agreed by the parties, the TSP Delivery Manager and the Secretary of State's Representative shall meet to discuss any comments in good faith; and
 - (b) the TSP Delivery Manager shall submit a revised draft of the Approvals Plan to the Secretary of State's Representative within ten (10) Business Days of such meeting, or such other period of time as may be agreed by the parties, for review by the Secretary of State's Representative and:
 - (i) if the Secretary of State's Representative approves the revised draft of the Approvals Plan in respect of the Requirements for Approval and agrees the revised draft of the Approvals Plan in respect of the Requirements for Agreement, such draft shall become the Approvals Plan for the purposes of this Agreement; or
 - (ii) if the Secretary of State's Representative does not approve in respect of the Requirements for Approval or does not agree in respect of the Requirements for Agreement the revised draft of the Approvals Plan, the Secretary of State's Representative shall within ten (10) Business Days of receiving the revised draft of the Approvals Plan, or such other period of time as may be agreed by the parties, provide the TSP Delivery Manager with her reasons for not approving in respect of the Requirements for Approval and not agreeing in respect of the Requirements for Agreement such plan and the provisions of Paragraphs 2.3 and 2.5 shall apply as if such revised plan was the first draft.
- 2.6 If:
- (a) the Secretary of State's Representative does not approve in respect of the Requirements for Approval or does not agree in respect of the Requirements for Agreement a revised draft of the Approvals Plan on or after the second occasion on which the TSP Delivery Manager has submitted a revised draft pursuant to Paragraph 2.5(b); and

- (b) the TSP Delivery Manager has provided the Secretary of State's Representative with his reasons for not approving in respect of the Requirements for Approval and not agreeing in respect of the Requirements for Agreement the comments provided by the Secretary of State's Representative with respect to such plan and an explanation of how the TSP Delivery Manager proposes to deal with the issues raised by the Secretary of State's Representative,

the TSP Delivery Manager shall be entitled, without prejudice to his obligations pursuant to this Agreement or the TARA with respect to Great Western Relevant Approvals, to issue a further revised draft of the Approvals Plan addressing, in the manner referred to in the explanation referred to in Paragraph 2.6(b), the issues raised by the Secretary of State's Representative, in which case such draft shall, provided he complies with the requirements of Paragraph 2.2, become the Approvals Plan for the purposes of this Agreement.

- 2.7 The TSP Delivery Manager shall update the Approvals Plan from time to time as changes in the approvals requirements, test results or other relevant factors may require and the provisions of Paragraphs 2.3 to 2.6 (inclusive) shall apply to each update of the Approvals Plan as if such update was the first draft (save that the Secretary of State's Representative shall not be entitled to make comments on any aspect of an updated Approvals Plan that has not been affected by the updates made by the TSP Delivery Manager).
- 2.8 In respect of any Derogations that the TSP requires in relation to Great Western Relevant Approvals and in respect of which the Secretary of State is the Relevant Authority to grant such Derogation, nothing within this Appendix E (*Approvals Plan*) or any agreement or approval provided by or on behalf of the Secretary of State or the Secretary of State's Representative in connection with the process outlined in this Appendix E (*Approvals Plan*) shall be construed as an agreement by or on behalf of the Secretary of State in her capacity as the Relevant Authority to grant such Derogations or shall fetter in any respect the exercise by the Secretary of State in such capacity of any of her powers or obligations in respect of such Derogations.

3. MEETINGS AND FORUMS

- 3.1 The TSP Delivery Manager shall convene a test programme meeting (each a **Test Programme Meeting**) to review the test programme, test path planning and summary test results, including:
 - (a) the minimum number and location of test paths, including operational restrictions, anticipated for each stage of testing in connection with Great Western Relevant Approvals;
 - (b) programme milestones for obtaining the agreement of all relevant infrastructure owners for test paths required for each stage of testing in connection with Great Western Relevant Approvals;
 - (c) detailed contingency plans in the event that any test paths required are not available; and
 - (d) issues arising from tests in connection with Great Western Relevant Approvals,

and the Secretary of State's Representative shall be entitled to receive notice of and attend, or nominate an assistant or agent to attend, all such meetings and receive copies of all materials provided in respect of or at any Test Programme Meeting.

- 3.2 Test Programme Meetings shall be held at monthly intervals, commencing not later than six (6) months prior to the start of dynamic testing on the Network and shall continue until all Great Western Relevant Approvals, including any required Derogations, have been obtained.
- 3.3 The TSP Delivery Manager shall be responsible for convening and shall convene a compatibility review forum (within the meaning set out in Railway Group Standard GE/RT8270 'Assessment of Compatibility of Rolling Stock and Infrastructure' (the **Compatibility Review Forum**)), and the Secretary of State's Representative shall be entitled to:
 - (a) receive a minimum of seven (7) days' written notice of and attend all meetings of the Compatibility Review Forum; and
 - (b) receive copies of all materials provided in respect of or at any meeting of the Compatibility Review Forum.
- 3.4 Meetings of the Compatibility Review Forum shall commence within six (6) months of the Effective Date and the frequency of the meetings shall be as agreed by the attendees of the Compatibility Review Forum.
- 3.5 The TSP shall appoint the Notified Body and the Designated Body for the purposes of the Railway (Interoperability) Regulations 2011. All costs of the Notified Body in respect of obtaining all Great Western Relevant Approvals shall be for the account of the TSP and shall be paid directly to the Notified Body by the TSP. The Secretary of State's Representative shall be entitled, at her discretion, to attend any meeting between the TSP and the Notified Body and the TSP Delivery Manager shall provide a minimum of seven (7) days' written notice to the Secretary of State's Representative in respect of any such meeting and copies of any materials provided in respect of any such meeting.

4. **APPROVALS MATRIX**

In accordance with Paragraph 2, the TSP Delivery Manager shall provide a matrix in relation to testing associated with Great Western Relevant Approvals including any required Derogations (the **Approvals Matrix**) which shall include a table describing in detail all static and dynamic tests. The description of each test shall include:

- (a) location (e.g. Japan or UK);
- (b) any required Secretary of State, Relevant Operator or other third party actions;
- (c) the relevant standard (if applicable);
- (d) test duration; and
- (e) test site/route and possession requirements, including any specific operating restrictions.

5. **TEST PATH REQUIREMENTS FOR THE GREAT WESTERN RELEVANT APPROVALS TESTING**

Without prejudice to Paragraph 4 of Part A (*Testing and Acceptance*) of Schedule 2 (*Introduction into Service*) and Appendix B (*Fault Free Running Conditions*) of Part A (*Testing and Acceptance*) of Schedule 2 (*Introduction into Service*), the TSP shall provide, procure and be responsible for satisfying all requirements to conduct network testing in order to obtain the Great Western Relevant Approvals (the **Test Path Requirements**), including obtaining test paths, a test operator, provision of on-train operational staff (including drivers) and payment for energy consumed (including fuel and EC4T as necessary).

6. **TESTING PROCESS MANAGEMENT**

Without prejudice to the provisions of Part A (*Testing and Acceptance*) of Schedule 2 (*Introduction into Service*), the TSP shall manage all testing required under the Approvals Plan and shall:

- (a) allow the Secretary of State engagement with Japan and UK testing activities;
- (b) allow the Secretary of State, and where necessary the Relevant Operator, to witness any tests identified to the TSP by the Secretary of State and undertaken by the TSP or the Manufacturer and the TSP shall provide to the Secretary of State, a minimum of ten (10) days prior to the end of each month, a testing programme setting out any plans to conduct tests required under this Appendix E (*Approvals Plan*) or Appendix A (*Testing, Commissioning and Acceptance*) to Part A (*Testing and Acceptance*) of Schedule 2 (*Introduction into Service*) for the following month, such programme to identify whether the test is to be carried out in the UK or another specified country, provided that:
 - (i) the first such testing programme shall be provided by the TSP to the Secretary of State no later than two (2) months before the scheduled date for the commencement of testing activities (as specified in the Integrated Programme) and the TSP shall not have any obligation to provide any such testing programme after the Actual Acceptance Date of the last Set; and
 - (ii) where operational issues require a change to the date of any test from that specified in the testing programme, the TSP shall give the Secretary of State's Representative as much notice of such change as reasonably practicable but if the Secretary of State's Representative and/or the Relevant Operator is unable to attend the test on the revised date that shall not affect the validity of the test;
- (c) issue all test results to the Secretary of State's Representative together with sufficient supporting materials and information to enable the Secretary of State's Representative to understand and interpret such results; and
- (d) be responsible for managing the interface arrangements between the Secretary of State, the TSP's test manager and the test operator appointed by the TSP.

7. **APPROVALS OBLIGATIONS OF THE TSP TO THE RELEVANT OPERATOR**

- 7.1 Without prejudice to the provisions of Paragraph 1 of this Appendix E (*Approvals Plan*), the TSP shall be responsible for preparing and providing all support, cooperation,

materials and information (other than any materials and information in the possession, control or sole competence of the Relevant Operator), and for providing all such materials and information in an appropriate form, which are reasonably necessary to allow the Relevant Operator to:

- (a) issue a Statement of Compatibility;
- (b) amend its Safety Management System (insofar as it relates to the maintenance and operation of the Sets) in order to obtain a Safety Certificate;
- (c) obtain the Infrastructure Manager's and the ORR's agreement (or, if necessary, solely the ORR's agreement) to the Vehicle Change; and
- (d) obtain any Great Western Relevant Approvals or Derogations required by, or undertake any tasks required from, such Relevant Operator to deliver its obligations under this Schedule and all Applicable Laws and Standards,

in each case, to the extent relating to the Sets or the operation of the Sets.

7.2 In performing its obligations above, the TSP shall not be obliged to do such things which as a matter of any Applicable Laws and Standards only the Relevant Operator in its capacity as an operator of passenger rolling stock is capable of doing. These actions include:

- (a) the preparation of all documentation forming part of submissions to any Relevant Authority which describe activities that are unique to such Relevant Operator's operation of the Sets and which are therefore not within the TSP's knowledge or control; and
- (b) such parts of the Verification Assessment Procedure that, under Applicable Laws and Standards, are not permitted to be carried out by any person other than the Relevant Operator as listed in Paragraphs 7.2(b)(i) and 7.2(b)(ii):
 - (i) issuing a Statement of Compatibility; and
 - (ii) amending its Safety Management System in order to obtain a revised Safety Certificate where that is required.

8. **GREAT WESTERN RELEVANT APPROVALS AND DEROGATIONS WHICH THE RELEVANT OPERATOR IS TO OBTAIN**

8.1 In respect of any Great Western Relevant Approvals or Derogations which as a matter of law or Industry Standard only an operator of rolling stock may apply for, provided that the TSP has:

- (a) complied with its obligations under Paragraph 1.2(b) to produce and provide the Relevant Operator with all materials and information (other than any materials and information in the possession, control or sole competence of the Relevant Operator) which are reasonably necessary to enable the Relevant Operator to obtain such Great Western Relevant Approvals or Derogations and the TSP has done everything within its competence, and that is reasonable for it to do so, in order to minimise the actions required from the Relevant Operator in respect of such Great Western Relevant Approvals or Derogations; and

- (b) complied with its obligations under Paragraph 2.2(d), and as set out in the Approvals Plan, to provide support to the Relevant Operator to enable the Relevant Operator to obtain those Great Western Relevant Approvals or Derogations which as a matter of any Applicable Laws and Standards only an operator of rolling stock may apply for,

then the Secretary of State shall procure that the Relevant Operator shall comply with its obligations set out in the Approvals Plan in respect of any such Great Western Relevant Approvals or Derogations.

8.2 The Secretary of State shall procure that, by the Actual Acceptance Date of the first Set in the Fleet, the Relevant Operator shall have:

- (a) amended its Safety Management System (insofar as it relates to the maintenance and operation of the Sets) in accordance with Paragraph 7 of this Appendix E (*Approvals Plan*) and Paragraph 5.2 of Part C (*Train Maintenance and Servicing*) of Schedule 3 (*Depots*) to reflect:
 - (i) the Design (where such Set receives a Final Acceptance Certificate) or (where such Set receives a Qualified Acceptance Certificate) the Design subject to, and taking account of, the relevant Final Acceptance Preconditions; and
 - (ii) whether such Set receives a Final Acceptance Certificate or a Qualified Acceptance Certificate, the Maintenance Plan (as developed in accordance with Part C (*Train Maintenance and Servicing*) of Schedule 3 (*Depots*)); and
- (b) to the extent required, obtained a revised Safety Certificate to reflect the revised Safety Management System.

Appendix F to Schedule 1

IEP Network

Part 1. IEP Route Definition by ELR and Start and End Mileage (Great Western)

List of Routes

The description of the routes includes all running lines in signalled direction, including Fast/Main, Slow/Relief and loops, all crossovers and connections between them and all tracks serving all platform faces (including bay platforms). The routes (save where expressly listed below) exclude sidings, depots and crossovers/connections between the running lines and those sidings and depots.

The 'Route Type' is derived from the definition used by Network Rail to manage the track asset policy.

RFS Sub-Route	RFS Route Description	ELR	Start		End		Approx Decimal Miles	Route Type (Simplified)
			Miles	Yards	Miles	Yards		
Paddington to Bristol TM via Bath Spa	Core Route	MLN1	0	0000	118	0682	118.39	Primary
Bristol TM to Taunton (including Weston Super Mare Avoiding Line)	Core Route	MLN1	118	0682	163	0264	44.76	Primary
Bristol TM to Taunton (including Weston Super Mare Avoiding Line)	Core Route	WSM	135	0232	139	0124	3.94	Secondary
Reading to Penzance via Westbury (and avoiding line), Frome (& avoiding line) and Exeter St Davids	Core Route	BKE	36	0369	37	1371	1.57	Primary
Reading to Penzance via Westbury (and avoiding line), Frome (& avoiding line) and Exeter St Davids	Core Route	BHL	37	1313	81	0418	43.46	Primary
Reading to Penzance via Westbury (and avoiding line), Frome (& avoiding line) and Exeter St Davids	Core Route	SWY	81	0418	95	0727	14.18	Primary
Reading to Penzance via Westbury (and avoiding line)	Core Route	WES	94	0969	97	0022	2.46	Primary

RFS Sub-Route	RFS Route Description	ELR	Start		End		Approx Decimal Miles	Route Type (Simplified)
			Miles	Yards	Miles	Yards		
line), Frome (& avoiding line) and Exeter St Davids								
Reading to Penzance via Westbury (and avoiding line), Frome (& avoiding line) and Exeter St Davids	Core Route	WEY	109	1091	129	1104	20.01	Primary
Reading to Penzance via Westbury (and avoiding line), Frome (& avoiding line) and Exeter St Davids	Core Route	FRA	114	0834	116	0950	2.07	Primary
Reading to Penzance via Westbury (and avoiding line), Frome (& avoiding line) and Exeter St Davids	Core Route	CCL	115	0715	138	0680	22.98	Primary
Reading to Penzance via Westbury (and avoiding line), Frome (& avoiding line) and Exeter St Davids	Core Route	MLN1	163	0264	246	0330	30.83	Primary
Plymouth Laira ECS Move	ECS Route	PLO	0	0000	0	0768	0.44	tbc
Plymouth Laira ECS Move	ECS Route	FRY	244	1311	245	0873	0.75	tbc
Plymouth Laira ECS Move	ECS Route	SUT1	243	1474	244	0981	0.72	tbc
Plymouth Laira ECS Move	ECS Route	SUT2	244	0895	244	1311	0.24	tbc
Reading to Penzance via Westbury (and avoiding line), Frome (and avoiding line) and Exeter St Davids	Non Core Route	MLN2	247	0616	256	0836	9.12	Secondary
Reading to Penzance via Westbury (and avoiding line), Frome (and avoiding line) and Exeter St Davids	Non Core Route	MLN3	256	0880	305	1430	49.31	Secondary
Reading to Penzance via Westbury (and avoiding line), Frome (and avoiding line) and Exeter St Davids	Non Core Route	MLN4	305	1474	326	1100	20.79	Secondary
Newton Abbot to Paignton	Core Route	TOR	214	0761	223	0000	8.57	Secondary

RFS Sub-Route	RFS Route Description	ELR	Start		End		Approx Decimal Miles	Route Type (Simplified)
			Miles	Yards	Miles	Yards		
Par to Newquay	Non Core Route	PAR	281	1258	282	0356	0.49	Rural
Par to Newquay	Non Core Route	NEW	282	0356	302	1078	20.41	Rural
Wootton Bassett Junction to Carmarthen via Bristol Parkway and Swansea	Core Route	SWB	83	0153	112	1671	29.86	Primary
Wootton Bassett Junction to Carmarthen via Bristol Parkway and Swansea	Core Route	BSW	5	1342	17	0025	11.25	Primary
Wootton Bassett Junction to Carmarthen via Bristol Parkway and Swansea	Core Route	SWM2	148	1342	214	1364	66.01	Primary
Wootton Bassett Junction to Carmarthen via Bristol Parkway and Swansea	Core Route	SWM2	214	1364	246	0220	31.35	Secondary
Wootton Bassett Junction to Carmarthen via Bristol Parkway and Swansea	Core Route	SWA	214	1382	216	0145	1.30	Primary
Wootton Bassett Junction to Carmarthen via Bristol Parkway and Swansea	Core Route	SWL	0	0000	0	1162	0.66	Secondary
Wootton Bassett Junction to Carmarthen via Bristol Parkway and Swansea	Core Route	CAN	245	0216	245	1441	0.70	Secondary
Carmarthen Bridge Junction to Carmarthen P&T Loop Junction	Diversiory Route	CNW	0	0000	0	0425	0.25	tbcc
Bristol Parkway to Bristol TM	Core Route	FEC	111	1747	113	0350	1.21	Primary
Bristol Parkway to Bristol TM	Core Route	BSW	0	0330	4	0792	4.26	Primary
Swindon to Worcester Shrub Hill via Gloucester (reverse) or direct (avoiding Gloucester) and	Core Route	SWM1	77	0715	106	1629	29.52	Secondary

RFS Sub-Route	RFS Route Description	ELR	Start		End		Approx Decimal Miles	Route Type (Simplified)
			Miles	Yards	Miles	Yards		
Cheltenham Spa								
Swindon to Worcester Shrub Hill via Gloucester (reverse) or direct (avoiding Gloucester) and Cheltenham Spa	Core Route	BGL2	94	1320	99	1518	5.11	Primary
Swindon to Worcester Shrub Hill via Gloucester (reverse) or direct (avoiding Gloucester) and Cheltenham Spa	Core Route	BGL1	93	0107	94	0220	1.06	Primary
Swindon to Worcester Shrub Hill via Gloucester (reverse) or direct (avoiding Gloucester) and Cheltenham Spa	Core Route	SWM2	113	0164	114	0440	1.16	Primary
Swindon to Worcester Shrub Hill via Gloucester (reverse) or direct (avoiding Gloucester) and Cheltenham Spa	ECS Route	CHL	92	0452	93	0109	0.81	Primary
Swindon to Worcester Shrub Hill via Gloucester (reverse) or direct (avoiding Gloucester) and Cheltenham Spa	Core Route	BAG2	85	0066	92	1650	7.90	Primary
Swindon to Worcester Shrub Hill via Gloucester (reverse) or direct (avoiding Gloucester) and Cheltenham Spa	Diversionsary Route	BAG2	68	1353	85	0066	17.27	Primary
Swindon to Worcester Shrub Hill via Gloucester (reverse) or direct (avoiding Gloucester) and Cheltenham Spa	Diversionsary Route	ABW	0	0000	0	1562	0.89	Secondary
Swindon to Worcester Shrub Hill via Gloucester (reverse) or direct (avoiding Gloucester) and Cheltenham Spa	Core Route	OWW	117	572	120	1054	3.27	Secondary

RFS Sub-Route	RFS Route Description	ELR	Start		End		Approx Decimal Miles	Route Type (Simplified)
			Miles	Yards	Miles	Yards		
Didcot Parkway to Banbury (including Didcot East Junction to Didcot North Junction)	Core Route	DEC	52	1184	53	1566	1.22	Primary
Didcot Parkway to Banbury (including Didcot East Junction to Didcot North Junction)	Core Route	DCL	53	0275	66	0705	13.24	Primary
Didcot Parkway to Banbury (including Didcot East Junction to Didcot North Junction)	Non Core Route	DCL	66	0705	86	0632	19.96	Primary
Didcot West to Foxhall Junction	Diversiory Route	DWC	-0	0027	0	0710	0.42	tbc
Oxford to Hereford via Worcester and Great Malvern	Core Route	OWW	66	0700	117	0572	50.93	Secondary
Oxford to Hereford via Worcester and Great Malvern	Core Route	WAH	120	1021	148	0262	27.57	Secondary
Oxford to Hereford via Worcester and Great Malvern	Core Route	SHL	49	0590	52	0000	2.68	Secondary
Hereford to Newport (including Maindee North Junction to Maindee East Junction) (for ECS purposes)	ECS Route	SHL	52	0000	52	0409	0.23	Secondary
Hereford to Newport (including Maindee North Junction to Maindee East Junction) (for ECS purposes)	ECS Route	HDC	0	0000	2	0238	2.14	Secondary
Hereford to Newport (including Maindee North Junction to Maindee East Junction) (for ECS purposes)	ECS Route	HNL1	2	0238	41	1446	39.69	Secondary
Hereford to Newport (including Maindee North Junction to Maindee East Junction) (for ECS purposes)	ECS Route	MAI	41	0597	41	1430	0.47	Secondary

RFS Sub-Route	RFS Route Description	ELR	Start		End		Approx Decimal Miles	Route Type (Simplified)
			Miles	Yards	Miles	Yards		
Standish Junction to Westerleigh Junction (for ECS and diversionary purposes)	ECS Route	BGL2	99	1518	120	0069	20.17	Primary
Standish Junction to Westerleigh Junction (for ECS and diversionary purposes)	ECS Route	YAT	120	0069	121	0590	1.30	Primary
Old Oak Common to West Ealing/Hanwell Junctions via Greenford	Diversionsary Route	ANL	3	0427	7	0323	3.94	Secondary
Old Oak Common to West Ealing/Hanwell Junctions via Greenford	Diversionsary Route	GEC	8	0985	8	1547	0.32	Secondary
Old Oak Common to West Ealing/Hanwell Junctions via Greenford	Diversionsary Route	WEL1	6	1149	8	0990	1.91	Secondary
Old Oak Common to West Ealing/Hanwell Junctions via Greenford	Diversionsary Route	HAN	0	0000	0	0796	0.45	Secondary
Reading to Waterloo via Ascot and both Twickenham and Brentford*	Non Core Route	RDG1	0	0102	36	0738	36.38	Secondary
Reading to Waterloo via Ascot and both Twickenham and Brentford*	Non Core Route	RDG2	61	1602	68	1518	6.94	Secondary
Reading to Waterloo via Ascot and both Twickenham and Brentford*	Non Core Route	HOU	7	0313	14	0850	7.31	Secondary
Reading West Junction (RWC) to Oxford Road Junction	Diversionsary Route	RWC	0	0033	0	0957	0.53	tbc
New Reading Flyover (tbc)	Non Core Route	RLL	tbc	tbc	tbc	tbc	tbc	tbc
Reading New Junction	Non Core Route	RNJ	67	1688	68	0767	0.48	tbc

RFS Sub-Route	RFS Route Description	ELR	Start		End		Approx Decimal Miles	Route Type (Simplified)
			Miles	Yards	Miles	Yards		
Westbury to Bathampton Junction (inc Westbury East Loop Junction to Hawkeridge Junction)	Diversionsary Route	BFB	-0	0231	9	0374	9.21	Secondary
Westbury to Bathampton Junction (inc Westbury East Loop Junction to Hawkeridge Junction)	Diversionsary Route	WYL	94	1716	95	0708	0.42	Secondary
Westbury to Bathampton Junction (inc Westbury East Loop Junction to Hawkeridge Junction)	Diversionsary Route	WEY	104	0880	109	1091	5.12	Secondary
Castle Cary to Exeter St Davids via Yeovil Pen Mill and Yeovil Junction	Non Core Route	WEY	129	1104	141	0770	11.81	Secondary
Castle Cary to Exeter St Davids via Yeovil Pen Mill and Yeovil Junction	Non Core Route	YJP	0	0042	1	0953	1.52	Rural
Castle Cary to Exeter St Davids via Yeovil Pen Mill and Yeovil Junction	Non Core Route	BAE2	122	0792	172	0110	49.61	Secondary
Thingley Junction to Bradford South Junction	Diversionsary Route	WEY	96	0181	104	0880	8.39	Secondary
Feeder Bridge Junction to Dr Days Junction	Diversionsary Route	BLL	117	1111	117	1608	0.28	Secondary
North Somerset Junction to Bristol West Junction	Diversionsary Route	BRL	0	0009	1	0190	1.10	Secondary
Filton South Junction to Patchway Junction	Core Route	BSW	4	0792	5	1342	1.31	Secondary
Filton Junction to Filton West Junction	ECS Route	FWC	4	1456	5	0902	0.69	tbc
Narrowways Hill Jnc to Patchway and Bristol Parkway via Avonmouth*	Diversionsary Route	CNX	2	0056	9	0676	7.35	Rural

RFS Sub-Route	RFS Route Description	ELR	Start		End		Approx Decimal Miles	Route Type (Simplified)
			Miles	Yards	Miles	Yards		
Narrowways Hill Jnc to Patchway and Bristol Parkway via Avonmouth*	Diversionsary Route	AMB	14	0836	16	0066	1.56	Rural
Narrowways Hill Jnc to Patchway and Bristol Parkway via Avonmouth*	ECS Route	AFR	112	0115	118	1340	6.70	Freight only
Narrowways Hill Jnc to Patchway and Bristol Parkway via Avonmouth*	Diversionsary Route	PAC	0	0000	0	0920	0.52	Freight only
Gloucester to Severn Tunnel Junction via Chepstow	Diversionsary Route	SWM2	114	0440	148	1342	34.51	Secondary
Cardiff Central to Bridgend via Barry and Rhoose	Diversionsary Route	BRY	0	0220	8	0388	8.03	Secondary
Cardiff Central to Bridgend via Barry and Rhoose	Diversionsary Route	VOG	0	0000	18	1712	18.97	Secondary
Cardiff Central to Leckwith Loop North Junction via Ninian Park	Diversionsary Route	RAD	0	0554	0	1540	0.56	Secondary
Cardiff Central to Leckwith Loop North Junction via Ninian Park	Diversionsary Route	CLL	0	0000	0	0574	0.33	Freight only
Bridgend to Margam via Tondou*	Diversionsary Route	BAL	0	0244	3	0308	3.04	Rural
Bridgend to Margam via Tondou*	Diversionsary Route	POR	0	0000	2	0964	2.55	Freight only
Bridgend to Margam via Tondou*	Diversionsary Route	OVE	0	1723	7	0902	6.53	Freight only

RFS Sub-Route	RFS Route Description	ELR	Start		End		Approx Decimal Miles	Route Type (Simplified)
			Miles	Yards	Miles	Yards		
Margam Moors Junction to Margam Abbey East Junction	Diversiory Route	MRJ	198	1417	199	0447	0.45	tbc
Briton Ferry to Llandeilo Jn via District Lines*	Diversiory Route	SDI1	206	0308	208	1071	2.43	Freight only
Briton Ferry to Llandeilo Jn via District Lines*	Diversiory Route	SDI2	0	0000	10	1417	10.81	Freight only
Briton Ferry to Llandeilo Jn via District Lines*	Diversiory Route	LLA	0	0000	3	1128	3.63	Rural
South of North Pole Jn to Acton East Jn (Acton East Junction to Acton Wells Junction)	ECS Route	AWL	0	0123	0	1073	0.54	tbc
South of North Pole Jn to Acton East Jn (Acton Wells Junction)	ECS Route	BOK5	0	1585	0	1457	0.07	tbc
South of North Pole Jn to Acton East Jn (Acton Wells Junction to West London Junction)	ECS Route	WAW	7	0146	6	0638	0.43	tbc
South of North Pole Jn to Acton East Jn (West London Junction to Mitre Bridge Junction)	ECS Route	WLL	6	0638	5	1478	0.52	tbc
Coach Road Sidings (Westbury)	Core (SDG) Route	USY	109	1330	110	0090	0.30	Siding
New Yard Depot (Exeter St Davids)	Core (SDG) Route	MLN1	193	0177	193	1285	0.63	Siding

RFS Sub-Route	RFS Route Description	ELR	Start		End		Approx Decimal Miles	Route Type (Simplified)
			Miles	Yards	Miles	Yards		
Long Rock Depot (Penzance)	Non Core Route (SDG)	MLN4	325	0261	326	0594	1.19	Siding
Goodington Carriage Sidings (Paignton)	Core (SDG)	TOR	222	0530	222	1320	0.45	Siding
Brickyard Siding (Cardiff)	Core (SDG)	SWM2	170	1639	171	0352	0.50	Siding
Hereford Sidings (Worcester Shrub Hill)	Core (SDG)	OWW	120	0289	120	1013	0.41	Siding
Down Carriage Sidings (Oxford)	Core (SDG)	DCL	63	1359	64	0066	0.27	Siding
Up Carriage Sidings (Oxford)	Core (SDG)	DCL	63	1082	64	0066	0.42	Siding
Henwick Up Siding (Worcester Foregate Street)	Core (SDG)	WAH	121	1609	122	0308	0.26	Siding
Hereford Down Siding No. 1 (Hereford)	Core (SDG)	SHL	50	1660	51	0260	0.20	Siding
Edgar Street Sidings (Hereford)	Core (SDG)	SHL	51	0387	51	0818	0.24	Siding
(new) Depot (Reading)	Core (SDG)	MLN1	36	0424	37	1320	1.50	Siding
Alstone Carriage Siding (Cheltenham)	Core (SDG)	BAG2	84	0484	84	1048	0.32	Siding

RFS Sub-Route	RFS Route Description	ELR	Start		End		Approx Decimal Miles	Route Type (Simplified)
			Miles	Yards	Miles	Yards		
Middle Siding (Worcester Shrub Hill)	Core (SDG) Route	OWW	120	0600	120	1012	0.23	Siding
Long Siding (Worcester Shrub Hill)	Core (SDG) Route	OWW	120	0317	120	0662	0.20	Siding
High Level Sidings (Bristol Temple Meads)	Core (SDG) Route	BSW	0	0205	0	0445	0.14	Siding
Cocklebury Yard (Swindon)	Core (SDG) Route	MLN1	76	0740	77	0222	0.70	Siding

Part 2. IEP Route Definition by ELR and Start and End Mileage (East Coast)

List of Routes

The description of the routes includes all running lines in signalled direction, including Fast/Main, Slow/Relief and loops, all crossovers and connections between them and all tracks serving all platform faces (including bay platforms). The routes (save where expressly listed below) exclude sidings, depots and crossovers/connections between the running lines and those sidings and depots.

The 'Route Type' is derived from the definition used by Network Rail to manage the track asset policy.

RFS Sub-Route	RFS Route Description	ELR	Start		End		Approx Decimal Miles	Route Type (Simplified)
			Miles	Yards	Miles	Yards		
Kings Cross to Newcastle – electrified	Core Route	ECM1	0	0000	160	0352	160.20	Primary
Kings Cross to Newcastle – electrified	Core Route	PMJ	16	1232	22	0484	5.58	Secondary
Kings Cross to Newcastle – electrified	Core Route	HOS	0	0000	1	1013	1.58	Primary
Kings Cross to Newcastle – electrified	Core Route	ECM2	160	0352	169	0352	9.00	Primary
Kings Cross to Newcastle – electrified	Core Route	ECM3	169	0352	182	1738	13.79	Primary
Kings Cross to Newcastle – electrified	Core Route	ECM4	182	1738	188	1056	5.61	Primary
Kings Cross to Newcastle – electrified	Core Route	ECM5	0	0000	80	0110	80.06	Primary
Kings Cross to Newcastle – electrified	Core Route	ECM6	80	0110	80	0660	0.31	Primary
Newark to Lincoln	Core Route	NSE	0	0000	0	0440	0.25	Secondary
Newark to Lincoln	Core Route	NOB1	17	1628	32	0000	14.08	Secondary
Newark to Lincoln	Core Route	NOB2	32	0000	32	1540	0.88	Secondary
Doncaster to Leeds via Wakefield – electrified	Core Route	DOL1	156	0616	175	0704	19.05	Primary

RFS Sub-Route	RFS Route Description	ELR	Start		End		Approx Decimal Miles	Route Type (Simplified)
			Miles	Yards	Miles	Yards		
Doncaster to Leeds via Wakefield – electrified	Core Route	DOL2	175	0704	186	0105	10.66	Primary
Hambledon South Junction to Leeds via Micklefield	Core Route	HUL4	10	1100	20	1100	10.00	Secondary
Hambledon South Junction to Leeds via Micklefield	Core Route	HUL3	4	0946	10	1100	6.09	Secondary
Hambledon South Junction to Leeds via Micklefield	Core Route	HSC	174	0220	175	0726	1.29	Secondary
Micklefield to York	Core Route	CFM	10	0682	15	1342	5.38	Secondary
Micklefield to York	Core Route	NOC	5	0902	10	1694	5.45	Secondary
Leeds to York via Harrogate	Core Route	LEH1	0	0452	14	1320	14.49	Rural
Leeds to York via Harrogate	Core Route	LEH2	14	1320	15	0440	0.50	Rural
Leeds to York via Harrogate	Core Route	LEH3	15	0440	17	0946	2.29	Rural
Leeds to York via Harrogate	Core Route	HAY2	18	1320	20	0836	1.73	Rural
Leeds to York via Harrogate	Core Route	HAY1	1	1122	18	1320	17.11	Rural
Leeds to Skipton – electrified (but power restrictions apply)	Core Route	TJC3	195	1188	221	1496	26.17	Secondary
Leeds to Bradford Forster Square – electrified	Core Route	SBF	205	1213	208	1085	2.93	Secondary
Doncaster to Hull via Selby	Core Route	TCW1	169	0352	174	0242	4.94	Secondary
Doncaster to Hull via Selby	Core Route	HUL2	30	0880	31	0264	0.65	Secondary
Doncaster to Hull via Selby	Core Route	HUL1	0	0000	30	0880	30.50	Secondary

RFS Sub-Route	RFS Route Description	ELR	Start		End		Approx Decimal Miles	Route Type (Simplified)
			Miles	Yards	Miles	Yards		
Hertford Loop – electrified	Diversionsary Route	HDB	4	1496	28	0330	23.10	Secondary
Hitchin to Peterborough via Ely (electrified to Ely)	Diversionsary Route	SBR	32	0252	55	0758	23.29	Secondary
Hitchin to Peterborough via Ely (electrified to Ely)	Diversionsary Route	BGK	53	0066	71	1386	18.75	Secondary
Hitchin to Peterborough via Ely (electrified to Ely)	Diversionsary Route	EMP	71	1394	100	1452	29.03	Secondary
Peterborough to Doncaster via Sleaford and Lincoln	Diversionsary Route	WEB	79	0759	92	1276	13.29	Rural
Peterborough to Doncaster via Sleaford and Lincoln	Diversionsary Route	SPD1	44	0154	62	0286	18.08	Rural
Peterborough to Doncaster via Sleaford and Lincoln	Diversionsary Route	SSE	0	0000	0	0946	0.54	Rural
Peterborough to Doncaster via Sleaford and Lincoln	Diversionsary Route	SNW	1	0704	3	0902	2.11	Rural
Peterborough to Doncaster via Sleaford and Lincoln	Diversionsary Route	SPD2	62	0286	81	0550	19.15	Rural
Peterborough to Doncaster via Sleaford and Lincoln	Diversionsary Route	SPD3	81	0550	98	1210	17.37	Secondary
Peterborough to Doncaster via Sleaford and Lincoln	Diversionsary Route	SPD4	98	1518	115	1584	17.04	Secondary

RFS Sub-Route	RFS Route Description	ELR	Start		End		Approx Decimal Miles	Route Type (Simplified)
			Miles	Yards	Miles	Yards		
Peterborough to Doncaster via Sleaford and Lincoln	Diversionsary Route	SPD5	115	1584	117	0880	1.60	Secondary
Peterborough to Doncaster via Sleaford and Lincoln	Diversionsary Route	BCB	115	1581	116	0972	0.65	Freight only
Doncaster to Gilberdyke via Goole	Diversionsary Route	DOW	0	0000	8	0176	8.10	Primary
Doncaster to Gilberdyke via Goole	Diversionsary Route	TJG1	7	1520	9	0321	1.32	Secondary
Doncaster to Gilberdyke via Goole	Diversionsary Route	TJG2	0	0000	14	0132	14.07	Secondary
Doncaster to Leeds via Knottingley	Diversionsary Route	KWS	58	0452	68	1672	10.69	Freight only
Doncaster to Leeds via Knottingley	Diversionsary Route	WAG1	47	0781	58	0440	10.81	Secondary
Doncaster to Leeds via Knottingley	Diversionsary Route	WWK	0	0000	0	0572	0.33	Secondary
Doncaster to York via Knottingley	Diversionsary Route	FKW	2	0594	2	1562	0.55	Secondary
Doncaster to York via Knottingley	Diversionsary Route	SMJ2	0	0000	2	0594	2.34	Secondary
Doncaster to York via Knottingley	Diversionsary Route	SMJ3	15	0088	16	1518	1.81	Secondary

RFS Sub-Route	RFS Route Description	ELR	Start		End		Approx Decimal Miles	Route Type (Simplified)
			Miles	Yards	Miles	Yards		
Doncaster to York via Knottingley	Diversionsary Route	NOC	10	1694	15	0088	4.09	Secondary
Selby to Hambleton West Junction	Diversionsary Route	HUL3	0	0000	4	0946	4.54	Secondary
Northallerton to Newcastle via Yarm, Hartlepool and Sunderland	Diversionsary Route	LLP1	28	1672	29	1584	0.95	Secondary
Northallerton to Newcastle via Yarm, Hartlepool and Sunderland	Diversionsary Route	LLP2	42	0462	43	0013	0.74	Secondary
Northallerton to Newcastle via Yarm, Hartlepool and Sunderland	Diversionsary Route	LLP3	0	0000	0	1569	0.89	Secondary
Northallerton to Newcastle via Yarm, Hartlepool and Sunderland	Diversionsary Route	LEN2	-0	0044	0	0827	0.47	Secondary
Northallerton to Newcastle via Yarm, Hartlepool and Sunderland	Diversionsary Route	LEN3	42	1738	101	1266	58.73	Secondary
Northallerton to Newcastle via Yarm, Hartlepool and Sunderland	Diversionsary Route	HLK	0	0000	0	1030	0.59	Secondary
Northallerton to Newcastle via Yarm, Hartlepool and Sunderland	Diversionsary Route	KEB	0	0000	0	0286	0.16	Secondary
Northallerton to Newcastle via Yarm, Hartlepool and Sunderland	Diversionsary Route	PLG1	100	1424	101	0330	0.38	Secondary
Northallerton to Newcastle via Yarm, Hartlepool and Sunderland	Diversionsary Route	PLG2	0	0000	0	0478	0.27	Secondary

RFS Sub-Route	RFS Route Description	ELR	Start		End		Approx Decimal Miles	Route Type (Simplified)
			Miles	Yards	Miles	Yards		
Stockton to Ferryhill	Diversiory Route	STF	0	0000	10	1584	10.90	Freight only
Kings Cross to Edinburgh – electrified	Core Route	ECM7	0	0000	69	1474	69.84	Primary
Kings Cross to Edinburgh – electrified	Core Route	ECM8	0	0618	54	1108	54.28	Primary
Kings Cross to Edinburgh – electrified	Core Route	ECM9	0	0000	0	0618	0.35	Primary
Hitchin to Kings Lynn via Cambridge – electrified	Core Route	BGK	71	1386	96	1650	25.15	Secondary
Doncaster to Hull via Selby	Core Route	HNC	3	0748	4	0000	0.57	Secondary
Edinburgh to Glasgow Central via Carstairs and Motherwell – electrified	Core Route	EGM3	0	0316	1	0462	1.08	Primary
Edinburgh to Glasgow Central via Carstairs and Motherwell – electrified	Core Route	ECA3	99	0014	100	0924	1.52	Primary
Edinburgh to Glasgow Central via Carstairs and Motherwell – electrified	Core Route	ECA2	74	0215	99	0014	24.88	Primary
Edinburgh to Glasgow Central via Carstairs and Motherwell – electrified	Core Route	CSP	73	1080	74	0250	0.53	Primary
Edinburgh to Glasgow Central via Carstairs and Motherwell – electrified	Core Route	WCM1	73	0814	84	0218	10.66	Primary
Edinburgh to Glasgow Central via Carstairs and Motherwell – electrified	Core Route	WCM2	84	0218	102	0594	18.21	Primary
Edinburgh to Aberdeen via Kirkcaldy and Leuchars	Core Route	ECN1	0	0000	0	0316	0.18	Primary

RFS Sub-Route	RFS Route Description	ELR	Start		End		Approx Decimal Miles	Route Type (Simplified)
			Miles	Yards	Miles	Yards		
Edinburgh to Aberdeen via Kirkcaldy and Leuchars	Core Route	ECN2	0	0316	59	1726	59.80	Secondary
Edinburgh to Aberdeen via Kirkcaldy and Leuchars	Core Route	ECN3	0	0462	17	0374	16.95	Secondary
Edinburgh to Aberdeen via Kirkcaldy and Leuchars	Core Route	ECN4	17	1210	33	0572	15.64	Secondary
Edinburgh to Aberdeen via Kirkcaldy and Leuchars	Core Route	ECN5	203	0242	241	0176	37.96	Secondary
Edinburgh to Inverness via Perth, routing through Stirling or Kirkaldy	Core Route	EGM2	44	1653	46	0000	1.06	Primary
Edinburgh to Inverness via Perth, routing through Stirling or Kirkaldy	Core Route	EGM1	24	1320	44	1653	20.19	Primary
Edinburgh to Inverness via Perth, routing through Stirling or Kirkaldy	Core Route	PMT	21	0440	26	0898	5.26	Secondary
Edinburgh to Inverness via Perth, routing through Stirling or Kirkaldy	Core Route	SCM3	109	0946	123	0880	13.96	Secondary
Edinburgh to Inverness via Perth, routing through Stirling or Kirkaldy	Core Route	SCM4	123	0880	150	1342	27.26	Secondary
Edinburgh to Inverness via Perth, routing through Stirling or Kirkaldy	Core Route	CDC1	0	0000	14	0220	14.13	Secondary
Edinburgh to Inverness via Perth, routing through Stirling or Kirkaldy	Core Route	CDC2	44	0396	45	1452	1.60	Secondary
Edinburgh to Inverness via Perth, routing through Stirling or Kirkaldy	Core Route	HGL1	150	1342	158	0836	7.71	Secondary
Edinburgh to Inverness via Perth, routing through Stirling or Kirkaldy	Core Route	HGL2	7	0044	118	0030	110.99	Secondary

RFS Sub-Route	RFS Route Description	ELR	Start		End		Approx Decimal Miles	Route Type (Simplified)
			Miles	Yards	Miles	Yards		
Stirling or Kirkcaldy								
Newcastle to Carstairs via Carlisle	Diversionsary Route	NEC1	0	0939	5	0616	4.82	Secondary
Newcastle to Carstairs via Carlisle	Diversionsary Route	NEC2	3	1716	60	0044	56.05	Secondary
Newcastle to Carstairs via Carlisle	Diversionsary Route	CGJ7	68	1474	69	0202	0.28	Primary
Newcastle to Carstairs via Carlisle	Diversionsary Route	WCM1	0	0000	73	0814	73.46	Primary
Newcastle to Carstairs via Carlisle	Diversionsary Route	ECA1	73	0303	73	1340	0.59	Primary
Diversionsary routes into Glasgow, namely Wishaw, Bellshill, Hamilton and Cathcart – electrified	Diversionsary Route	WWD	84	0176	89	1107	5.53	Secondary
Diversionsary routes into Glasgow, namely Wishaw, Bellshill, Hamilton and Cathcart – electrified	Diversionsary Route	SHR	86	1377	87	0946	0.76	Secondary
Diversionsary routes into Glasgow, namely Wishaw, Bellshill, Hamilton and Cathcart – electrified	Diversionsary Route	EGS1	-0	0154	3	1423	3.89	Secondary
Diversionsary routes into Glasgow, namely Wishaw, Bellshill, Hamilton and Cathcart – electrified	Diversionsary Route	SCM1	89	1123	91	0176	1.46	Secondary
Diversionsary routes into Glasgow, namely Wishaw, Bellshill, Hamilton and Cathcart – electrified	Diversionsary Route	SCM2	91	0066	91	0209	0.08	Secondary
Diversionsary routes into Glasgow, namely Wishaw, Bellshill, Hamilton and Cathcart – electrified	Diversionsary Route	MDE	0	0000	0	0679	0.39	Secondary

RFS Sub-Route	RFS Route Description	ELR	Start		End		Approx Decimal Miles	Route Type (Simplified)
			Miles	Yards	Miles	Yards		
Bellshill, Hamilton and Cathcart – electrified	Route							
Diversions routes into Glasgow, namely Wishaw, Bellshill, Hamilton and Cathcart – electrified	Diversions Route	MDW	91	0176	91	1109	0.53	Secondary
Diversions routes into Glasgow, namely Wishaw, Bellshill, Hamilton and Cathcart – electrified	Diversions Route	HMN1	0	0000	1	0968	1.55	Secondary
Diversions routes into Glasgow, namely Wishaw, Bellshill, Hamilton and Cathcart – electrified	Diversions Route	HMN2	0	0000	6	1342	6.76	Secondary
Diversions routes into Glasgow, namely Wishaw, Bellshill, Hamilton and Cathcart – electrified	Diversions Route	KHL	95	1715	100	0792	4.48	Secondary
Diversions routes into Glasgow, namely Wishaw, Bellshill, Hamilton and Cathcart – electrified	Diversions Route	CNC	0	0000	0	0990	0.56	Secondary
Diversions routes into Glasgow, namely Wishaw, Bellshill, Hamilton and Cathcart – electrified	Diversions Route	CTC	0	0000	1	1518	1.86	Secondary
Diversions routes into Glasgow, namely Wishaw, Bellshill, Hamilton and Cathcart – electrified	Diversions Route	MEN1	0	0770	0	1502	0.42	Secondary
Inverkeithing to Markinch via Dunfermline	Diversions Route	CWH1	13	0438	22	1672	9.70	Secondary
Inverkeithing to Markinch via Dunfermline	Diversions Route	CWH2	0	0000	0	1540	0.88	Secondary
Inverkeithing to Markinch via Dunfermline	Diversions Route	CWH3	27	0000	34	1496	7.85	Secondary
Inverkeithing to Markinch via Dunfermline	Diversions Route	TNW	-0	-0218	0	1540	0.99	Secondary

RFS Sub-Route	RFS Route Description	ELR	Start		End		Approx Decimal Miles	Route Type (Simplified)
			Miles	Yards	Miles	Yards		
	Route							
Inverkeithing to Markinch via Dunfermline	Diversiionary Route	IGE	0	0000	0	0726	0.41	Freight only
Kirknewton to Uddingston via Shotts	Diversiionary Route	EGS2	0	0880	23	0281	22.66	Secondary
Perth to Dundee	Diversiionary Route	SCM5	0	0770	21	0500	20.85	Secondary
Aberdeen to Inverness	Diversiionary Route	ANI1	0	0000	53	0118	53.07	Secondary
Aberdeen to Inverness	Diversiionary Route	ANI2	0	0000	30	0885	30.50	Secondary
Aberdeen to Inverness	Diversiionary Route	ANI3	119	0572	143	0843	24.15	Secondary
Carmuiris West Junction to Carmuiris East Junction	Diversiionary Route	CMS	-0	-0032	0	0866	0.51	
Greenhill Upper Junction to Polmont Junction	Diversiionary Route	EGM1	17	0638	24	1320	7.39	
Greenhill Upper Junction to Greenhill Lower Junction	Diversiionary Route	GHL	0	0000	0	1318	0.75	
Greenhill Lower Junction to Larbert Junction	Diversiionary Route	SCM3	106	1364	109	0946	2.76	
Edinburgh to Glasgow Central via Carstairs and	Core Route	EGM4	-0	-0039	0	0316	0.20	

RFS Sub-Route	RFS Route Description	ELR	Start		End		Approx Decimal Miles	Route Type (Simplified)
			Miles	Yards	Miles	Yards		
Motherwell – electrified								
Edinburgh Suburban - Portobello Junction to Brunstane		SUB1	3	0696	4	0000	0.60	
Edinburgh Suburban - Brunstane to Haymarket Central Junction		SUB2	0	0291	6	1518	6.70	
Edinburgh Suburban - Gorgie Junction to Haymarket West Junction		GGE	-0	-0126	0	0805	0.53	
Edinburgh Suburban - Craiglockhart Junction to Slateford Junction		CKT	0	0000	0	1058	0.60	
Benton North Junction to Earsdon Junction		BNE	0	0000	2	1166	2.66	
Earsdon Junction to Morpeth North Junction		EJM	7	0198	20	1012	13.46	
Teeside - Norton-on-Tees East Junction to Norton-on-Tees West Junction		NWE	0	0000	0	0616	0.35	
Teeside - Darlington South Junction to Eaglescliffe South Junction		DSN1	0	0638	8	1254	8.35	
Selby Area - Selby West Junction to Selby Canal Junction		SEC	0	0000	0	0726	0.41	
Gainsborough Area - Trent West Junction to Trent East Junction		MAC3	73	0201	73	0630	0.18	
Lincoln Area - Boulton Junction to Pyewipe Junction		BHP	0	0000	0	1430	0.81	

RFS Sub-Route	RFS Route Description	ELR	Start		End		Approx Decimal Miles	Route Type (Simplified)
			Miles	Yards	Miles	Yards		
	Route							
Sleaford Area - Sleaford West Junction to Sleaford East Junction	Diversionsary Route	GRS2	120	0638	121	0462	0.90	
Ely - Ely North Junction to Ely West Junction	Diversionsary Route	EWC	0	0000	1	0000	1.00	
Finsbury Park - Canonbury Tunnel (East Portal) to Finsbury Park Junction	Diversionsary Route	CFP	3	0254	4	0682	1.24	
Wakefield Area - Hare Park Junction to Crofton West Junction	Diversionsary Route	HPC	171	1518	173	0484	1.41	
Wakefield Area - Calder Bridge Junction to Turners Lane Junction	Diversionsary Route	CTL	0	0000	0	1166	0.66	
Wakefield Area - Wakefield Kirkgate West Jn to Goose Hill Jn	Diversionsary Route	MVN2	47	0946	50	0682	2.85	
Wakefield Area - Goose Hill Junction to Whitehall East Junction.	Diversionsary Route	TJC3	184	1177	195	1188	11.00	
Wakefield Area - Milford Junction to Altofts Junction	Diversionsary Route	NOC	15	0088	23	1262	8.67	
Wakefield Area - Whitwood Junction to Methley Junction	Diversionsary Route	MEW2	0	0000	1	0314	1.18	
Wakefield Area - Pontefract West Junction to Cutsyke Junction	Diversionsary Route	CPM1	56	0924	59	0066	3.51	
Wakefield Area - Castleford West Junction to	Diversionsary	CPM2	0	0000	0	1342	0.76	

RFS Sub-Route	RFS Route Description	ELR	Start		End		Approx Decimal Miles	Route Type (Simplified)
			Miles	Yards	Miles	Yards		
Cutsyke Junction	Route							
Wakefield Area - Sherburn Junction to Gascoigne Wood Junction	Diversionsary Route	SHG	13	0418	14	0748	1.19	
Leeds Area - Engine Shed Junction to Leeds West Junction	Diversionsary Route	ELN	195	0433	195	1166	0.42	
Doncaster Area - Rossington Colliery Junction to Flyover West Junction	Diversionsary Route	FWR1	152	0237	153	0418	1.10	
Doncaster Area - Loversall Carr Junction to Rossington Colliery Junction	Diversionsary Route	LCR	152	0000	152	0237	0.13	
Doncaster Area - Loversall Junction to Flyover East Junction	Diversionsary Route	LCJ	152	0792	152	1738	0.54	
Doncaster Area - Potteric Carr Junction to Low Ellers Curve Junction	ECS Route	UDS	15	1210	16	1232	1.01	
Doncaster Area - St Catherine's Junction to Decoy south Junction	ECS Route	YDS	15	0308	15	1562	0.71	
Doncaster Area - South of St.Catherine's Junction to Flyover West Junction	ECS Route	BKS	14	1685	15	1210	0.73	
North Pole Depot to Copenhagen Jn - South of crossovers at North Pole Junction to Mitre Bridge Junction	ECS Route	WLL	4	1544	5	1478	0.96	
North Pole Depot to Copenhagen Jn - Mitre Bridge Junction to Willesden High Level Junction	ECS Route	WMB	-0	-0009	0	0939	0.54	

RFS Sub-Route	RFS Route Description	ELR	Start		End		Approx Decimal Miles	Route Type (Simplified)
			Miles	Yards	Miles	Yards		
North Pole Depot to Copenhagen Jn - Willesden High Level Junction to Willesden High Level Junction	ECS Route	BOK4	0	0071	0	0000	0.04	
North Pole Depot to Copenhagen Jn - Willesden High Level Junction to Kensal Green Junction	ECS Route	BOK3	5	1055	5	0214	0.48	
North Pole Depot to Copenhagen Jn - Kensal Green Junction to Camden Road Junction	ECS Route	BOK2	5	0214	-0	-0043	5.15	
North Pole Depot to Copenhagen Jn - Camden Road Junction to Camden Road Central Junction	ECS Route	BOK1	5	0183	2	1500	2.25	
North Pole Depot to Copenhagen Jn -Camden Road Central Junction to SE/LNE Boundary	ECS Route	CRF2	4	1409	4	0992	0.24	
North Pole Depot to Copenhagen Jn - SE/LNE Boundary to Copenhagen Junction	ECS Route	CRF1	0	0660	0	0000	0.38	
Gospel Oak Junction to Harringay Junction	ECS Route	GOJ	-0	-0078	0	1277	0.77	
Gospel Oak Junction to Harringay Junction	ECS Route	TAH1	2	0924	4	0330	1.66	
Gospel Oak Junction to Harringay Junction	ECS Route	HPW	0	0066	0	0550	0.28	
Bradford Interchange to Wakefield Kirkgate - Bradford Interchange to Dryclough Junction	Diversiory Route	MRB	40	0593	31	0792	8.89	
Bradford Interchange to Wakefield Kirkgate - Dryclough Junction to Greetland Junction	Diversiory Route	GRD	0	0000	1	0242	1.14	
Bradford Interchange to Wakefield Kirkgate - Greetland Junction to Wakefield Kirkgate West	Diversiory Route	MVN2	30	1672	47	0946	19.59	

RFS Sub-Route	RFS Route Description	ELR	Start		End		Approx Decimal Miles	Route Type (Simplified)
			Miles	Yards	Miles	Yards		
Junction								
Dundee Sidings (North of Edinburgh)	Diversiory Route (SDG)	SCM5	0	0770	0	1468	0.40	Siding
	Core Route (SDG)	ECN2	58	1518	59	0613	0.49	Siding
Marsh Lane Sidings (Leeds)	Core Route (SDG)	HUL4	19	0420	19	1247	0.47	Siding
Wrenthorpe Sidings (Wakefield Westgate)	Core Route (SDG)	DOL2	176	0338	176	1627	0.73	Siding
Harrogate East Station Sidings (Harrogate)	Core Route (SDG)	HAS	0	0000	1	0000	1.00	Siding
	Core Route (SDG)	HAY2	20	0135	20	0649	0.29	Siding
Up Good Sidings (Lincoln)	Diversiory Route (SDG)	SPD3	82	0123	82	0571	0.25	Sidings

Appendix G to Schedule 1

Training

1. INTRODUCTION

- 1.1 This Appendix G (*Training*) sets out the requirements in accordance with which the TSP shall deliver training courses, materials, facilities and equipment to the Secretary of State, the Relevant Operator and other third parties involved in the operation of the Sets (referred to herein as **Relevant Third Parties**) in order to allow such parties to build and maintain the competence necessary to support the operation of the Sets throughout the Contract Period.
- 1.2 The process for satisfying such requirements are to be documented in a Training Plan to be developed and implemented by the TSP in accordance with this Appendix G (*Training*).

2. RELEVANT OPERATOR TRAINING

- 2.1 The TSP shall be responsible for the provision of training courses, materials, facilities and equipment to the Secretary of State and the Relevant Operator in connection with the training to be provided by the TSP in accordance with the Training Plan. The object of the training will be to train the drivers and other employees of the Relevant Operator or the Relevant Third Parties on a "train the trainer basis" in order safely, effectively and efficiently to:
- (a) operate the Sets; and
 - (b) support the operation of the Sets.
- 2.2 The Training Plan will specify the training courses to be provided by the TSP in the period from the date falling six (6) months prior to the Scheduled Acceptance Date of the first Set (or such other date as may be agreed between the parties with the objective of maintaining the competence of trainers) to the earlier of:
- (a) the date of the Fleet Acceptance Certificate; and
 - (b) the Fleet Acceptance Drop Dead Date,
- (the **Train the Trainer Period**).
- 2.3 If the Relevant Operator establishes at any time prior to the date that falls three (3) months after the expiry of the Train the Trainer Period that the training provided by the TSP in accordance with the Training Plan does not satisfy the object to train the drivers and other employees of the Relevant Operator and Relevant Third Parties on a "train the trainer basis" as required by Paragraph 2.1, the TSP shall provide such further training courses on a "train the trainer basis", at the TSP's cost, as are necessary to comply with the requirements of Paragraph 2.1.
- 2.4 To the extent that the TSP is required to provide any training courses, materials, facilities and equipment in addition to those described in the Training Plan at any time during the Contract Period as a result of a change to the design or configuration of any Set:
- (a) to the extent that the change to the design or configuration of the Set is a Variation, the Secretary of State shall be responsible for the costs of such training

courses, materials, facilities and equipment, such costs being established under Schedule 8 (*Variations*); and

- (b) to the extent that the change to the design or configuration of the Set does not constitute a Variation, the TSP shall be responsible for the costs of such training courses, materials, facilities and equipment.
- 2.5 The Relevant Operator shall be permitted to reproduce, adapt and reformat the training courses and materials provided by the TSP pursuant to the Training Plan to support the delivery of training in the operation of the Sets to their own drivers and other employees and required Relevant Third Parties when necessary and, to the extent that the TSP provides written materials, all such materials shall be in Microsoft Office or pdf format, or such other format as is agreed.
- 2.6 The TSP shall ensure that all of its trainers and assessors are appropriately qualified (including as detailed in the Training Matrix (to be provided in accordance with Paragraph 13) and certificated for the purpose of training the Relevant Operator's trainers.
- 2.7 The Relevant Operator shall provide sufficient trainers to be trained during the Train the Trainer Period, and shall ensure that all such trainers are appropriately qualified (including as detailed in the Training Matrix (to be provided in accordance with Paragraph 13) and certificated, in each case for the purpose of training its employees.
- 2.8 As a minimum, the TSP shall provide training courses in accordance with the Training Plan which shall support the following employees and activities of the Relevant Operator and required Relevant Third Parties:
- (a) train driver;
 - (b) train guard;
 - (c) on-board customer service and catering staff;
 - (d) driving on depots;
 - (e) control room personnel;
 - (f) train despatch;
 - (g) engineering staff (through inclusion on TSP staff course);
 - (h) on-train cleaning staff; and
 - (i) catering logistic supplier,

which courses (unless expressly stated otherwise above) shall be run on a "train the trainer" basis.

3. RELEVANT THIRD PARTY TRAINING REQUIREMENTS

- 3.1 The TSP shall be responsible for the provision of training courses, materials, facilities and equipment to Relevant Third Parties on a "train the trainer" basis sufficient to enable such Relevant Third Parties to deliver training to their employees in order to effectively, efficiently and safely support the operation of the Sets. The Training Plan will specify the training courses to be provided in this regard during the Train the Trainer Period.

- 3.2 If the Relevant Third Party establishes at any time prior to the date that falls three (3) months after the date of the Fleet Acceptance Certificate that the training provided by the TSP in accordance with the Training Plan does not satisfy the object to train the employees of the Relevant Third Party on a "train the trainer basis" as required by Paragraph 3.1, the TSP shall provide such further training courses on a "train the trainer basis", at the TSP's cost, as are necessary to comply with the requirements of Paragraph 3.1
- 3.3 Each Relevant Third Party shall be permitted to reproduce, adapt and reformat the training courses and materials provided by the TSP pursuant to the Training Plan to support the delivery of training in the operation of the Sets to their own employees and, to the extent that the TSP provides written materials, all such materials shall be in Microsoft Office or pdf format, or such other format as is agreed.
- 3.4 The TSP shall ensure that all of its trainers and assessors are appropriately qualified (including as detailed in the Training Matrix (to be provided in accordance with Paragraph 13)) and certificated for the purpose of training the Relevant Third Party's trainers.
- 3.5 As a minimum, the Training Plan will include training courses to be run by the TSP for the following Relevant Third Parties:
- (a) Network Rail mobile operations managers;
 - (b) Network Rail line side re-railing, lifting and recovery teams;
 - (c) on-train cleaning staff;
 - (d) station operator train dispatch staff; and
 - (e) Rail Accident Investigation Board inspectors,
- which courses shall be run on a "train the trainer" basis.

4. **OBLIGATION TO PROVIDE TRAINING MATERIALS**

- 4.1 The TSP shall develop, and keep maintained and up to date, high quality training materials necessary to support the delivery of the training courses that the TSP is to run pursuant to the Training Plan (the **Training Materials**) from the date of delivery of the first training course or materials pursuant to Paragraphs 2 and 3 and throughout the Contract Period. All training materials shall be updated by the TSP as and when reasonably necessary as a result of changes in the design or configuration of the Sets.
- 4.2 Where the TSP develops any training materials pursuant to this Appendix G (*Training*), the TSP shall provide the Secretary of State's Representative, the Relevant Operator and (to the extent appropriate) any Relevant Third Party with a draft of such materials. Within four (4) weeks (or such other period as the parties may agree) of receiving a draft of any such materials, the Secretary of State's Representative shall collate the comments of the Relevant Operator and (to the extent appropriate) such Relevant Third Party and within such period either:
- (a) provide the TSP with the comments on such draft materials in which case the TSP shall submit a revised draft to the Secretary of State's Representative, the Relevant Operator and (to the extent appropriate) any Relevant Third Party within

two (2) weeks of receipt of such comments and this Paragraph 4.2 shall apply to each such revised draft; or

(b) notify the TSP that she agrees the draft of such materials.

4.3 The TSP shall continue to revise and resubmit drafts of the relevant materials to the Secretary of State's Representative until those materials are agreed pursuant to Paragraph 4.2, provided that, in respect of each revised draft of the relevant materials which are resubmitted to the Secretary of State's Representative, the Secretary of State's Representative shall provide comments to the TSP or notify the TSP that she agrees the revised draft of such materials within two (2) weeks (or such other period as the parties may agree) of receiving the revised draft of such materials.

5. TRAINING FACILITIES AND EQUIPMENT

5.1 The TSP shall provide all training facilities and equipment necessary to support the delivery of the training courses that the TSP is to run pursuant to the Training Plan.

5.2 For each "train the trainer" course to be run by the TSP, the TSP shall provide, as a minimum, a room for the training located at the Mother Depot or such other location as is agreed, in each case with the features and facilities reasonably required in relation to the relevant course.

5.3 Subject to Paragraph 5.4, the TSP shall, from the commencement date of the first "train the trainer" course to the last day of the Contract Period, provide the following facilities and equipment for the trainers of the Relevant Operator, and the Relevant Third Parties' to run subsequent courses:

(a) any necessary demonstration components; and

(b) subject to the commercial and industrial operations of the TSP or the Maintainer (as the case may be) not being unreasonably disrupted, access to Sets at locations and times agreed by the TSP with the Relevant Operator or the Relevant Third Party, such access not to be unreasonably withheld having regard to the TSP's obligations under this Agreement and the TARA.

5.4 Each of the Relevant Operator and the Relevant Third Party shall be responsible for providing and/or procuring suitable training rooms for their trainers to run subsequent courses.

5.5 Where any relevant facilities and equipment are located in areas under the control of the Relevant Operator, the Relevant Operator will provide the TSP (free of charge) with reasonable access to enable compliance with this Paragraph 5.

6. CONTENT OF TRAINING MATERIALS

6.1 The TSP shall fully document all training courses required pursuant to Paragraphs 2 and 3 (including the "train the trainer" courses) to be run by the TSP. The training materials for all such courses shall include as a minimum, to the extent reasonably required:

(a) trainer's notes;

(b) presentations;

(c) trainee handouts, course booklets and user guides;

- (d) audio/visual materials including films or animations or computer simulation;
 - (e) any computer based training;
 - (f) other assessment materials including knowledge test papers and quiz lists as required by the competence assessment method selected for each course; and
 - (g) details of all required facilities and equipment.
- 6.2 The TSP shall provide when initially produced and as soon as reasonably practicable after each subsequent update or amendment, to each of the following persons:
- (a) the Secretary of State's Representative, one (1) electronic copy of the relevant materials (or the relevant change);
 - (b) the Relevant Operator, ten (10) hard copies and one (1) electronic copy of the relevant materials (or the relevant change); and
 - (c) each Relevant Third Party (but only in respect of training courses that are relevant to such Relevant Third Party), one (1) electronic copy and such number of hard copies (to a maximum of ten (10)) as are agreed (or the relevant change).
- 6.3 Throughout the Contract Period, the TSP shall, on request and at the cost of the requesting person, make additional copies of the training materials available to the Secretary of State, the Relevant Operator and any Relevant Third Party.
- 6.4 The TSP shall provide to the Secretary of State's Representative and the Relevant Operator a DVD or DVDs (which may use CGI-style simulation in line with industry best practice) to support train familiarisation and defect handling training and the TSP shall update these DVDs from time to time to include the most appropriate defects throughout the design life of the Sets.
- 6.5 The Secretary of State's Representative and/or the Relevant Operator may use, reproduce and distribute to any employee of the Relevant Operator or any Relevant Third Party any DVD provided pursuant to Paragraph 6.4.
- 6.6 Where any training materials have been provided in an electronic media (for example, DVDs or videos) which becomes obsolete, the TSP shall provide the relevant training material in a replacement format that is readily available on the market at that time and is agreed with the Secretary of State's Representative (such agreement not to be unreasonably withheld or delayed).
7. **SIMULATOR INFORMATION**
- 7.1 As part of the facilities required to support the delivery of the training required by Paragraph 2, the TSP shall provide to the Secretary of State and the Relevant Operator functional design and performance information with respect to the Sets to allow the Secretary of State or the Relevant Operator to procure Simulators which simulate accurately the functionality, design and performance of the Sets, including relevant information from, or extracts of, the Technical Documents and/or the Technical Library to the extent necessary for this procurement (the ***Simulator Information***).
- 7.2 As a minimum the Simulator Information shall allow the Relevant Operator to procure a Simulator that:

- (a) has realistic hardware and software replication of the driving cab (including the driver's seat), cab desk, controls and associated systems (such as the train management system, the reservation system, the passenger information system and selective door opening) and any other parts of the Set that are deemed necessary by the Relevant Operator for the train crew to utilise (such as pantograph isolation, door control panels and vehicle system isolations);
- (b) simulates the sounds associated with the operation of the Sets, controls and equipment; and
- (c) replicates sufficient faults, fault scenarios and rectification steps to meet the outputs of the Training Needs Assessment.

7.3 Subject to Paragraph 9.3, the TSP shall make the Simulator Information available by the date specified for delivery of the Simulator Information in the Training Plan and throughout the Contract Period.

7.4 Subject to Paragraph 7.5, throughout the Contract Period, the TSP shall ensure that the Simulator Information is kept up to date to the extent reasonably necessary to reflect any changes in:

- (a) the design or configuration of the Sets; or
- (b) the Operating and Maintenance Manuals,

and shall provide a copy of any updated Simulator Information to the Relevant Operator as soon as reasonably practicable following such update.

7.5 Following the Actual Acceptance Date of the first Set in the Fleet, where the TSP is required to make any change to any Simulator Information as a result of a change to the design or configuration of any Set or a change to the Operating and Maintenance Manuals:

- (a) subject to Paragraph 7.5(c), to the extent that the change to the design or configuration of the Set and/or change to the Operating and Maintenance Manuals (as applicable) constitutes a Variation or is made at the request of the Secretary of State or the Relevant Operator, the Secretary of State shall be responsible for the costs of any change to any Simulator;
- (b) to the extent that the change to the design or configuration of the Set or change to the Operating and Maintenance Manuals (as applicable) does not constitute a Variation and is not made at the request of the Secretary of State or the Relevant Operator, the TSP shall, subject to the provision of such supporting evidence as the TSP may reasonably require, reimburse the Relevant Operator for the reasonable costs of any resulting change to any Simulator; and
- (c) to the extent that the change to the design or configuration of the Set and/or change to the Operating and Maintenance Manuals (as applicable) is made in response to a Variation agreed by the parties in response to a failure by the TSP to comply with its obligations under this Agreement or the TARA, the TSP shall, subject to the provision of such supporting evidence as the TSP may reasonably require, reimburse the Relevant Operator for the reasonable costs of any resulting change to any Simulator.

8. **COMPUTER BASED TRAINING**

- 8.1 Without prejudice to the obligations in Paragraph 6, as part of the training materials required to support the delivery of training by the Relevant Operator, the TSP shall provide to the Secretary of State and the Relevant Operator in accordance with the Training Plan appropriate computer based training and competence assessment modules (the **Computer Based Training**).
- 8.2 The detailed scope of the Computer Based Training shall be determined by the Training Needs Assessment and Training Methods Selection Process and identified in the Training Matrix.
- 8.3 Unless otherwise determined by the Training Needs Assessment, the TSP shall provide a minimum of two (2) hours of Computer Based Training in accordance with the Training Plan to support the operation of the Sets with the content to include the following:
- (a) a basic introduction to the Sets;
 - (b) Vehicle and equipment layouts; and
 - (c) on-train systems.
- 8.4 Subject to Paragraph 9.3, the TSP shall make all Computer Based Training modules available to the Secretary of State's Representative and the Relevant Operator from the date specified for delivery of the Computer Based Training in the Training Plan and throughout the Contract Period.
- 8.5 Throughout the Contract Period, the TSP shall ensure that all Computer Based Training modules are maintained, kept up to date to the extent reasonably necessary to reflect any changes in the design or configuration of the Sets, and the principles in Paragraph 2.4 shall apply to any change to Computer Based Training modules required as a consequence of any changes in the design or configuration of the Sets resulting from a Variation.
- 8.6 As part of the Computer Based Training, the TSP shall provide a means of assessing knowledge gain and the effectiveness of such Computer Based Training.

9. **TRAINING PLAN**

- 9.1 The TSP shall develop the Training Plan that will:
- (a) describe in detail the processes through which the TSP will:
 - (i) identify the training needs of the Relevant Operator and Relevant Third Parties as more particularly described below (the **Training Needs**);
 - (ii) determine the most appropriate training delivery methods (the **Training Methods Selection Process**) as more particularly described in Paragraph 12;
 - (iii) develop the training courses and associated materials, facilities and equipment required to meet the requirements of this Appendix G (**Training**);

- (iv) deliver the training to the Relevant Operator's, and Relevant Third Parties', trainers in accordance with the requirements of this Appendix G (*Training*); and
 - (v) deliver the training materials (including Simulator Information), facilities and equipment (including Computer Based Training) in accordance with the requirements of this Appendix G (*Training*);
- (b) describe in detail the process for the Secretary of State, the Relevant Operator and (as appropriate) each Relevant Third Party to review and comment on the specifications for:
- (i) training courses;
 - (ii) training materials;
 - (iii) training facilities and equipment; and
 - (iv) Computer Based Training,
- prior to such specifications being finalised;
- (c) specify, among other things:
- (i) the scope of the training courses, facilities and equipment to be provided by the TSP;
 - (ii) the maximum number of the Relevant Operator's trainers to be trained by the TSP;
 - (iii) the format and content of training materials to be provided by the TSP; and
 - (iv) the location and duration of the training courses to be provided by the TSP;
- (d) include the scheduled dates on which all training courses, materials (including Simulator Information), facilities and equipment (including Computer Based Training) will be provided;
- (e) describe the information and support the TSP requires from the Secretary of State, the Relevant Operator and Relevant Third Parties to develop and deliver the Training Plan, provided that the TSP shall only request information and support from the Secretary of State, the Relevant Operator and the Relevant Third Parties to the extent reasonable and the TSP shall be responsible for procuring such information and support from the Relevant Third Parties; and
- (f) include a distinct programme for the development and delivery of on-going training deliverables associated with expected technical changes to the Sets.

9.2 Subject to Paragraph 9.3, the TSP shall provide all training courses, materials (including Simulator Information), facilities and equipment (including Computer Based Training) on the dates scheduled in the Training Plan. All training courses shall be conducted and all materials shall be delivered by the TSP in English.

- 9.3 The TSP may delay delivery of any training courses, materials (including Simulator Information), facilities and equipment (including Computer Based Training) by agreement with the Secretary of State and the Relevant Operator (such agreement in each case not to be unreasonably withheld or delayed) provided that this does not materially impact on the Relevant Operator's ability to train its drivers and other employees to operate or support the operation of the Sets prior to delivery of the first Set in the Fleet to the Relevant Operator to achieve the fault free running required for Final Acceptance.
- 9.4 The Secretary of State shall procure that the Relevant Operator cooperates with the TSP to develop the Training Plan, including providing appropriate information as to the level of competence of the Relevant Operator's trainers, drivers and other employees.

10. **TRAINING PLAN DEVELOPMENT AND DELIVERY**

- 10.1 The TSP shall develop and deliver the Training Plan in accordance with the Integrated Programme.
- 10.2 Not less than eighteen (18) months prior to the Scheduled Acceptance Date of the first Set, the TSP shall provide to the Secretary of State's Representative a first draft of the Training Plan. Within four (4) weeks (or such other period as the parties may reasonably agree) of receiving the first draft Training Plan from the TSP, the Secretary of State's Representative shall review the draft Training Plan and collate the comments of the Secretary of State, the Relevant Operator and any Relevant Third Party, and shall provide these comments to the TSP.
- 10.3 Within a reasonable period of time following receipt of such comments, the TSP and the Secretary of State's Representative shall meet to discuss any comments in good faith.
- 10.4 Within two (2) weeks of such meeting, the TSP shall submit a revised draft of the Training Plan to the Secretary of State's Representative for agreement by the Secretary of State's Representative (such agreement not to be unreasonably withheld or delayed). Within two (2) weeks (or such other period as the parties may agree) of receiving any revised draft of the Training Plan, the Secretary of State's Representative shall either:
- (a) provide the TSP with her comments on such revised draft of the Training Plan in which case the TSP shall submit a revised draft to the Secretary of State's Representative and Paragraphs 10.3 and 10.4 shall apply to each such revised draft; or
 - (b) notify the TSP that she agrees the revised draft of the Training Plan.
- 10.5 The TSP shall continue to revise and resubmit drafts of the Training Plan to the Secretary of State's Representative until the Training Plan is agreed pursuant to Paragraph 10.4.
- 10.6 The TSP shall update the Training Plan by agreement of the Secretary of State's Representative and the Relevant Operator (such agreement in each case not to be unreasonably withheld or delayed) from time to time as changes in the training requirements or other relevant factors may require, and this Paragraph 10 shall apply to each such update.

11. **TRAINING NEEDS ASSESSMENT – REQUIREMENTS CAPTURE**

- 11.1 The TSP shall commence a training needs assessment requirements capture process (the ***Training Needs Assessment***) not less than eighteen (18) months prior to the

Scheduled Acceptance Date of the first Set, to identify the training needs of all personnel of the Relevant Operator and Relevant Third Parties', including having regard to:

- (a) the existing levels of competence of the Relevant Operator's and Relevant Third Parties' trainers and other employees (provided that it is acknowledged that it is for the Relevant Operator or the Relevant Third Party to assess the competence of its trainers and other employees);
- (b) the Train Technical Specification;
- (c) the Train Technical Description;
- (d) this Agreement;
- (e) the TARA;
- (f) expected train service operational processes;
- (g) to the extent provided to the TSP by the Relevant Operator, relevant provisions of the Relevant Operator's Safety Management System, including competence management processes; and
- (h) the Great Western IEP Network.

11.2 The Training Needs Assessment will include the completion of a form detailing all the training needs identified (a **Training Needs Assessment Sheet**) substantially in the form attached as Annex A (*Example Training Needs Assessment Sheet*) to this Appendix G (*Training*) or such other form as the TSP and the Secretary of State's Representative may agree. One (1) Training Needs Assessment Sheet shall be completed for each training course to be provided by the TSP.

11.3 Once each Training Needs Assessment Sheet is completed, the TSP shall provide it to the Secretary of State's Representative for review. Within four (4) weeks (or such other period as the parties may reasonably agree) of receipt of each completed Training Needs Assessment Sheet, the Secretary of State's Representative shall review each Training Needs Assessment Sheet, collate the comments of the Relevant Operator and any Relevant Third Parties and either:

- (a) provide the TSP with comments on such Training Needs Assessment Sheet in which case the TSP shall submit a revised draft of that Training Needs Assessment Sheet to the Secretary of State's Representative within two (2) weeks of receipt of such comments and this Paragraph 11.3 shall apply to each such revised draft; or
- (b) notify the TSP that she agrees the draft Training Needs Assessment Sheet.

11.4 The TSP shall continue to revise and resubmit drafts of a Training Needs Assessment Sheet to the Secretary of State's Representative until that Training Needs Assessment Sheet is agreed pursuant to Paragraph 11.3, provided that, in respect of each revised draft of a Training Needs Assessment Sheet which is resubmitted to the Secretary of State's Representative, the Secretary of State's Representative shall provide comments to the TSP or notify the TSP that she agrees the revised draft of such Training Needs Assessment Sheet within two (2) weeks (or such other period as the parties may agree) of receiving the revised draft of such Training Needs Assessment Sheet.

11.5 The TSP shall update the Training Needs Assessment by agreement with the Secretary of State's Representative (such agreement not to be unreasonably withheld or delayed) as required from time to time to reflect the developing Design and to address changes to the Sets or their operation over the Contract Period.

12. TRAINING METHODS SELECTION PROCESS

12.1 Using the information contained in the Training Needs Assessment Sheets, the TSP shall determine the most appropriate means of structuring and delivering the required training through a training methods selection process (the **Training Methods Selection Process**).

12.2 The TSP shall allow the Secretary of State's Representative reasonable input into the Training Methods Selection Process.

12.3 The Training Methods Selection Process shall establish:

- (a) the overall course structure;
- (b) the level of competence to be established by each course;
- (c) the competence requirements that must be in place before attending each course;
- (d) the training method to be used;
- (e) the facilities required to run each course;
- (f) the equipment required to run each course, including Simulators; and
- (g) the materials required to run each course, including Computer Based Training modules.

12.4 The outputs of the Training Methods Selection Process shall be used to develop the Training Matrix in accordance with Paragraph 13.

13. TRAINING MATRIX

13.1 In accordance with the Training Plan, but in any event within twelve (12) months of the Scheduled Acceptance Date of the first Set the TSP shall provide to the Secretary of State's Representative a table (the **Training Matrix**) outlining all training courses to be provided by the TSP in accordance with this Appendix.

13.2 The Training Matrix when in its final form will include, as a minimum, the details referred to in Annex B (*Training Matrix*) to this Appendix G (*Training*).

13.3 The Secretary of State's Representative shall, within four (4) weeks (or such other period as the parties may reasonably agree) of each submission review the Training Matrix and collate the comments of the Relevant Operator and either:

- (a) provide the TSP with comments on the Training Matrix in which case the TSP and the Secretary of State's Representative shall meet to discuss any comments in good faith and the TSP shall submit a revised draft of the Training Matrix to the Secretary of State's Representative within two (2) weeks of such meeting and this Paragraph 13.3 shall apply to each such revised draft; or
- (b) notify the TSP that she agrees the Training Matrix.

- 13.4 The TSP shall continue to revise and resubmit drafts of the Training Matrix to the Secretary of State's Representative until the Training Matrix is agreed pursuant to Paragraph 13.3, provided that, in respect of each revised draft of a Training Matrix which is re-submitted to the Secretary of State's Representative, the Secretary of State's Representative shall provide comments to the TSP or notify the TSP that she agrees the revised draft of the Training Matrix within two (2) weeks (or such other period as the parties may agree) of receiving the revised draft of the Training Matrix.
- 13.5 The TSP shall update the Training Matrix by agreement of the Secretary of State's Representative and the Relevant Operator (such agreement in each case not to be unreasonably withheld or delayed) from time to time as changes from the Training Needs Assessment or other relevant factors may require, and this Paragraph 13 shall apply to each such update.
- 13.6 The TSP shall provide the Relevant Operator and any Relevant Third Parties with reasonable notice, in any event not less than four weeks, of dates for the delivery of courses by the TSP.
- 13.7 Where satisfactory completion of successive courses is required, the TSP shall highlight this in the Training Matrix and shall structure the course programme to reasonably allow attendees from the Relevant Operator or Relevant Third Party to achieve this.
- 13.8 The TSP shall not be responsible for any travel or subsistence costs in relation to any training (other than those incurred by its own staff or contractors).
14. **OPERATIONAL TRAINING WORK GROUP**
- 14.1 The TSP shall establish an operational training working group to assist the TSP to develop and deliver the Training Plan (the ***Operational Training Working Group***).
- 14.2 The TSP shall be responsible for leading, facilitating and managing the Operational Training Work Group.
- 14.3 The Operational Training Working Group shall include, as a minimum, representatives from:
- (a) the TSP;
 - (b) the Secretary of State;
 - (c) the Relevant Operator; and
 - (d) Network Rail (to the extent necessary).
- 14.4 The TSP may invite other third parties to attend meetings of the Operational Training Working Group as is necessary and appropriate and as agreed with the Secretary of State's Representative in advance, such consent not to be unreasonably withheld.
- 14.5 At any meeting of the Operational Training Working Group the Operational Training Working Group shall agree the date or dates of one or more future meetings of the Operational Training Working Group. Following any such agreement, the Operational Training Working Group shall meet on each such date, provided that either of the TSP or the Secretary of State may vary any such date by providing the other parties that have been invited to that meeting with at least five (5) Business Days' written notice.

- 14.6 The first meeting of the Operational Training Work Group will occur not less than eighteen (18) months prior to the Scheduled Acceptance Date of the first Set.
- 14.7 The TSP shall provide at least one (1) course for the members of the Operational Training Work Group to provide an early view of the training content, methodology and functionality of the Sets prior to the first delivery of a Set to the UK.
- 14.8 Each member of the Operational Training Working Group shall be responsible for its own costs in relation to the Operational Training Work Group.

Annex A of Appendix G to Schedule 1

Example Training Needs Assessment Sheet



“Train the Trainer” Needs Assessment

Name: Trainer Name	Job Role: Current training role within the company
Notes: Notes to be added by Hitachi trainer during assessment period.	

Example timeline of training course for particular training role

	Required Courses												Supplementary Courses									
	1	2	3	4	5	6	7	8	9	10	11	12	1	2	3	4	5	6	7	8	9	10
Level 1 Entry (0 to 6 months)	02/12	03/12	04/12	X	X	X	X	X	X	X	X	X	A/R	A/R	X	X	X	X	X	X	X	X
Level 2 Intermediate (6 to 18 months)	Phase 03/13	Phase 03/13	07/12	08/12	02/13	05/13	X	X	X	X	X	X			A/R	A/R	A/R	X	X	X	X	X
Level 3 Experienced (18 to 30 months)	Phase 03/14	Phase 03/14			Phase 02/14	Phase 02/14	08/13	01/14	X	X	X	X						A/R	A/R	X	X	X
Level 4 Advanced (30 to 42 months)	Phase 03/15	Phase 03/15			Phase 02/15	Phase 02/15			08/14	01/15	X	X							A/R	A/R	X	X
Level 5 Expert (42 to 54 months)	Phase 03/16	Phase 03/16			Phase 02/16	Phase 02/16					01/16	X										A/R

NB: Hitachi trainer to initial course cell upon successful completion.

“Train the Trainer” Needs Assessment

	Course Code	Course Title	Course Aim
Required Courses	1	Course code	Overall Course aim.
	2	As Above	As Above
	3	As Above	As Above
	4	As Above	As Above
	5	As Above	As Above
	6	As Above	As Above
	7	As Above	As Above
	8	As Above	As Above
	9	As Above	As Above
	10	As Above	As Above
	11	As Above	As Above
	12	As Above	As Above
Supplementary Courses	1	Course code	Overall Course aim.
	2	As Above	As Above
	3	As Above	As Above
	4	As Above	As Above
	5	As Above	As Above
	6	As Above	As Above
	7	As Above	As Above
	8	As Above	As Above
	9	As Above	As Above
	10	As Above	As Above

Annex B of Appendix G to Schedule 1

Training Matrix

Course Title			
Course Duration			
Course Location			
The party to be trained			
The party who will deliver the training			
Competence to be established by the course			
Competence requirements to be in place before attending the course			
Training method to be used			
Facilities required to run the course			
Equipment required to run the course			
Materials required to run the course including Computer Based Training modules			
Maximum Number of Attendees per course			
Module Title(s)			
Number of Modules			
Start date(s) (linked to a project programme milestone) of each course.			

Appendix H to Schedule 1

Relevant TTS Provisions

Train Technical Specification provision (clause)	Train Technical Description provision (clause/section)
TS1827	TTD-0753
TS1578	TTD-0054, TTD-0071, TTD- 0065
TS1970	TTD-0071
TS1695	TTD-0413
TS1841	TTD-0743
TS1982	TTD-0769
TS274	TTD-0792
TS1625	TTD-0263
N020	TTD-1112
TS286	TTD-0340
TS1921	TTD-0395
TS481	TTD-1190, TTD-1194, TTD-1195, TTD-1250, Annex W
TS1571	TTD-0214,TTD- 0375
TS605	TTD-0729
TS1265	TTD-0138
TS1664	TTD-0139
TS1665	TTD-0139
TS1666	TTD-0140
TS1671	TTD-0631
TS1632	Section 5.4
TS1633	Section 5.4
TS1634	Section 5.4
TS1635	Section 5.4
TS1636	Section 5.4
TS1679	TTD-0454
TS1644	TTD-0100, TTD-1284

Train Technical Specification provision (clause)	Train Technical Description provision (clause/section)
TS1649	TTD-0099,TTD- 0438
TS1650	TTD-0857, TTD-0360
TS1405	TTD-0376
TS1686	TTD-0584
TS303	TTD-0381, TTD-0437, TTD-0875
TS1498	TTD-0673
TS1470	TTD-0511
TS425	TTD-0471
N108	TTD-0275, TTD-0280
N144	TTD-1187
TS1870	TTD-0285
N153	TTD-0679

SCHEDULE 2

Introduction into Service

Part A of Schedule 2

Testing and Acceptance

1. TESTING

The TSP will carry out testing and commissioning on each Set in accordance with the Testing, Commissioning and Acceptance Plan specified in Appendix A (*Testing, Commissioning and Acceptance*) to this Part A (*Testing and Acceptance*).

2. TYPE ACCEPTANCE

2.1 Subject to the terms and conditions of this Agreement, the TSP shall present the first Set of each Type for Type Acceptance at its Designated Acceptance Location and in accordance with the Delivery Schedule.

2.2 The Secretary of State's Representative shall not be obliged to accept the presentation of a Set for Type Acceptance nor to issue a Type Acceptance Certificate unless:

- (a) the TSP has complied with all its obligations under this Agreement in respect of the Requirements which have fallen due at the date of the presentation of a Set of its Type for Type Acceptance;
- (b) all testing required by the Testing, Commissioning and Acceptance Plan to be carried out prior to issue of a Type Acceptance Certificate has been carried out on a Set of that Type (other than the 5,000 Miles Requirement) and the TSP has delivered not less than five (5) days earlier to the Secretary of State's Representative a fully documented record demonstrating that the results achieved have met the requirements of the Testing, Commissioning and Acceptance Plan which relates to the Great Western IEP Network;
- (c) subject to Appendix C (*Specific Infrastructure Acceptance Issues*) of Schedule 1 (*Set Specification and Design*), a Set of its Type has obtained all approvals required by the Approvals Plan to be obtained prior to issue of a Type Acceptance Certificate and the TSP has delivered not less than ten (10) days earlier to the Secretary of State's Representative a fully documented record of all approvals in force in respect of the Set which is compliant with the requirements for Type Acceptance of the Testing, Commissioning and Acceptance Plan which relates to the Great Western IEP Network;
- (d) a Set of its Type has completed five thousand (5,000) consecutive miles on the IEP Network without any TSP Faults causing a delay in excess of five (5) minutes recorded by the Performance System (the **5,000 Miles Requirement**); and
- (e) the TSP not less than five (5) days earlier confirms in writing to the Secretary of State's Representative that either:
 - (i) the conditions set out in Paragraphs 2.2(a) to (c) have been satisfied in their entirety; or

- (ii) the conditions set out in Paragraphs 2.2(a) to (c) have been satisfied in all material respects and at such time provides (A) written confirmation of any and all non-material non-compliances with such conditions and (B) details of a programme for rectifying any such non-compliances as soon as reasonably practicable following such time.

2.3 Where the TSP operates two (2) coupled Half Sets for the purposes of the 5,000 Miles Requirement in respect of each such Half Set, the TSP shall ensure that:

- (a) a minimum of thirty per cent. (30%) of the miles comprising the 5,000 Miles Requirement is achieved by each Half Set separately in single Half Set operation; and
- (b) a minimum of thirty per cent. (30%) of the miles comprising the 5,000 Miles Requirement is achieved by the Half Sets operating as a coupled pair.

2.4 In respect of each Bi-Mode Set operated by the TSP for the purposes of the 5,000 Miles Requirement, the TSP shall ensure that:

- (a) a minimum of thirty per cent. (30%) of the miles comprising the 5,000 Miles Requirement is achieved using the Bi-Mode Set's diesel engine; and
- (b) a minimum of thirty per cent. (30%) of the miles comprising the 5,000 Miles Requirement is achieved using the overhead electric power supply.

2.5 If the conditions set out in Paragraphs 2.2(a) to (e) have been satisfied with respect to a Set, the Secretary of State's Representative shall issue, within ten (10) days of receipt of the written confirmation pursuant to Paragraph 2.2(e), a Type Acceptance Certificate to the TSP with respect to such Set and each Set of its Type.

2.6 If the conditions set out in Paragraphs 2.2(a) to (e) have not been satisfied, the Secretary of State's Representative shall issue, within ten (10) days of receipt of the written confirmation pursuant to Paragraph 2.2(e), to the TSP either:

- (a) a written statement of the reasons why she believes that any of those conditions have not been satisfied; or
- (b) a Qualified Type Acceptance Certificate subject to Paragraph 3.1

2.7 If, at such time as a Set of any Type is presented for Type Acceptance, the Actual Type Weight of such Set is less than or equal to the Target Type Weight in respect of a Set of such Type, where such Set is issued with a Type Acceptance Certificate or a Qualified Type Acceptance Certificate the Secretary of State shall specify the Type Weight Adjustment Factor on such Type Acceptance Certificate or Qualified Type Acceptance Certificate. The Type Weight Adjustment Factor shall be calculated in accordance with the following formula for the purposes of paragraph 2.12 of part A (*TARA Payments*) of schedule 5 (*Payment*) of the TARA:

$$TWAF_{bm} = (STW_{bm} - ATW_{bm}) \times TMS$$

$$TWAF_{el} = (STW_{el} - ATW_{el}) \times TMS$$

where:

STWbm means the Specified Type Weight (in tonnes) for a Bi-Mode Set;
 STWel means the Specified Type Weight (in tonnes) for an Electric Set;
 TWAFbm means the Type Weight Adjustment Factor for a Bi-Mode Set;
 TWAFel means the Type Weight Adjustment Factor for an Electric Set
 ATWbm means the Actual Type Weight (in tonnes) for a Bi-Mode Set;
 ATWel means the Actual Type Weight (in tonnes) for an Electric Set; and
 TMS means the type mileage saving of [REDACTED] per mile per tonne.

2.8 For the purposes of Paragraphs 2.7 and 2.9, the Target Type Weight in respect of a Set of any Type shall be calculated in accordance with the following formula:

$$TTW = STW - (N \times DBF)$$

where:

TTW means the Target Type Weight (in tonnes);
 STW means the Specified Type Weight (in tonnes);
 N means the number of Vehicles comprising the relevant Set of such Type; and
 DBF means the dead band factor of [REDACTED]

2.9 If, at such time as a Set of any Type is presented for Type Acceptance, the Actual Type Weight of such Set is greater than the Target Type Weight in respect of a Set of such Type, where such Set is issued with a Type Acceptance Certificate or a Qualified Type Acceptance Certificate the Secretary of State shall specify the Type Weight Adjustment Factor on such Type Acceptance Certificate or Qualified Type Acceptance Certificate as zero (0).

3. QUALIFIED TYPE ACCEPTANCE

3.1 The Secretary of State's Representative may issue a Qualified Type Acceptance Certificate in relation to any Set where:

- (a) the TSP has demonstrated to the satisfaction of the Secretary of State's Representative that:
 - (i) all testing which relates to the Great Western IEP Network, required by the Testing, Commissioning and Acceptance Plan to be carried out prior to issue of a Type Acceptance Certificate, has been carried out on that Set and the TSP has delivered to the Secretary of State's Representative a fully documented record demonstrating that the results achieved have met the requirements of the Testing, Commissioning and Acceptance Plan which relates to the Great Western IEP Network; and

- (ii) subject to Appendix C (*Specific Infrastructure Acceptance Issues*) of Schedule 1 (*Set Specification and Design*), that Set has obtained all approvals which relate to the Great Western IEP Network required by the Approvals Plan to be obtained prior to issue of a Type Acceptance Certificate, and the TSP has delivered to the Secretary of State's Representative a fully documented record of all approvals in force in respect of that Set which relate to the Great Western IEP Network which is compliant with the requirements of the Testing, Commissioning and Acceptance Plan to that extent; and
 - (b) the Secretary of State's Representative has obtained the prior written consent of the TSP in respect of the issue of that Qualified Type Acceptance Certificate and the matters referred to in Paragraph 3.2. Any Qualified Type Acceptance Certificate issued by the Secretary of State's Representative without the prior written approval of the TSP shall be invalid and have no effect for the purposes of this Agreement and the TARA.
- 3.2 Any Qualified Type Acceptance Certificate issued in respect of a Set shall list in detail the outstanding conditions to be satisfied and tasks to be performed by the TSP in order for a Type Acceptance Certificate for that Set to be issued (the **Type Acceptance Preconditions**), in accordance with a timetable set out in the Qualified Type Acceptance Certificate, which must in any event be satisfied before any Final Acceptance Certificate may be issued in respect of any Set of that Type.
- 3.3 In the event that any Type Acceptance Precondition is not satisfied in relation to any Set in accordance with the timetable specified in the relevant Qualified Type Acceptance Certificate, the Secretary of State may:
- (a) issue a further Qualified Type Acceptance Certificate in respect of that Set, to which the provisions of Paragraph 3.2 shall apply; or
 - (b) revoke that Qualified Type Acceptance Certificate with immediate effect provided that the revocation of any Qualified Type Acceptance Certificate shall not have the effect of revoking any Qualified Acceptance Certificates or Final Acceptance Certificates that have been issued in relation to other Sets of that Type.
- 3.4 When the TSP believes that it has satisfied any Type Acceptance Preconditions it may, subject to reasonable advance notice being provided to the Secretary of State's Representative, re-present a Set of that Type to the Secretary of State's Representative in order to achieve a Type Acceptance Certificate pursuant to and in accordance with Paragraph 2.2.
4. **NETWORK TESTING**
- 4.1 The TSP shall be responsible for obtaining those train paths and appropriately qualified train operating staff that it requires for the purposes of testing any Set in accordance with the Testing, Commissioning and Acceptance Plan on the network prior to presenting that Set to the Relevant Operator for Final Acceptance in accordance with Paragraph 5.
- 4.2 The TSP shall give:
- (a) the Secretary of State's Representative in respect of the network testing required by the Testing, Commissioning and Acceptance Plan to be completed before

issue of a Type Acceptance Certificate (***Pre-Type Acceptance Network Testing***); and

- (b) the Relevant Operator in respect of the network testing required by the Testing, Commissioning and Acceptance Plan to be completed after issue of a Type Acceptance Certificate or a Qualified Type Acceptance Certificate (***Post-Type Acceptance Network Testing***),

in each case, ten (10) Business Days' written notice of any such network testing and shall permit the Secretary of State's Representative and/or the Relevant Operator as the case may be to observe such network testing provided that:

- (i) the first such network testing programme shall be provided by the TSP to the Secretary of State no later than two (2) months before the scheduled date for commencement of network testing activities (as specified in the Integrated Programme) and the TSP shall not have any obligation to provide any network testing programme after the Actual Acceptance Date of the last Set; and
- (ii) where operational issues require a change to the date of any such network testing from that specified in the Testing, Commissioning and Acceptance Plan, the TSP shall give the Secretary of State's Representative as much notice of such change as reasonably practicable but if the Secretary of State's Representative and/or the Relevant Operator is unable to attend the test on the revised date that shall not affect the validity of the test.

4.3 If a Set fails to pass any of the network tests set out in the Testing, Commissioning and Acceptance Plan, the TSP shall notify:

- (a) the Secretary of State's Representative in respect of any Pre-Type Acceptance Network Testing; and
- (b) the Relevant Operator in respect of any Post-Type Acceptance Network Testing,

in each case, as soon as practicable and, in any event, no later than five (5) days after such failure.

5. **FINAL ACCEPTANCE**

5.1 The TSP shall present each Set for Final Acceptance at the Designated Acceptance Location on its Scheduled Acceptance Date.

5.2 The Relevant Operator shall not be obliged to accept a Set for Final Acceptance unless:

- (a) all conditions have been satisfied in respect of Type Acceptance for that Set (of which a Type Acceptance Certificate issued by the Secretary of State's Representative shall be conclusive evidence);
- (b) the TSP has complied with all its obligations under this Agreement in respect of the Requirements (other than in respect of breaches of obligations that have been remedied or waived in accordance with the terms of this Agreement) which have fallen due at the date of the presentation of the Set for Final Acceptance;
- (c) all testing required by the Testing, Commissioning and Acceptance Plan to be carried out prior to issue of a Final Acceptance Certificate (other than the 2,000

Miles Requirement) has been carried out on that Set and the TSP has delivered not less than five (5) days earlier to the Relevant Operator a fully documented record demonstrating that the results achieved have met the requirements of the Testing, Commissioning and Acceptance Plan;

- (d) that Set has obtained all approvals required by the Approvals Plan to be obtained prior to issue of a Final Acceptance Certificate and the TSP has delivered not less than five (5) days earlier to the Relevant Operator a fully documented record of all approvals in force in respect of that Set which is compliant with the requirements of the Testing, Commissioning and Acceptance Plan;
- (e) that Set is capable of operating with passengers in revenue earning service on the Great Western IEP Network and the TSP is in compliance with its obligations under Clause 7 to provide the training required under, and in accordance with, the Training Plan in relation to that Set;
- (f) that Set complies with the requirements of (i) the Train Technical Specification and (ii) the Train Technical Description (each as demonstrated in accordance with the White Book), and that Set is complete in accordance with the Design, in each case as applicable to that Set at the date of presentation of that Set for Final Acceptance;
- (g) that Set is comprised of the number of Vehicles specified in the relevant field of column 3 of the table set out in Appendix C (*Delivery Schedule*) to Part A (*Testing and Acceptance*) of Schedule 2 (*Introduction into Service*);
- (h) that Set complies with and is capable of being operated in accordance with all Applicable Laws and Standards (save to the extent an Applicable Derogation applies);
- (i) that Set has been maintained in accordance with the Maintenance Plan;
- (j) there are no Recurrent Defects other than Recurrent Defects which:
 - (i) the TSP has demonstrated to the reasonable satisfaction of the Relevant Operator are not present in that Set; and
 - (ii) are the subject of a remedial programme accepted by the Relevant Operator;
- (k) the TSP has provided a signed Certificate of Satisfactory Depot in relation to that Set;
- (l) the Set has completed two thousand (2,000) consecutive miles on the Great Western IEP Network without any TSP Faults which cause a delay in excess of five (5) minutes recorded by the Performance System (the **2,000 Miles Requirement**) in accordance with Paragraph 5.6; and
- (m) the TSP has confirmed in writing to the Relevant Operator that either:
 - (i) the Final Acceptance Conditions have been satisfied in their entirety; or
 - (ii) the Final Acceptance Conditions have been satisfied in all material respects and at such time provides written confirmation of any and all non-material non-compliances with such conditions, in which case the

Relevant Operator shall not be obliged to accept the Set for Final Acceptance, but may elect to do so pursuant to Paragraph 6 without the need for further TSP consent in respect of the non-compliance notified by the TSP.

5.3 Where the Final Acceptance Conditions have been satisfied with respect to a Set, the Relevant Operator shall issue a Final Acceptance Certificate to the TSP on the day of that Set being tendered for a Final Acceptance Certificate by the TSP (or such later date on which the Relevant Operator receives the written confirmation from the TSP for the purposes of Paragraph 5.2(m)).

5.4 If the Final Acceptance Conditions have not been satisfied with respect to a Set, the Relevant Operator shall either:

(a) issue to the TSP, on the day of that Set being tendered for Final Acceptance by the TSP, a written statement setting out the reasons why the Relevant Operator believes that any of those Final Acceptance Conditions has not been satisfied; or

(b) where the only Final Acceptance Conditions that have not been satisfied with respect to that Set are the FFR-related Conditions in circumstances where the Relevant Operator has failed to comply with its obligation to make available the required track access pursuant to Appendix B (*Fault Free Running Conditions*) to Part A (*Testing and Acceptance*) of Schedule 2 (*Introduction into Service*), at the Relevant Operator's discretion deem that Set to have satisfied the FFR-related Conditions and issue a Final Acceptance Certificate to the TSP on the day of that Set being tendered for a Final Acceptance Certificate by the TSP with respect to that Set.

5.5 Where:

(a) the circumstances set out in Paragraph 5.4(b) have arisen in respect of a Set and the Relevant Operator is prepared to deem that Set to have satisfied the FFR-related Conditions; and

(b) such Set fails to satisfy one or more Final Acceptance Conditions other than the FFR-related Conditions,

then:

(i) the Relevant Operator may issue a Qualified Acceptance Certificate in respect of that Set in accordance with, and subject to the provisions of, Paragraph 6.1;

(ii) that Set shall be deemed to have satisfied the 2,000 Miles Requirement; and

(iii) the failure by the Relevant Operator to comply with its obligation to make available the required track access pursuant to Appendix B (*Fault Free Running Conditions*) to Part A (*Testing and Acceptance*) of Schedule 2 (*Introduction into Service*) shall not constitute a Delayed Acceptance Event or a Delayed Fleet Acceptance Event for the purposes of this Agreement.

5.6 In connection with the 2,000 Miles Requirement:

- (a) any Set that has achieved five thousand (5,000) consecutive miles on the IEP Network without any TSP Faults causing a delay in excess of five (5) minutes recorded by the Performance System as part of Type Acceptance testing in accordance with Paragraph 2.2(d) shall be deemed to have satisfied the 2,000 Miles Requirement, and shall not be required to achieve the 2,000 Miles Requirement in addition to those five thousand (5,000) miles; and
- (b) any other Set may satisfy the 2,000 Miles Requirement either:
 - (i) by the TSP demonstrating to the Relevant Operator's reasonable satisfaction, at or prior to the Set being tendered for Final Acceptance, that the Set satisfied the 2,000 Miles Requirement during the testing and commissioning process of that Set in accordance with the Testing, Commissioning and Acceptance Plan; or
 - (ii) in accordance with Appendix B (*Fault Free Running Conditions*) to Part A (*Testing and Acceptance*) of Schedule 2 (*Introduction into Service*).

6. QUALIFIED ACCEPTANCE CERTIFICATE

6.1 If:

- (a) a Set, in respect of which all conditions in respect of either Type Acceptance or Qualified Type Acceptance have been satisfied (of which a Type Acceptance Certificate or Qualified Type Acceptance Certificate (as the case may be) issued by the Secretary of State's Representative shall be conclusive evidence), fails to satisfy one or more of the Final Acceptance Conditions (other than the condition set out in Paragraph 5.2(k), which the TSP shall in all circumstances be required to satisfy in order to obtain a Qualified Acceptance Certificate in respect of any Set); and
- (b) the Relevant Operator considers that that Set can nevertheless be operated safely and in accordance with all Applicable Laws and Standards, save to the extent that an Applicable Derogation applies, and the terms of all approvals required by the Approvals Plan and otherwise,

then, subject to the Relevant Operator obtaining the prior written consent of the TSP in respect of the issue of a Qualified Acceptance Certificate and the matters referred to in Paragraph 6.3, the Relevant Operator may (subject to Paragraph 6.2) issue a Qualified Acceptance Certificate in respect of that Set. Any Qualified Acceptance Certificate issued by the Relevant Operator without the prior written approval of the TSP shall be invalid and have no effect for the purposes of this Agreement and the TARA.

6.2 If a Set, in respect of which all conditions in respect of Type Acceptance or Qualified Type Acceptance have been satisfied (of which a Type Acceptance Certificate or Qualified Type Acceptance Certificate (as the case may be) issued by the Secretary of State's Representative shall be conclusive evidence), fails to satisfy the condition set out in Paragraph 5.2(j), but satisfies all other Final Acceptance Conditions, the Relevant Operator shall issue a Qualified Acceptance Certificate in respect of that Set if it receives the TSP's prior written approval in respect of the issue of a Qualified Acceptance Certificate.

6.3 Any Qualified Acceptance Certificate issued under Paragraph 6.1 or 6.2 shall list in detail the outstanding conditions to be satisfied and tasks to be performed by the TSP in order

for a Final Acceptance Certificate for that Set to be issued (the **Final Acceptance Preconditions**), in accordance with a timetable set out in the Qualified Acceptance Certificate which shall in any event include satisfaction of any Type Acceptance Preconditions, and the issue of a Type Acceptance Certificate, in respect of that Type of Set.

6.4 In respect of any Set which has a Qualified Acceptance Certificate, the Relevant Operator shall issue the TSP with a Final Acceptance Certificate if and when the Final Acceptance Preconditions attached to such Qualified Acceptance Certificate have been satisfied.

6.5 Each Final Acceptance Certificate or Qualified Acceptance Certificate shall state the RV Date.

7. RATE OF ACCEPTANCE

7.1 In any seven (7) day period, the TSP shall not present to the Relevant Operator more than one (1) Full Set or two (2) Half Sets, each for a Final Acceptance Certificate, unless otherwise agreed.

7.2 Subject always to Paragraph 7.1, where the TSP fails to perform its obligation to present a Set to the Relevant Operator on its Scheduled Acceptance Date so as to obtain either a Final Acceptance Certificate or a Qualified Acceptance Certificate in respect of such presentation, it may, without prejudice to the rights and obligations of the parties in respect of such failure, present such Set on a later date of which the TSP has given the Relevant Operator not less than five (5) Business Days' written notice referring to this Paragraph 7.2 and on such presentation the Relevant Operator may not decline to accept the Set on account of it not having been presented for acceptance on its Scheduled Acceptance Date.

8. QUALIFIED ACCEPTANCE RETENTION

8.1 In relation to any Set which has been issued with a Qualified Acceptance Certificate, if six (6) months after the date that that Set was issued with a Qualified Acceptance Certificate the Set has not been issued with a Final Acceptance Certificate pursuant to Paragraph 6.4, a set retention amount equivalent to [REDACTED] for that Set shall be deducted from the TARA Payments payable by the Relevant Operator in accordance with part A (*TARA Payments*) of schedule 5 (*Payment*) of the Relevant TARA (the **Set Retention Amount**) until the earlier of:

(a) the date on which that Set is issued with a Final Acceptance Certificate pursuant to Paragraph 6.4;

(b) [REDACTED]

(c) the date on which the balance of the Fleet Acceptance Security Account in relation to that Fleet is greater than or equal to the Relevant Fleet Acceptance Security Account Balance at such time;

(d) the date on which the TSP provides the Secretary of State with a bond from a Qualifying Bond Provider to the value of the Relevant Fleet Acceptance Security Account Balance at such time less the amount standing to the credit of the Fleet Acceptance Security Account at such time, which shall be payable without further enquiry by that Qualifying Bond Provider to the Secretary of State in full in London

on first written demand by the Secretary of State (the **Fleet Acceptance Bond**);
and

(e) such Set becoming a Total Loss.

8.2 The Relevant Operator shall on each Payment Date pay an amount equivalent to the Set Retention Amount into a bank account in the name of the Secretary of State to be notified by the Secretary of State to the TSP prior to the Actual Acceptance Date of the first Set in the Fleet (the **Fleet Acceptance Security Account**), however any failure or delay by the Relevant Operator in levying any such deduction shall not be considered a breach by the TSP of this Agreement.

9. FLEET ACCEPTANCE

9.1 The Relevant Operator shall issue a Fleet Acceptance Certificate once every Set in that Fleet has been issued with a Final Acceptance Certificate.

9.2 If a Fleet Acceptance Certificate has not been issued with respect to a Fleet on or prior to the date [REDACTED] then:

(a) subject to the TSP complying with any obligations pursuant to Paragraph 9.2(b), Set Retention Amounts shall cease to apply in respect of any Set in that Fleet with a Qualified Acceptance Certificate and the Relevant Operator shall cease paying any amounts into the Fleet Acceptance Security Account; but

(b) if the balance of the Fleet Acceptance Security Account is less than the Relevant Fleet Acceptance Security Account Balance at such time and the TSP has not provided a Fleet Acceptance Bond in accordance with Paragraph 8.1(d), the TSP shall either:

(i) deposit a top-up amount into the Fleet Acceptance Security Account sufficient to raise the balance to the Relevant Fleet Acceptance Security Account Balance at such time (the **Outstanding Amount**); or

(ii) provide the Secretary of State with a Fleet Acceptance Bond to the value of the Outstanding Amount (but otherwise in accordance with Paragraph 8.1(d)).

9.3 If at any time prior to the Fleet Acceptance Drop Dead Date either:

(a) the balance of the Fleet Acceptance Security Account; or

(b) the aggregate of the balance of the Fleet Acceptance Security Account and the value of any Fleet Acceptance Bond that has been provided by the TSP,

is greater than the Relevant Fleet Acceptance Security Account Balance at such time as a result of one or more Sets having been issued with a Final Acceptance Certificate and/or one or more Sets having suffered a Total Loss then:

(i) the TSP may reduce the value of any Fleet Acceptance Bond;

(ii) on the request of the TSP, the Secretary of State shall reimburse to the TSP to be retained for its own account any amounts standing to the credit of the Fleet Acceptance Security Account in excess of the Fleet Acceptance Security Account Balance at such time; or

- (iii) on the request of the TSP, the TSP and the Secretary of State shall effect a combination of Paragraphs 9.3(i) and (ii),

provided that, following any such reduction and/or withdrawal, the balance of the Fleet Acceptance Security Account shall be at least equal to the Relevant Fleet Acceptance Security Account Balance at such time.

- 9.4 If a Fleet Acceptance Certificate has not been issued with respect to the Fleet in accordance with Paragraph 9.1 prior to the Fleet Acceptance Drop Dead Date, then as between the Secretary of State and the TSP, on or at any time after the Fleet Acceptance Drop Dead Date, the Secretary of State may:
- (a) issue a demand to the Qualifying Bond Provider under any Fleet Acceptance Bond; and/or
 - (b) withdraw and retain for her own use any outstanding balance on the Fleet Acceptance Security Account.
- 9.5 If a Fleet Acceptance Certificate is issued with respect to the Fleet at any time prior to the Fleet Acceptance Drop Dead Date, then the Secretary of State shall release to the TSP all sums in the Fleet Acceptance Security Account (including any interest accrued thereon), and shall return any Fleet Acceptance Bond to the TSP for cancellation.
- 9.6 In the event that this Agreement terminates in accordance with its terms at any time prior to the issue of a Fleet Acceptance Certificate with respect to the Fleet and, at such time, there is an outstanding balance on the Fleet Acceptance Security Account and/or a Fleet Acceptance Bond is outstanding, if:
- (a) such termination is effected pursuant to Part B (*Force Majeure*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*), Part C (*Secretary of State Default*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*) or Part F (*Voluntary Termination by the Secretary of State*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*), then the Secretary of State shall release to the TSP all sums in the Fleet Acceptance Security Account (including any interest accrued thereon), and shall return any Fleet Acceptance Bond to the TSP for cancellation;
 - (b) such termination is effected pursuant to Part E (*Corrupt Gifts and Fraud*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*) or Part G (*Termination for Breach of Refinancing Provisions*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*), the Secretary of State may:
 - (i) issue a demand to the Qualifying Bond Provider under any Fleet Acceptance Bond; and
 - (ii) withdraw and retain for her own use any outstanding balance on the Fleet Acceptance Security Account;
 - (c) such termination is effected pursuant to Paragraph 6 of Part D (*TSP Default*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*), then the Secretary of State shall release to the TSP all sums in the Fleet Acceptance Security Account (including any interest accrued thereon), and shall return any Fleet Acceptance Bond to the TSP for cancellation; or

- (d) such termination is effected pursuant to any other provision of Part D (*TSP Default*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*), where the Secretary of State decides on the Termination Date:
- (i) to tender for the provision of a New Contract in accordance with the re-tendering procedure in Appendix A (*Re-Tendering Procedure*) to Part D (*TSP Default*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*), the Secretary of State may withdraw any balance outstanding on the Fleet Acceptance Security Account and apply such balance in respect of the New TSP in accordance with the terms of the New Contract (and, to the extent a Fleet Acceptance Bond has been issued, the Secretary of State shall return such Fleet Acceptance Bond to the TSP for cancellation);
 - (ii) to require determination in accordance with the no re-tendering procedure in Appendix B (*No Re-Tendering Procedure*) to Part D (*TSP Default*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*), any balance outstanding on the Fleet Acceptance Security Account shall be deducted from the Estimated Fair Value of this Agreement and the Secretary of State shall reimburse such balance to the TSP to be retained for its own account (and, to the extent a Fleet Acceptance Bond has been issued, the Secretary of State shall return such Fleet Acceptance Bond to the TSP for cancellation); and
 - (iii) to require determination in accordance with the no full fleet valuation procedure in Appendix C (*No Full Fleet Valuation Procedure*) to Part D (*TSP Default*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*), the Secretary of State may withdraw and retain for her own use any outstanding balance on the Fleet Acceptance Security Account (and, to the extent a Fleet Acceptance Bond has been issued, the Secretary of State may issue a demand to the Qualifying Bond Provider under the Fleet Acceptance Bond).

9.7 In the event that a Delayed Fleet Acceptance Event occurs, the TSP shall be entitled to a reasonable extension of the Fleet Acceptance Drop Dead Date and the provisions of Paragraphs 1.2 to 1.11 (inclusive) of Part B (*Delayed Delivery and Delayed Acceptance*) of this Schedule 2 (*Introduction into Service*) shall apply *mutatis mutandis* to any such Delayed Fleet Acceptance Event.

10. RESERVE ROLE OF SECRETARY OF STATE

10.1 The Secretary of State may by notice in writing to the Relevant Operator and the TSP provide that the rights of the Relevant Operator under this Agreement:

- (a) may be exercised only with the prior written agreement of the Secretary of State's Representative; or
- (b) are to be transferred to the Secretary of State for the Secretary of State's Representative to exercise as she sees fit and to the exclusion of the Relevant Operator,

provided always that this Paragraph 10.1 confers no additional rights on the Secretary of State to those provided to the Relevant Operator under this Agreement (including any right to an extension of any time period for performance by the Relevant Operator of any

action under this Agreement) and in no way compromises the rights of the TSP under this Schedule 2 (*Introduction into Service*).

- 10.2 The Secretary of State may exercise or refrain from exercising the rights provided to her under this Paragraph 10 as often as she sees fit and may also amend, with effect only from the date of such amendment, any exercise of any such rights (provided, for the avoidance of doubt, that no such amendment shall have retrospective effect).

11. OPERATOR'S ROLE

- 11.1 The Secretary of State shall procure that the Initial Relevant Operator enters into a Relevant Operator Direct Agreement with the TSP and, in accordance with its terms, accedes to the Dispute Resolution Agreement on the earlier of:

- (a) 31 December 2013; and
- (b) the first Business Day of the term of the applicable Relevant Franchise Agreement.

- 11.2 The Secretary of State shall, prior to:

- (a) the Initial Relevant Operator entering into the Relevant Operator Direct Agreement and acceding to the Dispute Resolution Agreement; and
- (b) any replacement Relevant Operator (where applicable) entering into and acceding to such respective agreements from time to time following the expiry or termination of the TARA in accordance with its terms,

act reasonably and in good faith in and about the performance of the obligations of the Relevant Operator under this Agreement.

- 11.3 The parties agree that the relationship between the Secretary of State and the Relevant Operator is not one of principal and agent and that nothing in this Agreement nor any other Project Document shall create, or be construed as creating, a relationship of principal and agent between the Secretary of State and the Relevant Operator respectively.

- 11.4 The Secretary of State shall incur no liability of any kind to the TSP in respect of the performance, non-performance, timeliness of performance, quality of performance or reasonableness of performance by the Relevant Operator of its obligations under this Agreement, the TARA or any other Project Document except:

- (a) where expressly provided for under this Agreement or any other Project Document to which the Secretary of State is a party;
- (b) where arising from any obligation of the Secretary of State under this Agreement or any other Project Document to which the Secretary of State is a party to:
 - (i) procure the performance of any obligation of the Relevant Operator by the Relevant Operator (including, for the avoidance of doubt, pursuant to the provisions of Part C (*Usage Undertaking*) of Schedule 4 (*Train Availability and Reliability Agreements*)); or
 - (ii) assume responsibility for the performance of any obligation of the Relevant Operator in accordance with Paragraph 11.2; and

(c) where arising from the provisions of Paragraphs 1 and 3 of Part B (*Delayed Delivery and Delayed Acceptance*) of Schedule 2 (*Introduction into Service*).

11.5 The Secretary of State shall notify the Relevant Operator of any amendment to this Agreement which has the effect of requiring the Relevant Operator to perform, or incur any liability in respect of, any obligations in excess of the obligations assumed by the Relevant Operator under this Agreement (as at the Effective Date) and (if applicable) under any Relevant Operator Direct Agreement (as at the date of such agreement).

Appendix A to Part A of Schedule 2

Testing, Commissioning and Acceptance

1. INTRODUCTION

1.1 This Appendix A (*Testing, Commissioning and Acceptance*) sets out the requirements in accordance with which the TSP will develop and implement the Testing, Commissioning and Acceptance Plan, which shall set out the details of:

- (a) the tests and other methods of demonstration to be undertaken (including the conditions for any such tests or methods of demonstration and the standards or required results that must be achieved) on Sets of each Type for the purpose of obtaining Type Acceptance for such Type;
- (b) following satisfaction of all conditions in respect of Type Acceptance (of which a Type Acceptance Certificate issued by the Secretary of State's Representative shall be conclusive evidence), the verification tests and other methods of demonstration to be undertaken on all Sets of such Type, for the purpose of obtaining Final Acceptance for each of those Sets;
- (c) the processes and programme for determining and carrying out the tests or other methods of demonstration described in Paragraphs 1.1(a) and (b);
- (d) the processes and programme for evaluating and responding to the results of the tests, or the results of any other method of demonstration, described in Paragraphs 1.1(a) and (b); and
- (e) the processes and programme for confirming and certifying Type Acceptance and Final Acceptance of each Set.

1.2 Throughout the development and implementation of the Testing, Commissioning and Acceptance Plan the TSP shall:

- (a) be responsible for identifying the detailed requirements that will need to be met by the TSP to demonstrate the compliance of the Sets with the Requirements and obtain Type Acceptance for each Type and Final Acceptance for each Set;
- (b) allow the Secretary of State's Representative, the Relevant Operator and any other Third Party ten (10) Business Days, or such other period of time as may be agreed by the relevant parties, to review and comment on all materials provided by the TSP pursuant to the Testing, Commissioning and Acceptance Plan which relate to the testing, demonstration and commissioning activities being or to be undertaken;
- (c) ensure that the Secretary of State's Representative is copied in on all relevant correspondence sent by the TSP to the Relevant Operator, Network Rail or any other Third Parties and, when reasonably requested by the Secretary of State's Representative in accordance with Paragraph 3.3(c) of Part C (*Contract Management*) of Schedule 2 (*Introduction into Service*), provide to the Secretary of State's Representative copies of any relevant correspondence the TSP receives from the Relevant Operator, Network Rail or any other Third Parties;
- (d) provide the Secretary of State's Representative with all relevant materials and information, including the scope of any test or demonstration, specifications,

results and reports to enable the Secretary of State's Representative and (where appropriate) the Relevant Operator and/or ECML Relevant Operator to review and understand the proposed tests and demonstrations (and any subsequent changes thereto), results or reports, in each case in respect of the compliance of the Sets with the Requirements, and understand how such tests, demonstrations or results will or do (as applicable) establish that the Requirements will be or have been met;

- (e) agree with the Secretary of State of the details of the tests and demonstrations to be undertaken (including the conditions for such tests and methods of demonstration and the standards or required results that must be achieved) for the purposes of obtaining (i) Type Acceptance of each Type and (ii) Final Acceptance for all Sets of each Type;
- (f) be responsible for the control and management of technical and design issues arising from testing and other methods of demonstration (for example, through updating and managing the Open Items set out on White Book Compliance Sheets) in accordance with Appendix D (*Design Plan*) of Schedule 1 (*Set Specification and Design*);
- (g) except as otherwise expressly provided in this Agreement, procure, provide and be responsible for providing all facilities and resources required to support the Testing, Commissioning and Acceptance Plan;
- (h) be responsible for arranging and managing all meetings and forums (including minute taking); and
- (i) be responsible for obtaining all approvals, access rights, demonstration of compatibility and any other necessary consents in order to deliver the Testing, Commissioning and Acceptance Plan.

2. TESTING, COMMISSIONING AND ACCEPTANCE PLAN

2.1 The TSP shall be responsible for developing and implementing the Testing, Commissioning and Acceptance Plan in accordance with the Integrated Programme.

2.2 The TSP shall provide to the Secretary of State's Representative, within nine (9) months of the Effective Date, the first draft of the Testing, Commissioning and Acceptance Plan, which shall:

- (a) comply with the requirements in Paragraph 1.2 of this Appendix A (*Testing, Commissioning and Acceptance*);
- (b) include details of:
 - (i) the tests to be undertaken on the Sets of each Type in order to obtain Type Acceptance;
 - (ii) any test and demonstrations undertaken under the ECML Testing Commissioning and Acceptance Plan (whether for the purposes of Type Acceptance or Final Acceptance) in relation to the Common Requirements; and
 - (iii) the verification tests and other methods of demonstration to be undertaken on all Sets of each Type, following satisfaction of all conditions in respect

of Type Acceptance, for the purpose of obtaining Final Acceptance for each of those Sets;

- (c) describe in detail when and how the TSP shall provide all materials and information to the Secretary of State which are reasonably necessary to establish that the Requirements have been met;
- (d) describe in detail (i) when and how the TSP will consult with the Secretary of State, Network Rail and other Third Parties in relation to the testing and commissioning activities to be undertaken by the TSP, and (ii) the TSP's programme for maintaining regular communication with the Secretary of State, Network Rail and other Third Parties;
- (e) describe in detail (i) the materials and information to be supplied to Third Parties by the TSP to support the delivery of the Testing, Commissioning and Acceptance Plan and (ii) the process by which the TSP will provide such materials and information;
- (f) describe in detail (i) the actions and information required by the TSP from the Secretary of State and the Relevant Operator, in order for the TSP to successfully complete all testing and demonstrations and obtain all approvals necessary to enable such testing and demonstrations, provided that the TSP shall do everything within its competence to minimise the actions and information required from the Secretary of State and the Relevant Operator, and (ii) the timeframe for procuring such actions and information (in conjunction with the Integrated Programme);
- (g) describe in detail (i) the actions and information required by the TSP from any Third Party, which as a matter of any Applicable Laws and Standards only such Third Party may carry out or obtain, in order for the TSP to successfully complete all testing and demonstrations and obtain all approvals necessary to enable such testing and demonstrations, provided that the TSP shall do everything within its competence to minimise the actions and information required from any such Third Party, and (ii) the timeframe for procuring such actions and information (in conjunction with the Integrated Programme);
- (h) describe in detail when and how the TSP shall engage with all Third Parties and incorporate their requirements (as appropriate and as agreed with the Secretary of State's Representative and, if appropriate, the Relevant Operator) into the updates of the Testing, Commissioning and Acceptance Plan;
- (i) include details of all facilities and resources required to support and implement the Testing, Commissioning and Acceptance Plan to which the TSP will be responsible for procuring access;
- (j) describe the process by which the TSP shall satisfy the 5,000 Mile Requirement and the 2,000 Mile Requirement;
- (k) include details of the Test Path Requirements associated with the tests required to allow the testing and commissioning activities (as defined in Paragraph 5 of Appendix E (*Approvals Plan*) of Schedule 1 (*Set Specification and Design*)) to be carried out;

- (l) describe in detail how the TSP shall manage the testing process in accordance with Paragraph 7;
- (m) describe how the TSP will identify, record and manage issues arising from testing or the commissioning process, including how the TSP will demonstrate to the Secretary of State that any such issues will be satisfactorily addressed; and
- (n) define the scope of all proposed tests, which shall, in respect of each of the Type Acceptance phase and the Final Acceptance phase, include details of (as appropriate):
 - (i) location (e.g. Japan or UK);
 - (ii) the applicable acceptance criteria;
 - (iii) the relevant Glass Case Standards;
 - (iv) the relevant Type;
 - (v) the relevant Set(s); and
 - (vi) describe in detail the proposed meetings and forums relating to the testing and commissioning activities being undertaken by the TSP, including the scope of remit, required attendees, periodicity and proposed latest start date (by month, linked to the Integrated Programme).

2.3 For the purposes of this Paragraph 2 only, the requirements set out in Paragraphs 1.2(b), 1.2(c), 1.2(d), 1.2(f), 1.2(g), 1.2(h) and 1.2(i) and in Paragraphs 2.2(b), 2.2(d), 2.2(e), 2.2(g), 2.2(h), 2.2(i), 2.2(k), 2.2(l) and 2.2(m) shall be the **Requirements for Approval** and the requirements set out in Paragraphs 1.2(a) and 1.2(e) and in Paragraphs 2.2(a), 2.2(c), 2.2(f), 2.2(j) and 2.2(n) shall be the **Requirements for Agreement**.

- 2.4 (a) Within twenty (20) Business Days of receiving the first draft Testing, Commissioning and Acceptance Plan from the TSP, or such period of time as may be agreed by the parties, the Secretary of State's Representative shall:
- (i) review the draft Testing, Commissioning and Acceptance Plan and collate the comments of the Secretary of State and the Relevant Operator; and
 - (ii) provide any comments to the TSP Delivery Manager or confirm that the Testing, Commissioning and Acceptance Plan is approved in respect of the Requirements for Approval and agreed in respect of the Requirements for Agreement.
- (b) If the Secretary of State's Representative provides comments on the draft Testing, Commissioning and Acceptance Plan, within ten (10) Business Days of the TSP Delivery Manager receiving such comments, or such other period of time as may be agreed by the parties, the TSP Delivery Manager and the Secretary of State's Representative shall meet to discuss any comments in good faith.
- (c) The TSP Delivery Manager shall submit a revised draft of the Testing, Commissioning and Acceptance Plan to the Secretary of State's Representative within ten (10) Business Days of such meeting, or such other period of time as may be agreed by the parties, for review by the Secretary of State's Representative.

- (d) Within ten (10) Business Days of receiving the revised draft of the Testing, Commissioning and Acceptance Plan from the TSP Delivery Manager, or such other period of time as may be agreed by the parties, the Secretary of State's Representative shall either:
 - (i) confirm that the revised draft of the Testing, Commissioning and Acceptance Plan is approved in respect of the Requirements for Approval and agreed in respect of the Requirements for Agreement; or
 - (ii) advise the TSP Delivery Manager that the revised draft of the Testing, Commissioning and Acceptance Plan is not approved in respect of the Requirements for Approval and not agreed in respect of the Requirements for Agreement and provide the TSP Delivery Manager with the reasons why such plan is not so approved and agreed.
- (e) Within ten (10) Business Days of receiving the Secretary of State's Representative's reasons for not approving in respect of the Requirements for Approval and not agreeing in respect of the Requirements for Agreement the revised draft of the Testing, Commissioning and Acceptance Plan, or such other period of time as may be agreed by the parties, the TSP Delivery Manager shall submit a further revised draft of the Testing, Commissioning and Acceptance Plan to the Secretary of State's Representative.
- (f) Any draft of the Testing, Commissioning and Acceptance Plan approved in respect of the Requirements for Approval and agreed in respect of the Requirements for Agreement in accordance with this Paragraph 2.4 shall become the Testing, Commissioning and Acceptance Plan for the purposes of this Agreement.

2.5 The TSP Delivery Manager shall continue to revise and resubmit drafts of the Testing, Commissioning and Acceptance Plan to the Secretary of State's Representative until it is approved in respect of the Requirements for Approval and agreed in respect of the Requirements for Agreement in accordance with Paragraph 2.4.

2.6 From time to time as reasonably necessary until Final Acceptance of the last Set, the TSP Delivery Manager shall update the Testing, Commissioning and Acceptance Plan by approval in respect of the Requirements for Approval and by agreement in respect of the Requirements for Agreement of the Secretary of State's Representative as changes in the testing and commissioning requirements, results or other relevant factors may require, and will provide to the Secretary of State a copy of such updated Testing, Commissioning and Acceptance Plan. Each updated Testing, Commissioning and Acceptance Plan shall include a six month look ahead covering commissioning and acceptance activities.

3. DEMONSTRATION REVIEW PROCESS

3.1 (a) The TSP Delivery Manager shall provide the Secretary of State's Representative with the specifications of (i) each test or other method of demonstration that the TSP intends to carry out to demonstrate that the Requirements have been met for the purposes of Type Acceptance and (ii) the verification tests or other methods of demonstration that the TSP intends to carry out on each Set for the purpose of obtaining Final Acceptance. The specifications provided by the TSP Delivery Manager in accordance with this Paragraph 3.1 shall include the specification of each verification test and/or demonstration that the TSP intends to undertake on each Set in relation to the systems listed in Annex B (*List of Systems to be*

Commissioned) of this Appendix A (*Testing, Commissioning and Acceptance*) for the purpose of obtaining Final Acceptance of each Set.

- (b) Within ten (10) Business Days of receiving any test specification or the details of any other method of demonstration from the TSP Delivery Manager, or within such other period as may be agreed by the parties, the Secretary of State's Representative shall review such test specification or the details of such method of demonstration and shall collate the comments of the Secretary of State and the Relevant Operator, and (if appropriate) the ECML Relevant Operator and shall either provide any comments to the TSP Delivery Manager or confirm that such test specification, or such method of demonstration, is agreed.
 - (c) The TSP Delivery Manager shall continue to revise and resubmit the test specifications or details of the method of demonstration (as the case may be) to the Secretary of State's Representative until that test specification or method of demonstration is agreed in accordance with Paragraph 3.1(b).
- 3.2
- (a) The TSP Delivery Manager shall issue all test results and the results of any other method of demonstration to the Secretary of State's Representative together with sufficient supporting materials and information to enable the Secretary of State's Representative to understand and interpret such results.
 - (b) Within ten (10) Business Days of the Secretary of State's Representative receiving such results from the TSP Delivery Manager, or such other period of time as may be agreed by the parties, the Secretary of State's Representative shall review such results and collate the comments of the Secretary of State and the Relevant Operator and (if appropriate) the ECML Relevant Operator, and shall either provide any comments to the TSP Delivery Manager or confirm that such results are agreed.
 - (c) If the Secretary of State's Representative provides comments on such results, within ten (10) Business Days of the TSP Delivery Manager receiving such comments from the Secretary of State's Representative on the results, or such other period as may be agreed by the parties, the TSP Delivery Manager shall provide a detailed written response to each of the Secretary of State's Representative's comments.
 - (d) Within ten (10) Business Days of the Secretary of State's Representative receiving the TSP Delivery Manager's detailed written responses, the Secretary of State's Representative and the TSP Delivery Manager shall meet to discuss any comments in good faith. If following such meeting, the relevant results remain in dispute, either party may advise the other party that a Dispute has arisen.
- 3.3 In respect of Common Requirements:
- (a) to the extent that a Common Requirement was identified in the White Book as one to be demonstrated on a Type basis, the provisions of Paragraphs 3.1 and 3.2 will apply in respect of such Requirement, provided that the Secretary of State and the TSP shall take appropriate account of any testing or other method of demonstration already carried out under the ECML MARA when considering whether such Requirement is satisfied under this Agreement; and
 - (b) to the extent that a Common Requirement was identified in the White Book as one to be demonstrated on a Fleet basis, any demonstration of compliance with that

Requirement pursuant to the ECML MARA shall also be sufficient to demonstrate compliance with that Requirement for the purposes of Type Acceptance under this Agreement and no further testing or other method of demonstration shall be required in respect of such Requirement for the purposes of Type Acceptance.

4. **WHITE BOOK PROCESS**

4.1 In accordance with Paragraph 6.2 of Appendix D (*Design Plan*) of Schedule 1 (*Set Specification and Design*), the TSP Delivery Manager shall, as part of the process by which the TSP intends to demonstrate that the requirements for obtaining Type Acceptance and Final Acceptance of the first Set of a Type have been met, update the relevant White Book Compliance Sheet upon the TSP proposing and the Secretary of State's Representative agreeing:

- (a) the test specification for the test, or details of the method of demonstration, to be used by the TSP to demonstrate the relevant Requirement in accordance with Paragraph 3.1; and
- (b) the test results, or the results of any other method of demonstration, in accordance with Paragraph 3.2,

and provide a copy of such White Book Compliance Sheet to the Secretary of State's Representative for agreement.

4.2 If, in the reasonable opinion of the Secretary of State's Representative, the updated White Book Compliance Sheet does not reflect what had been previously agreed by the Secretary of State's Representative in accordance with Paragraph 3, the Secretary of State's Representative shall, within ten (10) Business Days of receiving the updated White Book Compliance Sheet, or such other period as may be agreed by the parties, provide his comments to the TSP Delivery Manager.

4.3 The TSP Delivery Manager shall continue to revise and resubmit the updated White Book Compliance Sheet to the Secretary of State's Representative until that updated White Book Compliance Sheet is agreed.

4.4 When a White Book Compliance Sheet has been completed in full in accordance with this Paragraph 4 and with Paragraph 6 of Appendix D (*Design Plan*) of Schedule 1 (*Set Specification and Design*), the TSP Delivery Manager shall submit a copy of such White Book Compliance Sheet to the Secretary of State for sign-off and such White Book Compliance Sheet shall be signed-off by the Secretary of State's Representative if the relevant Requirement has been met.

5. **GLASS CASE STANDARD**

5.1 The TSP will provide to the Secretary of State's Representative, within twelve (12) months after the Effective Date, a Glass Case Standard plan (the ***Glass Case Standard Plan***) which shall include:

- (a) how the TSP will identify (using the Design produced in accordance with Appendix D (*Design Plan*) of Schedule 1 (*Set Specification and Design*) as a reference) the examples and samples to be presented, in addition to those listed in Annex A (*Examples of Glass Case Standards to be Produced*) to this Appendix A (*Testing, Commissioning and Acceptance*), as the Glass Case

Standard, and with which each Set must comply when presented for Final Acceptance;

- (b) when and how the TSP will consult with the Secretary of State in relation to the Glass Case Standards; and
 - (c) how the TSP will ensure that the Glass Case Standards are adhered to during each stage of the manufacturing process of the Sets and the process by which the Secretary of State shall be able to review each manufacturing stage of the Sets to ensure the Glass Case Standards are complied with.
- 5.2 For the purposes of this Paragraph 5 only, the requirement set out in Paragraph 5.1(c) shall be the **Requirement for Approval** and the requirements set out in Paragraphs 5.1(a) and 5.1(b) shall be the **Requirements for Agreement**.
- 5.3 (a) Within ten (10) Business Days of receiving the first draft Glass Case Standards Plan from the TSP, or such other period of time as may be agreed by the parties, the Secretary of State's Representative shall:
- (i) review the draft Glass Case Standards Plan and collate the comments of the Secretary of State and the Relevant Operator(s); and
 - (ii) provide any comments to the TSP Delivery Manager or confirm that the Glass Case Standards Plan is agreed in respect of the Requirements for Agreement and approved in respect of the Requirement for Approval.
- (b) If the Secretary of State's Representative provides comments on the draft Glass Case Standards Plan, within ten (10) Business Days of the TSP Delivery Manager receiving such comments, or such other period of time as may be agreed by the parties, the TSP Delivery Manager and the Secretary of State's Representative shall meet to discuss any comments in good faith.
- (c) The TSP Delivery Manager shall submit a revised draft of the Glass Case Standards Plan to the Secretary of State's Representative within ten (10) Business Days of such meeting, or such other period of time as may be agreed by the parties, for review by the Secretary of State's Representative.
- (d) Within ten (10) Business Days of receiving the revised draft of the Glass Case Standards Plan from the TSP Delivery Manager, or such period of time as may be agreed by the parties, the Secretary of State's Representative shall either:
- (i) confirm that the revised draft of the Glass Case Standards Plan is agreed in respect of the Requirements for Agreement and approved in respect of the Requirement for Approval; or
 - (ii) advise the TSP Delivery Manager that the revised draft of the Glass Case Standards Plan is not agreed in respect of the Requirements for Agreement and/or not approved in respect of the Requirement for Approval and provide the TSP Delivery Manager with the reasons why such plan is not so agreed and/or approved.
- (e) Within ten (10) Business Days of receiving the Secretary of State's reasons for not agreeing in respect of the Requirements for Agreement and not approving in respect of the Requirement for Approval the revised draft of the Glass Case Standards Plan, or such other period of time as may be agreed by the parties, the

TSP Delivery Manager shall submit a further revised draft of the Glass Case Standards Plan to the Secretary of State's Representative.

- (f) Any draft of the Glass Case Standards Plan agreed in respect of the Requirements for Agreement and approved in respect of the Requirement for Approval in accordance with this Paragraph 5.3 shall become the Glass Case Standards Plan for the purposes of this Agreement.

5.4 The TSP Delivery Manager shall continue to revise and resubmit drafts of the Glass Case Standards Plan to the Secretary of State's Representative until it is agreed in respect of the Requirements for Agreement and approved in respect of the Requirement for Approval in accordance with Paragraph 5.3(d).

6. TEST PATH REQUIREMENTS FOR COMMISSIONING AND ACCEPTANCE

6.1 Without prejudice to Paragraph 4 of Part A (*Testing and Acceptance*) of Schedule 2 (*Introduction into Service*) and subject to Appendix B (*Fault Free Running Conditions*) to Part A (*Testing and Acceptance*) of Schedule 2 (*Introduction into Service*), the TSP shall provide, procure and be responsible for satisfying the Test Path Requirements (defined in Paragraph 5 of Appendix E (*Approvals Plan*) of Schedule 1 (*Set Specification and Design*)), including obtaining test paths, a test operator, provision of on-train operational staff (including drivers) and payment for energy consumed (including fuel and EC4T as necessary) associated with tests required to demonstrate that the Requirements have been met.

6.2 The TSP shall provide, as part of the Testing, Commissioning and Acceptance Plan, the following details for the Test Path Requirements:

- (a) a table outlining the minimum number and location of test paths, including operational restrictions, anticipated for each stage of testing;
- (b) programme milestones for obtaining the agreement of all relevant infrastructure owners for test paths required for each testing stage; and
- (c) a detailed contingency plan in the event that any test paths required are not available.

7. TESTING PROCESS MANAGEMENT

7.1 Without prejudice to the provisions of Part A (*Testing and Acceptance*) of Schedule 2 (*Introduction into Service*), the TSP Delivery Manager shall manage all testing required under the Testing, Commissioning and Acceptance Plan and shall:

- (a) allow the Secretary of State's Representative to participate in Japan and UK testing activities;
- (b) to the extent reasonably practicable, accommodate the Secretary of State's reasonable requirements in the selection of UK in-traffic testing routes;
- (c) allow the Secretary of State, and where necessary the Relevant Operator and (if applicable) the ECML Relevant Operator, to witness any such tests undertaken by the TSP or the Manufacturer or either of their affiliates or the engine manufacturer, and the TSP shall provide to the Secretary of State, a minimum of ten (10) days prior to the end of each month, a testing programme setting out any plans to conduct tests required under the Testing, Commissioning and Acceptance Plan or

Appendix E (*Approvals Plan*) of Schedule 1 (*Set Specification and Design*) for the following month, such programme to identify whether the test is to be carried out in the UK or another specified country, provided that:

- (i) the first such testing programme shall be provided by the TSP to the Secretary of State no later than two (2) months before the scheduled date for the commencement of testing activities (as specified in the Integrated Programme) and the TSP shall not have any obligation to provide any such testing programme after the Actual Acceptance Date of the last Set; and
 - (ii) where operational issues require a change to the date of any test from that specified in the testing programme, the TSP shall give the Secretary of State's Representative as much notice of such change as reasonably practicable but if the Secretary of State's Representative and/or the Relevant Operator and/or the ECML Relevant Operator is unable to attend the test on the revised date that shall not affect the validity of the test; and
- (d) be responsible for managing the interface arrangements between the Secretary of State, the TSP's test manager and the test operator appointed by the TSP.

8. **ACCEPTANCE OBLIGATIONS OF THE TSP TO THE SECRETARY OF STATE**

8.1 Without prejudice to the other provisions of this Appendix A (*Testing, Commissioning and Acceptance*) and Part A (*Testing and Acceptance*) of Schedule 2 (*Introduction into Service*), the TSP Delivery Manager shall be responsible for preparing and providing all necessary support, cooperation, materials and information, and for providing all such materials and information in an appropriate form, to enable the Secretary of State to:

- (a) issue a Type Acceptance Certificate for each Type if appropriate; and
- (b) enable the Relevant Operator to deliver its obligations under this Part A (*Testing and Acceptance*) of Schedule 2 (*Introduction into Service*) and under all Applicable Laws and Standards.

Annex A of Appendix A to Part A of Schedule 2

Examples of Glass Case Standards to be Produced

1. Examples of interior finishes to demonstrate colour and finish of:
 - (a) all soft materials in A4 size or larger swatch form (including carpets and seat covers); and
 - (b) all hard surfaces in test board sample form (including heater duct surfaces, dado panels, wall panels, partitions, window surrounds, catering surfaces, floor surfaces, luggage racks, ceiling panels and doors). Samples to be provided in each colour and finish for each material.
2. Examples of exterior finishes to demonstrate colour and finish of all external surfaces in test board form (bodyside, roof, underframe panel). Samples to be provided in each colour and finish for each material.
3. Samples of key interior or exterior fixtures to demonstrate the form of:
 - (a) heater duct surfaces, dado panels, wall panels, partitions, window surrounds, luggage racks, ceiling panels, doors;
 - (b) seats including attached elements such as seat covers, fold down tables, armrests etc;
 - (c) tables;
 - (d) blinds;
 - (e) passenger operated equipment such as switches, buttons, locks etc;
 - (f) cab seats; and
 - (g) bins.
4. Samples of panel finish – for example, expressed through photographs or mock-up examples showing fixtures and gaps between panels.
5. Examples of wiring or piping installation – for example, photographs of initial underframes and electrical cubicles.

Annex B of Appendix A to Part A of Schedule 2

List of Systems to be Commissioned

As a minimum, systems to be commissioned to include the following:

- (a) braking and acceleration (in electric and self-powered mode);
- (b) battery function;
- (c) auxiliary power supply and battery charging;
- (d) air system including main and auxiliary compressor including air leakage test;
- (e) door function;
- (f) sanding;
- (g) horn;
- (h) gangway doors;
- (i) cab heating, ventilation and air conditioning system;
- (j) saloon heating, ventilation and air conditioning system;
- (k) windscreen heater
- (l) passenger saloon power sockets;
- (m) cab and saloon lighting;
- (n) fire/smoke detection;
- (o) toilets;
- (p) coupler;
- (q) train management system function (including driver advisory system and energy consumption monitoring);
- (r) passenger information system function;
- (s) driver safety device;
- (t) current collection system (including pantograph, vacuum circuit breaker, and automatic power control (**APC**));
- (u) closed circuit television;
- (v) vehicle end lighting (headlight/tail/marker);
- (w) 'two train' functionality;
- (x) passenger reservation system;
- (y) passenger counting system;

- (z) passenger wi-fi system;
- (aa) train protection and warning system (**TPWS**) (incorporating the automatic warning system (**AWS**));
- (bb) European Train Control System (**ETCS**)
- (cc) GSM-R radio system;
- (dd) On-Train Data Recorder;
- (ee) Automatic Train Protection system;
- (ff) selective door opening;
- (gg) Unattended Track Geometry Measurement System;
- (hh) catering equipment; and
- (ii) windscreen wiper system.

Appendix B to Part A of Schedule 2

Fault Free Running Conditions

1. INTRODUCTION

This Appendix B (*Fault Free Running Conditions*) specifies the conditions that shall apply in connection with any fault free running of any Set by the Relevant Operator prior to that Set's Actual Acceptance Date, in order to satisfy the 2,000 Miles Requirement for that Set pursuant to Paragraph 5.6(b)(ii) of Part A (*Testing and Acceptance*) of Schedule 2 (*Introduction into Service*).

2. RELEVANT OPERATOR'S OBLIGATIONS

2.1 Subject to Paragraphs 3.1 and 4.1, whenever requested by the TSP the Relevant Operator shall operate each Set with a view to ensuring each Set satisfies the 2,000 Miles Requirement. In order to comply with this obligation, the Relevant Operator shall (subject in each case to the occurrence of any Force Majeure Event that prevents the Relevant Operator from carrying out the relevant obligation):

- (a) procure the provision on the Great Western IEP Network of not more than one hundred and seventy one thousand (171,000) miles' track access in aggregate and at a rate sufficient to ensure that each Set satisfies the 2,000 Miles Requirements up to a maximum of not more than three thousand one hundred (3,100) miles' track access per calendar week;
- (b) provide suitably qualified drivers; and
- (c) comply with any other reasonable request of the TSP which is reasonably necessary in order to enable the carrying out of the fault free running,

and (subject in all cases to Paragraph 2.2) the Relevant Operator shall bear, and shall not seek reimbursement from the TSP of, all costs (including the cost of all necessary fuel (including additives) in accordance with part D (*Reimbursable Charges*) of schedule 6 (*Performance Regime*) of the TARA) associated with making the arrangements under this Paragraph 2.1.

2.2 For the purposes of satisfying the 2,000 Miles Requirement in respect of all Sets, if the TSP requires the Relevant Operator to operate the Sets (including the operation of any Set in returning such Set to the relevant Depot following satisfaction of the 2,000 Miles Requirement in respect of such Set or in returning such Set to the TSP pursuant to Paragraph 5.7) for:

- (a) more than one hundred and seventy one thousand (171,000) miles in aggregate; and/or
- (b) at a rate of more than three thousand one hundred (3,100) miles per calendar week,

the Relevant Operator shall use reasonable endeavours to provide the necessary track access and drivers, provided that all costs associated with such additional resource provision in relation to this Paragraph 2.2 (including the cost of all necessary fuel (including additives) and electricity and track charges) shall be reimbursed to the Relevant Operator by the TSP.

- 2.3 Where the TSP makes two (2) coupled Half Sets available to the Relevant Operator for the purposes of the 2,000 Miles Requirement in respect of each such Half Set, the Relevant Operator shall ensure that:
- (a) a minimum of thirty per cent. (30%) of the miles comprising the 2,000 Miles Requirement is achieved by each Half Set separately in single Half Set operation; and
 - (b) a minimum of thirty per cent. (30%) of the miles comprising the 2,000 Miles Requirement is achieved by the Half Sets operating as a coupled pair.
- 2.4 Where any two (2) Half Sets are operating as a coupled pair pursuant to Paragraph 2.3(b) and a TSP Fault occurs in respect of such coupled pair, the TSP Fault shall be attributed to both of the Sets comprising the coupled pair for the purposes of the 2,000 Miles Requirement for each such Set where, in the view of the Relevant Operator (acting reasonably):
- (a) the TSP Fault relates to the mechanism by which the Sets are coupled; or
 - (b) the TSP has not conclusively demonstrated that the TSP Fault relates to one but not both of the Sets.
- 2.5 In respect of each Bi-Mode Set made available to the Relevant Operator for the purposes of the 2,000 Miles Requirement, the Relevant Operator shall ensure that:
- (a) a minimum of thirty per cent. (30%) of the miles comprising the 2,000 Miles Requirement is achieved using the Bi-Mode Set's diesel engine; and
 - (b) a minimum of thirty per cent. (30%) of the miles comprising the 2,000 Miles Requirement is achieved using the overhead electric power supply.
- 2.6 Where reasonably practicable, the TSP and the Relevant Operator may agree (in light of the delivery programme in respect of the Sets) that the Relevant Operator may provide mileage to enable two (2) Sets to undertake fault free running simultaneously (but operating separately) in order to satisfy the 2,000 Miles Requirement in respect of each such Set.

3. NOTIFICATION TO THE RELEVANT OPERATOR

- 3.1 The TSP shall liaise with the Relevant Operator during the testing and commissioning of the Sets and shall inform the Relevant Operator as soon as reasonably practicable of the TSP's decision as to the 2,000 Miles Requirement for each Set for the purposes of Paragraph 5.6 of Part A (*Testing and Acceptance*) of Schedule 2 (*Introduction into Service*). Where the TSP wishes the Relevant Operator to undertake the fault free running required to satisfy the 2,000 Miles Requirement for any Set pursuant to Paragraph 5.6(b)(ii) of Part A (*Testing and Acceptance*) of Schedule 2 (*Introduction into Service*), the TSP shall:
- (a) inform the Relevant Operator that it wishes the Relevant Operator to do so as soon as reasonably practicable and:
 - (i) in the case of fault free running of the first Set to be tendered by the TSP for Final Acceptance by the Relevant Operator, no less than thirty (30) days prior to the date on which the TSP is to tender such Set for Final Acceptance by the Relevant Operator; or

- (ii) in the case of fault free running in respect of any other Set to be tendered by the TSP for Final Acceptance by the Relevant Operator, no less than five (5) days prior to the date on which the TSP is to tender the Set for Acceptance by the Relevant Operator; and
 - (b) provide written confirmation to the Relevant Operator that the relevant Set can be operated safely and in accordance with all Applicable Laws and Standards for the purposes of undertaking fault free running in accordance with this Appendix B (*Fault Free Running Conditions*).
- 3.2 The TSP may tender any Set that has not satisfied all of the Final Acceptance Conditions (including, the FFR-related Conditions) to the Relevant Operator for operating in order to satisfy the 2,000 Miles Requirement for such Set provided that such Set can be operated safely and in accordance with all Applicable Laws and Standards for the purposes of undertaking fault free running in accordance with this Appendix B (*Fault Free Running Conditions*) and the TSP has provided the written confirmation required pursuant to Paragraph 3.1(b).

4. TSP'S OBLIGATIONS

- 4.1 Any Set that is tendered to the Relevant Operator for operating in order to satisfy the 2,000 Miles Requirement for such Set pursuant to Paragraph 5.6(b)(ii) of Part A (*Testing and Acceptance*) of Schedule 2 (*Introduction into Service*) shall be tendered by the TSP at the Designated Acceptance Location on a date and at a time specified by the TSP in accordance with the Integrated Programme.
- 4.2 The Relevant Operator may withhold a Final Acceptance Certificate or a Qualified Acceptance Certificate in respect of the relevant Set by reference to any failure to satisfy a Final Acceptance Condition that becomes apparent to the Relevant Operator in the course of such operation, or otherwise on or prior to the date on which the TSP tenders the relevant Set for Acceptance where such failure continues to subsist as at the date on which the relevant Set is presented for Final Acceptance, in accordance with and pursuant to Paragraph 5.2 or 6.1 respectively of Part A (*Testing and Acceptance*) of Schedule 2 (*Introduction into Service*).
- 4.3 Where:
- (a) the TSP informs the Relevant Operator, at the time of tendering any Set to the Relevant Operator for operating in order to satisfy the 2,000 Miles Requirement for such Set, that such Set does not satisfy all of the Final Acceptance Conditions (other than the FFR-related Conditions); and
 - (b) the Relevant Operator has confirmed in writing that it shall issue a Qualified Acceptance Certificate in respect of the unsatisfied Final Acceptance Conditions and the TSP has confirmed that it shall consent to such issue,

the Relevant Operator may not withhold a Qualified Acceptance Certificate in respect of the relevant Set solely by reference to circumstances subsisting as at the date of such written confirmation.

- 4.4 For the avoidance of doubt, the provisions of this Paragraph 4 are without prejudice to the Relevant Operator's right to withhold an Acceptance Certificate or a Qualified Acceptance Certificate in respect of any Set that does not satisfy any FFR-related Condition.

5. **FAULT FREE RUNNING**

5.1 In relation to any Set that is tendered to the Relevant Operator pursuant to Paragraph 5.6(b)(ii) of Part A (*Testing and Acceptance*) of Schedule 2 (*Introduction into Service*) and in accordance with Paragraphs 3.1 and 4.1:

- (a) the Relevant Operator shall attend the Designated Acceptance Location on the date and at the time specified pursuant to Paragraph 4.1 and commence fault free running of the Set on that date in order to satisfy the 2,000 Miles Requirement in respect of such Set;
- (b) the Relevant Operator shall, at the direction of the TSP but subject to the provisions of this Appendix B (*Fault Free Running Conditions*), operate the Set for as many miles as is necessary to satisfy the 2,000 Miles Requirement in respect of such Set; and
- (c) the TSP shall (unless otherwise agreed) participate in the fault free running of the Set by having members of its technical team present on the Set during the fault free running.

5.2 The Secretary of State shall, subject to Paragraphs 5.6 and 5.8, be responsible for and shall release and indemnify the TSP, its employees, agents and contractors on demand from and against all liability for:

- (a) the reasonable and proper repair costs of the TSP incurred in respect of damage to any Set;
- (b) death and personal injury;
- (c) loss of or damage to property (including any Set which is a Total Loss but excluding a damaged Set to which Paragraph 5.2(a) applies);
- (d) any third party actions, claims, demands, costs, charges and expenses (including legal expenses on an indemnity basis); and
- (e) insurance deductibles (or, where the liability is less than the amount of the relevant insurance deductible, the amount of such liability) and increases in insurance premiums, in each case in respect of insurances being maintained by the TSP in relation to the Sets,

which, in each case, may arise out of or in consequence of Relevant Operator Misconduct which occurs at any time such Set is being operated by the Relevant Operator pursuant to this Appendix B (*Fault Free Running Conditions*).

5.3 The Secretary of State shall, subject to Paragraphs 5.5 and 5.6, be responsible for and shall release and indemnify the TSP, its employees, agents and contractors on demand from and against all liability for:

- (a) insurance deductibles (or, where the liability is less than the amount of the relevant insurance deductible, the amount of such liability); and
- (b) increases in insurance premiums,

in each case in respect of insurances being maintained by the TSP in relation to the Sets which may arise out of or in consequence of such Sets being operated by the Relevant

Operator pursuant to this Appendix B (*Fault Free Running Conditions*) (excluding any liability which may arise out of or in consequence of Relevant Operator Misconduct to which Paragraph 5.2 applies).

- 5.4 Where the Secretary of State considers that any increase in insurance premiums has been caused by factors other than such Sets being operated by the Relevant Operator pursuant to this Appendix B (*Fault Free Running Conditions*), the TSP shall provide to the Secretary of State such written evidence as the Secretary of State may require of the proportion of the increase that is attributable to such operation and, subject to the Secretary of State being satisfied as to such evidence and subject in all cases to Paragraph 5.8, the Secretary of State shall only be liable for such proportion pursuant to Paragraph 5.3.
- 5.5 The Secretary of State shall not be responsible for or be obliged to indemnify the TSP or any of its employees, agents or contractors:
- (a) in respect of any amounts pursuant to Paragraph 5.2(a) which are not reasonably and properly incurred in the relevant circumstances by the TSP;
 - (b) for any liability caused by any act or omission of the TSP, its employees, agents or contractors (whether constituting negligence or wilful misconduct or otherwise) or by the breach by the TSP of its obligations under this Agreement;
 - (c) for any of the matters referred to in Paragraph 5.2 which the Secretary of State or any employee, agent or contractor of the Secretary of State (including the Relevant Operator) demonstrates on the balance of probabilities is wholly or mainly attributable to causes which the Sets could reasonably be expected to have withstood (having due regard to the Train Technical Specification in the normal course of operations);
 - (d) for any of the matters referred to in Paragraph 5.2 which arises as a direct result of the Relevant Operator acting on the instruction of the TSP or any of its employees, agents or contractors; or
 - (e) in respect of any amounts which in aggregate exceed the Stipulated Loss Value of the relevant Set in respect of any one (1) occurrence or series of connected or related occurrences.
- 5.6 If the TSP becomes aware of a matter which might give rise to a claim pursuant to either Paragraph 5.2 or 5.3:
- (a) the TSP shall immediately notify the Secretary of State in writing (giving reasonable particulars);
 - (b) and that matter involves, or may involve, a claim against the TSP, the TSP shall, at the Secretary of State's cost:
 - (i) take such action as the Secretary of State may reasonably request to:
 - (A) dispute, resist, appeal, compromise, defend, remedy or mitigate that claim; or
 - (B) enforce the TSP's rights in relation to that claim; and

- (ii) subject to Paragraphs 5.6(d) and (e), in connection with any proceedings related to that claim having a value less than the limit stipulated in Paragraph 5.5(e), if the Secretary of State so requests and if the TSP consents (such consent not to be unreasonably withheld or delayed), allow the Secretary of State exclusive conduct of those proceedings,

provided that the Secretary of State shall indemnify and hold harmless the TSP against all Loss incurred by the TSP as a result of such request made by the Secretary of State;

- (c) the TSP shall not admit liability in respect of or settle any claim without first obtaining the Secretary of State's prior written consent, such consent not to be unreasonably withheld or delayed, and, if unreasonably withheld or delayed, to be the subject of indemnification by the Secretary of State as provided for in Paragraph 5.6(b);
- (d) where the Secretary of State exercises her right pursuant to Paragraph 5.6(b)(ii) to request exclusive conduct of any proceedings, the Secretary of State shall keep the TSP informed of the progress of the relevant claim, and shall consult with the TSP prior to the Secretary of State taking any decision material to the conduct of that claim, including any admission of liability by the Secretary of State or the settlement or compromise by the Secretary of State of that claim; and
- (e) where the Secretary of State does not exercise her right pursuant to Paragraph 5.6(b)(ii) to exclusively conduct any proceedings within thirty (30) days of the date of the notification referred to in Paragraph 5.6(a), the Secretary of State shall, at her own cost, provide any assistance required by the TSP to:
 - (i) dispute, resist, appeal, compromise, defend, remedy or mitigate the relevant claim; or
 - (ii) enforce the TSP's rights in relation to the relevant claim.

5.7 The TSP may at any time require the Relevant Operator to return to the TSP any Set that is undertaking fault free running.

5.8 For the avoidance of doubt, the TSP may at any time make its own arrangements to operate the Sets at its own cost for the purposes of satisfying the 2,000 Miles Requirement in a manner other than in accordance with this Appendix B (*Fault Free Running Conditions*).

Appendix C to Part A of Schedule 2

Delivery Schedule

Type	Number of Vehicles	Interior layout code (Annex D TTS)	Type Acceptance Date
Bi-Mode Set	5	1	2 February 2017
Electric Set	9	3	20 October 2017

Train number	Scheduled Acceptance Date	Maximum Available Sets
Bi-Mode Sets		
Delivery Train 1	25 May 2017	0
Delivery Train 2	1 June 2017	0
Delivery Train 3	8 June 2017	2
Delivery Train 4	16 June 2017	2
Delivery Train 5	22 June 2017	4
Delivery Train 6	30 June 2017	4
Delivery Train 7	7 July 2017	6
Delivery Train 8	13 July 2017	6
Delivery Train 9	21 July 2017	8
Delivery Train 10	28 July 2017	8
Delivery Train 11	3 August 2017	10
Delivery Train 12	10 August 2017	10
Delivery Train 13	18 August 2017	12
Delivery Train 14	24 August 2017	12
Delivery Train 15	31 August 2017	14
Delivery Train 16	7 September 2017	14
Delivery Train 17	14 September 2017	16
Delivery Train 18	21 September 2017	16
Delivery Train 19	28 September 2017	18
Delivery Train 20	5 October 2017	18
Delivery Train 21	12 October 2017	20

Delivery Train 22	19 October 2017	20
Delivery Train 23	27 October 2017	22
Delivery Train 24	2 November 2017	22
Delivery Train 25	9 November 2017	24
Delivery Train 26	17 November 2017	24
Delivery Train 27	23 November 2017	26
Delivery Train 28	30 November 2017	26
Delivery Train 29	7 December 2017	28
Delivery Train 30	15 December 2017	28
Delivery Train 31	4 January 2018	30
Delivery Train 32	11 January 2018	30
Delivery Train 33	18 January 2018	32
Delivery Train 34	25 January 2018	32
Delivery Train 35	1 February 2018	32
Delivery Train 36	8 February 2018	32

Train number	Scheduled Acceptance Date	Maximum Available Sets
Electric Sets		
Delivery Train 37	15 February 2018	0
Delivery Train 38	22 February 2018	0
Delivery Train 39	1 March 2018	2
Delivery Train 40	8 March 2018	2
Delivery Train 41	15 March 2018	4
Delivery Train 42	22 March 2018	4
Delivery Train 43	29 March 2018	6
Delivery Train 44	5 April 2018	6
Delivery Train 45	12 April 2018	8
Delivery Train 46	19 April 2018	8
Delivery Train 47	26 April 2018	10
Delivery Train 48	3 May 2018	10

Delivery Train 49	10 May 2018	12
Delivery Train 50	17 May 2018	12
Delivery Train 51	24 May 2018	14
Delivery Train 52	1 June 2018	14
Delivery Train 53	7 June 2018	16
Delivery Train 54	14 June 2018	16
Delivery Train 55	22 June 2018	18
Delivery Train 56	28 June 2018	18
Delivery Train 57	6 July 2018	18

Appendix D to Part A of Schedule 2
Forms of Acceptance Certificates
Form 1: Type Acceptance Certificate

To: **Agility Trains West Limited, 4th Floor, 4 Copthall Avenue, London EC2R 7DA**

Date:

Dear Sirs

We refer to the Master Availability and Reliability Agreement dated [_____] 2012 (the **MARA**) between the Secretary of State for Transport (the **Secretary of State**) and Agility Trains West Limited (the **TSP**). Words and expressions defined in the MARA shall, except where otherwise defined herein, bear the same meanings when used herein.

The Secretary of State hereby confirms that she has today taken Type Acceptance of the first Set of the following Type: [_____] pursuant to Paragraph 2 of Part A (*Testing and Acceptance*) of Schedule 2 (*Introduction into Service*) of the MARA.

The Secretary of State confirms that pursuant to Paragraph 2.7 of Part A (*Testing and Acceptance*) of Schedule 2 (*Introduction into Service*) of the MARA, the Type Weight Adjustment Factor is [_____].

Yours faithfully,

By:

Name:

Title:

On behalf of the Secretary of State for Transport

Type Acceptance of the Type listed above is hereby acknowledged for and on behalf of:

Agility Trains West Limited

By:

Name:

Title:

Form 2: Qualified Type Acceptance Certificate

To: **Agility Trains West Limited, 4th Floor, 4 Copthall Avenue, London EC2R 7DA**

Date:

Dear Sirs

We refer to the Master Availability and Reliability Agreement dated [_____] 2012 (the **MARA**) between the Secretary of State for Transport (the **Secretary of State**) and Agility Trains West Limited (the **TSP**). Words and expressions defined in the MARA shall, except where otherwise defined herein, bear the same meanings when used herein.

The Secretary of State hereby confirms that she has today taken Qualified Type Acceptance of the first Set of the following Type: [_____] pursuant to Paragraph 3 of Part A (*Testing and Acceptance*) of Schedule 2 (*Introduction into Service*) of the MARA.

The outstanding conditions to be satisfied and tasks to be performed by the TSP in order for full Type Acceptance of the Set of that Type listed above to occur (the **Type Acceptance Preconditions**) are as follows:

[_____]

[The TSP shall satisfy the Type Acceptance Preconditions in accordance with the following timetable and in any event before any Final Acceptance Certificate may be issued in respect of the Set of that Type listed above:

[_____]]

[or if single date]

[The TSP shall satisfy the Type Acceptance Preconditions by [_____] and in any event before any Final Acceptance Certificate may be issued in respect of the Set of that Type listed above.]

The taking by the Secretary of State of Qualified Type Acceptance of any Set of that Type listed above shall not constitute a waiver of any of the rights of the Secretary of State under the MARA.

Yours faithfully,

By:

Name:

Title:

On behalf of the Secretary of State for Transport

Qualified Type Acceptance of the Set of that Type listed above is hereby acknowledged for and on behalf of

Agility Trains West Limited

By:

Name:

Title:

Form 3: Final Acceptance Certificate

To: **Agility Trains West Limited, 4th Floor, 4 Copthall Avenue, London EC2R 7DA**

Date:

Dear Sirs

We refer to the Master Reliability and Availability Agreement dated [_____] 2012 (the **MARA**) between the Secretary of State for Transport (the **Secretary of State**) and Agility Trains West Limited (the **TSP**). Words and expressions defined in the MARA shall, except where otherwise defined herein, bear the same meanings when used herein.

[Relevant Operator] hereby confirms that it has today taken Final Acceptance of the following Set: [_____] pursuant to Paragraph 5 of Part A (*Testing and Acceptance*) of Schedule 2 (*Introduction into Service*) of the MARA and the RV Date pursuant to Paragraph 6.5 of Part A (*Testing and Acceptance*) of Schedule 2 (*Introduction into Service*) of the MARA is [•].

Yours faithfully,

By:

Name:

Title:

On behalf of **[Relevant Operator]**

Final Acceptance of the Set listed above is hereby acknowledged for and on behalf of:

Agility Trains West Limited

By:

Name:

Title:

Form 4: Qualified Acceptance Certificate

To: **Agility Trains West Limited, 4th Floor, 4 Copthall Avenue, London EC2R 7DA**

Date:

Dear Sirs

We refer to the Master Reliability and Availability Agreement dated [_____] 2012 (the **MARA**) between the Secretary of State for Transport (the Secretary of State) and Agility Trains West Limited (the **TSP**). Words and expressions defined in the MARA shall, except where otherwise defined herein, bear the same meanings when used herein.

[Relevant Operator] hereby confirms that it has today taken Qualified Acceptance of the following Set: [_____] pursuant to Paragraph 6 of Part A (*Testing and Acceptance*) of Schedule 2 (*Introduction into Service*) of the MARA and the RV Date pursuant to Paragraph 6.5 of Part A (*Testing and Acceptance*) of Schedule 2 (*Introduction into Service*) of the MARA is [•].

The outstanding conditions to be satisfied and tasks to be performed by the TSP in order for Final Acceptance of the Set listed above to occur (the **Final Acceptance Preconditions**) are as follows:

[_____]

[The TSP shall satisfy the Final Acceptance Preconditions in accordance with the following timetable:

[_____]]

[or if single date]

[The TSP shall satisfy the Final Acceptance Preconditions by [_____] and in any event before any Final Acceptance Certificate may be issued in respect of the Set listed above.]

The taking by **[Relevant Operator]** of Qualified Acceptance of the Set listed above shall not constitute a waiver of any of the rights of the Secretary of State or **[Relevant Operator]** under the MARA.

Yours faithfully,

By:

Name:

Title:

On behalf of **[Relevant Operator]**

Qualified Acceptance of the Set listed above is hereby acknowledged for and on behalf of:

Agility Trains West Limited

By:

Name:

Title:

Form 5: Fleet Acceptance Certificate

To: **Agility Trains West Limited, 4th Floor, 4 Copthall Avenue, London EC2R 7DA**

Date:

Dear Sirs

We refer to the Master Reliability and Availability Agreement dated [_____] 2012 (the **MARA**) between the Secretary of State for Transport (the **Secretary of State**) and Agility Trains West Limited (the **TSP**). Words and expressions defined in the MARA shall, except where otherwise defined herein, bear the same meanings when used herein.

[Relevant Operator] hereby confirms that it has today taken Final Acceptance of the every Set in the following Fleet: [_____] pursuant to Paragraph 9 of Part A (*Testing and Acceptance*) of Schedule 2 (*Introduction into Service*) of the MARA.

Yours faithfully,

By:

Name:

Title:

On behalf of **[Relevant Operator]**

Final Acceptance of every Set in the Fleet listed above is hereby acknowledged for and on behalf of:

Agility Trains West Limited

By:

Name:

Title:

Part B of Schedule 2

Delayed Delivery and Delayed Acceptance

1. EXTENSIONS OF TIME

Scope

- 1.1 The provisions of this Paragraph 1 shall apply for the purpose of amending any Scheduled Acceptance Date or, after the Scheduled Acceptance Date for a particular Set has passed, the relevant Delivery Longstop Date and (if applicable) the Fleet Acceptance Drop Dead Date.

Duty to Notify

- 1.2 The TSP shall give written notice to the Secretary of State as soon as reasonably possible after the TSP:

- (a) becomes aware that a Delayed Acceptance Event has occurred; or
- (b) can reasonably foresee a Delayed Acceptance Event occurring,

(and a **Notified Delayed Acceptance Event** shall be construed as referring to a Delayed Acceptance Event which either has occurred or is so foreseen).

- 1.3 Any notice given pursuant to Paragraph 1.2 shall not in any event be given later than seven (7) days after the TSP becomes aware of (or can reasonably foresee) the relevant Notified Delayed Acceptance Event and in either case such notice shall:

- (a) state the cause or anticipated cause of the delay, and the likelihood and probable extent of the delay;
- (b) state the number and identity of the Sets that the TSP considers may be affected by the delay (and, where more than one Set may be affected by the delay, the TSP may notify the Secretary of State in respect of all such Sets in a single notice served in accordance with Paragraph 1.2); and
- (c) specify whether the TSP considers it is, or may become, entitled to an extension of time in respect of any such Sets.

Mitigation

- 1.4 (a) The TSP shall procure that the Manufacturer and/or the Maintainer (as appropriate) shall use, and continue to use, its reasonable endeavours to avoid or reduce the effects or likely effects of any Delayed Acceptance Event on the ability of the TSP to comply with its obligations under this Agreement, provided that neither the Manufacturer nor the Maintainer shall be obliged as a consequence of this Paragraph 1.4(a) to incur material expenditure and, for this purpose, the TSP shall be required to show that the Manufacturer and the Maintainer maintained and operated all such contingency plans as an experienced manufacturer or maintainer (as the case may be), with equivalent assets, resources, obligations and responsibilities to the Manufacturer or Maintainer (as the case may be), would reasonably be expected to maintain or operate in respect of the performance of works and services that are similar in their scale and nature to the works and services required to be performed by the Manufacturer or Maintainer

(as the case may be) under the Manufacture and Supply Agreement or the Maintenance Agreement (as the case may be).

- (b) The TSP shall use, and continue to use, its reasonable endeavours to avoid or reduce the effects or likely effects of any Delayed Acceptance Event on its ability to comply with its obligations under this Agreement, provided that the TSP shall not be obliged by this Paragraph 1.4(b) to incur material expenditure and for this purpose, the TSP shall be required to show that it maintained and operated all such contingency plans as an experienced train service provider, with equivalent assets, resources, obligations and responsibilities to the TSP (including the benefit of a guarantee from Hitachi, Ltd. in respect of the obligations of the Manufacturer and the Maintainer under the Manufacture and Supply Agreement and the Maintenance Agreement respectively), would reasonably be expected to maintain or operate in respect of the performance of works and services that are similar in their scale and nature to the works and services required to be performed by the TSP under this Agreement.

Further Notices

- 1.5 The TSP shall as soon as practicable but in any event within fourteen (14) days of the date by which notice is required to be given under Paragraph 1.2, submit by further written notice to the Secretary of State:
 - (a) full and detailed particulars of the cause and extent of the delay and the effects of the delay on the TSP's ability to comply with its obligations under this Agreement;
 - (b) details of the documents that will be relied upon to support any claim of the TSP for an extension of time based on the Notified Delayed Acceptance Event; and
 - (c) details of the measures which the TSP has adopted and/or proposes to adopt to avoid or reduce the effects of the Notified Delayed Acceptance Event upon its ability to comply with its obligations to meet any Scheduled Acceptance Date, Delivery Longstop Date or Fleet Acceptance Drop Dead Date (as applicable).

- 1.6 Where a Notified Delayed Acceptance Event has a continuing effect or where the TSP is unable to determine whether the effect of the Notified Delayed Acceptance Event will actually cause it not to be able to comply with its obligations to meet any Scheduled Acceptance Date, Delivery Longstop Date or Fleet Acceptance Drop Dead Date (as applicable), such that, in either case, it is not practicable for the TSP to submit the items referred to in Paragraph 1.5, the TSP shall instead submit to the Secretary of State within fourteen (14) days of the date by which notice is required to be given under Paragraph 1.2:
 - (a) a statement to that effect with reasons together with interim written particulars (including details of the likely consequences of the Notified Delayed Acceptance Event on the TSP's ability to comply with its obligations to meet any Scheduled Acceptance Date, Delivery Longstop Date or Fleet Acceptance Drop Dead Date (as applicable) and an estimate of the likelihood and likely extent of the delay); and
 - (b) thereafter at intervals of not more than fourteen (14) days, further interim written particulars until the actual delay caused (if any) is ascertainable, whereupon the TSP shall as soon as practicable, but in any event within twenty-eight (28) days thereof, submit to the Secretary of State the items referred to in Paragraph 1.5.

Determination of Entitlement

1.7 Where a Notified Delayed Acceptance Event has been notified to the Secretary of State in accordance with this Paragraph 1, the TSP shall be entitled to such extension to the Scheduled Acceptance Date (or, after the Scheduled Acceptance Date has passed, the Delivery Longstop Date or (if applicable) the Fleet Acceptance Drop Dead Date) as may be reasonable in the circumstances. Where the Secretary of State considers that the TSP is entitled to such an extension, the Secretary of State shall within twenty-eight (28) days, or such further time as may be reasonable in the circumstances, of:

- (a) receipt of sufficiently final, full and detailed particulars of the cause and actual effect of any Notified Delayed Acceptance Event as are reasonably required for the Secretary of State to determine whether the TSP is fairly entitled to such an extension of time; or
- (b) where an event has a continuing effect or where the Secretary of State anticipates a significant delay before the actual effect of a Notified Delayed Acceptance Event becomes ascertainable and the Secretary of State considers an interim extension of time should be granted, receipt, in either case, of such particulars as are reasonably required for the Secretary of State to determine whether the TSP is fairly entitled to such an interim extension of time,

determine, grant and notify to the TSP an extension of time by means of a postponement of any relevant Scheduled Acceptance Date (or, after the Scheduled Acceptance Date has passed, the relevant Delivery Longstop Date or (if applicable) the Fleet Acceptance Drop Dead Date) by written notice to a stated future date.

1.8 If the Secretary of State reasonably considers that the TSP is not entitled to an extension of time to a Scheduled Acceptance Date, a Delivery Longstop Date or the Fleet Acceptance Drop Dead Date, the Secretary of State shall as soon as reasonably practicable notify the TSP in writing.

General

1.9 Any extension given by the Secretary of State under this Paragraph 1 to the Scheduled Acceptance Date or Delivery Longstop Date in respect of any Set shall not of itself entitle the TSP to any extension to the Scheduled Acceptance Date or Delivery Longstop Date in respect of any other Set (whether or not such other Set was identified by the TSP pursuant to Paragraph 1.3(b)) and, with the exception of those other Sets identified by the TSP pursuant to Paragraph 1.3(b), the TSP shall be obliged to request in accordance with Paragraph 1.3 an extension of time for each other Scheduled Acceptance Date or Delivery Longstop Date to which it considers it is, or may become, entitled under this Paragraph 1.

1.10 Save as expressly provided in Paragraphs 2 and 3 or elsewhere in this Agreement but without prejudice to the TSP's rights under Part C (*Secretary of State Default*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*), any extension of time granted by the Secretary of State under this Paragraph 1 shall be in full compensation and satisfaction for any loss sustained or sustainable by the TSP in respect of any matter or thing in connection with which such extension shall have been granted.

1.11 The Secretary of State shall be entitled to take into account in determining the extent of the TSP entitlement to an extension of time pursuant to Paragraph 1.7 any failure by the TSP to strictly comply with the terms of Paragraphs 1.2 to 1.6 (inclusive) in relation to that

extension of time. In the event that any notice or information is provided by the TSP after the periods referred to in Paragraph 1.3, 1.5 or 1.6 (as relevant), the TSP shall not be entitled to any extension of time in respect of the period for which the notice or information is delayed but such delay shall not in and of itself preclude the TSP being entitled to an extension of time pursuant to Paragraph 1.7.

2. OTHER CONSEQUENCES OF EXTENSION DAYS

Responsibility

2.1 Any Extension Day granted:

- (a) pursuant to Paragraph 1.7 by reference to limb (c), (d), (e), (f) or (i) of the definition of Delayed Acceptance Event is referred to in this Part B (*Delayed Delivery and Delayed Acceptance*) as a **Secretary of State Extension Day**; and
- (b) pursuant to Paragraph 1.7 by reference to limb (a) of the definition of Delayed Acceptance Event is (subject to Paragraph 2.2) referred to in this Part B (*Delayed Delivery and Delayed Acceptance*) as a **Force Majeure Extension Day**.

2.2 Following any exercise by the Secretary of State of her right pursuant to Paragraph 1.5 of Part B (*Force Majeure*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*) to require this Agreement to continue, any Extension Day granted pursuant to limb (a) of the definition of Delayed Acceptance Event that falls on or after the date of the Secretary of State's written response for the purposes of Paragraph 1.5 of Part B (*Force Majeure*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*) shall be a Secretary of State Extension Day for the purposes of this Part B (*Delayed Delivery and Delayed Acceptance*) of Schedule 2 (*Introduction into Service*).

3. SECRETARY OF STATE DELAY

Consequences of Secretary of State Delay

3.1 Subject to Paragraph 3.2, the Secretary of State shall pay liquidated damages to the TSP in respect of each Secretary of State Extension Day that is granted in respect of the Fleet in an amount equal to the aggregate of:

- (a) in respect of the Bi-Mode Sets, an amount equal to:

$$(SAP_H \times n) \times BM;$$

- (b) in respect of the Electric Sets, an amount equal to:

$$(SAP_F \times n) \times ES,$$

where, in each case:

SAP_H means the Indexed SAP for a Half Set;

SAP_F means the Indexed SAP for a Full Set;

n means:

- (i) 

(ii)

(iii)

BM means the number of Bi-Mode Sets that are delayed in respect of the relevant Delayed Acceptance Event (being the number of Bi-Mode Sets in respect of which a Set Availability Payment would have been payable under the TARA had the Delayed Acceptance Event not occurred, which in no circumstances shall exceed the number of Bi-Mode Sets in respect of the period during which the relevant Secretary of State Extension Day falls, as set out in the relevant cell within the column headed "Maximum Available Sets" in Appendix C (*Delivery Schedule*) to Part A (*Testing and Acceptance*) of Schedule 2 (*Introduction into Service*)); and

ES means the number of Electric Sets that are delayed in respect of the relevant Delayed Acceptance Event (being the number of Electric Sets in respect of which a Set Availability Payment would have been payable under the TARA had the Delayed Acceptance Event not occurred, which in no circumstances shall exceed the number of Electric Sets in respect of the period during which the relevant Secretary of State Extension Day falls, as set out in the relevant cell within the column headed "Maximum Available Sets" in Appendix C (*Delivery Schedule*) to Part A (*Testing and Acceptance*) of Schedule 2 (*Introduction into Service*)).

3.2 Where:

- (a) the TSP had greater than or equal to [REDACTED] notice of the relevant Delayed Acceptance Event; and
- (b) the relevant Delayed Acceptance Event affects some but not all of the Sets in the Fleet,

the amount of liquidated damages for the purposes of Paragraph 3.1 shall be increased by the aggregate amount of the reasonable and proper costs arising in respect of the relevant Delayed Acceptance Event that:

- (i) the TSP demonstrates to the satisfaction of the Secretary of State could not reasonably have been avoided; and
- (ii) have not been reimbursed to the TSP pursuant to Paragraph 3.1,

subject to the aggregate amount of liquidated damages pursuant to Paragraph 3.1 and this Paragraph 3.2 in no circumstances exceeding the aggregate of the full Set Availability Payment in respect of each Set that has been delayed in respect of the relevant Delayed Acceptance Event.

3.3 Where the TSP had eighteen (18) months' or more notice of the relevant Delayed Acceptance Event, the amount of liquidated damages for the purposes of Paragraph 3.1 shall be increased by the aggregate amount of the reasonable and proper storage costs directly incurred by the TSP in relation to those Sets that are subject to the relevant Secretary of State Extension Day. For the avoidance of doubt, such costs shall only be payable by the Secretary of State to the extent that the TSP has used its reasonable endeavours to mitigate the amount of such costs and has complied with its obligations pursuant to Schedule 11 (*Information and Confidentiality*) in respect of such costs.

- 3.4 Any amounts payable by the Secretary of State under Paragraph 3.1 shall be due and payable on the first Business Day of the next Reporting Period (provided that, where such Business Day is a Secretary of State Extension Day for the purposes of Paragraph 3.1, liquidated damages in respect of such Business Day shall not be due and payable until the first Business Day of the next Reporting Period following such Business Day) or, where the then current Reporting Period is the last Reporting Period during the Contract Period, on the last Business Day of such Reporting Period.
- 3.5 Any extension granted by the Secretary of State and/or any amounts payable pursuant to Paragraphs 1 and 3 of this Part B (*Delayed Delivery and Delayed Acceptance*) of Schedule 2 (*Introduction into Service*) are agreed by the parties to be the sole and exclusive remedies of the TSP in respect of the circumstances to which such extension and/or payments relate.

4. **FORCE MAJEURE DELAY**

If an unbroken series of Force Majeure Extension Days continues for more than one hundred and eighty (180) days in respect of the delivery and acceptance of greater than or equal to ten per cent. (10%) of the Fleet, either party may terminate this Agreement in accordance with Part B (*Force Majeure*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*).

5. **DELIVERY LONGSTOP DATE**

- 5.1 If any Set does not have a Final Acceptance Certificate or a Qualified Acceptance Certificate in respect of it by the relevant Delivery Longstop Date (a ***Delayed Acceptance Default Event***), the Secretary of State may terminate this Agreement in accordance with the provisions of Part D (*TSP Default*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*).

Part C of Schedule 2

Contract Management

1. APPOINTMENT OF PERSONNEL

TSP's Personnel

1.1 The TSP shall:

- (a) appoint a competent contract manager (the **TSP Delivery Manager**) who shall have power and authority delegated to him by the TSP to act and to make decisions on behalf of the TSP. The responsibilities of the TSP Delivery Manager shall be as set out in this Part C (*Contract Management*) of Schedule 2 (*Introduction into Service*);
- (b) provide a senior representative, with a sufficient level of authority, to attend the Principals' Meetings; and
- (c) notify the Secretary of State of its Senior Personnel from time to time for the purposes of the Dispute Resolution Agreement.

1.2 Except in cases of emergency, or as a consequence of the proper exercise of disciplinary procedures of the TSP, the TSP shall give a minimum of one (1) month's notice to the Secretary of State of a proposal to replace the TSP Delivery Manager.

Secretary of State Personnel

1.3 The Secretary of State shall:

- (a) appoint a competent contract manager (the **Secretary of State's Representative**) who shall have power and authority delegated to such person by the Secretary of State to act and make decisions on behalf of the Secretary of State. The responsibilities of the Secretary of State's Representative shall be as set out in this Part C (*Contract Management*) of Schedule 2 (*Introduction into Service*);
- (b) provide a senior representative, with a sufficient level of authority, to attend the Principals' Meetings; and
- (c) notify the TSP of her Senior Personnel from time to time for the purposes of the Dispute Resolution Agreement.

1.4 Except in cases of emergency, or as a consequence of the proper exercise of disciplinary procedures of the Secretary of State, the Secretary of State shall give a minimum of one (1) month's notice to the TSP of a proposal to replace the Secretary of State's Representative.

Principal Responsibilities of the TSP Delivery Manager

- 1.5 The TSP Delivery Manager shall be responsible for procuring that the TSP provides reasonable support to the Secretary of State in the event the Secretary of State is required to assume the role of Relevant Operator on a temporary basis and for facilitating the TSP in fulfilling its other obligations under this Agreement, including:
- (a) managing this Agreement, including being the TSP's single point of contact in the day-to-day operation and commercial administration of this Agreement;
 - (b) identifying any key performance issues arising from the TSP's performance of its obligations under the TARA including managing and collating the input of the Third Parties to the processes in this Agreement;
 - (c) developing, consulting and co-ordinating with the Secretary of State on the joint management processes needed to facilitate the performance of this Agreement, including co-ordinating personnel and arranging and attending any necessary Delivery Review Meetings and MARA Performance Review Meetings;
 - (d) day-to-day commercial administration of the deliverables under this Agreement; and
 - (e) identification and communication of Disputes.

Principal Responsibilities of the Secretary of State's Representative

- 1.6 The Secretary of State's Representative shall be responsible for facilitating the Secretary of State in fulfilling her obligations under this Agreement, including:
- (a) managing this Agreement, including being the Secretary of State's single point of contact in the day-to-day commercial administration of this Agreement and, where required, the TARA, and, where relevant, managing and collating the input of the Relevant Operator to the processes in this Agreement;
 - (b) consulting and co-ordinating with the TSP Delivery Manager on the joint management processes needed to facilitate the performance of this Agreement;
 - (c) providing Secretary of State input into and attending Delivery Review Meetings and MARA Performance Review Meetings and agreeing the minutes from each of those Delivery Review Meetings and MARA Performance Review Meetings;
 - (d) providing Secretary of State input, where necessary, into those Performance Review Meetings under the TARA (as that term is defined in such TARA) that the Secretary of State's Representative decides, at her own discretion, to attend and agreeing the minutes of those Performance Review Meetings;
 - (e) identification and communication of Disputes; and
 - (f) managing termination, step in and handover processes.

Delegation

- 1.7 The Secretary of State's Representative and the TSP Delivery Manager (as the case may be) may, from time to time, delegate any of, but not all of, the powers, functions and authorities vested in the Secretary of State's Representative to assistants and/or agents

and may at any time revoke such delegation. Any such delegation or revocation shall be in writing, shall be signed by the Secretary of State's Representative or the TSP Delivery Manager (as applicable) and shall state which power, function or authority is thereby delegated or revoked and the persons to whom or from whom the same are delegated or revoked. No such delegation or revocation shall have any effect until written notice thereof has been provided to the Secretary of State's Representative (in the case of a delegation or revocation by the TSP Delivery Manager) or the TSP Delivery Manager (in the case of a delegation or revocation by the Secretary of State's Representative) and such delegation or revocation shall not be retrospective unless otherwise agreed between the parties.

2. CONSULTATION

The TSP Delivery Manager shall ensure that he is available as soon as reasonably practicable for consultation with the Secretary of State's Representative in emergency situations.

3. RELATIONSHIP AND DELIVERY REVIEW

Communication

- 3.1 The TSP shall ensure that the TSP Delivery Manager is available, at all reasonable times, to receive, deal with, agree, advise on and explain what the current position is concerning any issues regarding this Agreement.
- 3.2 All correspondence between the TSP and the Secretary of State shall be sent to the Secretary of State's Representative and/or the TSP Delivery Manager (as appropriate) in accordance with Clause 21.
- 3.3 The TSP shall:
 - (a) use a logical and structured system for correspondence reference. All correspondence between the TSP and the Secretary of State shall be given a unique reference number;
 - (b) maintain a sequentially numbered register of all correspondence relating to this Agreement between the TSP and any of Network Rail, the Secretary of State, the Relevant Operator or any Third Party (the **Correspondence Register**). The Correspondence Register shall record the reference number for each piece of correspondence, its date, a brief description of the topic covered in the correspondence, the date on which a response is due and the date on which a response was made or received; and
 - (c) provide a copy of the Correspondence Register to the Secretary of State's Representative five (5) Business Days prior to the end of each Reporting Period, and shall, following a request from the Secretary of State's Representative, provide copies of any correspondence listed in the Correspondence Register to the Secretary of State's Representative.
- 3.4 Save where otherwise agreed in writing between the TSP and the Secretary of State, all correspondence and documents to be provided pursuant to this Agreement:
 - (a) shall be in English; and

- (b) to the extent they are to be provided in electronic format, shall be provided in a Microsoft Office, pdf or Primavera compatible format or such other format as may be agreed by the parties from time to time.

TSP Programme Delivery Plan

- 3.5
- (a) The TSP shall deliver to the Secretary of State on or before the Effective Date a draft copy of the TSP Programme Delivery Plan. The content of the TSP Programme Delivery Plan shall be as set out in Appendix A (*Form of TSP Programme Delivery Plan*) to this Part C (*Contract Management*) of Schedule 2 (*Introduction into Service*).
 - (b) The TSP Delivery Manager shall subsequently provide draft TSP Programme Delivery Plans to the Secretary of State's Representative for review not less than thirty (30) Business Days prior to each anniversary of the Effective Date, or such other date as may be agreed by the parties. The form and content of each subsequent TSP Programme Delivery Plan provided by the TSP shall have a similar format, quality and level of content as the first TSP Programme Delivery Plan and shall conform with the requirements set out in Appendix A (*Form of TSP Programme Delivery Plan*) to this Part C (*Contract Management*) of Schedule 2 (*Introduction into Service*).
 - (c) Within twenty (20) Business Days of the Effective Date (in the case of the first draft of the TSP Programme Delivery Plan provided pursuant to Paragraph 3.5(a)) and within twenty (20) Business Days of receiving from the TSP any subsequent draft TSP Programme Delivery Plans pursuant to Paragraph 3.5(b), or such other period as may be agreed between the parties, the Secretary of State's Representative shall review the draft TSP Programme Delivery Plan and collate the comments of the Secretary of State and, if required, the Relevant Operator, and shall provide any comments to the TSP Delivery Manager.
 - (d) If the Secretary of State's Representative provides comments on the draft TSP Programme Delivery Plan, within ten (10) Business Days of the TSP Delivery Manager receiving such comments, or such other period of time as may be agreed by the parties, the TSP Delivery Manager and the Secretary of State's Representative shall meet to discuss any comments in good faith.
 - (e) The TSP shall submit a revised version of the TSP Programme Delivery Plan to the Secretary of State's Representative within twenty (20) Business Days of such meeting, or such other period of time as may be agreed by the parties, and, in the case of each comment made by the Secretary of State's Representative on the TSP Programme Delivery Plan, will either have incorporated such comment or will provide a written explanation of the reason why the comment has not been reflected in the revised version of the TSP Programme Delivery Plan. The revised version of the TSP Programme Delivery Plan provided under this Paragraph 3.5(e) shall be the TSP Programme Delivery Plan for the purposes of this Agreement.
 - (f) If the TSP subsequently proposes to materially change the TSP Programme Delivery Plan other than pursuant to Paragraph 3.5(b), the TSP shall inform the Secretary of State's Representative of the proposed change and shall submit a revised draft of the TSP Programme Delivery Plan to the Secretary of State's Representative for review and the provisions of Paragraphs 3.5(c) to 3.5(e) (inclusive) shall apply to each revised draft of the TSP Programme Delivery Plan.

Any amended TSP Programme Delivery Plan shall have a similar format, quality and level of content as the first TSP Programme Delivery Plan, and shall conform to the requirements set out in Appendix A (*Form of TSP Programme Delivery Plan*) to this Part C (*Contract Management*) of Schedule 2 (*Introduction into Service*).

Secretary of State Programme Delivery Plan

- 3.6 (a) The Secretary of State shall deliver to the TSP on or before the Effective Date a draft copy of the Secretary of State Programme Delivery Plan. The content of the Secretary of State Programme Delivery Plan shall be as set out in Appendix B (*Form of Secretary of State Programme Delivery Plan*) to this Part C (*Contract Management*) of Schedule 2 (*Introduction into Service*).
- (b) If the Secretary of State subsequently proposes to materially change the Secretary of State Programme Delivery Plan, the Secretary of State shall inform the TSP Delivery Manager of the proposed change and shall submit a revised version of the Secretary of State Programme Delivery Plan to the TSP Delivery Manager reflecting such changes. Any amended Secretary of State Programme Delivery Plan shall have a similar format, quality and level of content as the initial Secretary of State Programme Delivery Plan, and shall conform to the requirements set out in Appendix B (*Form of Secretary of State Programme Delivery Plan*) to this Part C (*Contract Management*) of Schedule 2 (*Introduction into Service*).

Delivery Review Meetings

- 3.7 (a) Delivery review meetings (***Delivery Review Meetings***) shall be held on or before every third (3rd) Tuesday of each Reporting Period, or on such other date or with such other frequency as may be agreed between the TSP and the Secretary of State. Delivery Review Meetings shall be attended by at least the Secretary of State's Representative and the TSP Delivery Manager. Representatives of the Initial Significant Contractors shall attend each Delivery Review Meeting unless, in the reasonable opinion of either the TSP Delivery Manager or the Secretary of State's Representative, it would not be appropriate for them to attend a particular Delivery Review Meeting, in which case the TSP Delivery Manager shall notify the Significant Contractors accordingly.
- (b) The standing agenda for the Delivery Review Meetings shall be as set out in Paragraph 5. Each party shall give reasonable notice to the other party of any other items it proposes to add to the agenda for any Delivery Review Meeting.
- (c) The time and location of any Delivery Review Meeting shall be in such location in the United Kingdom (or outside the United Kingdom if agreed between the parties) and at such time as agreed between the parties or, in the absence of such agreement, at a location in London and at a time specified by the Secretary of State.
- (d) The TSP Delivery Manager shall use reasonable endeavours to prepare the minutes of any Delivery Review Meeting within five (5) Business Days of the date upon which such meeting was held, and in any event, shall prepare such minutes within ten (10) Business Days of the date upon which such meeting was held. The Secretary of State's Representative shall use reasonable endeavours to review and confirm the accuracy of the minutes within five (5) Business Days of receiving

the minutes from the TSP Delivery Manager, and in any event, shall review and confirm the accuracy of such minutes within ten (10) Business Days of receiving the minutes from the TSP Delivery Manager.

- (e) The Delivery Review Meetings shall be held in accordance with this Paragraph 3.7 until a Final Acceptance Certificate has been issued in respect of all Sets, or until such other date as may be agreed between the parties. After the date upon which the Delivery Review Meetings have otherwise ceased under this Paragraph 3.7 the Delivery Review Meetings shall be (i) convened on an ad hoc basis by agreement between the parties and (ii) resumed, where necessary, in the event of a Variation.

TSP Delivery Reports

- 3.8 (a) No later than five (5) Business Days, or such other period as may be agreed by the parties, prior to each of (i) the first Delivery Review Meeting to be held after the date falling forty (40) Business Days after the Effective Date and (ii) each Delivery Review Meeting thereafter, the TSP Delivery Manager shall provide to the Secretary of State's Representative a TSP delivery report relating to the Reporting Period immediately preceding that Delivery Review Meeting (which shall include, inter alia, a copy of the Integrated Programme updated as at the last Business Day of the Reporting Period to which the TSP Delivery Report relates) and which shall cover the issues set out in Appendix C (*Form of TSP Delivery Report*) to this Part C (*Contract Management*) of Schedule 2 (*Introduction into Service*) (**TSP Delivery Report**).
- (b) The TSP Delivery Manager shall provide to the Secretary of State's Representative any additional information that the TSP has in its possession or control, or is able to obtain from its Initial Significant Contractors without incurring material costs, relating to issues set out in Appendix C (*Form of TSP Delivery Report*) to this Part C (*Contract Management*) of Schedule 2 (*Introduction into Service*) as may be requested by the Secretary of State's Representative, within a reasonable period of time following such request.

Integrated Programme

- 3.9 (a) On or before the Effective Date the TSP Delivery Manager shall provide a copy of the Baseline Integrated Programme to the Secretary of State's Representative.
- (b) The Baseline Integrated Programme shall form the initial Integrated Programme for the purposes of this Agreement and, unless otherwise agreed by the TSP Delivery Manager and the Secretary of State's Representative, the enterprise project structure and the work breakdown structure of the Integrated Programme shall, following any update, remain the same as that used within the Baseline Integrated Programme.
- (c) The Integrated Programme shall be revised and updated as at the last Business Day in each Reporting Period and the updated Integrated Programme shall form part of the TSP Delivery Report that is provided by the TSP Delivery Manager to the Secretary of State's Representative in accordance with Paragraph 3.8(a).

MARA Performance Review Meetings

- 3.10 (a) Commencing in the Reporting Period immediately after the date upon which a Final Acceptance Certificate was issued in respect of the final Set, performance review meetings (**MARA Performance Review Meetings**) shall be held within ten (10) Business Days of the end of each Reporting Period, or on such other date or with such other frequency as may be agreed between the TSP and the Secretary of State. MARA Performance Review Meetings shall be attended by at least the Secretary of State's Representative and the TSP Delivery Manager. Representatives of the Initial Significant Contractors shall attend each Delivery Review Meeting unless, in the reasonable opinion of either the TSP Delivery Manager or the Secretary of State's Representative, it would not be appropriate for them to attend a particular Delivery Review Meeting, in which case the TSP Delivery Manager shall notify the Initial Significant Contractors accordingly.
- (b) The standing agenda for the meetings shall be as set out in Paragraph 6. Each party shall give reasonable notice to the other party of any other items it proposes to add to the agenda of any MARA Performance Review Meeting.
- (c) The time and location of any MARA Performance Review Meeting shall be in such location in the United Kingdom (or outside the United Kingdom if agreed between the parties) and at such time as shall be agreed between the parties or, in the absence of such agreement, at a location in London and at a time specified by the Secretary of State.
- (d) The TSP Delivery Manager shall use reasonable endeavours to prepare the minutes of any MARA Performance Review Meeting within five (5) Business Days of the date upon which such meeting was held, and in any event, shall prepare such minutes within ten (10) Business Days of the date upon which such meeting was held. The Secretary of State's Representative shall use reasonable endeavours to review and confirm the accuracy of the minutes within five (5) Business Days of receiving the minutes from the TSP Delivery Manager, and in any event, shall review and confirm the accuracy of such minutes within ten (10) Business Days of receiving the minutes from the TSP Delivery Manager.

TARA Performance Reports

- 3.11 (a) No later than five (5) Business Days prior to any MARA Performance Review Meeting, the TSP Delivery Manager shall provide to the Secretary of State's Representative a copy of the most recent TARA Performance Report(s) prepared under the TARA.
- (b) The TSP Delivery Manager shall provide to the Secretary of State's Representative any additional information that the TSP has in its possession or control, or is able to obtain from its Initial Significant Contractors without incurring material costs, as may be requested by the Secretary of State's Representative, within a reasonable time following any such request.

Principals' Meetings

- 3.12 In addition to the Delivery Review Meetings and the MARA Performance Review Meetings, the parties shall each provide a senior representative, with a sufficient level of authority, to meet every four (4) Reporting Periods (or with such other frequency as the parties may agree) to review their working relationship in more general terms. Three (3)

Business Days before each such meeting (a **Principals' Meeting**) an agenda shall be agreed between the parties acting in good faith.

Dispute Resolution

- 3.13 If agreement cannot be reached on any issue at a Delivery Review Meeting, MARA Performance Review Meeting or a Principals' Meeting, then, if the issue on which agreement cannot be reached is one in respect of which agreement between the Secretary of State and the TSP is required pursuant to the terms of this Agreement, unless otherwise agreed between the parties a Dispute shall arise.

Provision of Working Facilities

- 3.14 Where the TSP requires the Secretary of State's Representative or its representatives to attend meetings, provide support or to consult with the TSP to assist the TSP in performing its obligations under this Agreement or the TARA, the TSP shall provide such working facilities (including hot desk facilities) at its offices or other locations such as depots, manufacturing plants or workshops as may be available at such office or other location and as may be reasonably required by the Secretary of State's Representative or his representatives, subject to the commercial and industrial operations of the TSP, the Manufacturer or the Maintainer (as the case may be) not being unreasonably disrupted.

Provision of Network Information

- 3.15 The Secretary of State shall, following any request by the TSP, permit the TSP to use any Network Information specified by the Secretary of State.
- 3.16 The TSP shall, following any request by the Secretary of State, provide copies of any Network Information specified by the Secretary of State to the Secretary of State or her nominee.

4. RIGHTS OF ACCESS

Sets

- 4.1 Prior to the Scheduled Acceptance Date of the first Set in the Fleet, the TSP shall, and shall procure that the Manufacturer shall, grant access to the Secretary of State, the Secretary of State's Representative and/or a person nominated by the Secretary of State upon the giving of reasonable notice to any property or facilities used by the TSP or the Manufacturer to perform works in connection with the design and manufacture of the Sets as the Secretary of State may reasonably require to monitor compliance by the TSP with its obligations under this Agreement.
- 4.2 (a) No attendance by the Secretary of State, the Secretary of State's Representative or a nominee of the Secretary of State under Paragraph 4.1 shall unreasonably disrupt the commercial and industrial operation of the TSP or the Manufacturer (as the case may be) and without prejudice to the foregoing, no more than twelve (12) inspections may be carried out pursuant to Paragraph 4.1 in any twelve (12) month period.
- (b) Any access or monitoring compliance pursuant to Paragraph 4.1 shall not relieve the TSP of any of its obligations under this Agreement and shall not prejudice any rights of the TSP or the Relevant Operator under this Agreement in respect of non-compliance by the TSP with its obligations under this Agreement.

Depots

- 4.3 Prior to the date on which a Certificate of Satisfactory Depot is issued in respect of a Depot, the TSP shall, upon the giving of reasonable notice, grant or procure such access to that Depot as the Secretary of State may reasonably require to allow inspection of that Depot and its functions by the Secretary of State, the Secretary of State's Representative and/or a person nominated by the Secretary of State for the purposes of inspecting the construction, operation and maintenance of the Project and to monitor compliance by the TSP with its obligations under this Agreement in respect of the design, construction and completion of that Depot.
- 4.4 No inspection by the Secretary of State, the Secretary of State's Representative or a nominee of the Secretary of State under Paragraph 4.3 shall unreasonably disrupt the commercial and industrial operation of the TSP or the Depot Construction Sub-Contractor and, without prejudice to the foregoing, no more than twelve (12) inspections of any Depot may be carried out pursuant to Paragraph 4.3 in any twelve (12) month period.
- 4.5 Following the date on which a Certificate of Satisfactory Depot is issued in respect of a Depot, the TSP shall, upon the giving of reasonable notice, grant or procure such access to that Depot as the Secretary of State may reasonably require to allow inspection of that Depot and its functions by:
- (a) the Secretary of State, the Secretary of State's Representative and/or a person nominated by the Secretary of State:
 - (i) to inspect the progress in the making good of defects in the works;
 - (ii) to inspect the maintenance of that Depot; and
 - (iii) to monitor compliance by the TSP with its obligations under this Agreement;
 - (b) the Secretary of State, the Secretary of State's Representative and/or a person nominated by the Secretary of State including advisers for the purposes of preparation of:
 - (i) a Relevant Franchise Agreement; and/or
 - (ii) reports or other documents in connection with any invitation to potential operators to tender for the right and obligation to operate all or any of the franchise services under any Relevant Franchise Agreement; and
 - (c) a Franchise Bidder of such parts of that Depot that are normally accessed by employees of the Relevant Operator pursuant to the TARA for the purpose of participating in a franchise competition and/or entering into a Relevant Franchise Agreement.
- 4.6 (a) No access by the Secretary of State, the Secretary of State's Representative, a nominee of the Secretary of State, a Franchise Bidder or a prospective Franchisee under Paragraph 4.5 shall unreasonably disrupt the commercial and industrial operation of the TSP or the Maintainer and, without prejudice to the foregoing, no more than twelve (12) inspections of any Depot may be carried out pursuant to Paragraph 4.5 in any twelve (12) month period.

- (b) Any access or monitoring compliance pursuant to Paragraph 4.5 shall not relieve the TSP of any of its obligations under this Agreement and shall not prejudice any rights of the TSP or the Relevant Operator under this Agreement in respect of non-compliance by the TSP with its obligations under this Agreement.

Availability of Personnel

- 4.7 The TSP shall make available during any inspection or visit pursuant to Paragraph 3.14, 4.1, 4.3 or 4.5 any personnel to provide all such assistance as may reasonably be required by the Secretary of State, the Secretary of State's Representative and/or a person nominated by the Secretary of State in connection with such inspection or visit upon the giving of reasonable notice subject to the commercial and industrial operations of the TSP, the Manufacturer or the Maintainer (as the case may be) not being unreasonably disrupted.

Documents

- 4.8 (a) The TSP shall at the request of the Secretary of State, the Secretary of State's Representative or a person nominated by the Secretary of State upon the giving of reasonable notice, make available, and procure the making available of, Documents for inspection and copying (by any means) by the Secretary of State, the Secretary of State's Representative or a person nominated by the Secretary of State.
 - (b) For the purposes of Paragraph 4.8(a), **Documents** means the documents set out in limbs (a) to (j) (inclusive) and limbs (p) to (t) (inclusive) of the definition of Technical Library (including all drafts thereof of any technical information contained therein) and plans related thereto but does not include documents protected on the grounds of legal professional privilege or litigation privilege.
- 4.9 The Secretary of State, the Secretary of State's Representative and/or a person nominated by the Secretary of State may at the TSP's discretion be permitted to take photographs, film or make a video-recording, or make any other kind of record of any such inspection.

Compliance with Health and Safety Requirements

- 4.10 Each of the Secretary of State, the Secretary of State's Representative and/or a person nominated by the Secretary of State shall at all times comply with any relevant health and safety requirements of TSP (as notified to the Secretary of State, the Secretary of State's Representative or a person nominated by the Secretary of State, as the case may be) when exercising its rights under Paragraphs 3.14, 4.1, 4.3 and 4.5.
- 4.11 The Secretary of State shall, subject to Paragraph 4.12, be responsible for, and shall release and indemnify the TSP, its employees, agents and contractors on demand from and against, all liability for:
 - (a) death or personal injury;
 - (b) loss of or damage to property (including property belonging to the TSP or for which it is responsible (**TSP Property**));
 - (c) third party actions, claims, demands, costs, charges and expenses (including legal expenses on an indemnity basis); and

- (d) insurance deductibles or increase in insurance premiums in respect of insurances being maintained by the TSP in relation to the Assets or the Depots,

which, in each case, may arise out of or in consequence of the exercise by the Secretary of State, the Secretary of State's Representative and/or a person nominated by the Secretary of State of its rights under Paragraphs 3.14, 4.1, 4.3 and/or 4.5.

4.12 The Secretary of State shall not be responsible or be obliged to indemnify the TSP or any of its employees, agents or contractors:

- (a) for any injury or Loss caused by the negligence or wilful misconduct of the TSP, its employees, agents or contractors or by the breach by the TSP of its obligations under this Agreement;
- (b) for any of the matters referred to in Paragraphs 4.11(a) to (c) (inclusive) which arise as a direct result of the Secretary of State, the Secretary of State's Representative or any person nominated by the Secretary of State acting on the instruction of the TSP or any of its employees, agents or contractors; or
- (c) in respect of any amounts which in aggregate exceed two million five hundred thousand pounds Sterling (£2,500,000) (Indexed) in respect of any Loss in any one (1) occurrence or series of connected or related occurrences (provided that the maximum liability of the Secretary of State under this Paragraph 4.12(c) shall be ten million pounds Sterling (£10,000,000) (Indexed) in aggregate where such amounts are not the consequence of the wilful misconduct of the Secretary of State or her employees, agents or contractors).

4.13 If the TSP becomes aware of a matter which might give rise to a claim pursuant to Paragraph 4.11:

- (a) the TSP shall immediately notify the Secretary of State in writing (giving reasonable particulars);
- (b) and that matter involves, or may involve, a claim against the TSP, the TSP shall, at the Secretary of State's cost:
 - (i) take such action as the Secretary of State may reasonably request to:
 - (A) dispute, resist, appeal, compromise, defend, remedy or mitigate that claim; or
 - (B) enforce the TSP's rights in relation to that claim; and
 - (ii) subject to Paragraphs 4.13(d) and (e), in connection with any proceedings related to that claim having a value less than the limit stipulated in Paragraph 4.12(c), if the Secretary of State so requests and if the TSP consents (such consent not to be unreasonably withheld or delayed), allow the Secretary of State exclusive conduct of those proceedings,

provided that the Secretary of State shall indemnify and hold harmless the TSP against all Loss incurred by the TSP as a result of such request made by the Secretary of State;

- (c) the TSP shall not admit liability in respect of or settle any claim without first obtaining the Secretary of State's prior written consent, such consent not to be

unreasonably withheld or delayed, and, if unreasonably withheld or delayed, to be the subject of indemnification by the Secretary of State as provided for in Paragraph 4.13(b);

- (d) where the Secretary of State exercises her right pursuant to Paragraph 4.13(b)(ii) to request exclusive conduct of any proceedings, the Secretary of State shall keep the TSP informed of the progress of the relevant claim, and shall consult with the TSP prior to the Secretary of State taking any decision material to the conduct of that claim, including any admission of liability by the Secretary of State or the settlement or compromise by the Secretary of State of that claim; and
- (e) where the Secretary of State does not exercise her right pursuant to Paragraph 4.13(b)(ii) to exclusively conduct any proceedings within thirty (30) days of the date of the notification referred to in Paragraph 4.13(a), the Secretary of State shall, at her own cost, provide any assistance required by the TSP to:
 - (i) dispute, resist, appeal, compromise, defend, remedy or mitigate the relevant claim; or
 - (ii) enforce the TSP's rights in relation to the relevant claim.

5. **STANDING AGENDA FOR DELIVERY REVIEW MEETINGS**

5.1 The standing agenda for each Delivery Review Meeting shall include (as applicable):

- (a) a summary review of safety performance;
- (b) a review of the TSP Delivery Report;
- (c) a review of the progress made with respect to the Secretary of State's obligations set out in this Agreement;
- (d) a summary review of any proposals for remedial plans;
- (e) a review of the progress of the design, manufacture and bringing into service of the Fleet as measured against the Integrated Programme;
- (f) a review of the progress of the design, planning, construction and bringing into service of each Depot as measured against the Integrated Programme;
- (g) a review of significant issues that have arisen since the last Business Day of the preceding Reporting Period;
- (h) a review of the status of the Consolidated Issues List;
- (i) a review of the TSP's ability, upon the service of a Default Notice, to comply with its obligations pursuant to Annex A (*Termination of this Agreement*) of Appendix D (*Handover Protocol*) to Part D (*TSP Default*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*);
- (j) a review of risks and issues and associated actions;
- (k) a review of progress made against the most recent TSP Programme Delivery Plan;
- (l) any other business; and

- (m) confirmation of the date and (if known) the location of the next Delivery Review Meeting.
- 5.2 The parties may amend the standing agenda for each Delivery Review Meeting at any time by mutual consent.
6. **STANDING AGENDA FOR THE MARA PERFORMANCE REVIEW MEETINGS**
- 6.1 The standing agenda for each MARA Performance Review Meeting shall include (as applicable):
- (a) a high-level review of the TARA Performance Report for the TARA;
 - (b) a review of the TSP's ability, upon the service of a Default Notice, to comply with its obligations pursuant to Annex A (*Termination of this Agreement*) of Appendix D (*Handover Protocol*) to Part D (*TSP Default*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*);
 - (c) any other business; and
 - (d) confirmation of the date and (if known) the location of the next MARA Performance Review Meeting.
- 6.2 The parties may amend the standing agenda for each MARA Performance Review Meeting at any time by mutual consent.
7. **GENERAL**
- 7.1 Subject to Paragraph 7.2, no comment or failure to comment, nor any agreement or approval, implicit or explicit, by the Secretary of State at any of the meetings referred to in this Part C (*Contract Management*) of Schedule 2 (*Introduction into Service*) will relieve the TSP of any of its obligations under this Agreement.
- 7.2 The TSP shall be entitled to rely on any comment, absence of comment, agreement or approval (whether implicit or explicit) where:
- (a) such comment, absence of comment, agreement or approval has been documented in minutes of the relevant meeting and either such minutes have been approved by the Secretary of State's Representative or, in the absence of such approval, the Secretary of State's Representative has not raised any objection to the content of such minutes, in each case within ten (10) Business Days of the receipt thereof; or
 - (b) such comment, absence of comment, agreement or approval (as applicable) has been made by an assistant or agent of the Secretary of State's Representative acting pursuant to and within the scope of powers, functions and/or authorities delegated to such assistant or agent in accordance with Paragraph 1.7 of this Part C (*Contract Management*) of Schedule 2 (*Introduction into Service*) (and not revoked in accordance with Paragraph 1.7 of this Part C (*Contract Management*) of Schedule 2 (*Introduction into Service*)).

Appendix A to Part C of Schedule 2

Form of TSP Programme Delivery Plan

This Appendix A (*Form of TSP Programme Plan*) sets out what should be included in the TSP Programme Delivery Plan but remains subject to any amendments as may be agreed between the parties from time to time.

1. The TSP Programme Delivery Plan shall include:
 - (a) an executive summary;
 - (b) an organisational chart setting out how the TSP's team is structured including details of the TSP's key resources, roles, responsibilities and reporting lines necessary to ensure management processes within the team are fully integrated and therefore that the interface between the following plans is managed effectively:
 - (i) the Design Plan;
 - (ii) the Integrated Programme;
 - (iii) the Approvals Plan;
 - (iv) the Testing, Commissioning and Acceptance Plan;
 - (v) the Maintenance Plan;
 - (vi) the Training Plan; and
 - (vii) the Transition Plan,(together, the ***IEP Plans***);
 - (c) details of the location and the contact details of each team member;
 - (d) a plan of how the TSP's resources will be allocated throughout the Contract Period to ensure the TSP's obligations under this Agreement are complied with;
 - (e) a description of the TSP's safety policies and the TSP's integrated project risk management process;
 - (f) details of how the TSP will identify, record and manage any issues that may arise, including how the TSP will demonstrate to the Secretary of State that any such issues will be satisfactorily addressed;
 - (g) details of when and how the TSP will consult with the Secretary of State regarding identification of Third Parties and the principles for how those Third Parties will be managed by the TSP; and
 - (h) details of when and how the TSP will consult with the Secretary of State, Network Rail and any other Third Parties in relation to any issues that may arise (including, any delays) and the TSP's programme for maintaining regular communication with the Secretary of State, the Relevant Operator, Network Rail and any other Third Parties in relation to any such issues,

and shall describe in detail the TSP's action plan and the deliverables required to meet the TSP's obligations (if any) arising from each of:

- (i) the safety plan;
- (ii) the operational plans;
- (iii) the programme and project plans;
- (iv) the risk register;
- (v) the stakeholder management plan;
- (vi) the marketing and development plan;
- (vii) the quality plan; and
- (viii) the environment plan.

2. For the purposes of Paragraph 1(f), the TSP Programme Delivery Plan shall reflect the following principles:

- (a) during meetings between the TSP and the Secretary of State, the Relevant Operator and/or Third Parties including, meetings of the Design Review Panel, the TSP shall record as part of the meeting minutes any issues and associated actions including details of the next step, who will carry out that next step and the date by which it is required to be complete;
- (b) any issues and associated actions recorded under Paragraph 2(a) shall also be added to the Consolidated Issues List, which will also record the date and forum through which the issue was first raised;
- (c) the issues and actions on the Consolidated Issues List will be reviewed at each Delivery Review Meeting (or the meeting of the forum where the issue was first raised, as the case may be), and where all of the specified actions in respect of an issue have been delivered, the TSP, the Secretary of State, the Relevant Operator and the Third Parties (as appropriate) shall agree either that: (i) the issue is closed or (ii) further actions are required to close it as the case may be; and
- (d) where further actions are agreed in respect of an issue, these will be added to the Consolidated Issues List in respect of the issue concerned.

3. Where it is agreed that an issue is closed, that action shall be marked as closed on the Consolidated Issues List.

Appendix B to Part C of Schedule 2

Form of Secretary of State Programme Delivery Plan

This Appendix B (*Form of Secretary of State Programme Delivery Plan*) sets out what should be included in the Secretary of State Programme Delivery Plan but remains subject to any amendments as may be agreed between the parties from time to time.

1. The Secretary of State Programme Delivery Plan shall include:
 - (a) an executive summary;
 - (b) an organisational chart setting out how the Secretary of State's team is structured, including details of the Secretary of State's key resources, roles, responsibilities and reporting lines necessary to ensure management processes within the team are fully integrated and therefore that the interface between the IEP Plans is managed effectively;
 - (c) details of the location and the contact details of each team member; and
 - (d) a plan of how the Secretary of State's resources will be allocated throughout the Contract Period to ensure the Secretary of State's obligations under this Agreement are complied with.

Appendix C to Part C of Schedule 2

Form of TSP Delivery Report

This Appendix C (*Form of TSP Delivery Report*) sets out what should be included in each TSP Delivery Report and remains subject to any amendments as may be agreed between the parties from time to time.

1. TSP Delivery Report shall, by reference to all activities, include:
 - (a) the Integrated Programme updated as at the last Business Day of the Reporting Period to which the TSP Delivery Report relates;
 - (b) a narrative describing progress of the project by reference to the Integrated Programme;
 - (c) a Critical Items Actions Report;
 - (d) a commentary on key issues;
 - (e) risks identified in the relevant updated Integrated Programme; and
 - (f) a report on the status of current remedial plans.
2. The ***Critical Items Actions Report*** shall:
 - (a) analyse the updated Integrated Programme to determine which items are critical or potentially critical;
 - (b) identify the extent of the delay of any of these activities and the impact on the updated Integrated Programme;
 - (c) identify the reasons for the delay;
 - (d) outline and discuss the mitigation measures that the TSP proposes to undertake to reduce the impact of the delay; and
 - (e) list the measures taken, and the measures proposed to be taken, to prevent recurrence of the event which caused the delay and/or similar such events in the future.

Appendix D to Part C of Schedule 2

Form of Integrated Programme

1. INTRODUCTION

This Appendix D (*Form of Integrated Programme*) describes the level of detail that should be included in the project time plan (the **Integrated Programme**) which shall be used as the primary source of project information against which periodic progress of the TSP against its obligations under this Agreement shall be monitored throughout the Contract Period. The Integrated Programme shall be displayed in Gantt format or other format acceptable to the Secretary of State using Primavera compliant *.XER format.

2. CONTENT

2.1 The Integrated Programme shall describe all activities and milestones, and their interdependencies, necessary to achieve Final Acceptance of the Sets in accordance with Appendix C (*Delivery Schedule*) to Part A (*Testing and Acceptance*) of Schedule 2 (*Introduction into Service*) and the associated delivery of the Depots in accordance with Schedule 3 (*Depots*).

2.2 The Integrated Programme will:

- (a) include all the Delivery Phase activities by enterprise project structure and work breakdown structure, including:
 - (i) Set design, mock-up and production, procurement, manufacture, testing, approvals, commissioning and acceptance, training, audits and inspections, and production and provision of Simulator Information;
 - (ii) maintenance facility planning, design, construction, commissioning, handover, audits and inspections; and
 - (iii) maintenance organisation readiness, manuals and training;
- (b) identify the planned dates for commencement and completion, and the key milestones, of each of the Delivery Phase activities;
- (c) identify any constraints that exist, the sequence of work to be carried out and any operational restrictions, in relation to each of the Delivery Phase activities;
- (d) identify the planned float for each of the Delivery Phase activities;
- (e) include all the interface milestones, including dates of the critical dependencies on the Secretary of State, Network Rail, the ORR, the Relevant Operator, Third Parties and other relevant stakeholders described in this Agreement;
- (f) identify and schedule consents and acceptance requirements;
- (g) identify the activities that constitute the controlling operations or critical path that in any event shall not exceed twenty five per cent. (25%) of the Delivery Phase activities;
- (h) clearly identify the co-ordination and relationship process linking all the Delivery Phase activities;

- (i) describe in detail the project requirements for the coming year;
- (j) describe in detail the TSP's action plan and the deliverables required to meet the TSP's obligations (if any) arising from each of:
 - (i) the safety plan;
 - (ii) the operational plans;
 - (iii) the programme and project plans;
 - (iv) the risk register;
 - (v) the stakeholder management plan;
 - (vi) the marketing and development plan;
 - (vii) the quality plan; and
 - (viii) the environment plan;
- (k) include all Delivery Phase activities of the Initial Significant Contractors;
- (l) assign a responsibility code for each activity corresponding to the Initial Significant Contractor who is responsible for performing the work; and
- (m) include a display of actual progress against planned progress, utilising remaining duration, for all Delivery Phase activities.

2.3 The Integrated Programme will be developed and updated such that, at any time, the immediate future (six (6) months minimum, twelve (12) months maximum) (the **Rolling Horizon**) will be modelled at a level of detail, insofar as practicable, such that no activity is longer than one (1) month without being sub-divided into shorter sub-activities. The period beyond the Rolling Horizon will be modelled at a less detailed level but still to a level sufficient to satisfy the requirements of this Schedule.

SCHEDULE 3

Depots

Part A of Schedule 3

Depot Provisions

1. DEPOT AGREEMENTS

1.1 The TSP shall on the date hereof enter into:

- (a) Agreements for Lease in respect of each Depot with (1) Network Rail or (in the case of North Pole only) BRBR and (2) the Maintainer; and
- (b) the Network Rail Direct Agreement with (1) Network Rail and the (2) Secretary of State and the BRBR Direct Agreement with (1) BRBR and (2) the Secretary of State.

1.2 The Secretary of State shall on the date hereof enter into:

- (a) the Network Rail Direct Agreement with (1) Network Rail and (2) the TSP; and
- (b) the BRBR Direct Agreement with (1) BRBR and (2) the TSP.

1.3 (a) Unless the Secretary of State otherwise agrees (such agreement not to be unreasonably withheld), the TSP shall not enter into any prospective Depot Lease Agreement without first obtaining the approval of the Secretary of State of:

- (i) the identity of the Depot Contractor in relation to that prospective Depot Lease Agreement (and for the avoidance of doubt the identity of the Initial Depot Contractors and the Manufacturer as counterparties to the relevant Depot Lease Agreements is deemed approved by the Secretary of State at the Commencement Date); and
- (ii) the terms of that Depot Lease Agreement,

provided that for the avoidance of doubt:

- (A) without prejudice to Paragraph 1.3(b)(ii), all the Depot Lease Agreements entered into on the date hereof and all the proposed Leases, Underleases and other documents which may at any time be completed pursuant to any such Depot Lease Agreement are deemed approved by the Secretary of State for the purpose of this Paragraph 1.3 save that where the form of any Depot Lease Agreement previously approved by the Secretary of State shall be amended such amendment shall require a further approval (such approval not to be unreasonably withheld); and
- (B) where any Lease is granted to the TSP pursuant to any of the Depot Lease Agreements entered into on the date hereof no consent from the Secretary of State shall be required for the exercise by the TSP of its option to renew such Lease on the agreed terms to be contained therein or on the grant of any

renewal lease to the TSP pursuant to such option, in each case for a term commencing after the Expiry Date.

- (b) The TSP shall not, unless the Secretary of State otherwise agrees (such agreement not to be unreasonably withheld):
 - (i) terminate or agree the termination of (whether, in either case, in whole or in part) any Depot Lease Agreement, or take or omit to take any action which would or might give rise to:
 - (A) repudiation or other termination of that Depot Lease Agreement; or
 - (B) any right of suspension or termination at the instance of any other party to that Depot Lease Agreement;
 - (ii) make or agree to any supplement, amendment or variation of any of the terms of any Depot Lease Agreement where such supplement, amendment or variation may have an adverse impact on the provision of the Service and/or increase the liability of the Secretary of State under the Project;
 - (iii) materially depart from the performance of its obligations under any Depot Lease Agreement, or materially waive or fail to enforce any rights it may have under any Depot Lease Agreement, or procure that any Depot Contractor materially departs from the performance of its obligations under any Depot Lease Agreement, or materially waives or fails to enforce any rights it may have under any Depot Lease Agreement; or
 - (iv) without limiting Clause 23, or Paragraph 5.2(c) of this Part A (*Depot Provisions*), assign, underlet, sub-contract, transfer or dispose of any of its rights or obligations under any Depot Lease Agreement, unless:
 - (A) the relevant document or proposed course of action has been submitted to the Secretary of State not less than ten (10) Business Days, or such shorter time as the Secretary of State may agree, before the proposed document or course of action will take effect; and
 - (B) the Secretary of State has consented in writing (such consent not to be unreasonably withheld) on such terms as she may stipulate.

2. DEPOT DEVELOPMENT

- 2.1 The TSP shall design, develop and complete any works necessary to the Depots and the Network (or shall procure the design, development and completion of such works):
 - (a) so that each Depot complies with the standards and requirements set out in the relevant Outline Specification and the Rules of the Depot in all respects;
 - (b) so as to be available to enable the Sets to be operated in accordance with this Agreement and the TARA; and
 - (c) otherwise in accordance with all Applicable Laws and Standards.

- 2.2 The TSP shall liaise with Network Rail and provide Network Rail with such reasonable information and assistance as it may require in connection with the Network Change process and shall procure that the design and construction of the Depots accommodate all requirements and conditions of the Network Change obtained in respect of each Depot.
- 2.3 The TSP shall liaise and co-operate with Network Rail and provide Network Rail with such reasonable information and assistance as it may require in connection with the electrification of Swansea Maliphant which shall include using all reasonable endeavours to provide to Network Rail such information in respect of the Integrated Programme as may be reasonably necessary in connection with the OHLE Works and to accommodate Network Rail's reasonable access requirements to enable Network Rail to carry out the OHLE Works (or to procure that such works are carried out on its behalf) and at all times with due regard to the TSP's works, its obligations under this Agreement and the TARA and the operation of the existing site.
- 2.4 The Secretary of State shall procure that the OHLE Works are procured, installed, commissioned and accepted in accordance with the Base Design in all material respects and shall pass on all reasonable comments provided to it by the TSP, the Maintainer and/or the Manufacturer to Network Rail on the detailed design and acceptance process of the OHLE Works to the extent that the Secretary of State has the right to comment on the OHLE Works to Network Rail.
- 2.5 The Secretary of State acknowledges that the Manufacturer intends to enter into the Asset Protection Agreements in connection with the development of Stoke Gifford and Swansea Maliphant, but the TSP is not a party to any such Asset Protection Agreements.
- 2.6 The TSP shall procure that the Depot Construction Sub-Contractor appointed by the Manufacturer to design, construct, refurbish and/or renovate the Depots provides within twenty eight (28) days of entering into relevant appointment a collateral warranty on terms which are no less advantageous to the Secretary of State than the form set out in Appendix B (*Collateral Warranties*) to this Part A (*Depot Provisions*).

3. VARIATIONS OF OUTLINE SPECIFICATION

- 3.1 The TSP shall not make any change to an Outline Specification other than with the prior written consent of the Secretary of State given in accordance with the provisions of this Paragraph 3.
- 3.2 The TSP may request, by written notice addressed to the Secretary of State, variations to an Outline Specification in respect of any Depot (hereinafter referred to as **Specification Revisions**) provided that:
- (a) the TSP supplies sufficient details of the proposed Specification Revisions for such request to be evaluated;
 - (b) the Specification Revisions would not result in a material reduction in the quality or functionality of the specification or operation of any Depot to that set out in the relevant Outline Specification (as amended from time to time);
 - (c) the TSP undertakes to pay any increased costs associated with the Specification Revisions; and

- (d) the Secretary of State is satisfied that the Specification Revisions would not result in a failure to deliver the Depot in accordance with the Integrated Programme and so as to be available to enable the Sets to be operated in accordance with this Agreement and the TARA.
- 3.3 If the criteria in Paragraph 3.2 are satisfied then the Secretary of State shall consider and approve the Specification Revisions and the Secretary of State shall within ten (10) Business Days following receipt of the written notice referred to in Paragraph 3.2 notify the TSP in writing of her approval and any conditions applicable to such approval. Subject to the TSP advising the Secretary of State in accordance with Paragraph 3.4 that it wishes the Specification Revisions to be made, if it is necessary to make any amendments to this Agreement to enable the implementation of the Specification Revisions, the Secretary of State shall issue a Variation Notice in accordance with Schedule 8 (*Variations*).
- 3.4 Following receipt of the Secretary of State's written approval pursuant to Paragraph 3.3, the TSP shall advise the Secretary of State in writing within ten (10) Business Days whether or not it wishes the Specification Revisions to be made. If the TSP advises the Secretary of State that it does wish the Specification Revisions to be made then henceforward from such date the relevant Outline Specification shall be so amended to include the Specification Revisions (subject to any conditions notified by the Secretary of State pursuant to Paragraph 3.3).
- 3.5 If the TSP does not advise the Secretary of State in writing that it wishes the Specification Revisions to be made pursuant to Paragraph 3.4 then such Specification Revisions shall not be made and accordingly no amendment of the relevant Outline Specification shall be made.
- 3.6 No involvement by the Secretary of State in approving or failing to approve any plans or specifications or in connection with any permissions, approvals or consents (or applications therefore) or in considering (or failing to consider) whether or not to grant any approvals or consents in any way relieves or affects the duties of the TSP, the Manufacturer, the Maintainer or the Depot Sub-Contractor in relation to the Depots under this Agreement, the Depot Lease Agreements, the Depot Sub-Contract or otherwise (save where expressly stated herein and provided that the Secretary of State has acted reasonably and without delay in each case where she is required in this Agreement to do so).
- 4. GROUND CONDITIONS**
- 4.1 The TSP shall bear all Abnormal Site Costs up to a maximum amount exclusive of VAT of ten million eight hundred and eighty nine thousand and eighty nine pounds Sterling (£10,889,089) (Indexed);
- 4.2 If the Abnormal Site Costs shall exceed ten million eight hundred and eighty nine thousand and eighty nine pounds Sterling (£10,889,089) (Indexed) exclusive of VAT it is agreed that one half of the excess shall be funded by the TSP and the remaining half shall be funded by the Secretary of State.
- 4.3 The contribution to be made by the Secretary of State referred to in Paragraph 4.2 shall be exclusive of VAT. If, in accordance with the normal VAT accounting regulations, any VAT becomes due on the contribution referred to in Paragraph 4.2 (i.e. in the situation where the payment is something other than compensatory in nature and outside the scope of VAT), such VAT shall be paid by the Secretary of State to the TSP in addition to

the contribution referred to in Paragraph 4.2 on provision by the TSP to the Secretary of State of a valid VAT invoice for the proportion of contribution made by the Secretary of State.

- 4.4 The Secretary of State will pay the contribution referred to in Paragraph 4.2 either in one single payment within thirty (30) days of a demand therefor by the TSP or (at the option of the TSP) in such instalments as are agreed with the TSP.
- 4.5 Each Abnormal Costs Claim shall be in writing, specify the amount claimed and the Abnormal Site Costs to which it relates.
- 4.6 The TSP shall maintain or procure that the relevant Significant Contractor(s) shall maintain a record of the Abnormal Site Costs including copies of any relevant invoices which may be inspected on an open book basis by the Secretary of State at any time on reasonable notice.
- 4.7 The TSP shall take reasonable steps to minimise and properly manage the amount of the Abnormal Site Costs (or to procure that any Significant Contractor engaged in relation to the same shall so mitigate and properly manage the amount of the Abnormal Site Costs).

5. SECRETARY OF STATE CONSENT TO DEALINGS

- 5.1 Wherever any Depot Lease Agreement provides that the Secretary of State's consent or agreement shall be required for any assignment, underletting or other dealing (whether by the TSP or by the Manufacturer or the Maintainer) the Secretary of State shall not unreasonably withhold or delay her consent or agreement.
- 5.2 Notwithstanding anything contained in any of the Depot Lease Agreements, the Secretary of State irrevocably agrees and confirms that her consent and agreement shall be deemed to have been given for each and all of the following:
 - (a) the grant of any Underlease to the Maintainer in accordance with the Agreements for Lease and the completion of any other deed or document which the Agreements for Lease shall provide shall be completed;
 - (b) the grant (whether by the TSP or the Maintainer) of any utility services or substation lease, easement or wayleave to any utility provider or statutory undertaker in connection with the provision, maintenance, supply or use of any water, surface water, sewage, drainage, soil, gas, electricity, telecommunications or other services or supplies to any Depot; and
 - (c) the creation of any agreed Security Interest by the TSP in respect of its rights and interests pursuant to the Depot Lease Agreements in favour of the Secured Creditors.
- 5.3 Where the Secretary of State's consent or agreement is given or deemed to be given under Paragraph 5.2 for any assignment, underletting or other dealing (whether by the TSP or the Maintainer) the Secretary of State shall, upon request by the TSP, provide such notice or other communication in writing to the relevant Landlord as the TSP shall reasonably require to confirm that such consent or agreement has been obtained and to enable the TSP or the Maintainer (as the case may be) to complete such assignment, underletting or dealing (subject to compliance by the TSP with any other lawful requirements of the relevant Landlord which may be contained in the relevant Depot Lease Agreements) and/or to register the same at the Land Registry.

5.4 Where pursuant to Paragraph 2.1 of Part B (*Call Option Requirements*) of Schedule 3 (*Depots*) the Secretary of State agrees to the exercise by the TSP of any of the TSP's Lease Surrender Rights in respect of any Depot, the Secretary of State shall, upon request by the TSP, provide such notice or other communication in writing to the relevant Landlord as the TSP shall reasonably require to confirm such agreement and to enable the TSP to exercise such TSP's Lease Surrender Rights (subject to compliance by the TSP with the provisions of Part B (*Call Option Requirements*) of Schedule 3 (*Depots*)).

6. CONNECTION WORKS

6.1 The TSP shall bear all Connection Costs up to a maximum amount exclusive of VAT of twenty-four million pounds Sterling (£24,000,000) (Indexed).

6.2 If the Connection Costs exceed twenty-four million pounds Sterling (£24,000,000) (Indexed) exclusive of VAT it is agreed that one-tenth of the excess shall be funded by the TSP and the remaining nine-tenths shall be funded by the Secretary of State.

6.3 If the Connection Costs are less than twenty-four million pounds Sterling (£24,000,000) (Indexed) exclusive of VAT it is agreed that nine-tenths of the savings shall be paid by the TSP to the Secretary of State.

6.4 The contribution to be made by the Secretary of State referred to in Paragraph 6.2 shall be exclusive of VAT. If, in accordance with the normal VAT accounting regulations, any VAT becomes due on the contribution referred to in Paragraph 6.2 (i.e. in the situation where the payment is something other than compensatory in nature and outside the scope of VAT), such VAT shall be paid by the Secretary of State to the TSP in addition to the contribution referred to in Paragraph 6.2 on provision by the TSP to the Secretary of State of a valid VAT invoice for the proportion of contribution made by the Secretary of State.

6.5 The Secretary of State shall pay the contribution referred to in Paragraph 6.2 in one of the following ways:

- (a) in a single payment within thirty (30) days of a demand therefor by the TSP, such demand to be made after completion of the Connection Works; or
- (b) in such instalments as are agreed between the TSP and the Secretary of State to enable the Manufacturer to make the associated payments to Network Rail in accordance with the Works Agreement without contributing a greater proportion of such payment than the TSP proportion envisaged under Paragraph 6.2.

6.6 The TSP shall pay to the Secretary of State any amounts due pursuant to Paragraph 6.3 either:

- (a) in a single payment within thirty (30) Business Days of a demand therefor by the Secretary of State, such demand to be made after completion of the Connection Works; or
- (b) in such other manner as may be agreed by the parties.

6.7 Each Connection Costs Claim shall be in writing, specify the amount claimed and the Connection Costs to which it relates.

- 6.8 The TSP shall maintain or procure that the Manufacturer maintains a record of the Connection Costs including copies of any relevant invoices which may be inspected on an open book basis by the Secretary of State at any time on reasonable notice.
- 6.9 The TSP shall take reasonable steps to minimise and properly manage the amount of the Connection Costs (or to procure that the Manufacturer shall so mitigate and properly manage the amount of the Connection Costs).
- 6.10 The TSP shall procure that the Manufacturer shall not agree to any variation (or series of related variations) to the Connection Works (including any Connection Works Requirements) that is reasonably likely to result in an increase to the Connection Costs of more than fifty thousand pounds Sterling (£50,000) without obtaining the Secretary of State's prior written consent, such consent not to be unreasonably withheld or delayed.

7. **LANDLORD DIRECT AGREEMENTS**

Notwithstanding anything contained in the Landlord Direct Agreements the Secretary of State shall not give a New Lease Notice under either of the Landlord Direct Agreements or give notice to any Landlord under either of the Landlord Direct Agreements requiring the Landlord to terminate the Depot Lease Agreements in respect of any Depot unless the Secretary of State's right to exercise the Call Option has arisen under Paragraph 1 of Part B (*Call Option Requirements*) of Schedule 3 (*Depots*).

8. **OHLE WORKS**

- 8.1 The Secretary of State shall procure that:
- (a) all OHLE Works within the depot boundary, including all required power supplies and connections to the Great Western IEP Network infrastructure, shall be procured, installed, commissioned and, unless and until an OHLE Variation has been implemented in accordance with the terms of this Agreement, operated and maintained by or on behalf of Network Rail in full; and
 - (b) the OHLE Works are completed and fully operational in accordance with all Applicable Laws and Standards by the Swansea Maliphant OHLE Longstop Date.
- 8.2 It is agreed and acknowledged by the parties that the Relevant Operator may not diagram Electric Sets onto and off Swansea Maliphant or otherwise require that Electric Sets gain access to and/or are stabled at Swansea Maliphant prior to the later to occur of the Swansea Mainline Electrification Date and:
- (a) the date on which the OHLE Works have been procured, installed and commissioned in accordance with all Applicable Laws and Standards and are materially consistent with the Base Design so that any differences between the OHLE Works as built and the Base Design do not have an adverse effect on the performance of the TSP's obligations or on its liabilities or the risk of any Deductions under this Agreement or any TARA; or
 - (b) the date on which the TSP agrees in its absolute discretion that the Relevant Operator may do so.
- 8.3 The parties further acknowledge that:
- (a) any snagging issues in connection with the OHLE Works will either be resolved prior to the implementation of an OHLE Variation (in relation to which an Authority

to Proceed has been issued in accordance with Paragraph 4.1 of Part C (*Additional Procedural Aspects of Variations*) of Schedule 8 (*Variations*) or the associated costs of identifying and resolving any such issues will be included in the Run of the Financial Model to be carried out as part of the OHLE Variation in accordance with Part G (*Runs of the Financial Model*) of Schedule 8 (*Variations*); and

- (b) any increase in insurance deductibles or in insurance premiums in respect of insurances maintained by the TSP in relation to the Depots in connection with an OHLE Variation, including any Secretary of State Property, and any such increase in insurance deductibles or in insurance premiums incurred prior to the implementation of an OHLE Variation (in relation to which an Authority to Proceed has been issued in accordance with Paragraph 4.1 of Part C (*Additional Procedural Aspects of Variations*) of Schedule 8 (*Variations*)) may be included in the Run of the Financial Model to be carried out as part of the OHLE Variation in accordance with Part G (*Runs of the Financial Model*) of Schedule 8 (*Variations*).

Appendix A to Part A of Schedule 3

Outline Specification

Governing Principles

Sites will be developed in accordance with the following principles.

Buildings at New Sites

Presentation	use of design and materials to provide buildings and facilities that are in keeping with a modern rail depot facility
Cleanability	use of design and materials to provide buildings and facilities that can be kept clean with reasonable facility by for example, avoiding dirt traps, using wipe-clean surfaces where appropriate and providing ease of access for cleaning drains, etc.
Sustainability	use of design, construction and materials cognisant of the environmental impact with the whole life cost of operation and the capital cost
Working Environment	use of design and materials to provide a light, clean and modern working environment for all staff on site that enables the Maintainer's culture of staff commitment and work quality to be achieved. Offices and other work areas will be open plan as appropriate.
Facilities Maintenance	use of design, materials and equipment and plant to enable the buildings and facilities to be maintained so as to allow the Services to be provided in accordance with the TARA for the duration of the Design Life (as defined below) (or other period appropriate to specific plant and equipment)
Design Life	Facility generally
	27.5 years minimum, subject to normal life, maintenance & refurbishment
	Main buildings & structures
	40 years
	Track, signalling & OHLE
	27.5 years
	Plant & equipment
	Variable - per manufacturers' / suppliers' stated useful life expectancy
	Systems (HVAC, M&E, etc.)
	Variable - per manufacturers' / suppliers' stated useful life expectancy

Buildings at Existing Sites:

Refurbishment	repair of defects & restoration of existing buildings to a suitable reasonable condition consistent with its age & type of use. Additional upgrading of systems & services to comply with current building codes, safety requirements & environmental standards where necessary. Replacement of life-expired plant and removal of redundant infrastructure as appropriate.
Enhancement	provision of additional facilities required for IEP Sets but not currently existing. Minor improvements to required facilities to create a sufficient ambience appropriate for the quality & culture intrinsic to the Maintainer's maintenance approach, but not to the standard of "flagship".

Location	North Pole
Purpose of Facility	Stabling Servicing Maintenance Casualty Repair Overhaul
Operational Assumption	Servicing & Stabling: As per Rules of the Depot
	Rail Access: Via two new connections (one connection onto the Down Main Line and one connection onto the Engine & Carriage Line) Existing West London Line connection Arrival Road to remain in place (Departure Road to be severed) Road Access: Via the existing road way and access gate on Mitre Way

Location	North Pole
Existing Facility	Former Eurostar depot with extensive stabling, servicing & maintenance facilities including sheds, stores, wheel lathe & staff & office accommodation. Presently out-of-use & cleared of all moveable equipment
New Facility	Alterations within existing servicing shed for vehicle lifting, provision of wheel turning and carriage wash facilities, new signalled connections from GWML and servicing facilities.
Scope of Work	<p>a) Installation of plant items listed in servicing plant summary detailed below</p> <p>b) Construction of two new connections onto the Down Main and Engine & Carriage Lines (one connection onto the Down Main Line and one connection onto the Engine & Carriage Line)</p> <p>c) Provision of OHLE and bi-directional signalling of the new connections for arrival and departure as agreed with Network Rail</p> <p>d) Construction of new servicing spines between the reception roads (currently designated as the Transfer Sidings) at the east end of the North Pole site and adjacent to the existing Heavy Maintenance Shed</p> <p>e) Construction of a new East – West rail link between the servicing sidings (Transfer sidings) and the main west end depot complex (under the North London Line bridge)</p> <p>f) Construction of a new bi-directional carriage washing machine</p> <p>g) Alterations to the existing servicing shed to provide a means of synchronised lifting for vehicles up to a 10-car Set on one road</p> <p>h) Alterations to the existing servicing shed to install a new wheel lathe on one road</p> <p>i) Alterations to the existing servicing shed to install a mono rail overhaul crane to one road for planned and ad-hoc roof module change out</p> <p>j) Alterations to the existing servicing shed to provide saloon floor and roof height access platforms for a 10-car length on a minimum of two roads</p> <p>k) Reconditioning of existing office, maintenance and stores areas for fit-out for occupation</p>

Location	North Pole
	<p>l) Installation of plant items detailed below</p> <p>m) Provision of lighted walkways between roads (as necessary)</p> <p>n) Associated works including site fencing, CCTV, access roadways, parking, lighting, site drainage</p> <p>o) Testing, commissioning & acceptance of works</p>
Buildings	<p><i>Train Wash Shed</i> Train wash and associated plant to be enclosed in basic shed facility including foundations, steel clad building and services</p> <p><i>Ancillary Buildings & Plant Rooms</i> Any additional plant rooms required in order to house the depot facilities will be provided as part of the works</p>
Servicing Plant Summary	<p><i>Train Washing Plant</i> Bi-directional single pass wash principle; body sides, skirts, dryers; -5°C (or colder) washing capability</p> <p><i>Underframe Wash</i> Drained pit area to be provided with steam cleaner / pressure wash system facilities</p> <p><i>Fuelling System</i> Storage capacity for 3 days of fuel, tank farm complete with bunds, pumps, tanker discharge and meters. Sufficient fuelling points to cater for 2 x 5 car or 1 x 10-car Set on the reception/servicing roads as necessary</p> <p><i>Urea Fuel Additive System</i> Storage capacity for 3 days of fuel additive, tank farm complete with bunds, pumps, tanker discharge and meters. Dispensing to servicing spines serving reception/servicing roads as necessary</p> <p><i>CET/Tanking/Potable Water</i> CET system complete with extraction points and water (and potable water) tanking points as necessary on servicing spines serving the reception/servicing roads as necessary. CET tanking water to be softened prior to dispensing</p> <p><i>Depot Protection System</i> Flashing beacon warnings and klaxons to warn of train movements (or other suitable warning). Automatically activated on inbound movements, operator activated on outbound movements. Fitted to all applicable roads</p> <p><i>Shore Supplies External</i> None to be provided (all external p/way within the depot is covered by OHLE)</p>

Location	North Pole	
	<i>Shore Supplies Internal</i>	Shore supplies to be provided on de-wired roads designated for maintenance and repair within the existing servicing shed
	<i>Waste Compactor</i>	To be provided as necessary
Maintenance Shed Plant Summary	<i>Wheel lathe</i>	Tandem under-floor wheel lathe, including basic machine, outer axle box centring devices, two adaptors, integral chip crusher, swarf conveyors to a basic configuration & fume extraction system
	<i>Equipment Drop</i>	Equipment drop capable of removing all underslung equipment (including engine rafts, bogies)
	<i>Wheel Lathe Shunting Vehicles</i>	Train moving system (shunter) for stock weight of 520T
	<i>Pit manipulators</i>	To be provided in Maintenance Shed as necessary
	<i>Fork Lift Truck(s)</i>	2 trucks to be provided – with approx.1.5 and approx. 5 Tonne battery counterbalance respectively
	<i>Tow Tractors</i>	1 x Flatbed battery electric tow tractor to be provided
TOC Drivers Provision	Train Operator / Drivers waiting and welfare facilities are provided in a dedicated area within the cleaners' accommodation building, adjacent to the Handover/Handback point. These facilities are provided to enable the "collection/handback of trains" only	
Additional Comments		

Location	Stoke Gifford	
Purpose of Facility	Stabling Servicing Maintenance	

Location	Stoke Gifford
	Repairs/work arising
Operational Assumption	IEP Sets Capacity: As per Rules of the Depot
	Rail Access: Via new connections from the Avonmouth and Down Tunnel Lines
	Road Access: Via the existing road way off North Way which will be improved
Existing Facility	Out-of-use land presently leased for construction & demolition materials recycling
New Facility	Full capability depot for stabling, servicing, maintenance and repairs constructed new on existing railway land
Scope of Work	<ul style="list-style-type: none"> a) Site clearance & removal of existing track b) Provide new bi directional connections from the Avonmouth and Down Tunnel Lines, including OHLE, signalling alterations & additions c) Construction of new track layout to provide stabling and servicing roads d) Construction of new two-road approximately 288m x 21.5m maintenance shed including foundations, steel & cladding building, M&E, inspection pits, equipment drop pit & 2T runway cranes e) Construction of new approximately 177m x 15m stores shed including foundations, steel & cladding building f) Construction of new approximately 52m x 20m office & accommodation building including foundations, steel & cladding building, M&E, internal fit-out g) Construction of new approximately 30m x 10m cleaners and TOC drivers accommodation block h) Provision of depot control & protection system

Location	Stoke Gifford	
	<ul style="list-style-type: none"> i) Provision of wheel lathe facility j) Provision of lighted walkways between roads (as necessary) k) Installation of plant items detailed below l) Provision of CET, water, fuelling per Servicing Plant Summary listed below m) Provision of utilities services on site & to buildings from adjacent off-site connection points m) Associated works including site fencing, CCTV, access roadways, parking, lighting, site drainage o) Testing, commissioning & acceptance of works 	
Buildings	<i>Main Shed</i>	New two road single ended structural steel clad building; including heating, ventilation, fume extraction, power and all associated services appropriate to planned end use. Shed to be provided with OHLE, pits, access platforms equipment drops, hoists and bogie turntable as required for maintenance and repair activities
	<i>Stores Shed</i>	Integral part of Main Shed construction of structural steel and cladding; includes heating, ventilation, power and all associated services appropriate to planned end use. Stores area to be provided with crane, bogie storage road and racking
	<i>Main Staff, Office & Training Accommodation</i>	Integral part of Main Shed construction of new structural steel and cladding; includes heating, ventilation, power, other associated services and fit out appropriate to planned end use
	<i>Wheel Lathe Building</i>	Construction of new wheel lathe building (and associated office / welfare facilities) including foundations, structure and all necessary services. Building to be provided with crane, carbody support and pit to facilitate car height setting and post turning work arising
	<i>Train Washing Plant</i>	Bi-directional wash, single pass wash principle; body sides, skirts, dryers; -5°C (or colder) washing capability
	<i>Train Wash Shed</i>	Train wash and associated plant to be enclosed in basic shed facility including foundations, steel clad

Location	Stoke Gifford	
		building and services
	<i>Cleaners / TOC Driver Accommodation</i>	Accommodation to be provided for housing train cleaners employed by the Maintainer, and TOC drivers (TOC drivers facilities provided to enable the "collection/handback of trains" only)
	<i>Ancillary Buildings & Plant Rooms</i>	Any additional plant rooms required in order to house the depot facilities will be provided as part of the works
Servicing Plant Summary	<i>Underframe Wash</i>	Drained pit area to be provided with steam cleaner / pressure wash system facilities
	<i>Fuelling System</i>	Storage capacity for 3 days of fuel, tank farm complete with bunds, pumps, tanker discharge and meters. Sufficient fuelling points to cater for 2 x 5 car or 1 x 10-car Set on the reception/servicing roads as necessary. Fuel delivery to be possible by road and rail
	<i>Fuel Additive System</i>	Storage capacity for 3 days of fuel additive, tank farm complete with bunds, pumps, tanker discharge and meters. Dispensing to servicing spines serving reception/servicing roads as necessary
	<i>CET/Tanking/Potable Water</i>	CET system complete with extraction points and water (and potable water) tanking points to servicing spines serving reception/servicing roads as necessary
	<i>Depot Protection System</i>	Flashing beacon warnings and klaxons to warn of train movements (or other suitable warning). Automatically activated on inbound movements, operator activated on outbound movements. Fitted to all applicable roads
	<i>Waste Compactor</i>	To be provided as necessary
Wheel Lathe Plant Summary	<i>Wheel Lathe</i>	Tandem under-floor wheel lathe, including basic machine, outer axle box centring devices, two adaptors, integral chip crusher, swarf conveyors to a basic configuration & fume extraction system
	<i>Wheel Lathe Shunting Vehicle</i>	Train moving system (shunter) for stock weight of 350T (9-car bi-mode Tare) or above
	<i>Wheel Lathe Crane</i>	20T OET Crane
	<i>Depot Protection System</i>	Full system: powered de-railers, warning beacons, sirens, inbound/outbound signals on 1 road single

Location	Stoke Gifford	
		shed
	<i>Carbody support</i>	Ability to support bodyshell for the means of carrying out vehicle height packing
Maintenance Shed Plant Summary	<i>Equipment Drop</i>	Equipment drop capable of removing all underslung equipment (including engine rafts, bogies)
	<i>Bogie Turntable</i>	1 x bogie turntable
	<i>Lube Oil, Gearbox & Compressor Oil, Transformer Oil Delivery / Recovery Systems</i>	Installed or portable system with extraction points & delivery points, waste oil recovery tanks, fresh oil storage tanks
	<i>Coolant Delivery / Recovery System</i>	Installed or portable system with extraction points & delivery points, waste coolant recovery tanks, fresh coolant mixing & storage tanks
	<i>Shore Supplies</i>	Shore supplies to be provided for two Sets on de-wired roads
	<i>Cranes</i>	2T Monorail above a minimum of 1 road
	<i>Depot Protection System</i>	Flashing beacon warnings and klaxons to warn of train movements (or other suitable warning as deemed appropriate); powered de-railers; inbound/outbound signals
	<i>Fume Extraction</i>	Provided to cover exhaust positions as appropriate
	<i>Pit Services</i>	Pits to be provided with suitable access points, lighting, drainage, power points and compressed air at appropriate intervals (at a frequency of no less than every 26m)
	<i>Roof / Side Access Platforms</i>	Roof level access platforms will be "sheep pen" style with a ManSafe system
TOC Drivers Provision	Train Operator / Drivers waiting and welfare facilities are provided in a dedicated area within the cleaners' accommodation building, adjacent to the Handover/Handback point. These facilities are provided to enable the "collection/handback of trains" only	
Additional Comments	Provision of utilities, interception, drainage, services, external depot lighting, walkways & hard standing, CCTV & site fencing provision to be commensurate with site use. Site clearance including remedial works to existing culverts is within the Contractors	

Location	Stoke Gifford
	scope of works

Location	Swansea Maliphant
Purpose of Facility	Stabling Servicing Minor casualty repairs
Operational Assumption	Sets Capacity: As per Rules of the Depot Rail Access: As existing Road Access: Via the existing road way off Morfa Road
Existing Facility	Partly out-of-use former carriage sidings used presently for some HST stabling
New Facility	Full capability site for servicing and stabling
Scope of Work	<ul style="list-style-type: none"> a) Construction of new track layout to provide stabling and servicing roads and a new carriage wash within the depot boundary b) Depot, inclusive of new track layout, plant and infrastructure, designed to accommodate the Base Design c) Installation of plant items listed below d) Provision of raised platforms at each end of each road for access to train

Location	Swansea Maliphant	
<p>Servicing Summary</p> <p>Plant</p>	<ul style="list-style-type: none"> e) Provision of lighted walkways between roads (as necessary) f) Provision of portable style serviced amenities building g) Provision of CCTV site surveillance for operations & security monitoring with remote monitoring h) Provision of enclosed DDA-compliant footbridge across the site (replacing the existing level crossing) i) Provision of covered inspection pit (enclosed in basic shed type facility) i) Testing, commissioning & acceptance of works 	<p>Uni-directional wash, single pass wash principle; body sides, skirts, dryers; -5°C (or colder) washing capability</p> <p>Storage capacity for 3 days of fuel, tank farm complete with bunds, pumps, tanker discharge & meters. Sufficient fuelling points to cater for 2 x 5 car or 1 x 10-car Set on the reception/servicing roads as necessary. Fuel delivery to be possible by road and rail</p> <p>Storage capacity for 3 days of fuel, tank farm complete with bunds, pumps, tanker discharge & meters. Dispensing to servicing spine serving adjacent servicing roads as necessary</p> <p>CET system complete with extraction point and water (and potable water) tanking points provided to servicing spine serving adjacent servicing roads as necessary</p> <p>Flashing beacon warnings and klaxons to warn of train movements (or other suitable warning). Automatically activated on inbound movements, operator activated on outbound movements</p> <p>Shore supply to be provided at all berth positions</p> <p>To be provided as necessary</p> <p>26m long (plus aprons) covered inspection pit to be enclosed in basic shed type facility including foundations, steel clad building and services</p>
	<p><i>Train Washing Plant</i></p>	
	<p><i>Fuelling System</i></p>	
	<p><i>Fuel Additive System</i></p>	
	<p><i>CET/Tanking/Potable Water</i></p>	
	<p><i>Depot Protection System (for Covered Inspection Pit)</i></p>	
	<p><i>Shore Supplies</i></p>	
	<p><i>Waste Compactor</i></p>	
	<p><i>Covered Inspection Pit</i></p>	

Location	Swansea Maliphant
TOC Drivers Provision	A facility to enable the "collection/handback of trains" only. Drivers will use existing nearby third party messing amenities.
Additional Comments	

Appendix B to Part A of Schedule 3

Collateral Warranties

THIS DEED is made the day of 201[•]

BETWEEN:

- (1) [CONTRACTOR] whose registered office is at [•], (the **Contractor**) and
- (2) **THE SECRETARY OF STATE FOR TRANSPORT** whose principal address is at 33 Horseferry Road, London, SW1P 4DR (the **Beneficiary**).

WHEREAS

- (A) The Beneficiary has entered into an agreement dated [•] with Hitachi Rail Europe Limited (the **Employer**) in connection with the Works.
- (B) The Contractor has entered into the Contract with the Employer to carry out the Works.
- (C) The Contractor has agreed to enter into this Deed for the benefit of the Beneficiary.

NOW IT IS AGREED AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Deed (including the recitals), except where the context otherwise requires, the following words and expressions shall have the following meanings:

Contract means the agreement dated [•] between (1) the Employer and (2) the Contractor;

Intellectual Property means all current and future legal and equitable interests in registered or unregistered trademarks, service marks, patents, registered designs, inventions, technical information, know-how or other intellectual property rights of any nature created by the Contractor in connection with the Works;

Network means the railway network of which Network Rail Infrastructure Limited is the facility owner (as defined in section 17(6) of the Railways Act 1993);

Network Licence means the licence relating to the Network granted to Network Rail pursuant to section 8 of the Railways Act 1993 (as amended); and

Works means [insert description of relevant Works].

- 1.2 In this Deed unless the context otherwise requires:-

- (a) words importing any gender include every gender;
- (b) words importing the singular number only include the plural number and vice versa;
- (c) words importing persons include firms, companies and corporations and vice versa;
- (d) any reference to any statute (whether or not specifically named) shall include any statutory modification or re-enactment of it for the time being in force and any

order, instrument, plan, regulation, permission and direction made or issued under it or under any statute replaced by it or deriving validity from it;

- (e) references to Clauses are references to the relevant clause in this Deed;
- (f) the words "**include**" and "**including**" are to be construed without limitation;
- (g) where any obligation is undertaken by two or more persons jointly those persons shall be jointly and severally liable in respect of that obligation; and
- (h) the headings to the Clauses are for convenience only and shall not affect the interpretation of this Deed.

2. **CONTRACTOR'S OBLIGATIONS**

2.1 The Contractor represents, warrants and undertakes to the Beneficiary:

- (a) that in performing the Works it has exercised and will continue to exercise all the skill, care and diligence to be reasonably expected of an appropriately qualified and competent contractor which is experienced in carrying out projects of a similar, scope, nature, complexity and size to the Works;
- (b) that it has complied with and will comply with each and all of the obligations, duties and undertakings of the Contractor under and pursuant to the Contract;
- (c) that on completion the Works will satisfy all performance specifications and requirements contained or referred to in the Contract; and
- (d) that the Beneficiary shall be deemed to have relied upon the Contractor's skill and judgment in respect of those matters relating to the Works as lie within the scope of the Contract and that the Contractor owes a duty of care in respect thereof to the Beneficiary (but not more onerous than that owed to the Employer under the Contract).

3. **LIABILITY**

3.1 No approvals, comments, instructions, consents, attendance at meetings relating to the Works or advices from the Beneficiary shall in any way relieve the Contractor from its obligations under this Deed.

3.2 Notwithstanding anything that may be contained elsewhere in this Deed, the Contractor shall have no greater liability (whether in quantum or in scope) to the Beneficiary than it would have had if the Beneficiary had been named as joint employer under the Contract.

3.3 No action or proceedings for any breach of this Deed shall be commenced against the Contractor after the expiry of twelve (12) years from the date of practical completion of the Works.

4. **INTELLECTUAL PROPERTY**

4.1 The Contractor as beneficial owner irrevocably grants to the Beneficiary with effect from the date of this Deed (and notwithstanding that the Contract may be completed or terminated) a royalty-free, non-exclusive licence to use all rights, titles and interest in the Intellectual Property for any purpose:

- (a) in connection with the maintenance, repair, reinstatement, renewal or extension of the Works; or
- (b) in order for the Beneficiary to comply with the obligations on its part under the Network Licence or to comply with any standard or requirement affecting the Beneficiary.

4.2 The licence referred to in Clause 4.1 shall carry the right to grant sub-licences in the same terms and shall be transferable to third parties.

4.3 All royalties or other sums payable in respect of the supply and use of any Intellectual Property required in connection with the Contract shall be paid by the Contractor and the Contractor shall indemnify the Beneficiary from and against all claims, proceedings, damages, costs and expenses suffered or incurred by the Beneficiary by reason of the Contractor infringing or being held to infringe any intellectual property rights in the course of or in connection with the Contract or the licence granted in Clause 4.1.

5. **INSURANCE**

The Contractor has effected and will maintain professional indemnity insurance in an amount of ten million pounds Sterling (£10,000,000) for each and every claim or series of claims arising out of the same event or circumstances in any one period of insurance (which period shall not be more than one year) for a period of twelve (12) years from the date of the issue of the certificate of practical completion of the Works subject to such insurance being available in the London insurance market at reasonably competitive rates. As and when reasonably requested to do so by the Beneficiary, the Contractor shall produce for inspection documentary evidence that such insurance is being maintained and that payment has been made in respect of all premiums due under it.

6. **NOTICES**

6.1 Any notices to be given under this Deed shall be either delivered personally or sent by first class recorded delivery post. The address for service of the Beneficiary and of the Contractor shall be as stated in this Deed or such other address for service as the party to be served may have previously notified in writing to the other party. A notice shall be deemed to have been served as follows:

- (a) if personally delivered, at the time of delivery; or
- (b) if posted, at the expiration of forty eight (48) hours after the envelope containing the same was delivered into the custody of the postal authorities.

In proving such service, it shall be sufficient to prove that personal delivery was made or that the envelope containing such notice was properly addressed and delivered into the custody of the postal authorities as a pre-paid first class recorded delivery letter.

7. **GENERAL**

7.1 The Contractor shall have no claim whatsoever against the Beneficiary in respect of any damage, loss or expense howsoever arising out of or in connection with the Contract or any amounts due to the Contractor thereunder.

7.2 The Beneficiary may assign the benefit of this Deed on a maximum of two occasions without the consent of the Contractor. The benefit of this Deed may also be assigned by

way of security or charged without the consent of the Contractor to any mortgagee of the Beneficiary or its assignees on any number of occasions.

7.3 The parties to this Deed do not intend that any term of this Deed should be enforceable, by virtue of the Contracts (Rights of Third Parties) Act 1999, by any person who is not a party to this Deed.

7.4 If for any reason any Clause in this Deed shall be found to be ineffective inoperable or unenforceable, it shall be severed and deemed to be deleted from this Deed and in such event the remaining provisions of this Deed shall continue to have full force and effect.

7.5 This Deed shall be governed by and construed in accordance with the law of England and any dispute or difference concerned with its terms shall be referred to the non-exclusive jurisdiction of the courts of England.

IN WITNESS whereof the parties have caused this agreement to be executed (as a Deed in the case of the Contractor) on the date first before written.

EXECUTED as a **DEED** by)
[**CONTRACTOR**])
acting by:)

Director

Director/Secretary

SIGNED by)
Duly authorised on behalf of)
THE SECRETARY OF STATE FOR TRANSPORT)

Part B of Schedule 3

Call Option Requirements

1. CALL OPTION

Call Option

- 1.1 Subject to Paragraphs 1.2, 1.3 and 1.4, and only to the extent that each Depot Lease Document is transferable, the TSP grants to the Secretary of State the option (the **Call Option**) to require the TSP to transfer each and every Depot Lease Document to the Secretary of State or to such person as the Secretary of State may direct (the **Nominee**).
- 1.2 The Call Option may only be exercised if:
- (a) all the Default Option Conditions are satisfied; or
 - (b) as a consequence of a Variation agreed between the Secretary of State and the TSP in accordance with Schedule 8 (*Variations*) the parties agree that one or more Depots are no longer required for the IEP Network or for the performance by the TSP of its obligations under this Agreement or any TARA;
 - (c) the Secretary of State requires the TSP to transfer its right, title and interest in and to the Assets to the Secretary of State on termination of this Agreement pursuant to Part J (*Asset Transfer*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*); or
 - (d) the Secretary of State has exercised her novation rights following the issue of a Notice of Proposed Termination of the Sub-Contract pursuant to the Secretary of State MSA Direct Agreement or the Secretary of State TSA Direct Agreement,
- (together, the **Option Conditions**).

Default Option Conditions

- 1.3 The Default Option Conditions are:
- (a) there has been a Depot Lease Termination Event;
 - (b) in respect of any Depot Lease Document (the **relevant Depot Lease Document**), all the applicable Depot Lease Termination Pre-Conditions have been satisfied; and
 - (c) the relevant Landlord is immediately entitled to give a Depot Lease Termination Notice under the terms of the relevant Depot Lease Document,
- (together, the **Default Option Conditions**).

Option to comprise all Depot Lease Documents relating to a Depot

- 1.4 The Secretary of State shall exercise the Call Option in respect of all Depot Lease Documents (as opposed to only one or some of them) relating to any Depot or Depots specified in the Call Option Notice.

Exercise of the Call Option

- 1.5 If the Secretary of State chooses to exercise the Call Option, she shall serve a written notice on the TSP (the **Call Option Notice**):
- (a) confirming the exercise of the Call Option;
 - (b) unless Paragraph 1.2(c) applies, identifying the Depot and Depot Lease Documents to which the Call Option Notice applies and the relevant Option Condition(s) which have been satisfied in relation thereto;
 - (c) confirming whether the Call Option Notice applies to the Maintainer Depot Agreements relating to the relevant Depot;
 - (d) confirming either that the Depot Lease Documents and Maintainer Depot Agreements will be transferred to the Secretary of State or, in the case of a transfer to a Nominee, the full name, registration number and registered office of the Nominee; and
 - (e) unless Paragraph 1.2(c) applies, the date on which she requires the transfer to take place, which may not be earlier than thirty (30) days from the date of exercise of the Call Option and not later than ninety (90) days from the date of exercise of the Call Option.
- 1.6 Upon exercise of the Call Option the provisions of Paragraph 3 shall apply.

2. SURRENDER OF LEASES

- 2.1 If, as a consequence of a Variation agreed between the Secretary of State and the TSP in accordance with Schedule 8 (*Variations*), the parties agree in writing that any Depot is no longer required for the IEP Network or by the TSP for the performance of its obligations under this Agreement and the TARA, the TSP may exercise its right to require a termination and/or surrender of the Depot Lease Documents relating to that Depot pursuant to the TSP's Lease Surrender Rights having given not less than ten (10) Business Days written notice of its intention to exercise such rights to the Secretary of State (the **Surrender Notice**), and in which event the TSP shall procure that the Maintainer shall at the same time surrender the Underlease for such Depot and (insofar as they are capable of being terminated) terminate any other Depot Lease Agreements relating to that Depot to which it is a party. Where any Depot Lease Document provides that a notice or consent is required from the Secretary of State to the Landlord in order for the TSP to exercise any of the TSP's Surrender Rights, the Secretary of State shall on request by the TSP provide such notice and/or consent addressed to the Landlord and copied to the TSP.
- 2.2 The TSP's Lease Surrender Rights are:
- (a) in the case of either the Stoke Gifford Lease or the Swansea Maliphant Lease, the rights contained in clause 8 of that Lease; and
 - (b) in the case of the North Pole Lease, the rights contained in clause 5.19 of that Lease,
- (together, the **TSP's Lease Surrender Rights**).

2.3 Except as provided in Paragraph 2.1, the TSP shall not:

- (a) surrender or agree to surrender any Lease;
- (b) terminate or agree to terminate any Depot Lease Document; or
- (c) accept or agree to accept a surrender of any Underlease from the Maintainer,

in each case without the Secretary of State's prior written consent (such consent not to be unreasonably withheld or delayed).

2.4 The parties shall enter into the TSP Surrender and the TSP shall enter into, and shall procure that the Maintainer enters into the Maintainer Surrender to give effect to the surrender of the Depot Lease Agreements as contemplated in Paragraph 2.1.

3. **SALE AGREEMENT**

3.1 The service of a valid Call Option Notice shall create a binding agreement on the following terms:

- (a) the TSP shall transfer to the Secretary of State or her Nominee the relevant Depot Lease Documents in respect of the relevant Depots (or such of them as are subsisting at the date of the exercise of the Call Option and are transferrable) by way of completion of the TSP Transfer;
- (b) if required in the Call Option Notice, the TSP shall procure that the Maintainer shall, at the same time as completion of the TSP Transfer, transfer to the Secretary of State or her Nominee the relevant Maintainer Depot Agreements in respect of the relevant Depots (or such of them as are subsisting at the date of the exercise of the Call Option and are transferrable) by way of completion of the Maintainer Transfer;
- (c) where the Depot Lease Documents include Leases and the Maintainer Depot Agreements include Underleases, part 1 and paragraph A of part 2 of the Standard Conditions shall apply (as modified pursuant to Paragraph 3.1(d)(i)) insofar as the same are applicable to a sale by private treaty to the extent that they are not inconsistent with the express terms of this Part B (*Call Option Requirements*) of Schedule 3 (*Depots*);
- (d) the TSP shall:
 - (i) deduce its title to any Leases which are the subject of a TSP Transfer and deduce the Maintainer's title to any Underleases which are the subject of a Maintainer Transfer (or in each case such of them as are subsisting at the date of exercise of the Call Option) to the Secretary of State or her Nominee not later than ten (10) Business Days after service of the Call Option Notice by providing official copies of the registers of title and the title plan for each such Lease and Underlease if then registered at the Land Registry, a copy of the Lease and Underlease and (to the extent they are in the TSP's possession or are available from the Land Registry) full copies or abstracts of any documents noted on the registers or to which the Transfers will otherwise be subject (except charges or encumbrances registered or protected on the register which are to be discharged or overreached at or prior to Call Option Completion); and

- (ii) promptly reply to any requisitions reasonably raised by the Secretary of State;
- (e) the Secretary of State may withdraw a Call Option Notice if she is not satisfied with any aspect of the TSP's title to the relevant Leases or the Maintainer's title to the relevant Underleases provided that such withdrawal notice must be in writing and served on the TSP within ten (10) Business Days of receipt by the Secretary of State of all the information referred to in Paragraph 3.1(d);
- (f) each Lease or Underlease which is the subject of a TSP Transfer or Maintainer Transfer (as the case may be) shall be transferred free from all monetary charges and financial and other encumbrances but subject to and, where applicable, with the benefit of the following matters so far as they relate to the relevant Depot and are still subsisting and capable of taking effect at Call Option Completion:
 - (i) the matters referred to in Standard Condition 3.1.2;
 - (ii) any matters contained or referred to in the registered titles to the relevant Depot kept at the Land Registry other than registered charges by way of legal mortgage (and any related restrictions) in favour of any party other than the Secretary of State;
 - (iii) all matters subject to which the TSP acquired the Lease;
 - (iv) the documents listed in the schedule to the Transfers (if any);
 - (v) any matters contained or referred to in the Lease;
 - (vi) the Underlease and any matters contained in or referred to in the Underlease;
 - (vii) all rights of way, light and air support, drainage and other rights, easements, quasi easements, liabilities and public or private rights whatsoever, and to any liability to repair or contribute to the repair of sewers, drains, pipes, party structures and other like matters and including any utility, services or substation lease, easement or wayleave granted to any utility company or statutory undertaker;
 - (viii) all overriding interests as set out in schedule 1 or schedule 3 (as appropriate) and sections 11(4)(c) and 90 of the Land Registration Act 2002 (as amended by schedule 12 and the Land Registration (Transitional Provisions) (No 2) Order 2003);
 - (ix) all Local Land Charges (whether or not registered before the date of this Agreement) and all matters capable of registration as Local Land Charges (whether or not actually registered);
 - (x) all notices served and orders, demands, proposals or requirements made, by any local or other public or competent authority;
 - (xi) all actual or proposed orders, directions, plans, notices, instruments, charges, restrictions, conditions, agreements or other matters arising under any statute relating to town and country planning and any laws and regulations intended to control or regulate the construction, demolition,

- alteration or change of use of land or buildings or to preserve or protect the environment;
- (xii) any deeds or documents which have been executed or any rights, encumbrances or interests which have been lawfully created in accordance with the terms of the relevant Lease or Underlease except for any financial charges or security interests granted over or in respect of the relevant Lease or Underlease; and
 - (xiii) any rights, encumbrances or interests which have been created or have arisen by compulsory acquisition by any local, government or statutory authority;
- (g) in respect of any Depot Lease Documents to be included in the TSP Transfer, the Secretary of State shall provide to the relevant Landlord prior to the date specified in the Call Option Notice for the transfer to take place:
- (i) (where the assignee will also be the operator of any Depots included in the Transfer) evidence that the proposed assignee holds a licence for the operation of such Depot pursuant to section 8 of the Act or an exemption from the requirement for a licence under section 7 of the Act; and
 - (ii) written confirmation that the proposed Transfer has been directed or approved by the Secretary of State;
- (h) Call Option Completion shall take place on the date specified in the Call Option Notice at which time:
- (i) the Secretary of State and the TSP shall enter into or, where the Depot Lease Documents are to be transferred to a Nominee as directed by the Secretary of State, the TSP shall enter into and the Secretary of State shall procure that the Nominee shall enter into, the TSP Transfer;
 - (ii) (if applicable) the TSP shall procure that the Maintainer shall enter into the Maintainer Transfer with the Secretary of State or the Nominee and the Secretary of State shall enter into or, where the Maintainer Depot Agreements are to be transferred to a Nominee as directed by the Secretary of State, the Secretary of State shall procure that the Nominee enters into, the Maintainer Transfer; and
 - (iii) the TSP shall deliver, and shall procure that the Maintainer shall deliver, to the Secretary of State or the Nominee as the Secretary of State may direct, all relevant deeds and documents relating to any Depots, Depot Lease Documents and Maintainer Depot Agreements which are the subject of the Transfers; and
- (i) the modifications to the Standard Conditions are as follows:
- (i) for the purpose of Standard Condition 1.1.1(e) "contract rate" means four per cent. (4%) above the base rate from time to time of Lloyds TSB Bank plc; and
 - (ii) the modifications contained in Appendix D (*Modifications to the Standard Conditions*) to this Part B (*Call Option Requirements*) of Schedule 3 (*Depots*).

4. INFORMATION AND MANAGEMENT

4.1 If a Call Option Notice or a Surrender Notice is served the TSP shall comply, and shall procure that the Maintainer shall comply, with the following obligations with effect from the date of the Call Option Notice or a Surrender Notice (as the case may be):

- (a) to provide all information reasonably requested by the Secretary of State in relation to the Depot Lease Documents, the Maintainer Depot Agreements and the Depots to which they relate;
- (b) (subject to the terms of the relevant Lease(s) and Underlease(s)) permit the Secretary of State and any third party at her or its request (as applicable) to enter onto the relevant Depots at all reasonable times and for all reasonable purposes connected with the exercise of the Call Option or the TSP's Lease Surrender Rights provided that the Secretary of State (and any third parties under her direction) shall act reasonably and in compliance with all applicable health and safety requirements and reasonable conditions of access imposed by the Maintainer; and
- (c) for such period as may be required pursuant to Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*), to continue to operate or procure the operation or use of the Depots which are the subject of the Call Option Notice or the Surrender Notice in accordance with the terms of the Secretary of State TSA Direct Agreement, the Depot Lease Documents and the Maintainer Depot Agreements and to not take or omit to take any action which would be inconsistent with the ordinary course of operating or otherwise using such Depots without the Secretary of State's prior written consent.

5. REGISTRATION

The Secretary of State may only protect her rights pursuant to this Part B (*Call Option Requirements*) by way of unilateral notice or a class c(iv) land charge and shall not send a full copy of this Agreement to the Land Registry or the Land Charges Department (or permit the sending of any such copy).

6. FUNDERS DIRECT AGREEMENT

The Secretary of State's rights pursuant to this Part B (*Call Option Requirements*) of Schedule 3 (*Depots*) shall be subject to the terms of the Funder Direct Agreement.

Appendix A to Part B of Schedule 3
Form TR1 for Leases

Land Registry
 Transfer of portfolio of titles
 (whole or part)

TR5

If you need more room than is provided for in a panel, and your software allows, you can expand any panel in the form. Alternatively use continuation sheet CS and attach it to this form. This form should only be used where the same transferor transfers **all the titles** to the same transferee.

Enter 'U' in column 1 if the land is unregistered.

In column 2 enter 'W' for a transfer of whole of a registered title, or 'P' for a transfer of part of a registered title. Leave blank if the land is unregistered.

Insert address including postcode (if any) or other description of the property, for example 'land adjoining 2 Acacia Avenue' in column 3. For transfers of part you must either attach a plan and state the reference used to identify the land transferred, for example 'edged red' or refer to an existing reference on the transferor's title plan. Any attached plan must be signed by the transferor.

In column 4 include information that cannot conveniently be included in another

1	Title number of the property	(W) or (P)	Property	Other information
	[Insert details]		[North Pole]	
	[Insert details]		[Stoke Gifford]	
	[Insert details]		[Swansea Maliphant]	

panel, such as whether the title is freehold or leasehold, apportioned consideration, differing title guarantees.

When application for registration is made these title number(s) should be entered in panel 2 of Form AP1.

Give full name(s).

Complete as appropriate where the transferor is a company.

Give full name(s).

Complete as appropriate where the transferee is a company. Also, for an overseas company, unless an arrangement with Land Registry exists, lodge either a certificate in form 7 in schedule 3 to the Land Registration Rules 2003 or a certified copy of the constitution in English or Welsh, or other evidence permitted by rule 183 of the Land Registration Rules 2003.

Each transferee may give up to three

2	Other title number(s) against which matters contained in this transfer are to be registered or noted, if any:				
3	Date:				
4	<p>Transferor:</p> <p>Agility Trains West Limited</p> <p>For UK incorporated companies/LLPs</p> <p>Registered number of company or limited liability partnership including any prefix:</p> <p>For overseas companies</p> <p>(a) Territory of incorporation:</p> <p>(b) Registered number in the United Kingdom including any prefix:</p>				
5	<p>Transferee for entry in the register:</p> <p>[Secretary of State or Nominee]</p> <p>For UK incorporated companies/LLPs</p> <p>Registered number of company or limited liability partnership including any prefix:</p> <p>For overseas companies</p> <p>(a) Territory of incorporation:</p> <p>(b) Registered number in the United Kingdom including any prefix:</p>				
6	Transferee's intended address(es) for service for entry in the				

addresses for service, one of which must be a postal address whether or not in the UK (including the postcode, if any). The others can be any combination of a postal address, a UK DX box number or an electronic address.

register:

[Insert details]

Place 'X' in the appropriate box. State the currency unit if other than sterling. If none of the boxes applies, insert an appropriate memorandum in panel 11.

Place 'X' in any box that applies.

Add any modifications.

Where the transferee is more than one person, place 'X' in the appropriate box.

Complete as necessary.

7 The transferor transfers the property in panel 1 to the transferee

8 Consideration

The transferor has received from the transferee for the property the following sum (in words and figures)

The transfer is not for money or anything that has a monetary value

Insert other receipt as appropriate: this transfer forms part of a transaction in respect of which the value attributable to the Property is £[●]

9 No title guarantee is given

10 Declaration of trust. The transferee is more than one person and

they are to hold the Property on trust for themselves as joint tenants

they are to hold the Property on trust for themselves as tenants in common in equal shares

they are to hold the Property on trust:

Use this panel for:

- definitions of terms not defined above
- rights granted or reserved
- restrictive covenants
- other covenants
- agreements and declarations
- any required or permitted statements
- other agreed provisions.

The prescribed subheadings may be added to, amended, repositioned or omitted.

11 Additional provisions

11.1 Definitions

In this panel:

“Documents” means the deeds and documents listed in SCHEDULE 1 to this panel;

“Leases” means the leases under which the Property is held by the Transferor, details of which are set out in the registers relating to the titles transferred by this transfer [including in the case of the Leases for Stoke Gifford and Swansea Maliphant the Depot Access Conditions and Depot Letting Conditions, as referred to therein] and all documents supplemental or ancillary thereto;

“MARA” means a Master Availability and Reliability Agreement made [] 2012 between (1) The Secretary of State for Transport and (2) Agility Trains West Limited in relation to the Greater Western IEP Network;

“Stoke Gifford” and **“Swansea Maliphant”** have the meanings given to them in the MARA [(each being part of the Property)].

11.2 Interpretation

11.2.1 References to the “Transferor” and the “Transferee” include references to their respective successors in title;

11.2.2 The headings are for reference only and is not to be

Any other land affected by rights granted or reserved or by restrictive covenants should be defined by reference to a plan.

referred to when interpreting this transfer.

11.3 Title guarantee

11.3.1 The covenant set out in section 4(1)(b) of the Law of Property (Miscellaneous Provisions) Act 1994 does not extend to implying any covenant on the part of the Transferor that at the date of this transfer there is:

11.3.1.1 no subsisting breach of a condition or tenant's obligation contained in the Lease; or

11.3.1.2 nothing which at the date of this transfer would render the Lease liable to forfeiture,

insofar as such matters relate to the state and condition of the Property.

11.3 Indemnity

The Transferee covenants with the Transferor by way of indemnity only that the Transferee will, from the date of this transfer and whilst it remains bound by the tenant's covenants in the Leases, to:

11.3.1 observe and perform the covenants, obligations and other matters contained in or referred to in the register of title numbers and the Documents to the extent that they are binding on the Transferee and only insofar as they affect the Property and are still subsisting and are capable of having effect;

11.3.2 observe and perform the obligations on behalf of the tenant contained in the Leases; and

11.3.3 keep the Transferor indemnified from and against all actions, proceedings, costs, claims, demands and liabilities (collectively "Liabilities") whatsoever arising by reason of any breach, non-observance or non-performance of any of these covenants, conditions and obligations.

11.4 Assignment of Depot Lease Agreements other than the Leases

11.4.1 The Transferor assigns to the Transferee all its rights and interests in the deeds and documents (if any) listed in SCHEDULE 2 to this panel but only to the extent that such rights and interests are transferable;

11.4.2 The Transferee covenants with the Transferor by way of indemnity only that from the date of this

transfer and whilst it remains bound by the tenant's covenants in the Leases the Transferee will from the date of this transfer observe and perform the covenants, obligations and other matters referred to in the deeds and documents listed in SCHEDULE 2 to this panel and to keep the Transferor indemnified from all Liabilities whatsoever arising by reason of any breach, non observance or non performance of the same.

11.5 Agreements and declarations

11.5.1 This transfer and any matter arising from it are to be governed by and construed in accordance with English law. The parties agree to submit to the exclusive jurisdiction of the English courts in relation to this transfer and any such matter.

11.5.2 A person who is not party to this transfer has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this transfer. This provision does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

11.6 Delivery and execution

11.6.1 The parties intend this transfer to be delivered on the first date specified on page 1 of this transfer.

11.6.2 This transfer is to be executed in duplicate.

SCHEDULE 1: TO PANEL 11: DOCUMENTS

Property affected:	Date:	Nature of document:	Parties:
Underleases for each Depot being transferred [other documents]			

SCHEDULE 2 TO PANEL 11: DOCUMENTS

[List all the Depot Lease Agreements (if any) to be assigned under panel 11.4]

The transferor must execute this transfer as a deed using the space opposite. If there is more than one transferor, all must execute. Forms of execution are given in schedule 9 to the Land Registration Rules 2003. If the transfer contains transferee's covenants or declarations or contains an application by the transferee (e.g. for a restriction), it must also be executed by the transferee.

12 Execution

WARNING

If you dishonestly enter information or make a statement that you know is, or might be, untrue or misleading, and intend by doing so to make a gain for yourself or another person, or to cause loss or the risk of loss to another person, you may commit the offence of fraud under section 1 of the Fraud Act 2006, the maximum penalty for which is 10 years' imprisonment or an unlimited fine, or both.

Failure to complete this form with proper care may result in a loss of protection under the Land Registration Act 2002 if, as a result, a mistake is made in the register.

Under section 66 of the Land Registration Act 2002 most documents (including this form) kept by the registrar relating to an application to the registrar or referred to in the register are open to public inspection and copying. If you believe a document contains prejudicial information, you may apply for that part of the document to be made exempt using Form EX1, under rule 136 of the Land Registration Rules 2003.

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Appendix B to Part B of Schedule 3
Form of Assignment for the Agreement for Leases

DATED

2012

(1) AGILITY TRAINS WEST LIMITED

[(2) HITACHI RAIL EUROPE LIMITED]

- and -

**(3) [THE SECRETARY OF STATE FOR TRANSPORT]
[NOMINEE]**

AGREEMENT

relating to

property known as [North Pole]

[Stoke Gifford] [Swansea Maliphant]

CONTENTS

1.	ASSIGNMENT	2
2.	INDEMNITY COVENANT	2
3.	EXCLUSION OF RIGHTS UNDER THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999	3

BETWEEN:

- (1) **AGILITY TRAINS WEST LIMITED** (registered in England under number 07930606) whose registered office is at 4th Floor, 4 Copthall Avenue, London EC2R 7DA (**Agility**); and
- (2) **[HITACHI RAIL EUROPE LIMITED** (company registration number 05598549) whose registered office is at 40 Holborn Viaduct, London EC1N 2PB (**Hitachi**)²]
- (3) **[THE SECRETARY OF STATE FOR TRANSPORT]** whose principal address is at 33 Horseferry Road, London SW1P 4DR] **[NOMINEE]** (**Assignee**).

BACKGROUND:

- (A) By an agreement for lease and underlease dated [] 2012 and made between (1) [BRB (Residuary) Limited] [Network Rail Infrastructure Limited] and (2) Agility and (3) [Hitachi] [Hitachi Rail Europe Limited] (**Agreement For Lease**) the [property] [properties] known as [North Pole] [Stoke Gifford] [and] [Swansea Maliphant] and described in more detail in the Agreement for Lease was agreed to be let to Agility and Hitachi subject to the terms of the Agreement for Lease.
- (B) Pursuant to a Master Availability and Reliability Agreement made [] 2012 (**MARA**) between (1) The Secretary of State for Transport and (2) Agility Trains West Limited in relation to the Great Western IEP Network the Secretary of State has a call option in respect of the Agreement For Lease (**Call Option**).
- (C) The Call Option has been exercised in accordance with the MARA and this deed is entered in accordance with the terms of the Call Option.

IT IS AGREED:

1. ASSIGNMENT

- 1.1 In consideration of the covenants contained in this assignment Agility assigns to the Assignee all its right, title and interest as lessee in the Agreement for Lease.
- 1.2 [In consideration of the covenants contained in this assignment Hitachi assigns to the Assignee all its right, title and interest as underlessee in the Agreement for Lease.]

2. INDEMNITY COVENANT

- 2.1 The Assignee covenants with Agility by way of indemnity only that the Assignee will henceforth from the date hereof observe and perform all covenants and other obligations of Agility under the Agreement for Lease and will at all times from the date hereof keep Agility indemnified from and against all actions, proceedings, costs, claims, demands and liabilities whatsoever arising by reason of any breach, non-observance or non-performance of any of these covenants and obligations which occurs after the date hereof. Nothing in this Clause 2.1 shall impose on the Assignee liability for any pre-existing breach, non-observance or non-performance of any covenant or other obligation on the part of Agility under the Agreement for Lease.

² If the Secretary of State requires the transfer of the Maintainer Depot Agreements upon exercise of the Call Option, the Maintainer will also need to be an assignor under this Agreement.

2.2 [The Assignee covenants with Hitachi by way of indemnity only that the Assignee will henceforth from the date hereof observe and perform all covenants and other obligations of Hitachi under the Agreement for Lease and will at all times from the date hereof keep Hitachi indemnified from and against all actions, proceedings, costs, claims, demands and liabilities whatsoever arising by reason of any breach, non-observance or non-performance of any of these covenants and obligations which occurs after the date hereof. Nothing in this Clause 2.2 shall impose on the Assignee liability for any pre-existing breach, non-observance or non-performance of any covenant or other obligation on the part of Hitachi under the Agreement for Lease.]

3. **NON MERGER**

The right, title and interest of the Assignee as underlessee under the Agreement for Lease shall not merge with the right, title and interest of the Assignee as lessee under the Agreement for Lease.

4. **EXCLUSION OF RIGHTS UNDER THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

A person who is not party to this assignment shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this assignment. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

Executed (but not delivered until)
the date hereof) as a deed by)
AGILITY TRAINS WEST)
LIMITED acting by two directors)
or one director and the secretary:)

Signature _____

Name (block capitals) _____
Director

Signature _____

Name (block capitals) _____
Secretary/Director

Executed (but not delivered until)
the date hereof) as a deed by)
HITACHI RAIL EUROPE)
LIMITED acting by two directors)
or one director and the secretary:)

Signature _____

Name (block capitals) _____
Director

Signature _____

Name (block capitals) _____
Secretary/Director

Executed (but not delivered until)
the date hereof) as a deed by)
THE SECRETARY OF STATE)
FOR TRANSPORT by the)
affixing of the Corporate Seal)
hereunto)

SEAL

Authenticated by authority of the Secretary of State
for Transport

Appendix C to Part B of Schedule 3
Form TR1 for Underleases

Land Registry

Transfer of portfolio of titles (whole or part)

TR5

If you need more room than is provided for in a panel, and your software allows, you can expand any panel in the form. Alternatively use continuation sheet CS and attach it to this form. This form should only be used where the same transferor transfers **all the titles** to the same transferee.

Enter 'U' in column 1 if the land is unregistered.

In column 2 enter 'W' for a transfer of whole of a registered title, or 'P' for a transfer of part of a registered title. Leave blank if the land is unregistered.

Insert address including postcode (if any) or other description of the property, for example 'land adjoining 2 Acacia Avenue' in column 3. For transfers of part you must either attach a plan and state the reference used to identify the land transferred, for example 'edged red' or refer to an existing reference on the transferor's title plan. Any attached plan must be signed by the transferor.

In column 4 include information that

1	Title number of the property	(W) or (P)	Property	Other information
	[Insert details]		[North Pole]	
	[Insert details]		[Stoke Gifford]	
	[Insert details]		[Swansea Maliphant]	

cannot conveniently be included in another panel, such as whether the title is freehold or leasehold, apportioned consideration, differing title guarantees.

--	--	--	--

When application for registration is made these title number(s) should be entered in panel 2 of Form AP1.

2 Other title number(s) against which matters contained in this transfer are to be registered or noted, if any:

Give full name(s).

Complete as appropriate where the transferor is a company.

3 Date:

4 Transferor:

Hitachi Rail Europe Limited

For UK incorporated companies/LLPs

Registered number of company or limited liability partnership including any prefix:

For overseas companies

(a) Territory of incorporation:

(b) Registered number in the United Kingdom including any prefix:

Give full name(s).

Complete as appropriate where the transferee is a company. Also, for an overseas company, unless an arrangement with Land Registry exists, lodge either a certificate in form 7 in schedule 3 to the Land Registration Rules 2003 or a certified copy of the constitution in English or Welsh, or other evidence permitted by rule 183 of the

5 Transferee for entry in the register:

[Secretary of State or Nominee]

For UK incorporated companies/LLPs

Registered number of company or limited liability partnership including any prefix:

For overseas companies

(a) Territory of incorporation:

(b) Registered number in the United Kingdom including any prefix:

Land Registration Rules 2003.

Each transferee may give up to three addresses for service, one of which must be a postal address whether or not in the UK (including the postcode, if any). The others can be any combination of a postal address, a UK DX box number or an electronic address.

Place 'X' in the appropriate box. State the currency unit if other than sterling. If none of the boxes applies, insert an appropriate memorandum in panel 11.

Place 'X' in any box that applies.

Add any modifications.

Where the transferee is more than one person, place 'X' in the appropriate box.

Complete as necessary.

6	Transferee's intended address(es) for service for entry in the register:	[Insert details]
7	The transferor transfers the property in panel 1 to the transferee	
8	Consideration	<input type="checkbox"/> The transferor has received from the transferee for the property the following sum (in words and figures) <input type="checkbox"/> The transfer is not for money or anything that has a monetary value <input checked="" type="checkbox"/> Insert other receipt as appropriate: this transfer forms part of a transaction in respect of which the value attributable to the Property is £[●]
9	No title guarantee is given	
10	Declaration of trust. The transferee is more than one person and	<input type="checkbox"/> they are to hold the Property on trust for themselves as joint tenants <input type="checkbox"/> they are to hold the Property on trust for themselves as tenants in common in equal shares <input type="checkbox"/> they are to hold the Property on trust:

Use this panel for:

- definitions of terms not defined above
- rights granted or reserved
- restrictive covenants
- other covenants
- agreements and declarations
- any required or permitted statements
- other agreed provisions.

The prescribed subheadings may be added to, amended, repositioned or omitted.

Any other land affected by rights granted or reserved or by restrictive covenants should be defined by reference to a plan.

11 Additional provisions

11.1 Definitions

In this panel:

“Documents” means the deeds and documents listed in SCHEDULE 1 to this panel;

“Leases” means the leases under which the Property is held by the Transferor, details of which are set out in the registers relating to the titles transferred by this transfer including in the case of all the Leases, the Depot Access Conditions and in the case of the Leases of Stoke Gifford and Swansea Maliphant, the Depot Letting Conditions, as referred to therein and all documents supplemental or ancillary thereto;

“MARA” means a Master Availability and Reliability Agreement made [] 2012 between (1) The Secretary of State for Transport and (2) Agility Trains West Limited in relation to the Greater Western IEP Network;

“Stoke Gifford” and **“Swansea Maliphant”** have the meanings given to them in the MARA (each being part of the Property).

11.2 Interpretation

11.2.1 References to the “Transferor” and the “Transferee” include references to their respective successors in title;

11.2.2 The headings are for reference only and is not to be referred to when interpreting this transfer.

11.3 Title guarantee

11.3.1 The covenant set out in section 4(1)(b) of the Law of Property (Miscellaneous Provisions) Act 1994 does not extend to implying any covenant on the part of the Transferor that at the date of this transfer there is:

11.3.1.1 no subsisting breach of a condition or tenant’s obligation contained in the Lease; or

11.3.1.2 nothing which at the date of this transfer would render the Lease liable to forfeiture,

insofar as such matters relate to the state and

condition of the Property.

11.3 Indemnity

The Transferee covenants with the Transferor by way of indemnity only that the Transferee will, from the date of this transfer and whilst it remains bound by the tenant's covenants in the Leases, to:

11.3.1 observe and perform the covenants, obligations and other matters contained in or referred to in the register of title numbers and the Documents to the extent that they are binding on the Transferee and only insofar as they affect the Property and are still subsisting and are capable of having effect;

11.3.2 observe and perform the obligations on behalf of the tenant contained in the Leases; and

11.3.3 keep the Transferor indemnified from and against all actions, proceedings, costs, claims, demands and liabilities whatsoever arising by reason of any breach, non-observance or non-performance of any of these covenants, conditions and obligations.

11.4 Assignment of Depot Lease Documents other than the Leases

The Transferor assigns to the Transferee all its rights and interests in the deeds and documents listed in SCHEDULE 2 to this panel but only to the extent that such rights and interests are transferable.

11.5 Agreements and declarations

11.5.1 This transfer and any matter arising from it are to be governed by and construed in accordance with English law. The parties agree to submit to the exclusive jurisdiction of the English courts in relation to this transfer and any such matter.

11.5.2 A person who is not party to this transfer has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this transfer. This provision does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

11.6 Delivery and execution

11.6.1 The parties intend this transfer to be delivered on the first date specified on page 1 of this transfer.

11.6.2 This transfer is to be executed in duplicate.

SCHEDULE 1 TO PANEL 11: DOCUMENTS

[List all the documents to which the transfer is subject]

Property affected:	Date:	Nature of document:	Parties:
[any documents]			

SCHEDULE 2 TO PANEL 11 : DOCUMENTS

[List all the Depot Lease Documents (if any) to be assigned under Panel 11.4]

The transferor must execute this transfer as a deed using the space opposite. If there is more than one transferor, all must execute. Forms of execution are given in schedule 9 to the Land Registration Rules 2003. If the transfer contains transferee's covenants or declarations or contains an application by the transferee (e.g. for a restriction), it must also be executed by the transferee.

12 Execution

WARNING

If you dishonestly enter information or make a statement that you know is, or might be, untrue or misleading, and intend by doing so to make a gain for yourself or another person, or to cause loss or the risk of loss to another person, you may commit the offence of fraud under section 1 of the Fraud Act 2006, the maximum penalty for which is 10 years' imprisonment or an unlimited fine, or both.

Failure to complete this form with proper care may result in a loss of protection under the Land Registration Act 2002 if, as a result, a mistake is made in the register.

Under section 66 of the Land Registration Act 2002 most documents (including this form) kept by the registrar relating to an application to the registrar or referred to in the register

are open to public inspection and copying. If you believe a document contains prejudicial information, you may apply for that part of the document to be made exempt using Form EX1, under rule 136 of the Land Registration Rules 2003.

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Appendix D to Part B of Schedule 3
Modifications to the Standard Conditions

1. The Standard Conditions shall be amended as follows:
 - (a) clause 1.4 (*VAT*) shall not apply;
 - (b) clause 2.2 (*Deposit*) shall not apply and all references to a deposit shall be deleted;
 - (c) clause 6.3 (*Timetable*) shall not apply;
 - (d) clauses 8.1 (*Date*) and 8.2 (*Place*) shall not apply;
 - (e) clause 9.5.2 (a)(ii) shall not apply;
 - (f) clause 10.3 (*Consents*) shall not apply; and
 - (g) any further amendments as may be agreed between the Secretary of State and TSP prior to the Call Option Completion.

Part C of Schedule 3

Train Maintenance and Servicing

1. INTRODUCTION

1.1 This Part defines the requirements in accordance with which the TSP shall:

- (a) develop the Maintenance Plan and sets out certain related obligations with which the TSP shall (subject to Paragraph 1.2) comply in order to ensure that the Sets are kept in a safe, serviceable, reliable and clean condition, and in compliance with the Design (as such Design may be amended from time to time in accordance with Schedule 8 (*Variations*) or Schedule 9 (*Change in Law*) or the TARA); and
- (b) amend the Maintenance Plan as necessary from time to time to reflect certain modifications to the Sets.

1.2 For the avoidance of doubt, a failure by the TSP to comply with the Maintenance Arrangements described in the Maintenance Plan shall not, of itself, constitute a breach of this Agreement.

2. MAINTENANCE PLAN REQUIREMENTS

2.1 The Maintenance Plan shall be in a form compliant with the requirements of all Applicable Laws and Standards, including Railway Group Standard GM/RT2004 Requirements for Rail Vehicle Maintenance.

2.2 The Maintenance Plan shall be designed to deliver and provide assurance to the Secretary of State and the Relevant Operator of compliance by the TSP with the requirements of this Agreement and the TARA relating to the safety, serviceability, reliability and cleanliness of the Sets, including compliance with:

- (a) all Applicable Laws and Standards;
- (b) any conditions relating to the maintenance of the Sets imposed or required by any Relevant Approvals;
- (c) once developed in accordance with Paragraph 5 and the Approvals Plan, the Relevant Operator's Safety Management System, in so far as it relates to the maintenance and operation of the Sets;
- (d) the Rules of the Fleet, Rules of the Depot and the handover and handback arrangements provided in schedule 2 (*Availability*) and schedule 3 (*In-Service Provisions and Faults*) of the TARA;
- (e) the availability and reliability regimes provided in schedule 2 (*Availability*) and schedule 3 (*In-Service Provisions and Faults*) of the TARA;
- (f) the Set presentation standards set out in appendix A (*Presentation Standard Table*) to part B (*Handover*) of schedule 2 (*Availability*) of the TARA;
- (g) the Key Performance Indicators (as defined in the TARA); and
- (h) the Design (as such Design may be amended from time to time in accordance with Schedule 8 (*Variations*) or Schedule 9 (*Change in Law*) or the TARA),

which requirements collectively shall constitute the ***Maintenance Requirements***.

2.3 Without prejudice to Paragraph 2.2, the TSP shall procure that there is in place a competent Entity in Charge of Maintenance (as defined in the TARA) for the purpose of maintaining the Sets.

3. RELEVANT OPERATOR'S RELIANCE ON THE MAINTENANCE PLAN

3.1 The parties acknowledge that, pursuant to Applicable Laws and Standards, the Relevant Operator is under certain obligations and has certain responsibilities with respect to the Maintenance Arrangements and agree that nothing within this Part C (*Train Maintenance and Servicing*), the Maintenance Plan or any associated arrangements shall absolve the Relevant Operator from such obligations or responsibilities.

3.2 Notwithstanding Paragraph 3.1, the TSP shall be responsible for developing, implementing and updating the Maintenance Plan and the Maintenance Plan shall at all times remain under the control of the TSP.

3.3 The TSP understands that the Relevant Operator will be placing reliance on the TSP's compliance with the processes and procedures set out in this Part C (*Train Maintenance and Servicing*), part C (*Train Maintenance and Servicing*) of schedule 4 (*Contract Management and Compliance*) of the TARA and the Maintenance Plan in order to obtain the Relevant Approvals that the Relevant Operator requires in order to operate the Sets.

3.4 The TSP through its internal arrangements and processes or its sub-contracts is a competent design authority, maintainer and train engineering specialist and shall be responsible for the specification, design, performance, management, review and development of the Maintenance Arrangements.

4. DEVELOPING THE MAINTENANCE PLAN

4.1 Throughout the development and implementation of the Maintenance Plan, the TSP shall ensure, and provide assurance to the Secretary of State and the Relevant Operator as and when reasonably requested, that the proposed Maintenance Plan is compliant with and will enable compliance by the TSP with its obligations under this Agreement, all Applicable Laws and Standards and any conditions relating to the maintenance of the Sets imposed or required by any Relevant Approvals.

4.2 The TSP shall develop and implement the Maintenance Plan in accordance with this Part and the Integrated Programme in order to meet any relevant programme thresholds and milestones in the Approvals Plan, the Testing, Commissioning and Acceptance Plan, the Training Plan and Appendix B (*Fault Free Running Conditions*) to Part A (*Testing and Acceptance*) of Schedule 2 (*Introduction into Service*).

Requirements capture exercise

4.3 As part of the development of the Maintenance Plan, the TSP Delivery Manager shall undertake a requirements capture exercise to identify the inputs to the Maintenance Plan from this Schedule and the Maintenance Requirements and which shall be carried out with the Secretary of State's Representative and the Relevant Operator, the format of which shall be agreed between the TSP Delivery Manager and the Secretary of State's Representative.

4.4 The TSP shall be responsible for identifying all information, materials and support required from any third parties by the TSP in order to develop and implement the

Maintenance Plan, and the TSP shall be responsible for obtaining such information, materials and support.

- 4.5 Notwithstanding Paragraph 4.3, until the Actual Acceptance Date of the first Set in the Fleet and to the extent necessary to enable the TSP to meet its obligations under this Part, the Secretary of State's Representative shall procure that the Relevant Operator provides any information, materials and support that are within the possession, control or sole competence of the Relevant Operator and that are reasonably requested by the TSP Delivery Manager and are notified to the Secretary of State's Representative a reasonable period in advance in accordance with the Integrated Programme.

Maintenance Plan Structure

- 4.6 In accordance with the Integrated Programme (and in any event no later than nine (9) months after the Effective Date), the TSP Delivery Manager shall provide the Secretary of State's Representative with an initial structure for the development of the Maintenance Plan (the **Maintenance Plan Structure**) for review and comment by the Secretary of State's Representative.
- 4.7 The Maintenance Plan Structure shall incorporate the requirements of Railway Group Standard GM/RT2004 Requirements for Rail Vehicle Maintenance.
- 4.8 Any comments provided by the Secretary of State's Representative under Paragraph 4.6 shall be considered in good faith by the TSP and the TSP shall, as necessary, amend the Maintenance Plan Structure to address any comments which are reasonable and which relate to compliance with Applicable Laws and Standards or Relevant Approvals, or compliance by the Secretary of State or the Relevant Operator with their obligations under this Agreement or the TARA.

Maintenance Plan review

- 4.9 When developed in accordance with Paragraphs 4.6 to 4.8, the TSP shall break down the Maintenance Plan Structure into discrete areas (each a **Maintenance Plan Structure Area**) with the intention that the scope of each Maintenance Plan Structure Area shall enable the content of the Maintenance Plan to be reviewed in discrete manageable packages where practicable and applicable.
- 4.10 In respect of each Maintenance Plan Structure Area, the TSP Delivery Manager shall:
- (a) provide the Secretary of State's Representative and the Relevant Operator with a draft of the relevant part of the Maintenance Plan, together with the Supporting Information (as defined below), in accordance with the Integrated Programme, for their review and comment;
 - (b) allow the Secretary of State's Representative and the Relevant Operator a period of ten (10) Business Days, or such longer period as may be agreed between the parties, from receipt to review the relevant part of the Maintenance Plan and the Supporting Information; and
 - (c) consider any comments provided by the Secretary of State's Representative or the Relevant Operator in good faith and shall, as necessary, amend the Maintenance Plan to address any comments which are reasonable and which relate to compliance with Applicable Laws and Standards, Relevant Approvals or the TSP's obligations under this Agreement or the TARA.

5. **VERIFICATION OF THE MAINTENANCE PLAN**

5.1 No later than six (6) months prior to the Scheduled Acceptance Date of the first Set in the Fleet, the TSP Delivery Manager shall:

- (a) produce a Maintenance Plan for passenger service in accordance with Paragraph 4 (without any amendments which the Secretary of State's Representative and the Relevant Operator have not reviewed or had the reasonable opportunity to review in accordance with Paragraph 4);
- (b) procure confirmation from an appropriate verification body which has been accredited to undertake such verification activities that the Maintenance Plan meets the requirements of all Applicable Laws and Standards and any conditions relating to the maintenance of the Sets imposed or required by any Relevant Approvals; and
- (c) provide a copy of such confirmation, together with a copy (hard copy and electronic copy) of the Maintenance Plan to the Secretary of State's Representative and the Relevant Operator (as applicable).

5.2 Without prejudice to Appendix E (*Approvals Plan*) of Schedule 1 (*Set Specification and Design*), the TSP shall provide such assistance as the Relevant Operator may reasonably require to enable the Relevant Operator to prepare its Safety Management System to refer to the Maintenance Plan and the confirmation from the verification body under Paragraph 5.1.

6. **ACCESS TO THE MAINTENANCE PLAN AND RELATED MATERIALS**

6.1 The TSP Delivery Manager shall provide a copy of the Maintenance Plan to the Secretary of State's Representative and the Relevant Operator on request as, when and to the extent reasonably required for the Secretary of State and the Relevant Operator:

- (a) to confirm that the TSP is fulfilling its obligations;
- (b) to perform their own obligations; and
- (c) to verify that they shall be able to perform their obligations in future,

in each case, under this Agreement, the TARA, all Applicable Laws and Standards and all Relevant Approvals.

6.2 The TSP Delivery Manager shall, whenever reasonably requested and when required in accordance with Paragraphs 4.1 and 6.1, provide the Relevant Operator and the Secretary of State's Representative with all materials and information (the **Supporting Information**) reasonably necessary to enable the Relevant Operator and the Secretary of State's Representative to review the Maintenance Plan, and any subsequent changes proposed thereto, and to understand how the Maintenance Plan satisfies or shall satisfy the requirements of this Schedule and the Maintenance Requirements (as may be developed through the requirements capture exercise), particularly to the extent reasonably required for:

- (a) the Relevant Operator to verify that it shall be able to comply with (or, where applicable, to continue to comply with) all Applicable Laws and Standards and Relevant Approvals and its Safety Management System;

- (b) the Secretary of State to verify that she shall be able to fulfil her obligations in the event that this Agreement and/or the TARA is terminated; and
- (c) the Secretary of State to confirm that the TSP is fulfilling its obligations under this Agreement in relation to the Maintenance Plan.

6.3 The rights in favour of the Relevant Operator under this Paragraph 6 may only be exercised (by the Relevant Operator or by the Secretary of State on behalf of the Relevant Operator) until the Actual Acceptance Date of the first Set in the Fleet, following which date the Relevant Operator's rights under part C (*Train Maintenance and Servicing*) of schedule 4 (*Contract Management and Compliance*) of the TARA shall apply instead.

7. AMENDMENTS TO THE MAINTENANCE PLAN

7.1 The TSP acknowledges that the Maintenance Plan, in conjunction with the Relevant Operator's Safety Management System, shall together form the suite of arrangements by which the Relevant Operator shall fulfil its responsibilities and obligations under Applicable Laws and Standards and Relevant Approvals with regard to the Maintenance Arrangements.

7.2 Any amendments made to the Maintenance Plan following verification in accordance with Paragraph 5 shall be made in accordance with:

- (a) up to the Actual Acceptance Date of the first Set in the Fleet, this Paragraph 7; and
- (b) on and from the Actual Acceptance Date of the first Set in the Fleet, the requirements of part C (*Train Maintenance and Servicing*) of schedule 4 (*Contract Management and Compliance*) of the TARA, and the TSP Delivery Manager shall provide the Secretary of State's Representative with a copy of the Maintenance Plan following any such amendments together with, if applicable, a copy of any confirmation from an appropriate verification body required in accordance with the TARA.

7.3 In respect of all changes, the TSP Delivery Manager shall:

- (a) notify the Secretary of State's Representative and the Relevant Operator;
- (b) provide a copy (hard copy and electronic copy) of the amended Maintenance Plan as soon as reasonably practicable following such amendment (including following compliance with its obligations under Paragraph 7.4 in respect of any amendment to the Maintenance Plan having the effects contemplated by Paragraph 7.4); and
- (c) if required in the opinion of the TSP or if reasonably requested by the Relevant Operator or the Secretary of State, procure confirmation from the relevant verification body that the amended Maintenance Plan still meets the requirements of all Applicable Laws and Standards and any conditions relating to the maintenance of the Sets, or the control and conduct of the maintenance of the Sets, imposed or required by any Relevant Approvals, and provide a copy of such confirmation to the Relevant Operator and the Secretary of State.

7.4 In respect of any changes that may materially affect the ability of the Secretary of State or the Relevant Operator to comply with their obligations under this Agreement, the TARA, any Applicable Laws and Standards or any Relevant Approvals, or may materially affect

the cost to the Secretary of State or the Relevant Operator (as applicable) of such compliance, the TSP Delivery Manager shall:

- (a) consult with the Secretary of State's Representative and the Relevant Operator prior to implementing any such changes;
- (b) provide the Secretary of State's Representative and the Relevant Operator with ten (10) Business Days, or such longer period of time as may be agreed by the parties, in advance of making or implementing any proposed changes, to review all materials and to respond with any comments or suggestions;
- (c) consider any comments or suggestions received in good faith; and
- (d) not make any changes which would result (directly or indirectly) in the Secretary of State and/or the Relevant Operator being in breach of, or unable to comply with, any Applicable Laws and Standards or Relevant Approvals, or its obligations under this Agreement or the TARA.

8. MODIFICATIONS TO THE SETS

8.1 Subject to:

- (a) the remainder of this Paragraph 8;
- (b) Schedule 8 (*Variations*); and
- (c) Schedule 9 (*Change in Law*),

the TSP shall be entitled to modify the Sets from time to time after the Actual Acceptance Date of the first Set in the Fleet.

8.2 If the TSP proposes to make any modifications to the Sets, in advance of making any such modification the TSP shall:

- (a) notify the Secretary of State and the Relevant Operator of all such modifications;
- (b) consult with the Relevant Operator in respect of any such proposed modification to the extent that such amendment may impact on the way that the Relevant Operator operates the Sets and/or any Simulator, or would require the Relevant Operator to notify its staff in respect of such modification;
- (c) procure through its internal arrangements and processes or through its sub-contracts that the competent design authority approves the modification to the Sets; and
- (d) make such amendments to the Maintenance Plan in accordance with this Part C (*Train Maintenance and Servicing*) or part C (*Train Maintenance and Servicing*) of schedule 4 (*Contract Management and Compliance*) of the TARA as are necessary to reflect such modification.

8.3 The TSP shall not make any modifications to the Sets without the prior written consent of:

- (a) the Secretary of State, to the extent that any modification to the Sets would:
 - (i) result (directly or indirectly) in such Sets not complying with the Train Technical Specification; and/or

- (ii) result (directly or indirectly) in such Sets not complying with the Train Technical Description; and/or
 - (iii) materially adversely affect the interoperability of the Sets with other units operating over the IEP Network; and/or
 - (iv) result (directly or indirectly) in the Secretary of State being in breach of, or unable to comply with, any Applicable Laws and Standards, any Relevant Approvals (where such Relevant Approvals are binding upon the Secretary of State) or her obligations under this Agreement; and/or
- (b) the Relevant Operator, to the extent that any modification to the Sets would:
- (i) affect the Relevant Operator's revenues, costs or risks of operating the Sets and/or any Simulator; and/or
 - (ii) result (directly or indirectly) in the Relevant Operator being in breach of, or unable to comply with any Applicable Laws and Standards or Relevant Approvals, or its obligations under the TARA.

8.4 To the extent that the TSP modifies the Sets in accordance with this Paragraph 8, the Design shall be amended to reflect such modification.

8.5 Where this Agreement provides for the TSP to provide Sets of more than one Type, if a Type Acceptance Certificate has been issued in respect of some but not all of those Types and the TSP then proposes to modify the Design of a Type in respect of which a Type Acceptance Certificate has not yet been issued:

- (a) if the proposed change to the Design of such Type will not require any modification to any Sets of any Type in respect of which a Type Acceptance Certificate has been issued, such change to the Design shall be governed by Paragraph 12 of Appendix D (*Design Plan*) of Schedule 1 (*Set Specification and Design*) notwithstanding that the change is being proposed after the Actual Acceptance Date of the first Set in the Fleet; or
- (b) if the proposed change to the Design of such Type will require modification to Sets of any Type in respect of which a Type Acceptance Certificate has been issued, the proposed change shall be governed by this Paragraph 8.

9. **COMPLIANCE WITH APPLICABLE LAWS AND STANDARDS AND RELEVANT APPROVALS**

Any reference in this Part to a requirement to comply with Applicable Laws and Standards or Relevant Approvals shall not apply to any Applicable Laws and Standards or Relevant Approvals to the extent of any Applicable Derogation.

SCHEDULE 4

Train Availability and Reliability Agreements

Part A of Schedule 4

Obligations to enter into the Initial TARA

- 1.1 The TSP shall enter into the Initial TARA with the Initial Relevant Operator within five (5) Business Days of the Secretary of State notifying the TSP of the identity of the Initial Relevant Operator and requesting the TSP to do so in writing.
- 1.2 The Secretary of State shall procure that the Initial Relevant Operator enters into the Initial TARA with the TSP on the earlier of (a) the first day of the term of the applicable Relevant Franchise Agreement and (b) the date that is six (6) months prior to the first Scheduled Acceptance Date of a Set in the Fleet.

Appendix A to Part A of Schedule 4
Form of Relevant Operator Direct Agreement

Dated _____

AGILITY TRAINS WEST LIMITED
(as the TSP)

[•]
(as the Relevant Operator)

RELEVANT OPERATOR DIRECT AGREEMENT

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THIS RELEVANT OPERATOR DIRECT AGREEMENT (this **Agreement**) is made as a deed on [•]³

BETWEEN:

- (1) **AGILITY TRAINS WEST LIMITED**, a company incorporated in England and Wales whose registered number is 07930606 and whose registered address is at 4th Floor, 4 Cophthall Avenue, London, EC2R 7DA (the **TSP**); and
- (2) [_____], a company incorporated in England and Wales whose registered number is [_____] and whose registered address is at [_____] (the **Relevant Operator**).

WHEREAS:

- (A) The Secretary of State for Transport (the **Secretary of State**) and the TSP have entered into a master availability and reliability agreement dated [•] pursuant to which the TSP was appointed the train service provider to design, build, own and maintain a new fleet of high speed trains for operation on the Great Western IEP Network (the **MARA**).
- (B) [On the date that is the earlier of: (a) the first day of the term of the Relevant Franchise Agreement; and (b) the date that is six (6) months prior to the first Scheduled Acceptance Date of a Set in the Fleet, the TSP and the Relevant Operator shall enter into a TARA pursuant to which the TSP shall agree to make the Sets available to the Relevant Operator for the provision of passenger services on the Great Western IEP Network (the **Relevant Operator TARA**).]⁴
- (C) [On or around the date hereof, the TSP and the Relevant Operator have entered into a TARA pursuant to which the TSP has agreed to make the Sets available to the Relevant Operator for the provision of passenger services on the Great Western IEP Network in accordance with its terms (**the Relevant Operator TARA**).]⁵
- (D) The MARA provides for the exercise of certain rights, the assumption of certain obligations and the performance of certain acts by the Relevant Operator and this Agreement sets out the terms on which the Relevant Operator agrees for the benefit of the TSP to assume such obligations and perform such acts.

NOW THEREFORE for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, **IT IS AGREED** as follows:

1. INTERPRETATION AND DEFINITIONS

Interpretation

- 1.1 In this Agreement, except to the extent the context otherwise requires:

³ The DfT and Agility agree that, in the case of the Initial Relevant Operator, this Agreement shall be entered into on the earlier of the date of the Relevant Franchise Agreement (or the next occurring Business Day) and 31 December 2013.

⁴ Form of Recital B to be used where, in the case of the Initial Relevant Operator, this Agreement is entered into on 31 December 2013, in advance of the Relevant Franchise Agreement.

⁵ Form of Recital C to be used where, in the case of the Initial Relevant Operator, this Agreement is entered into on the date of the Relevant Franchise Agreement (which will also be the date of the Relevant Operator TARA), and is also to be used in the case of all subsequent Relevant Operators who are obliged under the terms of the MARA to enter into this Agreement (where the date of this Agreement will be the same as that of the Relevant Franchise Agreement and the Relevant Operator TARA). Agility Note: form of Recital C to be used in the RODA to be entered into with First Great Western.

- (a) the words **person** or **persons** or to words importing persons include, without limitation, individuals, partnerships, corporations, government agencies, committees, departments, authorities and other bodies, corporate or unincorporated, whether having distinct legal personality or not;
- (b) **TSP** or **Relevant Operator** include any successor in title to the TSP or the Relevant Operator respectively;
- (c) any deed, agreement or instrument shall include any such deed, agreement or instrument as may from time to time be amended, supplemented or substituted;
- (d) an **agreement** also includes a concession, contract, deed, franchise, licence, treaty or undertaking (in each case, whether oral or written);
- (e) **law** includes common or customary law and any constitution, decree, judgment, legislation, order, ordinance, regulation, statute, treaty or other legislative measure in any jurisdiction or any present or future directive, regulation, request or requirement (in each case, whether or not having the force of law but, if not having the force of law, the compliance with which is in accordance with the general practice of persons to whom the directive, regulation, request or requirement is addressed);
- (f) the words **include**, **including** and **in particular** shall be construed without limitation;
- (g) unless otherwise stated in this Agreement, the MARA or the TARA, the costs of performing an obligation under this Agreement shall be borne by the party required to perform such obligation;
- (h) a Clause is a reference to a clause of this Agreement;
- (i) headings are for ease of reference only; and
- (j) where the context so admits, words importing the singular number only shall include the plural and vice versa, and words importing neuter gender shall include the masculine or feminine gender.

Definitions

1.2 In this Agreement, except where the context otherwise requires: (a) words and expressions defined in the MARA shall have the same respective meanings; and (b) the following terms shall have the following meanings:

Acceptance Process means the process for progressive acceptance of Sets into revenue-earning passenger service and dealing with outstanding matters specified in Part A (*Testing and Acceptance*) of Schedule 2 (*Introduction into Service*) of the MARA (and including Appendix B (*Fault Free Running Conditions*) to Part A (*Testing and Acceptance*) of Schedule 2 (*Introduction into Service*) of the MARA);

Action Notice has the meaning given to it in Clause 6.1;

Approvals Plan means the TSP's plan for obtaining all Relevant Approvals including any required Derogations in relation to each Set, developed and implemented in accordance with Appendix E (*Approvals Plan*) of Schedule 1 (*Set Specification and Design*) of the MARA;

Confirmatory Action Notice has the meaning given to it in Clause 6.3;

Dispute Resolution Agreement means the dispute resolution agreement dated the Effective Date between the Secretary of State, the TSP and the Relevant Operator (as amended, varied and acceded to from time to time in accordance with its terms);

Fleet Acceptance Certificate means the fleet acceptance certificate to be issued in respect of the Fleet pursuant to Paragraph 9 of Part A (*Testing and Acceptance*) of Schedule 2 (*Introduction into Service*) of the MARA, excluding any Sets treated as a Total Loss thereunder;

Indexation means, in respect of any amount set out in this Agreement that is stated to be Indexed, the adjustment of such amount to reflect any adjustment to the Retail Prices Index between the stated date and the date on which reference to such amount is made, and **Indexed** shall be construed accordingly;

Losses means all damages, losses, liabilities, costs, expenses (including legal and other professional charges and expenses) and charges whether arising under statute, contract or at common law or in connection with judgments, proceedings, internal costs or demands and **Loss** shall be construed accordingly;

MARA has the meaning given to it in Recital (A);

MARA Effective Date has the meaning given to "Effective Date" in the MARA;

Related Loss has the meaning given to it in Clause 10;

Relevant Franchise Agreement means the agreement entered into, or to be entered into, by the Relevant Operator for the provision of passenger services and the operation of Sets in accordance with the Relevant Operator TARA;

Relevant Operator Obligations has the meaning given to it in Clause 2.1;

Relevant Operator TARA has the meaning given to it in Recital (B);

Relevant Operator TARA Expiry Date has the meaning given to "Expiry Date" in the Relevant Operator TARA;

Scheduled Acceptance Date means:

- (a) in relation to a Type, the Type Acceptance Date specified in the Delivery Schedules; and
- (b) in relation to any Set, the Acceptance Date specified in the Delivery Schedules,

in each case as extended and notified to TSP pursuant to Paragraph 1.7 of Part B (*Delayed Delivery and Delayed Acceptance*) of Schedule 2 (*Introduction into Service*) of the MARA;

Secretary of State has the meaning given to it in Recital (A); and

Training Plan means the TSP's plan for the performance of its obligations in respect of the delivery of training pursuant to Appendix G (*Training*) of Schedule 1 (*Set Specification and Design*) of the MARA.

2. RELEVANT OPERATOR OBLIGATIONS

2.1 The Relevant Operator acknowledges that the MARA provides for the assumption of certain obligations and the performance of certain acts by the Relevant Operator in relation to:

- (a) the Acceptance Process;
- (b) the Approvals Plan;
- (c) the Training Plan;
- (d) the matters set out in Appendix C (*Specific Infrastructure Acceptance Issues*) of Schedule 1 (*Set Specification and Design*) of the MARA; and
- (e) the matters set out in Annex E (*Relevant Operator Equipment*) of Appendix D (*Design Plan*) of Schedule 1 (*Set Specification and Design*) of the MARA,

(together, the **Relevant Operator Obligations**).

2.2 Without prejudice to Clause 2.3, the Relevant Operator shall not be obliged to perform, nor to incur any liability in respect of, any obligations in excess of the Relevant Operator Obligations as set out in the MARA dated [•] (and, for the avoidance of doubt, shall not be obliged to perform, nor to incur any liability in respect of, any additional obligations arising from any amendment of the MARA by the Secretary of State and the TSP) except where the Secretary of State has provided notice in writing to the Relevant Operator of such increased obligations.

2.3 The Relevant Operator shall, subject to the terms of this Agreement, perform the Relevant Operator Obligations and at all times shall co-operate with the TSP and act reasonably and in good faith in the performance of the Relevant Operator Obligations (including as to any performance, non-performance, timeliness of performance and/or quality of performance of, or associated with the performance of, the Relevant Operator Obligations).

3. REPRESENTATIONS AND WARRANTIES

TSP Representations and Warranties

3.1 The TSP represents and warrants to the Relevant Operator on the date of execution of this Agreement that:

- (a) the TSP is a company properly organised and validly existing under the laws of England and Wales as a limited liability company;
- (b) the TSP has the power to carry on its business as it is now being conducted and has all licences, consents, approvals, permits, authorisations, exemptions, registrations and certifications required for that purpose;
- (c) the TSP has the power to enter into and perform its obligations under this Agreement, and all necessary corporate, shareholder and other action has been taken to authorise the entry into, performance and delivery of this Agreement and this Agreement constitutes its legally valid, binding and enforceable obligations in accordance with its terms; and

- (d) entering into this Agreement and performing its obligations under this Agreement will not:
 - (i) conflict with the TSP's Memorandum and Articles of Association;
 - (ii) conflict with any law or regulation applicable to the TSP; or
 - (iii) conflict with, or result in a breach of, any existing contract which is binding on the TSP.

Relevant Operator Representations and Warranties

3.2 The Relevant Operator represents and warrants to the TSP on the date of execution of this Agreement that:

- (a) the Relevant Operator is a company properly organised and validly existing under the laws of England and Wales as a limited liability company;
- (b) the Relevant Operator has the power to carry on its business as it is now being conducted and has all licences, consents, approvals, permits, authorisations, exemptions, registrations and certifications required for that purpose;
- (c) the Relevant Operator has the power to enter into and perform its obligations under this Agreement, and all necessary corporate, shareholder and other action has been taken to authorise the entry into, performance and delivery of this Agreement and this Agreement constitutes its legally valid, binding and enforceable obligations in accordance with its terms; and
- (d) entering into this Agreement and performing its obligations under this Agreement will not:
 - (i) conflict with the Relevant Operator's Memorandum and Articles of Association;
 - (ii) conflict with any law or regulation applicable to the Relevant Operator; or
 - (iii) conflict with, or result in a breach of, any existing contract which is binding on the Relevant Operator.

4. TERM OF THIS AGREEMENT

4.1 The obligations of the parties under this Agreement are subject to:

- (a) the Secretary of State and the TSP having entered into the MARA and the MARA Effective Date having occurred; and
- (b) at any time that any Relevant Operator Obligation falls due for performance, the TSP being in compliance with all of its obligations under the MARA that are applicable to the performance of the Relevant Operator Obligations and (where, as at such time, the TSP and the Relevant Operator have entered into the Relevant Operator TARA and the Relevant Operator TARA is in full force and effect) the Relevant Operator TARA where any such non-compliance may, in the view of the Relevant Operator, detrimentally affect the rights, interests or standing of the Relevant Operator under or relating to the MARA or the Relevant Operator TARA.

- 4.2 This Agreement shall terminate on the earlier of:
- (a) the date on which the Relevant Operator or the Secretary of State issues a Fleet Acceptance Certificate in accordance with the terms of the MARA; and
 - (b) the Relevant Operator TARA Expiry Date,
- save that Clauses 5, 8 and 12 shall survive termination of this Agreement pursuant to this Clause 4.2.

5. LIMITS OF LIABILITY

Relevant Operator Liability

- 5.1 Without prejudice to Clause 5.2 and the terms of the MARA and the Relevant Operator TARA, the Relevant Operator's total liability to the TSP under this Agreement in respect of all Losses of the TSP arising under or in connection with its performance of the Relevant Operator Obligations in accordance with this Agreement, whether in contract, tort (including negligence), breach of statutory duty or otherwise, shall in no circumstances exceed ten million pounds Sterling (£10,000,000) (Indexed from the MARA Effective Date).
- 5.2 The Relevant Operator shall in no circumstances be liable to the TSP under this Agreement, whether in contract, tort (including negligence), breach of statutory duty or otherwise, for any Losses of the TSP which the TSP has recovered (or is able to recover, or would have been able to recover but for the operation of any other provision of the MARA) pursuant to Paragraph 3 of Part B (*Delayed Delivery and Delayed Acceptance*) of Schedule 2 (*Introduction into Service*) of the MARA.
- 5.3 The TSP shall take all reasonable steps to mitigate any Loss for which it is entitled to bring a claim against the Relevant Operator under this Agreement, and nothing in this Agreement shall give the TSP the right to any double recovery in respect of any claims under the Project Documents.

TSP Liability

- 5.4 Without prejudice to Clause 5.5 and the terms of the MARA and the Relevant Operator TARA, the TSP's total liability to the Relevant Operator under this Agreement in respect of all Losses of the Relevant Operator arising under or in connection with the performance of the TSP's obligations pursuant to this Agreement, whether in contract, tort (including negligence), breach of statutory duty or otherwise, shall in no circumstances exceed ten million pounds Sterling (£10,000,000) (Indexed from the MARA Effective Date).
- 5.5 The TSP shall in no circumstances be liable to the Relevant Operator under this Agreement, whether in contract, tort (including negligence), breach of statutory duty or otherwise, for any Losses of the Relevant Operator which the Relevant Operator has recovered (or is able to recover, or would have been able to recover but for the operation of any other provision of the Relevant Operator TARA) pursuant to the Relevant Operator TARA.
- 5.6 The Relevant Operator shall take all reasonable steps to mitigate any Loss for which it is entitled to bring a claim against the TSP under this Agreement and nothing in this Agreement shall give the Relevant Operator the right to any double recovery.

6. **RELEVANT OPERATOR BREACH**

- 6.1 The TSP agrees to promptly notify the Relevant Operator in writing if at any time the TSP reasonably considers that the Relevant Operator is in breach of its obligations under this Agreement. Such notice (an **Action Notice**) shall include a statement by the TSP that the TSP reasonably believes that the Relevant Operator is in breach of its obligations under this Agreement and shall provide reasonable details of:
- (a) the grounds for that view;
 - (b) the acts which the TSP believes should reasonably have been performed by the Relevant Operator in order to satisfy its obligations under this Agreement which were not so performed; and
 - (c) the steps which the TSP (acting reasonably) considers are required to be taken by the Relevant Operator in order to satisfy its obligations under this Agreement.
- 6.2 The parties shall consult in good faith in relation to any Action Notice and the reasons identified by the TSP therein, and the TSP shall take due account of the Relevant Operator's representations in respect of such matters.
- 6.3 If, having consulted in good faith with the Relevant Operator and having taken due account of the Relevant Operator's representations in accordance with Paragraph 6.2, the TSP's considered view is that the Relevant Operator is in breach of its obligations under this Agreement, the TSP shall promptly notify the Relevant Operator in writing to that effect. Such notice (a **Confirmatory Action Notice**) shall:
- (a) include a statement by the TSP that it is the TSP's considered view that the Relevant Operator is in breach of its obligations under this Agreement;
 - (b) provide reasonable details of the grounds for that view; and
 - (c) provide reasonable details of the steps which the TSP considers are required to be taken by the Relevant Operator in order to satisfy its obligations under this Agreement.
- 6.4 (a) The TSP may at any time request in writing from the Relevant Operator such information as the Relevant Operator may reasonably be able to provide as to the compliance by the Relevant Operator with its obligations under this Agreement, and the Relevant Operator shall use reasonable endeavours to provide such information as soon as reasonably practicable following any such request.
- (b) Without prejudice to Clause 6.4(a), the Relevant Operator may at any time provide to the TSP any information that the Relevant Operator sees fit as evidence of the compliance by the Relevant Operator with its obligations under this Agreement.
- 6.5 The TSP agrees that, in the event of any subsequent dispute pursuant to Clause 7 as to whether the Relevant Operator has complied with its obligations under this Agreement, the TSP may only rely on grounds:
- (a) which were identified in an Action Notice served by the TSP in accordance with Paragraph 6.1 and/or a Confirmatory Action Notice subsequently served by the TSP in accordance with Paragraph 6.3;

- (b) in respect of which it was not reasonable to have expected the TSP to have served notice in accordance with Paragraph 6.1 or 6.3; or
- (c) of which the TSP was not aware, and of which it is not reasonable to expect the TSP to have been aware, having regard to any information provided pursuant to Paragraph 6.4(a) or (b).

7. DISPUTE RESOLUTION

The parties agree that any dispute or difference of whatever nature arising under or in connection with the terms of this Agreement, or under or in connection with any other obligations or rights the parties may acquire in relation to this Agreement, shall be determined in accordance with the Dispute Resolution Agreement, and each party shall comply with its respective obligations thereunder.

8. CONFIDENTIALITY

The provisions of schedule 13(*Confidentiality*) of the Relevant Operator TARA shall have effect between the parties as if references in that schedule to "this Agreement" were references to this Agreement, and each party shall comply with its respective obligations thereunder.

9. MISCELLANEOUS PROVISIONS

Benefit of Agreement

- 9.1 Except for any assignment by the TSP required as security under the Financing Documents, neither the TSP nor the Relevant Operator shall assign or transfer all or any of its rights and/or obligations under this Agreement without the prior written consent of the other party hereto.

Cumulative Rights

- 9.2 Each of the TSP's and the Relevant Operator's rights and remedies under this Agreement are cumulative and may be exercised as often as either of them considers appropriate. Any failure to exercise or any delay in exercising any of such rights shall not operate as a waiver or variation of that or any other such right, any defective or partial exercise of any such rights shall not preclude any other or further exercise of that or any other such right, and no act or course of conduct or negotiation on either party's part or on its behalf shall in any way preclude that party from exercising any such right or constitute a suspension or variation of any such right.

Further Assurance

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

Waivers

- 9.4 (a) No term or provision of this Agreement shall be considered waived by any party to it unless a waiver is given in writing by that party.

- (b) No waiver under this Clause 9.4 shall be a waiver of a past or future default or breach, nor shall it amend, delete or add to the terms, conditions or provisions of the remaining parts of this Agreement except where expressly provided herein.

Severability

- 9.5 If any term, condition or provision contained in this Agreement shall be held to be void, invalid, unlawful or unenforceable to any extent, such term, condition or provision shall not affect the validity, legality or enforceability of the remaining parts of this Agreement.

Entire Agreement

- 9.6 This Agreement (including the provisions of the Project Documents referred to and incorporated herein) contains the entire agreement between the parties in relation to the subject matter of this Agreement and supersedes all prior agreements and arrangements between the parties. In addition, 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 for a breach of the terms of this Agreement, to the exclusion of all other rights and remedies (including those arising in tort or arising under statute).

Counterparts

- 9.7 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. Delivery of a counterpart of this Agreement by e-mail attachment or telecopy shall be an effective mode of delivery.

Rights of Third Parties Act

- 9.8 A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement (but this does not affect any right or remedy of a third party which exists or is available apart from under the Contracts (Rights of Third Parties) Act 1999).

General Obligations

- 9.9 (a) The TSP shall co-operate with the Relevant Operator and act reasonably and in good faith in and about the performance of its obligations and the exercise of its rights pursuant to this Agreement.
- (b) Without prejudice to Clause 2.2, the Relevant Operator shall co-operate with the TSP and act reasonably and in good faith in and about the performance of its obligations and the exercise of its rights pursuant to this Agreement.

Amendment

- 9.10 No amendment to this Agreement shall be valid unless it is in writing and signed by both parties.

10. RELATED LOSS

Notwithstanding any other provisions of this Agreement, to the extent that the Relevant Operator is liable to the TSP for any claim arising under this Agreement, the Relevant Operator shall not be entitled to avoid or reduce its liability to the TSP on the basis that

the TSP would not (but for this Clause 10) suffer all or part of the relevant Loss or damage (**Related Loss**) solely because such Related Loss is incurred by a sub-contractor (of any tier) of the TSP and the sub-contractor's rights to recover such Related Loss from the TSP are deferred, suspended, or dependent upon determination of the extent of entitlement under this Agreement or any sub-contract (of any tier).

11. NOTICES

11.1 Any notice, notification or other communication 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 following addresses:

To the **TSP** at:

Address: 4th Floor
4 Copthall Avenue
London EC2R 7DA

Attention: Chief Executive Officer

To the **Relevant Operator** at:

Address: [●]

Attention: [●]

or such other address in the United Kingdom as each party may specify by notice in writing to the other party by giving at least five (5) Business Days' notice, and, in either case, with a copy to:

The **Secretary of State for Transport** at:

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

Attention: Director – Major Projects and London.

11.2 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 if delivered between 09:00 hours and 17:30 hours on a Business Day (otherwise on the next occurring Business Day); and
- (b) if sent by pre-paid first class post, from and to any place within the United Kingdom, three (3) Business Days after posting unless otherwise proven.

12. GOVERNING LAW AND JURISDICTION

Governing Law

12.1 This Agreement and any non contractual obligations arising out of or in connection with this Agreement shall be governed by, and interpreted in accordance with, English law.

Jurisdiction

12.2 Except as expressly provided in this Agreement by reference to the provisions of the Dispute Resolution Agreement, the English courts shall have exclusive jurisdiction in relation to all disputes arising out of or in connection with this Agreement (including claims for set-off and counterclaims), including disputes arising out of or in connection with:

- (a) the creation, validity, effect, interpretation, performance or non performance of, or the legal relationships established by, this Agreement; and
- (b) any non contractual obligations arising out of or in connection with this Agreement. For such purposes each party irrevocably submits to the jurisdiction of the English courts and waives any objection to the exercise of such jurisdiction.

Signature Page – Relevant Operator Direct Agreement

IN WITNESS whereof the parties hereto have executed this Agreement as a deed on the day and year first written before.

TSP

SIGNED by _____)
for and on behalf of **AGILITY**)
TRAINS WEST LIMITED in the)
presence of)
)

Relevant Operator

SIGNED by _____)
for and on behalf of [•] in the)
presence of)
)
)

Part B of Schedule 4

Termination, Expiry and Replacement of the Relevant TARA

1. TERMINATION OF TARA

- 1.1 The TSP may not terminate or suspend the TARA, or its rights or obligations thereunder, unless and until it has followed the procedure set out in this Paragraph 1.
- 1.2 The TSP shall not, during a period of thirty (30) days (the **Cure Period**) after providing a written notice to the Secretary of State of its intention to terminate the TARA, including full details of the grounds for termination (a **TARA Default Notification**), take any steps to terminate such TARA unless requested to do so (or consented to) in writing by the Secretary of State (in which case the TARA shall terminate immediately).
- 1.3 (a) Subject to Paragraph 1.3(c), if the Secretary of State does not consent in writing to termination taking effect within ten (10) days after the date of receipt of any TARA Default Notification, then the Secretary of State shall, subject to Paragraph 1.3(b), procure that the Relevant Operator pays within thirteen (13) days of receipt by the Secretary of State of the TARA Default Notification:
- (i) all amounts due to be paid by the Relevant Operator to the TSP during a period beginning with the Secretary of State's receipt of the TARA Default Notification and continuing for so long as (but no longer than) the grounds for termination stated in that TARA Default Notification continue to entitle the TSP to terminate the TARA; together with
 - (ii) any unpaid amounts owed by the Relevant Operator that gave rise to the TSP's right of termination, as specified in the TARA Default Notification.
- (b) To the extent the Secretary of State fails to procure any such payment under Paragraph 1.3(a) by the time specified in Paragraph 1.3(a), such payments shall become payable by the Secretary of State two (2) Business Days following such date, but for the purposes of limb (a) of the definition of Secretary of State Default, such amount shall be deemed due and payable from the applicable Payment Date (as defined in the TARA) on which it fell due and payable under the TARA.
- (c) In the event that the notice provided by the TSP pursuant to Paragraph 1.2 states that, and it is the case that, the grounds for termination include any of the reasons specified in paragraph 1 of part C (*Operator Default*) of schedule 10 (*Remedies, Default and Termination*) of the TARA then a period of three (3) days shall be substituted for the period of ten (10) days and the period of six (6) days shall be substituted for the period of thirteen (13) days, each as referred to in Paragraph 1.3(a).
- 1.4 If the Secretary of State procures that any breach or default by the Relevant Operator is cured within such Cure Period or provides assurance on terms satisfactory to the TSP that such default will be cured by an agreed later date and such default is cured by such agreed later date, then the TSP shall not terminate the TARA by reason of that breach or default.
- 1.5 The TSP will immediately inform the Secretary of State when it proceeds to terminate the TARA in accordance with this Paragraph 1.

1.6 Where, in relation to the TARA, a Force Majeure Event (as defined in that TARA) is continuing or its effects are continuing such that the Affected Party (as defined in that TARA) is unable to comply with substantially all of its obligations under such TARA for a period of more than one hundred and eighty (180) days, and either party to that TARA has provided written notice to the Secretary of State pursuant to and in accordance with paragraph 4 of part E of schedule 10 (*Remedies, Default and Termination*) of that TARA, the Secretary of State may at her sole discretion direct the parties to that TARA to terminate it immediately or after such period of time as the Secretary of State determines.

2. TERMINATION OF A RELEVANT FRANCHISE AGREEMENT

2.1 The relevant TARA entered into by the TSP shall be on terms that it terminates either:

- (a) on the scheduled termination date of the Relevant Franchise Agreement to which it relates; or
- (b) if that Relevant Franchise Agreement terminates early, on such date as the Secretary of State may notify to the TSP for this purpose.

2.2 The TSP consents to the Secretary of State, her nominee or the Relevant Operator (and their successors) transferring the benefit and burden of that Relevant Operator's rights and obligations under the TARA to any person who is appointed by the Secretary of State to operate railway passenger services using the Sets concerned.

3. REQUIREMENT TO ENTER INTO A REPLACEMENT TARA

3.1 On termination or expiry of the TARA, and howsoever that may arise, the TSP shall, without prejudice to Paragraph 5, enter into a replacement TARA with any operator of railway passenger services nominated by the Secretary of State and in relation to the Sets specified by the Secretary of State.

3.2 Any replacement TARA entered into pursuant to Paragraph 3.1:

- (a) may require Sets to be deployed:
 - (i) anywhere on the Network; and
 - (ii) in any formations,provided always that it is technically possible for the TSP to deploy such Sets on the parts of the Network and in the formations specified by the Secretary of State; and
- (b) otherwise shall be on terms stipulated by the Secretary of State in accordance with the provisions of this Agreement (including Paragraph 3.3).

3.3 The provisions of Schedule 8 (*Variations*) shall apply to any entry into a replacement TARA insofar as that replacement TARA:

- (a) requires, pursuant to Paragraph 3.2(a), the deployment of the relevant Sets on a different part of the Network or in different formations from the relevant requirements under the terminated TARA; or
- (b) is on terms which differ in any respects from the terms of the expired or terminated TARA (as originally entered into or subsequently amended in

accordance with Schedule 8 (*Variations*) other than changes to the expired or terminated TARA to reflect a change in parties or a change in the Contract Period.

4. FRANCHISE BIDDING PROCEDURE

Information Provision

- 4.1 The TSP acknowledges that the Secretary of State may wish to invite persons to tender for the right to provide passenger services under a Relevant Franchise Agreement, or alternatively to enter into a Relevant Franchise Agreement without having gone through a tendering process.
- 4.2 The TSP will provide the Secretary of State and her representatives and advisers with reasonable access to all books, records and other materials kept by or on behalf of the TSP in connection with the Sets for the purpose of assisting such representatives and advisers:
- (a) to prepare reports or other documents in connection with any invitation to potential operators to tender for the right and obligation to operate all or any of the franchise services under any Relevant Franchise Agreement; or
 - (b) to enter into any Relevant Franchise Agreement without undergoing a tendering process,

provided that the exercise of such access rights by the Secretary of State and her representatives and advisers shall not unduly interfere with the continuing provision and operation by the TSP of its obligations under this Agreement and the TARA then in force.

- 4.3 Without limiting the generality of Paragraph 4.2, the TSP shall, when reasonably requested by the Secretary of State, promptly provide to the Secretary of State, and consents to the publication to each Franchise Bidder of:
- (a) any Relevant TARA (including all schedules, appendices and amendments thereto) with appropriate redactions agreed between the parties from time to time;
 - (b) complete records of past performance of the TSP including:
 - (i) all performance data required to be maintained under paragraph 2 of part A (*Contract Management*) of schedule 4 (*Contract Management and Compliance*) of any TARA during the term of the franchise agreement that relates to the old TARA and is to be replaced by the Relevant Franchise Agreement;
 - (ii) details of any Notifiable Events that have occurred in the term of the franchise agreement that relates to the old TARA and is to be replaced by the Relevant Franchise Agreement; and
 - (iii) minutes of all TARA Performance Review Meetings and TARA Principals' Meetings, together with copies of the corresponding TARA Performance Reports relating to the term of the franchise agreement that relates to the old TARA and is to be replaced by the Relevant Franchise Agreement,

in each case, in relation to the Relevant TARA and any other existing TARA that the Secretary of State reasonably determines to be relevant to the franchise tendering procedure; and

- (c) details of the Sets that are to be part of the train fleet under the Relevant Franchise Agreement.

Obligation to Assist Franchise Bidders

- 4.4 The TSP acknowledges that in order for a Franchise Bidder to provide the Secretary of State with a complete and accurate tender return, it will require information and assistance from the TSP in order accurately to scope and price its franchise tender return.
- 4.5 The TSP will provide reasonable assistance to each Franchise Bidder when putting together its franchise bid, including:
 - (a) considering, discussing and agreeing with any Franchise Bidder on fair, non-discriminatory and transparent terms any Variations that the Franchise Bidder proposes; and
 - (b) using the Variation procedure under this Agreement to determine with the Secretary of State the changes in TARA Payments and any other consequences that will be required should the Franchise Bidder be appointed the franchisee under the Relevant Franchise Agreement and require the TSP to effect the changes it is proposing,

including, in each case, to carry out indicative iterations of Runs of the Financial Model and indicative Variations for each Franchise Bidder to determine the financial and other consequences of its proposals.

- 4.6 The TSP agrees that, upon a Franchise Bidder being appointed the franchisee under a Relevant Franchise Agreement and entering into a replacement TARA with the TSP in accordance with Paragraph 3, it shall carry out any Variations agreed with that Franchise Bidder under Paragraph 4.5 on the terms so agreed.
- 4.7 The TSP shall bear its own costs in performing its obligations under Paragraph 3 and this Paragraph 4, provided that in relation to its obligations under Paragraph 4.5, it shall be required to do so in each franchise tendering process only to the extent that there are five (5) or fewer Franchise Bidders requesting its assistance in connection with such franchise tendering process. Where there are more than five (5) Franchise Bidders requesting its assistance in relation to any one franchise tendering process the TSP shall still be required to perform its obligations under this Paragraph 4 but the Secretary of State shall meet the reasonable costs of the TSP in providing the assistance required under Paragraph 4.5 in excess of the costs that would have been incurred were there only five (5) Franchise Bidders.

5. LIMITATION ON OBLIGATIONS

- 5.1 On or after the RV Date, the TSP shall not be obliged under this Part B (*Termination, Expiry and Replacement of the Relevant TARA*) to enter into a replacement TARA.
- 5.2 Prior to the RV Date, the TSP may be required to enter into a replacement TARA under Paragraph 3 in respect of relevant Sets. Any such Set shall remain subject to the terms of the TARA until but not beyond the RV Date, subject always to any agreement to the contrary between the Secretary of State and the parties to the TARA.
- 5.3 Where the RV Date falls after commencement of a franchise but before the end of that franchise, the TSP will negotiate in good faith with any train operator nominated by the Secretary of State for this purpose as to the terms on which any relevant Sets may be

made available to that successor train operator following the RV Date to the expiry of that franchise.

- 5.4 The TSP agrees that, in respect only of the period when the Sets are owned by the TSP, any future lease rentals or availability payments under contracts with successor train operators for the use of the Sets after the RV Date (including under Paragraph 5.3) shall be costed using market value estimates based on the original residual value as indicated in the Financial Model, adjusted for any prevailing market circumstances, and the TSP shall provide details of any such movements on a transparent basis.

Part C of Schedule 4

Usage Undertaking

1. USAGE UNDERTAKING

- 1.1 The Secretary of State undertakes to procure that, immediately on the expiry or termination of the TARA in accordance with its terms (the **old TARA**) prior to the RV Date, a passenger train operating company or companies nominated by her:
- (a) enters into a further TARA (the **new TARA**) that complies with the following provisions of this Part C (*Usage Undertaking*) in respect of all Sets that were subject to the old TARA, the Dispute Resolution Agreement and, if applicable, a Relevant Operator Direct Agreement;
 - (b) upon the entering into of the new TARA, accedes to the Dispute Resolution Agreement in accordance with its terms; and
 - (c) in respect of any expiry or termination of the old TARA prior to the issue of a Fleet Acceptance Certificate, enters into a Relevant Operator Direct Agreement.
- 1.2 The RV Date for each Set in the Fleet shall be the date falling twenty seven years and six calendar months (27.5 years) after the Actual Acceptance Date of the first Set in the Fleet.
- 1.3 The new TARA shall be on terms compliant with the provisions of this Agreement relating to the TSP's obligations to enter into a TARA with the following additional requirements:
- (a) the provisions in the new TARA relating to standards of performance are to operate as if performance standards achieved by the TSP under the immediately preceding old TARA had been achieved by the TSP under the new TARA including:
 - (i) any Notifiable Events, Formal Warning Notices and/or Final Warning Notices; and
 - (ii) any Remedial Events and Remedial Plans,outstanding under the old TARA immediately prior to the commencement of the new TARA shall continue and be deemed to have occurred under the new TARA;
 - (b) the new TARA shall provide that the Relevant Operator may require the TSP to make available for service the same number of Sets in the Fleet that the TSP is required to make available for service under the immediately preceding old TARA for the purposes of discharging its availability commitment under the new TARA;
 - (c) the new TARA shall provide that Sets that would be Unavailable but for paragraph 2 of part G (*Obligations concerning Sets withheld from service*) of schedule 2 (*Availability*) of the immediately preceding old TARA at the time the TSP enters into the new TARA are deemed to be available in the new TARA subject to the same terms and the TSP shall be entitled to equivalent relief from Deductions to which the TSP would have been entitled under the immediately preceding old TARA in respect thereof;

- (d) the expiry date of the new TARA shall be the earlier of the expiry date of the Relevant Franchise Agreement to which the new TARA relates and the RV Date; and
- (e) where the new TARA and the immediately preceding old TARA are with the same train operator, or where the train operator under the new TARA is a subsidiary of the train operator under the old TARA or of the holding company of the train operator under the old TARA, then the train operator in respect of the new TARA shall become liable in respect of any and all outstanding costs and liabilities due and payable and/or arising from the old TARA.

1.4 Any new TARA entered into pursuant to this Part C (*Usage Undertaking*) shall provide for payment to the TSP:

- (a) in the case of any new TARA that is entered into after the Actual Acceptance Date of the last Set in the Fleet, (subject to Schedule 8 (*Variations*) where applicable) in accordance with the provisions of Appendix A (*Cash Flows and Financial Model*) to this Part C (*Usage Undertaking*) of Schedule 4 (*Train Availability and Reliability Agreements*) and by reference to the Reporting Periods that comprise the term of the new TARA; and
- (b) in the case of any other new TARA, in accordance with Schedule 8 (*Variations*).

2. DELAY IN ENTRY INTO NEW TARA

2.1 In circumstances where, prior to the RV Date, the new TARA is not entered into by the Relevant Operator immediately on the expiry or termination in accordance with the terms of the old TARA but the TSP is nevertheless ready, willing and able to make the Sets available to the Relevant Operator on the terms of the old TARA, from (but excluding) the date of expiry or termination of that old TARA to (but excluding) the date on which a Secretary of State Default may arise pursuant to limb (c) of the definition of Secretary of State Default, the Secretary of State shall be liable for any and all TARA Payments due to the TSP in respect of such period in accordance with the terms of that old TARA and the provisions of Paragraph 1.3(b) of Part B (*Termination, Expiry and Replacement of the Relevant TARA*) of Schedule 4 (*Train Availability and Reliability Agreements*) shall apply in respect of such liability.

3. TARA TRANSFER PROVISIONS

- 3.1 The Secretary of State shall comply with the obligations ascribed to her under paragraphs 1.20, 1.26 and 3.3 of part E (*Transfer Provisions*) of schedule 1 (*General Provisions*) of the TARA.
- 3.2 The Secretary of State agrees to procure that the Relevant Operator satisfies its indemnity obligations set out in paragraphs 1.2, 1.38 and 1.47 of part E (*Transfer Provisions*) of schedule 1 (*General Provisions*) of the TARA.
- 3.3 The obligations of the Secretary of State set out in Paragraphs 3.1 and 3.2 are subject to the TSP taking all reasonable steps to obtain payment from the Relevant Operator (up to and including obtaining judgment) and taking all reasonable steps by way of mitigation and, subject thereto, if the Relevant Operator has not satisfied any final judgment within 30 days, the Secretary of State agrees to pay the judgment amount itself to the TSP.

Appendix A to Part C of Schedule 4

Cash Flows and Financial Model

1.



2. The Base Period Charge shall be indexed according to paragraph 2.15 of part A (*TARA Payments*) of schedule 5 (*Payments*) of the TARA.

Part D of Schedule 4

Step-In

1. STEP-IN

- 1.1 If the Secretary of State receives a notification from the Relevant Operator in writing in accordance with paragraph 1.5 of schedule 11 (*Step-in and Step-out*) of the TARA, the Secretary of State shall notify the Relevant Operator and the TSP's Representative in writing whether she consents to (and of the terms (if any) on which her consent is given) the actions as notified to her by the Relevant Operator pursuant to this Paragraph 1 and any consequential additional action as the Relevant Operator reasonably believes is necessary, which shall in each case comply with the requirements of paragraphs 1.2 and 1.3 of schedule 11 (*Step-in and Step-out*) of the TARA.
- 1.2 The TSP shall give all reasonable assistance, to the Secretary of State and/or Relevant Operator (as applicable) to carry out such Required Action and shall enforce any rights it may have to require the Maintainer to provide all reasonable assistance in these circumstances.

Effect of Step-In

- 1.3 In respect of actions taken by the Relevant Operator or required to be taken by the Maintainer during the Step-in Period, the Relevant Operator shall act reasonably and in accordance with Good Industry Practice. Subject to Paragraph 1.4, the Secretary of State shall indemnify and keep indemnified the TSP from and against any Losses which the TSP suffers or incurs as a result of:
- (a) the failure by the Operator to act reasonably and in accordance with Good Industry Practice; and/or
 - (b) the Operator requiring the TSP or the Maintainer to act in accordance with Good Industry Practice but where such action or omission is outside the scope of the Maintenance Requirements and the Losses suffered or incurred are so suffered or incurred directly as a result of taking of the Required Action and:
 - (i) would not otherwise have been suffered or incurred; and
 - (ii) could not reasonably have been avoided by the TSP; or
 - (c) any Deductions suffered or incurred by the TSP after the end of the Step-in Period as a result of the Required Action to the extent such Deduction:
 - (i) would not otherwise have been suffered or incurred; and
 - (ii) could not reasonably have been avoided by the TSP.
- 1.4 The Secretary of State shall not be responsible or be obliged to indemnify the TSP pursuant to Paragraph 1.3 to the extent of any such Losses which the TSP suffers or incurs as a result of its failure to comply with the following:
- (a) Paragraph 1.2;

- (b) the TSP shall at all times take all reasonable steps to minimise and mitigate any injury or Loss for which it is entitled to bring a claim against the Secretary of State pursuant to Paragraph 1.4; and
 - (c) the TSP shall notify the Secretary of State in writing promptly during the Step-in Period if at any time the TSP considers that the Relevant Operator is not acting reasonably and in accordance with Good Industry Practice. The notification shall include a statement by the TSP that it reasonably believes that the Relevant Operator is in breach of its obligation to act reasonably and in accordance with Good Industry Practice during the Step-in Period and shall provide reasonable details of:
 - (i) the grounds of that view;
 - (ii) the activities which the TSP believes should reasonably have been carried out by the Relevant Operator in order to satisfy its obligation to act reasonably and in accordance with Good Industry Practice during the Step-in Period which were not so carried out; and
 - (iii) the steps which the TSP considers are required to be taken by the Relevant Operator to enable the Relevant Operator to satisfy its obligation to act reasonably and in accordance with Good Industry Practice during the Step-in Period.
- 1.5 (a) the TSP shall consult with the Secretary of State about the alleged failures of the Relevant Operator notified by the TSP under Paragraph 1.4(c) and the TSP shall take due account of the Secretary of State's representations in respect of such matters. If, having consulted with the Secretary of State and having taken due account of the Secretary of State's representations, the TSP's considered view is that the Relevant Operator has not acted reasonably and in accordance with Good Industry Practice, the TSP shall promptly notify the Secretary of State in writing to that effect. The notification shall include:
- (i) a statement by the TSP that it is its considered view that the Relevant Operator is in breach of its obligation to act reasonably and in accordance with Good Industry Practice during the Step-in Period;
 - (ii) provide reasonable details of the grounds for that view; and
 - (iii) provide reasonable details of the steps which the TSP considers are required to be taken by the Relevant Operator to enable it to satisfy its obligation to act reasonably and in accordance with Good Industry Practice during the Step-in Period;
- (b) the TSP shall, upon the request by the Secretary of State, provide to the Secretary of State records, information and/or documents as may be reasonably required by the Secretary of State to enable the Secretary of State to reach a considered view as to whether or not the Relevant Operator has acted reasonably and in accordance with Good Industry Practice; and
 - (c) and if that matter involves, or may involve, a claim against the TSP by a third party, the TSP shall, at the Secretary of State's cost:
 - (i) take such action as the Secretary of State may reasonably request to:

- (A) dispute, resist, appeal, compromise, defend, remedy or mitigate that claim; or
 - (B) enforce the TSP's rights in relation to that claim; and
- (ii) if the Secretary of State so requests and if the TSP consents (such consent not to be unreasonably withheld or delayed), allow the Secretary of State exclusive conduct of those proceedings (including any admission of liability, settlement or compromise of that claim):
- (A) the Secretary of State shall keep the TSP informed of the progress of the relevant claim, and shall consult with the TSP prior to the Secretary of State taking any decision material to the conduct of that claim; and
 - (B) the TSP shall not admit liability, settle or compromise any claim without first obtaining the TSP's prior written consent, such consent not to be unreasonably withheld or delayed.

SCHEDULE 5

Insurance

Part A of Schedule 5

Insurance Provisions

1. INSURANCE PROVISIONS

Requirement to Maintain

- 1.1 Subject to Paragraph 3, the TSP shall take out and maintain or procure the taking out and maintenance of:
- (a) during the Operational Period, the insurances described in Appendix A (*Insured Risks During Operational Period*) to Part B (*Required Insurances*) of Schedule 5 (*Insurance*) and any other insurances as may be required by law; and
 - (b) during any design and construction works period in respect of the Depots or any ancillary works to the Network, the insurances described in Appendix B (*Insured Risks During Design and Construction Works of Depots*) to Part B (*Required Insurances*) of Schedule 5 (*Insurance*) and any other insurances as may be required by law,
- in each case for the period specified in the relevant Appendix in respect of the insurance and on the terms set out in this Schedule 5 (*Insurance*).
- 1.2 The insurances required pursuant to Paragraph 1.1 must be effective in each case not later than the earliest date on which the TSP assumes the relevant risk under the terms of the Project Documents.
- 1.3 Subject to Part D (*Insurance Premium Risk Sharing*) of Schedule 5 (*Insurance*) the insurance premiums in respect of the insurances referred to in Paragraph 1.1 shall at all times be the responsibility of the TSP.
- 1.4 During the period of the manufacturing of the Sets, until such time as the insurances specified in Appendix A (*Insured Risks During Operational Period*) to Part B (*Required Insurances*) of Schedule 5 (*Insurance*) commence, the TSP shall maintain insurance cover on terms and against all relevant risks (including risks arising during the testing and commissioning of the Sets) in accordance with good industry practice. With the exception of Paragraphs 1.6 to 1.13 (inclusive), the insurances required by this Paragraph 1.4 will not be subject to the other provisions of this Paragraph 1.

Obligation on Parties

- 1.5 (a) The Secretary of State and the TSP shall not (and the TSP shall procure that no TSP Related Party shall) take any action or fail to take any reasonable action or (insofar as it is reasonably within its power) permit anything to occur in relation to it, which would entitle any insurer to refuse to pay any claim under any insurance policy in which that party is an insured, a co-insured or additional insured person or otherwise noted on that insurance policy.
- (b) The TSP shall use reasonable endeavours to procure that any broker (who at all times shall be of good repute) of the TSP, or of any other relevant party, charged

with the responsibility from time to time of placing or maintaining any of the insurances specified in Paragraph 1.1 provides the Secretary of State with a brokers' letter of undertaking substantially in the form set out in Appendix D (*Form of Broker's Letter of Undertaking*) to Part B (*Required Insurances*).

Nature of the Insurances

- 1.6 With the exception of employer's liability, motor third party liability and any other insurances required by law from time to time, the insurances referred to in Paragraph 1.1 and, to the extent applicable, in Paragraph 1.4 shall:
- (a) subject to Paragraph 1.7, name the TSP as co-insured with any other party maintaining the insurance;
 - (b) provide for non-vitiation protection in respect of any claim made by the Secretary of State as co-insured in accordance with the substance of the Endorsement in Appendix C (*Endorsement*) to Part B (*Required Insurances*);
 - (c) contain a clause waiving the insurers' subrogation rights against the Secretary of State and her employees and agents in accordance with the substance of the Endorsement in Appendix C (*Endorsement*) to Part B (*Required Insurances*);
 - (d) provide for thirty (30) days prior written notice of their cancellation, non-renewal or amendment to be given to the Secretary of State in accordance with the substance of the Endorsement in Appendix C (*Endorsement*) to Part B (*Required Insurances*);
 - (e) provide for all communications to be given in accordance with the substance of the Endorsement in Appendix C (*Endorsement*) to Part B (*Required Insurances*);
 - (f) contain clauses on primary insurance and ring fencing in accordance with the substance of the Endorsement in Appendix C (*Endorsement*) to Part B (*Required Insurances*); and
 - (g) in respect of the Physical Damage Policies, provide for payment of any proceeds received by the TSP to be applied in accordance with Paragraph 2 of this Part A (*Insurance Provisions*) and the substance of the Endorsement in Appendix C (*Endorsement*) to Part B (*Required Insurances*).

Co-Insured

- 1.7 With the exception of employer's liability, delay in start up and business interruption (but not loss of profits), motor third party liability and any other any insurances required by law from time to time that are not specified in Part B (*Required Insurances*) the insurances referred to in Paragraphs 1.1 and 1.4 shall, wherever possible, name the Secretary of State as a co-insured for her separate interest.

Evidence of Insurance Policies

- 1.8 The TSP shall provide to the Secretary of State as soon as practicable following any request and, in any event, within thirty (30) days of such request:
- (a) copies of all insurance policies referred to in Paragraphs 1.1 and 1.4 (together with any other information reasonably requested by the Secretary of State relating to such insurance policies); and if so required, the Secretary of State shall be

entitled to inspect the original of any insurance policy on reasonable notice during ordinary business hours; and

- (b) evidence that the premiums payable under all insurance policies have been paid in full and that the insurances are in full force and effect in accordance with the requirements of this Paragraph 1 and Part B (*Required Insurances*) of Schedule 5 (*Insurance*).

Renewal Certificates

- 1.9 The TSP shall obtain as and when necessary renewal certificates or such other evidence as the Secretary of State shall agree to be acceptable (such agreement not to be unreasonably withheld or delayed) in relation to any of the insurances referred to in Paragraphs 1.1 and 1.4 and shall provide copies (certified in a manner acceptable to the Secretary of State) to the Secretary of State as soon as possible following the TSP's obtaining but in any event on or before the renewal date.

Breach

- 1.10 If the TSP is in breach of any of its obligations under Paragraphs 1.1 and 1.4, the Secretary of State may pay any premiums required to keep such insurance in force, or itself procure such insurance and may, in either case, recover such amounts from the TSP on written demand.

Notification of Cancellation

- 1.11 The TSP shall notify the Secretary of State if any insurer cancels or gives notification of cancellation of any of the insurances referred to in Paragraphs 1.1 and 1.4 at least thirty (30) days before such cancellation is to take effect or as soon as reasonably practicable in the event that notification of cancellation is received by the TSP from the relevant insurer less than thirty (30) days prior to such cancellation.

Notification of Claims

- 1.12 The TSP shall give the Secretary of State notification within twenty (20) Business Days after any claim which it reasonably estimates to be in excess of one million pounds Sterling (£1,000,000) (Indexed) on any of the insurance policies referred to in this Paragraph 1 accompanied by full details (to the extent available) of the incident giving rise to the claim.

Limit of Liability

- 1.13 Save as expressly provided for in this Agreement, neither failure to comply, nor full compliance by the TSP with the provisions of this Schedule 5 (*Insurance*) shall limit or relieve the TSP of its other liabilities and obligations under this Agreement.
- 1.14 Save as expressly provided for in this Agreement, neither failure to comply nor full compliance by the Relevant Operator with the provisions of schedule 7 (*Insurance*) of the TARA shall limit or relieve the TSP of its liabilities and obligations under this Agreement.

Secretary of State Agreement

- 1.15 The insurances referred to in this Paragraph 1 shall be effected with insurers of good financial standing and reputation in the insurance market or otherwise with insurers

agreed by the Secretary of State (such agreement not to be unreasonably withheld or delayed).

Indexation

- 1.16 The limit of indemnity and the maximum deductibles for each of the Required Insurances in Appendix A (*Insured Risks During Operational Period*) to Part B (*Required Insurances*) shall be Indexed in circumstances where following such Indexation, such limits of indemnity and maximum deductibles shall on each renewal date equal or exceed the whole insurable amount or deductible (as the case may be) available in the insurance market.

2. REINSTATEMENT AND CHANGE OF REQUIREMENT AFTER INSURED EVENT

Application of Insurance Proceeds

- 2.1 All insurance proceeds received under any insurance policy referred to in Paragraphs 3 and 4 of Appendix A (*Insured Risks During Operational Period*) to Part B (*Required Insurances*) and Paragraph 3 of Appendix B (*Insured Risks During Design and Construction Works of Depots*) to Part B (*Required Insurances*) (together, the **Physical Damage Policies**) shall, subject to Paragraphs 2.2 and 2.3, be applied to repair, reinstate and replace each part or parts of the Assets or the Depots in respect of which such proceeds were received.
- 2.2 Where, pursuant to Paragraph 2.2 of Part I (*Total Loss*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*) the Secretary of State elects not to require the replacement of a Set that has suffered a Total Loss, Paragraph 2.7 shall not apply to insurance proceeds received in respect of that Set or any payment made by the Secretary of State pursuant to Paragraph 3.3(b)(i), and such proceeds or payment (of any quantum) shall be for the TSP's account and shall be translated into a Revised Input for the purposes of the run of the Financial Model to be performed pursuant to Part G (*Runs of the Financial Model*) of Schedule 8 (*Variations*) in respect of such Total Loss.
- 2.3 (a) Subject to Paragraph 2.3(b), where any Depot has suffered a Depot Total Loss, or any part or parts of any Depot have suffered a Depot Loss, and the TSP is unable (having used all reasonable endeavours) to obtain all necessary planning consents and other necessary licences, approvals and consents necessary in order lawfully to carry out the repair, reinstatement and making good of the relevant Depot, or the relevant part or parts of the Depot, Paragraph 2.7 shall not apply to insurance proceeds received in respect of that Depot or any payment made by the Secretary of State pursuant to Paragraph 3.3(b)(i), and such proceeds or payment (of any quantum) shall (following deduction of any payments due by the TSP to Network Rail under the Depot Lease Documents in respect of the relevant Depot, which shall be made by the TSP in accordance with such Depot Lease Documents) be for the TSP's account and, when received in respect of a Depot Total Loss, such net proceeds or payment shall be translated into a Revised Input for the purposes of the run of the Financial Model to be performed pursuant to Part G (*Runs of the Financial Model*) of Schedule 8 (*Variations*) in respect of such Depot Total Loss.
- (b) Where North Pole has suffered a Depot Total Loss, or any part or parts of North Pole have suffered a Depot Loss, and the TSP is unable (having used all reasonable endeavours) to obtain all necessary planning consents and other necessary licences, approvals and consents necessary in order lawfully to carry

out the repair, reinstatement and making good of North Pole, or the relevant part or parts of North Pole, Paragraph 2.7 shall not apply to insurance proceeds received in respect of North Pole or any payment made by the Secretary of State pursuant to Paragraph 3.3(b)(i), and such proceeds or payment (of any quantum) shall (following deduction of any payments due by the TSP to BRBR under the Depot Lease Documents in respect of North Pole, which shall be made by the TSP in accordance with such Depot Lease Documents) be for the TSP's account and, when received in respect of a Depot Total Loss, such net proceeds or payment shall be translated into a Revised Input for the purposes of the run of the Financial Model to be performed pursuant to Part G (*Runs of the Financial Model*) of Schedule 8 (*Variations*) in respect of such Depot Total Loss.

Joint Account

2.4 The TSP shall establish the Joint Insurance Account on or prior to the Commencement Date in the name of the TSP.

2.5 The TSP undertakes promptly following receipt of the completed account mandate documentation from the Secretary of State's representative (and in any event, within thirty (30) days thereof) to procure that the persons notified by the Secretary of State's Representative to the TSP shall each be named on the account as an authorised signatory to operate the Joint Insurance Account jointly in accordance with the terms of this Agreement.

2.6 The TSP shall at all times maintain the Joint Insurance Account.

2.7 Subject to Paragraphs 2.2 and 2.3, all:

- (a) insurance proceeds paid under any Physical Damage Policy in respect of a single event (or a series of related events);
- (b) amounts paid by the Secretary of State pursuant to Paragraph 3.3(b)(i) in respect of any risk that is usually covered by property damage insurance;
- (c) costs reimbursed by the Relevant Operator to the TSP in respect of Operator Responsible Damage pursuant to paragraph 1 of part E (*Costs Payable by Operator*) of schedule 6 (*Performance Regime*) of the TARA; and
- (d) compensation paid by Network Rail to the TSP pursuant to paragraph 4.6(a) of part E (*Costs Payable by Operator*) of schedule 6 (*Performance Regime*) of the TARA, and

that are either:

- (i) in an amount in excess of five million pounds Sterling (£5,000,000), (Indexed) in isolation; or
- (ii) in respect of any proceeds or compensation paid pursuant to either Paragraph 2.7(a) or 2.7(b) in an amount in excess of five million pounds Sterling (£5,000,000) (Indexed) when aggregated with any other proceeds or compensation paid pursuant to either Paragraph 2.7(a) or 2.7(b) where such proceeds or compensation relate to the same single event (or the same series of related events),

shall be paid into the Joint Insurance Account by or on behalf of the TSP unless otherwise agreed by the parties.

- 2.8 Prior to the Termination Date or the Expiry Date, any amounts standing to the credit of the Joint Insurance Account (the **Relevant Proceeds**) (together with any interest accrued) may be withdrawn by the TSP from the Joint Insurance Account in accordance with Paragraph 2.11.
- 2.9 Upon the Expiry Date, the Relevant Proceeds (together with any interest accrued) shall be for the TSP's account).
- 2.10 Upon the Termination Date, the provisions of Paragraph 2.12 shall apply.

Obligations

- 2.11 Where a claim is made or proceeds of insurance and/or other amounts are received or are receivable in one or more of the circumstances set out in Paragraph 2.7 in respect of the same single event (or the same series of related events) (the **Relevant Incident**) in an amount in excess of five million pounds Sterling (£5,000,000 Indexed) and the provisions of Paragraph 2.2 or 2.3 (as the case may be) do not apply:
- (a) the TSP shall deliver as soon as practicable and in any event within twenty eight (28) days after the making of the claim, a plan prepared by the TSP for the carrying out of the works necessary (the **Reinstatement Works**) to repair, reinstate or replace the Assets and/or the Depots which are the subject of the relevant claim or claims (the **Reinstatement Plan**). The Reinstatement Plan shall set out:
- (i) if not the Manufacturer (in respect of any Reinstatement Works relating to any Set) or the Depot Construction Sub-Contractor (in respect of any Reinstatement Works relating to any Depot), the identity of the person proposed to effect the Reinstatement Works, which shall be subject to the prior written agreement of the Secretary of State (and, in the case of Reinstatement Works in respect of any Depot, the relevant Landlord in accordance with the relevant Lease), not to be unreasonably withheld or delayed; and
- (ii) the proposed terms and timetable upon which the Reinstatement Works are to be effected (including the date that the relevant Assets and/or Depots will become fully operational), the final terms of which shall be subject to the prior written agreement of the Secretary of State (and, in the case of Reinstatement Works in respect of any Depot, the relevant Landlord in accordance with the relevant Lease), not to be unreasonably withheld or delayed; and
- (b) provided that the Secretary of State has provided her prior written agreement for the purposes of Paragraphs 2.11(a)(i) and (ii) (and, in the case of Reinstatement Works in respect of any Depot, the relevant Landlord has provided its prior written agreement for the purposes of Paragraphs 2.11(a)(i) and (ii)) and in relation to a Total Loss or a Depot Total Loss the Secretary of State has issued a Required Variation Notice:
- (i) the Reinstatement Plan will be adopted;

- (ii) the TSP shall enter into contractual arrangements to effect the Reinstatement Works with the person identified in the Reinstatement Plan agreed by the Secretary of State (and, in the case of a Reinstatement Plan in respect of any Depot, the relevant Landlord in accordance with the relevant Lease);
- (iii) the Secretary of State shall use reasonable endeavours to assist the TSP in carrying out of the Reinstatement Plan; and
- (iv) prior to the Termination Date or the Expiry Date, any Relevant Proceeds (together with any interest accrued) may be withdrawn by the TSP from the Joint Insurance Account as required:
 - (A) to enable it to make payments in accordance with the terms of the contractual arrangements referred to in Paragraph 2.11(b)(ii); and
 - (B) to meet any other reasonable costs and expenses of the TSP for the sole purposes of funding the Reinstatement Works,

and the parties shall operate the signatory requirements of the Joint Insurance Account in order to give effect to such withdrawals.

2.12 Upon the Termination Date, the Secretary of State may withdraw amounts standing to the credit of the Joint Insurance Account for the purposes of funding any Reinstatement Works relating to any Assets or any Depots where the Secretary of State has:

- (a) in respect of any termination prior to the GWML Minimum Fleet Acceptance Date, exercised the Call Option in respect of the relevant Depot;
- (b) in respect of any termination on or after the GWML Minimum Fleet Acceptance Date but prior to the Fleet Acceptance Date, exercised the Call Option in respect of the relevant Depot and/or exercised her rights pursuant to Paragraph 7.3(d) of Part D (*TSP Default*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*) in respect of the Assets; or
- (c) in respect of any termination on or after the Fleet Acceptance Date, exercised the Call Option in respect of the relevant Depot and/or exercised her rights pursuant to Paragraph 8.8(e) of Part D (*TSP Default*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*) in respect of the Assets,

and the parties shall operate the signatory requirements of the Joint insurance Account in order to give effect to such withdrawals.

2.13 The Secretary of State agrees and undertakes that, provided that:

- (a) the TSP is complying with its obligations under this Paragraph 2;
- (b) the TSP procures that the Reinstatement Works are carried out and completed in accordance with the contractual arrangements referred to in Paragraph 2.11(b)(ii); and
- (c) where the insured event constitutes a Force Majeure Event for the purposes of the TARA, the TSP is complying with its obligations under paragraphs 3 and 5 of part E (*Force Majeure*) of schedule 10 (*Remedies, Default and Termination*) of the TARA,

she shall not exercise any right which she might otherwise have to terminate this Agreement by virtue of the event which gave rise to the claim for the Relevant Proceeds.

- 2.14 After the Reinstatement Plan has been implemented to the reasonable satisfaction of the Secretary of State (and, in the case of a Reinstatement Plan in respect of any Depot, the relevant Landlord in accordance with the relevant Lease) and in accordance with Paragraph 2.11(b)(ii), the Secretary of State shall permit withdrawal by the TSP of any Relevant Proceeds then held in respect of the Relevant Incident in the Joint Insurance Account that have not been paid under Paragraph 2.11(b)(iv), together with any interest accrued.
- 2.15 Without prejudice to the provisions of Clauses 12.2(d) and (e) and Part I (*Total Loss*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*), the TSP shall be solely responsible for the payment of any deficiency where the amount of the Relevant Proceeds is not sufficient to meet the costs of the Reinstatement Works.

Works Carried Out

- 2.16 Where insurance proceeds are to be used in accordance with this Schedule 5 (*Insurance*) to repair, reinstate or replace any Asset and/or any Depot, the TSP shall carry out the relevant Reinstatement Works in accordance with the TSP's proposals so that, on completion of the work, the provisions of this Agreement are complied with and the TSP can comply with its obligations under the TARA.

3. RISKS THAT BECOME UNINSURABLE

Uninsurable Risks

- 3.1 Nothing in this Schedule 5 (*Insurance*) shall oblige the TSP to take out insurance in respect of a risk which is Uninsurable, save where the predominant cause of the risk being Uninsurable is any act(s) or omission(s) of the TSP or any TSP Related Party.

Risks That Become Uninsurable

- 3.2 If a risk usually covered by property damage insurance, delay in start-up and business interruption insurance (but not loss of profits), contractors "all risks" insurance, third party liability insurance or statutory insurances in each case required under this Agreement becomes Uninsurable then:
- (a) the TSP shall notify the Secretary of State of any risk becoming Uninsurable within five (5) Business Days of becoming aware of the same and in any event, at least five (5) Business Days before expiry or cancellation of any existing insurance in respect of that risk;
 - (b) if both parties agree, or it is determined in accordance with the Dispute Resolution Agreement that the risk is Uninsurable and that:
 - (i) the risk becoming or being Uninsurable is not caused by the actions of the TSP or any TSP Related Party; and
 - (ii) the TSP has demonstrated to the Secretary of State that the TSP and a prudent board of directors of a company operating the same or other substantially similar businesses in the United Kingdom to that operated by the TSP would, in similar circumstances (in the absence of the type of relief envisaged by this Paragraph 3), be acting reasonably and in the best

interests of the company if it resolved to cease to operate such businesses as a result of that risk becoming Uninsurable, taking into account, amongst other things (and without limitation):

- (A) the likelihood of the Uninsurable risk occurring (if it has not already occurred);
- (B) the financial consequences for such company if such Uninsurable risk did occur (or has occurred); and
- (C) other mitigants against such consequences which may be available to such company,

then, the parties shall meet to discuss the means by which the risk should be managed or shared (including considering the issue of self-insurance by either party).

Consequences

3.3 Subject to Paragraph 3.5(a), if the requirements of Paragraph 3.2 are satisfied, but the parties cannot agree as to how to manage or share the relevant risk, then:

- (a) in respect of any risk that is usually covered by third party liability insurance only, the Secretary of State shall (at the Secretary of State's option) either pay to the TSP an amount equal to the amount calculated in accordance with Paragraph 2 of Part B (*Force Majeure*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*) and this Agreement will terminate, or elect to allow this Agreement to continue and Paragraph 3.3(b) shall thereafter apply in respect of such risk;
- (b) in respect of any risk that is usually covered by property damage insurance, contractors "all risks" insurance, delay in start-up and business interruption insurance (but not loss of profits), third party liability insurance (if the Secretary of State elects to allow this Agreement to continue in accordance with Paragraph 3.3(a)) or statutory insurance, this Agreement shall continue and on the occurrence of the risk (but only where such risk is at such time Uninsurable) the Secretary of State shall (at the Secretary of State's option) either:
 - (i) pay to the TSP an amount equal to insurance proceeds that would have been payable had the relevant insurance continued to be available on the same terms and conditions and this Agreement will continue; or
 - (ii) pay an amount equal to the amount calculated in accordance with Paragraph 2 of Part B (*Force Majeure*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*), plus (in relation to third party liability insurance only) the amount of insurance proceeds that would have been payable, whereupon this Agreement will terminate.

3.4 Where this Agreement continues pursuant to Paragraph 3.3(a) and/or (b):

- (a) a Run of the Financial Model shall be performed pursuant to Part G (*Runs of the Financial Model*) of Schedule 8 (*Variations*) and the Revised Inputs in relation to such Run of the Financial Model shall be such as to produce a result to the effect that the TARA Payments payable under the TARA shall be:

- (i) reduced in each year for which the relevant insurance is not maintained by an amount equal to the premium paid (or which would have been paid) by the TSP in respect of the relevant risk in the year prior to it becoming Uninsurable (Indexed); and
 - (ii) where the relevant risk is Uninsurable for part of a year only, pro rated to the number of months for which the risk is Uninsurable; and
- (b) (i) the TSP shall approach the insurance market at least every four months to establish whether the relevant risk remains Uninsurable;
 - (ii) the Secretary of State reserves the right to approach the insurance market through an independent broker or consult with her Insurance Adviser to determine whether or not the relevant risk remains Uninsurable and shall notify the TSP if she has determined that the relevant risk has ceased to be Uninsurable (provided that, where the TSP disagrees with any such determination of the Secretary of State, it shall be entitled to refer the matter for resolution in accordance with the Dispute Resolution Agreement); and
 - (iii) as soon as the TSP is aware that the relevant risk is no longer Uninsurable, the TSP shall take out and maintain or procure the taking out and maintenance of insurance (to be incepted as soon as is reasonably practicable) for the relevant risk in accordance with this Agreement.
- 3.5 (a) In respect of any period between the Secretary of State receiving notification in accordance with Paragraph 3.2(a) that a TPL Risk has become Uninsurable (an **Uninsurable TPL Risk**) and the Secretary of State's notification to the TSP in accordance with Paragraph 3.3(a) in respect of such Uninsurable TPL Risk then, provided it is ultimately agreed or determined that the requirements of Paragraph 3.2(b) are satisfied in respect of the Uninsurable TPL Risk, Paragraph 3.3(b) shall (subject to Paragraph 3.5(b)) apply in respect of occurrences of that Uninsurable TPL Risk during such period, unless the parties otherwise agree how to manage that Uninsurable TPL Risk during this period; and
- (b) Paragraph 3.5(a) shall only apply provided the TSP does not unreasonably and materially delay:
- (i) any agreement and/or determination in accordance with the Dispute Resolution Agreement as to whether the requirements of Paragraph 3.2(b) are satisfied in respect of the relevant Uninsurable TPL Risk; and/or
 - (ii) any meeting with the Secretary of State to discuss the means by which the relevant Uninsurable TPL Risk should be managed.

TSP's Option

- 3.6 If, pursuant to Paragraphs 3.3(b) the Secretary of State elects to make any payment to the TSP of:
- (a) an amount equal to the amount calculated in accordance with Paragraph 2 of Part B (*Force Majeure*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*); plus
 - (b) the amount of insurance proceeds that would have been payable,

(such that this Agreement will terminate) (together, the **Relevant Payment**), the TSP shall have the option (exercisable in writing within twenty (20) Business Days of the date of such election by the Secretary of State (the **Option Period**)) to pay to the Secretary of State on or before the end of the Option Period, an amount equal to the insurance proceeds that would have been payable had the relevant insurance continued to be available on the same terms and conditions, in which case:

- (i) the Relevant Payment will not be made by the Secretary of State;
- (ii) this Agreement will continue; and
- (iii) the TSP's payments shall be applied for the same purpose and in the same manner as insurance proceeds would have been applied had the relevant risk not become Uninsurable.

Unavailability of Terms and Conditions

3.7 (a) If, upon the renewal of any insurance which the TSP is required to maintain or to procure the maintenance of pursuant to this Agreement:

- (i) any Insurance Term is not available to the TSP in the insurance market with insurers of good financial standing and reputation in the insurance market; and/or
- (ii) the insurance premium payable for insurance incorporating such Insurance Term is such that the Insurance Term is not generally being incorporated in insurance procured in the insurance market with insurers of good financial standing and reputation in the insurance market by companies insuring similar risks in the United Kingdom,

(other than, in each case, by reason of one or more actions of the TSP or a TSP Related Party) then Paragraph 3.7(b) shall apply.

(b) If it is agreed or determined that Paragraph 3.7(a) applies, then the Secretary of State shall waive the TSP's obligations in Paragraph 1.1 of this Part A (*Insurance Provisions*) and/or Part B (*Required Insurances*) of Schedule 5 (*Insurance*) in respect of that particular Insurance Term and the TSP shall not be considered in breach of its obligations regarding the maintenance of insurance pursuant to this Agreement as a result of the failure to maintain insurance incorporating such Insurance Term for so long as the relevant circumstances described in Paragraph 3.7(a) continue to apply to such Insurance Term.

(c) To the extent that the parties agree, or it is determined pursuant to the Dispute Resolution Agreement, that an alternative or replacement term and/or condition of insurance is available to the TSP in the insurance market with insurers of good financial standing and reputation in the insurance market, which if included in the relevant insurance policy would fully or partially address the TSP's inability to maintain or procure the maintenance of insurance with the relevant Insurance Term at a cost which contractors in the UK are (at such time) generally prepared to pay, then the TSP shall maintain or procure the maintenance of insurance including such alternative or replacement term and/or condition. Notwithstanding any other provision of this Agreement, the costs of such insurance shall be subject to the premium costs sharing mechanism set out at Part D (*Insurance Premium Risk Sharing*) of Schedule 5 (*Insurance*).

- (d) The TSP shall notify the Secretary of State as soon as reasonably practicable and in any event within five (5) Business Days of becoming aware that Paragraph 3.7(a)(i) and/or (ii) are likely to apply or (on expiry of the relevant insurance then in place) do apply in respect of an Insurance Term (irrespective of the reason for the same). The TSP shall provide the Secretary of State with such information as the Secretary of State reasonably requests regarding the unavailability of the Insurance Term and the parties shall meet to discuss the means by which such unavailability should be managed as soon as is reasonably practicable.

- (e) In the event that Paragraph 3.7(a)(i) and/or (ii) apply in respect of an Insurance Term, (irrespective of the reason for the same), the TSP shall approach the insurance market at least every four (4) months to establish whether Paragraph 3.7(a)(i) and/or (ii) remain applicable to the Insurance Term. The Secretary of State reserves the right to approach the insurance market through an independent broker or consult with her Insurance Adviser to determine whether or not the Insurance Term remains unavailable and shall notify the TSP if she is determined that the relevant Insurance Term has ceased to be unavailable (provided that, where the TSP disagrees with any such determination of the Secretary of State, it shall be entitled to refer the matter for resolution in accordance with the Dispute Resolution Agreement. As soon as the TSP is aware that Paragraph 3.7(a)(i) and/or (ii) has ceased to apply to the Insurance Term, the TSP shall take out and maintain or procure the taking out and maintenance of insurance (to be incepted as soon as is reasonably practicable), incorporating such Insurance Term in accordance with this Agreement.

Part B of Schedule 5
Required Insurances

1. EXTENT OF REQUIRED INSURANCES

This Part B comprises the Required Insurances and comprises four Appendices:

- (a) Appendix A: [REDACTED]
[REDACTED];
- (b) Appendix B: [REDACTED]
[REDACTED];
- (c) Appendix C: [REDACTED] and
- (d) Appendix D: [REDACTED]

Appendix A to Part B of Schedule 5

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Appendix C to Part B of Schedule 5

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Appendix D to Part B of Schedule 5

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Part C of Schedule 5

Stipulated Loss Value

Operational Year	% of Agreed Value
1	100.00%
2	100.00%
3	100.00%
4	100.00%
5	100.00%
6	100.00%
7	100.00%
8	100.00%
9	100.00%
10	98.79%
11	97.49%
12	96.05%
13	94.44%
14	92.64%
15	90.64%
16	88.44%
17	85.95%
18	84.40%
19	82.76%
20	80.89%
21	78.81%
22	76.49%
23	73.91%
24	71.03%
25	67.81%
26	65.37%
27	62.65%

Operational Year	% of Agreed Value
28	59.61%
29	56.23%
30	52.46%
31	48.26%
32	43.57%
33	38.36%
34	33.56%
35	28.22%

Part D of Schedule 5

Insurance Premium Risk Sharing

1. INSURANCE REVIEW PROCEDURE

- 1.1 This procedure shall be used to determine whether the Secretary of State shall bear any increases or benefit from any decreases in Relevant Insurance costs.
- 1.2 The TSP's approved insurance broker shall prepare a report on behalf of both the TSP and the Secretary of State (the **Joint Insurance Cost Report**). The Joint Insurance Cost Report is to be prepared at the TSP's expense, and should, as a minimum, contain the following information for the relevant Insurance Review Period:
- (a) a full breakdown of the Actual Relevant Insurance Cost;
 - (b) a full breakdown of the Base Relevant Insurance Cost;
 - (c) a spreadsheet (the **Insurance Summary Sheet**) detailing separately:
 - (i) the sum(s) insured/limit of indemnity (i.e. rateable factor) for each of the Relevant Insurances;
 - (ii) the premium rate for each of the Relevant Insurances;
 - (iii) the net premium paid (or to be paid) for each of the Relevant Insurances (i.e. excluding both insurance premium tax and brokers fees and commissions);
 - (iv) the deductible(s) for each Relevant Insurance; and
 - (v) details of any claims (paid or reserved) (including incident date, type and quantum) which the TSP reasonably estimates to be in excess of one million pounds Sterling (£1,000,000) (Indexed);
 - (d) an assessment and quantification of each Project Insurance Change together with the reasons therefore;
 - (e) full details of any Portfolio Cost Saving;
 - (f) any other reasons that the TSP believes may have caused a change (by way of increase or decrease relative to the Base Relevant Insurance Cost) in the Actual Relevant Insurance Cost;
 - (g) the opinion of the Broker as to the reasons why the Actual Relevant Insurance Cost has varied from the Base Relevant Insurance Cost, specifying the impact of each of the factors and quantifying the amount attributable to each factor specified above;
 - (h) the calculation of the Insurance Cost Differential and any Exceptional Cost or Exceptional Saving arising from this calculation;
 - (i) evidence satisfactory to the Secretary of State (to the extent such evidence is available and the TSP having used reasonable endeavours to obtain such evidence) of any changes to circumstances generally prevailing in the Relevant

Insurance Market that are claimed to account for the Insurance Cost Differential;
and

- (j) details of movements in the CBS Private Capital non marine index and, if published, the Insurance Cost Index plus, if available from other appropriate sources, details of changes in insurance cost across the Relevant Insurance Market as a whole.

1.3 The TSP shall procure that the Broker, no later than the date which is ten (10) Business Days after the Insurance Review Date, delivers to the Secretary of State, at the same time as it delivers to the TSP, at least two (2) copies of the Joint Insurance Cost Report. Following receipt of the Joint Insurance Cost Report, the Secretary of State shall notify the TSP in writing within fifteen (15) Business Days whether or not she accepts the Joint Insurance Cost Report, including full details of any disagreement. If the Secretary of State does not provide such notification and/or details of any disagreement to the TSP within fifteen (15) Business Days, the Secretary of State shall be deemed to have accepted the Joint Insurance Cost Report.

1.4 If the Secretary of State disagrees with any item in the Joint Insurance Cost Report, the parties shall use their respective reasonable endeavours acting in good faith to agree the contents of the Joint Insurance Cost Report. If the parties fail to agree the contents of the Joint Insurance Cost Report within thirty five (35) Business Days from the date it was delivered to the Secretary of State, the matter shall be resolved pursuant to the Dispute Resolution Agreement.

1.5 The Secretary of State may make the Joint Insurance Cost Report available to any of her agents or advisers or other body or bodies nominated by the Secretary of State for insurance cost verification, benchmarking or similar purpose.

2. **SHARING OF EXCEPTIONAL COST AND EXCEPTIONAL SAVING**

2.1 If, following the completion of the Insurance Review Procedure, it is agreed or determined that there is an Exceptional Cost, the Secretary of State shall within fourteen (14) days of completion of the Insurance Review Procedure elect whether to either pay:

- (a) a one-off lump-sum payment to the TSP equal to 85 per cent. (85%) of the Exceptional Cost, in which case, the Secretary of State shall make such one-off lump sum payment to the TSP equal to 85 per cent. (85%) of the Exceptional Cost within thirty (30) days of completion of the Insurance Review Procedure; or

- (b) 85 per cent. (85%) of the Exceptional Cost by way of an adjustment to the Indexed SAP, whether as a lump sum payment or payments over time, in which case:

- (i) within thirty (30) days of completion of the Insurance Review Procedure:

- (A) the Secretary of State shall issue a Required Variation Notice to the TSP to that effect; and

- (B) a Run of the Financial Model shall be performed pursuant to Part G (*Runs of the Financial Model*) of Schedule 8 (*Variations*); and

- (ii) within sixty (60) days of completion of the Insurance Review Procedure, the TSP and the Relevant Operator shall have entered into a TARA Amendment Agreement to that effect.

2.2 If, following the completion of the Insurance Review Procedure, it is agreed or determined that there is an Exceptional Saving, the Secretary of State shall within fourteen (14) days of completion of the Insurance Review Procedure elect whether to either receive:

- (a) a one-off lump-sum payment from the TSP equal to 85 per cent. (85%) of the Exceptional Saving, in which case, the TSP shall make such one-off lump sum payment within thirty (30) days of completion of the Insurance Review Procedure; or
- (b) 85 per cent. (85%) of the Exceptional Cost, following an adjustment to the Indexed SAP, whether as a lump sum payment or payments over time, in which case:
 - (i) within thirty (30) days of completion of the Insurance Review Procedure:
 - (A) the Secretary of State shall issue a Required Variation Notice to the TSP to that effect; and
 - (B) a Run of the Financial Model shall be performed pursuant to Part G (*Runs of the Financial Model*) of Schedule 8 (*Variations*); and
 - (ii) within sixty (60) days of completion of the Insurance Review Procedure, the TSP and the Relevant Operator shall have entered into a TARA Amendment Agreement to that effect.

2.3 Following the completion of the Insurance Review Procedure, if it is agreed or determined that there is neither an Exceptional Cost nor an Exceptional Saving, any Insurance Cost Differential shall be borne by or benefit the TSP.

SCHEDULE 6

Expiry, Events of Default, Termination and Force Majeure

Part A of Schedule 6

Remedial Plans and Other Secretary of State Remedies

1. REMEDIAL PLAN NOTICES

1.1 Without limiting the Secretary of State's other rights under this Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*), if a particular breach by the TSP, other than any breach for which KPI Points could have been awarded under the TARA and/or an abatement in an Availability Adjustment and/or a Reliability Adjustment could have been made under the TARA including, any failure to present any Set of the relevant Type so as to achieve Final Acceptance at the Designated Acceptance Location on a Scheduled Acceptance Date for a Set of that Type, has continued for more than thirty (30) days, or occurred more than four (4) times in any four (4) consecutive Reporting Periods (a **Persistent Breach**), then the Secretary of State may serve a notice on the TSP requiring it to propose a reasonable remedial plan (a **Remedial Plan**) for the purpose of curing (progressively, if need be) the Persistent Breach in a cost effective manner as soon as reasonably practicable (a **Remedial Plan Notice**). For the purposes of this Part A (*Remedial Plans and Other Secretary of State Remedies*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*):

- (a) where the TSP has breached any of its obligations under this Agreement, such breach shall be considered to have been cured and no longer continuing if and when the TSP subsequently remedies such breach other than in relation to the time or date at or on which the relevant obligation should have been performed; and
- (b) if and to the extent that any failure by the TSP to meet any relevant deadline in the Delivery Schedule, Requirements and/or any plans developed pursuant to them is directly attributable to the failure of the Secretary of State and/or the Relevant Operator to meet a corresponding prior deadline, it shall not be treated as a breach.

Contents of Remedial Plan Notices

1.2 Each Remedial Plan Notice shall specify:

- (a) the Persistent Breach; and
- (b) a reasonable time period (but not, in any event, less than ten (10) Business Days from receipt of that Remedial Plan Notice) for providing the Remedial Plan.

Obligation to submit Remedial Plan

1.3 The TSP shall comply with any Remedial Plan Notice in accordance with its terms. If the TSP considers that the time period for producing the Remedial Plan is not a reasonable one, it shall promptly inform the Secretary of State of its view and of the time period it considers to be reasonable. Pending any agreement on a different period, the TSP shall prepare a Remedial Plan to the timescale notified by the Secretary of State.

Contents of Remedial Plans

1.4 Each Remedial Plan shall set out:

- (a) the Persistent Breach to which it relates;
- (b) an explanation of the reasons for the occurrence of that Persistent Breach;
- (c) the steps that the TSP proposes in order to cure that Persistent Breach, with details of the resources required and deployment proposed, sufficient to enable a reasonable assessment of the prospects of success and relevant timescales, and to enable reasonable monitoring by the Secretary of State of actions taken by the TSP against actions proposed by it in the Remedial Plan; and
- (d) the time period within which the TSP proposes to implement those steps with milestones linked to planned outcomes.

2. RESPONSE TO REMEDIAL PLAN

2.1 Within ten (10) Business Days of receipt of a Remedial Plan, the Secretary of State shall respond in writing to the TSP, specifying:

- (a) that the Secretary of State is satisfied with the contents of that Remedial Plan;
- (b) any amendments to that Remedial Plan that the Secretary of State believes necessary or appropriate in order to cure the Persistent Breach that is the subject of that Remedial Plan; or
- (c) such alternative course of action as the Secretary of State believes necessary or appropriate in order to cure the Persistent Breach that is the subject of that Remedial Plan.

2.2 If the Secretary of State responds in accordance with Paragraph 2.1(b) or (c), the parties shall meet and discuss the Remedial Plan and the Secretary of State's response to it with a view to agreeing within ten (10) Business Days of the date of the Secretary of State's response to the Remedial Plan (or such longer time period as the parties may agree) a documented course of remedial action.

2.3 If the Secretary of State responds in accordance with Paragraph 2.1(a) or, following the discussions pursuant to Paragraph 2.2, the parties agree a documented course of remedial action, then the provisions of the Remedial Plan or the agreed remedial action shall be treated as a shared Remedial Plan (a **Shared Remedial Plan**).

2.4 If, following the discussions pursuant to Paragraph 2.2, the parties do not agree a course of remedial action, then:

- (a) the TSP shall provide the Secretary of State with a written, reasoned explanation of its reasons for not adopting those of the Secretary of State's proposals that it is unwilling to incorporate within the Remedial Plan; and
- (b) the provisions of the Remedial Plan (including any elements of the Secretary of State's response with which the TSP agrees) shall be treated as the TSP's sole Remedial Plan (a **Sole Remedial Plan**).

3. IMPLEMENTATION OF REMEDIAL PLANS

Shared Remedial Plans

- 3.1 The TSP shall implement any Shared Remedial Plan in accordance with its terms and shall provide to the Secretary of State with reasonable frequency all reasonable information about progress in and the results to date of its implementation.
- 3.2 If the TSP acts in accordance with a Shared Remedial Plan, any failure to cure the Persistent Breach to which that Shared Remedial Plan relates by the end of the time period for implementation of the relevant remedial action specified in that Shared Remedial Plan, shall not in itself constitute a breach of this Agreement, provided that:
- (a) where the Persistent Breach itself constitutes a TSP Default, such TSP Default shall not be cured or waived by virtue of this Paragraph 3.2;
 - (b) the TSP provides the Secretary of State with a written, reasoned explanation of why it considers the resources deployed pursuant to that Shared Remedial Plan did not produce the expected results, and proposes reasonable steps and timescales for the deployment of further resource in a cost effective manner to deliver those results; and
 - (c) the provisions of this Part A (*Remedial Plans and Other Secretary of State Remedies*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*) shall apply to any written statement provided pursuant to Paragraph 3.2(b) as if it were a Remedial Plan submitted pursuant to Paragraph 1.3.
- 3.3 If the TSP fails to act in accordance with a Shared Remedial Plan without obtaining the Secretary of State's prior written consent, then (if the Persistent Breach is continuing) the provisions of Paragraph 3.2 shall apply but with the additional requirements that:
- (a) the explanation required in Paragraph 3.2(b) shall also address the reasons for such failure; and
 - (b) where the Secretary of State considers that there is no reasonable excuse for the TSP's failure to act in accordance with that Shared Remedial Plan, Paragraph 3.7 shall apply.

Sole Remedial Plans

- 3.4 The TSP shall implement any Sole Remedial Plan in accordance with its terms, provided that if the Secretary of State does not agree with the time period within which the TSP proposes to implement its Sole Remedial Plan, the Secretary of State may determine a shorter time period within which the TSP shall implement the Sole Remedial Plan.
- 3.5 If the TSP acts in accordance with a Sole Remedial Plan, any failure to cure the Persistent Breach to which that Sole Remedial Plan relates by the end of the time period for implementation specified in that Sole Remedial Plan shall not in itself constitute a breach of this Agreement, provided that:
- (a) where the Persistent Breach itself constitutes a TSP Default, such TSP Default shall not be cured or waived by virtue of this Paragraph 3.5;

- (b) the TSP provides the Secretary of State with a written reasoned explanation of why it considers the resources deployed pursuant to that Sole Remedial Plan did not produce the expected results, and proposes reasonable steps and timescales for the deployment of further resource in a cost effective manner to deliver those results; and
- (c) the provisions of this Part A (*Remedial Plans and Other Secretary of State Remedies*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*) shall apply to any written statement provided pursuant to Paragraph 3.5(b) as if it were a Remedial Plan submitted pursuant to Paragraph 1.3, save that a further alternative response shall be available to the Secretary of State pursuant to Paragraph 2.1 being:

"that the Secretary of State is not confident that the TSP is able to implement a Remedial Plan that will cure that Persistent Breach within a reasonable timescale" (a **Not Confident Response**).

3.6 If the TSP fails to act in accordance with a Sole Remedial Plan without obtaining the Secretary of State's prior written consent, then (if the Persistent Breach is continuing) the provisions of Paragraph 3.5 shall apply but with the additional requirements that:

- (a) any explanation required in Paragraph 3.5(b) shall also address the reasons for such failure; and
- (b) where the Secretary of State considers that there is no reasonable excuse for the TSP's failure to act in accordance with that Sole Remedial Plan, Paragraph 3.7 shall apply.

Unresolved Persistent Breach

3.7 Where any of the following apply:

- (a) any Persistent Breach is not cured by the end of the time period for implementation specified in (i) the second or any subsequent Shared Remedial Plan, or (ii) any Sole Remedial Plan that is applied to it;
- (b) the Secretary of State delivers a Not Confident Response in accordance with Paragraph 3.5(c) following the failure of any Sole Remedial Plan to cure the Persistent Breach to which it relates by the end of the time period for implementation specified in that Sole Remedial Plan; or
- (c) the Secretary of State considers that there is no reasonable excuse for the TSP failing to act in accordance with a Shared Remedial Plan or a Sole Remedial Plan,

and such Persistent Breach is continuing, subject to Paragraph 3.8, the Secretary of State may by written notice to the TSP designate that Persistent Breach as an **Unresolved Persistent Breach**, and the provisions of Paragraph 2 of Part D (*TSP Default*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*) shall apply.

3.8 The Secretary of State may not designate a Persistent Breach as an Unresolved Persistent Breach or a breach pursuant to Paragraph 1.1(g) of Part D (*TSP Default*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*) where the Persistent Breach arises from a failure to present any Set for Final Acceptance at the Designated Acceptance Location on its Scheduled Acceptance Date, until the Delivery Longstop Date in respect of such Set has occurred.

4. **EFFECT OF FORCE MAJEURE EVENT**

Without prejudice to the operation of Paragraph 1.1 of Part B (*Force Majeure*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*), the following provisions shall apply in relation to Force Majeure Events affecting performance of the requirements of a Sole Remedial Plan or a Shared Remedial Plan:

- (a) the TSP shall give written notice to the Secretary of State promptly after it becomes aware (and in any event within twenty-four (24) hours of becoming aware) of the occurrence or likely occurrence of a Force Majeure Event which will or is likely to affect the TSP's ability to comply with a Sole Remedial Plan or a Shared Remedial Plan within the time period for implementation specified in the relevant plan;
- (b) each notice submitted in accordance with Paragraph 4(a) shall state the extent or likely extent of the relevant Force Majeure Event and, in the case of a Force Majeure Event which has not occurred at such time, the reasons why the TSP considers it likely to occur;
- (c) the TSP shall use, and shall continue to use, reasonable endeavours to avoid or reduce the effect or likely effect of any Force Majeure Event on its ability to comply with any Sole Remedial Plan or a Shared Remedial Plan, as the case may be; and
- (d) the TSP shall be entitled to a reasonable extension of the time period for implementation specified in a Sole Remedial Plan or a Shared Remedial Plan, as the case may be, in order to take account of the effect of a Force Majeure Event which has occurred on the TSP's ability to comply with that Sole Remedial Plan or a Shared Remedial Plan and reasonable and necessary revisions to the terms of the Sole Remedial Plan or Shared Remedial Plan. The parties shall endeavour to agree such revisions and/or such reasonable extension of time and, if they fail to do so, the Secretary of State may determine such revisions and/or such reasonable extension and shall as soon as reasonably practicable notify the TSP in writing of her decision.

5. **INCREASED MONITORING**

- 5.1 Following any Persistent Breach occurring, the Secretary of State may at her option (but shall not be obliged to) commence or increase the level and/or frequency of monitoring (whether by inspection, audit or otherwise) of the TSP's performance of any relevant obligation until such time as the TSP demonstrates, to the Secretary of State's reasonable satisfaction, that it is capable of performing and will perform such obligation as required by this Agreement.
- 5.2 The TSP shall co-operate fully with the Secretary of State in relation to such monitoring referred to in Paragraph 5.1.
- 5.3 The results of such monitoring will be reviewed at the Delivery Review Meetings held in accordance with Paragraph 3.7 of Part C (*Contract Management*) of Schedule 2 (*Introduction into Service*).

Part B of Schedule 6

Force Majeure

1. CONSEQUENCES OF FORCE MAJEURE EVENT

1.1 To the extent that a Force Majeure Event occurs and the Affected Party is prevented from carrying out any of its obligations under this Agreement by such Force Majeure Event, the Affected Party will not incur any liability to the other party for any Losses incurred by that other party as a result of such non-performance of those obligations, nor shall the other party be entitled to bring a claim for breach of those obligations against the Affected Party. For the avoidance of doubt (but without prejudice to Paragraphs 1.4 and 1.5 and Paragraph 4 of Part B (*Delayed Delivery and Delayed Acceptance*) of Schedule 2 (*Introduction into Service*)), the Secretary of State shall not be entitled to terminate this Agreement for a TSP Default if such TSP Default arises from a Force Majeure Event.

1.2 The Affected Party shall notify the other party as soon as practicable after the Affected Party:

- (a) becomes aware that a Force Majeure Event has occurred; or
- (b) can reasonably foresee a Force Majeure Event occurring.

Any notice given pursuant to this Paragraph 1.2 shall not in any event be given later than seven (7) days after the Affected Party becomes aware of or can reasonably foresee the occurrence of the relevant Force Majeure Event and in either case such notice shall state the likelihood of the Affected Party being, and the probable extent to which the Affected Party is, prevented from carrying out any of its obligations under this Agreement.

1.3 As soon as practicable following such notification, the parties shall consult with each other in good faith and use reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and facilitate the continued performance of the affected obligations (including the terms of any rectification plan which the TSP proposes (a **Force Majeure Rectification Plan**)). For the avoidance of doubt, in so far as it relates to Industrial Action, an obligation to use "reasonable endeavours" shall not require the Affected Party to incur material expenditure or material liability.

1.4 If no such terms are agreed pursuant to Paragraph 1.3 on or before the date falling one hundred and twenty (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 unable to comply with substantially all of its obligations under this Agreement for a period of more than one hundred and eighty (180) days, then either party may terminate this Agreement by giving thirty (30) days' written notice to the other party and this Agreement shall terminate on the expiry of those thirty (30) days.

1.5 If the TSP gives notice to the Secretary of State under Paragraph 1.4 or Paragraph 4 of Part B (*Delayed Delivery and Delayed Acceptance*) of Schedule 2 (*Introduction into Service*) that it wishes to terminate this Agreement, the Secretary of State shall have the option either to accept such notice or to respond in writing on or before the date falling twenty (20) days after the date of its receipt, stating that she requires this Agreement to continue. If the Secretary of State gives the TSP such notice, then:

- (a) from the date on which this Agreement would have terminated under Paragraph 1.4 or Paragraph 4 of Part B (*Delayed Delivery and Delayed*

Acceptance) of Schedule 2 (*Introduction into Service*), as the case may be, until the termination of this Agreement pursuant to Paragraph 1.5(b) or otherwise, the Secretary of State shall continue to pay to the TSP in accordance with the provisions specified in each TARA, an amount equivalent to each TARA Payment that would have been paid to the TSP, but for the continuation or continuing effects of the Force Majeure Event, assuming that the Services were being fully provided, less any TARA Payment actually received by the TSP and less any cost savings the TSP makes as a result of not performing those Services (subject to no double-recovery with the foregoing), and the Secretary of State shall also continue to pay liquidated damages payable on the basis set out in Paragraph 3 of Part B (*Delayed Delivery and Delayed Acceptance*) of Schedule 2 (*Introduction into Service*) in respect of any Secretary of State Extension Day; and

(b) this Agreement will not terminate until expiry of written notice (of at least thirty (30) days) from the Secretary of State to the TSP that she wishes this Agreement to terminate.

1.6 The parties shall at all times following the occurrence of a Force Majeure Event use reasonable endeavours to prevent and mitigate the effects of any delay and the TSP shall at all times during which a Force Majeure Event is subsisting, take all steps in accordance with industry good practice to overcome or minimise the consequences of that Force Majeure Event.

1.7 The Affected Party shall notify the other party 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, this Agreement shall continue to be performed on the terms existing immediately prior to the occurrence of such Force Majeure Event.

2. **COMPENSATION ON TERMINATION FOR FORCE MAJEURE**

2.1 On termination of this Agreement under Paragraphs 1.4 or 1.5, Paragraph 4 of Part B (*Delayed Delivery and Delayed Acceptance*) of Schedule 2 (*Introduction into Service*) or Paragraph 3.3(a) of Part A (*Insurance Provisions*) of Schedule 5 (*Insurance*), the Secretary of State shall pay to the TSP the Force Majeure Termination Sum in accordance with Part H (*Calculation and Payment of Termination Sums*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*). Subject to Paragraphs 2.2 to 2.5 inclusive, the **Force Majeure Termination Sum** shall be the amount equal to the aggregate of:

- (a) the Base Senior Debt Termination Amount;
- (b) the Junior Debt less an amount equal to the aggregate of payments of interest made by the TSP under the Subordinated Financing Agreements;
- (c) all amounts paid to the TSP by way of subscription for shares in the capital of the TSP less dividends and other distributions paid to the shareholders of the TSP (save to the extent deducted under Paragraph 2.1(b));
- (d) redundancy payments for employees of the TSP that have been or will be reasonably incurred by the TSP as a direct result of termination of this Agreement; and
- (e) any Sub-Contractor Breakage Costs.

- 2.2 If the amounts referred to in Paragraphs 2.1(b) and/or (c) are less than zero, then, for the purposes of the calculation in Paragraph 2.1, they shall be deemed to be zero.
- 2.3 If the aggregate of the amounts referred to in Paragraphs 2.1(a) to (c) inclusive is less than the Revised Senior Debt Termination Amount, then the Force Majeure Termination Sum shall be increased so that it is equal to the aggregate of the Revised Senior Debt Termination Amount and the amounts referred to in Paragraphs 2.1(d) and (e), provided always that:
- (a) the amount referred to in Paragraphs 2.1(d) and (e) shall only be paid to the extent that the TSP has demonstrated to the reasonable satisfaction of the Secretary of State that that amount will not be paid in payment (in whole or in part) of any Distribution; and
 - (b) if, at the time of termination, there are any Additional Permitted Borrowings outstanding, no Sub-Contractor Breakage Costs shall be paid in respect of any Sub-Contract in circumstances where there is an event of default under such Sub-Contract which would entitle the TSP to terminate such Sub-Contract.
- 2.4 If a Distribution is made whilst any Additional Permitted Borrowing is outstanding and the TSP has wilfully, or through gross negligence, failed to comply with its obligations under Paragraph 1.6(g)(i) of Schedule 11 (*Information and Confidentiality*) then in addition to the deduction of the Distribution referred to in limb (b)(v) of the definition of Revised Senior Debt Termination Amount, the Secretary of State shall be entitled to set off the value of that Distribution a second time against the Force Majeure Termination Sum, provided that the amount of the Force Majeure Termination Sum will never be less than the Revised Senior Debt Termination Amount.
- 2.5 If the TSP has wilfully or through gross negligence failed to comply with its obligations under Paragraph 1.6(g)(ii) of Schedule 11 (*Information and Confidentiality*) and, as a consequence, there has been an overstatement of the cash balances by the TSP as at that date which has caused the Secretary of State to reasonably believe that she would be required to pay a lesser sum at the Termination Date than she actually is required to pay under the terms of this Paragraph 2, then the Force Majeure Termination Sum shall be reduced by the amount of such overstatement (to the extent such overstatement is still applicable at the Termination Date), provided that the amount of the Force Majeure Termination Sum will never be less than the Revised Senior Debt Termination Amount.
- 2.6 On termination of this Agreement pursuant to this Part B, the Secretary of State shall have the option to require the TSP to transfer to the Secretary of State or as directed by the Secretary of State all of its right, title and interest in and to the Assets (subject to the Permitted Encumbrances) in accordance with Part J (*Asset Transfer*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*) save where the Secretary of State has not approved a reasonable Force Majeure Rectification Plan proposed by the TSP pursuant to Paragraph 1.3.

Part C of Schedule 6

Secretary of State Default

1. TERMINATION ON SECRETARY OF STATE DEFAULT

- 1.1 If a Secretary of State Default has occurred and the TSP wishes to terminate this Agreement, the TSP must serve a termination notice on the Secretary of State within forty-five (45) days of becoming aware of that Secretary of State Default.
- 1.2 The termination notice must specify the type of Secretary of State Default which has occurred entitling the TSP to terminate.
- 1.3 This Agreement will terminate on the day falling forty-five (45) days after the date the Secretary of State receives the termination notice, unless the Secretary of State rectifies the Secretary of State Default within thirty (30) days of receipt of that termination notice.

2. COMPENSATION ON TERMINATION FOR SECRETARY OF STATE DEFAULT

- 2.1 If this Agreement is terminated pursuant to Paragraph 1, the Secretary of State shall pay the TSP the Secretary of State Default Termination Sum in accordance with Part H (*Calculation and Payment of Termination Sums*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*) on the Termination Date. Subject to Paragraphs 2.2 to 2.4 inclusive, the **Secretary of State Default Termination Sum** shall be an amount equal to the aggregate of:
 - (a) the Base Senior Debt Termination Amount;
 - (b) redundancy payments for employees of the TSP that have been or will be reasonably incurred by the TSP as a direct result of termination of this Agreement;
 - (c) any Sub-Contractor Breakage Costs; and
 - (d) the aggregate amount for which the share capital of the TSP and the amounts outstanding under the Subordinated Financing Agreements could have been sold on an open market basis based on the Relevant Assumptions.
- 2.2 If the aggregate of the amounts referred to in Paragraphs 2.1(a) and (d) is less than the Revised Senior Debt Termination Amount, then the Secretary of State Default Termination Sum shall be increased so that it is equal to the aggregate of the Revised Senior Debt Termination Amount and the amount referred to in Paragraphs 2.1(b) and (c), provided always that:
 - (a) the amount referred to in Paragraphs 2.1(b) and (c) shall only be paid to the extent that the TSP has demonstrated to the reasonable satisfaction of the Secretary of State that that amount will not be paid in payment (in whole or in part) of any Distribution; and
 - (b) if, at the time of termination, there are any Additional Permitted Borrowings outstanding, no Sub-Contractor Breakage Costs shall be paid in respect of any Sub-Contract in circumstances where there is an event of default under such Sub-Contract which would entitle the TSP to terminate such Sub-Contract.
- 2.3 If a Distribution is made whilst any Additional Permitted Borrowing is outstanding and the TSP has wilfully, or through gross negligence, failed to comply with its obligations under

Paragraph 1.6(g)(i) of Schedule 11 (*Information and Confidentiality*), then in addition to the deduction of the Distribution referred to in limb (v) of the definition of Revised Senior Debt Termination Amount, the Secretary of State shall be entitled to set off the value of that Distribution a second time against the Secretary of State Default Termination Sum, provided that the amount of the Secretary of State Default Termination Sum will never be less than the Revised Senior Debt Termination Amount.

- 2.4 If the TSP has wilfully or through gross negligence failed to comply with its obligations under Paragraph 1.6(g)(ii) of Schedule 11 (*Information and Confidentiality*) and there has been an overstatement of the cash balances by the TSP as at that date which has caused the Secretary of State to reasonably believe that she would be required to pay a lesser sum at the Termination Date than she is actually required to pay under the terms of this Paragraph 2, then the Secretary of State Default Termination Sum shall be reduced by the amount of such overstatement (to the extent such overstatement is still applicable at the Termination Date), provided that the amount of the Secretary of State Default Termination Sum will never be less than the Revised Senior Debt Termination Amount.

3. **ASSET TRANSFER**

On payment of the amount referred to in Paragraph 2.1, the Secretary of State shall have the option to require the TSP to transfer its right, title and interest in and to the Assets (subject to the Permitted Encumbrances) to the Secretary of State or as directed by the Secretary of State in accordance with Part J (*Asset Transfer*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*).

Part D of Schedule 6

TSP Default

1. TSP DEFAULT

1.1 Each of the following is a TSP Default:

- (a) a court makes an order that the TSP be wound up or a resolution for a voluntary winding-up of the TSP is passed;
- (b) any receiver or manager in respect of the TSP is appointed or possession is taken by or on behalf of any creditor of any property of the TSP that is the subject of a charge;
- (c) any voluntary arrangement is made for a composition of debts or a scheme of arrangement is approved under the Insolvency Act 1986 or the Companies Act 2006 in respect of the TSP;
- (d) an administration order is made, or an administrator is appointed in respect of the TSP;
- (e) any event occurring which, under the law of any relevant jurisdiction, has an analogous or equivalent effect to any of the events listed in limbs (a) to (d) inclusive;
- (f) a Delayed Acceptance Default Event;
- (g) a breach by the TSP of any of its obligations under this Agreement which materially and adversely affects the performance of the Service;
- (h) a Depot Lease Termination Event in respect of a Depot Lease Document occurring where all of the Default Option Conditions in relation to that Depot Lease Document have been satisfied;
- (i) a Persistent Breach Default Event occurs;
- (j) a breach by the TSP of Clause 23;
- (k) a breach by the TSP of either Clause 24.3 or Clause 24.4;
- (l) the abandonment of this Agreement by the TSP;
- (m) the occurrence of a TSP Default (as defined in the TARA) that is continuing in circumstances where the Relevant Operator is not prevented by paragraph 2.5 of part B (*TSP Default*) of schedule 10 (*Remedies, Default and Termination*) of the TARA from exercising its rights under paragraph 2.4 of part B (*TSP Default*) of schedule 10 (*Remedies, Default and Termination*) of the TARA;
- (n) a breach by the TSP of its obligation to take out and maintain any of the Required Insurances in accordance with the provisions of Schedule 5 (*Insurance*); and
- (o) a breach by the TSP of its obligations under Paragraphs 1.2, 1.4 or 3 of Part B (*Termination, Expiry and Replacement of the Relevant TARA*) of Schedule 4 (*Train Availability and Reliability Agreements*).

1.2 The TSP shall notify the Secretary of State as soon as reasonably practicable on, and in any event within twenty-four (24) hours of, the TSP becoming aware of a TSP Default.

2. PERSISTENT BREACH BY THE TSP

2.1 If an Unresolved Persistent Breach has occurred in accordance with Paragraph 3.7 of Part A (*Remedial Plans and Other Secretary of State Remedies*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*) then the Secretary of State may serve a notice (a **Formal Warning Notice**) on the TSP:

- (a) specifying that it is a formal warning notice;
- (b) giving reasonable details of the Unresolved Persistent Breach; and
- (c) stating that the occurrence of such Unresolved Persistent Breach may, subject to Paragraph 2.2, entitle the Secretary of State to terminate this Agreement.

2.2 If, following service of a Formal Warning Notice, the Unresolved Persistent Breach specified has continued beyond thirty (30) days or recurred in three (3) or more Reporting Periods within the six (6) Reporting Periods after the date of service of the Formal Warning Notice, then the Secretary of State may serve another notice (a **Final Warning Notice**) on the TSP:

- (a) specifying that it is a Final Warning Notice;
- (b) stating that the Unresolved Persistent Breach specified has already been the subject of a Formal Warning Notice served under Paragraph 2.1; and
- (c) stating that if such Unresolved Persistent Breach continues for a further thirty (30) days or recurs in three (3) or more Reporting Periods within the six (6) Reporting Periods following the date of service of the Final Warning Notice, this Agreement may be terminated by the Secretary of State.

2.3 If, following service of a Final Warning Notice either of the circumstances in Paragraph 2.2(c) occurs, the Secretary of State may by written notice to the TSP designate such Unresolved Persistent Breach as the occurrence of a persistent breach default event (a **Persistent Breach Default Event**).

2.4 A Formal Warning Notice may not be served in respect of any Unresolved Persistent Breach which has previously been counted in the making of a separate Formal Warning Notice or Final Warning Notice.

3. CURE NOTICES

3.1 The following provisions of this Paragraph 3 shall apply in respect of a TSP Default falling within Paragraphs 1.1(g), (j), (k), (n) or (o).

3.2 Before the Secretary of State may serve a Default Notice in respect of a TSP Default falling within Paragraphs 1.1(g), (j), (k), (n) or (o), she shall serve on the TSP a notice (a **Cure Notice**) specifying:

- (a) the type and nature of the TSP Default that has occurred; and
- (b) her intention to serve a Default Notice in respect of that TSP Default if it is not rectified in accordance with the following provisions of this Paragraph 3.

- 3.3 The Secretary of State may not subsequently serve a Default Notice in respect of a TSP Default falling within Paragraph 1.1(g) and that has been the subject of a Cure Notice if the TSP:
- (a) puts forward an acceptable rectification programme within thirty (30) days after the date the TSP receives the Cure Notice; and
 - (b) implements such programme in accordance with its terms and rectifies the TSP Default in accordance with such programme.
- 3.4 The Secretary of State may not subsequently serve a Default Notice in respect of a TSP Default falling within Paragraphs 1.1(j), (k), (n) or (o) and that has been the subject of a Cure Notice if the TSP rectifies the TSP Default within sixty (60) days after the date the TSP receives the Cure Notice.
- 3.5 The Secretary of State may serve a Default Notice in respect of a TSP Default falling within Paragraph 1.1(g) that is continuing and that has been the subject of a Cure Notice if:
- (a) no acceptable rectification programme has been put forward by the TSP in accordance with Paragraph 3.3(a); or
 - (b) an acceptable rectification programme has been put forward pursuant to Paragraph 3.3(a) but the TSP fails to rectify the TSP Default in accordance with such programme.
- 3.6 The Secretary of State may serve a Default Notice in respect of a TSP Default falling within Paragraphs 1.1(j), (k), (n) or (o) and that has been the subject of a Cure Notice if the TSP does not rectify the TSP Default within sixty (60) days after the date the TSP receives the Cure Notice.

4. **REMEDIAL PLANS**

The Secretary of State may not serve a Default Notice in respect of a TSP Default in relation to which:

- (a) she has issued a Remedial Plan Notice (unless the period has expired within which the TSP is required to deliver to the Secretary of State a Remedial Plan and the TSP has failed to do so); or
- (b) the TSP is implementing a Shared Remedial Plan in accordance with its terms.

5. **NOTIFIABLE EVENTS, REMEDIAL EVENTS AND REPLACEMENT OF THE MAINTAINER**

- 5.1 The Secretary of State agrees with the TSP that, where this Paragraph 5.1 applies, she will not (a) authorise the Relevant Operator to terminate the TARA due to the occurrence of a TSP Default (as defined in the TARA) where such default is caused by a Maintainer Default, or (b) terminate the MARA pursuant to Paragraphs 1.1(g) or 1.1(i) where such default is caused by a Maintainer Default.
- 5.2 Paragraph 5.1 applies only in the following circumstances and in the circumstances set out in Paragraph 5.3:
- (a) the Maintenance Agreement is terminable in accordance with its terms by the TSP on account of a Maintainer Default; and

- (b) upon, or as soon as reasonably practicable after, the Maintenance Agreement has become terminable by the TSP in accordance with its terms, but prior to the TARA and/or this Agreement becoming terminable in accordance with their respective terms, the TSP has served a written notice on the Secretary of State and the Relevant Operator stating that it intends to terminate (subject to Clause 4.1(b)(i) of this Agreement) the Maintenance Agreement on account of the Maintainer Default, and intends to enter into an equivalent replacement maintenance agreement (the **New Maintenance Agreement**) with a person with the requisite financial, managerial and technical resources, who is wholly independent of the Maintainer, so as to enable the TSP to properly perform its obligations under the TARA, the identity of whom will be provided to the Secretary of State for the purposes of Clause 4.1(a) when known by the TSP (the **Replacement Notice**).
- 5.3 Paragraph 5.1 only applies during a period (the **Maintainer Protected Period**) beginning with the service by the TSP, being duly entitled to do so, of the Replacement Notice on the Secretary of State and the Relevant Operator, and ending:
- (a) one hundred and eighty (180) days after the date of service of the Replacement Notice or, where no New Maintenance Agreement has been entered into by the TSP during this one hundred and eighty (180) day period and the TSP demonstrates to the satisfaction of the Secretary of State that there is a reasonable prospect of a New Maintenance Agreement being entered into during a further period of one hundred and eighty (180) days, three hundred and sixty (360) days after the date of service of the Replacement Notice (or, in either case, such other date as the parties may agree); or
- (b) if earlier, on the date on which the TSP enters into the New Maintenance Agreement, subject to and in accordance with the applicable requirements of Clause 4.
- 5.4 The continuance of the Maintainer Protected Period is conditional upon the TSP continuing to use reasonable endeavours to enter into a New Maintenance Agreement in compliance with this Agreement.
- 5.5 The parties agree that on expiry of the Maintainer Protected Period without a New Maintenance Agreement having been entered into, the Secretary of State may, as she sees fit, authorise the Relevant Operator to terminate the TARA on any grounds thereunder that enable the Relevant Operator to do so, including by reference to any acts or omissions of the TSP during the Maintainer Protected Period, and either alone or in combination with any other acts or omissions of the TSP, whether before or after the Maintainer Protected Period.
- 5.6 The parties also agree that, where the TSP enters into a New Maintenance Agreement in accordance with Clause 4.1(a):
- (a) any accrued circumstances, incidents or events giving rise to Notifiable Events shall be waived by the Relevant Operator and any accrued Notifiable Events, Remedial Events, formal warning notices and/or final warning notices under the TARA shall, for the purposes of termination only (and without prejudice to the rights of the Relevant Operator to make financial Deductions in respect of the foregoing from TARA Payments due and payable whether before, during or after the Maintainer Protected Period) be cancelled; and

- (b) during the period commencing on the date of the New Maintenance Agreement and ending six (6) Reporting Periods thereafter:
 - (i) any Notifiable Events incurred pursuant to the TARA shall be waived by the Relevant Operator;
 - (ii) the TARA shall not be terminable by the Relevant Operator in respect of any Persistent Failure Default Event (as defined in the TARA) that arises from any Remedial Event incurred pursuant to the TARA and any circumstances, incidents or events giving rise to any Remedial Event shall be waived by the Relevant Operator; and
 - (iii) any Deductions for which the TSP is liable pursuant to the TARA shall be halved,

and the Secretary of State shall procure that the Relevant Operator amends the TARA in accordance with its terms to give effect to the provisions of this Paragraph 5.6(b).

5.7 Upon the occurrence of a Maintainer Replacement Refinancing the provisions of Appendix E (*Maintainer Replacement Refinancing*) to Part D (*TSP Default*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*) shall have effect between the parties and each party shall comply with its respective obligations thereunder.

5.8 The provisions of this Paragraph 5 shall relate only to the termination of the Maintenance Agreement and the TSP's entry into a New Maintenance Agreement, and do not apply to any termination and/or replacement of any further or other Maintenance Agreement and/or subsequent maintenance arrangements that the TSP may make.

6. **TERMINATION PRIOR TO THE MINIMUM FLEET ACCEPTANCE DATE**

6.1 This Paragraph 6 regulates the service and effect of Default Notices that may be served prior to the Minimum Fleet Acceptance Date.

6.2 The Secretary of State may (subject to Paragraphs 3 and 4, where applicable) serve a Default Notice on the TSP within twenty (20) Business Days of becoming aware of a TSP Default which has occurred and is continuing.

6.3 Any Default Notice served pursuant to this Paragraph 6 shall specify:

- (a) the type and nature of the TSP Default that has occurred;
- (b) a Termination Date that is not later than ninety (90) days after the date of the Default Notice;
- (c) whether the Secretary of State intends to exercise the Call Option in respect of one or more of the Depots;
- (d) that, on the Termination Date, no Assets shall transfer to the Secretary of State (and no sums shall be payable by the Secretary of State other than pursuant to Paragraph 6.5); and
- (e) that the parties shall comply with the provisions of Appendix D (*Handover Protocol*) to Part D (*TSP Default*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*).

- 6.4 Any Default Notice served pursuant to this Paragraph 6 shall:
- (a) effect the termination of this Agreement and the TARA on the Termination Date; and
 - (b) act to cancel the outstanding and future obligations of the TSP to deliver Sets for Acceptance in accordance with the terms of this Agreement.
- 6.5 In the circumstances set out in this Paragraph 6 and whether the Secretary of State has exercised or refrained from exercising the Call Option, the Secretary of State shall pay to the TSP the Depot Compensation Amount in accordance with the provisions of Part H (*Calculation and Payment of Termination Sums*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*).
- 6.6 The payment by the Secretary of State to the TSP of the Depot Compensation Amount referred to in Paragraph 6.5 shall be exclusive of VAT. If, in accordance with the normal VAT accounting regulations, any VAT becomes due in respect of the Depot Compensation Amount (that is to say, in the situation where the payment is something other than compensatory in nature and outside the scope of VAT), such VAT shall be paid by the Secretary of State to the TSP in addition to the Depot Compensation Amount which it pays to the TSP, on provision by the TSP to the Secretary of State of a valid VAT invoice.
- 7. TERMINATION ON OR AFTER THE MINIMUM FLEET ACCEPTANCE DATE BUT PRIOR TO THE FLEET ACCEPTANCE DATE**
- 7.1 This Paragraph 7 regulates the service and effect of Default Notices that may be served on or after the Minimum Fleet Acceptance Date but prior to the Fleet Acceptance Date.
- 7.2 The Secretary of State may (subject to Paragraphs 3 and 4, where applicable) serve a Default Notice on the TSP at any time after the TSP Default occurs and is continuing.
- 7.3 Any Default Notice served pursuant to this Paragraph 7:
- (a) shall specify the type and nature of the TSP Default that has occurred;
 - (b) shall specify a Termination Date that is not later than ninety (90) days after the date of the Default Notice;
 - (c) shall specify whether the Secretary of State intends to exercise the Call Option in respect of one or more of the Depots;
 - (d) shall direct the TSP on the Termination Date to transfer to the Secretary of State, or as the Secretary of State directs, all of the TSP's rights, title and interest in and to the Assets in accordance with Part J (*Asset Transfer*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*);
 - (e) shall specify that the parties shall comply with the provisions of Annex A (*Termination of this Agreement*) of Appendix D (*Handover Protocol*) to Part D (*TSP Default*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*); and
 - (f) may, subject to the terms of the Funder Direct Agreement and the Sub-Contractor Direct Agreements, direct the TSP to enter into a novation of all or any of the Sub-Contract Documents to the Secretary of State, or as she may direct.

- 7.4 Any Default Notice served pursuant to this Paragraph 7 shall:
- (a) effect the termination of this Agreement and the TARA on the Termination Date;
 - (b) activate the provisions of Appendix C (*No Full Fleet Valuation Procedure*) to Part D (*TSP Default*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*) in respect of the Assets and the provisions of Paragraph 7.5 in respect of the Depots; and
 - (c) act to cancel the outstanding and future obligations of the TSP and the Secretary of State in relation to the delivery of Sets for Acceptance in accordance with the terms of this Agreement.
- 7.5 In the circumstances set out in this Paragraph 7 and whether the Secretary of State has exercised or refrained from exercising the Call Option, the Secretary of State shall pay to the TSP the Depot Compensation Amount in accordance with the provisions of Part H (*Calculation and Payment of Termination Sums*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*).
- 7.6 The payment by the Secretary of State to the TSP of the Depot Compensation Amount referred to in Paragraph 7.5 shall be exclusive of VAT. If, in accordance with the normal VAT accounting regulations, any VAT becomes due in respect of the Depot Compensation Amount (that is to say, in the situation where the payment is something other than compensatory in nature and outside the scope of VAT), such VAT shall be paid by the Secretary of State to the TSP in addition to the Depot Compensation Amount which it pays to the TSP, on provision by the TSP to the Secretary of State of a valid VAT invoice.
8. **TERMINATION ON OR AFTER THE FLEET ACCEPTANCE DATE**
- 8.1 This Paragraph 8 regulates the service and effect of Default Notices that may be served on or after the Fleet Acceptance Date.
- 8.2 The Secretary of State may (subject to Paragraphs 3 and 4, where applicable, and subject always to Paragraphs 8.4, 8.5 and 8.6) serve a Default Notice on the TSP at any time after the TSP Default occurs and is continuing.
- 8.3 The TSP may give the Secretary of State not less than ten (10) Business Days' notice of the date (in each case, the ***Anticipated Cap Reduction Date***) that it believes shall constitute the First Cap Reduction Date or the Responsibility Transfer Date (as the case may be), confirming in each case that, so far as it is aware, the conditions to be satisfied by the Manufacturer shall have been met in respect of the applicable date unless the Secretary of State elects to serve a Default Notice in advance of such date in accordance with this Paragraph 8. The provisions of Paragraphs 8.4, 8.5 and 8.6 shall apply to any notice served by the TSP.
- 8.4 Where, as at any Anticipated Cap Reduction Date, a TSP Default has occurred and is continuing, unless the relevant TSP Default is as at such date the subject of:
- (a) a Cure Notice (whether or not the TSP is complying with its obligations pursuant to Paragraph 3);
 - (b) a Remedial Plan Notice (whether or not the TSP is complying with its obligations pursuant to Part A (*Remedial Plans and Other Secretary of State Remedies*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*)); or

- (c) a Formal Warning Notice or a Final Warning Notice but has not been designated a Persistent Breach Default Event by the Secretary of State,

the Secretary of State shall, subject to compliance by the TSP with its obligation pursuant to Paragraph 8.3 and to Paragraph 8.6(c)(ii), on the relevant Anticipated Cap Reduction Date elect either to serve a Default Notice on the TSP in accordance with Paragraph 8.7 in respect of such TSP Default or be deemed to have waived her right to serve a Default Notice in respect of such TSP Default.

8.5 At any time after any Anticipated Cap Reduction Date upon the Secretary of State becoming entitled to serve a Default Notice pursuant to:-

- (a) Paragraph 3.5 or 3.6 (in respect of a Cure Notice that was active as at that Anticipated Cap Reduction Date);
- (b) Paragraph 4 (in respect of a Remedial Plan Notice that was active as at that Anticipated Cap Reduction Date); or
- (c) Paragraph 2.3 (in respect of a Formal Warning Notice or a Final Warning Notice that was active as at that Anticipated Cap Reduction Date),

the Secretary of State shall, subject to compliance by the TSP with its obligation pursuant to Paragraph 8.3 and to Paragraph 8.6(c)(ii), on such date elect either to serve a Default Notice on the TSP in accordance with Paragraph 8.7 in respect of the relevant TSP Default or be deemed to have waived her right to serve a Default Notice in respect of such TSP Default.

8.6 Where, in relation to any election pursuant to Paragraph 8.4 or 8.5, the Secretary of State notifies the TSP that she considers that, on the relevant Anticipated Cap Reduction Date or such later date (as applicable):

- (a) she is not in possession of all information relevant to her election;
- (b) she has not received all advice she requires in order to make her election; and
- (c) she has not had a reasonable and fair period of time for consideration of her election,

then:

- (i) the Secretary of State's obligation to elect to either serve a Default Notice on the TSP in respect of the relevant TSP Default or be deemed to have waived her right to serve a Default Notice in respect of such TSP Default shall be suspended until the earlier of:
 - (A) the date as on which the Secretary of State considers that the conditions of Paragraphs 8.6(a) to (c) (inclusive) are satisfied; and
 - (B) the date that is nine (9) months after the later of:
 - (I) the relevant Anticipated Cap Reduction Date; and
 - (II) the date on which the Secretary of State became entitled to serve a Default Notice in any circumstance set out in

Paragraph 8.5 with respect to the relevant Anticipated Cap Reduction Date; and

- (ii) the TSP shall use reasonable endeavours to provide as soon as reasonably practicable any information to the Secretary of State as she requires in order to make her election.

8.7 (a) The TSP may, at any time during the Contract Period, request in writing that the Secretary of State confirms to the TSP whether, at such time, the Secretary of State has actual knowledge of a TSP Default that at such time has occurred and is subsisting.

(b) Following any request pursuant to Paragraph 8.7(a), the Secretary of State shall promptly provide such confirmation to the TSP, provided that the obligations of the Secretary of State under this Paragraph 8.7(b) shall at no time require the Secretary of State to undertake any research or investigation into any matter related hereto.

8.8 Any Default Notice served pursuant to this Paragraph 8:

(a) shall specify the type and nature of the TSP Default that has occurred;

(b) shall specify the Secretary of State's election, subject to and in accordance with Paragraph 9, to either:

- (i) tender for the provision of a New Contract in accordance with the Re-Tendering Procedure; or

- (ii) require a determination in accordance with the No Re-Tendering Procedure;

(c) shall specify a Termination Date that is, in the case of both an election to tender for the provision of a New Contract in accordance with the Re-Tendering Procedure and an election to require a determination in accordance with the No Re-Tendering Procedure, not later than ninety (90) days after the date of the Default Notice;

(d) whether the Secretary of State intends to exercise the Call Option in respect of one or more of the Depots;

(e) shall direct the TSP on the Termination Date to transfer to the Secretary of State, or as the Secretary of State directs, all of the TSP's rights, title and interest in and to the Assets (subject to the Permitted Encumbrances) in accordance with Part J (*Asset Transfer*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*);

(f) shall specify that the parties shall comply with the provisions of Annex A (*Termination of this Agreement*) of Appendix D (*Handover Protocol*) to Part D (*TSP Default*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*); and

(g) may, subject to the terms of the Funder Direct Agreement and the Sub-Contractor Direct Agreements, direct the TSP to enter into a novation of all or any of the Sub-Contract Documents to the Secretary of State, or as she may direct.

- 8.9 Any Default Notice served pursuant to this Paragraph 8 shall:
- (a) effect the termination of this Agreement and the TARA on the Termination Date; and
 - (b) act to cancel the outstanding and future obligations of the TSP to deliver Sets for Acceptance in accordance with the terms of this Agreement.

9. CONDITIONS RELATING TO MARKET TENDER ELECTIONS

9.1 The Secretary of State may elect to tender for the provision of a New Contract in accordance with Paragraph 8 if there is a Liquid Market and:

- (a) the Senior Lenders have not exercised their rights to step-in under and in accordance with the Funder Direct Agreement; or
- (b) the TSP or the Senior Lenders have not procured the transfer of the TSP's rights and liabilities under this Agreement to a suitable substitute TSP (as defined in the Funder Direct Agreement) and have failed to use reasonable efforts to do so,

but otherwise the Secretary of State shall not be entitled to tender for the provision of a New Contract and shall be deemed to have elected for a determination in accordance with the No Re-Tendering Procedure to apply.

9.2 If the Secretary of State elects to tender for the provision of a New Contract in accordance with Paragraphs 8.8(b) and 9.1, the Re-Tendering Procedure will be followed provided the Secretary of State determines that:

- (a) at least three (3) Suitable Substitute TSPs are prequalified under the Secretary of State's prequalification procedure unless the TSP, acting reasonably and with the consent of the Senior Lenders, agrees that the prequalification of two (2) Suitable Substitute TSPs is sufficient; and
- (b) at least two (2) Compliant Tenders are received under the Re-Tendering Procedure.

9.3 If either of the conditions in Paragraphs 9.2(a) and 9.2(b) is not satisfied, the parties shall be deemed to have elected for a determination of the Adjusted Estimated Fair Value of this Agreement and the provisions of the No Re-Tendering Procedure will apply.

10. SUPPLEMENTAL PROVISIONS RELATING TO DEFAULT NOTICES

10.1 In any Default Notice, the Secretary of State may, as an alternative to specifying a Termination Date, state that she will specify a Termination Date within twenty (20) days after the date of the Default Notice.

10.2 In any Default Notice served pursuant to Paragraph 8, the Secretary of State may, as an alternative to specifying her election to either:

- (a) tender for the provision of a New Contract in accordance with the Re-Tendering Procedure; or
- (b) require a determination in accordance with the No Re-Tendering Procedure,

state that that she will specify her election within twenty (20) days after the date of the Default Notice.

10.3 Any subsequent specification by the Secretary of State pursuant to Paragraph 10.1 or 10.2 shall be regarded for all purposes as if it had been set out in the Default Notice to which it relates and is subject to the provisions and time periods of the applicable Paragraphs in this Part D (*TSP Default*) to which such Default Notice is served.

11. PAYMENTS FOLLOWING DEFAULT NOTICE

11.1 The TSP shall, from the date of service of a Default Notice to the Termination Date:

- (a) remain under an obligation to act in accordance with the TARA to which it is party;
- (b) retain for its own account any TARA Payments it receives during that period; and
- (c) not be entitled to receive any Post Termination Service Amounts.

11.2 If and to the extent that, in respect of a Default Notice served pursuant to Paragraph 7 or 8, the Compensation Date falls after the Termination Date, then for all or any part of a Reporting Period falling between the Termination Date and the Compensation Date, the Secretary of State shall, subject to Paragraph 11.3, pay to the TSP:

- (a) the Post Termination Service Amount for that Reporting Period, on or before the date falling twenty-one (21) days after the end of that Reporting Period; and
- (b) the Post Termination Service Amount for the period ending on the Compensation Date, on or before the date falling twenty (20) Business Days after the Compensation Date.

11.3 If any Post Termination Service Amount is less than zero then:

- (a) it shall be carried forward and shall be set off against any future positive Post Termination Service Amounts; and
- (b) if any such Post Termination Service Amount has not been set off on or before the Compensation Date, then it shall be taken into account in the calculation of the Adjusted Highest Compliant Tender Price, the Adjusted Estimated Fair Value of this Agreement or the Adjusted No Full Fleet Compensation Amount, as appropriate.

11.4 If and to the extent that, in respect of a Default Notice served pursuant to Paragraph 7 or 8, the Compensation Date falls after the Termination Date, the Secretary of State shall:

- (a) in circumstances where the Sub-Contracts (and, in each case, any related Sub-Contract Documents) have been novated in accordance with the relevant Sub-Contractor Direct Agreement in favour of the Secretary of State or her nominee, exercise her rights under the relevant agreement in a reasonable and proper manner in respect of the maintenance of the Sets; and
- (b) in circumstances where the Sub-Contracts (and, in each case, any related Sub-Contract Documents) have not been novated in accordance with the relevant Sub-Contractor Direct Agreement in favour of the Secretary of State or her nominee, subject to Paragraph 11.5 effect reasonable arrangements for the maintenance of all Assets in respect of which the TSP's rights, title and interest have been transferred to the Secretary of State or her nominee pursuant to Paragraph 7.3(d) or 8.8(e) are, during the period from (and including) the Termination Date to (but

excluding) the Compensation Date and exercise her rights under such arrangements in a reasonable and proper manner.

- 11.5 The Secretary of State shall, subject only to compliance by the Secretary of State with her obligations under Paragraph 11.4(b) and the Secretary of State TSA Direct Agreement, have no liability pursuant to Paragraph 11.4(b) for any maintenance in respect of the Sets carried out by the Maintainer thereunder.

Appendix A to Part D of Schedule 6

Re-tendering Procedure

1. OBJECTIVES AND THE TENDER PROCESS

1.1 The objectives of the Re-Tendering Procedure shall be:

- (a) to procure a Suitable Substitute TSP:
 - (i) to enter into a New Contract with the Secretary of State on substantially the same terms as this Agreement;
 - (ii) to enter into a new TARA with the Relevant Operator on substantially the same terms as the TARA which is to terminate or has terminated pursuant to the Default Notice (the **New TARA**);
 - (iii) to take title to the Assets;
 - (iv) to enter into transfers and/or novations of the relevant Depot Lease Agreements, the BRBR Direct Agreement and the Network Rail Direct Agreement; and
 - (v) where the Sub-Contract Documents are able to be novated pursuant to the relevant Sub-Contractor Direct Agreement, to enter into novated Sub-Contract Documents with the Manufacturer and the Maintainer;
- (b) to establish the Highest Compliant Tender Price and the Adjusted Highest Compliant Tender Price as a result of the Tender Process; and
- (c) to pay to the TSP or receive from the TSP, as appropriate, the Adjusted Highest Compliant Tender Price as a result of the Tender Process.

1.2 The Secretary of State shall:

- (a) (subject to any legal requirements preventing her from doing so) use her reasonable endeavours to complete the Tender Process as soon as practicable; and
- (b) notify the TSP of the Qualification Criteria and the other requirements and terms of the Tender Process, including the timing of the Tender Process in setting such requirements and terms.

1.3 The Tender Process shall be conducted in accordance with applicable procurement regulations existing at the time of the Tender Process.

1.4 The TSP authorises the release of any information by the Secretary of State under the Tender Process which would otherwise be prevented under Schedule 11 (*Information and Confidentiality*) that is reasonably required as part of the Tender Process.

- 1.5 The TSP may, at its own cost, appoint a person (the ***Tender Process Monitor***) to monitor the Tender Process for the purpose of monitoring and reporting to the TSP and the Senior Lenders on the Secretary of State's compliance with the Tender Process and making representations to the Secretary of State. The TSP shall procure that the Tender Process Monitor:
- (a) does not disclose any Confidential Information to the TSP or any other person (and provides an undertaking to the Secretary of State to such effect as a condition of its appointment) but shall be entitled to advise the TSP and the Senior Lenders as to whether it considers that the Secretary of State has acted in accordance with the Tender Process, and correctly determined the Adjusted Highest Compliant Tender Price; and
 - (b) enters into a confidentiality agreement with the Secretary of State in a form acceptable to the Secretary of State.
- 1.6 The Tender Process Monitor shall be entitled to attend all meetings relating to the Tender Process, inspect copies of the tender documentation and bids and where he wishes to make representations to the Secretary of State regarding compliance with the Tender Process, he shall do so in writing. All representations shall be made by the Tender Process Monitor in a timely manner as the Tender Process proceeds and the Secretary of State shall not be bound to consider or act upon such representations, but acknowledges that such representations may be referred to by the TSP in the event that the TSP refers a Dispute relating to the Adjusted Highest Compliant Tender Price to dispute resolution in accordance with the Dispute Resolution Agreement pursuant to Paragraph 2.3.

2. **TENDERS**

- 2.1 The Secretary of State shall require bidders to bid on the basis that:
- (a) they will receive the benefit of any outstanding claims under material damage insurance policies and amounts (if any) standing to the credit of the Joint Insurance Account on the date that the New Contract is entered into and in accordance with Paragraph 9 of Part A (*Testing and Acceptance*) of Schedule 2 (*Introduction into Service*);
 - (b) all of the TSP's rights, title and interest in and to the Assets (as at the point immediately prior to the Termination Date) shall be available to the New TSP; and
 - (c) the TSP's rights and interest in and to the Depots (as at the point immediately prior to the Termination Date) shall, subject to no double counting, be available to the New TSP.
- 2.2 As soon as practicable after tenders have been received, the Secretary of State shall:
- (a) determine the Compliant Tenders; and
 - (b) notify the TSP of the Highest Compliant Tender Price and the Adjusted Highest Compliant Tender Price.
- 2.3 The TSP may within five (5) Business Days of receipt of the notice pursuant to Paragraph 2.2, notify the Secretary of State that it disagrees with the Adjusted Highest Compliant Tender Price notified pursuant to that Paragraph. If the TSP so disagrees, then the Dispute shall be referred to the dispute resolution procedure described in the

Dispute Resolution Agreement but the Secretary of State shall nevertheless be entitled to enter into a New Contract.

3. PAYMENT AND SETTLEMENT

3.1 Unless the Secretary of State receives notice from the TSP pursuant to Paragraph 2.3 within the period specified therein, where the Adjusted Highest Compliant Tender Price notified pursuant to Paragraph 2.2 or subsequently determined pursuant to the Dispute Resolution Agreement:

- (a) is a positive number, the Secretary of State shall pay to the TSP that Adjusted Highest Compliant Tender Price no later than the date falling twenty (20) Business Days after the date of the New Contract; or
- (b) is a negative number, the TSP shall pay to the Secretary of State that Adjusted Highest Compliant Tender Price no later than the date of the New Contract.

3.2 The discharge by the Secretary of State of her payment obligations in Paragraph 3.1 and, if appropriate, Paragraph 3.8 shall be in full and final settlement of all the TSP's claims and rights against the Secretary of State for breaches and/or termination of this Agreement and the Project Documents whether under contract, tort, restitution or otherwise, save for any liability of the Secretary of State which arose prior to the Termination Date that has not already been taken into account in that Adjusted Highest Compliant Tender Price.

3.3 Where the Adjusted Highest Compliant Tender Price notified pursuant to Paragraph 2.2 or subsequently determined pursuant to the Dispute Resolution Agreement:

- (a) is zero or a negative number, then the Secretary of State shall have no obligation to make any payment to the TSP pursuant to this Paragraph 3 and with effect from the time that the Secretary of State gives notice of that fact to the TSP, the Secretary of State shall be released from all liability to the TSP for breaches and/or termination of this Agreement and any other Project Document whether under contract, tort, restitution or otherwise, save for any antecedent liability of the Secretary of State which arose prior to the Termination Date that has not already been taken into account in determining the Adjusted Highest Compliant Tender Price; and
- (b) is zero or a positive number, then the TSP shall have no obligation to make any payment to the Secretary of State pursuant to this Paragraph 3.

3.4 Where the TSP has served notice on the Secretary of State under Paragraph 2.3 and the amount of the Adjusted Highest Compliant Tender Price has been determined pursuant to the Dispute Resolution Agreement, the Secretary of State (or the TSP, as the case may be) shall pay to the TSP (or the Secretary of State, as the case may be) on or before the date falling twenty (20) Business Days after it has been so determined:

- (a) an amount equal to that price; and
- (b) interest at the Default Rate on any amount of the Adjusted Highest Compliant Tender Price which had been withheld, from:
 - (i) in the case of a payment from the Secretary of State, the date falling twenty (20) Business Days after the date of the New Contract until the date of payment; and

- (ii) in the case of a payment from the TSP, the date falling on the date of the New Contract until the date of payment.
- 3.5 Where there is an agreed amount and a disputed amount in respect of the Adjusted Highest Compliant Tender Price, the Secretary of State (or the TSP, as the case may be) shall pay to the TSP (or the Secretary of State, as the case may be) the agreed amount no later than the date specified in Paragraph 3.1, with the disputed amount being dealt with in accordance with Paragraph 3.4.
- 3.6 If the Secretary of State (or the TSP, as the case may be) has not become obliged to pay an amount equal to the Adjusted Highest Compliant Tender Price to the TSP (or the Secretary of State, as the case may be) on or before the date falling two (2) years after the Termination Date (other than, in the case of payment by the Secretary of State, as a result of a failure by the TSP to comply with its obligations under Paragraph 4 of Part J (*Asset Transfer*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*)), then the provisions of this Appendix A shall cease to apply and the provisions of the No Re-Tendering Procedure shall apply instead.
- 3.7 The Secretary of State may elect at any time prior to the receipt of a Compliant Tender to follow the No Re-Tendering Procedure by notifying the TSP that this election has been made.
- 3.8 If the Secretary of State has received all bids from bidders under the Tender Process and has received a Compliant Tender but decides not to complete the Tender Process, she shall notify the TSP of this decision and, as the case may be, pay to the TSP or the TSP shall pay the Secretary of State an amount equal to the Adjusted Highest Compliant Tender Price within twenty (20) Business Days of such notification.

Appendix B to Part D of Schedule 6

No Re-tendering Procedure

1. APPLICATION OF NO-RETENDERING PROCEDURE

If either the Secretary of State elects, or is deemed to have elected, pursuant to Paragraph 8 or 9 of Part D (*TSP Default*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*) or pursuant to Paragraph 3.6 of Appendix A (*Re-Tendering Procedure*) to Part D (*TSP Default*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*), to require agreement or determination of the Adjusted Estimated Fair Value of this Agreement in accordance with this Appendix B (*No Re-Tendering Procedure*) then the procedure in Paragraph 2 shall apply.

2. ESTIMATED FAIR VALUE OF THIS AGREEMENT

2.1 Where this Paragraph 2 applies, the parties shall act in good faith to agree the Estimated Fair Value of this Agreement as at the Termination Date. In agreeing or determining (pursuant to Paragraph 2.3) the Estimated Fair Value of this Agreement, the parties (or, as the case may be, the Expert) shall be obliged to follow the principles set out below:

- (a) all forecast amounts shall be calculated in nominal terms at current prices, recognising the adjustment for indexation in respect of forecast inflation between the date of calculation and the forecast payment date(s) as set out in this Agreement;
- (b) the total of all future payments of the full amount of all TARA Payments that would have been paid to the TSP, but for the termination, assuming that the Agility Services were being fully provided (including any Adjustments Assumed within the Effective Date Financial Model in respect of the TARA Payments), shall be calculated and discounted to the Termination Date at the Termination Date Discount Rate; and
- (c) the total of all costs forecast to be incurred by the Secretary of State as a result of termination, calculated and discounted at the Termination Date Discount Rate and deducted from the payment calculated pursuant to Paragraph 2.1(b), such costs to include (without double counting):
 - (i) a reasonable risk assessment of any cost overruns that will arise, whether or not forecast in the relevant base case;
 - (ii) the costs forecast to be incurred by the Secretary of State in providing from the Termination Date the Agility Services to the standard required, and
 - (iii) any rectification costs required to deliver the Agility Services to the standard required (including any costs forecast to be incurred by the Secretary of State to complete construction or development work and additional operating costs required to restore operating services standards (taking account of the novation of the Sub-Contracts if and to the extent they have been novated to the Secretary of the State or her nominee in accordance with the Sub-Contractor Direct Agreements), or the costs of any action taken by the Secretary of State to step-in to those Sub-Contracts pursuant to the Sub-Contractor Direct Agreements (but

excluding, in respect of any Depot, where any such costs have been recovered by the relevant Landlord from the TSP pursuant to the relevant Depot Lease Agreement or Depot Lease Document),

in each case, such costs to be forecast at a level that will deliver the full amount of TARA Payments referred to in Paragraph 2.1(b).

- 2.2 As soon as reasonably practicable after the agreement of the Estimated Fair Value of this Agreement, the Secretary of State shall calculate the Adjusted Estimated Fair Value of this Agreement and notify the TSP of the same.
- 2.3 The TSP may within twenty (20) Business Days of receipt of the notice pursuant to Paragraph 2.2, notify the Secretary of State that it disagrees with the Adjusted Estimated Fair Value of this Agreement notified pursuant to that Paragraph. If the TSP so disagrees, then the Dispute shall be referred to be determined pursuant to the Dispute Resolution Agreement.
- 2.4 When the Adjusted Estimated Fair Value of this Agreement is agreed or determined, it shall be paid in accordance with Paragraph 3.

3. PAYMENT AND SETTLEMENT

- 3.1 Where the Adjusted Estimated Fair Value of this Agreement, agreed or determined pursuant to Paragraph 2:
 - (a) is a positive number, the Secretary of State shall pay to the TSP that Adjusted Estimated Fair Value of this Agreement in accordance with Part H (*Calculation and Payment of Termination Sums*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*); or
 - (b) is a negative number, the TSP shall pay to the Secretary of State that Adjusted Estimated Fair Value of this Agreement no later than the Compensation Date.
- 3.2 The discharge by the Secretary of State of her obligation in Paragraph 3.1(a) is in full and final settlement of all the TSP's claims and rights against the Secretary of State for breaches and/or termination of this Agreement or other Project Document whether in contract, tort, restitution or otherwise save for any liability that arose prior to the Termination Date that has not been taken into account in determining the Adjusted Estimated Fair Value of this Agreement.
- 3.3 Where the Adjusted Estimated Fair Value of this Agreement, agreed or determined pursuant to Paragraph 2:
 - (a) is zero or a negative number, then the Secretary of State shall have no obligation to make any payment to the TSP pursuant to this Paragraph 3 and with effect from the time of the agreement or determination of the Adjusted Estimated Fair Value of this Agreement, the Secretary of State shall be released from all liability to the TSP for breaches and/or termination of this Agreement and any other Project Document whether under contract, tort, restitution or otherwise, save for any antecedent liability of the Secretary of State which arose prior to the Termination Date that has not already been taken into account in determining the Adjusted Estimated Fair Value of this Agreement; and
 - (b) is zero or a positive number, then the TSP shall have no obligation to make any payment to the Secretary of State pursuant to this Paragraph 3.

Appendix C to Part D of Schedule 6

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Appendix D to Part D of Schedule 6
Handover Protocol

1. **THIS HANDOVER PROTOCOL IS COMPRISED OF TWO ANNEXES:**
 - (a) Annex A (*Termination of this Agreement*); and
 - (b) Annex B (*Expiry of the Contract Period*).

Annex A of Appendix D to Part D of Schedule 6

Termination of this Agreement

Information

- 1.1 The Secretary of State may at the same time or at any time after the Secretary of State has issued a Default Notice to the TSP, give the TSP written notice of the identity of any replacement train service provider or any other nominee of the Secretary of State to be engaged following the termination of this Agreement, together with a request to provide the Secretary of State and/or any such replacement train service provider or any other nominee of the Secretary of State with any of the following (to the extent relevant having regard to the time in the Contract Period when the Default Notice is being served and whether the Sub-Contracts are being novated in accordance with the Sub-Contractor Direct Agreements and this Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*)):
- (a) an asset register containing details of all the Assets to be transferred in accordance with Part J (*Asset Transfer*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*);
 - (b) details of all Depots;
 - (c) where termination occurs prior to the Minimum Fleet Acceptance Date, a day by day programme for the removal of the Assets from the Depots;
 - (d) where termination occurs post the Minimum Fleet Acceptance Date, a day by day programme for the delivery of the Assets in accordance with Part J (*Asset Transfer*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*);
 - (e) the Technical Library;
 - (f) the Depot Maintenance Records;
 - (g) any copies of the Non-Depot Software that is supplied, or to be supplied, by the TSP in connection with the Project (and all manuals relating to that software) that are in the possession of the TSP, the Maintainer, the Manufacturer or any of their Affiliates;
 - (h) any Non-Depot Source Code in the TSP's possession to the extent that it has been released from escrow pursuant to Paragraph 2.4 of Schedule 10 (*Intellectual Property*) (and/or the IP Escrow Agreement);
 - (i) any details required in respect of Relevant Employees;
 - (j) details of any Sets to be transferred to the Secretary of State or her nominee;
 - (k) planned servicing and maintenance documents (including maintenance manuals) describing the Sets and the maintenance regime in sufficient detail to enable a third party to take over planned preventative maintenance, historical records of inspection, replacement and refurbishment, the future planned preventative maintenance regime and any other details reasonably requested by the Secretary of State;

- (l) Maintenance Plans;
- (m) schedules of Spares held at Depots or elsewhere, with details of locations;
- (n) schedules of the Special Tools held at the Depots;
- (o) Performance Reports (as defined in the Initial TARA);
- (p) details of any other records or copies held by the TSP in accordance with this Agreement that are to be delivered and/or made available to the Secretary of State;
- (q) details relating to the Significant Contractors engaged in relation to the Project (including company name, registered number and registered office of each Significant Contractor, the names of any contacts at each Significant Contractor, and the nature of the services provided by each Significant Contractor);
- (r) details of all Manufacturer's warranties in respect of the Sets and Depots as applicable;
- (s) details of any licences, service agreements, warranty and maintenance agreements, support agreements or other arrangements between the TSP and Third Parties which are necessary for carrying out the provision of the Service;
- (t) details of any Relevant Approvals which are necessary for carrying out the provision of the Service;
- (u) details of any equipment, systems and/or data (for example, OTMR) which are necessary for carrying out the provision of the Service; and
- (v) draft documents to enable the assignment or novation of the Leases and the Relevant Approvals,

and upon receipt of such notice and request, the TSP shall be obliged to provide the information and draft documents within fourteen (14) days from the date of the relevant Default Notice and associated request.

Liaison and Co-operation

- 1.2 (a) The TSP shall, during the period from the date of the Default Notice and until the date ninety (90) days thereafter, remain under an obligation to act in accordance with the TARA; and
- (b) liaise and co-operate with the Secretary of State's Representative and any new train service provider or nominee expressly notified to the TSP by the Secretary of State's Representative in relation to:
- (i) termination of this Agreement and the services being provided by the TSP; and
 - (ii) the phasing in of any replacement services.

Assistance required by the Secretary of State

- 1.3 The TSP shall (and shall procure that the Significant Contractors shall), during the period from the date of the Default Notice until the date ninety (90) days thereafter, provide to the

Secretary of State, such new train service provider or any nominee of the Secretary of State, such reasonable assistance as the Secretary of State or such nominee may require.

Handover of Assets

- 1.4 (a) Subject to the Funders Direct Agreement, any applicable Sub-Contractor Direct Agreement and Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*) (as the case may be), with effect from the date of the Default Notice until the date ninety (90) days thereafter the TSP shall (and where relevant, shall procure that its Significant Contractors shall) in addition to its obligations under this Agreement and the TARA and relevant Sub-Contracts, and without any additional cost to the Secretary of State (and to the extent relevant having regard to the time in the Contract Period when the Default Notice is being served and whether the Sub-Contracts are being novated in accordance with this Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*)):
- (i) provide such co-operation as is reasonably requested by the Secretary of State and any other person designated by the Secretary of State to agree a reasonable programme to achieve a smooth handover of the relevant Assets to the Secretary of State or her nominee (a **Handover Programme**) throughout the ninety (90) day period referred to in Paragraphs 1.2 and 1.3;
 - (ii) provide such co-operation as is reasonably requested by the Secretary of State and any other person designated by the Secretary of State to ensure the delivery and performance of the Handover Programme; and
 - (iii) upon request by the Secretary of State and to the extent of such request, as soon as practicable, perform the obligations specified in Paragraph 1.4(b).
- (b) The obligations referred to in Paragraph 1.4(a)(iii) are as follows:
- (i) make available for use to the Secretary of State the Sets (including any Vehicles), Spares, Special Tools, Simulators and the Technical Library used by the TSP which are reasonably required in connection with the performance of this Agreement and the TARA;
 - (ii) procure the benefit of all manufacturers or suppliers warranties in respect of any mechanical and electrical equipment at each Depot and/or used in the performance of the Service;
 - (iii) vacate, and where the relevant Sub-Contracts are not being novated or the Standby Maintenance Arrangements are not being provided by the Maintainer pursuant to the relevant Sub-Contractor Direct Agreement, procure its Significant Contractors vacate the Depots, within ninety (90) days from the date of the Default Notice, leaving such Depots in the condition required by the relevant Lease;
 - (iv) deliver and handover to the Secretary of State or her nominee any Relevant Approval;

- (v) novate or enter into any necessary deeds of variation in respect of any agreement or similar document in respect of any Planning Permission and shall fully and effectively license for use by the Secretary of State (or such persons as the Secretary of State may direct) any drawings and/or plans referred to in any such document;
- (vi) in accordance with the provisions of Part J (*Asset Transfer*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*), at the Secretary of State's request transfer all rights, title and interest in and to any of the Assets on the basis of full title guarantee and any rights and interest it has in relation to the provision of the services to the Secretary of State or to any nominee of the Secretary of State;
- (vii) allow a nominee of the Secretary of State reasonable access to facilities as detailed in Paragraph 4 of Part C (*Contract Management*) of Schedule 2 (*Introduction into Service*);
- (viii) acknowledge the irrevocable, royalty-free, non-exclusive licences granted by the TSP to the Secretary of State in accordance with Schedule 10 (*Intellectual Property*);
- (ix) assist with any transfer of Relevant Employees to the replacement train service provider or any nominee of the Secretary of State (including on expiry of any services being provided by the Maintainer pursuant to the Secretary of State TSA Direct Agreement) that occurs as a result of the Transfer Regulations and the provisions of part E (*Transfer Provisions*) of schedule 1 (*General Provisions*) of the TARA; and
- (x) provide handover workshops to the Secretary of State and/or her nominee to explain in reasonable detail the contents of any documents or actions to be or being undertaken in respect of each of the above.

Annex B of Appendix D to Part D of Schedule 6

Expiry of the Contract Period

1. REASONABLE ASSISTANCE

The TSP shall at any time during the final six (6) months of the Contract Period prior to its expiry for effluxion of time provide (and shall procure that its Significant Contractors (other than the Depot Construction Sub-Contractor) provide) to the Secretary of State or her nominee such reasonable assistance as the Secretary of State may require to achieve a smooth phasing out of the services on the RV Date, which shall include:

- (a) the vacation of the Depots in accordance with the Lease;
- (b) the delivery and handover to the Secretary of State or her nominee of any Relevant Approval and any other consent, permission, waiver, licence or certificate required or obtained in connection with the Project;
- (c) the novation or entering into of any necessary deeds of variation in respect of any agreement or similar document in respect of any Planning Permission and shall fully and effectively license for use by the Secretary of State (or such persons as the Secretary of State may direct) any drawings and/or plans referred to in any such document;
- (d) allowing a nominee of the Secretary of State reasonable access to facilities as detailed in Paragraph 4 of Part C (*Contract Management*) of Schedule 2 (*Introduction into Service*); and
- (e) assisting with any transfer of Relevant Employees to the replacement train service provider or any nominee of the Secretary of State that occurs as a result of the Transfer Regulations and the provisions of part E (*Transfer Provisions*) of schedule 1 (*General Provisions*) of the TARA.

2. SETS

The provisions of Paragraphs 5.3 and 5.4 of Part B (*Termination, Expiry and Replacement of the Relevant TARA*) of Schedule 4 (*Train Availability and Reliability Agreements*) shall apply in relation to the use of Assets after the RV Date.

Appendix E to Part D of Schedule 6

Maintainer Replacement Refinancing

1. OCCURRENCE OF A MAINTAINER REPLACEMENT REFINANCING

1.1 This Appendix E (*Maintainer Replacement Refinancing*) shall apply following the occurrence of a Maintainer Trigger Event, where, subject to Clause 4, the TSP after such event enters into a new Maintenance Agreement with a person who is not the Maintainer, so as to enable the TSP to perform its obligations under this Agreement and the TARA.

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Part E of Schedule 6

Corrupt Gifts and Fraud

1. TSP WARRANTY AS TO CORRUPT GIFTS AND FRAUD

1.1 The TSP warrants that in entering into this Agreement it has not committed any Prohibited Act.

2. TERMINATION FOR CORRUPT GIFTS AND FRAUD

2.1 If the TSP or any Sub-Contractor (or anyone employed by or acting on behalf of any of them) or any of its or their agents or shareholders commits any Prohibited Act, then, without limiting any rights the Secretary of State may have under this Agreement or otherwise, the Secretary of State shall be entitled to act in accordance with Paragraphs 2.2 to 2.7 (inclusive). In this Part E (*Corrupt Gifts and Fraud*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*), the expression "not acting independently of" (when used in relation to the TSP, Shareholder or a Sub-Contractor) means and shall be construed as acting with the authority of or knowledge of any one or more of the directors of the TSP, Shareholder or the Sub-Contractor (as the case may be).

2.2 If a Prohibited Act is committed by the TSP or by an employee not acting independently of the TSP, then the Secretary of State may terminate this Agreement by giving notice to the TSP and this Agreement will terminate in accordance with that notice.

2.3 If the Prohibited Act is committed by an employee of the TSP acting independently of the TSP, then the Secretary of State may give notice to the TSP of termination and this Agreement will terminate in accordance with that notice, unless within thirty (30) days of receipt of such notice, the TSP terminates the employee's employment and (if necessary) procures the performance of such part of the affected works and/or services by another person.

2.4 Subject to Paragraph 2.6, if the Prohibited Act is committed by a Shareholder of the TSP (***Prohibited Act Shareholder***) acting independently of the TSP and any other Shareholder, then the Secretary of State may give notice to the TSP of termination and this Agreement will terminate in accordance with that notice unless, within thirty (30) days of receipt of such notice, the TSP procures the acquisition of the Prohibited Act Shareholder's interest in the TSP by any or all of the remaining Shareholders or a third party subject to the provisions of Clause 24.

2.5 If the Prohibited Act is committed by a Sub-Contractor or by an employee of that Sub-Contractor not acting independently of that Sub-Contractor, then the Secretary of State may give notice to the TSP of termination and this Agreement will terminate in accordance with that notice, unless within thirty (30) days of receipt of such notice the TSP terminates the relevant Project Document and procures the performance of such part of the affected works and/ or services by another person.

2.6 If the Prohibited Act is committed by an employee of a Sub-Contractor acting independently of that Sub-Contractor, then the Secretary of State may give notice to the TSP of termination and this Agreement will terminate, unless within thirty (30) days of receipt of such notice the Sub-Contractor terminates the employee's employment and (if necessary) procures the performance of such part of the affected works and/or services by another person or, should the Sub-Contractor not terminate the employee's

employment, unless the TSP terminates the relevant Project Document and procure the performance of such part of the affected works and/or services by another person.

2.7 If the Prohibited Act is committed by any other person specified in Paragraph 2.1 but not specified in Paragraphs 2.2 to 2.6 inclusive (including an employee of a Shareholder acting independently of that Shareholder), then the Secretary of State may give notice to the TSP of termination and this Agreement will terminate in accordance with that notice unless within thirty (30) days of receipt of that notice, the TSP procures the termination of such person's employment and of the appointment of their employer (where not employed by the TSP or the Sub-Contractor) and (if necessary) procures the performance of such part of the works and/or services by another person.

2.8 Any notice of termination under this Paragraph 2, shall specify:

- (a) the nature of the Prohibited Act;
- (b) the identity of the party whom the Secretary of State believes has committed the Prohibited Act;
- (c) the date on which this Agreement will terminate, which, in the case of any notice issued pursuant to Paragraphs 2.3 to 2.6 inclusive, shall be no less than thirty (30) days after the date of such notice; and
- (d) whether the Secretary of State requires transfer of the TSP's rights, title and interest in and to the Assets as referred to in Paragraph 4.

3. **COMPENSATION ON TERMINATION FOR CORRUPT GIFTS AND FRAUD**

3.1 On termination of this Agreement in accordance with Paragraph 2, the Secretary of State shall pay the TSP an amount equal to the Revised Senior Debt Termination Amount.

3.2 Such amount shall be determined and paid in accordance with Part H (*Calculation and Payment of Termination Sums*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*).

4. **ASSET TRANSFER**

On termination of this Agreement in accordance with Paragraph 2, the Secretary of State may require the TSP to transfer its rights, title and interest in and to the Assets (subject to the Permitted Encumbrances) to the Secretary of State or as directed by the Secretary of State in accordance with Part J (*Asset Transfer*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*).

Part F of Schedule 6

Voluntary Termination by the Secretary of State

1. VOLUNTARY TERMINATION BY THE SECRETARY OF STATE

- 1.1 The Secretary of State may terminate this Agreement at any time by complying with her obligations under Paragraphs 1.2 and 1.3.
- 1.2 If the Secretary of State wishes to terminate this Agreement under Paragraph 1.1, she must give notice to the TSP stating:
- (a) that the Secretary of State is terminating this Agreement under this Paragraph 1;
 - (b) that this Agreement will terminate on the date specified in the notice, which must be a minimum of thirty (30) days after the date of receipt of the notice; and
 - (c) whether the Secretary of State has chosen to exercise her option under Paragraph 3.
- 1.3 This Agreement will terminate on the date specified in the notice referred to in Paragraph 1.2(b).

2. COMPENSATION ON VOLUNTARY TERMINATION

- 2.1 On termination under Paragraph 1, the Secretary of State shall pay the TSP an amount equal to the amount payable under Paragraph 2 of Part C (*Secretary of State Default*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*).
- 2.2 Such amount shall be determined and paid in accordance with Part H (*Calculation and Payment of Termination Sums*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*).

3. ASSET TRANSFER

On termination of this Agreement in accordance with Paragraph 1 the Secretary of State shall have the option to require the TSP to transfer its right, title and interest in and to the Assets (subject to the Permitted Encumbrances) to the Secretary of State or as directed by the Secretary of State in accordance with Part J (*Asset Transfer*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*).

Part G of Schedule 6

Termination for Breach of Refinancing Provisions

1. TERMINATION BY THE SECRETARY OF STATE FOR BREACH OF THE REFINANCING PROVISIONS

1.1 If the TSP wilfully breaches Paragraph 1.1, 1.3(a) or 3.3(a) of Part A (*Refinancing*) of Schedule 7 (*Finance Arrangements*), then the Secretary of State may terminate this Agreement at any time by complying with her obligations under Paragraphs 1.2 and 1.3.

1.2 If the Secretary of State wishes to terminate this Agreement under Paragraph 1.1 she must give notice to the TSP stating:

- (a) that the Secretary of State is terminating this Agreement under this Paragraph 1;
- (b) that this Agreement will terminate on the date falling thirty (30) days after the date of receipt of the notice referred to in this Paragraph 1.2; and
- (c) whether the Secretary of State has chosen to exercise her option under Paragraph 3.

1.3 This Agreement will terminate on the date falling thirty (30) days after the date of receipt of the notice referred to in this Paragraph 1.2.

2. COMPENSATION ON TERMINATION FOR BREACH OF THE REFINANCING PROVISIONS

2.1 On termination of this Agreement under Paragraph 1, the Secretary of State shall pay the TSP an amount equal to the Revised Senior Debt Termination Amount.

2.2 Such amount shall be determined and paid in accordance with Part H (*Calculation and Payment of Termination Sums*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*).

3. ASSET TRANSFER

On termination of this Agreement in accordance with Paragraph 1, the Secretary of State shall have the option to require the TSP to transfer its right, title and interest in and to the Assets (subject to the Permitted Encumbrances) to the Secretary of State or as directed by the Secretary of State in accordance with Part J (*Asset Transfer*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*).

Part H of Schedule 6

Calculation and Payment of Termination Sums

1. METHOD OF PAYMENT

Payment of Termination Sums other than Adjusted Highest Compliant Tender Price

- 1.1 Subject to Paragraph 1.6, where a Termination Sum is payable under this Agreement, the Secretary of State shall pay to the TSP that Termination Sum, together with interest on any Base Senior Debt Termination Amount or Revised Senior Debt Termination Amount element of the Termination Sum at the Default Rate, on or before the date falling sixty (60) days after the Notice Date, provided that she may elect to pay the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount or the Adjusted Estimated Fair Value of this Agreement (as relevant) element of the Termination Sum in accordance with Paragraph 1.2.
- 1.2 The Secretary of State may, other than on a Secretary of State Default, elect to pay the Base Senior Debt Termination Amount, the Revised Senior Debt Termination Amount or the Adjusted Estimated Fair Value of this Agreement (as relevant) element of the Termination Sum:
- (a) in instalments as follows:
 - (i) where the Base Senior Debt Termination Amount, the Revised Senior Debt Termination Amount or the Adjusted Estimated Fair Value of this Agreement (as relevant) is greater than or equal to the Outstanding Principal:
 - (A) in respect of that element of the Base Senior Debt Termination Amount, the Revised Senior Debt Termination Amount or the Adjusted Estimated Fair Value of this Agreement (as relevant) representing the Outstanding Principal, on the dates (the **Instalment Dates**) and in the amounts that the TSP would have been required to pay principal to the Senior Lenders under the terms of the Senior Financing Agreement had the Termination Date not occurred; and
 - (B) in respect of the sum (if any) remaining after deducting the Outstanding Principal from the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount or the Adjusted Estimated Fair Value of this Agreement (as relevant), in equal instalments on the Instalment Dates; or
 - (ii) where the Base Senior Debt Termination Amount, the Revised Senior Debt Termination Amount or the Adjusted Estimated Fair Value of this Agreement (as relevant) is less than the Outstanding Principal, on the Instalment Dates pro rata to the amounts that the TSP would have been required to pay as principal to the Senior Lenders on each Instalment Date under the terms of the Senior Financing Agreement had the Termination Date not occurred; or
 - (b) as the parties may otherwise agree.

- 1.3 From the relevant Instalment Date until the date of payment, interest shall accrue on any unpaid element of the Termination Sum at the Default Rate and be payable on the next occurring Instalment Date.
- 1.4 If the Secretary of State has elected to pay in accordance with Paragraph 1.2, she may (on twenty-eight (28) days prior written notice to the TSP) elect to pay the outstanding part of the Base Senior Debt Termination Amount, the Revised Senior Debt Termination Amount or the Adjusted Estimated Fair Value of this Agreement (as relevant) element of the Termination Sum in full on any Instalment Date.
- 1.5 If the Secretary of State:
- (a) fails to make a payment to the TSP in accordance with Paragraphs 1.1 and/or 1.2 and/or 1.4; and/or
 - (b) breaches Clause 23,

the TSP may issue a notice to the Secretary of State declaring any unpaid and outstanding element of (as applicable) the Base Senior Debt Termination Amount, the Revised Senior Debt Termination Amount or the Adjusted Estimated Fair Value of this Agreement (as relevant) element of the Termination Sum and any accrued but unpaid interest to be immediately due and payable.

Payment of Adjusted Highest Compliant Tender Price

- 1.6 The Adjusted Highest Compliant Tender Price shall, where applicable, be payable in accordance with Paragraph 3 of Appendix A (*Re-Tendering Procedure*) to Part D (*TSP Default*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*).

2. GROSS UP

If any amount of compensation payable by the Secretary of State under:

- (a) Paragraph 2 of Part B (*Force Majeure*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*);
- (b) Paragraph 2 of Part C (*Secretary of State Default*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*);
- (c) Paragraph 3 of Part E (*Corrupt Gifts and Fraud*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*);
- (d) Paragraph 2 of Part F (*Voluntary Termination by the Secretary of State*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*);
- (e) Paragraph 2 of Part G (*Termination for Breach of Refinancing Provisions*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*);
- (f) Paragraph 6 of Part D (*TSP Default*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*);
- (g) Paragraph 7 of Part D (*TSP Default*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*) pursuant to Appendix C (*No Full Fleet Valuation Procedure*) to Part D (*TSP Default*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*); or

- (h) Paragraph 3 of Part K (*Paragraph 5+ Termination*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*).

(Paragraphs 2(a) to (h) together the **Relevant Compensation Provisions**) is subject to Tax payable to a Relevant Authority in the United Kingdom, then the Secretary of State shall pay to the TSP such additional amount as will put the TSP in the same after Tax position as it would have been had the payment not been subject to Tax, taking account of any relief, allowances deduction, setting off or credit in respect of Tax (whether available by choice or not) which may be available to the TSP to reduce the Tax to which the payment is subject.

3. **EXCLUSIVITY OF REMEDY**

Any payment of compensation under the Relevant Compensation Provisions by a party (the **Compensating Party**) to the other party (the **Compensated Party**) shall be in full satisfaction of any claim which can be made against the Compensating Party by the Compensated Party in relation to termination of this Agreement or any Project Document whether under contract, tort, restitution or otherwise, save for any liability of the Compensating Party which arose prior to the Termination Date that has not already been taken into account in that compensation. The compensation payable under the Relevant Compensation Provisions shall be the sole remedy of the Compensated Party against the Compensating Party in respect of termination of this Agreement.

4. **CHANGES TO PROJECT DOCUMENTS**

No amendment, waiver or exercise of a right under any Project Document or other ancillary document shall have the effect of increasing the Secretary of State's liabilities on early termination of this Agreement unless:

- (a) the TSP has obtained the prior written consent of the Secretary of State to such increased liability for the purposes of this Paragraph 4; or
- (b) it is a Permitted Borrowing.

5. **SET-OFF ON TERMINATION**

The Secretary of State is not entitled to set off any amount against any payment of termination compensation (whether payable as a lump sum or in instalments) under any Relevant Compensation Provision, save to the extent that after such an amount has been set off, the termination payment made would be in an amount greater than or equal to the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount, as appropriate, at that time.

6. **COMPENSATION PAID TO SENIOR LENDERS**

The Secretary of State shall be entitled to rely on the certificate of the Agent as conclusive as to the amount of the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount outstanding at any relevant time. The receipt by the Agent of the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount or elements thereof as relevant shall discharge the Secretary of State's obligations to pay such sums to the TSP.

Part I of Schedule 6

Total Loss

1. INSURANCE PROCEEDS FOLLOWING A TOTAL LOSS

Without prejudice to the TSP's obligations under this Agreement to enter into a TARA and thereby make Sets available to the Relevant Operator, if a Total Loss occurs with respect to any Set after the Actual Acceptance Date of such Set, the provisions of Paragraph 2 of Part A (*Insurance Provisions*) of Schedule 5 (*Insurance*) shall apply in relation to any insurance proceeds in respect of that Total Loss and Paragraph 2.3 of this Part I (*Total Loss*) shall apply if a Total Loss occurs with respect to any Sets prior to the Actual Acceptance Date during fault free running pursuant to Appendix B (*Fault Free Running Conditions*) of Part A (*Testing and Acceptance*) of Schedule 2 (*Introduction into Service*).

2. REQUIREMENT FOR A REPLACEMENT SET

Consultation

2.1 If a Total Loss occurs with respect to any Set during fault free running pursuant to Appendix B (*Fault Free Running Conditions*) of Part A (*Testing and Acceptance*) of Schedule 2 (*Introduction into Service*) or after the Actual Acceptance Date of such Set:

- (a) the TSP shall promptly notify the Secretary of State and the Relevant Operator in writing of the occurrence of the relevant Total Loss (and (subject to Paragraph 2.2 or 2.4 as applicable) such Set, to the extent the Total Loss occurs after the Actual Acceptance Date of such Set, shall no longer form and/or be treated as part of the Fleet for the purposes of this Agreement); and
- (b) to the extent the Total Loss occurs after the Actual Acceptance Date of such Set, the Secretary of State and the TSP shall consult in good faith for a period of ten (10) Business Days following receipt by the Secretary of State of notice pursuant to Paragraph 2.1(a) to determine whether the Manufacturer shall be instructed by the TSP to supply a replacement for the Set that has suffered a Total Loss.

No requirement for a Replacement Set

2.2 Subject to Paragraph 2.5 if the Secretary of State, after having consulted with the TSP in accordance with Paragraph 2.1(b), elects not to require the TSP to procure under the terms of the Manufacture and Supply Agreement that the Manufacturer manufactures and supplies a replacement for a Set that has suffered a Total Loss, then:

- (a) the Secretary of State shall formulate and issue a Required Variation Notice pursuant to Schedule 8 (*Variations*) to have effect on and from the date of the Total Loss (or such longer time as is necessary carry out and give effect to the Variation);
- (b) the Required Variation Notice shall require such reduction (if any) in the number of Sets that the Relevant Operator can require be made available under the TARA to which the Total Loss relates as is reasonable in the circumstances; and
- (c) except in the circumstances set out in Paragraph 2.3, the Run of the Financial Model pursuant to Part G (*Runs of the Financial Model*) of Schedule 8 (*Variations*) shall include as a Revised Input the receipt by the TSP of the Stipulated Loss Value in respect of the Total Loss.

- 2.3 Where a Total Loss occurs with respect to any Set during fault free running pursuant to Appendix B (*Fault Free Running Conditions*) to Part A (*Testing and Acceptance*) of Schedule 2 (*Introduction into Service*) the insurance proceeds equal to the Stipulated Loss Value paid in respect of such Set (together with any amounts in respect of insurance deductibles paid pursuant to Paragraph 5.2 of Appendix B (*Fault Free Running Conditions*) to Part A (*Testing and Acceptance*) of Schedule 2 (*Introduction into Service*)) shall be paid directly to the TSP and shall not be paid into the Joint Insurance Account.

Requirement for a Replacement Set

- 2.4 Subject to Paragraph 2.5 and without prejudice to Paragraph 2.11 of Part A (*Insurance Provisions*) of Schedule 5 (*Insurance*), if the Secretary of State, after having consulted with the TSP in accordance with Paragraph 2.1(b), elects to require the TSP to procure under the terms of the Manufacture and Supply Agreement that the Manufacturer manufactures and supplies a replacement (a **Replacement Set**) for a Set that has suffered a Total Loss, then:
- (a) the Secretary of State shall formulate and issue a Required Variation Notice pursuant to Schedule 8 (*Variations*) to have effect on and from the date of the Total Loss or such longer time as is necessary to carry out and to give effect to the Variation;
 - (b) the Required Variation Notice shall:
 - (i) prior to the Actual Acceptance Date of the Replacement Set, require such reduction (if any) in the number of Sets that the Relevant Operator can require be made available under the TARA to which the Total Loss relates as is reasonable in the circumstances; and
 - (ii) include provision for the TSP to procure delivery of a replacement Set as soon as reasonably practicable having regard to the ability of the Manufacturer to manufacture any replacement Set due to its existing commitments, including, existing commitments under Other MARAs, and provision for the reversal of any reduction in availability of Sets pursuant to Paragraph 2.4(b)(i) with effect from the likely acceptance date for the replacement Set;
 - (c) the Run of the Financial Model pursuant to Part G (*Runs of the Financial Model*) of Schedule 8 (*Variations*) shall include as a Revised Input the receipt by the TSP of the Stipulated Loss Value in respect of the Total Loss;
 - (d) the provisions of Part A (*Testing and Acceptance*) of Schedule 2 (*Introduction into Service*) shall apply in relation to that Replacement Set; and
 - (e) the TSP shall procure that the Replacement Set from its Actual Acceptance Date is made available to the Relevant Operator under the terms of the TARA.
- 2.5 The Secretary of State may not (without the TSP's prior consent) elect to require the TSP to procure that the Manufacturer manufactures a Replacement Set if, at the time of election, the Manufacturer is no longer manufacturing Sets required under any Other MARA unless the Secretary of State funds the additional cost of manufacture of such Set, calculated in accordance with Paragraph 2.4.

Part J of Schedule 6

Asset Transfer

1. Subject to the terms of the Funder Direct Agreement and the Intercreditor Agreement, in the event that the TSP is required to transfer its right, title and interest in and to the Assets to the Secretary of State, or as directed by the Secretary of State, pursuant to any of:
 - (a) Paragraph 2.6 of Part B (*Force Majeure*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*);
 - (b) Paragraph 3 of Part C (*Secretary of State Default*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*);
 - (c) Paragraph 7.3(d) or 8.8(e) of Part D (*TSP Default*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*);
 - (d) Paragraph 4 of Part E (*Corrupt Gifts and Fraud*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*);
 - (e) Paragraph 3 of Part F (*Voluntary Termination by the Secretary of State*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*);
 - (f) Paragraph 3 of Part G (*Termination for Breach of Refinancing Provisions*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*); or
 - (g) Paragraph 3 of Part K (*Paragraph 5+ Termination*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*);

the Secretary of State shall serve a written notice to the TSP requiring the immediate transfer of the Assets referred to in such notice, or transfer at such date or dates as the Secretary of State may specify in such notice (in each case, subject to the Permitted Encumbrances).

2. Upon receipt of the written notice referred to in Paragraph 1 of this Part J (*Asset Transfer*) the TSP hereby agrees that it will immediately perform its obligations under the Asset Transfer Agreement.
3. The parties acknowledge that payment by the Secretary of State of:
 - (a) the Force Majeure Termination Sum in accordance with Paragraph 2.1 of Part B (*Force Majeure*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*);
 - (b) the Secretary of State Default Termination Sum in accordance with Paragraph 2.1 of Part C (*Secretary of State Default*) or Paragraph 2.1 of Part F (*Voluntary Termination by the Secretary of State*) (as applicable) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*);
 - (c) the Adjusted Highest Compliant Tender Price in accordance with Paragraph 3.1(a) of Appendix A (*Re-Tendering Procedure*) of Part D (*TSP Default*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*);

- (d) the Adjusted Estimated Fair Value of this Agreement in accordance with Paragraph 3.1(a) of Appendix B (*No Re-Tendering Procedure*) to Part D (*TSP Default*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*);
- (e) the Adjusted No Full Fleet Compensation Amount or the Revised Senior Debt Termination Amount (as applicable) in accordance with Paragraphs 3.1(a) and 3.1(b) of Appendix C (*No Full Fleet Valuation Procedure*) to Part D (*TSP Default*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*);
- (f) the Revised Senior Debt Termination Amount in accordance with Paragraph 3.1 of Part E (*Corrupt Gifts and Fraud*) or Paragraph 2.1 of Part G (*Termination for Breach of Refinancing Provisions*) (as applicable) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*); or
- (g) the Paragraph 5+ Termination Sum in accordance with Paragraph 2.1 of Part K (*Paragraph 5+ Termination*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*),

(as applicable) shall constitute consideration for the performance by the TSP of its obligations pursuant to Paragraphs 1 and 2 of this Part J (*Asset Transfer*).

4. The parties agree that provided the TSP (or a duly authorised agent or attorney on its behalf or a mortgagee, chargee, receiver or administrator on behalf of the relevant mortgagee or chargee) executes and delivers the Bill of Sale and any other Transfer Documents (as defined in the Asset Transfer Agreement) for which the TSP is responsible to the Secretary of State in accordance with the TSP's obligations under this Agreement, the Secretary of State's obligation to pay the relevant Termination Sum shall be paid in accordance with the terms of this Agreement and shall not be conditional on the Transfer Documents operating to legally transfer any right, title or interest in the Assets to the Secretary of State or her nominee.
5. As of the date hereof the TSP further agrees to appoint the Security Trustee as its attorney pursuant to a power of attorney contained in the Borrower Debenture to do, inter alia, all such acts and execute all such agreements, deeds, documents, letters and amendments if the Secretary of State deems such acts to be desirable for a more efficient and timely transfer of the Assets pursuant to the Asset Transfer Agreement.
6. As of the date hereof the TSP further agrees to grant, by way of security, a charge over the Assets in favour of the Secretary of State pursuant to the terms of the Borrower Debenture and Intercreditor Agreement.
7. If the TSP fails to comply with its obligations pursuant to the Asset Transfer Agreement to transfer its rights and legal title to the Assets to the Secretary of State in accordance with this Part J (*Asset Transfer*), the TSP shall indemnify and keep indemnified the Secretary of State against all Losses suffered or incurred by the Secretary of State as a result of the TSP's failure to comply with its obligations to transfer its rights and legal title to the Assets to the Secretary of State.
8. Each of the TSP and the Secretary of State agree that there is no requirement on the TSP to transfer the Assets to the Secretary of State, nor is there any requirement on the Secretary of State to make any payment to the TSP in respect of the Assets (save for the Depot Compensation Amount) in the event that this Agreement terminates prior to the Minimum Fleet Acceptance Date.

Appendix A to Part J of Schedule 6
Form of Asset Transfer Agreement

Dated _____

AGILITY TRAINS WEST LIMITED

THE SECRETARY OF STATE FOR TRANSPORT

ASSET TRANSFER AGREEMENT

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THIS AGREEMENT is made on _____

BETWEEN:

- (1) **AGILITY TRAINS WEST LIMITED**, whose registered number is 07930606 and registered address is at 4th Floor, 4 Copthall Avenue, London EC2R 7DA (**TSP**); and
- (2) **THE SECRETARY OF STATE FOR TRANSPORT**, whose principal address is at 33 Horseferry Road, London, SW1P 4DR (the **Secretary of State**).

WHEREAS:

- (A) The Secretary of State and the TSP entered into a Master Availability and Reliability Agreement on or around the date of this Agreement pursuant to which the TSP was appointed the train service provider to design, build, own and maintain a new fleet of high speed trains for operation on the Great Western IEP Network (the **MARA**).
- (B) Pursuant to Part J (*Asset Transfer*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*) of the MARA, the Secretary of State has the right, in certain circumstances, to serve a Transfer Notice on the TSP requiring the transfer of its right, title and interest in and to the Assets referred to in the Transfer Notice and the TSP has agreed that in those circumstances, it will transfer its right, title and interest in and to the Assets.
- (C) The TSP is the legal and beneficial owner of the Assets which the TSP agrees to transfer to the Secretary of State and the Secretary of State wishes to purchase.

IT IS AGREED as follows:

1. INTERPRETATION

Definitions

- 1.1 In this Agreement, unless otherwise defined in this Agreement, words and expressions defined in the MARA and used in this Agreement shall have the same meaning where used in this Agreement. In addition, the following words and expression shall have the meanings set forth in this Clause 1.1, except where the context otherwise requires:

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

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

Borrower Debenture has the meaning given to such term in the Intercreditor Agreement;

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

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

Delivery Location means such location on the IEP Network as the TSP and the Secretary of State shall agree;

MARA has the meaning given to it in Recital (A);

Payment Date means, the date of payment (or dates of payment where the Secretary of State is entitled to and has elected to pay in instalments) of the Purchase Price in accordance with Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*) of the MARA;

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

- (a) the Force Majeure Termination Sum in accordance with Paragraph 2.1 of Part B (*Force Majeure*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*) of the MARA;
- (b) the Secretary of State Default Termination Sum in accordance with Paragraph 2.1 of Part C (*Secretary of State Default*) or Paragraph 2.1 of Part F (*Voluntary Termination by the Secretary of State*) (as applicable) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*) of the MARA;
- (c) the Adjusted Highest Compliant Tender Price in accordance with Paragraph 3.1(a) of Appendix A (*Re-Tendering Procedure*) of Part D (*TSP Default*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*) of the MARA;
- (d) the Adjusted Estimated Fair Value of this Agreement in accordance with Paragraph 3.1(a) of Appendix B (*No Re-Tendering Procedure*) to Part D (*TSP Default*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*) of the MARA;
- (e) the Adjusted No Full Fleet Compensation Amount or the Revised Senior Debt Termination Amount (as applicable) in accordance with Paragraphs 3.1(a) and 3.1(b) of Appendix C (*No Full Fleet Valuation Procedure*) to Part D (*TSP Default*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*) of the MARA;
- (f) the Revised Senior Debt Termination Amount in accordance with Paragraph 3.1 of Part E (*Corrupt Gifts and Fraud*) or Paragraph 2.1 of Part G (*Termination for Breach of Refinancing Provisions*) (as applicable) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*) of the MARA; or
- (g) the Paragraph 5+ Termination Sum in accordance with Paragraph 2.1 of Part K (*Paragraph 5+ Termination*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*) of the MARA;

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

Transfer Notice means a notice given by the Secretary of State pursuant to Paragraph 1 of Part J (*Asset Transfer*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*) of the MARA.

Construction

1.2 References in this Agreement to:

- (a) any statutory or other legislative provision shall be construed as including any statutory or legislative modification or re enactment thereof, or any provision enacted in substitution therefor;
- (b) the words "person" or "persons" or to words importing persons include, without limitation, individuals, partnerships, corporations, government agencies, committees, departments, authorities and other bodies, corporate or unincorporated, whether having distinct legal personality or not;
- (c) "Secretary of State" or "TSP" include any successor in title to the Secretary of State or the TSP respectively;
- (d) any deed, agreement or instrument shall include any such deed, agreement or instrument as may from time to time be amended, supplemented or substituted;
- (e) an "agreement" also includes a concession, contract, deed, franchise, licence, treaty or undertaking (in each case, whether oral or written);
- (f) the "assets" of any person shall be construed as a reference to the whole or any part of its business, undertaking, property, assets and revenues (including any right to receive revenues);
- (g) "law" includes common or customary law and any constitution, decree, judgment, legislation, order, ordinance, regulation, statute, treaty or other legislative measure in any jurisdiction or any present or future directive, regulation, request or requirement (in each case, whether or not having the force of law but, if not having the force of law, the compliance with which is in accordance with the general practice of persons to whom the directive, regulation, request or requirement is addressed);
- (h) unless otherwise stated in this Agreement, the costs of performing an obligation under this Agreement shall be borne by the party required to perform such obligation;
- (i) a Clause or a Schedule is a reference to a clause of or a schedule to this Agreement;
- (j) "month" is a reference to a period which starts on one day in a calendar month and ends on the day immediately preceding the numerically corresponding day in the next calendar month, except that, if there is no numerically corresponding day in that next month, it shall end on the last day of that next month (and references to "months" shall be construed accordingly);
- (k) headings are for ease of reference only; and
- (l) where the context so admits, words importing the singular number only shall include the plural and vice versa, and words importing neuter gender shall include the masculine or feminine gender.

2. **COMMENCEMENT AND DURATION**

2.1 This Agreement shall commence, take effect and be binding upon the Secretary of State and the TSP on and from the Effective Date.

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

3. **AGREEMENT TO TRANSFER**

In the event that the TSP is required to transfer its right, title and interest in and to the Assets to the Secretary of State in accordance with Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*) of the MARA, then subject to the provisions of this Agreement and the Funder Direct Agreement, the TSP shall transfer the Assets, with full title guarantee (but subject to the Permitted Encumbrances and save for any TSP IPR), to the Secretary of State in accordance with the Transfer Notice and the Secretary of State shall purchase the Assets from the TSP on the Delivery Date in an "as is, where is" condition.

4. **REPRESENTATIONS AND WARRANTIES**

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

- (a) the TSP is a company properly organised and validly existing under the laws of England and Wales as a limited liability company;
- (b) the TSP has the power to enter into and perform its obligations under this Agreement. All necessary corporate, shareholder and other action has been taken to authorise the entry into, performance and delivery of this Agreement and this Agreement constitutes, or upon execution will constitute, legally valid, binding and enforceable obligations in accordance with its terms;
- (c) the entry by the TSP into this Agreement and the performance by the TSP of its obligations under this Agreement will not:
 - (i) conflict with the Memorandum and Articles of Association of the TSP;
 - (ii) conflict with any law or regulation applicable to the TSP; or
 - (iii) conflict with, or result in a breach of, any existing contract which is binding on the TSP; and
- (d) except as disclosed in writing to the Secretary of State on or before the Delivery Date, no legal proceedings are pending or, to the best of the TSP's knowledge and belief, threatened against the TSP, which if decided against the TSP, would have a material adverse effect upon the financial condition, assets or business of the TSP or the ability of the TSP to perform its obligations under this Agreement.

5. PURCHASE PRICE

Payments

- 5.1 Where the Purchase Price is a positive number, the Secretary of State shall pay to the TSP the Purchase Price on the Payment Date.
- 5.2 All payments by the Secretary of State to the TSP under this Agreement shall be made for value on the Payment Date in Sterling and in immediately available freely transferable funds.
- 5.3 Payment by the Secretary of State of the relevant Termination Sum pursuant to the MARA shall discharge the Secretary of State's obligations to pay the Purchase Price under this Agreement.

Gross up

- 5.4 The Purchase Price for the Assets shall be subject to Paragraph 2 of Part H (*Calculation and Payment of Termination Sums*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*) of the MARA.

Set off

- 5.5 Payments to be made by the Secretary of State under this Agreement shall be subject to Paragraph 5 of Part H (*Calculation and Payment of Termination Sums*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*) of the MARA.

6. DELIVERY PROCESS

Title Transfer

- 6.1 Upon and subject to the terms and conditions of the MARA, this Agreement, the Funder Direct Agreement and the Intercreditor Agreement, the transfer of title to the Assets by the TSP to the Secretary of State hereunder shall take place on the Delivery Date by the TSP delivering to the Secretary of State the duly completed and executed Bill of Sale for the Assets, immediately whereupon title to the Assets shall pass with full title guarantee (but subject to the Permitted Encumbrances and save for any TSP IPR) from the TSP to the Secretary of State. The Secretary of State shall thereupon execute and deliver to the TSP the Acceptance Certificate for the Assets.
- 6.2 The TSP hereby acknowledges that if it fails to complete and execute the Bill of Sale for the Assets in accordance with Clause 6.1 that the Secretary of State may exercise her rights subject to and in accordance with the Borrower Debenture, the Intercreditor Agreement and the Funder Direct Agreement to give effect to the transfer of title to the Assets (subject to Permitted Encumbrances and save for any TSP IPR) to the Secretary of State.

Delivery Location

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

7. **NO LIABILITY FOR CONDITION OF ASSETS**

- 7.1 The TSP hereby warrants to the Secretary of State that immediately prior to Delivery the TSP will have full legal and beneficial title to the Assets (subject to the Permitted Encumbrances and save for any TSP IPR) and will have full power and lawful authority to, and on Delivery will, transfer that title to the Secretary of State (subject to the Permitted Encumbrances and save for any TSP IPR).
- 7.2 The Secretary of State unconditionally agrees that subject only to Clauses 6.1 and 7.1 as between the Secretary of State and the TSP the Assets and each part thereof is to be transferred in an as is, where is condition and no term, condition, warranty, representation or covenant of any kind whatsoever has been made or is given by the TSP or its servants or agents in respect of the value, quality, durability, condition, design, operation, description, merchantability or fitness for use or purpose of the Assets or any part thereof, as to the absence of latent, inherent or other defects (whether or not discoverable), as to the completeness or condition of the Assets, or as to the absence of any infringement of any patent, copyright, design, or other proprietary rights and all conditions, warranties and representations (or obligation or liability, in contract or in tort) in relation to any of those matters, expressed or implied, statutory or otherwise, are expressly excluded.

8. **MISCELLANEOUS PROVISIONS**

Benefit of Agreement

- 8.1 Neither the TSP nor the Secretary of State shall assign or transfer all or any of their respective rights and/or obligations under this Agreement without the prior written consent of the other party hereto, save that:
- (a) the TSP may assign its rights under this Agreement as security pursuant to the Security Documents and any beneficiary of that security may also assign the benefit of this Agreement in favour of any person to whom it transfers the entitlements under this Agreement when realising such security conferred by the Security Documents; and
 - (b) the Secretary of State may assign, novate or otherwise transfer her rights and/or obligations under this Agreement to any person that the Secretary of State assigns, novates or otherwise transfers its rights and/or obligations under the MARA in accordance with clause 23.2 (*Restrictions on Transfer*) of the MARA.

Rights Cumulative, Waivers

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

Rights of Third Parties Act

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

Counterparts

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

Further Assurance

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

Variation

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

Invalidity of any Provision

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

9. NOTICES

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

- (a) be in writing delivered personally or by first-class prepaid letter (airmail if international) or sent by fax;
- (b) be deemed to have been received:
 - (i) in the case of a fax, at the time of despatch with confirmed transmission report stating the correct fax number and number of pages sent and that such transmission is "OK" or equivalent (provided always that if these conditions are not met before 4.00p.m. (local time) within normal business hours on a business day in the country of the addressee it shall be deemed to have been received at the opening of business on the next business day); and
 - (ii) in the case of a letter when actually delivered if delivered before 4.00p.m. on a business day and otherwise on the next business day; and
- (c) be sent:

To Secretary of State at:

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

Attention: Director – Major Projects and London

To the TSP at:

Address: 4th Floor
4 Copthall Avenue
London EC2R 7DA

Attention: Chief Executive Officer.

10. GOVERNING LAW AND JURISDICTION

Governing Law

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

Jurisdiction

10.2 The Parties agree that any dispute arising under or in connection with this Agreement will be determined pursuant to the Dispute Resolution Agreement.

SIGNATURE PAGE – ASSET TRANSFER AGREEMENT

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

THE TSP

EXECUTED AS A DEED BY)
AGILITY TRAINS WEST LIMITED)
by a director in the presence of a witness:)

Signature.....
Director

Name

Witness signature:

Witness name:

Witness address:

Witness occupation:

THE SECRETARY OF STATE

THE CORPORATE SEAL OF)
THE SECRETARY OF STATE FOR)
TRANSPORT IS HEREUNTO AFFIXED)
)

.....
Authenticated by authority of
The Secretary of State for Transport

SCHEDULE 1

BILL OF SALE

AGILITY TRAINS WEST LIMITED a company whose registered number is 07930606 and registered address is at 4th Floor, 4 Copthall Avenue, London EC2R 7DA (**TSP**), is (subject to the Permitted Encumbrances) the owner of the full legal and beneficial title to the following Assets (as defined in the Master Availability and Reliability Agreement made between the Secretary of State and the TSP dated _____ (the **MARA**)):

- (a) all Sets (including any Vehicle forming part of any Set);
- (b) all Spares;
- (c) all Special Tools;
- (d) all Simulator Information; and
- (e) the Technical Library,

(as such terms are defined in the MARA).

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

For valuable consideration, the TSP does hereby grant, transfer and deliver, with full title guarantee, all its right, title and interest in and to the Assets (subject to the Permitted Encumbrances and save for any TSP IPR (as such term is defined in the MARA) to **THE SECRETARY OF STATE FOR TRANSPORT** whose principal address is at 33 Horseferry Road, London, SW10 4DR (the **Secretary of State**) in accordance with the asset transfer agreement dated _____ and made between the TSP and the Secretary of State (the **Asset Transfer Agreement**) to have and to hold the Assets forever.

The TSP hereby warrants to the Secretary of State that it has on the date hereof good and lawful right to sell, deliver and transfer title to the Assets to the Secretary of State (subject to the Permitted Encumbrances and save for any TSP IPR) and that good legal and beneficial title to the Assets are hereby conveyed to the Secretary of State with full title guarantee (subject to the Permitted Encumbrances and save for any TSP IPR) and the Secretary of State hereby agrees to warrant and defend such title forever against all claims and demands whatsoever.

This Bill of Sale is governed by English law.

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

SIGNED by _____)
for and on behalf of **AGILITY**)
TRAINS WEST LIMITED in the)
presence of

SCHEDULE 2

ACCEPTANCE CERTIFICATE

This Acceptance Certificate is delivered on and as of the date set forth below by the Secretary of State for Transport (the **Secretary of State**) to Agility Trains West Limited (the **TSP**), pursuant to an asset transfer agreement dated _____ and made between the Secretary of State and the TSP (the **Asset Transfer Agreement**).

The Secretary of State hereby confirms to the TSP that the Secretary of State has at _____ hours (_____ time) on this _____ day of _____ at _____ accepted the following Assets (as defined in the Master Availability and Reliability Agreement made between the Secretary of State and the TSP dated _____ (the **MARA**)) subject to the Permitted Encumbrances and save for any TSP IPR in accordance with the provisions of this Asset Transfer Agreement:

- (a) all Sets (including any Vehicle forming part of any Set);
- (b) all Spares;
- (c) all Special Tools;
- (d) all Simulator Information; and.
- (e) the Technical Library,

(as such terms are defined in the **MARA**).

IN WITNESS whereof Secretary of State has executed this Acceptance Certificate, this _____ day of _____.

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

Name:

Title:

Part K of Schedule 6

Paragraph 5+ Termination

1. TERMINATION ON PARAGRAPH 5+ GROUNDS

- 1.1 If a Paragraph 5+ Termination Event has occurred the Secretary of State must serve a termination notice within five (5) Business Days of the Paragraph 5+ Termination Event occurring.
- 1.2 This Agreement will terminate on the day falling forty-five (45) days after the date the Secretary of State serves the termination notice.

2. COMPENSATION ON TERMINATION FOR PARAGRAPH 5+ TERMINATION

- 2.1 If this Agreement is terminated pursuant to Paragraph 1, the Secretary of State shall pay the TSP the Paragraph 5+ Termination Sum in accordance with Part H (*Calculation and Payment of Termination Sums*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*) on the Termination Date. Subject to Paragraphs 2.2 to 2.5 inclusive, the **Paragraph 5+ Termination Sum** shall be an amount equal to the aggregate of:

- (a) the Base Senior Debt Termination Amount;
- (b) any Sub-Contractor Breakage Costs (excluding any Sub-Contractor loss of profit suffered by the Manufacturer and/or the Maintainer); and
- (c) eighty-five per cent. (85%) of the aggregate amount for which the share capital of the TSP and the amounts outstanding under the Subordinated Financing Agreements could have been sold on an open market basis based on the Relevant Assumptions immediately before the Variation.

- 2.2 If the amount referred to in Paragraph 2.1(a) is less than the Revised Senior Debt Termination Amount, then the amount referred to in Paragraph 2.1(a) shall be increased so that it is equal to the Revised Senior Debt Termination Amount, provided always that:

- (a) the amount referred to in Paragraph 2.1(b) shall only be paid to the extent that the TSP has demonstrated to the reasonable satisfaction of the Secretary of State that that amount will not be paid in payment (in whole or in part) of any Distribution; and
- (b) if, at the time of termination, there are any Additional Permitted Borrowings outstanding, no Sub-Contractor Breakage Costs shall be paid in respect of any Sub-Contract in circumstances where there is an event of default under such Sub-Contract which would entitle the TSP to terminate such Sub-Contract.

- 2.3 If a Distribution is made whilst any Additional Permitted Borrowing is outstanding and the TSP has wilfully, or through gross negligence, failed to comply with its obligations under Paragraph 1.6(g)(i) of Schedule 11 (*Information and Confidentiality*), then in addition to the deduction of the Distribution referred to in limb (v) of the definition of Revised Senior Debt Termination Amount, the Secretary of State shall be entitled to set off the value of that Distribution a second time against the Paragraph 5+ Termination Sum, provided that the amount of the Paragraph 5+ Termination Sum will never be less than the Revised Senior Debt Termination Amount.

2.4 If the TSP has wilfully or through gross negligence failed to comply with its obligations under Paragraph 1.6(g)(ii) of Schedule 11 (*Information and Confidentiality*) and there has been an overstatement of the cash balances by the TSP as at that date which has caused the Secretary of State to reasonably believe that she would be required to pay a lesser sum at the Termination Date than she is actually required to pay under the terms of this Paragraph 2, then the Paragraph 5+ Termination Sum shall be reduced by the amount of such overstatement (to the extent such overstatement is still applicable at the Termination Date), provided that the amount of the Paragraph 5+ Termination Sum will never be less than the Revised Senior Debt Termination Amount.

2.5 In circumstances where the Sub-Contract Documents novate in accordance with this Agreement and the Sub-Contractor Direct Agreements to Secretary of State or her nominee, such that:

- (a) the Sub-Contract Documents as novated continue on their current terms;
- (b) the Sets continue to be manufactured pursuant to the Manufacture and Supply Agreement and maintained pursuant to the Maintenance Agreement (as so novated),

the Secretary of State shall not in such circumstances pay the TSP any amount in respect of any Sub-Contractor Breakage Costs in the case of the Manufacturer and the Maintainer.

3. **ASSET TRANSFER**

On payment of the amount referred to in Paragraph 2, the Secretary of State shall have the option to require the TSP to transfer its right, title and interest in and to the Assets (subject to the Permitted Encumbrances) to the Secretary of State or as directed by the Secretary of State in accordance with Part J (*Asset Transfer*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*).

SCHEDULE 7

Finance Arrangements

Part A of Schedule 7

Refinancing

1. RESTRICTIONS ON REFINANCING

- 1.1 The Secretary of State and the TSP shall at all times act in good faith with respect to any Refinancing.
- 1.2 The Secretary of State shall (before, during and at any time after any Refinancing) have unrestricted rights of audit over any financial model and documentation (including any aspect of the calculation of the Refinancing Gain) used in connection with that Refinancing (whether that Refinancing is a Qualifying Refinancing or not).
- 1.3 The TSP:
- (a) shall not enter into or permit any Qualifying Refinancing without the Secretary of State's prior written consent; and
 - (b) shall promptly provide the Secretary of State with full details of any proposed Qualifying Refinancing, including a copy of the proposed financial model relating to it (if any) and the basis for the assumptions used in the proposed financial model.
- 1.4 Without prejudice to the other provisions of this Schedule 7 (*Finance Arrangements*), the TSP shall:
- (a) notify the Secretary of State of all Notifiable Financings on becoming aware of the same and again when they are entered into and provide full details of the same; and
 - (b) include a provision in the Senior Financing Agreements whereby it is entitled to be informed of any proposals which the Senior Lenders may have to refinance the Senior Financing Agreements.

2. REFINANCING GAIN RESULTING FROM QUALIFYING REFINANCING

- 2.1 The Secretary of State shall be entitled to receive:
- (a) a 50 per cent. (50%) share of any Refinancing Gain arising from a Qualifying Refinancing, in respect of any Refinancing Gain up to (when considered in aggregate with all previous Qualifying Refinancings) a Refinancing Gain of one million pounds Sterling (£1,000,000);
 - (b) a 60 per cent. (60%) share of any further Refinancing Gain arising from a Qualifying Refinancing, in respect of any Refinancing Gain up to (when considered in aggregate with all previous Qualifying Refinancings) a Refinancing Gain of three million pounds Sterling (£3,000,000);
 - (c) a 70 per cent. (70%) share of any further Refinancing Gain arising from a Qualifying Refinancing, in respect of any Refinancing Gain up to (when

considered in aggregate with all previous Qualifying Refinancings) a Refinancing Gain of forty five million pounds Sterling (£45,000,000);

- (d) a 80 per cent. (80%) share of any further Refinancing Gain arising from a Qualifying Refinancing, in respect of any Refinancing Gain up to (when considered in aggregate with all previous Qualifying Refinancings) a Refinancing Gain of sixty three million pounds Sterling (£63,000,000); and
- (e) a 90 per cent. (90%) share of any further Refinancing Gain arising from a Qualifying Refinancing.

2.2 The Secretary of State shall not withhold or delay her consent to a Qualifying Refinancing to obtain a greater share of any Refinancing Gain than that specified in Paragraph 2.1.

2.3 The Secretary of State shall have the right to elect to receive her share of any Refinancing Gain as:

- (a) a single payment in an amount less than or equal to any Distribution made on or about the date of the Refinancing;
- (b) a reduction in the TARA Payments over the remaining Contract Period; or
- (c) a combination of any of the above.

2.4 The Secretary of State and the TSP will negotiate in good faith to agree the basis and method of calculation of the Refinancing Gain and payment of the Secretary of State's share of the Refinancing Gain (taking into account how the Secretary of State has elected to receive her share of the Refinancing Gain under Paragraph 2.3).

2.5 The Refinancing Gain shall be calculated after taking into account the reasonable and proper professional costs that each party directly incurs in relation to the Qualifying Refinancing and on the basis that all reasonable and proper professional costs incurred by the Secretary of State will be paid to the Secretary of State by the TSP within twenty-eight (28) days of any Qualifying Refinancing.

3. SECRETARY OF STATE RIGHT TO REQUEST REFINANCING

3.1 If the Secretary of State considers the funding terms generally available in the market to be more favourable than those reflected in the Financing Documents, the Secretary of State may, by notice in writing to the TSP, require the TSP to request potential funders to provide terms for a potential Refinancing (a **Refinancing Notice**).

3.2 The Refinancing Notice shall set out in reasonable detail the grounds upon which the Secretary of State believes such funding terms to be available. The TSP and Secretary of State shall meet to discuss the Refinancing Notice within twenty-eight (28) days. Such a meeting will consider the evidence available to both parties about the availability of funding terms for a potential Refinancing. The Secretary of State shall be entitled to withdraw the Refinancing Notice at or before such a meeting, or within ten (10) days following the meeting.

3.3 If the Secretary of State serves a Refinancing Notice which is not withdrawn pursuant to Paragraph 3.2, then the TSP shall:

- (a) act promptly, diligently and in good faith with respect to the potential Refinancing;

- (b) use all reasonable endeavours to obtain the most favourable available terms from existing and/or new lenders for any potential Refinancing (provided that the TSP shall not be required to propose refinancing in a manner which a prudent board of directors of a company operating the same business in the United Kingdom to that operated by the TSP, in similar circumstances, would not approve or in any of the circumstances described in Paragraph 3.7), for the avoidance of doubt also being terms which are likely to generate a positive Refinancing Gain after the deduction of costs in accordance with the provisions of Paragraph 2.5; and
- (c) either:
 - (i) as soon as reasonably practicable after receipt of the Refinancing Notice, provide to the Secretary of State (A) full details of the proposed Refinancing, including a financial model and the basis for the assumptions used in the financial model and evidence to the reasonable satisfaction of the Secretary of State that these assumptions represent the most favourable available terms for the potential Refinancing on the basis set out in limb (b) and (B) initial drafts of any changes to this Agreement including in relation to potential compensation on termination which might be required to give effect to the proposed Refinancing; or
 - (ii) if the TSP believes that it is not possible to obtain funding terms which are materially more favourable than those reflected in the Financing Documents in accordance with the requirements of limb (b), provide evidence to the reasonable satisfaction of the Secretary of State for such belief and evidence to the reasonable satisfaction of the Secretary of State that the TSP has complied with its obligations in limbs (a) and (b).

3.4 Following receipt of the information referred to in Paragraph 3.3(c)(i), the Secretary of State shall (in her absolute discretion) either:

- (a) instruct the TSP to implement the proposed Refinancing; or
- (b) instruct the TSP to discontinue the proposed Refinancing,

provided that if the Secretary of State reasonably considers that the requirements of Paragraph 3.3(c)(i) have not been satisfied, the Secretary of State may require the TSP to satisfy its obligations under Paragraph 3.3(c)(i) whereupon the provisions of Paragraphs 3.3 and 3.4 shall apply as if the Secretary of State had served a Refinancing Notice.

3.5 If the Secretary of State instructs the TSP to implement the proposed Refinancing:

- (a) the TSP shall, as soon as reasonably practicable, use all reasonable endeavours to procure that such proposed Refinancing is implemented;
- (b) such proposed Refinancing shall be deemed to be a Qualifying Refinancing; and
- (c) the provisions of Paragraphs 1 and 2 shall apply.

3.6 If:

- (a) the Secretary of State instructs the TSP to discontinue the potential Refinancing pursuant to Paragraph 3.4(b); or

(b) the requirements of Paragraph 3.3(c)(ii) are satisfied,

then the Secretary of State shall reimburse the TSP for the reasonable and proper professional costs incurred by the TSP in relation to the potential Refinancing, such costs to be paid to the TSP by the Secretary of State within twenty-eight (28) days after receipt of a valid invoice in respect of such amount. Such costs shall not include any internal management costs incurred by the TSP except insofar as (a) it can be demonstrated to the reasonable satisfaction of the Secretary of State that such costs have been incurred in place of professional costs which would in the normal course of such business have been paid to third parties and (b) the Secretary of State has, by prior written agreement, agreed the use of such internal management resource.

3.7 The Secretary of State shall be entitled to issue a Refinancing Notice under Paragraph 3.1 at any time but not more than once in any two-year period. For the avoidance of doubt, a Refinancing Notice that has been withdrawn under Paragraph 3.2 has been issued for the purpose of this Paragraph 3.7.

SCHEDULE 8

Variations

Part A of Schedule 8

Scope and Consequences of Variations

1. VARIATION OF THIS AGREEMENT

The parties agree:

- (a) the Secretary of State:
 - (i) may vary this Agreement and/or any existing or future TARA in accordance with the provisions of this Schedule 8 (*Variations*) for the purposes of any Contemplated Variation;
 - (ii) shall vary this Agreement and/or any existing or future TARA in accordance with the provisions of this Schedule 8 (*Variations*) for the purposes of any Approved Default Variation; and
 - (iii) shall vary this Agreement and/or any existing or future TARA in accordance with the provisions of this Schedule 8 (*Variations*) for the purposes of any Required Variation;
- (a1) the Secretary of State may, from time to time, delegate to the Relevant Operator all or any of its powers and authorities to vary any existing or future TARA to which it is a party pursuant to this Schedule 8 (*Variations*) and may at any time revoke or replace such delegation in whole or in part. Any delegation shall not authorise the Relevant Operator to give any undertaking on behalf of the Secretary of State pursuant to Part D (*Financing of Variations*) of Schedule 8 (*Variations*). Any such delegation or revocation shall be in writing, shall be signed by the Secretary of State's Representative and shall state which power or authority is thereby delegated or revoked. No such delegation or revocation shall have any effect until written notice thereof has been provided to the TSP's Delivery Manager and the Relevant Operator and such delegation or revocation shall not be retrospective unless otherwise agreed between the parties;
- (a2) if the Secretary of State exercises her right to delegate pursuant to Paragraph 1(a1):
 - (i) such delegation may be on such terms and subject to such conditions as the Secretary of State considers appropriate from time to time (as notified in writing in the relevant delegation);
 - (ii) for so long as such delegation is not revoked or replaced, the Relevant Operator shall have the same rights as the Secretary of State would have had pursuant to this Schedule 8 (*Variations*) to negotiate and agree the relevant Variation and any amendment to the TARA and/or the Set Availability Payment;
 - (iii) she may vary, revoke, replace or add further conditions to the terms of such delegation at any time and such variation, revocation, replacement or additional conditionality shall be effective from the date of notice in writing

- of such variation, replacement, revocation or additional conditionality to the TSP and the Relevant Operator (provided, for the avoidance of doubt, that no such amendment shall have retrospective effect); and
- (iv) if the Paragraph 5+ Procedure applies to the relevant Variation, the Secretary of State will terminate such delegation with effect from the date of receipt by her of any Challenge Notice;
- (b) subject to Paragraphs 1(c) and (e), to act, for the purposes of agreeing or determining the Variation and change (if any) to the Set Availability Payment that is to be made in respect of any Variation:
- (i) in accordance with Paragraph 2 in respect of any Variation that consists solely of one or more aspects of Constant Risk;
 - (ii) in accordance with Paragraph 5 in respect of any Redeployment Variation and/or Adhoc Train Lending where such Adhoc Train Lending is for in excess of five (5) Sets and/or any Variation pursuant to limb (i) of the definition of Required Variation;
 - (iii) in accordance with Paragraph 5 in respect of any Variation other than:
 - (A) a Variation prior to the Type Acceptance Date of the first Set in the Fleet;
 - (B) a Variation in respect of ETCS Baseline 3;
 - (C) in respect of an aspect of Constant Risk;
 - (D) a Variation required as a result of a Change in Law; or
 - (E) a Variation which involves a requirement for Capital Expenditure by or on behalf of the TSP of less than fifteen million pounds Sterling £15,000,000 (Indexed) in respect of a single Variation or when aggregated with Capital Expenditure by or on behalf of the TSP in respect of all previous Variations (excluding any previous Variation referred to in Paragraphs 1(b)(iii)(A) to 1(b)(iii)(D) (inclusive)) required by the Secretary of State, involves Capital Expenditure by or on behalf of the TSP of up to seventy five million pounds Sterling (£75,000,000) (Indexed) in aggregate; and
 - (iv) in accordance with Paragraph 3 in respect of any other Variation;
- (c) for all purposes of a Default Variation and an Approved Default Variation, to act in accordance with Part B (*Approved Default Variations*) of Schedule 8 (*Variations*);
- (d) where the Secretary of State wishes to implement a Contemplated Variation (other than the Pre-Priced Option) she shall notify the TSP by issuing a notice substantially in the form of Form 1 (a **Contemplated Variation Notice**) set out in Appendix A (Form 1: Contemplated and Required Variation Notice) to Part C (*Additional Procedural Aspects of Variations*) of Schedule 8 (*Variations*) and describe the Variation proposed in adequate detail:
- (i) to enable the TSP to assess and report on each of the items which it is to address in its Required Response; and

- (ii) if it is proposed to alter the terms of this Agreement and/or any existing or future TARA, to state the terms as altered where required to give effect to the Contemplated Variation and not otherwise;
- (e) where the Secretary of State wishes to implement a Contemplated Variation that is a Redeployment Variation:
 - (i) she shall act in accordance with Part I (*Redeployment Variation*) and Part J (*Additional Procedural Aspects of Redeployment Variations*) of Schedule 8 (*Variations*) and the provisions of Part I (*Redeployment Variation*) of this Schedule 8 (*Variations*) and Paragraph 5 of this Part A shall apply to any Redeployment Variation; save that
 - (ii) no Redeployment Variation shall be implemented during the period starting on the Effective Date and expiring on the date falling ten (10) years after the Actual Acceptance Date of the first Set in the Fleet;
- (f) where the Secretary of State wishes to implement a Contemplated Variation that is Adhoc Training Lending she shall act in accordance with the provisions of Part H (*Adhoc Train Lending*) of Schedule 8 (*Variations*) and, save in respect of Paragraphs 3 to 5, in the event of any conflict with any other provision of this Schedule 8 (*Variations*) the provisions of Part H (*Adhoc Train Lending*) of Schedule 8 (*Variations*) shall take precedence with respect to Adhoc Train Lending;
- (g) where the Secretary of State is required to implement a Required Variation she shall notify the TSP by issuing a notice substantially in the form of Form 1 (a **Required Variation Notice**) set out in Appendix A (*Form 1: Contemplated and Required Variation Notice*) to Part C (*Additional Procedural Aspects of Variations*) of Schedule 8 (*Variations*) which shall specify the following:
 - (i) a full description of the Variation;
 - (ii) the proposed method of implementing that Variation and a reasonable time scale for doing so, including the extent of implementation at any key milestone or stage;
 - (iii) if the Secretary of State considers it appropriate (subject to the requirements of Applicable Laws and Standards), contractual incentive provisions (including liquidated damages) to incentivise the successful implementation of the objective that is the subject matter of that Variation;
 - (iv) any changes to the terms of this Agreement that are required to give effect to the Variation;
 - (v) any changes to the terms of any existing or future TARA which the Secretary of State requires the TSP to contract on that are required to give effect to the terms of the Variation including, where that Variation requires the redeployment of any Set (which shall also include any drafting where Paragraph 1(d)(ii) applies); and
 - (vi) any other material consideration;
- (h) where the Secretary of State wishes to implement a Contemplated Variation that is the Pre-Priced Option, shall act in accordance with the provisions of Appendix A

(*Pre-Priced Option*) to Part A (*Scope and Consequences of Variations*) of Schedule 8 (*Variations*) and in the event of any conflict with any other provision of this Schedule 8 (*Variations*), the provisions of Appendix A (*Pre-Priced Option*) to Part A (*Scope and Consequences of Variations*) of this Schedule 8 (*Variations*) shall take precedence with respect to the exercise of the Pre-Priced Option;

- (i) the Secretary of State shall not (and shall not be required to) exercise any variation right for a purpose that:
 - (i) is not technically achievable;
 - (ii) is legally impermissible; or
 - (iii) would prevent the TSP from complying with the terms or requirements of any Relevant Approval or any contract entered into pursuant to a Relevant Approval where, using its best endeavours, the TSP is not able to vary such Relevant Approval or contract to accommodate such Variation; and
- (j) where the Secretary of State wishes to issue and/or implement a Contemplated Variation that is an OHLE Variation, the Secretary of State shall only do so if the installation and commissioning of the OHLE Works has been procured in accordance with Paragraph 8 of Part A (*Depot Provisions*) of Schedule 3 (*Depots*).

2. **CONSTANT RISK PROCEDURE**

Where a Variation (other than a Redeployment Variation) consists only of one or more aspects of Constant Risk:

- (a) the TSP shall provide the Required Response in respect of such Variation as soon as reasonably practical having regard to the magnitude of the change and the number of Variations proposed and/or in the process of being considered by the TSP at the same time, and in any event within sixty (60) Business Days of receiving the Secretary of State's Variation Notice;
- (b) the parties shall meet and seek to agree the TSP's Required Response and the Variation within sixty (60) Business Days of the Secretary of State receiving the Required Response. In the absence of agreement, the Secretary of State may refer any aspect of the Required Response and/or the Variation on which the parties are unable to agree for determination in accordance with the Dispute Resolution Agreement;
- (c) the Secretary of State shall, if the parties have agreed any one or more aspects of the Required Response, Variable Considerations, Standard Considerations and/or Stable Risk include details of such agreement in the referral for determination in accordance with the Dispute Resolution Agreement and any determination to be made in accordance with the Dispute Resolution Agreement shall adopt the agreement of the parties on those aspects as the determination on those aspects;
- (d) the parties agree that any such determination referred to in Paragraph 2(b) is to be a fair and reasonable assessment of what is required in order to leave the parties in a "no better and no worse position" in terms of the TSP's ability to provide the Services to the contractual standards and its economic position (as described in Paragraph 4.4 of Part G (*Runs of the Financial Model*) of Schedule 8

(*Variations*) after the Variation has been implemented than before, on the basis of Stable Risk, the Variable Considerations and the Standard Considerations and on the basis of such assessment, the Revised Inputs to be used for determining the adjustment to the Set Availability Payment in accordance with Paragraph 4 of Part G (*Runs of the Financial Model*) of Schedule 8 (*Variations*) shall be determined in the same proceedings;

- (e) the Secretary of State shall notify the TSP of whether she wishes to proceed with the Variation within ten (10) Business Days of receiving notice of the final determination of any Dispute;
- (f) if the Secretary of State wishes to, or is required to, proceed with the Variation, she shall issue to the TSP an Authority to Proceed as provided for in Part C (*Additional Procedural Aspects of Variations*) of Schedule 8 (*Variations*) whereupon the TSP shall be required to implement the Variation as agreed between the parties or as determined pursuant to the Dispute Resolution Agreement and on implementation of the Variation the TSP shall be entitled to any adjustment to the Set Availability Payment calculated in accordance with Paragraph 4 of Part G (*Runs of the Financial Model*) of Schedule 8 (*Variations*); and
- (g) for the avoidance of doubt, if the relevant Variation is a Required Variation and Paragraph 4.3 of Part C (*Additional Procedural Aspects of Variations*) of Schedule 8 (*Variations*) applies, the Secretary of State shall not be obliged to issue an Authority to Proceed to the TSP in order for the TSP to be obliged to implement any Variation that is specified in a Required Variation Notice.

3. PROCEDURES WHERE A VARIATION DOES NOT CONSIST SOLELY OF CONSTANT RISK

Where a Variation (other than a Redeployment Variation) does not consist solely of one or more aspects of Constant Risk:

- (a) the TSP shall provide the Required Response and Risk Assessment in respect of such Variation as soon as reasonably practicable, having regard to the magnitude of the change and the number of Variations proposed and/or in the process of being considered by the TSP at the same time, after receiving the Secretary of State's Variation Notice and in any event within ninety (90) Business Days of receiving the Secretary of State's Variation Notice or such other period as the parties may agree;
- (b) the TSP shall prepare the Risk Assessment on the basis of Stable Risk in respect of any aspect of Constant Risk that is involved in the Variation;
- (c) where the TSP provides a Risk Assessment that concludes:
 - (i) there would be no material and adverse change in risk for the TSP in performing its obligations under this Agreement and any TARA to which it is party after the Variation has been implemented, then the procedure set out in Paragraphs 2(b) to (g) shall apply in respect of the Variation rather than this Paragraph 3;
 - (ii) there would be a material and adverse change in risk for the TSP in performing its obligations under this Agreement and any TARA to which it is party after the Variation has been implemented, and the Secretary of

State wishes to proceed with the Variation based on the Required Response including any change to the Set Availability Payment proposed by the TSP in its Required Response (calculated by performing a Run of the Financial Model), then the Secretary of State shall issue to the TSP an Authority to Proceed as provided for in Part C (*Additional Procedural Aspects of Variations*) of Schedule 8 (*Variations*), whereupon the TSP shall be required to do so and shall be entitled to the proposed change (if any) to the Set Availability Payment in accordance with the Required Response and the parties shall implement the other aspects of the Variation in accordance with the terms of the Required Response;

- (iii) there would be a material and adverse change in risk for the TSP in performing its obligations under this Agreement and any TARA to which it is party after the Variation has been implemented, and as a consequence of such conclusion, the Secretary of State does not wish to proceed with the Variation on the basis of the Required Response, the Risk Assessment and/or any change to the Set Availability Payment proposed by the TSP in its Required Response (calculated by performing a Run of the Financial Model), then the parties shall meet as soon as reasonably practicable with the purpose of:
 - (A) agreeing that there is no material and adverse change in risk, whereupon the procedure set out in Paragraphs 2(b) to (g) shall apply in respect of the Variation rather than this Paragraph 3;
 - (B) agreeing that there is a material and adverse change in risk and the scope and impact of such change in risk; or
 - (C) (aa) confirming that they are unable to agree whether or not there is a material and adverse change in risk or, (bb) to the extent to which they have so agreed that there is a material and adverse change in risk, confirming that they are unable to agree the scope and impact of such change in risk, which they shall be deemed to have done if neither Paragraph 3(c)(iii)(A) or 3(c)(iii)(B) are satisfied within twenty (20) Business Days of that meeting;
- (d) where Paragraph 3(c)(iii)(B) or 3(c)(iii)(C) applies, the parties shall (promptly following agreement pursuant to Paragraph 3(c)(iii)(B) or after the twenty (20) Business Day period referred to in Paragraph 3(c)(iii)(C)) seek to agree whether any material and adverse change in risk that there may be, may be avoided by the Secretary of State proposing an alternative Variation which continues to meet the requirements of the Secretary of State, and:
 - (i) if the parties do so agree having regard to a revised or new Risk Assessment that there is no material and adverse change in risk or the scope and impact of such change in risk, and the Secretary of State is content to and does propose that Variation instead, then Paragraph 2 shall apply to that alternative Variation;
 - (ii) if the parties do not so agree the parties may refer the matter for determination in accordance with the Dispute Resolution Agreement and Paragraph 4 shall apply; and

- (iii) in any other case and where pursuant to Paragraph 3(d)(ii) the parties do not so agree that Paragraph 4 shall apply, then Paragraph 5 shall apply; and
- (e) for the avoidance of doubt, if the relevant Variation is a Required Variation and Paragraph 4.3 of Part C (*Additional Procedural Aspects of Variations*) of Schedule 8 (*Variations*) applies, the Secretary of State shall not be obliged to issue an Authority to Proceed to the TSP in order for the TSP to be obliged to implement any Variation that is specified in a Required Variation Notice.

4. PROCEDURE FOR RESOLUTION OF DISPUTES IN NON-CONSTANT RISK VARIATIONS

Where this Paragraph 4 applies pursuant to Paragraph 3(c)(iii)(B) to this Part A (*Scope and Consequences of Variations*) or Paragraph 6 of Part H (*Adhoc Train Lending*) of this Schedule 8 (*Variations*):

- (a) if the Secretary of State wishes to proceed with the relevant Variation, she shall refer the matter for determination in accordance with the Dispute Resolution Agreement;
- (b) the Secretary of State shall, if the parties have agreed any one or more aspects of the Required Response, Variable Considerations, Standard Considerations and/or Stable Risk include details of such agreement in the referral for determination in accordance with the Dispute Resolution Agreement and the determination to be made in accordance with the Dispute Resolution Agreement shall adopt the agreement of the parties on those aspects as the determination on those aspects;
- (c) the parties agree that any such determination referred to in Paragraph 2(a) is to be a fair and reasonable assessment of the Required Response and the Revised Inputs that are required in order to leave the parties in a "no better and no worse position" in terms of the TSP's ability to provide the Services to the contractual standards and its economic position (as described in Paragraph 4.4 of Part G (*Runs of the Financial Model*) of Schedule 8 (*Variations*)) after the Variation has been implemented than before, on the basis of Stable Risk, Altered Risk, the Variable Considerations and the Standard Considerations and on the basis of such assessment, the Revised Inputs to be used for determining the adjustment to the Set Availability Payment in accordance with Paragraph 4 of Part G (*Runs of the Financial Model*) of Schedule 8 (*Variations*) shall be determined in the same proceedings;
- (d) the Secretary of State shall in the case of a Contemplated Variation after determination of any Dispute, notify the TSP of whether she wishes to proceed with the Contemplated Variation within ten (10) Business Days of receiving notice of the final determination of the Dispute; and
- (e) if the Secretary of State wishes to, or is required to, proceed with the Variation, she shall issue to the TSP an Authority to Proceed as provided for in Part C (*Additional Procedural Aspects of Variations*) of Schedule 8 (*Variations*) whereupon the TSP shall be required to do so and on implementation of the Variation the provisions of Part G (*Runs of the Financial Model*) of Schedule 8 (*Variations*) shall apply in respect of any change to the Set Availability Payment to which the TSP is entitled.

5. SUCK IT AND SEE PROCEDURE FOR NON-CONSTANT RISK VARIATIONS

Paragraph 5 Procedure

5.1 Where this Paragraph 5 applies pursuant to Paragraph 1(b)(ii), Paragraph 1(b)(iii) or Paragraph 3(d)(iii):

- (a) if the Secretary of State wishes to, or is required to, proceed with the Variation, she shall refer the changes (if any) to the Revised Inputs (to the extent to which such changes (if any) have not been agreed) in accordance with this Paragraph 5 for determination in accordance with the Dispute Resolution Agreement;
- (b) the parties shall agree (or in default of such agreement it shall be determined pursuant to the Dispute Resolution Agreement) the modified calibration of all or any of the Performance Regime, Notifiable Events and Remedial Events regimes in respect of any TARA affected by the Variation so that during such period as the parties may reasonably agree after implementation of the Variation (or if the parties shall fail to so agree within twenty (20) Business Days, the period determined pursuant to the Dispute Resolution Agreement being no less than three (3) Reporting Periods or, where seasonality is a material factor, not less than thirteen (13) Reporting Periods) (**Protected Period**) the TSP is no more and no less likely than before the implementation of the Variation to:
 - (i) suffer Deductions or any other adjustments in relation to the Protected Changes pursuant to the Performance Regime for any Reporting Period which are greater than the mean amount of Deductions per Reporting Period the TSP suffered in respect of the Changed Provisions for any Reporting Period calculated over a period of thirteen (13) Reporting Periods before implementation of the Protected Changes (**Reference Period**) (excluding any Reporting Period where such Deductions are in excess of one hundred per cent. (100%) above the mean level of Deductions suffered by the TSP during the Reference Period);
 - (ii) accrue Notifiable Events and/or Remedial Events in respect of any TARA affected by the Variation to the extent that such events arise from performance in respect of Protected Changes which is worse than that provided by the TSP in respect of the Changed Provisions during the Reference Period; and/or
 - (iii) incur a TSP Default to the extent that such default arises from performance in respect of Protected Changes which is worse than that provided by the TSP in respect of the Changed Provisions during the Reference Period;
- (c) on expiry of the Protected Period any of the following shall apply:
 - (i) the parties shall agree that none of the Performance Regime, Notifiable Events or Remedial Events regimes in respect of any TARA affected by the Variation require any amendment in respect of the Protected Changes;
 - (ii) the parties shall agree a permanent modification of the Performance Regime, Notifiable Events and/or Remedial Event regimes in respect of the Protected Changes so that there is no material and adverse change in risk to the TSP in performing its obligations pursuant to the Protected

Changes from the risk to the TSP of performing its obligations on the basis of the Changed Provisions. For this purpose, the parties shall have reference to the TSP's performance under the Performance Regime, Notifiable Events and/or Remedial Event regimes during the Protected Period (taking into account the effect of any agreed bedding in period); or

- (iii) where the parties are unable to agree in accordance with either Paragraph 5.1(c)(i) or 5.1(c)(ii), either party may refer the matter for determination pursuant to the Dispute Resolution Agreement requesting determination that either no modification is required to, or permanent modification of, the Performance Regime, Notifiable Events and/or Remedial Event regimes in respect of the Protected Changes so that there is no material and adverse change in risk to the TSP in performing its obligations pursuant to the Protected Changes from the risk to the TSP of performing its obligations on the basis of the Changed Provisions. For this purpose, the determination pursuant to the Dispute Resolution Agreement shall have reference to the TSP's performance under the Performance Regime, Notifiable Events and/or Remedial Event regimes during the Protected Period (taking into account the effect of any agreed bedding in period),

and in the case of Paragraphs 5.1(c)(ii) and 5.1(c)(iii) the modified Performance Regime, Notifiable Events and/or Remedial Events regimes, shall apply from the date of the expiry of the Protected Period;

- (d) if, during the Protected Period, either the Secretary of State or the TSP reasonably believes that the modified calibration of the Performance Regime, Notifiable Events and/or Remedial Events regimes in respect of any TARA affected by the Variation as agreed by them or determined pursuant to the Dispute Resolution Agreement in accordance with Paragraph 5.1(b) has resulted in either party being in a materially better or worse position during the Protected Period than during the Reference Period, that party may by notice in writing to the other party (which shall set out in reasonable detail the reasons for such belief), invite that party to agree such changes as may be required so that the provisions of Paragraph 5.1(b) are satisfied with respect to such Variation. If the parties do not so agree and the Secretary of State wishes to proceed with the Variation, either party may refer the matter for determination in accordance with the Dispute Resolution Agreement pursuant to Paragraph 5.1(b);
- (e) either the Secretary of State or the TSP may, during a period ending twelve (12) months after any agreement pursuant to Paragraph 5.1(c)(i) or (ii), refer any Dispute arising in respect of that agreement for determination pursuant to the Dispute Resolution Agreement if the TSP's level of performance in respect of the Protected Change during that period has been materially different from its level of performance during the Protected Period, to determine a modification or further modification to the Performance Regime, Notifiable Events and/or Remedial Events regimes so that the risk of the TSP in performing its obligations pursuant to the Protected Changes is not materially different from the risk to the TSP of performing its obligations on the basis of the Changed Provisions by reference to the performance of the TSP against the Performance Regime, Notifiable Events and/or Remedial Events regimes during the period from the end of the Protected Period until the date of the referral for determination pursuant to this Paragraph 5.1(e) (**Calibration Period**) and taking into account any information

which either party shall provide regarding any external factor which may have materially altered the level of performance by the TSP during the Calibration Period;

- (f) if the Reference Period is longer than the period of actual operation of the TSP under the applicable TARA to the then current date, then the determination pursuant to the Dispute Resolution Agreement shall, in addition to, or instead of, or having regard to, the level of the TSP's actual historic performance have regard to the level of performance that the TSP expected to achieve over an equivalent period as set out in the Effective Date Financial Model;
- (g) for the avoidance of doubt, the Secretary of State may at any time require, and the TSP may request that the Secretary of State considers requiring, a further Variation with a view to ensuring that the risk to the TSP in performing its obligations pursuant to the Protected Changes is not materially different from the risk to the TSP of performing its obligations on the basis of the Changed Provisions (and the Secretary of State shall act reasonably in considering whether any TSP request pursuant to this Paragraph 5.1(g) is required to meet this objective), and any such Variation required by the Secretary of State shall be carried out in accordance with this Part A (*Scope and Consequences of Variations*);
- (h) the parties agree that as part of the Variation the relevant TARA shall make provision for any Deductions:
 - (i) suffered or incurred by the TSP during the Protected Period Calibration Period or any period of subsequent recalibration of the Performance Regime in accordance with this Paragraph 5 to be capped at a percentage of the Base Period Charge in the relevant Reporting Period as determined by the Secretary of State and as set out in the equivalent rows of the Pre-Variation Financial Model to rows 3927 and 3940 of the tab "C01_Workings" of the Effective Date Financial Model prepared in respect of the relevant Variation so that the TSP continues to be able to satisfy its scheduled debt service obligations under the Financing Documents as set out in row 9083 of the tab "C01_Workings" of the Effective Date Financial Model until the modified calibrations are agreed or determined pursuant to this Paragraph 5;
 - (ii) suffered or incurred by the TSP during the Protected Period, Calibration Period or any period of subsequent recalibration of the Performance Regime in accordance with this Paragraph 5 and which it is likely would not have been suffered or incurred but for the Variation to be reimbursed to the TSP to the extent (if any) such Deductions would not have been suffered or incurred pursuant to the modified calibrations agreed or determined pursuant to this Paragraph 5.1 after the expiry of such period; and
 - (iii) that it is likely would have been suffered or incurred by the TSP during the Protected Period, Calibration Period or any period of subsequent recalibration of the Performance Regime pursuant to the modified calibrations agreed or determined pursuant to this Paragraph 5 to be paid by the TSP to the Relevant Operator in the next Reporting Period after the expiry of such period; and

- (i) the parties agree that, in respect of any TARA affected by the Variation, any event of TSP Default and/or any Notifiable Event and/or any Remedial Event in so far as it contributes to a Persistent Failure, in each case incurred during the Protected Period, the Calibration Period or any period of subsequent recalibration of the Notifiable Events regime, and which would not have been suffered or incurred pursuant to the modified calibrations agreed or determined pursuant to this Paragraph 5.1 after the expiry of such period, but for the Variation, shall be cancelled.

Paragraph 5+ Procedure

5.2 The parties agree that the procedure set out in this Paragraph 5.2 to Paragraph 5.8 (inclusive) (the **Paragraph 5+ Procedure**) applies where the condition set out in Paragraph 5.3 is satisfied with respect to:

- (a) a Redeployment Variation; and/or;
- (b) any Variation other than:
 - (A) a Variation prior to the Type Acceptance Date of the first Set in the Fleet;
 - (B) a Variation in respect of ETCS Baseline 3;
 - (C) a Variation in respect of an aspect of Constant Risk;
 - (D) a Variation required as a result of a Change in Law; or
 - (E) a Variation which involves a requirement for Capital Expenditure by or on behalf of the TSP of less than fifteen million pounds Sterling £15,000,000 (Indexed) in respect of a single Variation or when aggregated with Capital Expenditure by or on behalf of the TSP in respect of all previous Variations (excluding any previous Variation referred to in Paragraphs 1(b)(iii)(A) to 1(b)(iii)(D) (inclusive)) required by the Secretary of State, involves Capital Expenditure by or on behalf of the TSP of up to seventy five million pounds Sterling (£75,000,000) (Indexed) in aggregate;

5.3 The condition for the purposes of Paragraph 5.2 is that the Senior Lenders have given written notice to the TSP pursuant to clause 13.12 (*Notification of Variation*) of the CTA, which the TSP has provided to the Secretary of State as soon as reasonably practicable after receipt thereof stating, with reasons and on a reasoned basis, that the Senior Lenders consider, notwithstanding the modified application of the Performance Regime during the Calibration Period:

- (a) the risk to the TSP of performing its obligations as a consequence of the implementation of the Protected Changes is materially different to the risk of performing its obligations prior to the implementation of the Protected Changes; or
- (b) there is a material adverse change in the risk profile of the Project.

5.4 Where the Paragraph 5+ Procedure applies the TSP may by notice in writing (the **Challenge Notice**) within sixty (60) Business Days of the end of the Calibration Period:

- (a) request that the Secretary of State considers a further recalibration and/or a further Variation, as such proposals are (being one or more proposals (if any)) set out in the Challenge Notice by the TSP, which the TSP reasonably considers is required in order to ensure, on the balance of probabilities, that as a result of the Changed Provisions:
 - (i) the risk to the TSP of performing its obligations as a consequence of the implementation of the Protected Changes is not materially different to the risk of performing its obligations prior to the implementation of the Protected Changes; or
 - (ii) there is not a material adverse change in the risk profile of the Project,
 - (a **Restoration of the Risk Profile**); or
 - (b) state that the Senior Lenders have informed the TSP that they consider a Restoration of the Risk Profile may not be achieved by any further recalibration and/or a further Variation whatsoever.
- 5.5 The Secretary of State shall, within sixty (60) days of the receipt of the Challenge Notice, by notice in writing to the TSP either:
- (a) accept any of the TSP's proposals for Restoration of the Risk Profile; or
 - (b) provide to the TSP its own proposals for Restoration of the Risk Profile.
- 5.6 The Secretary of State may, in formulating her own proposals (if any) pursuant to Paragraph 5.5(b), provide the TSP with a series of alternative proposals for Restoration of the Risk Profile, on the basis that:
- (a) at least one of these proposals is stated to be open for acceptance by the TSP (and, if the Secretary of State so decides, more than one proposal may be stated to be open for acceptance by the TSP); or
 - (b) one or more of these proposals are offered on the basis that it may only be accepted by the TSP if the Court determines that that proposal is required to be implemented in order to achieve, on the balance of probabilities, a Restoration of the Risk Profile.
- 5.7 If the parties do not agree to implement a proposal for Restoration of the Risk Profile in accordance with Paragraph 5.5 within one hundred and eighty (180) Business Days of any Challenge Notice, either party is entitled to refer the Dispute for determination to the Court of England and Wales and the Dispute Resolution Agreement shall not apply to such Dispute unless otherwise agreed by the parties.
- 5.8 If following a reference of a Dispute in accordance with Paragraph 5.7:
- (a) the TSP is able to demonstrate to the satisfaction of the Court that, on the balance of probabilities, no further recalibration and/or Variation (that in either case has been provided by the TSP pursuant to Paragraph 5.4 or by the Secretary of State pursuant to Paragraphs 5.5(b) and 5.6) is able to achieve a Restoration of the Risk Profile, then, unless the parties agree otherwise within the sixty (60) day period following any such determination by the court, the Secretary of State shall terminate this Agreement (a **Paragraph 5+ Termination Event**) in accordance

with Part K (*Paragraph 5+ Termination*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*); or

- (b) it is agreed or determined by the court that only one of the proposals referred to in Paragraph 5.5 is capable of effecting a Restoration of the Risk Profile, the Secretary of State shall elect for that proposal to be implemented or, where it is agreed or determined that more than one of those proposals is capable of effecting a Restoration of the Risk Profile, the Secretary of State may choose which of those proposals shall be implemented, which for the avoidance of doubt may be one of the TSP's proposals for Restoration of the Risk Profile if so determined by the court.

6. IMPLEMENTATION PERIOD AND IMPLEMENTATION RISK

The parties agree that the Implementation Period and any Implementation Risk in respect of any Variation (other than a Redeployment Variation) shall be agreed between them or determined pursuant to the Dispute Resolution Agreement as part of the process of determining the Variation to which they relate and the impact of the implementation of any Variation (including any costs arising or relief required in implementing the Variation) shall be taken into account in determining Stable Risk, Altered Risk and Variable Considerations and/or Standard Considerations.

7. ADDITIONAL FUNDING REQUIREMENT

The parties agree that the provisions of Part D (*Financing of Variations*) of this Schedule 8 (*Variations*) shall apply in respect of any Additional Funding Requirement.

8. CHANGES TO SET AVAILABILITY PAYMENTS

The parties agree that any assessment of the financial consequences of performing this Agreement as varied by a Variation (other than a Default Variation or Approved Default Variation, which shall be dealt with in accordance with Part B (*Approved Default Variations*) of Schedule 8 (*Variations*)), whether by either agreement between them or determination pursuant to the Dispute Resolution Agreement and to the preceding provisions of this Part A (*Scope and Consequences of Variations*), is to be translated into Revised Inputs which are to be incorporated into a Run of the Financial Model to generate a restated Set Availability Payment which restatement may (with the agreement of the Secretary of State) include the payment of capital contributions by the Secretary of State.

9. PRE-PRICED OPTION

The parties agree that provisions of Appendix A (*Pre-Priced Option*) to this Part A (*Scope and Consequences of Variations*) of this Schedule 8 (*Variations*) shall apply in respect of the Pre-Priced Option and that the Secretary of State may, by giving written notice to the TSP before the ETCS Baseline 3 Option Exercise Date exercise the Pre-Priced Option as set out in Appendix A (*Pre-Priced Option*) to Part A (*Scope and Consequences of Variations*) of this Schedule 8 (*Variations*) and in all other respects on and subject to the terms of this Agreement.

10. ETCS BASELINE 3

The parties agree that if at any time the Secretary of State exercises its rights in respect of the implementation of ETCS Baseline 3 on the sets to be delivered under the ECML

MARA, the Secretary of State shall exercise her rights in respect of the implementation of ETCS Baseline 3 on the Sets under this Agreement.

Appendix A to Part A of Schedule 8

Pre-Priced Option

1. PRE-PRICED OPTION

- 1.1 The TSP grants the Secretary of State the Pre-Priced Option, which the Secretary of State may, at her absolute discretion, exercise in accordance with this Appendix A (*Pre-Priced Option*) to Part A of Schedule 8 (*Variations*).
- 1.2 The Secretary of State may exercise the Pre-Priced Option at any time before the ETCS Baseline 3 Drop Dead Date, by serving a Contemplated Variation Notice on the TSP no later than the ETCS Baseline 3 Option Exercise Date (the date of such Contemplated Variation Notice or the exercise of the option under the ECML MARA being, the **ETCS Baseline 3 Date**).
- 1.3 The parties agree that a Contemplated Variation that involves the exercise of the ETCS Baseline 3 Option consists only of aspects of Constant Risk and the procedure set out in Paragraph 2 (*Constant Risk Procedure*) and Part C (*Additional Procedural Aspects of Variations*) shall apply in respect of any Contemplated Variation in respect of the ETCS Baseline 3 Option, except as expressly varied pursuant to this Appendix A (*Pre-Priced Option*) to Part A of Schedule 8 (*Variations*).
- 1.4 If the Secretary of State exercises the Pre-Priced Option, in consideration of the delivery of the Pre-Priced Option in accordance with this Agreement (as varied from time to time, including, without limitation, by the Contemplated Variation in respect of the Pre-Priced Option), the Secretary of State shall pay the ETCS Baseline 3 Option Price to the TSP in the amounts set out in the table below within ten (10) days after receipt of a valid invoice in respect of any such amount provided that the TSP does not issue an invoice in respect of any such amount before the relevant payment date set out in the table below:

	Payment Dates	Percentage of ETCS Baseline 3 Option Price payable
ETCS Baseline 3 Option Price Payment Date 1	15 days after the ETCS Baseline 3 Date	30%
ETCS Baseline 3 Option Price Payment Date 2	On completion of testing at the Hertford National Integration Facility as certified in writing by the TSP to the Manufacturer	50%
ETCS Baseline 3 Option Price Payment Date 3	On completion of the ETCS Baseline 3 software upgrade on the Fleet, as certified in writing by the TSP to the Manufacturer	20%

2. **PRE-PRICED OPTION AND THE FINANCIAL MODEL**

2.1 The ETCS Baseline 3 Option Revised Inputs are classified as follows:

- (a) the inputs which shall remain unchanged following the exercise of the Pre-Priced Option which for the avoidance of doubt shall include the Set Availability Payment, the Base Period Charge and the KPI Payment;
- (b) the inputs to reflect the change in costs which shall replace those in the Effective Date Financial Model if the Pre-Priced Option is exercised; and
- (c) the inputs to reflect the change in income in respect of the payment of the ETCS Baseline 3 Option Price in the amounts and on the dates described in Paragraph 1.4.

2.2 Promptly after the ETCS Baseline 3 Option Exercise Date, the TSP shall perform a Run of the Financial Model in accordance with Part G (*Runs of the Financial Model*) of Schedule 8 (*Variations*) to incorporate the ETCS Baseline 3 Option Revised Inputs. For the avoidance of doubt, the Run of the Financial Model in accordance with this Appendix A shall incorporate only the ETCS Baseline 3 Option Revised Inputs.

2.3 The parties agree that the provisions of Part G (*Runs of the Financial Model*) of Schedule 8 (*Variations*) shall apply in respect of any Run of the Financial Model in respect of the exercise of any Pre-Priced Option other than as expressly set out in this Appendix A (*Pre-Priced Option*).

Part B of Schedule 8

Approved Default Variations

1. The TSP may by written notice to the Secretary of State (an **Urgent Notice**) require the Secretary of State to consider, as a matter of urgency, implementing a Default Variation where any Depot or Servicing Point on which the TSP had been placing material reliance for the provision of the Services ceases to be or fails to become available to the TSP for that purpose (**Facility Default**).
2. The TSP shall provide the following information in any Urgent Notice:
 - (a) full details of the Facility Default and of the manner in which that default materially and adversely affects the TSP's ability to deliver the Services;
 - (b) full details of the solutions which the TSP has considered in order to be able to deliver the Services without material disruption or diminution to the provision of the Services notwithstanding the Facility Default;
 - (c) of the solutions listed pursuant to Paragraph 2(b), full details of the TSP's preferred solution (the **Preferred Solution**) and the reasons for it including the cost of the Preferred Solution and any required action from the Secretary of State in order to achieve the Preferred Solution;
 - (d) full details of the changes which the TSP believes are required to this Agreement and/or to any TARA to enable the TSP to implement the Preferred Solution in respect of the Facility Default; and
 - (e) details of any Reinstatement Plan proposed and/or agreed in accordance with Paragraph 2.11 of Part A (*Insurance Provisions*) of Schedule 5 (*Insurance*).
3. As soon as reasonably practicable after receipt of an Urgent Notice the parties shall meet to discuss its content and use reasonable endeavours to agree the optimum solution to the Facility Default, whether from among the solutions proposed by the TSP in its Urgent Notice or from some other solution on which the parties may agree through discussion with a view to any Variation minimising:
 - (a) any material disruption to or deterioration in the Services provided to the Relevant Operator by the TSP and by the Relevant Operator to its passengers or material increase in cost for the Relevant Operator;
 - (b) any material disruption to or deterioration in the services of other users of the railway network and their customers or material increase in cost for such other users; and
 - (c) any reasonably avoidable material cost to the TSP of such Facility Default.
4. Without limiting the generality of the factors to be taken into account, as set out in Paragraph 3 the parties shall take into account any changes to the maintenance locations of the Sets (and any associated changes to the Rules of the Fleet and the Rules of the Depot) that may contribute to an optimum solution.
5. Any solution that is agreed pursuant to Paragraphs 3 and 4 shall constitute an Approved Default Variation for purposes of this Agreement.

6. The TSP shall implement any Approved Default Variation as soon as reasonably practicable.
7. The TSP shall compensate the Relevant Operator for any increase in costs that it may reasonably and properly incur as a result of the implementation of any Approved Default Variation, which are to be agreed between the affected parties or determined by the Dispute Resolution Agreement.
8. Save as provided for in Paragraph 2.11 of Part A (*Insurance Provisions*) of Schedule 5 (*Insurance*), the TSP shall not be entitled to any relief other than that agreed pursuant to the Approved Default Variation in respect of any Facility Default and, for the avoidance of doubt, shall not be entitled to receive any change to the Set Availability Payment.

Part C of Schedule 8

Additional Procedural Aspects of Variations

1. PROGRESSING TERMS OF THE VARIATION

- 1.1 The procedural aspects of any Redeployment Variation shall, other than as expressly stated herein, be carried out in accordance with Part I (*Redeployment Variation*) and Part J (*Additional Procedural Aspects of Redeployment Variations*) of Schedule 8 (*Variations*) rather than this Part C (*Additional Procedural Aspects of Variations*) of Schedule 8 (*Variations*).
- 1.2 The TSP shall co-operate with the Secretary of State in carrying out such investigations and confirmations as may be reasonably required by the Secretary of State in order to confirm the TSP's responses to each of the requirements in Part A (*Scope and Consequences of Variations*) of Schedule 8 (*Variations*).
- 1.3 Where the Secretary of State considers that it is likely to require a Variation pursuant to this Schedule 8 (*Variations*), the Secretary of State shall use all reasonable endeavours to propose such Variation to the TSP in a Variation Notice in sufficient time for the requirements of Part A (*Scope and Consequences of Variations*) of Schedule 8 (*Variations*) to be completed before the date on which implementation of such Variation needs to commence.
- 1.4 The TSP shall notify the Secretary of State in writing as soon as reasonably practicable following receipt of a Variation Notice, but in any event within fifteen (15) Business Days of receipt of a Required Variation Notice, if the TSP believes that it is not possible for it to implement the Variation set out in that notice in the specified time scale.
- 1.5 If the TSP reasonably requires more time in order to provide the Required Response, it shall instead notify the Secretary of State in writing as soon as reasonably practicable following receipt of a Variation Notice, but in any event within fifteen (15) Business Days of receipt of a Required Variation Notice, of such requirement and the further reasonable period of time required in order to confirm whether the TSP can implement that Variation in the specified time scale. The Secretary of State may consent to any such request, such consent not to be unreasonably withheld or delayed.
- 1.6 If the TSP does not notify the Secretary of State pursuant to Paragraphs 1.4 or 1.5 (as the case may be) within the relevant notice period (including within any additional agreed notice period), the TSP shall be deemed to have confirmed its ability to implement that Variation within the specified time scale.
- 1.7 The Secretary of State may at any time issue a Required Variation Notice in respect of a Required Variation that has previously been the subject of a Contemplated Variation Notice.

2. FINALISING TERMS OF VARIATIONS

The parties agree:

- (a) in relation to a Contemplated Variation Notice, the Secretary of State may, to the extent she has not already done so, issue an Authority to Proceed in accordance with Paragraph 4.2;

- (b) where the Secretary of State undertakes to pay directly to the TSP any Additional Funding Requirement (or part thereof) that relates to the relevant Variation pursuant to Paragraph 3.1(a) of Part D (*Financing of Variations*) of Schedule 8 (*Variations*), the Secretary of State shall pay such element in accordance with the terms of that undertaking to the TSP;
- (c) the TSP shall:
 - (i) in the case of a Variation that is the subject matter of a Contemplated Variation Notice, implement that Variation in accordance with Paragraphs 4.1 and 4.2; and
 - (ii) in the case of a Variation that is the subject matter of a Required Variation Notice, implement that Variation in accordance with Paragraph 4.3, including, in each case, making such amendments to the provisions of any existing or future TARA as are required to give effect to the terms of a Variation in accordance with Paragraphs 3.2 and 3.3;
- (d) the parties shall make such amendments to the Escrow Documents that are required to give effect to the terms of the Variation as have been discussed and agreed by the parties or determined pursuant to the Dispute Resolution Agreement and thereafter deposit those amended documents into escrow in accordance with Part F (*Identity of the Financial Model*) of Schedule 8 (*Variations*); and
- (e) that a Run of the Financial Model shall be performed pursuant to Part G (*Runs of the Financial Model*) of Schedule 8 (*Variations*) to determine any change to the Set Availability Payments as a consequence of performing this Agreement and any existing or future TARA as varied by the relevant Variation.

3. RECORDING TERMS OF VARIATIONS

Amendment of Terms of this Agreement

- 3.1 Where any Variation that has been authorised or required in accordance with Schedule 8 (*Variations*) contemplates an amendment to the terms of this Agreement as a direct consequence of the Variation, the parties shall enter into a written agreement duly amending the terms of this Agreement as soon as reasonably practicable thereafter.

Amendment of Terms of any existing or future TARA

- 3.2 Where any Variation that has been authorised or required in accordance with Schedule 8 (*Variations*) contemplates an amendment to the terms of any existing TARA or any future TARA to be entered into (including any amendment to the Set Availability Payment payable thereunder) as a direct consequence of the Variation:
- (a) the Secretary of State shall as soon as reasonably practicable thereafter procure that the Relevant Operator, where that Relevant Operator is a party to the relevant TARA, enters into a written agreement with the TSP duly amending that TARA (a **TARA Amendment Agreement**) or enters into the relevant TARA on those amended terms required to give effect to the terms of the Variation; and
 - (b) the TSP shall as soon as reasonably practicable thereafter, subject to Paragraph 3.3, as appropriate, enter into that TARA Amendment Agreement or

enter into the relevant TARA on those amended terms required to give effect to the terms of the Variation.

3.3 The TSP shall:

- (a) provide a final draft of any TARA Amendment Agreement or TARA on amended terms to the Secretary of State no later than ten (10) Business Days (or such longer period as the Secretary of State may reasonably require) prior to the intended date for signature of any such agreement in order that the Secretary of State may determine whether, in the Secretary of State's reasonable opinion, the amendments set out in any such agreement appropriately reflect the terms of the Variation that has been agreed or determined; but
- (b) not enter into any such TARA Amendment Agreement or TARA on amended terms without the prior written consent of the Secretary of State (not to be unreasonably withheld) if, in the Secretary of State's reasonable opinion, the amendments set out in that agreement do not reflect the terms of the relevant Variation that has been agreed or is required pursuant to this Schedule 8 (*Variations*).

4. **IMPLEMENTATION OF VARIATIONS**

Implementation of Contemplated Variations

- 4.1 Subject to Paragraph 4.2, the TSP shall not implement any Variation set out in any Contemplated Variation Notice until the Secretary of State serves on the TSP a notice substantially in the form of Form 2 set out in Appendix B (*Form 2: Authority to Proceed*) of this Part C (*Additional Procedural Aspects of Variations*) of Schedule 8 (*Variations*) (an **Authority to Proceed**) in relation to that Variation. The Secretary of State shall not be obliged to issue an Authority to Proceed in relation to any Variation that is the subject matter of a Contemplated Variation Notice.
- 4.2 Where the Secretary of State reasonably considers that the required timescale for implementation of a Contemplated Variation does not allow the Contemplated Variation Notice procedure to be followed until the Variation is agreed or determined, the Secretary of State may issue an Authority to Proceed at any time following the issue of a Contemplated Variation Notice, even if the details for implementing the Variation specified in any such notice have not yet been agreed or determined, provided that the Secretary of State shall provide as much time as reasonably possible prior to issuing the Authority to Proceed in order to allow discussion of the Contemplated Variation with the TSP. In that event, the provisions of Paragraph 4.3 shall apply with effect from the date of the Authority to Proceed as if the Contemplated Variation Notice had been a Required Variation Notice. The TSP shall not be obliged to commence implementing the Contemplated Variation unless the Secretary of State provides Temporary Financial Accommodation in respect of any expenditure incurred or to be incurred in connection with any such Variation pending agreement or determination of the Variation.

Implementation of Required Variations

- 4.3 Following receipt of a Required Variation Notice, subject to Paragraph 3 of Part D (*Financing of Variations*) of Schedule 8 (*Variations*) or unless otherwise instructed by the Secretary of State, the TSP shall implement the Variation specified in that notice within the time scale specified in that notice, and where appropriate, shall implement that Variation in accordance with the key milestones or stages specified in that notice. The

Secretary of State shall not be obliged to issue an Authority to Proceed to the TSP in order for the TSP to be obliged to implement any Variation that is specified in a Required Variation Notice. If the TSP has notified the Secretary of State pursuant to Paragraph 1.3 that the TSP believes that it is not possible for it to implement the Variation set out in a Required Variation Notice in the specified time scale:

- (a) if the Secretary of State revises the specified time scale in response to such notice and the TSP agrees such revised timescale, the TSP shall implement the Variation specified in the Required Variation Notice within such revised time scale; or
- (b) if the Secretary of State does not revise the specified time scale in response to such notice (or if the TSP does not agree to any revised time scale that the Secretary of State proposes in response to such notice) the determination of a breach by the TSP of this Paragraph 4.3 for failure to comply with the specified time scales shall not be made until such reasonable time scales have been determined pursuant to the Dispute Resolution Agreement.

5. **WITHDRAWAL OF VARIATIONS**

The Secretary of State may withdraw any Contemplated Variation Notice or Authority to Proceed at any time by issuing a notice substantially in the form of Form 3 (a **Withdrawal Notice**) set out in this Appendix C (*Form 3: Withdrawal Notice*) to Part C (*Additional Procedural Aspects of Variations*) of Schedule 8 (*Variations*), in which case the TSP shall:

- (a) to the extent it has commenced implementing that Variation, immediately cease to implement that Variation; and
- (b) where the Secretary of State has issued an Authority to Proceed, be entitled to make a claim to recover from the Secretary of State any costs that the TSP has reasonably and properly incurred exclusively in connection with implementing that Variation (including any Sub-Contractor Breakage Costs and Senior Lender due diligence costs arising from the Withdrawal Notice) and all reasonable costs of rectification required to rectify or remove any works carried out prior to service of the Withdrawal Notice pursuant to such Variation and such withdrawal will be treated as a Delayed Acceptance Event under limb (i) of the definition thereof, to the extent this occurs prior to a Scheduled Acceptance Date and such withdrawal satisfies the requirements of the definition of Delayed Acceptance Event.

6. **CONTRACT MANAGEMENT OF VARIATIONS**

Referencing of Variations and correspondence

6.1 The Secretary of State shall:

- (a) allocate a unique number to the Variation that is the subject of any Contemplated Variation Notice or Required Variation Notice, in each case, upon the issue of any such notice; and
- (b) maintain a sequentially numbered register of all potential and actual Variations.

6.2 Each party shall procure that all correspondence it delivers in relation to any such Variation subsequent to the allocation of such number shall bear that number.

Costs and expenses of processing Variations

- 6.3 Where, prior to the issue of any Authority to Proceed, the TSP incurs costs or expenses in connection with the investigation, preparation or negotiation of any Contemplated Variation Notice, Required Variation Notice, Authority to Proceed and Withdrawal Notice, provided that the TSP notifies the Secretary of State in advance of such costs and expenses and the Variation to which such costs or expenses are incurred is being withdrawn pursuant to Paragraph 5, such costs and expenses will be payable by the Secretary of State unless the sole reason for the Variation being withdrawn is as a result of the TSP providing a price in the Required Response and subsequently, unreasonably, increasing that price, such that the Variation becomes unaffordable for the Secretary of State, in which case such costs and expenses shall be payable by the TSP.
- 6.4 Each Party shall pay its own costs and expenses, in each case of any nature whatsoever, incurred in connection with any acts, omissions or correspondence in connection with agreement on, or determination in accordance with the provisions of the Dispute Resolution Agreement of, the terms of any Variation and such costs and expenses shall not be taken into account in costing any Variation.

Disputes

- 6.5 If the TSP disputes a decision of the Secretary of State under this Part C (*Additional Procedural Aspects of Variations*) of Schedule 8 (*Variations*) it may refer the Dispute for resolution pursuant to the Dispute Resolution Agreement.

Appendix A to Part C of Schedule 8

Form 1: Contemplated and Required Variation Notice

Part A (to be completed by the Secretary of State's Representative)	
TO: [TSP's Representative]	FROM: [Secretary of State's Representative]
	DATE:
PROJECT TITLE:	VARIATION NO:
<i>[Include detailed description of Variation and any related aspects of the proposal (including expected changes to the terms of the Master Availability and Reliability Agreement and any Train Availability and Reliability Agreement and drafting in respect thereof where appropriate, and a request for contractual incentive provisions if relevant)]</i>	
And the following to be included in a Required Variation Notice:	
Method of Implementation:	
Implementation timetable, including key stages/milestones:	
[Contractual incentive provisions/liquidated damages:]	
Any changes to the contractual terms of MARA/TARA:	
Other material considerations:	
Signature: _____ Designation: _____ Date: _____	
Part B (to be completed by the TSP's Representative)	
Please advise:	
Method of Implementation:	
Implementation timetable, including key stages/milestones:	
[Contractual incentive provisions/liquidated damages:]	
Any changes to the contractual terms of MARA/TARA:	
Financial consequences:	
Additional Funding Requirement required:	
Sub-contractors to be used:	
Other material considerations:	
The TSP	
Signature: _____ Designation: _____ Date: _____	
When complete, this document must be returned to the Secretary of State's Representative	
Part C (to be completed by the Secretary of State's Representative)	

TO the TSP's Representative:

We hereby acknowledge receipt of the TSP's response to this Secretary of State's Contemplated/Required Variation Notice [*insert Variation No.*].

Signature: _____ Designation: _____ Date: _____

Appendix B to Part C of Schedule 8

Form 2: Authority to Proceed

Part A (to be completed by the Secretary of State's Representative)	
TO: [TSP's Representative]	FROM: [Secretary of State's Representative]
	DATE:
PROJECT TITLE:	VARIATION NO:
Further to the Contemplated Variation Notice/Required Variation Notice served on [insert date], this notice hereby constitutes an Authority to Proceed pursuant to Paragraph 4.1 of Part C (<i>Additional Procedural Aspects of Variations</i>) of Schedule 8 (<i>Variations</i>) of the Master Availability and Reliability Agreement between us.	
[set out any further information relating to the Variation that has not already been specified in the Required Variation Notice/Contemplated Variation Notice]	
Signature: _____	Designation: _____ Date: _____
Part B (to be completed by the TSP's Representative)	
TO the Secretary of State's Representative:	
We hereby acknowledge receipt of this Authority to Proceed in relation to Variation Notice [insert Variation No.].	
Signature: _____	Designation: _____ Date: _____

Appendix C to Part C of Schedule 8

Form 3: Withdrawal Notice

Part A (to be completed by the Secretary of State's Representative)	
TO: [TSP's Representative]	FROM: [Secretary of State's Representative]
	DATE:
PROJECT TITLE:	VARIATION NO:
We hereby withdraw the Variation that was the subject matter of a <i>Contemplated Variation Notice / Authority to Proceed</i> bearing the Variation number specified above.	
Signature: _____ Designation: _____ Date: _____	
Part B (to be completed by the TSP's Representative)	
TO the Secretary of State's Representative:	
We hereby acknowledge receipt of this Withdrawal Notice [<i>insert Variation No.</i>].	
Signature: _____ Designation: _____ Date: _____	

Part D of Schedule 8

Financing of Variations

1. ADDITIONAL FUNDING REQUIREMENT RELATING TO ANY VARIATION

Funding of Variations which involve an Additional Funding Requirement

- 1.1 Where any Variation involves an Additional Funding Requirement, the Secretary of State may direct that the Variation be paid for in either of the following ways, or partly in one way and partly in the other:
- (a) the Secretary of State undertaking (whether directly or via a Relevant Operator who is a party to a TARA) to pay that Additional Funding Requirement or part thereof to the TSP following the completion of the implementation of that Variation or at such stages during implementation of that Variation as the parties may agree; and/or
 - (b) requiring the TSP to use its reasonable endeavours to borrow or otherwise raise the money required in the form of debt (and associated hedging arrangements) and equity in the same debt to debt plus equity ratio applicable to the then current period as set out in row 10148 of the sheet C01_Workings of the Effective Date Financial Model prepared in respect of the relevant Variation demonstrated to fund that Additional Funding Requirement or part thereof on commercial terms and at rates which are consistent with market conditions at the time, and the TSP shall use these reasonable endeavours to investigate whether it is possible in respect of the Variation.
- 1.2 The Secretary of State's only obligation in respect of the Additional Funding Requirement referred to in Paragraph 1.1 shall be to make and comply with any directions she issues pursuant to Paragraph 1.1.
- 1.3 If the Secretary of State elects to require the TSP to use its reasonable endeavours as described in Paragraph 1.1(b) and the TSP is unable to borrow or otherwise raise the monies required, the TSP shall as soon as reasonably practicable following any request:
- (a) provide the Secretary of State with such information as the Secretary of State may reasonably require in relation to the TSP's failure to so borrow or raise those monies; and
 - (b) procure the delivery to the Secretary of State by the TSP's financial adviser, of a certificate in terms acceptable to the Secretary of State in which the TSP's financial adviser certifies the reasons why in its reasonable opinion the TSP was unable to borrow or otherwise raise the monies required.

Variations that are Qualifying Changes in Law

- 1.4 Where any Variation that is a Qualifying Change in Law involves an Additional Funding Requirement, then in addition to the TSP complying with its requirements in Paragraph 1.1(b) to the extent the Secretary of State makes the election described in Paragraph 1.1(b), the TSP shall also account for the TSP's Share of that Additional Funding Requirement pursuant to Paragraphs 1.3 to 1.5 (inclusive) of Schedule 9 (*Change in Law*).

2. **SECRETARY OF STATE RIGHT TO FUND ADDITIONAL FUNDING REQUIREMENT**

Notwithstanding anything in this Agreement to the contrary, at any time during the period in which the TSP is endeavouring to borrow or otherwise raise the money required to fund the Additional Funding Requirement relating to any Variation pursuant to Paragraph 1.1 or a specified part of it, the Secretary of State may notify the TSP that she is electing to fund that Additional Funding Requirement or part thereof pursuant to Paragraph 1.1(a). In such circumstances the reasonable costs associated with the TSP carrying out its obligations under this Part D (*Financing of Variations*) of Schedule 8 (*Variations*) incurred by the TSP up to the date of such notice from the Secretary of State will be reimbursed to the TSP by the Secretary of State.

3. **IMPLEMENTATION OF VARIATIONS WITH AN ADDITIONAL FUNDING REQUIREMENT**

3.1 Where the Secretary of State:

- (a) has issued either a Required Variation Notice or an Authority to Proceed in relation to a Variation that requires an Additional Funding Requirement; and
- (b) requires the TSP to use reasonable endeavours to borrow or otherwise raise the money required to fund that Additional Funding Requirement or part thereof pursuant to Paragraph 1.1(b),

the TSP shall not be obliged to commence implementing that Variation prior to those funding arrangements being in place, unless the Secretary of State is willing to provide Temporary Financial Accommodation pending a Run of the Financial Model pursuant to Part G (*Runs of the Financial Model*) of Schedule 8 (*Variations*) and if, despite using its reasonable endeavours to borrow or otherwise raise the money required to fund that Additional Funding Requirement pursuant to Paragraph 3.1(b), the TSP has been unable to borrow or otherwise raise the money required to fund that Additional Funding Requirement, the Secretary of State shall thereafter provide the relevant Additional Funding Requirement in accordance with Paragraph 1.1(a). This Paragraph 3 shall not apply in respect of any Required Variation issued under limb (l) of the definition of Required Variation.

3.2 Where the Required Variation relates to limb (a) of the definition of Required Variation and the Secretary of State has issued a Required Variation Notice in relation to a Variation that requires an Additional Funding Requirement and the TSP is unable to borrow or otherwise raise the monies required as notified in accordance with Paragraph 3 the Secretary of State shall provide Temporary Financial Accommodation pending a Run of the Financial Model pursuant to Part G (*Runs of the Financial Model*) of Schedule 8 (*Variations*) and shall thereafter provide the relevant Additional Funding Requirement in accordance with Paragraph 1.1(a).

3.3 Where Paragraph 3.2 applies, the TSP shall use reasonable endeavours to undertake a Run of the Financial Model pursuant to Part G (*Runs of the Financial Model*) of Schedule 8 (*Variations*) as soon as reasonably practicable after the issue of the relevant Required Variation Notice.

Part E of Schedule 8

Market Testing, Benchmarking and Indexing

1. MARKET TESTING

Services to be Market Tested

1.1 At least forty (40) weeks before each Market Testing Date, the TSP and the Secretary of State shall meet together as often as may be necessary in respect of all Market Tested Services to be market tested on that date:

- (a) to consider any changes required to such Market Tested Services;
- (b) to discuss and seek to agree the appropriate manner of advertising for tenders for the provision of such Market Tested Services and the means of identifying prospective tenderers;
- (c) to discuss and seek to agree the tender requirements which must include:
 - (i) a statement of the tender validity period;
 - (ii) details of the tender evaluation criteria;
 - (iii) the terms and conditions under which the Market Tested Services will be subcontracted by the Maintainer which will match, as far as possible, the terms and conditions on which such services are being provided at that time and will, without limitation, provide for the pass down to the tenderer as sub-contractor to the Maintainer of the financial consequences under this Agreement and/or any TARA of a failure to provide the services;
 - (iv) information relating to employees employed in the delivery of all Market Tested Services and their terms and conditions of employment;
 - (v) the information that tenderers are required to provide;
 - (vi) how many tenders are required for the market testing to be valid;
 - (vii) whether any Market Tested Services should be tendered as a group or individually; and
 - (viii) whether or not an independent tender manager (the **Independent Tender Manager**) needs to be appointed by the TSP to manage the tender process and if so which of the functions set out in this Paragraph 1 will be carried out by the TSP and which of them will be carried out by the Independent Tender Manager.

Grouping of services

1.2 Unless the TSP can demonstrate to the Secretary of State that the best value for money is likely to be achieved for the TSP if Market Tested Services are tendered separately or in particular groupings, or if any Market Tested Service is divided into separate parts, the grouping of any Market Tested Services shall be left to the discretion of tenderers on the basis that the tender requirements shall specify that:

- (a) tenderers may submit tenders for all or any part of the Market Tested Services; and
- (b) if a tenderer submits a tender for a group or groups of Market Tested Services, then it may be required to provide all or any of the services in such group or groups.

Selection of Tenderers

- 1.3 Following consultation with the Secretary of State and after giving due regard to any input provided by the Secretary of State, the TSP shall compile the list of prospective tenderers and shall be responsible for selecting the tenderers from the list of prospective tenderers on the basis of their:
 - (a) financial standing; and
 - (b) technical and management experience and ability (taking into account any relevant references).
- 1.4 The Secretary of State shall have a right to prevent the selection of any person as a prospective tenderer if she reasonably believes that such person does not (or could not reasonably be considered to) comply with any of the criteria agreed in accordance with Paragraph 1.1(c) or the criteria set out in Paragraph 1.3.
- 1.5 The Secretary of State shall have a right to review the list of prospective tenderers to be compiled by the TSP in accordance with Paragraph 1.3 prior to the tender being opened to the tenderers. The TSP will provide the Secretary of State with an explanation of the reasons for the non-inclusion on the list of prospective tenderers of any person identified as suitable by the Secretary of State, if so requested by the Secretary of State.
- 1.6 The TSP will provide any prospective tenderer that is unsuccessful in being selected with an explanation of the reasons behind its non-selection, if so requested by the person in question.

Evaluation of Tenders

- 1.7 Once the period for submission of tenders has ended, the TSP shall determine the best tender in accordance with the following principles:
 - (a) the TSP shall determine which compliant tender in respect of any Market Tested Service represents the best value for money;
 - (b) on making that determination, the TSP shall supply to the Secretary of State a copy of its tender evaluation (covering all compliant tenders), together with sufficient supporting information concerning the tender evaluation to enable the Secretary of State to analyse and understand the basis for the TSP's determination; and
 - (c) if the Secretary of State does not agree with the TSP's determination, the Secretary of State may, within fifteen (15) Business Days of being provided with the tender evaluation, dispute such determination and, if the parties do not resolve the Dispute within a further fifteen (15) Business Days, the Dispute shall be dealt with in accordance with the Dispute Resolution Agreement.

Successful Tenderers

- 1.8 Following agreement or determination of which tender represents the best value for money (as set out in Paragraph 1.7(a)):
- (a) the parties shall procure that the Maintainer enters into the necessary agreements with the winning tenderer so as to enable that tenderer as sub-contractor to the Maintainer to take over the provision of the relevant Market Tested Services on the terms and conditions set out in the tender requirements;
 - (b) a Run of the Financial Model shall be carried out in accordance with Part G (*Runs of the Financial Model*) of Schedule 8 (*Variations*) in order to ascertain the financial consequences of the provision of those Market Tested Services by the winning tenderer;
 - (c) in performing that Run of the Financial Model, Revised Inputs shall be utilised that reflect the provision of those Market Tested Services by the winning tenderer and determined in accordance with Appendix B (*Description of Labour and Labour SPV Costs Subject to Re-basing and Process for Updating the Model following Re-basing*) to Part E (*Market Testing, Benchmarking and Indexing*) of this Schedule 8 (*Variations*); and
 - (d) where appropriate, the TSP shall enter into a TARA Amendment Agreement with the Relevant Operator that amends any TARA to reflect the provision of those Market Tested Services by the winning tenderer.

2. BENCHMARKING

- 2.1 The provisions of this Paragraph 2 shall operate for the relevant Market Tested Services where the process described in Paragraph 1 fails to yield a result by reason of:
- (a) a failure to agree the tender requirements;
 - (b) a failure to agree on the list of prospective tenderers;
 - (c) a failure by anybody other than the TSP to submit a compliant tender; or
 - (d) the failure by the successful tenderer to enter into the necessary agreements with the TSP and the Secretary of State to provide the relevant Market Tested Services within sixty (60) days of such tenderer being notified that its tender has been successful,

each of the circumstances described in Paragraphs 2.1(a) to (d) inclusive being a **Market Testing Failure**.

- 2.2 The purpose of the benchmarking will be to ascertain the costs to the TSP of providing the Market Tested Services to be benchmarked on the relevant Benchmarking Date and to compare that against the prevailing market cost of providing such services and, if appropriate, for this to result in Revised Inputs for Market Tested Services to be applied in any related Run of the Financial Model pursuant to the provisions of Part G (*Runs of the Financial Model*) of Schedule 8 (*Variations*).
- 2.3 Within twenty (20) Business Days of any Market Testing Failure, the Secretary of State and the TSP shall meet together as often as may be necessary in respect of all Market

Tested Services to be benchmarked on that date so as to agree the basis on which the cost comparison will be carried out including:

- (a) agreeing on the source or sources for the provision of the benchmarking information;
- (b) unless otherwise agreed, ensuring that each of the relevant Market Tested Services is benchmarked separately;
- (c) ensuring that the cost comparison encompasses only those services which are being benchmarked;
- (d) ensuring that the cost comparison includes factors inherent in a change of service provider or sub-contractor;
- (e) ensuring that the cost comparison takes account of the pass down to the sub-contractor of the financial consequences under this Agreement and/or any TARA of a failure to provide the relevant services; and
- (f) ensuring that the cost comparison is made against an economic and efficient operator of those services which are being benchmarked.

2.4 The TSP shall carry out the benchmarking exercise within the parameters agreed pursuant to Paragraph 2.3 and shall, no later than twenty (20) Business Days before the relevant Benchmarking Date submit a written report (the **Benchmarking Report**) to the Secretary of State setting out:

- (a) the sources from which the information required to carry out the benchmarking was obtained;
- (b) the results of the benchmarking exercise for each Market Tested Service being so benchmarked; and
- (c) the proposed variations (if any) to any TARA (including any variations to any Set Availability Payment payable under any such TARA) as a result of such benchmarking exercise,

and the TSP shall supply such further information as is within its possession and as may be reasonably requested by the Secretary of State in connection with such benchmarking exercise.

2.5 If the Secretary of State does not agree with any aspect of the Benchmarking Report (including as to whether the benchmarking has been carried out in accordance with the basis agreed pursuant to Paragraph 2.3), the Secretary of State shall notify the TSP of her opinion within fifteen (15) Business Days of receipt by the Secretary of State of the Benchmarking Report. If the parties do not resolve the Dispute within a further fifteen (15) Business Days, the Dispute shall be dealt with in accordance with the Dispute Resolution Agreement.

2.6 Following agreement or determination of any Benchmarking Report:

- (a) a Run of the Financial Model shall be carried out in accordance with Part G (*Run of the Financial Models*) of Schedule 8 (*Variations*) in order to ascertain the financial consequences of the benchmarking of the Market Tested Services that are the subject matter of that report;

- (b) in performing that Run of the Financial Model, Revised Inputs shall be utilised that reflect that benchmarking and determined in accordance with Appendix B (*Description of Labour and Labour SPV Costs Subject to Re-basing and Process for Updating the Model following Re-basing*) to Part E (*Market Testing, Benchmarking and Indexing*) of this Schedule 8 (*Variations*); and
- (c) where appropriate, the TSP shall enter into a TARA Amendment Agreement with the Relevant Operator that amends any relevant TARA to reflect that benchmarking.

3. RE-BASING OF LABOUR COSTS

- 3.1 At each Re-basing Date, the Labour Cost shall be indexed by the Re-basing Indexation Factor.
- 3.2 For the purposes of the indexing in Paragraph 3.1:
 - (a) a Run of the Financial Model shall be carried out in accordance with Part G (*Runs of the Financial Model*) of Schedule 8 (*Variations*) in order to ascertain the financial consequences of the re-basing of the Labour Costs;
 - (b) in performing that Run of the Financial Model, Revised Inputs shall be utilised that reflect that re-basing, determined in accordance with Appendix B (*Description of Labour and Labour SPV Costs Subject to Re-basing and Process for Updating the Model following Re-basing*) to Part E (*Market Testing, Benchmarking and Indexing*) of Schedule 8 (*Variations*); and
 - (c) where appropriate, the TSP shall enter into a TARA Amendment Agreement with the Relevant Operator that amends any TARA to reflect that re-basing.

4. NO DOUBLE COUNTING

- 4.1 For the avoidance of doubt no costs shall be subject to more than one of Market Testing, Benchmarking or Re-basing.

Appendix A to Part E of Schedule 8

Description of Market Tested Services and Process for Updating the Model following Market Testing

Market Tested Services means those services set out in the table below and as set out in the Effective Date Financial Model.

	A	B	C	D	E				
Market Tested Services (in real terms)	Costs 10-15 (on each annual period)	Years (on semi annual period)	Costs 16-20 (on each annual period)	Years (on semi annual period)	Costs 21-25 (on each annual period)	Years (on semi annual period)	Costs 26-30 (on each annual period)	Years (on semi annual period)	Costs 30+ (on each semi annual period)
Contract Train Cleaning	£1,622,230		£1,622,230		£1,622,230		£1,622,230		£1,622,230
Thunderbird	£550,000		£550,000		£550,000		£550,000		£550,000
Total	£2,172,230		£2,172,230		£2,172,230		£2,172,230		£2,172,230

The Revised Inputs to be used in Paragraph 1.8 of Part E (*Market Testing, Benchmarking and Indexing*) of Schedule 8 (*Variations*) shall be determined as follows:

- (a) the cost of performing each Market Tested Service from the relevant Market Testing Date shall be determined in accordance with Paragraphs 1 and/or 2 of Part E (*Market Testing, Benchmarking and Indexing*) of Schedule 8 (*Variations*) (as applicable) (the **Revised Market Tested Costs**);
- (b) the Revised Market Tested Costs shall be updated in either the Effective Date Financial Model or the most recent Post Variation Financial Model (as applicable);
- (c) the Revised Market Tested Costs shall be inflated from the relevant Market Testing Date by applying a rate of inflation of 2.75% per annum and shall be updated on every semi annual period thereafter. The cost of performing each Market Tested Service shall be extracted from the TSA costs in real terms, as set out in row 235 in tab A03_Time Input of the Effective Date Financial Model, and the Revised Market Tested Costs, calculated according to this Appendix, shall be inputted back into the same row of either the Effective Date Financial Model or the most recent Post Variation Financial Model. For the avoidance of doubt, any other costs included in row 235 in tab A03_Time Input of the Effective Date Financial Model that are not costs associated with performing the Market Tested Services shall not be modified in either the Effective Date Financial Model or the most recent Post Variation Financial Model (as applicable); and
- (d) the Revised Market Tested Costs shall be the Revised Inputs in respect of the relevant Market Testing Date and the table above shall be updated with the costs of the Market Tested Services in real terms as at the relevant Market Testing Date from that relevant Market Testing Date to reflect the Revised Inputs, so that they are equal to:
 - (i) on the first (1st) Market Testing Date: the total of the costs in columns A, B, C, D and E, updated as at the first (1st) Market Testing Date in

accordance with Paragraphs (a) to (c), shall be reflected in the Financial Model in each semi annual period thereafter;

- (ii) on the second (2nd) Market Testing Date: the total of columns B, C, D and E updated as at the second (2nd) Market Testing Date in accordance with Paragraphs (a) to (c), shall be reflected in the Financial Model in each semi annual period thereafter;
 - (iii) on the third (3rd) Market Testing Date the total of the costs in columns C, D and E, updated as at the third (3rd) Market Testing Date in accordance with Paragraphs (a) to (c), shall be reflected in the Financial Model in each semi annual period thereafter;
 - (iv) on the fourth (4th) Market Testing Date the total of the costs in columns D and E, updated as at the fourth (4th) Market Testing Date in accordance with Paragraphs (a) to (c), shall be reflected in the Financial Model in each semi annual period thereafter;
 - (v) on the fifth (5th) Market Testing Date the total of the costs in column E, updated as at the fifth (5th) Market Testing Date in accordance with Paragraphs (a) to (c), shall be reflected in the Financial Model in each semi annual period thereafter;
- (e) the Financial Model shall be updated pursuant to Part G (*Runs of the Financial Model*) of Schedule 8 (*Variations*).

Appendix B to Part E of Schedule 8

Description of Labour and Labour SPV Costs subject to Re-basing and Process for Updating the Model following Re-basing

Labour Cost means the following cost items contained in the Effective Date Financial Model:

Table 1

	A	B	C	D	E
Labour Costs	Costs Years 10-15 (on each semi annual period)	Costs Years 16-20 (on each semi annual period)	Costs Years 21-25 (on each semi annual period)	Costs Years 26-30 (on each semi annual period)	Costs Years 30+ (on each semi annual period)
Direct Maintenance	£6,132,758	£6,132,758	£6,132,758	£6,132,758	£6,132,758
Maintenance Overheads	£1,105,212	£1,105,212	£1,105,212	£1,105,212	£1,105,212
Central Management	£610,209	£610,209	£610,209	£610,209	£610,209
Total	£7,848,179	£7,848,179	£7,848,179	£7,848,179	£7,848,179

Table 2

Labour SPV Cost means the following cost items contained in the Effective Date Financial Model:

Table 2	A	B	C	D	E
Labour SPV Costs	Costs Years 10-15 (on each semi annual period)	Costs Years 16-20 (on each semi annual period)	Costs Years 21-25 (on each semi annual period)	Costs Years 26-30 (on each semi annual period)	Costs Years 30+ (on each semi annual period)
Labour SPV Costs	£750,000	£750,000	£750,000	£750,000	£750,000

The Revised Inputs to be used in Paragraph 3.1 of Part E (*Market Testing, Benchmarking and Indexing*) of Schedule 8 (*Variations*) shall be determined as follows:

- (a) each Labour Cost shall be indexed at each relevant Re-basing Date from the later of April 2009 and the previous Re-basing Date by applying the Labour Re-basing Indexation Rate to calculate the re-based Labour Costs (the **Re-based Labour Costs**);

- (b) each Labour SPV Cost shall be indexed at each relevant Re-basing Date from the later of April 2009 and the previous Re-basing Date by applying the Labour Re-basing Indexation Rate to calculate the re-based Labour SPV Costs, (the **Re-based Labour SPV Costs**, together with the Re-based Labour costs, the **Re-based Labour and Labour SPV Costs**);
- (c) the Re-based Labour and Labour SPV Costs shall be updated in the relevant rows of either the Effective Date Financial Model or the most recent Post Variation Financial Model (as applicable);
- (d) the Re-based Labour and Labour SPV Costs shall be inflated from the relevant Re-basing Date by applying a rate of inflation of 2.75% per annum and shall be updated on every semi annual period thereafter. The Labour Costs, as set out in table 1 of this Appendix shall be extracted from the TSA costs in real terms, as set out in row 235 in tab A03_Time Input of the Effective Date Financial Model, and the Re-based Labour Costs, calculated according to this Appendix, shall be inputted back into the same row of either the Effective Date Financial Model or the most recent Post Variation Financial Model. The Labour SPV Costs, as set out in table 2 of this Appendix shall be extracted from the Labour SPV costs in real terms, as set out in row 330 in tab A03_Time Input of the Effective Date Financial Model, and the Re-based Labour SPV Costs, calculated according to this Appendix, shall be inputted back into the same row of either the Effective Date Financial Model or the most recent Post Variation Financial Model. For the avoidance of doubt, any other costs included in rows 235 and 330 in tab A03_Time Input of the Effective Date Financial Model that are not Labour Costs or Labour SPV Costs shall not be modified in either the Effective Date Financial Model or the most recent Post Variation Financial Model (as applicable); and
- (e) the tables above shall be updated from the relevant Re-basing Date to reflect the Re-based Labour Costs and Labour SPV Costs in real terms as at the relevant Re-basing Date, which shall be the Revised Inputs in respect of that relevant Re-basing Date, so that they are equal to:
 - (i) on the first (1st) Re-basing Date: the total of the costs in columns A, B, C, D and E above, updated as at the first (1st) Re-basing Date in accordance with Paragraphs (a) to (d), shall be reflected in the Financial Model in each semi annual period thereafter;
 - (ii) on the second (2nd) Re-basing Date: the total of the costs in columns B, C, D and E above, updated as at the second (2nd) Re-basing Date in accordance with Paragraphs (a) to (d), shall be reflected in the Financial Model in each semi annual period thereafter;
 - (iii) on the third (3rd) Re-basing Date; the total of the costs columns C, D and E above, updated as at the third (3rd) Re-basing Date in accordance with Paragraphs (a) to (d), shall be reflected in the Financial Model in each semi annual period thereafter;
 - (iv) on the fourth (4th) Re-basing Date; the total of the costs column D and E above, updated as at the fourth (4th) Re-basing Date in accordance with Paragraphs (a) to (d), shall be reflected in the Financial Model in each semi annual period thereafter;

- (v) on the fifth (5th) Re-basing Date; the total of the costs column E above, updated as at the fifth (5th) Re-basing Date in accordance with Paragraphs (a) to (d), shall be reflected in the Financial Model in each semi annual period thereafter;
- (f) the Financial Model shall be updated pursuant to Part G (*Runs of the Financial Model*) of Schedule 8 (*Variations*).

Part F of Schedule 8

Identity of the Financial Model

1. TSP'S OBLIGATIONS

- 1.1 The TSP shall deliver two (2) copies of each of the Financial Model and the Financial Model Data Book (which shall be initialled "DB" by the parties on the Effective Date) (each such copy in electronic format on CD-ROM and in hard format) (the **Escrow Documents**) to the Secretary of State in the agreed form, accompanied by a notice that the Escrow Documents are to be Placed in Escrow:
- (a) within seven (7) days of the Effective Date (such Escrow Documents being the **Effective Date Financial Model** and the **Effective Date Financial Model Data Book** respectively for the purposes of this Agreement); and
 - (b) within seven (7) days of any approval or audit of a Run of the Financial Model, as provided for in Part G (*Runs of the Financial Model*) of Schedule 8 (*Variations*), but updated with the relevant Revised Inputs.
- 1.2 The TSP shall deliver with each such deposit of the Escrow Documents all of the following information to the extent that it is relevant:
- (a) details of the Escrow Documents deposited (including full filename and version details, any details required to access the Escrow Documents including media type, backup command/software used, compression used, archive hardware and operating system details);
 - (b) the names and contact details of persons who are able to provide support in relation to accessing and interpreting the Escrow Documents;
 - (c) if required by the Secretary of State, a certificate from independent auditors approved by the Secretary of State, confirming that the deposited version of the Escrow Documents is in the agreed form in accordance with Paragraph 1.1(a) or (as the case may be) in accordance with Paragraph 1.1(b); and
 - (d) any applicable password or password(s) required to access the Escrow Documents, or written confirmation that no such password(s) apply.
- 1.3 The TSP shall:
- (a) provide to the Secretary of State on the Financing Effective Date and on 31 March and 30 September each year a copy of the Senior Lenders' Financial Model and, within thirty (30) days of any update, any updated version of the Senior Lenders' Financial Model;
 - (b) within thirty (30) days of any Run of the Financial Model in accordance with Part G (*Runs of the Financial Model*) of Schedule 8 (*Variations*), provide to the Secretary of State the Post Variation Financial Model; and
 - (c) provide to the Secretary of State on 31 March and 30 September each year a document listing all information provided by or on behalf of the TSP to the Senior Lenders during the preceding 6 month period and, at the request of the Secretary of State, provide to the Secretary of State with copies of any information provided

by or on behalf of the TSP to the Senior Lenders during the term of the Senior Financing Agreement.

2. SECRETARY OF STATE'S OBLIGATIONS

2.1 The Secretary of State shall:

- (a) within three (3) days following receipt, acknowledge receipt to the TSP of any version of the Escrow Documents delivered to her for the purposes of being Placed in Escrow;
- (b) save as provided under Paragraph 2.1(c), store each copy of the Escrow Documents in a different physical location from any other copy of each such document and use all reasonable endeavours to ensure that each copy of the Escrow Documents is at all times kept in a safe and secure environment. In so doing the Secretary of State shall be deemed to have Placed in Escrow the Escrow Documents for the purposes of this Agreement;
- (c) notify the TSP if she becomes aware at any time during the Contract Period that any copy of the Escrow Documents or part thereof stored in a particular location has been lost, damaged or destroyed; in such an event, the Secretary of State shall be permitted to create a new copy of the Escrow Documents or part thereof from the other copy Placed in Escrow and shall within seven (7) days notify the TSP accordingly and afford it the right to make reasonable inspections in order to satisfy itself that a complete and accurate copy has been made. Following the making of such a new copy of the Escrow Documents, the Secretary of State shall retain all copies of the Escrow Documents in accordance with Paragraph 2.1(b);
- (d) within seven (7) days of receipt of a notice from the TSP stating that the Escrow Documents are required for the purposes of an indicative or actual Run of the Financial Model in relation to any Variation, or should the Secretary of State herself so decide, release one copy of the Escrow Documents to the TSP and retain one copy of the Escrow Documents in escrow in accordance with Paragraph 2.1(b);
- (e) maintain a record of any release of any copy of any version of the Escrow Documents made, including details of any version released and the date of release as well as the identity of the person to whom the Escrow Documents are released;
- (f) have no obligation or responsibility to any person whatsoever to determine the existence, relevance, completeness, accuracy, effectiveness or any other aspect of the Escrow Documents; and
- (g) not be liable for any loss, damage or destruction caused to the TSP arising from any loss of, damage to or destruction of the Escrow Documents.

2.2 If the TSP fails to perform a Run of the Financial Model pursuant to Part G (*Runs of the Financial Model*) of Schedule 8 (*Variations*) and/or fails to return the copy of the Escrow Documents released pursuant to Paragraph 2.1(d):

- (a) such failure to perform that run or return the released copy to the Secretary of State shall be a breach of this Agreement;

- (b) the Secretary of State may release the other copy of the Escrow Documents Placed in Escrow and take a copy thereof (the **Replacement Copy**) in order that the Secretary of State may perform a Run of the Financial Model pursuant to Part G (*Runs of the Financial Model*) of Schedule 8 (*Variations*);
- (c) once copied, the second copy of the Escrow Documents released pursuant to Paragraph 2.2(b) shall be Placed in Escrow; and
- (d) once the Run of the Financial Model has been approved or audited as provided for in Part G (*Runs of the Financial Model*) of Schedule 8 (*Variations*) the Replacement Copy shall also be Placed in Escrow.

Part G of Schedule 8

Runs of the Financial Model

1. APPLICATION AND OUTPUT OF RUNS OF THE FINANCIAL MODEL

1.1 The provisions of this Part G shall apply and a Run of the Financial Model shall be performed if and whenever required pursuant to:

- (a) Paragraph 4.5 of Part B (*Termination, Expiry and Replacement of the Relevant TARA*) of Schedule 4 (*Train Availability and Reliability Agreements*);
- (b) Paragraphs 2.2, 2.3 and 3.4(a) of Part A (*Insurance Provisions*) of Schedule 5 (*Insurance*);
- (c) Paragraphs 2.1(b)(i)(B) and 2.2(b)(i)(B) of Part D (*Insurance Premium Risk Sharing*) of Schedule 5 (*Insurance*);
- (d) Appendix E (*Maintainer Replacement Refinancing*) to Part D (*TSP Default*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*);
- (e) Part I (*Total Loss*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*);
- (f) Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*);
- (g) Schedule 7 (*Finance Arrangements*);
- (h) Paragraph 8 of Part A (*Scope and Consequences of Variations*) of Schedule 8 (*Variations*);
- (i) Appendix A (*Pre-Priced Option*) to Part A (*Scope and Consequences of Variations*) of Schedule 8 (*Variations*);
- (j) Part D (*Financing of Variations*) of Schedule 8 (*Variations*);
- (k) Part E (*Market Testing, Benchmarking and Indexing*) of Schedule 8 (*Variations*);
- (l) Part H (*Adhoc Train Lending*) of Schedule 8 (*Variations*);
- (m) Part I (*Redeployment Variation*) of Schedule 8 (*Variations*); and
- (n) Paragraph 1.4(b) of Schedule 9 (*Change In Law*).

1.2 Any Run of the Financial Model shall involve:

- (a) Step 1: preparation of a Pre Variation Financial Model and a Pre Variation Financial Model Data Book in accordance with Paragraph 2;
- (b) Step 2: inputting the Revised Inputs into the Pre Variation Financial Model and restating the following elements within the Financial Model (collectively before restatement the **Old Results** and collectively after restatement the **New Results**):
 - (i) the Set Availability Payment relating to the Sets to be made available under any relevant TARA; and
 - (ii) the x-factor,

in accordance with Paragraphs 3 and 4; and

- (c) after the New Results have been calculated in accordance with Step 2 described at Paragraph 1.2(b), the Run of the Financial Model shall have been completed and the Post Variation Financial Model have been prepared.

1.3 Where it is necessary to amend the logic of formulae incorporated within the Financial Model to permit adjustments to be made in accordance with this Part G (*Runs of the Financial Model*), this shall only be done:

- (a) to the extent necessary;
- (b) in accordance with generally accepted accounting principles; and
- (c) by agreement between the parties (or if the parties are unable to agree, by determination pursuant to the Dispute Resolution Agreement).

1.4 Where any amendment is made to the logic or formulae incorporated in the Financial Model in accordance with Paragraph 1.2(a), a Run of the Financial Model shall first be completed as at the date immediately prior to such amendment to ensure that the economic positions referred to in Paragraph 4 are satisfied after any such amendment.

1.5 Any amendment to the Financial Model in accordance with this Part G (*Runs of the Financial Model*) shall be made either by introducing hard coded numbers or by changing the inputs used in the Financial Model to produce these numbers according to actual information.

2. PRE VARIATION FINANCIAL MODEL

2.1 In order to prepare the Pre Variation Financial Model and the Pre Variation Financial Model Data Book, the TSP shall use the most recently updated Financial Model and Financial Model Data Book and update that Financial Model and Financial Model Data Book for actual revenues, costs and cashflows relating to the Project only so that the Financial Model and the Financial Model Data Book are consistent with the statutory accounts of the TSP up to the period immediately preceding the period in which the Pre Variation Financial Model and Pre Variation Financial Model Data Book are to be prepared. For the avoidance of doubt, such account shall be prepared on the basis that the TSP shall not undertake any activity other than the Project.

2.2 Once the Financial Model has been updated in accordance with Paragraph 2.1, the preparation of the Pre Variation Financial Model shall be completed by including the following adjustments:

- (a) the revenues, costs and cashflows (as set out in Paragraph 2.1) that were projected to occur prior to the date of the Variation in the Financial Model that have not occurred but are still projected to occur, shall be included in the six (6) monthly or monthly period (as applicable having regard to whether the adjustment is made in the semi annual or monthly section of the Financial Model) immediately after the proposed Variation in the Pre Variation Financial Model;
- (b) the revenues, costs and cashflows that were not projected to occur prior to the date of the Variation in the Financial Model that have actually occurred prior to the date of the Variation, shall be removed from the historic part of the Financial Model to avoid double counting and the projected assumptions for those

revenues, costs and expenses shall be amended to reflect the actual values incurred;

- (c) the revenues, costs and cashflows that are projected at the time of the Variation to be received or paid by the TSP after the relevant variation under the Project Documents and Required Insurances (in each case, as at the Effective Date and amended only as required or permitted by this Agreement) which relate to events affecting the TSP as at the date of the Variation, which have not yet been received by or paid by the TSP, shall be included in the projected six (6) monthly or monthly period (as applicable having regard to whether the adjustment is made in the semi annual or monthly section of the Financial Model) of the Pre Variation Financial Model in which they are due to be received or paid by the TSP.
- (d) the actual revenues, costs and cashflows referred to in Paragraphs 2.2(a), (b) and (c) shall be identified by the TSP and reviewed and approved by the Secretary of State as part of the process of agreeing the Revised Inputs;
- (e) if the delivery period, as this is defined according to cells D13 and D20 in the tab A03_Time Inputs of the Effective Date Financial Model, is delayed beyond the delivery period set out in the Effective Date Financial Model structural changes shall be performed by the TSP in the Pre Variation Financial Model, to reflect such delay beyond the delivery period set out in the Effective Date Financial Model;
- (f) the Retail Prices Index, as set out in rows 252 and 264 in the tab A03_Time Inputs of the Effective Date Financial Model, applied to projected revenues costs and cashflows in the Pre Variation Financial Model shall take into account the cumulative impact of the actual Retail Prices Index rates prior to the preparation of the Pre Variation Financial Model. The Retail Prices Index considered in the periods after that in which the Pre Variation Financial Model is prepared shall be two point seven five per cent. (2.75%);
- (g) the Retail Prices Index, as set out in rows 252 and 264 in the tab A03_Time Inputs of the Effective Date Financial Model, shall be updated from the last six (6) monthly period in which it was updated until the immediately preceding period in which the Pre Variation Financial Model is being prepared;
- (h) the annual corporation tax rates, as set out in rows 688, 689 and 691 in the tab A03_Time Inputs of the Effective Date Financial Model, shall be updated in both the six (6) monthly period immediately preceding and the six (6) monthly period immediately following that in which the Pre Variation Financial Model is being prepared and shall include, for the relevant time periods, the VAT and corporate tax charges which have been announced by the Relevant Authority;
- (i) the annual capital allowance rates and percentage of costs qualifying for capital allowances, as set out in rows 566 to 573 and rows 576 to 583 respectively in table A02_Inputs of the Effective Date Financial Model, shall be updated in both the six (6) monthly period immediately preceding and the six (6) monthly period immediately following that in which the Pre Variation Financial Model is being prepared;
- (j) the VAT rates, as set out in rows 619 to 620 and rows 623 to 624 in tab A02_Inputs of the Effective Date Financial Model, shall be updated in both the six (6) monthly period immediately preceding and the six (6) monthly period immediately following that in which the Pre Variation Financial Model is being

prepared and shall include, for the relevant time periods, the VAT and corporation tax charges which have been announced by the Relevant Authority;

- (k) the "Financial Asset Imputed Interest rate (p.a.)" applicable in the relevant period following the date in which the Pre Variation Financial Model is prepared, as set out in cell G25 in the tab A02_Inputs of the Effective Date Financial Model shall be recalculated;
- (l) the effective interest rates of the different financing facilities, as set out in cells G28 to G33 in the tab A02_Inputs of the Effective Date Financial Model, shall be recalculated in the Pre Variation Financial Model and made applicable in the periods following the date in which the Pre Variation Financial Model is prepared;
- (m) any other changes required by the TSP in the process of preparation of the Pre Variation Financial Model, and agreed with the Secretary of State (in her sole discretion), necessary to update the Pre-Agreed Variation Model; and
- (n) any proposed changes made in the context of the preparation of the Pre Variation Financial Model by the TSP, according to Paragraphs 2.1 and 2.2 of this Part G (*Runs of the Financial Model*), shall be accompanied by such evidence as is necessary to support them.

3. REVISED INPUTS

3.1 The **Revised Inputs** in respect of any Run of the Financial Model shall be:

- (a) the data recorded in the Pre Variation Financial Model and Pre Variation Financial Model Data Book produced in accordance with Paragraph 2;
- (b) amended (whether by way of increase, reduction or otherwise) in accordance with Paragraph 3.2 when undertaking Step 2 of the relevant Run of the Financial Model (as described in Paragraph 1.2(b)).

3.2 The Revised Inputs shall be determined as follows:

- (a) as required pursuant to Paragraph 6.5 of Appendix C (*Specific Infrastructure Acceptance Issues*) of Schedule 1 (*Set Specification and Design*);
- (b) as required pursuant to Paragraph 4.5 of Part B (*Termination, Expiry and Replacement of the Relevant TARA*) of Schedule 4 (*Train Availability and Reliability Agreements*);
- (c) as required pursuant to Paragraphs 2.2, 2.3 and 3.4(a) of Part A (*Insurance Provisions*) of Schedule 5 (*Insurance*);
- (d) required pursuant to Paragraphs 2.1(b)(i)(B) and 2.2(b)(i)(B) of Part D (*Insurance Premium Risk Sharing*) of Schedule 5 (*Insurance*);
- (e) as required pursuant to Appendix E (*Maintainer Replacement Refinancing*) to Part D (*TSP Default*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*);
- (f) as required pursuant to Part I (*Total Loss*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*);

- (g) in accordance with the provisions of Paragraph 8 of Part A (*Scope and Consequences of Variations*) of Schedule 8 (*Variations*);
- (h) in accordance with the provisions of Appendix A (*Pre-Priced Option*) to Part A (*Scope and Consequences of Variations*) of Schedule 8 (*Variations*) in respect of any exercise of the Pre-Priced Option;
- (i) in relation to any requirement for borrowing arising in respect of Temporary Financial Accommodation, in accordance with the provisions of Part D (*Financing of Variations*) of Schedule 8 (*Variations*);
- (j) as required pursuant to Appendix A (*Description of Market Tested Services and Process for Updating the Model following Market Testing*) or Appendix B (*Description of Labour and Labour SPV Costs subject to Re-basing and Process for Updating the Model following Re-basing*) to Part E (*Market Testing, Benchmarking and Indexing*) of Schedule 8 (*Variations*) in respect of market testing, benchmarking or indexing;
- (k) as required pursuant to Part I (*Redeployment Variation*) of Schedule 8 (*Variations*) in respect of Redeployment Variations;
- (l) as required pursuant to Part H (*Adhoc Train Lending*) of Schedule 8 (*Variations*);
- (m) as required pursuant to Paragraph 1.4(b) of Schedule 9 (*Change In Law*);
- (n) as required pursuant to Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*); and
- (o) as required pursuant to Schedule 7 (*Finance Arrangements*),

in each case, so that each required change is taken into account only once.

3.3 The Secretary of State shall provide a written statement of the Revised Inputs to the TSP for the purposes of Paragraph 4.1 promptly after they have been agreed or, in the absence of agreement, determined.

4. AGREEMENT OF REVISED INPUTS

4.1 The parties shall agree or, in the absence of agreement it shall be determined pursuant to the terms of the Dispute Resolution Agreement, the New Results in respect of any Variation in a Run of the Financial Model:

- (a) on the basis of the Revised Inputs as set out in the Pre Variation Financial Model Data Book as agreed or determined in accordance with Paragraph 3.3; and
- (b) so that the parties are held in a "no better and no worse" economic position following the Variation as they were before the Variation.

4.2 Once the New Results have been calculated, the TSP and the Secretary of State shall consult in order to determine the impact on the Availability Adjustment and Reliability Adjustments of the new Set Availability Payment and the x-factor. The TSP shall perform a series of iterations in which the Availability Adjustment and Reliability Adjustments and the Operating Costs and Depot Lifecycle Costs are recalculated in the TSP's internal operational models, subject to the approval of such iterations and models by the Secretary of State. Each iteration shall consist of performing the following tasks:

- (a) calculating the Availability Adjustments and Reliability Adjustments derived from the New Results;
- (b) calculating the impact of the new Availability Adjustments and Reliability Adjustments on the TSP by using the TSP's internal operational model in terms of Operating Costs, Major (Bogie) Overhauls and Depot Lifecycle Costs. The TSP (and its sub-contractors, if required) shall make its internal operational models (in electronic format) available to the Secretary of State so that she can satisfy herself that any change in Operating Costs are reasonable;
- (c) inputting the Availability Adjustments, Reliability Adjustments, Operating Costs, Major (Bogie) Overhauls and Depot Lifecycle Costs in the Financial Model used to calculate the New Results and recalculating the New Results; and
- (d) repeating the process set out in Paragraph 4.4(a) until the TSP is left in a "no better no worse" economic position and the Post Variation Financial Model shows Availability Adjustments and Reliability Adjustments, Operating Costs, Major (Bogie) Overhauls and Depot Lifecycle Costs that are consistent with the New Results.

For the avoidance of doubt, the calculation of the Rebate Amount set out in Paragraphs 4.6 to 4.9 of this Part G (*Runs of the Financial Model*) shall only be made once the series of iterations set out in Paragraphs 4.2(a) to (d) have been completed and the Financial Model shows Availability Adjustments and Reliability Adjustments that are consistent with the recalculated Set Availability Payment and x-factor.

4.3 Only the following rows within the Financial Model shall be allowed to change in the process of iteration referred to in Paragraph 4.2:

- (a) the Availability and Reliability Adjustments set out in rows 218, 219, 236 and 237 in the tab A03_Time Inputs of the Effective Date Financial Model;
- (b) "Operating Costs during delivery – real", as set out in row 217 in the tab A03_Time Inputs of the Effective Date Financial Model;
- (c) "Operating Costs during operations – real" set out in row 235 in the tab A03_Time Inputs of the Effective Date Financial Model;
- (d) "Major (Bogie) Overhauls during delivery – real", as set out in row 342 in the tab A03_Time Inputs of the Effective Date Financial Model;
- (e) "Major (Bogie) Overhauls during operations – real", as set out in row 354 in the tab A03_Time Inputs of the Effective Date Financial Model;
- (f) "Depot Lifecycle Costs during delivery – real", as set out in row 343 in the tab A03_Time Inputs of the Effective Date Financial Model;
- (g) "Depot Lifecycle Costs during operations – real", as set out in row 355 in the tab A03_Time Inputs of the Effective Date Financial Model; and
- (h) any other changes required by the TSP in the process of preparation of the Financial Model, and agreed with the Secretary of State in her sole discretion, necessary to update the Pre-Variation Financial Model.

- 4.4 A "no better and no worse" economic position in respect of the TSP shall be a position in which the Revised Inputs are entered into the Pre Variation Financial Model and:
- (a) the Real Equity IRR shown in the Post Variation Financial Model is not lower than that shown in the Pre Variation Financial Model solely as a consequence of the introduction into the Pre Variation Financial Model of the Revised Inputs, and
 - (b) none of the average or minimum Historic and Projected Debt Service Cover Ratio or the average or minimum Loan Life Cover Ratio shown in the Post Variation Financial Model are lower than those shown in the Pre Variation Financial Model solely as a consequence of the introduction into the Pre Variation Financial Model of the Revised Inputs.
- 4.5 For the avoidance of doubt, a "no better and no worse" economic position following any Variation required pursuant to limb (n) of the definition of Required Variation, shall, without limitation take into account, any proceeds of Insurance that have been or are to be paid to the TSP in respect of the Depot that has suffered the relevant Depot Total Loss.
- 4.6 If the determination of the New Results in accordance with Paragraph 4 in respect of any Variation gives rise to an increase in the Real Equity IRR from that shown in the Pre Variation Financial Model applicable to such Variation, solely in order to meet the test in Paragraph 4.4(b) then the Secretary of State may in her sole discretion elect that, to the extent that it is not possible to achieve a Real Equity IRR equal to the Real Equity IRR shown in the Pre Variation Financial Model as a result of having to satisfy the test in Paragraph 4.4(b), an amount is set out in the Post Variation Financial Model to be paid by the TSP to the Relevant Operator semi-annually after paying the Senior Lenders but before payments to Shareholders and Subordinated Lenders that returns the Real Equity IRR to the Pre Variation Financial Model Real Equity IRR (a **Rebate Amount**). The TSP undertakes to pay any Rebate Amount in accordance with such election and this Paragraph 4.
- 4.7 Any Rebate Amount shall be subordinated in right of payment to amounts payable in respect of the Senior Financing Agreements.
- 4.8 The calculation of any Rebate Amount shall be made where Paragraph 4.6 applies over the entire Usage Guarantee Period.
- 4.9 If, once all obligations of the TSP in respect of the Senior Financing Agreements have been discharged, any Rebate Amount is still required to be paid, the Rebate Amount payable in respect of each semi-annual period shall be deducted from the Base Period Charge prior to the operating costs of the TSP such that the TARA Payment in each relevant semi-annual period is reduced by the amount of the Rebate Amount.
- 4.10 Once the Revised Inputs have been input into the Pre Variation Financial Model and the New Results have been calculated so that the parties are in "no better and no worse" economic position as described in this Paragraph 4, the Run of the Financial Model shall be deemed to be completed and the Financial Model containing all such changes shall be the Post Variation Financial Model.

5. **RUNS OF THE FINANCIAL MODEL**

- 5.1 When this Part G (*Runs of the Financial Model*) applies in respect of a Variation, a Run of the Financial Model shall be performed as soon as reasonably practicable utilising the Revised Inputs and shall be performed by:
- (a) the TSP promptly on receiving notification of the Revised Inputs from the Secretary of State pursuant to Paragraph 3.3; or
 - (b) the Secretary of State if the TSP fails to do so.
- 5.2 The party that performs the Run of the Financial Model pursuant to Paragraph 5.1 shall provide the non performing party with a reasonable opportunity to be in attendance and shall promptly notify such other party of the New Results.
- 5.3 The Secretary of State, as soon as reasonably practicable after receiving or generating the New Results pursuant to Paragraph 5.2, shall either:
- (a) certify to the TSP her approval of the New Results; or
 - (b) notify the TSP that she requires the Run of the Financial Model and its results to be audited by an independent auditor appointed by both parties in the absence of agreement of the outcome by the parties.
- 5.4 For purposes of Paragraph 5.3(b), the requirement for an audit is one that requires the auditor either to certify:
- (a) that the Pre Variation Financial Model and the Pre Variation Financial Model Data Book have been prepared in accordance with this Schedule 8 (*Variations*);
 - (b) that the New Results have been produced by applying the Revised Inputs (as provided to the TSP by the Secretary of State pursuant to Paragraph 3.3) to the Pre Variation Financial Model; and/or
 - (c) that the Post Variation Financial Model has been prepared in accordance with this Schedule 8 (*Variations*).
- 5.5 The parties shall procure that any auditor is, as soon as reasonably practicable after his appointment, able to discharge the audit requirements by providing to the auditor any information reasonably required by the auditor to discharge the audit requirements.
- 5.6 Subject to Paragraph 6, in respect of any Dispute concerning Revised Inputs, the Pre Variation Financial Model or the Post Variation Financial Model as certified by the Secretary of State pursuant to Paragraph 5.3 or by the auditor pursuant to Paragraph 5.4 shall be final and binding on the parties, except in the case of manifest error, bias or fraud.
- 5.7 The costs of any audit shall be met:
- (a) if the auditor determines that either no or minimal changes are required to the Pre Variation Financial Model or the Post Variation Financial Model as a result of the audit, as part of the Variation that is the subject of the Run of the Financial Model; or

- (b) if the auditor determines that material changes are required to the Pre Variation Financial Model or the Post Variation Financial Model as a result of the audit, by the party who carried out the Run of the Financial Model; or
- (c) if the Variation the subject of the relevant Run of the Financial Model is not completed because the TSP materially underestimated the amount of any costs detailed as part of the Required Response, by the TSP.

6. DISPUTES

- 6.1 If the parties are unable to agree any Revised Input or the TSP disputes a decision of the Secretary of State under this Part G (*Runs of the Financial Model*), the TSP may, subject to Paragraph 5 of Part A (*Scope and Consequences of Variations*) of Schedule 8 (*Variations*) refer the Dispute for determination pursuant to the Dispute Resolution Agreement.
- 6.2 Where the Dispute relates to a Variation in a Required Variation Notice or where the Secretary of State issues an Authority to Proceed in respect of that Variation before such Dispute has been resolved:
- (a) the Run of the Financial Model shall be conducted on the basis of the Revised Inputs (being those the subject of the Dispute) as reasonably determined by the Secretary of State; and
 - (b) on resolution of the Dispute in respect of the Revised Inputs, a further Run of the Financial Model shall be conducted and any difference from the outcome under Paragraph 6.2(a) shall be backdated to the date of implementation of the Variation together with interest in accordance with Clause 25.

Part H of Schedule 8

Adhoc Train Lending

General

1. RESTRICTIONS ON ADHOC TRAIN LENDING

The Secretary of State shall only be entitled to include Adhoc Train Lending within the scope of a Contemplated Variation (an **Adhoc Train Lending Variation**) where:

- (a) there is no TSP Default Notice outstanding in respect of either the Transferring TSP or the Receiving TSP; and
- (b) a Fleet Acceptance Certificate has been issued in respect of every Set within each Fleet.

2. REQUIRED CONTENTS OF ADHOC TRAIN LENDING VARIATION

Where an Adhoc Train Lending Variation requires Sets to be maintained by another Agility Company under any Other TARA, then the parties have agreed that in determining the requirements of the Variation pursuant to Part A (*Scope and Consequences of Variations*) of Schedule 8 (*Variations*) the principles for Adhoc Train Lending set out in this Part H (*Adhoc Train Lending*) shall apply, and shall be reflected by:

- (a) the Secretary of State in any Contemplated Variation Notice, in accordance with Paragraph 3; and
- (b) the TSP in respect of provision of the Required Response,

save where the Secretary of State and the TSP both agree that an alternative manner of delivering the Contemplated Variation which continues to meet the requirements of the Secretary of State is:

- (i) more appropriate to reflect the overall requirements of the Contemplated Variation; and
- (ii) would leave the TSP and any other Agility Company affected by the Contemplated Variation in a "no better and no worse position" in terms of the TSP's and any other Agility Company's ability to provide the Services to the contractual standards and in its economic position (as described in Paragraph 4.1(b) of Part G (*Runs of the Financial Model*) of Schedule 8 (*Variations*)).

3. REQUIREMENTS OF CONTEMPLATED VARIATION NOTICE

An Adhoc Train Lending Variation shall include the following requirements:

- (a) the Receiving Operator and Transferring Operator shall enter into an agreement for use of the Transferring Sets (an **Agreement for Adhoc Use**) by the Receiving Operator under which the Receiving Operator shall make a per Set payment to the Transferring Operator sufficient to pay that proportion of the Set Availability Payments in respect of the Transferring Sets which will still be payable by the Transferring Operator following the Adhoc Train Lending;

- (b) the train availability and reliability agreement between the Transferring Operator and the Transferring TSP shall be varied to reflect the reduction in Routine Maintenance of the Transferring Sets to be carried out by the Transferring TSP following the Adhoc Train Lending, with a reduction in the amount of each Set Availability Payment payable by the Transferring Operator to reflect such transfer;
- (c) the train availability and reliability agreement between the Receiving Operator and the Receiving TSP shall be varied to reflect the increase in Routine Maintenance of the Transferring Sets to be carried out by the Transferring TSP following the Adhoc Train Lending, and the consequent increase in the amount of each Set Availability Payment payable by the Receiving Operator to reflect such transfer;
- (d) upon the expiry of the TARA or Other TARA, the Secretary of State shall ensure the continued usage of any Transferring Sets, in a manner consistent with Part C (*Usage Undertaking*) of Schedule 4 (*Train Availability and Reliability Agreements*), either by:
 - (i) ensuring that the terms of the TARA and the Other TARA allow for the Transferring Sets to return to the original Transferring Operator (or a successor Relevant Operator under a replacement TARA entered into in accordance with Part C (*Usage Undertaking*)) of Schedule 4 (*Train Availability and Reliability Agreements*); or
 - (ii) ensuring that the Transferring Sets continue to be used by the train operating company replacing the Receiving Operator (the **Replacement Operator**) on terms which are the same or substantially similar in all material respects under a replacement train availability and reliability agreement entered into in accordance with Part C (*Usage Undertaking*) of Schedule 4 (*Train Availability and Reliability Agreements*), in which case the Secretary of State shall also procure that such Replacement Operator enters into an Agreement for Adhoc Use with the Transferring Operator on similar terms to that specified pursuant to Paragraph 3(a); and
- (e) the Receiving TSP and the Transferring TSP, where such entities are Agility Companies, shall enter into an Adhoc Train Lending Agreement in the form set out in Appendix A (*Adhoc Train Lending Agreement*) to this Part H (*Adhoc Train Lending*) of Schedule 8 (*Variations*) for the use of Transferring Sets (the **Adhoc Train Lending Agreement**).

4. REQUIREMENTS OF REQUIRED RESPONSE AND OTHER INFORMATION PROVIDED BY THE TSP

4.1 In providing the Required Response, the following shall apply:

- (a) the implementation of the Adhoc Train Lending shall reflect the agreements and principles set out in Paragraph 3;
- (b) the TSP shall set out the basis upon which Sets would be returned to the Transferring TSP (and Transferring Operator) on termination of either the train availability and reliability agreement of the Receiving TSP, or the franchise agreement of the Receiving Operator in accordance with this Agreement or the Adhoc Train Lending Agreement (where applicable);

- (c) for the purposes of any changes to the terms of this Agreement and/or any existing or future TARA or Other TARA required to give effect to the Variation, the following shall apply:
- (i) the train availability and reliability agreement of the Transferring Operator shall be varied to reflect:
 - (A) the reduction in Routine Maintenance obligations to reflect the transfer of the Transferring Sets;
 - (B) a reduction in total Set Availability Payments payable under the train availability and reliability agreement reflecting such reduction in Routine Maintenance;
 - (C) amendments to the Mileage Adjustment calculated to reflect the transfer of the Transferring Sets and the provision of mileage data from the Receiving Operator so that the Transferring Sets are included for the purposes of this calculation;
 - (D) appropriate provisions to include each of the Receiving TSP and any other appropriate parties as a co-insured on the Transferring TSP's relevant insurances in respect of the Transferring Sets, and to provide that the Receiving TSP is responsible for any deductibles or uninsurability caused by the Receiving TSP and for any insurance premium increases in respect of any claims on such insurances in respect of the Transferring Sets, save where such claims relate to the Transferring TSP's negligence or wilful default; and
 - (E) appropriate handback provisions for the return of the Transferring Sets on expiry or termination of the arrangements in respect of the Transferring Sets;
 - (ii) the train availability and reliability agreement of the Receiving Operator shall be varied to reflect:
 - (A) the increase in Routine Maintenance obligations to reflect the transfer of the Transferring Sets;
 - (B) appropriate obligations on the Receiving TSP to have sufficient access to Manufacturer IPR, Spares and any warranties provided by the Manufacturer in respect of the Transferring Sets to enable the Maintainer to the Receiving TSP to perform Routine Maintenance in accordance with a Routine Maintenance Plan;
 - (C) appropriate handback provisions for expiry or termination of the arrangements in respect of the Transferring Sets, including the standards and conditions that such Transferring Sets should be handed back in, and that the costs of ensuring such standards and conditions are met shall be the responsibility of the Receiving TSP (subject to Relevant Operator Responsible Damage). In the event that such handback standards and conditions are not met, the Transferring TSP may perform such works so as to put the Transferring Sets into the agreed handback standards and

conditions and such costs reasonably and properly incurred by the TSP shall be payable by the Transferring Operator (with recourse to the Receiving Operator and the Receiving TSP);

- (D) an increase in total Set Availability Payments payable under the train availability and reliability agreement reflecting any additional costs to be incurred by the Receiving TSP as a result of such increase in Routine Maintenance referred to in Paragraph 4.1(c)(ii)(A); and
- (E) the provisions of Clauses 8 (*Availability, Handback of Sets*), 9 (*In Service Provisions and Faults*), 11 (*Payment*), 12 (*Performance*), 14 (*Indemnities*), 15 (*Intellectual Property Rights*), 18 (*Confidentiality*) and 19 (*Dispute Resolution*) shall apply to the Transferring Sets, *mutatis mutandis*, and have effect as if references in those Clauses to "Set" are also references to a Transferring Set; and

- (iii) in the case of both the Receiving TSP and the Transferring TSP any reasonable changes required to the Performance Regime, Notifiable Events and Remedial Events regimes under either or both the TARA and the Other TARA to ensure that the change in fleet size does not adversely impact on the ability of such TSP to perform under the relevant Performance Regime, Notifiable Events and Remedial Events regimes, including, taking into account the risk of a change in the level of Deductions incurred by either TSP as a result of changes to the maintenance regime. Where appropriate, this may include a bedding-in period for the Transferring Sets following the Adhoc Train Lending.

4.2 For the purposes of the Required Response, the TSP shall provide the following information, which will be used for the purposes of calculating the Set Availability Payments:

- (a) in the case of the Transferring TSP changes in cost shall include:
 - (i) cost savings to be achieved by the TSP as a result of the reduced Routine Maintenance in respect of the Transferring Sets (but taking into account any Major Maintenance Works for Transferring Sets which are retained by the Transferring TSP, and any loss of efficiency arising from Routine Maintenance of a reduced number of Sets);
 - (ii) variations in costs arising from changes in requirements for staff and contractors, including, costs associated with TUPE transfer and redundancies arising from transfer of the Routine Maintenance work; Sub-Contractor Breakage Costs, costs arising from loss of efficiency; and
 - (iii) any other information relating to the Transferring TSP's costs in respect of the proposed Variation as may be relevant to the Secretary of State in considering the Required Response; and
- (b) in the case of the Receiving TSP changes in cost shall include:
 - (i) cost increases to be incurred by the TSP as a result of such increase in Routine Maintenance arising from an increased number of Sets (but taking

into account any efficiency savings arising from the maintenance of a larger number of Sets);

- (ii) variations in costs arising from changes in requirements for staff and contractors, including, costs associated with TUPE transfer of employees and recruitment of new employees to carry out the additional maintenance work; variations to existing contracts to reflect increased scope of work;
- (iii) any changes required to the relevant Rules of the Depot to accommodate the maintenance of additional Sets; and
- (iv) any other information relating to the Receiving TSP's costs in respect of the proposed Variation as may be relevant to the Secretary of State in considering the Required Response.

5. DETERMINATION OF SET AVAILABILITY PAYMENT

The parties agree that the provisions of Part A (*Scope and Consequences of Variations*) of Schedule 8 (*Variations*) shall apply in respect of the determination of the revised Set Availability Payment payable following an Adhoc Train Lending Variation.

6. MATTERS TO BE TAKEN INTO ACCOUNT IN RESPECT OF DISPUTE RESOLUTION IN RESPECT OF ADHOC TRAIN LENDING

The parties agree that the procedure for resolution of any dispute in respect of Adhoc Train Lending shall be consistent with the provisions of Paragraph 4 of Part A (*Scope and Consequences of Variations*) of Schedule 8 (*Variations*).

7. REQUIRED AMENDMENTS UNDER OTHER MARAS

7.1 Where the Secretary of State requests Adhoc Train Lending pursuant to this Part H (*Adhoc Train Lending*) and:

- (a) the TSP pursuant to this Agreement is the Receiving TSP; or
- (b) the TSP pursuant to this Agreement is the Transferring TSP,

the Secretary of State shall procure that an equivalent Adhoc Train Lending request is made pursuant to the terms of the Other MARA on compatible terms save that the TSP under such Other MARA shall be:

- (i) in the case of Paragraph 7.1(a), the Transferring TSP; and
- (ii) in the case of Paragraph 7.1(b), the Receiving TSP.

7.2 Where a matter is referred for determination in respect of any Adhoc Train Lending under an Other MARA, the parties shall ensure that the same procedure for resolution of any applies in respect of any Adhoc Train Lending applies under both MARAs.

8. RETURN HANDBACK CONDITIONS AND STANDARDS

8.1 The Transferring TSP and the Receiving TSP shall enter into an Adhoc Train Lending Agreement on or before the date of implementation of the Adhoc Train Lending.

8.2 In the event that the Transferring TSP under any Adhoc Train Lending Agreement serves an Adhoc Train Lending Cancellation Notice on the Receiving TSP terminating the Adhoc

Train Lending, the Transferring Sets shall be returned to the Transferring TSP in accordance with the Adhoc Train Lending Agreement and the relevant TARA.

8.3 Any changes required to:

- (a) address the financial consequences of a Transferring TSP not being able to secure the recovery of a Transferring Set; or
- (b) rectify the standard and conditions, and address the financial consequences of a Transferring Set not being returned to the Transferring TSP in the standard and conditions required by the handback provisions agreed for termination of Adhoc Train Lending,

shall be addressed by the Secretary of State issuing a Required Variation Notice.

8.4 On and from the return of the Transferring Sets in accordance with Paragraph 8.2, the parties agree that (and the Secretary of State shall procure the agreement of the Receiving Operator and the Transferring Operator that) the TARAs which were amended pursuant to this Part H (*Adhoc Train Lending*) in order to take account of such Adhoc Train Lending shall be deemed to revert to the terms of such TARAs as at the date immediately before the commencement of such Adhoc Train Lending.

9. **DEPOT WORKS**

Any alteration to the Rules of the Depot (other than any minor physical works to the Depot) in respect of any of the Fleet or one or more depot locations required to accommodate Adhoc Train Lending shall be addressed as a separate Contemplated Variation.

Appendix A to Part H of Schedule 8
Adhoc Train Lending Agreement

Dated _____

AGILITY TRAINS WEST LIMITED

AGILITY TRAINS EAST LIMITED

AD-HOC TRAIN LENDING AGREEMENT IN RESPECT OF []

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THIS AGREEMENT is made as a deed on [_____] 20[●]

BETWEEN:

- (1) **AGILITY TRAINS WEST LIMITED**, whose registered number is 07930606 and registered address is at 4th Floor, 4 Cophall Avenue, London EC2R 7DA (**Agility West**); and
- (2) **AGILITY TRAINS EAST LIMITED** whose registered number is 07930598 and registered address is at 4th Floor, 4 Cophall Avenue, London, EC2R 7DA (**Agility East**).

WHEREAS:

- (A) Agility West has entered into an agreement with the Secretary of State to design, build, own and maintain a new fleet of high speed trains for operation on the Great Western IEP Network, and to make such trains available for use on the Great Western IEP Network, and in certain circumstances on other routes on the IEP Network, in each case by operators of railway passenger services appointed as franchisees by the Secretary of State (the **GWML MARA**).
- (B) Agility East has entered into an agreement with the Secretary of State to design, build, own and maintain a new fleet of high speed trains for operation on the East Coast IEP Network, and to make such trains available for use on the East Coast IEP Network, and in certain circumstances on other routes on the IEP Network, in each case by operators of railway passenger services appointed as franchisees by the Secretary of State (the **ECML MARA**).
- (C) Agility West and Agility East each have a Maintenance Agreement with the same entity or an Affiliate of such an entity.
- (D) Each of the GWML MARA and the ECML MARA make provision for Adhoc Train Lending Variations pursuant to which Agility East may lend or borrow trains from Agility West and/or Agility West may lend or borrow trains from Agility East.
- (E) The parties are entering into this Agreement in order to set out certain terms which they agree are to apply between them whilst subcontracting with the same Maintainer in respect of any adhoc train lending that there may be in accordance with any Adhoc Train Lending Variation.

NOW THEREFORE in consideration of the provisions and mutual covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, **IT IS AGREED** as follows:

1. INTERPRETATION AND DEFINITIONS

Interpretation

- 1.1 In this Agreement, except to the extent the context otherwise requires:
 - (a) any reference to this Agreement includes Schedule 1 (*Transferring Sets*), which forms part of this Agreement;
 - (b) references in this Agreement to Recitals, Clauses and Schedules are to Recitals, Clauses and Schedules, in each case, of this Agreement, unless expressly specified to the contrary;

- (c) references to this Agreement include this Agreement as amended or supplemented in accordance with its terms or otherwise by written agreement between the parties;
- (d) references to any enactment or statutory provision shall unless otherwise expressly specified, include any subordinate legislation made from time to time under such enactment or statutory provision and are to be construed as references to that enactment or statutory provision as for the time being amended or modified or to any enactment or statutory provision for the time being replacing or amending it and references to any subordinate legislation are to be construed as references to that legislation as for the time being amended or modified or to any legislation for the time being replacing or amending it;
- (e) references in this Agreement to any other agreement, document or instrument (other than an enactment or statutory provision) shall be construed as referring to that agreement, document or instrument as from time to time amended, varied, supplemented, replaced, assigned or novated in accordance with its terms;
- (f) the contents page, headings and references to headings are for convenience only and shall be disregarded in construing this Agreement;
- (g) the words **include**, **including** and **in particular** shall be construed without limitation;
- (h) words in the singular shall include the plural and vice-versa;
- (i) words importing one gender shall include other genders;
- (j) a reference to a person shall include a reference to a firm, body corporate, an unincorporated association, a partnership, limited partnership, limited liability partnership or to an individual's executors and administrators; and references to any person shall include its successors, transferees and assignees;
- (k) the terms **party** and **parties** shall refer to the Transferring TSP and/or the Receiving TSP, as appropriate, and any reference to a **third party** is a reference to any person who is not a party;
- (l) unless otherwise stated in this Agreement, the costs of performing an obligation under this Agreement shall be borne by the party required to perform such obligation;
- (m) words and expressions defined in the Interpretation Act 1978 have the same meanings when used in this Agreement;
- (n) references to **railway passenger services** are to be construed subject to section 40 of the 2005 Act; and
- (o) words and expressions defined in part I of the Act have the same meanings when used herein provided that, except to the extent expressly stated, "railway" shall not have the wider meaning attributed to it by section 81(2) of the Act.

Definitions

1.2 In this Agreement:

- (a) capitalised terms shall have the meanings given to them in the [GWML/ECML] MARA and the [GWML/ECML] TARA, with the GWML MARA taking precedence over the [GWML/ECML] TARA unless otherwise stated; and
- (b) the following words and expressions shall have the following meanings, except to the extent the context otherwise requires:

Adhoc Train Lending means the redeployment of the Transferring Sets to the [GWML/ECML] TARA or receipt of the Transferring Sets from the [GWML/ECML] TARA pursuant to this Agreement, the GWML TARA and the ECML TARA as amended from time to time;

Adhoc Train Lending Cancellation Notice shall have the meaning given in Clause 5.2A.1(b) (*Non-compliance*);

Adhoc Train Lending Commencement Date means the date on which the Adhoc Train Lending commences;⁶

Adhoc Train Lending Termination Date means [to be agreed as part of the Adhoc Train Lending Variation process];

ECML TARA means the TARA as defined in the ECML MARA;

GWML TARA means the TARA as defined in the GWML MARA;

Handback Date means the date on or after the Adhoc Train Lending Termination Date on which the Transferring Sets are returned to the Transferring TSP in accordance with this Agreement;

Handover Condition shall have the meaning given in Clause 4.2 (*Operation and Maintenance*);

Inspections means Routine Inspections and the Final Inspection;

Major Maintenance Work shall have the meaning given in the Maintenance Agreement;

Major Works Inspections shall have the meaning given in Clause 5.2A.2(a) (*Major Maintenance Works*);

Receiving Operator means in respect of any ad hoc train loan, the Relevant Operator who will be operating with more Sets following the Adhoc Train Lending;

Receiving TSP means in respect of any ad hoc train loan whichever of Agility East and Agility West that is in receipt of the Transferring Sets;

Receiving TSP Default means a TSP Default as that term is defined in the [GWML/ECML] MARA;

Routine Maintenance means maintenance provided for in the Maintenance Plan that is not Major Maintenance Work;

⁶ To coincide with delivery of the Transferring Sets from one TOC to the other.

Routine Maintenance Plan means those elements of the Maintenance Plan relating to Routine Maintenance;

Routine Maintenance Standards means the Routine Maintenance standards in respect of the Transferring Sets (and which shall be no more or less burdensome than the Routine Maintenance standards in respect of any of the Transferring TSP's Sets which are not Transferring Sets) and notified to the Receiving TSP in writing in accordance with this Agreement;

Transferring Operator means, in relation to any Adhoc Train Lending, the Relevant Operator who will be operating fewer Sets following the Adhoc Train Lending;

Transferring Sets means those Sets listed in Schedule 1 (*Transferring Sets*) of this Agreement;

Transferring TSP means in respect of any ad hoc train loan whichever of Agility East and Agility West that is the owner of the Transferring Sets; and

Transferring TSP Default means a TSP Default as that term is defined in the [GWML/ECML] MARA.

2. COMMENCEMENT AND TERM

Commencement

- 2.1 In consideration of the mutual covenants contained in this Agreement, the Transferring TSP agrees to lend and the Receiving TSP agrees to borrow the Transferring Sets from the Adhoc Train Lending Commencement Date on the terms and subject to the conditions of this Agreement and the Adhoc Train Variation.

Duration and Termination

- 2.2 This Agreement shall terminate on the earlier of:
- (a) the Adhoc Train Lending Termination Date; and
 - (b) the date of early termination of this Agreement in accordance with Clause 5.2A.1(b) (*Non-compliance*) or Clause 5.2A.3(b) (*Non-compliance*) (as applicable),

save that Clauses 10.1 (*Governing Law*) and 10.2 (*Jurisdiction*), shall survive termination of this Agreement.

3. REPRESENTATIONS AND WARRANTIES

Representations and Warranties by the Transferring TSP

- 3.1 The Transferring TSP makes the following representations and warranties on the Adhoc Train Lending Commencement Date with reference to the facts and circumstances existing at the time. The Transferring TSP understands that the Receiving TSP is relying on the representations and warranties made by the Transferring TSP and is entering into this Agreement on the basis of them and should any of these representations and warranties prove to be incorrect the Receiving TSP may require the Transferring TSP to serve an Adhoc Train Lending Cancellation Notice in accordance with Clause 5.2A.1(b) (*Non-compliance*):

- (a) the Transferring TSP is a company properly organised and validly existing under the laws of England and Wales as a limited liability company. It has the power to carry on its business as it is now being conducted and has all licences, consents, approvals, permits, authorisations, exemptions, registrations and certifications required for that purpose;
- (b) the Transferring TSP has the power to enter into and perform its obligations under this Agreement. All necessary corporate, shareholder and other action has been taken to authorise the entry into, performance and delivery of this Agreement and this Agreement constitutes, its legally valid, binding and enforceable obligations in accordance with its terms;
- (c) the entry by the Transferring TSP into this Agreement and the performance by it of its obligations under this Agreement will not:
 - (i) conflict with its Memorandum and Articles of Association;
 - (ii) conflict with any applicable law or regulation applicable to the Transferring TSP; or
 - (iii) conflict with, or result in a breach of, any existing contract which is binding on the Transferring TSP; and
- (d) no Transferring TSP Default has occurred and is continuing.

Representations and Warranties by the Receiving TSP

3.2 The Receiving TSP makes the following representations and warranties on the Adhoc Lending Commencement Date with reference to the facts and circumstances existing at the time. The Receiving TSP understands that the Transferring TSP is relying on the representations and warranties made by the Receiving TSP and is entering into this Agreement on the basis of them and should any of these representations and warranties prove to be incorrect the Transferring TSP may serve an Adhoc Train Lending Cancellation Notice in accordance with Clause 5.2A.1(b) (*Non-compliance*):

- (a) the Receiving TSP is a company properly organised and validly existing under the laws of England and Wales as a limited liability company. It has the power to carry on its business as it is now being conducted and has all licences, consents, approvals, permits, authorisations, exemptions, registrations and certifications required for that purpose;
- (b) the Receiving TSP has the power to enter into and perform its obligations under this Agreement. All necessary corporate, shareholder and other action has been taken to authorise the entry into, performance and delivery of this Agreement and this Agreement constitutes its legally valid, binding and enforceable obligations in accordance with its terms;
- (c) the entry by the Receiving TSP into this Agreement and the performance by it of its obligations under this Agreement will not:
 - (i) conflict with its Memorandum and Articles of Association;
 - (ii) conflict with any applicable law or regulation applicable to the Receiving TSP; or

- (iii) conflict with, or result in a breach of, any existing contract which is binding on the Receiving TSP; and
- (d) no Receiving TSP Default has occurred.

4. OPERATION AND MAINTENANCE

- 4.1 The Transferring TSP shall, on or before the Adhoc Train Lending Commencement Date document, prepare the Routine Maintenance Standards and provide them to the Receiving TSP.
- 4.2 The Transferring TSP and the Receiving TSP shall carry out an inspection of the Transferring Sets and record in writing the condition of the Transferring Sets (the **Handover Condition**). The inspection will be long enough to permit the parties to fully inspect the condition of the Transferring Sets. Facilities shall (at the Transferring TSP's costs) be made available to enable the parties or their agents to carry out a detailed examination of the interior, exterior and the underside of the Transferring Sets. Gauges shall be made available if required by the Transferring TSP or the Receiving TSP to enable full examination of such items as wheelsets, couplers and any other critical component. The site of the inspection shall be such location as may be reasonably agreed in writing between the Transferring TSP and the Receiving TSP and the Transferring TSP shall provide access to the site of the inspections. The Receiving TSP shall ensure that its attendance at the inspection shall not unreasonably disrupt the commercial passenger operations of the Transferring Operator or the business or operations of the site at which such inspection is carried out or the users or occupiers at each site.
- 4.3 The Receiving TSP shall procure that, from the Adhoc Train Lending Commencement Date until the Adhoc Train Lending Termination Date, the Transferring Sets are maintained in accordance with the Routine Maintenance Standards and the Routine Maintenance Plan for the duration of the Adhoc Train Lending.
- 4.4 The Transferring TSP shall give the Receiving TSP not less than three (3) months' notice in advance of the dates scheduled for Major Maintenance Works in the Maintenance Plan.
- 4.5 The Receiving TSP shall procure the return of the Transferring Sets to the Transferring TSP at its Mother Depot to enable Major Maintenance Works to be performed by the Transferring TSP on the Transferring Sets in accordance with the Maintenance Plan and the periods for Major Maintenance Works therein. On delivery of such Transferring Sets an inspection shall be carried out in accordance with Clause 4.2 to determine the condition of the relevant Transferring Sets.
- 4.6 The Receiving TSP shall procure that the provisions of clauses 8 (*Availability, Handback of Sets*), 9 (*In-service Provisions and Faults*), 11 (*Payment*), 12 (*Performance*), 14 (*Indemnities*), 15 (*Intellectual Property Rights*), 18 (*Confidentiality*) and 19 (*Dispute Resolution*) of the [GWML/ECML] TARA shall apply to the Transferring Sets, *mutatis mutandis*, and have effect as if references in those clauses to "Set" are also references to a Transferring Set.

5. INSPECTIONS, RETURN HANDBACK CONDITIONS AND STANDARDS

Inspections

- 5.1 (a) The Transferring TSP shall be permitted to carry out regular inspections of the Transferring Sets in order to certify whether they comply with the standards to be maintained having regard to the Routine Maintenance Plan, the agreed handback conditions as referred to in Clause 5.2 (*Handback Condition*) and the [GWML/ECML/OTHER] TARA (a ***Routine Inspection***).
- (b) Within [] Business Days prior to the Adhoc Train Lending Termination Date, the Transferring TSP shall be permitted by the Receiving TSP to carry out an inspection of the Transferring Sets in order to verify whether they comply with the handback condition requirements specified in Clause 5.2 (*Handback Condition*) (the ***Final Inspection***).
- (c) The Transferring TSP shall ensure that the Inspections shall not unreasonably disrupt the commercial passenger operations of the Transferring Sets or the Receiving Operator. The Inspections will be long enough to permit the Transferring TSP and/or any person designated by the Transferring TSP to fully inspect the conditions of the Transferring Sets. Facilities shall (at the Receiving TSP's cost) be made available to enable the Transferring TSP or its agent to carry out a detailed examination of the interior, exterior and the underside of the Transferring Sets. Gauges shall be made available if required by the Transferring TSP to enable full examination of such items as wheelsets, couplers and any other critical component.
- (d) Details of the Inspections are that:
- (i) the site of the Inspections shall be such location as may be reasonably agreed in writing between the Transferring TSP and the Receiving TSP;
 - (ii) the Receiving TSP shall be entitled to have a representative present at the Inspections; and
 - (iii) the Receiving TSP shall provide safe access to the site of the Inspections.
- (e) After the Final Inspection, and immediately prior to the handback of the Transferring Sets to the Transferring TSP, the Transferring TSP shall carry out a "walk around" of the Transferring Sets, to identify any visible deterioration occurring subsequent to the Final Inspection.

5.2A.1 Non-compliance

- (a) If, at the time of an Inspection or immediately prior to the handback of the Transferring Sets to the Transferring TSP, the condition of such Transferring Set does not meet the requirements agreed in Clauses 5.1 (*Inspections*) and 5.2 (*Handback Condition*), the Transferring TSP will provide to the Receiving TSP details of such non-compliance and the Receiving TSP shall:
- (i) put forward or procure the putting forward of an acceptable rectification and maintenance plan which is required to be performed to bring the relevant Transferring Set to the standard and condition it would have been in if the Receiving TSP had or had procured that the Transferring Sets were maintained to the standards and conditions agreed in accordance with Clause 4; and

- (ii) implement or procure the implementation of such plan in accordance with its terms and rectification of the standard and condition of the Transferring Sets.
- (b) In the event that the Transferring Sets are not rectified in accordance with the plan described at Clause 5.2A.1(a)(i) (or where a breach of Clause 3.1 (*Representations and Warranties by the Transferring TSP*) has occurred), the Transferring TSP may serve an Adhoc Train Lending Cancellation Notice (***Adhoc Train Lending Cancellation Notice***) on the Receiving TSP and the Secretary of State terminating the Adhoc Train Lending with immediate effect and the Receiving TSP shall procure the immediate return to the Transferring TSP of the Transferring Sets to the Transferring TSP's Mother Depot.
- (c) The parties agree and will procure that any changes required to rectify the standard and conditions, and to address the financial consequences of, a Transferring Set not being returned by the Receiving TSP in the standard and conditions set out in Clause 5.2 (*Handback Condition*) shall be addressed by the Secretary of State issuing a Required Variation Notice to the Transferring TSP in accordance with Paragraph 8.3 of Part H (*Adhoc Train Lending*) of Schedule 8 (*Variations*) of the GWML MARA and/or the ECML MARA (as appropriate) and shall include appropriate relief in respect of such Transferring Sets in respect of performance incidents leading to Notifiable Events, the Performance Regime, TSP Default and Remedial Events until the Transferring Set is rectified to the required standard and condition.

5.2A.2 Major Maintenance Works

- (a) The Receiving TSP shall be permitted to carry out an inspection of each Transferring Set before taking delivery of that Transferring Set after completion of any Major Maintenance Work in order to establish whether that Major Maintenance Work has been carried out by the Transferring TSP in accordance with the Maintenance Plan and that Transferring Set is otherwise in the same condition as when delivered to the Transferring TSP for such Major Maintenance Work as established pursuant to the inspection referred to in Clause 4.5 (*Operation and Maintenance*) (***Major Works Inspection***).
- (b) The Receiving TSP shall ensure that the Major Works Inspection shall not unreasonably disrupt the commercial passenger operations of the Transferring TSP, the Transferring Operator or the Receiving Operator. The Major Works Inspection will be long enough to permit the Receiving TSP and/or any person designated by the Receiving TSP to fully inspect the conditions of the Transferring Sets. Facilities shall (at the Transferring TSP's cost) be made available to enable the Receiving TSP or its agent to carry out a detailed examination of the interior, exterior and the underside of the Transferring Sets. Gauges shall be made available if required by the Receiving TSP to enable full examination of such items as wheelsets, couplers and any other critical component.
- (c) Details of the Major Works Inspections are that:
 - (i) the site of the Major Works Inspections shall be such location as may be reasonably agreed in writing between the Transferring TSP and the Receiving TSP;

- (ii) the Transferring TSP shall be entitled to have its representatives present at the Major Works Inspections; and
- (iii) the Receiving TSP shall provide safe access to the site of the Major Works Inspections.

5.2A.3 Non-compliance

- (a) If at the time of a Major Works Inspection the condition of such Transferring Set does not meet the standards referred to in Clause 5.2A.2 (*Major Maintenance Works*), the Receiving TSP will provide to the Transferring TSP details of such non-compliance and the Transferring TSP shall:
 - (i) put forward or procure the putting forward of an acceptable rectification and maintenance plan which is required to be performed to bring the relevant Transferring Set to the standard and condition referred to in Clause 5.2A.2 (*Major Maintenance Works*); and
 - (ii) implement or procure the implementation of such plan in accordance with its terms and rectification of the standard and condition of the Transferring Sets.
- (b) In the event that the Transferring Sets are not rectified in accordance with the plan described at Clause 5.2A.3(a)(i) (or where a breach of Clause 3.2 (*Representations and Warranties by the Receiving TSP*) has occurred), the Receiving TSP may serve an Adhoc Train Lending Cancellation Notice on the Transferring TSP terminating the Adhoc Train Lending with immediate effect and the Receiving TSP shall procure the immediate return to the Transferring TSP of the Transferring Sets to the Transferring TSP's Mother Depot.
- (c) The parties agree and will procure that any changes required to rectify the standard and conditions, and address the financial consequences of, a Transferring Set not being maintained by the Transferring TSP in the standard and conditions set out in Clauses 5.2A.2 (*Major Maintenance Works*) shall be addressed by the Secretary of State issuing a Required Variation Notice to the Transferring TSP in accordance with Paragraph 8.3 of Part H (*Adhoc Train Lending*) of Schedule 8 (*Variations*) of the GWML MARA and/or the ECML MARA (as appropriate) and shall include appropriate relief in respect of such Transferring Sets in respect of performance incidents leading to Notifiable Events, the Performance Regime, Availability Abatements and Reliability Abatements and deductions from KPI Payments, Notifiable Events, TSP Default and Remedial Events until the Transferring Set is rectified to the required standard and condition.

Handback Condition

- 5.2 (a) The Receiving TSP shall procure that the Transferring Sets are maintained and returned to the Transferring TSP on the Handback Date in accordance with this Agreement and in particular:
- (i) in a condition consistent with its position within the Routine Maintenance Plan, with no maintenance work having been deferred, other as permitted pursuant to the Routine Maintenance Plan;

- (ii) in accordance with the Handover Condition (subject only to normal wear and tear);
 - (iii) in a fully operational condition; and
 - (iv) in the same formation as at the date on which such Transferring Set was delivered by the Transferring TSP to the Receiving TSP.
- (b) On the Handback Date:
- (i) the Transferring Sets shall have the same design configuration as at the date on which such Transferring Set was delivered by the Transferring TSP to the Receiving TSP (or as such design configuration has been amended from time to time pursuant to any Variations to the [GWML/ECML] MARA during the Adhoc Train Lending period);
 - (ii) each Transferring Set shall be clean and free from any material damage and, in this regard, it will reflect its position in the cleaning cycle and be in an appropriate condition ready for passenger use including:
 - (A) Exterior:
 - (I) all significant dents and scrapes shall have been repaired and major paint work blemishes and graffiti (pieces and spray tagging) shall have been made good;
 - (II) any corrosion which the Receiving TSP is responsible for remedying shall have been rectified;
 - (III) the Transferring Sets 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) no windows shall have any etching on them; and
 - (V) exterior paintwork shall have been maintained in accordance with the Routine Maintenance Plan;
 - (B) Interior:
 - (I) all interior furnishings and fittings shall be in serviceable condition, and free from major blemishes, graffiti, window etching, and other engraving or defacing of a significant nature; and
 - (II) any corrosion which the Receiving TSP is responsible for remedying shall have been rectified;
 - (C) unless the Transferring TSP agrees otherwise in writing, all of the Transferring Sets shall be in a winterised condition, where appropriate, including the following:
 - (I) doors and windows shall be closed; and

- (II) water shall be drained from air reservoirs in accordance with the Operating and Maintenance Manuals;
- (D) the Transferring Sets shall be capable of redelivery to the Transferring TSP's Mother Depot;
- (E) the technical records in respect of each Transferring Set shall be comprehensive and include:
 - (I) all maintenance records;
 - (II) updates and amendments to the Routine Maintenance Plan;
 - (III) depot worksheets;
 - (IV) variations to, or new issues of, the Operation and Maintenance Manuals;
 - (V) any technical data called for under the provisions of the GWML MARA and the GWML TARA;
 - (VI) evidence of rectification of faults or defects;
 - (VII) evidence that the Transferring Set is in a condition consistent with its position in the Routine Maintenance Plan; and
 - (VIII) data to support any temporary repairs due to corrosion damage; and
- (F) free from any Presentation KPI Standards Failure.

6. **INSURANCE**

The Transferring TSP agrees that, notwithstanding the Adhoc Train Lending, the provisions of Clause 13 (*Insurance*) of the GWML MARA or the ECML MARA (as appropriate) (for the avoidance of doubt, as it may be amended or varied pursuant to a Variation) shall continue to have effect, *mutatis mutandis*, and each party shall comply with its respective obligations thereunder and, for the avoidance of doubt the Transferring TSP shall insure the Transferring Sets for the duration of the Adhoc Train Lending in accordance with the GWML MARA or the ECML MARA (as appropriate).

7. **NOTICES**

Notices

- 7.1 Any notice, notification or other communication 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 following addresses:

To the **Agility West** at:

Address: 4th Floor
4 Copthall Avenue

London EC2R 7DA

Attention: Chief Executive Officer

To the **Agility East** at:

Address: 4th Floor
4 Copthall Avenue
London EC2R 7DA

Attention: Chief Executive Officer,

or such other address in the United Kingdom as each party may specify by notice in writing to the other party by giving at least five (5) Business Days' notice.

Deemed Receipt

7.2 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 if delivered between 09.00 hours and 17.30 hours on a Business Day (otherwise on the next occurring Business Day); and
- (b) if sent by pre-paid first class post, from and to any place within the United Kingdom, three (3) Business Days after posting unless otherwise proven.

8. MISCELLANEOUS

Cumulative Rights

8.1 Each of the Transferring TSP's and the Receiving TSP's rights and remedies under this Agreement are cumulative and may be exercised as often as either of them considers appropriate. Any failure to exercise or any delay in exercising any of such rights shall not operate as a waiver or variation of that or any other such right, any defective or partial exercise of any of such rights shall not preclude any other or further exercise of that or any other such right, and no act or course of conduct or negotiation on either party's part or on its behalf shall in any way preclude that party from exercising any such right or constitute a suspension or any variation of any such right.

Further Assurance

8.2 Each of the parties agree, at its own expense, to perform (or procure the performance of) all further acts and things within its control, and execute and deliver (or procure the execution and delivery of) such further documents, as may be required by Applicable Laws and Standards (save where Applicable Derogations apply) or as may be necessary or reasonably desirable to implement and/or give effect to this Agreement and the transactions contemplated by this Agreement.

Waivers

8.3 (a) No term or provision of this Agreement shall be considered waived by any party to it unless a waiver is given in writing by that party.

- (b) No waiver under limb (a) shall be a waiver of a past or future default or breach, nor shall it amend, delete or add to the terms, conditions or provisions of the remaining parts of this Agreement except where expressly provided herein.

Severability

- 8.4 If any term, condition or provision contained in this Agreement shall be held to be void, invalid, unlawful or unenforceable to any extent, such term, condition or provision shall not affect the validity, legality or enforceability of the remaining parts of this Agreement.

Entire Agreement

- 8.5 This Agreement and the other Project Documents contain the entire agreement between the parties in relation to the subject matter of this Agreement and supersede all prior agreements and arrangements between the parties. In addition, 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 for a breach of the terms of this Agreement, to the exclusion of all other rights and remedies (including those arising in tort or arising under statute).

Counterparts

- 8.6 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. Delivery of a counterpart of this Agreement by e-mail attachment or telecopy shall be an effective mode of delivery.

Third Party Rights

- 8.7 A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement (but this does not affect any right or remedy of a third party which exists or is available apart from under that act).

General Obligations

- 8.8 Each of the Transferring TSP and the Receiving TSP shall co-operate and act reasonably and in good faith in and about the performance of its obligations and the exercise of its rights pursuant to this Agreement.

Amendment

- 8.9 No amendment to this Agreement shall be valid unless it is in writing and signed by both parties.

9. RESTRICTIONS ON TRANSFER

Except for any assignment by the Transferring TSP and/or the Receiving TSP required as security under the Financing Documents neither party to this Agreement may assign, transfer, novate or otherwise dispose (whether by virtue of any Legislation or any scheme pursuant to any Legislation or otherwise) of any of its rights and/or obligations under this Agreement without the prior written consent of the other party or all other parties (as applicable), such consent not to be unreasonably withheld or delayed.

10. **GOVERNING LAW AND JURISDICTION**

Governing Law

10.1 This Agreement and any non contractual obligations arising out of or in connection with this Agreement shall be governed by, and interpreted in accordance with, English law.

Jurisdiction

10.2 The English courts shall have exclusive jurisdiction in relation to all disputes arising out of or in connection with this Agreement (including claims for set-off and counterclaims), including disputes arising out of or in connection with: (a) the creation, validity, effect, interpretation, performance or non performance of, or the legal relationships established by, this Agreement; and (b) any non contractual obligations arising out of or in connection with this Agreement. For such purposes each party irrevocably submits to the jurisdiction of the English courts and waives any objection to the exercise of such jurisdiction.

11. **SOLE REMEDY**

11.1 Subject to Clause 11.2, where this Agreement provides exclusively for any rights or remedies in respect of the breach or exercise of the other party's obligations under this Agreement, the entitlement to exercise those rights and remedies is to the exclusion of all other rights and remedies (other than available equitable remedies of specific performance and injunctive relief) of the first mentioned party howsoever arising at common law, under statute or in equity in respect of the circumstances relating to such exercise or breach.

11.2 Nothing in Clause 11.1 shall limit or exclude either party's liability for death or personal injury resulting from its negligence.

12. **RELATED LOSS**

Notwithstanding any other provisions of this Agreement, to the extent that either party is liable to the other party for any claim arising under this Agreement, that party shall not be entitled to avoid or reduce its liability to the other party on the basis that that party would not (but for this Clause 12) suffer all or part of the relevant loss or damage (**Related Loss**) solely because such Related Loss is incurred by a sub-contractor (of any tier) of that party and the sub-contractor's rights to recover such Related Loss from that party are deferred, suspended, or dependent upon determination of the extent of entitlement under this Agreement or any sub-contract (of any tier).

IN WITNESS whereof the parties hereto have executed this Agreement as a deed on the day and year first written before.

SIGNED AS A DEED BY)
AGILITY TRAINS WEST)
LIMITED)

DIRECTOR:

.....

DIRECTOR/SECRETARY:

SIGNED AS A DEED BY)
AGILITY TRAINS EAST)
LIMITED)

DIRECTOR:

.....

DIRECTOR/SECRETARY:

SCHEDULE 1
TRANSFERRING SETS

[list transferring sets]

Part I of Schedule 8

Redeployment Variation

General

1. REDEPLOYMENT VARIATIONS

1.1 Where the Secretary of State wishes to vary this Agreement by way of a Redeployment Variation she:

- (a) shall issue a Preliminary Redeployment Variation Notice in accordance with Paragraph 2; and
- (b) may, subject to agreement or determination of the Redeployment Variation Depot Site and Redeployment Variation Depot Specification pursuant to Paragraphs 6 to 7, issue a Further Redeployment Variation Notice in accordance with Paragraph 8.

1.2 Notwithstanding the issue of a Preliminary Redeployment Variation Notice or Further Redeployment Variation Notice, the Secretary of State and the TSP may agree that an alternative manner of delivering the Redeployment Variation which continues to meet the requirements of the Secretary of State:

- (a) is more appropriate to reflect the overall requirements of the Redeployment Variation; and
- (b) would leave the TSP after the Redeployment Variation in a "no better and no worse position" in terms of the TSP's ability to provide the Services to the contractual standards and in its economic position (as described in Paragraph 4.4 of Part G (*Runs of the Financial Model*) of Schedule 8 (*Variations*)).

2. PRELIMINARY REDEPLOYMENT VARIATION NOTICE

A preliminary redeployment variation notice shall be based on Form 1 set out in Appendix A (*Form 1: Contemplated and Required Variation Notice*) to Part C (*Additional Procedural Aspects of Variations*) of Schedule 8 (*Variations*) and shall describe the Redeployment Variation in adequate detail to enable the TSP to assess and report on each of the items which it is to address in the Required Response in addition to the information set out in the preliminary redeployment variation notice and including, the following:

- (a) the number and Type of Sets the Secretary of State is proposing should be redeployed being all or part of the Fleet contemplated at the Effective Date (which includes the exercise of any Pre-Priced Option) (**Redeployed Sets**);
- (b) the part of the Network that the Redeployed Sets will be operated on with reference to the proposed routes on such part of the Network;
- (c) the terms of the new, additional or substitute TARA to be entered into by the TSP in accordance with the terms of Schedule 8 (*Variations*);
- (d) any details of the proposed specification for the Redeployment Variation Depot(s) as further described in Paragraph 7, (the **Redeployment Variation Depot Specification**) available to the Secretary of State at the time; and

- (e) any details of the site(s) of, or possible locations being considered for the site(s) of, the Redeployment Variation Depot(s) (***Redeployment Variation Depot Site***) available to the Secretary of State at the time,

(a ***Preliminary Redeployment Variation Notice***).

3. REQUIRED RESPONSE

- 3.1 The TSP shall within ninety (90) Business Days of receipt of a Preliminary Redeployment Variation Notice (or such longer period as the Secretary of State may agree, having regard to the magnitude of the proposed Redeployment Variation) provide the Secretary of State with:
 - (a) an indicative draft of the Required Response (including written comments on any Redeployment Variation Depot Specification and Redeployment Variation Depot Site) and taking into account Paragraphs 3.2 and 3.3;
 - (b) an indicative draft of the Risk Assessment in respect of the Redeployment Variation taking into account Paragraph 3.4; and
 - (c) an Indicative Cost Plan in respect of any Redeployment Variation Depot Specification.
- 3.2 The indicative draft Required Response may include proposed changes in cost arising from changes in requirements for staff and contractors, including costs associated with the TUPE transfer of employees and recruitment of new employees which shall be addressed in accordance with the provisions of part E (*Transfer Provisions*) of schedule 1 (*General Provisions*) of the TARA.
- 3.3 Where a Preliminary Redeployment Variation Notice contemplates that a new TARA will be entered into in respect of the Redeployed Sets, the indicative draft Required Response shall be on the basis that any events, incidents or circumstances giving rise to any KPI Points, Availability Abatements, Reliability Abatements, Remedial Events and/or Notifiable Events that have accrued under the existing TARA that are applicable to the Redeployed Sets are not taken into account in respect of such new TARA, such that following the implementation of the Redeployment Variation the future TARA commences on a "slate wipe clean" basis.
- 3.4 The TSP shall prepare its indicative draft Risk Assessment on the basis of Stable Risk in respect of any aspect of Constant Risk that is involved in the Redeployment Variation.
- 3.5 The parties agree that the provision of Redeployment Variation Depot(s) in accordance with the agreed or determined Redeployment Variation Depot Site(s) and Redeployment Variation Depot Specification shall be prima facie treated as an aspect of Constant Risk in respect of any Redeployment Variations subject always to the TSP agreeing with the Secretary of State or it being determined pursuant to the Dispute Resolution Agreement that the provision of Redeployment Variation Depot(s) in accordance with the agreed or determined Redeployment Variation Depot Site(s) and Redeployment Variation Depot Specification will involve a material and adverse change in risk for the TSP and the Significant Contractor(s) in performing the TSP's obligations under this Agreement and any TARA to which the TSP is party after the Redeployment Variation has been implemented.

3.6 The parties agree that there is no Implementation Risk applicable to any Redeployment Variation.

4. **CO-OPERATION REGARDING REQUIRED RESPONSE**

4.1 The parties shall meet to discuss the indicative draft Required Response within twenty (20) Business Days of the Preliminary Redeployment Variation Notice and the provision of each updated Required Response.

4.2 The TSP shall on one (1) month's written request by the Secretary of State provide updates of the Required Response and/or Indicative Cost Plan or Updated Cost Plan (as the case may be) to the Secretary of State throughout the consideration and implementation of the Redeployment Variation until such time as the Required Response is submitted by the TSP to the Secretary of State in final form.

4.3 The parties shall meet as regularly as is necessary to discuss and progress the proposed Redeployment Variation. The parties shall act in good faith and use reasonable endeavours, by a process of iterative discussion and exchange of information, to agree the deliverables required and activities to be undertaken to progress the development of the Redeployment Variation including the location of the Redeployment Variation Depot Site(s) and the Redeployment Variation Depot Specification.

4.4 Where the TSP is to incur expenses and costs (on an individual occasion or in the aggregate) as a result of performing its obligations in respect of the preparation, development and agreement of the Redeployment Variation Depot Site(s), the Redeployment Variation Depot Specification and all other matters required of it in order to complete the Redeployment Variation as described in the Final Cost Plan, the TSP shall perform such obligations and the Secretary of State shall reimburse the TSP in an amount equal to those expenses and costs reasonably and properly incurred in the performance of such obligations provided that:

- (a) the TSP shall, on such dates as shall be determined by the Secretary of State and notified to the TSP (unless otherwise agreed in writing) provide to the Secretary of State, for her written approval (such approval not to be unreasonably withheld or delayed) a detailed estimate of the timetable and likely costs and expenses of performing such obligations during that stage (including a detailed breakdown of the estimated costs of activities at each stage of the preparation, development and agreement of the Redeployment Variation, including professional and legal fees and other disbursements (if any)) together with details of all professional and legal advisers that the TSP proposes to employ;
- (b) the TSP shall at no time incur any expenses and costs above the said estimate and each element thereof without the further approval of the Secretary of State (such approval not to be unreasonably withheld or delayed);
- (c) the Secretary of State shall reimburse the TSP for expenses and costs incurred in respect of each stage on receipt of the agreed deliverables in respect of such stage subject to the TSP providing satisfactory evidence to the Secretary of State that the expenses and costs were reasonably and properly incurred and the TSP has complied with the requirements of this Part I (*Redeployment Variation*) of Schedule 8 (*Variations*); and
- (d) provided that the Secretary of State has reimbursed the TSP for expenses and costs she has determined to be 'reasonably and properly incurred' pursuant to this

Paragraph 4.4, the TSP shall, notwithstanding that not all expenses and costs have been reimbursed by the Secretary of State, continue to perform its obligations hereunder and the parties shall use reasonable endeavours to agree the amount of expenses and costs to be reimbursed.

5. COST PLAN

- 5.1 The TSP shall, in accordance with Paragraph 3.1, prepare an Indicative Price and Indicative Cost Plan for the relevant Redeployment Variation Depot Works required pursuant to the Redeployment Variation Depot Specification.
- 5.2 The TSP shall update the Indicative Cost Plan in accordance with Paragraphs 5.3 to 5.6 in order to ascertain the Final Price for the Redeployment Variation Depot.
- 5.3 At each Cost Plan Reporting Date, the TSP shall provide an Updated Cost Plan to the Secretary of State's Representative or shall confirm that no updates to the last issued Indicative Cost Plan or Updated Cost Plan are required.
- 5.4 Each Updated Cost Plan shall:
- (a) use the same identifiable cost headings as the Indicative Cost Plan in a manner consistent with Appendix A (*Indicative Cost Plan*) to this Part I (*Redeployment Variation*);
 - (b) show the TSP's indicative but non-binding best estimate of the costs of performing the Redeployment Variation Depot Works taking into account the stage of design reached at the relevant Cost Plan Reporting Date, all estimates received for undertaking the relevant works and all material factors relating to the Redeployment Variation Depot Works which are in the knowledge of the TSP at the relevant Cost Plan Reporting Date; and
 - (c) where the cost of performing any part of the Redeployment Variation Depot Works cannot be identified with any certainty describe the narrowest reasonably possible anticipated range in which the cost is expected to fall (the ***Provisional Sum Items***),

provided that the TSP shall use reasonable endeavours, with each subsequent iteration of the Updated Cost Plan, to convert Provisional Sum Items into single identifiable costs as described in Paragraph 5.4(b) and to reduce the overall total of Provisional Sum Items.

- 5.5 The Secretary of State shall be entitled to make representations in writing to the TSP on the Indicative Cost Plan and any Updated Cost Plan, including to further the objective of converting Provisional Sum Items into identifiable costs as described in Paragraph 5.4(b). If the Secretary of State has not provided substantive representations to the TSP within ten (10) Business Days of receipt of any such Updated Cost Plan provided pursuant to Paragraph 5.2, then the Secretary of State shall be deemed not to have any such representations and the TSP shall be entitled to proceed on the basis of the relevant Updated Cost Plan. In the event of any disagreement between the parties in relation to identifiable costs in the relevant Updated Cost Plan either party may refer such disagreement for determination pursuant to the Dispute Resolution Agreement, save in respect of any costs which have been obtained by competitive tender in accordance with this Part I (*Redeployment Variation*), where such costs shall be as bid and agreed to pursuant to the relevant tender process.

- 5.6 In making any representations referred to in Paragraph 5.5, the Secretary of State shall have regard to the need to:
- (a) ensure the Redeployment Variation Depot shall meet the requirements and standards set out in the Redeployment Variation Depot Specification (as may be amended from time to time pursuant to Paragraph 5.7);
 - (b) ensure that operational expenditure, performance of the Services, Maintenance Arrangements, acceptance of the Redeployment Variation Depots, and the TSP's ability to comply with its obligations in accordance with this Agreement and the relevant TARAs are not adversely affected;
 - (c) perform the Redeployment Variation Depot Works in accordance with the Implementation Timetable (or the Revised Implementation Timetable, as applicable);
 - (d) comply with Network Rail's requirements for acceptance of the Redeployment Variation Depot Works being undertaken;
 - (e) comply with Relevant Approvals, Applicable Laws and Standards and Applicable Derogations; and
 - (f) comply with the relevant Network Change and Depot Change.

5.7 Following receipt of representations made by the Secretary of State in accordance with Paragraphs 5.5 and 5.6, the TSP shall, and shall procure that the Maintainer and the Redeployment Variation Construction Sub-Contractor shall, in each case to the extent relevant, meet with the Secretary of State's Representative to discuss such representations and shall use reasonable endeavours to amend the Redeployment Variation Depot Specification and programme for the Redeployment Variation Depot Works and to produce an amended Updated Cost Plan to take into account the Secretary of State's representations, subject always to the requirements and objectives set out in Paragraph 5.6.

6. REDEPLOYMENT VARIATION DEPOT SITE(S)

- 6.1 Prior to serving a Preliminary Redeployment Variation Notice, or as soon as reasonably practicable afterwards, the Secretary of State shall identify a potential site or sites for consideration by the TSP as the Redeployment Variation Depot Site(s) (which may be a site or sites for a New Depot or the current site or sites of an Existing Depot) and provide details of such site or sites to the TSP.
- 6.2 The parties shall meet to discuss the Secretary of State's proposed site or sites for the Redeployment Variation Depot(s) within thirty (30) Business Days of the Secretary of State proposing such site or sites to the TSP and providing details of such proposed site or sites (***Redeployment Variation Depot Site Notice Date***).
- 6.3 The parties shall act in good faith and use reasonable endeavours, by a process of iterative discussion and exchange of information, to agree a location for the Redeployment Variation Depot Site(s) which is or are reasonably able to accommodate a depot or depots that would meet the requirements of the Redeployment Variation Depot Specification.
- 6.4 The Secretary of State may serve a notice (the ***Redeployment Variation Depot Site Decision Notice***) on or at any time after twenty (20) Business Days after service of the

Redeployment Variation Depot Site Notice Date, specifying a date (the **Redeployment Variation Depot Site Decision Date**) after which the Secretary of State may refer the matter of the Redeployment Variation Depot Site for determination pursuant to the Dispute Resolution Agreement, in accordance with Paragraph 6.5, in the absence of prior written agreement between the parties as to the proposed location of the Redeployment Variation Depot Site. The Redeployment Variation Depot Site Decision Date specified by the Secretary of State shall be a date at least thirty (30) Business Days after service of the Redeployment Variation Depot Site Decision Notice.

6.5 The parties agree that at any time after the Redeployment Variation Depot Site Decision Date the Secretary of State may refer for determination pursuant to the Dispute Resolution Agreement any Dispute arising as to whether any one or more locations proposed by her for the Redeployment Variation Depot Site:

- (a) meet the requirements in respect of the Redeployment Variation Depot Site set out in Paragraph 6.3 and, if they do not do so, in what respects they do not do so; and/or
- (b) represent, having regard to the terms of Paragraph 3.5, a material and adverse change in risk for the TSP in performing the TSP's obligations under this Agreement and any TARA to which the TSP is party after the Redeployment Variation has been implemented and, if so, what provision should be made in respect thereof within the terms of Paragraph 14.

6.6 If it is determined pursuant to the Dispute Resolution Agreement that any changes are required to be made to the Redeployment Variation Depot Site proposed by the Secretary of State, the Secretary of State may, in her sole discretion:

- (a) accept such determination (in which case it shall be binding on the parties) or agree the Redeployment Variation Depot Site with the TSP, and proceed with the implementation of the Redeployment Variation pursuant to this Part I (*Redeployment Variation*); or
- (b) withdraw the Redeployment Variation.

7. REDEPLOYMENT VARIATION DEPOT SPECIFICATION

7.1 When serving a Preliminary Redeployment Variation Notice, or as soon as reasonably practicable afterwards, the Secretary of State shall either:

- (a) state that she requires the TSP to develop the Redeployment Variation Depot Specification in consultation with the Secretary of State; or
- (b) state that she will herself develop (or procure the development of) the Redeployment Variation Depot Specification in consultation with the TSP.

7.2 The parties shall, within thirty (30) Business Days of the Preliminary Redeployment Variation Notice, meet to discuss and agree practical working arrangements for the development of the Redeployment Variation Depot Specification. In the absence of agreement as to these arrangements at any time the Secretary of State may specify the arrangements to which the parties are to work, and may modify such specification from time to time.

- 7.3 The Redeployment Variation Depot Specification shall be developed so as to include:
- (a) whether the Redeployment Variation Depot will be a New Redeployment Depot or an Existing Depot (or a combination);
 - (b) the site or proposed site of the Redeployment Variation Depot(s) at the Redeployment Variation Depot Site(s) by reference to a plan not smaller in scale than 1:1250;
 - (c) the proposed design of the Redeployment Variation Depot(s);
 - (d) details of the proposed Redeployment Variation Depot(s) Works;
 - (e) details of plant and equipment to be provided at the Redeployment Variation Depot(s);
 - (f) details of the conditions of any existing facilities including plant and equipment at an Existing Depot (if proposed);
 - (g) a detailed programme for completion of the Redeployment Variation Depot(s) Works;
 - (h) details of any Network Changes required for the Redeployment Variation;
 - (i) details of any Depot Changes required for the Redeployment Variation;
 - (j) details of any Depot Connections required for the Redeployment Variation;
 - (k) details of any proposed Planning Permissions required for the Redeployment Variation Depot(s);
 - (l) details of how the Redeployment Variation Depot will be meet the Depot Requirements; and
 - (m) an Indicative Price and Indicative Cost Plan as described in Paragraph 5.
- 7.4 The parties shall act in good faith and use reasonable endeavours to agree, by a process of iterative discussion and exchange of information, a Redeployment Variation Depot Specification for a Redeployment Variation Depot which would as built be reasonably able to meet the Depot Requirements.
- 7.5 The Secretary of State may serve a notice (the **Redeployment Variation Depot Specification Decision Notice**) on or at any time after twenty (20) Business Days after service of the Redeployment Variation Depot Site Notice Date, specifying a date (the **Redeployment Variation Depot Specification Decision Date**) after which the Secretary of State may refer the matter of the Redeployment Variation Depot Specification for determination pursuant to the Dispute Resolution Agreement, in accordance with Paragraph 7.6, in the absence of prior written agreement between the parties as to the Redeployment Variation Depot Specification. The Redeployment Variation Depot Specification Decision Date specified by the Secretary of State shall be a date at least after twenty (20) Business Days after service of the Redeployment Variation Depot Site Decision Notice.
- 7.6 The parties agree that at any time after the Redeployment Variation Depot Site Decision Date the Secretary of State may refer for determination pursuant to the Dispute

Resolution Agreement any Dispute arising as to whether the proposed Redeployment Variation Depot Specification would as built:

- (a) be reasonably able to satisfy, for the Redeployed Sets, the Depot Requirements and, if it does not do so, in what respects it does not do so;
- (b) represent, having regard to the terms of Paragraph 3.5, a material and adverse change in risk for the TSP in performing the TSP's obligations under this Agreement and any TARA to which the TSP is party after the Redeployment Variation has been implemented and, if so, what provision should be made in respect thereof within the terms of Paragraph 14.

7.7 If it is determined pursuant to the Dispute Resolution Agreement that any changes are required to be made to the Redeployment Variation Depot Specification proposed by the Secretary of State, the Secretary of State may, in her sole discretion:

- (a) accept such determination (in which case it shall be binding on the parties) or agree the Redeployment Variation Depot Specification with the TSP, and proceed with the implementation of the Redeployment Variation pursuant to this Part I (*Redeployment Variation*); or
- (b) withdraw the Redeployment Variation.

8. IMPLEMENTATION OF A REDEPLOYMENT VARIATION

8.1 If, following:

- (a) the service of a Preliminary Redeployment Variation Notice;
- (b) agreement between the parties on or determination pursuant to the Dispute Resolution Agreement of the Redeployment Variation Depot Site; and
- (c) agreement between the parties on or determination pursuant to the Dispute Resolution Agreement of the Redeployment Variation Depot Specification,

the Secretary of State wishes to proceed with the Redeployment Variation, the Secretary of State shall issue to the TSP a further Redeployment Variation Notice (hereafter a **Further Redeployment Variation Notice**) and require the TSP to provide its final Required Response and final Risk Assessment within one (1) month thereafter, which the TSP shall duly provide.

8.2 The Further Redeployment Variation Notice:

- (a) shall provide for either a New Redeployment Depot or an Existing Depot at the Redeployment Variation Depot Site with the characteristics required by the Redeployment Variation Depot Specification;
- (b) may require the TSP to procure in accordance with Paragraph 11 the performance of the Redeployment Variation Depot Works;
- (c) may require the TSP to assume responsibility for all or any of the matters referred to in Paragraph 10;
- (d) shall require the TSP to make available Redeployed Sets from the Redeployment Variation Depot when the Redeployment Variation Depot is completed;

- (e) shall confirm the number of Redeployed Sets that are to be deployed to the Redeployment Variation Depot;
- (f) shall set out the Proposed Implementation Period in respect of the Redeployment Variation; and
- (g) shall confirm the terms of the new, additional TARA to be entered into by the TSP in accordance with the terms of this Schedule 8 (*Variations*).

8.3 The Further Redeployment Variation Notice shall not:

- (a) require deployment of the Redeployed Sets to the Redeployment Variation Depot before completion of the Redeployment Variation Depots; or
- (b) require the Set Availability Payment under the TARA relating to the Sets that are to become the Redeployed Sets to cease to be payable in accordance with the relevant TARA until the relevant Redeployed Sets are made available at the First Scheduled Handover Time in accordance with the new TARA.

8.4 If, following receipt of the TSP's final Required Response, the Secretary of State wishes to proceed with the Redeployment Variation, the Secretary of State shall issue to the TSP an Authority to Proceed with the Redeployment Variation (annexing the Redeployment Variation Depot Specification as agreed or determined) as provided for in Paragraph 4 of Part C (*Additional Procedural Aspects of Variations*) of Schedule 8 (*Variations*) (the **Authority to Proceed with Redeployment Variation**).

8.5 For the avoidance of doubt, the Secretary of State:

- (a) may proceed with the Redeployment Variation on the basis that she will procure the performance of the Redeployment Variation Depot Works through a procurement process which is not conducted by the TSP;
- (b) may require the TSP to assist and cooperate with the performance of the Redeployment Variation Depot Works through such a procurement process; and
- (c) shall not be obliged to issue an Authority to Proceed with any Redeployment Variation.

8.6 Where the Secretary of State reasonably considers that the required timescale for implementation of a Redeployment Variation does not allow the Redeployment Variation Notice procedure to be followed until the Redeployment Variation is agreed or determined, the Secretary of State may issue an Authority to Proceed with the Redeployment Variation at any time following the issue of a Preliminary Redeployment Variation Notice, even if the details for implementing the Redeployment Variation specified in any such notice have not yet been agreed or determined, provided that the Secretary of State shall allow as much time as reasonably possible prior to issuing the Authority to Proceed with the Redeployment Variation in order to allow discussion of the Redeployment Variation with the TSP in accordance with this Part I (*Redeployment Variation*). In that event, the provisions of Paragraph 4.3 of Part C (*Additional Procedural Aspects of Variations*) of Schedule 8 (*Variations*) shall apply with effect from the date of the Authority to Proceed with the Redeployment Variations as if the Contemplated Variation Notice had been a Required Variation Notice and the TSP shall not be obliged to commence implementing the Redeployment Variation unless the Secretary of State provides Temporary Financial Accommodation in respect of any expenditure incurred or

to be incurred in connection with any such Redeployment Variation pending agreement or determination of the Redeployment Variation.

9. IMPLEMENTATION TIMETABLE

- 9.1 The Proposed Implementation Period in respect of a Redeployment Variation shall be set out in the relevant Redeployment Variation Notice.
- 9.2 The parties shall agree or the Secretary of State may specify the overall timetable for implementation of the Redeployment Variation and the timings within that when the deliverables required by this Part I (*Redeployment Variation*) are required to be achieved (the **Implementation Timetable**).
- 9.3 Subject to Paragraph 10.1, if the granting of Planning Permission in respect of the Redeployment Variation is delayed for whatever reason in respect of an Redeployment Variation Depot Site, the TSP shall be relieved from its obligations to commence the relevant Redeployment Variation Depot Works at the respective Redeployment Variation Depot Site in accordance with the Redeployment Variation Depot Specification and such date shall be extended by such period as would have been granted to allow the TSP to subsequently implement the Redeployment Variation.
- 9.4 The TSP shall promptly notify the Secretary of State within ten (10) Business Days:
- (a) of the delay (if any) in meeting the dates for implementation specified in the Redeployment Variation Depot Specification; and
 - (b) propose to the Secretary of State a revised timetable for performing the Redeployment Variation Depot Works (the **Revised Implementation Timetable**).
- 9.5 The Secretary of State and the TSP shall seek to agree the Revised Implementation Timetable as soon as possible and in doing so shall agree such dates in respect of the Revised Implementation Timetable as are fair and reasonable in the circumstances.
- 9.6 In the absence of an agreement of the Revised Implementation Timetable within ten (10) Business Days of delivery of such proposed Revised Implementation Timetable, the Revised Implementation Timetable shall be determined at the instance of either party in accordance with the Dispute Resolution Agreement.
- 9.7 Once agreed or determined the Redeployment Variation shall be amended to reflect the Revised Implementation Timetable.

10. REDEPLOYMENT VARIATION DEPOT PERMISSIONS AND CONNECTIONS

- 10.1 The TSP shall use reasonable endeavours to obtain all requisite Planning Permissions in respect of the Redeployment Variation Depot Site in accordance with the Redeployment Variation Depot Specification as soon as reasonably practicable after being required by the Secretary of State to do so, and the reasonable and proper costs incurred in obtaining all such Planning Permissions shall be the responsibility of the Secretary of State until such date as the relevant Planning Permissions are granted in such form as to satisfy the requirements of the Redeployment Variation Depot Specification.
- 10.2 The TSP shall use reasonable endeavours to procure all necessary Depot Changes and Network Changes required by the Redeployment Variation Depot Specification as soon as reasonably practicable after being required by the Secretary of State to do so, and the reasonable and proper cost of procuring all such Depot Changes and Network Changes

shall be the responsibility of the Secretary of State until such date as the relevant Depot Change or Network Change is completed in accordance with the requirements of the Redeployment Variation Depot Specification.

- 10.3 The TSP shall use reasonable endeavours to procure all necessary Depot Connections required by the Redeployment Variation Depot Specification as soon as reasonably practicable after being required by the Secretary of State to do so, and the reasonable and proper cost of securing all appropriate Depot Connections shall be the responsibility of the Secretary of State until such date as the relevant Depot Connections are completed in accordance with the requirements of the Redeployment Variation Depot Specification.
- 10.4 The TSP shall use reasonable endeavours to procure that the Redeployment Variation Depot Lease or depot access agreement for the Redeployment Variation Depot Site (if applicable) grants the TSP sufficient rights to enable the Redeployment Variation to be implemented as soon as reasonably practicable after being required by the Secretary of State to do so, including:
- (a) sufficient access rights to the Redeployment Variation Depot to enable the Services and Maintenance Arrangements to be provided by the TSP;
 - (b) where required by the Redeployment Variation, vacant possession of the Redeployment Variation Depot Site in favour of the TSP; and
 - (c) appropriate rights to undertake and complete the performance of the Redeployment Variation Depot Works to the Redeployment Variation Depot Specification.
- 10.5 The Secretary of State may at any time and from time to time modify, withdraw or reinstate all or any of her requirements within the terms of Paragraphs 10.1 to 10.4.
- 10.6 Notwithstanding the role contemplated for the TSP by Paragraphs 10.1 to 10.4 and 11, the Secretary of State may by notice to the TSP at any time either substitute herself for the TSP's obligations under any one or more of Paragraphs 10.1 to 10.4 and 11 (and instead assume responsibility (directly or through a nominee) therefor) or alternatively impose an equivalent obligation on the train operator providing, or that is to provide, the passenger services which will utilise the Redeployed Sets.
- 10.7 In the event of any such substitution:
- (a) the TSP shall use all reasonable endeavours to assist the substitute in the timely discharge of its assumed obligation; and
 - (b) the Secretary of State shall be responsible for any reasonably and properly incurred cost of the TSP incurred in accordance with this Part I (*Redeployment Variation*) in respect of the Redeployment Variation prior to such substitution or in assisting the substitute with the implementation of the Redeployment Variation.
- 10.8 Where the Secretary of State withdraws the Redeployment Variation by issuing a notice substantially in the form of Form 3 set out in Appendix C (*Form 3: Withdrawal Notice*) to Part C (*Additional Procedural Aspects of Variations*) of Schedule 8 (*Variations*) (**Redeployment Variation Withdrawal Notice**) the Secretary of State will reimburse all TSP's costs reasonably and properly incurred and/or committed exclusively in connection with the Redeployment Variation up to the date of the Redeployment Variation Withdrawal Notice, including any Sub-Contractor Breakage Costs and all reasonable costs of

rectification required to remove any Redeployment Variation Depot Works performed prior to the issue of a Redeployment Variation Withdrawal Notice.

11. APPOINTMENT OF REDEPLOYMENT VARIATION CONSTRUCTION SUB-CONTRACTOR

11.1 Following the Authority to Proceed with Redeployment Variation, and if required so to do by the final Redeployment Variation Notice, the TSP shall promptly procure the appointment of a sub-contractor to perform the Redeployment Variation Depot Works (in accordance with the Redeployment Variation Depot Specification and the terms of any Planning Permission granted in respect of the Redeployment Variation Depot) (the **Redeployment Variation Construction Sub-Contractor**) in accordance with Applicable Laws and Standards and procurement best practice at the time.

11.2 The TSP shall prequalify bidders for appointment as the Redeployment Variation Construction Sub-Contractor who best meet the **Bidder Criteria** being, in respect of any bidder for the Redeployment Variation Depot Works, that such bidder is likely to be able to satisfy the following criteria:

- (a) it is of sufficient financial standing and stability to be able to perform the Redeployment Variation Depot Works and meet its obligations under the terms upon which it is to be appointed;
- (b) it is able to provide an appropriate security package to the TSP in respect of providing appropriate comfort to the TSP in respect of that bidder meeting its obligations under the terms upon which it is to be appointed;
- (c) it has a satisfactory health and safety record, as judged against the health and safety records of sub-contractors generally appointed by the TSP and/or the Maintainer on projects of a similar size, scope, nature and complexity as the Redeployment Variation Depot Works;
- (d) it accepts appropriate commercial terms and contractual incentive provisions required to incentivise and perform the Redeployment Variation Depot Works in accordance with the proposed construction programme without delay (including liquidated damages commensurate with a construction contract of similar size, scope, nature and complexity as the Redeployment Variation Depot Works);
- (e) it is able to meet its obligations under the terms upon which it is to be appointed;
- (f) it is able to meet market standard levels of assumption of risk in respect of the Redeployment Variation Depot Works, including, the assumption of the risks for any Contamination, Defects, Services Media and Finds;
- (g) it has the technical capability to be able to perform the Redeployment Variation Depot Works to a standard commensurate to that required of the TSP; and
- (h) it has sufficient available resources (including experienced supervision) to be able to perform the Redeployment Variation Depot Works in accordance with the Redeployment Variation Depot Specification and proposed construction programme.

11.3 The TSP shall provide the Secretary of State with such information concerning the procurement and appointment of Redeployment Variation Construction Sub-Contractor as it is reasonable for the Secretary of State to require and reasonable to expect the TSP to provide.

- 11.4 Following return of the bidder's bids for the Redeployment Variation Depot Works, the TSP shall issue a report to the Secretary of State summarising the bids received and stating its preferred bidder for the Redeployment Variation Depot Works (the **Preferred Bidder**) and shall provide an Updated Cost Plan for that part of the Redeployment Variation Depot Works on the basis of the Preferred Bidder's bid price.
- 11.5 The Secretary of State shall, within thirty (30) Business Days of receipt of the TSP's report issued pursuant to Paragraph 11.4, by written notice to the TSP either:
- (a) approve the appointment of the Preferred Bidder as the Redeployment Variation Construction Sub-Contractor; or
 - (b) advise the TSP that she intends to review all or some of the bidder's bids for the Redeployment Variation Depot Works (a **Bidder Review**).
- 11.6 If the Secretary of State advises the TSP that she will undertake a Bidder Review, the parties will act in good faith and use reasonable endeavours to agree, by a process of iterative discussion and exchange of information the appointment of the Redeployment Variation Construction Sub-Contractor. If the parties do not so agree by the date falling thirty (30) Business Days after the date of the Secretary of State's notice that she will undertake a Bidder Review, the Secretary of State may, by notice in writing to the TSP directly appoint the Redeployment Variation Construction Sub-Contractor of her choice herself.

12. **FINAL COST PLAN**

- 12.1 The TSP shall within thirty (30) Business Days of receipt of the Authority to Proceed with any Redeployment Variation, provide to the Secretary of State the Final Price included in the Final Cost Plan stating:
- (a) the total final price of the Redeployment Variation (including the Redeployment Variation Depot Works) with reference to the identifiable cost headings in the preceding Updated Cost Plan; and
 - (b) to the extent that any Final Price includes Provisional Sum Items these shall be clearly identified on the Final Cost Plan and the TSP shall use reasonable endeavours to procure that the Redeployment Variation Construction Sub-Contractor provides the most economically advantageous single identifiable fixed costs for such Provisional Sum Items as soon as reasonably practicable. The parties shall, within thirty (30) Business Days meet to agree, acting in good faith, such remaining Provisional Sum Items, but provided that in the absence of or following any such meeting the Secretary of State may agree such remaining Provisional Sum Items directly with the Redeployment Variation Construction Sub-Contractor.
- 12.2 The parties shall co-operate together with the objective of mitigating any increases in the Provisional Sum Items when converted to single identifiable cost.

13. **ADDITIONAL FUNDING REQUIREMENT**

The parties agree that the provisions of Part D (*Financing of Variations*) of Schedule 8 (*Variations*) shall apply in respect of any Additional Funding Requirement.

14. **DETERMINATION OF SET AVAILABILITY PAYMENT**

- 14.1 The parties agree that any assessment of the financial consequences of performing this Agreement as varied by a Redeployment Variation, whether by either agreement between them or determination pursuant to the Dispute Resolution Agreement is to be translated into Revised Inputs which are to be incorporated into a Run of the Financial Model to generate a restated Set Availability Payment.
- 14.2 The parties agree that any determination pursuant to the Dispute Resolution Agreement is to be a fair and reasonable assessment of the Redeployment Variation and the Revised Inputs that are required in order to leave the parties in a "no better and no worse" in terms of the TSP's ability to provide the Services to the contractual standards and its economic position (as described in Paragraph 4.4 of Part G (*Runs of the Financial Model*) of Schedule 8 (*Variations*)) after the Variation has been implemented than before and:
- (a) with respect to the calculation of the Revised Inputs on the basis:
 - (i) of any prior agreement or determination pursuant to Paragraph 3.5 in respect of any material and adverse change in risk; and
 - (ii) subject to Paragraph 14.2(a)(i), of Stable Risk, Altered Risk, the Variable Considerations and the Standard Considerations which shall be the relevant considerations on which the Revised Inputs to be used for determining the adjustment to the Set Availability Payment in accordance with Paragraph 4 of Part G (*Runs of the Financial Model*) of Schedule 8 (*Variations*) shall be determined;
 - (b) with respect to cost overruns, that the TSP shall be liable for any additional costs related to the Redeployment Variation Depot Works not referred to in the Final Cost Plan, but:
 - (i) save in respect of any Provisional Sum Item identified on the Final Cost Plan and/or agreed directly by the Secretary of State in accordance with Paragraph 12(b); and
 - (ii) the TSP's aggregate liability shall be limited to the sum of the amount of Project Management Fees (being not more than five per cent. (5%) of the total outturn cost) the TSP had forecast that it would make in the Final Cost Plan following completion of the Redeployment Variation Depot Works; and
 - (c) with respect to any Provisional Sum Item identified in the Final Cost Plan that the Secretary of State shall receive the benefit of any savings when such costs are converted into a single identifiable cost to be included in the Final Price. In the event such Provisional Sum Items when converted are greater than the Provisional Sum Items in the Final Cost Plan such additional cost shall be the responsibility of the Secretary of State.
- 14.3 The Secretary of State shall, if the parties have agreed any one or more aspects of the Stable Risk, Altered Risk, the Variable Considerations or the Standard Considerations, include details of such agreement in the referral for determination in accordance with the Dispute Resolution Agreement and the determination to be made in accordance with the Dispute Resolution Agreement shall adopt the agreement of the parties on those aspects as the determination on those aspects.

14.4 The Secretary of State shall notify the TSP of whether she wishes to proceed with the Redeployment Variation within ten (10) Business Days of the determination of the Dispute pursuant to the Dispute Resolution Agreement.

14.5 The TSP shall, as soon as reasonably practicable following determination of the Revised Inputs or if the TSP does not within thirty (30) Business Days of notification of such determination, the Secretary of State shall perform a Run of the Financial Model to determine the revised Set Availability Payment in respect of the Redeployment Variation.

15. OPEN BOOK ACCESS AND RECORDS

The TSP shall, and (where the Redeployment Variation Construction Sub-Contractor is a Second Tier Supplier for the purposes of this Agreement) shall procure that the Redeployment Variation Construction Sub-Contractor shall, comply with the terms of Paragraph 1 of Schedule 11 (*Information and Confidentiality*).

16. GROUND CONDITIONS AND CONTAMINATION AT REDEPLOYMENT VARIATION DEPOT SITES

16.1 Save where the Redeployment Variation Construction Sub-Contractor is responsible for procuring the Redeployment Variation Depot Surveys, the Secretary of State shall procure Redeployment Variation Depot Surveys in respect of the Redeployment Variation Depot Site and provide such Redeployment Variation Depot Surveys to the TSP and the Redeployment Variation Construction Sub-Contractor with an appropriate duty of care from such reputable surveyors to each of them as are satisfactory to the TSP and the Redeployment Variation Construction Sub-Contractor.

16.2 The TSP accepts and will price in relation to the Redeployment Variation Depot Site responsibility (including any financial and other consequences which result directly or indirectly) for any Contamination, Defects, Services Media or Finds identified in the Redeployment Variation Depot Surveys at the Redeployment Variation Site.

16.3 The Secretary of State accepts in relation to the Redeployment Variation Depot Site entire responsibility (including any financial and other consequences which result directly or indirectly) for any Contamination, Defects, Services Media and Finds not identified in the Redeployment Variation Depot Surveys to the extent that such responsibility is not accepted by the Redeployment Variation Construction Sub-Contractor in its sub-contract.

16.4 Save where the Redeployment Variation Construction Sub-Contractor is responsible for Contamination, Defects, Services Media and/or Finds pursuant to its sub-contract, where the Secretary of State is responsible for Contamination, Defects, Services Media and/or Finds in accordance with Paragraph 16.3 at the Redeployment Variation Depot Site the Secretary of State shall hold the TSP harmless from cleaning up and/or otherwise dealing with such Contamination, Defects, Services Media and/or Finds and shall indemnify the TSP in respect of all Losses incurred by the TSP resulting from such Contamination, Defects, Services Media and/or Finds and the TSP shall clean up or otherwise deal with such Contamination, Defects, Services Media and/or Finds and take steps reasonably necessary to prevent the recurrence of the same all in accordance with Good Industry Practice, all Relevant Approvals and Law to the extent that such responsibility is not accepted by the Redeployment Variation Construction Sub-Contractor in its sub-contract.

17. BUSINESS RATES

The Secretary of State shall procure that the Relevant Operator shall pay the applicable Business Rates in respect of the Redeployment Variation Depots as a pass through cost

in respect of any Reporting Periods, in each case as itemised (without any mark-up or margin applied by the TSP) on the invoice which the TSP has submitted to the Relevant Operator in accordance with the new TARA.

18. POST-IMPLEMENTATION MATTERS

18.1 The parties agree that from the First Scheduled Handover Time, the following scaling of the Deductions will apply:

- (a) twenty five per cent. (25%) for the first five (5) Reporting Periods;
- (b) fifty per cent. (50%) for the next immediately following four (4) Reporting Periods;
and
- (c) seventy-five per cent. (75%) for the next immediately following four (4) Reporting Periods.

18.2 The parties shall make such amendments to the Escrow Documents that are required to give effect to the terms of the Redeployment Variation as have been discussed and agreed by the parties or determined pursuant to the Dispute Resolution Agreement and thereafter deposit those amended documents in accordance with Part F (*Identity of the Financial Model*) of Schedule 8 (*Variations*).

Appendix A to Part I of Schedule 8

Indicative Cost Plan

Cost Headings	
Redeployment Variation Construction Sub-Contractor costs	
Site overheads and prelim cost	
Design costs	
Project management costs	
Material costs	
Sub-contracts	
Labour cost	
Plant and equipment cost	
Contingency	
Sub-total (Sub-Contractor costs)	A
TSP costs	
Project management costs	
Advisors (e.g. LTA) costs	
Contingency	
Sub-total (TSP costs)	B
Total out-turn costs	A+B
Project management fees (not more than five per cent. (5%) x total out-turn cost)	C
Provisional sums (if required)	D
Total Redeployment Variation Depot cost	A+B+C+D

Part J of Schedule 8

Additional Procedural Aspects of Redeployment Variations

1. PROGRESSING TERMS OF THE VARIATION

- 1.1 The TSP shall co-operate with the Secretary of State in carrying out such investigations and confirmations as may be reasonably required by the Secretary of State in order to confirm the TSP's responses to each of the requirements in Part I (*Redeployment Variation*) of Schedule 8 (*Variations*).
- 1.2 Where the Secretary of State considers that she is likely to require a Redeployment Variation pursuant to this Schedule 8 (*Variations*), the Secretary of State shall use all reasonable endeavours to propose such Redeployment Variation to the TSP in a Redeployment Variation Notice in sufficient time for the requirements of Part I (*Redeployment Variation*) of Schedule 8 (*Variations*) to be completed before the date on which implementation of such Variation needs to commence.

2. RECORDING TERMS OF REDEPLOYMENT VARIATIONS

Amendment of Terms of this Agreement

- 2.1 Where any Redeployment Variation that has been authorised or required in accordance with Part I (*Redeployment Variation*) of Schedule 8 (*Variations*) contemplates an amendment to the terms of this Agreement as a direct consequence of the Redeployment Variation, the parties shall enter into a written agreement duly amending the terms of this Agreement as soon as reasonably practicable thereafter.

Amendment of Terms of any existing or future TARA

- 2.2 Where any Redeployment Variation that has been authorised or required in accordance with Part I (*Redeployment Variation*) of Schedule 8 (*Variations*) contemplates an amendment to the terms of any existing TARA or any future TARA to be entered into (including any amendment to the Set Availability Payment payable thereunder) as a direct consequence of the Redeployment Variation:
 - (a) the Secretary of State shall as soon as reasonably practicable thereafter procure that the Relevant Operator, where that Relevant Operator is a party to the relevant TARA enters into a TARA Amendment Agreement or enters into the relevant TARA on those amended terms required to give effect to the terms of the Redeployment Variation; and
 - (b) the TSP shall as soon as reasonably practicable thereafter, subject to Paragraph 2.3, as appropriate, enter into that TARA Amendment Agreement or enter into the relevant TARA on those amended terms required to give effect to the terms of the Redeployment Variation.
- 2.3 The TSP shall:
 - (a) provide a final draft of any TARA Amendment Agreement or TARA on amended terms to the Secretary of State no later than ten (10) Business Days (or such longer period as the Secretary of State may reasonably require) prior to the intended date for signature of any such agreement in order that the Secretary of State may determine whether, in the Secretary of State's reasonable opinion, the

amendments set out in any such agreement appropriately reflect the terms of the Redeployment Variation that has been agreed or determined; but

- (b) not enter into any such TARA Amendment Agreement or TARA on amended terms without the prior written consent of the Secretary of State (not to be unreasonably withheld) if, in the Secretary of State's reasonable opinion, the amendments set out in that agreement do not reflect the terms of the relevant Variation that has been agreed or is required pursuant to this Schedule 8 (*Variations*).

3. **WITHDRAWAL OF REDEPLOYMENT VARIATIONS**

The Secretary of State may withdraw any Redeployment Variation Notice or Authority to Proceed with Redeployment Variation at any time by issuing a notice substantially in the form of Form 3 set out in Appendix C (*Form 3: Withdrawal Notice*) of Part C (*Additional Procedural Aspects of Variations*) of Schedule 8 (*Variations*) (a **Withdrawal Notice**), in which case the TSP shall:

- (a) to the extent it has commenced implementing that Redeployment Variation, immediately cease to implement that Redeployment Variation; and
- (b) where the Secretary of State has issued an Authority to Proceed with Redeployment Variation, be entitled to make a claim to recover from the Secretary of State any costs that the TSP has reasonably and properly incurred exclusively in connection with implementing that Redeployment Variation including any Sub-Contractor Breakage Costs arising from the Withdrawal Notice and all reasonable costs of rectification required to rectify or remove any works carried out prior to service of the Withdrawal Notice pursuant to such Redeployment Variation prior to the TSP being sent the Withdrawal Notice and such withdrawal will be treated as a Delayed Acceptance Event under limb (i) of the definition thereof to the extent this occurs prior to a Scheduled Acceptance Date and such withdrawal satisfies the requirements of the definition of Delayed Acceptance Event.

4. **CONTRACT MANAGEMENT OF REDEPLOYMENT VARIATIONS**

Referencing of Redeployment Variations and correspondence

4.1 The Secretary of State shall:

- (a) allocate a unique number to the Redeployment Variation that is the subject of any Redeployment Variation Notice, upon the issue of any such notice; and
- (b) include all Redeployment Variations in the sequentially numbered register of all potential and actual Variations maintained in accordance with this Agreement.

4.2 Each party shall procure that all correspondence it delivers in relation to any such Redeployment Variation subsequent to the allocation of such number shall bear that number.

Costs and expenses of disputes in respect of Redeployment Variations

4.3 Each party shall pay its own costs and expenses, in each case of any nature whatsoever, incurred in connection with any determination in accordance with the provisions of the Dispute Resolution Agreement of the terms of any Redeployment Variation and such

costs and expenses shall not be taken into account in costing any Redeployment Variation.

- 4.3A Where, prior to the issue of any Authority to Proceed, the TSP reasonably and properly incurs costs or expenses exclusively in connection with the investigation, preparation or negotiation of a Redeployment Variation, provided that the TSP notifies the Secretary of State in advance of such costs and expenses and the Redeployment Variation to which such costs or expenses are incurred is being withdrawn, such costs and expenses will be payable by the Secretary of State unless the sole reason for the Variation being withdrawn is as a result of the TSP providing a price in the Required Response and subsequently, unreasonably increasing that price, such that the Secretary of State no longer wishes to implement the Redeployment Variation, in which case, such costs and expenses shall be payable by the TSP.

Disputes

- 4.4 Except as expressly stated otherwise in this Part J (*Additional Procedural Aspects of Redeployment Variations*), if the TSP disputes a decision of the Secretary of State under this Part J (*Additional Procedural Aspects of Redeployment Variations*), it may refer the Dispute for resolution pursuant to the Dispute Resolution Agreement.

SCHEDULE 9

Change in law

1. QUALIFYING CHANGE IN LAW

Occurrence of Qualifying Change in Law

1.1 If a Qualifying Change in Law occurs or is shortly to occur, then either party may write to the other to express an opinion on its likely effects, giving details of its opinion of:

- (a) any potential Derogations that may be sought to mitigate or avoid the need for, or the cost of, compliance with that Qualifying Change in Law;
- (b) any necessary change in Services;
- (c) whether any changes are required to the terms of this Agreement or the TARA to deal with that Qualifying Change in Law;
- (d) whether relief from compliance with obligations is required, including the obligation of the TSP to achieve the Delivery Schedule in relation to the Fleet and/or comply with the Performance Regime (as defined in the TARA) during the implementation of that Qualifying Change in Law;
- (e) any loss of revenue that will result from that Qualifying Change in Law;
- (f) any Estimated Change in Costs that will directly result from that Qualifying Change in Law;
- (g) any Capital Expenditure that is required or no longer required as a result of that Qualifying Change in Law taking effect during the Post Design Period; and
- (h) any other financial, legal or commercial effects that directly result from that Qualifying Change in Law,

in each case giving in full detail the procedure for implementing such change in Services.

1.2 Responsibility for the costs of implementation (and any resulting variation to the Indexed SAP that would be required) shall be dealt with in accordance with Paragraphs 1.3 to 1.5 inclusive.

Mitigation of Effects of Qualifying Change in Law

1.3 As soon as practicable after receipt of any notice from either party under Paragraph 1.1, the parties shall discuss the matters referred to in Paragraph 1.1 and any ways in which the TSP can mitigate the effect of the relevant Qualifying Change in Law, including, and for the purpose of any such discussion and agreement, the TSP shall:

- (a) provide evidence that the TSP has used reasonable endeavours (including (where practicable) the use of competitive quotes) to oblige its sub-contractors to minimise any increase in costs and maximise any reduction in costs;
- (b) demonstrate, where appropriate, how any Capital Expenditure to be incurred or avoided is being measured in a cost effective manner, including showing that when such expenditure is incurred or would have been incurred, any foreseeable Changes in Law at that time has been taken into account by the TSP;

- (c) give evidence as to how that Qualifying Change in Law has affected prices charged by any businesses providing services the same as or similar in nature to the Services, including similar businesses in which the Shareholders or their Affiliates carry on business; and
- (d) demonstrate that any expenditure that has been avoided, which was anticipated to be incurred to replace or maintain those Assets and/or those Depots that have been affected by that Qualifying Change in Law, has been taken into account in the amount which in the TSP's opinion has resulted or is required under Paragraphs 1.1(f) and/or (g).

1.4 Without prejudice to the TSP's obligations pursuant to Paragraph 1.3, where any notice under Paragraph 1.1 has been duly served by either party:

- (a) the Secretary of State shall issue a Required Variation Notice pursuant to Paragraph 1(a)(iii) of Part A (*Scope and Consequences of Variations*) of Schedule 8 (*Variations*) in respect of any Variation(s) which in the opinion of the Secretary of State (having regard to the evidence provided pursuant to Paragraph 1.3) is required in response to the relevant Qualifying Change in Law (a **Qualifying Change in Law Variation**); and
- (b) any assessment of the financial consequences of performing this Agreement as varied by a Qualifying Change in Law Variation (whether by either agreement between the parties or determination pursuant to the Dispute Resolution Agreement pursuant to Part A (*Scope and Consequences of Variations*) of Schedule 8 (*Variations*)) will be translated into Revised Inputs which are to be incorporated into a Run of the Financial Model to generate a restated Indexed SAP, but provided that the TSP's Share of any Capital Expenditure shall not be included in the calculation of the relevant Revised Inputs.

1.5 The TSP's Share shall be solely for the account of the TSP.

2. IRRECOVERABLE VAT

The Secretary of State shall pay to the TSP from time to time as the same is incurred by the TSP sums equal to any Irrecoverable VAT but only to the extent that it arises as a result of a Change in Law. Any such payment shall be made within twenty eight (28) days of the delivery by the TSP to the Secretary of State of written details of the amount involved accompanied by details as to the grounds for and computation of the amount claimed.

3. OTHER CHANGE IN LAW

The TSP shall be on risk for all Changes in Law other than Qualifying Changes in Law.

4. DEROGATIONS

4.1 If a Qualifying Change in Law occurs or is shortly to occur and one or more potential Derogations are proposed by either party pursuant to Paragraph 1.1(a), the TSP shall, as soon as practicable, consult with the Secretary of State and produce a detailed plan in a form reasonably satisfactory to the Secretary of State (a **Derogation Plan**) identifying:

- (a) the procedure and timetable for developing, seeking and, if agreed, implementing the Derogation;

- (b) an estimate of the probable costs of development, seeking and implementation of the Derogation; and
 - (c) all information and support that is required from the Secretary of State and any third parties to develop, seek and implement the Derogation.
- 4.2 The Secretary of State shall, within a reasonable time of receiving the Derogation Plan, provide the TSP with a written notice either:
 - (a) instructing the TSP to seek the proposed Derogation in accordance with the Derogation Plan and, subject to Paragraph 4.3, the TSP shall be required to seek the Derogation in accordance with the Derogation Plan; or
 - (b) instructing the TSP not to seek the proposed Derogation, and Paragraph 4.8 shall apply.
- 4.3 The TSP shall not be required to seek the proposed Derogation if the TSP would be required to incur material expenditure to seek the proposed Derogation, unless the Secretary of State agrees to reimburse the TSP for its reasonable costs incurred in connection with seeking the Derogation.
- 4.4 If, in the process of seeking the Derogation pursuant to Paragraph 4.2, conditions are imposed that were not agreed in the Derogation Plan, the TSP shall promptly notify the Secretary of State and consult with the Secretary of State to produce an amended Derogation Plan as soon as practicable addressing the additional conditions and such amended Derogation Plan shall become the Derogation Plan for the purposes of this Paragraph 4.
- 4.5 If the TSP is successful in seeking the Derogation, the TSP shall promptly notify the Secretary of State of the success and of any conditions attached to the Derogation.
- 4.6 The Secretary of State shall, within a reasonable time of receiving notification from the TSP pursuant to Paragraph 4.5, provide the TSP with a written notice either:
 - (a) instructing the TSP to implement the Derogation in accordance with the Derogation Plan and, subject to Paragraph 4.7, the TSP shall be required to implement the Derogation in accordance with the Derogation Plan; or
 - (b) instructing the TSP not to implement the Derogation, and Paragraph 4.8 shall apply.
- 4.7 The TSP shall not be required to implement the Derogation if:
 - (a) such Derogation does not apply for the expected operational life of the Sets; or
 - (b) the TSP would be required to incur material expenditure to implement the Derogation, unless the Secretary of State agrees to reimburse the TSP for its reasonable costs incurred in connection with implementing the Derogation.
- 4.8 If the TSP is instructed not to seek and/or implement the Derogation pursuant to Paragraphs 4.2(b) or 4.6(b), or the TSP is not required to seek and/or implement the Derogation in accordance with Paragraphs 4.3 or 4.7, the provisions of Paragraphs 1.3 to 1.5 inclusive shall apply.

- 4.9 If the TSP is instructed to implement the Derogation pursuant to Paragraph 4.6(a) and implementing the Derogation requires any changes to the Services or to the terms of this Agreement or the TARA, the provisions of Paragraphs 1.3 to 1.5 inclusive shall apply.
- 4.10 Subject to Paragraphs 4.3 and 4.7(b), each party shall pay its own costs and expenses, in each case of any nature whatsoever, incurred in connection with preparing, negotiating and implementing a Derogation Plan.

Appendix A to Schedule 9

Foreseeable Changes in Law

Hard copy	prefix	Standard Number	Details of Change (where known)
08/30156922 DC	prEN	15220-2	Brake indicators – Part 2: Electrical operation brake indicators
09/30202541 DC	prEN	15380-4	Classification system for railway vehicles – Function groups
09/30205442 DC	FprEN	61375-1:2009	Train communication Network – General Architecture
09/30208429 DC	prEN	50467:2009	Electrical Connectors, Requirements and Test Methods
10/30216687 DC	DD CEN/TS	45545-2:2009	Requirements for fire behaviour of materials and components
09/30214359 DC	EN	50533	Three phase train line voltage characteristics
11/30235301 DC	EN	50547	Batteries for rail vehicles
10/30209452 DC	EN	16185-1	Braking systems of multiple units – Draft for Public Comment
10/30209455 DC	EN	16185-2	Braking systems of multiple units – Test methods – Draft for Public Comment
09/30168502 DC	EN	16028	Wheel / Rail friction management – Draft for Public Comment
11/30213783 DC	EN	50463-1	Energy measurement on board trains – Draft for Public Comment
11/30213786 DC	EN	50463-2	Railway applications. Energy measurement on board trains. Part 2. Energy measuring
11/30213789 DC	EN	50463-3	Railway applications. Energy measurement on board trains. Part 3. Data handling
11/30213792 DC	EN	50463-4	Railway applications. Energy measurement on board trains. Part 4. Communication
11/30213810 DC	EN	50463-5	Railway applications. Energy measurement on board trains. Part 5. Conformity assessment
10/30235844 DC	EN	61881-2	Aluminium electrolytic capacitors – Draft for Public Comment

Hard copy	prefix	Standard Number	Details of Change (where known)
10/30235845 DC	EN	61881-3	Electric double layer capacitors – Draft for Public Comment
10/30205116 DC	EN	15153-2	Warning horns – Draft for Public Comment
10/30205113 DC	EN	15153-1	Head, marker and tail lamps – Draft for Public Comment
10/30216933 dc	EN	50553	Requirements for running capability in case of fire on board of rolling stock
09/30195289 DC	EN	13272	Electrical lighting for rolling stock in public transport systems – Draft for Public Comment
10-30209530 DC	EN	16186-1	Driver's cab – Visibility, layout, access
10/30209514 DC	EN	16116-1	Design requirements for steps, handrails and associated staff access – Draft for Public Comment
10/30214903 DC	EN ISO	3095	Measurement of noise emitted by railbound vehicles – Draft for Public Comment
09/30209524 DC	EN	16019	Autocoupler – Draft for Public Comment
11/30156929 DC	EN	16241	Slack adjuster – Draft for Public Comment
10/30169416 DC	EN	15437-2	Axlebox condition monitoring – Draft for Public Comment
11 German prEN available through Standards Expert	EN	15654-1	Measurement of wheel and axle loads
11/30209536 DC	EN	14752	EN14752:2005 under amendment, Draft for Public Comment expected May 2011
05/30086725 DC	prEN	15328:2005	Braking – Brake pads
10/30237345 DC	BS	6853:1999	CoP fire precautions – passenger carrying trains
11/30250871 DC	EN	50388:2005	Railway applications. Power supply and rolling stock. Technical criteria for the coordination between power supply (substation) and rolling stock to achieve interoperability

Hard copy	prefix	Standard Number	Details of Change (where known)
Draft 2c Iss 3	GE/RT	8014(1)	Hot axle bearing detection (B5.2, 7.1, 7.2, 8.1, 8.2, 8.4, 9.2)
Draft 1c Iss 4	GE/RT	8030(2)	Requirements for a Train Protection and Warning System (2.3, 2.4)
Draft 1h Iss 2	GE/RT	8035(1)	Automatic Warning System (B9, B10)
10/30217513 DC	EN	50317:2002	Railway applications. Current collection systems. Requirements for and validation of measurements of the dynamic interaction between pantograph and overhead contact line
09/30202505 DC	EN	50367:2006	Technical criteria for the interaction between pantograph and overhead contact wire
11/30206274 DC	EN	60349-4	Electric traction. Rotating electrical machines for rail and road vehicles. Part 4. Permanent magnet synchronous electrical machines connected to an electronic converter
Draft 2b Iss 3	GE/RT	8006(2)	Assessment of Compatibility of Rail Vehicle Weights and Underline Bridges
11/30209527 DC	EN	16286-1	Railway applications. Gangway systems between vehicles. Part 1. Main applications
11/30241418 DC	EN	16286-2	Railway applications. Gangway systems between vehicles. Part 2. Acoustic measurements
11/30217674 DC	BS	5892-8	Railway applications. Wheelsets and bogies. Powered and non-powered wheelsets with inboard bearings. Product requirements
11/30247723 DC	BS IEC	60571	Railway applications. Electronic equipment used on rolling stock

SCHEDULE 10

Intellectual Property

1. INTELLECTUAL PROPERTY RIGHTS

Licences

- 1.1 Nothing in this Agreement or any TARA shall operate to transfer the Intellectual Property Rights of any party in any documents, material, information or data provided by or belonging to that party or its sub-contractors under this Agreement or any TARA to any other party or sub-contractor. All TSP IPR, Maintainer IPR, Manufacturer IPR or Third Party IPR shall at all times remain the property of the TSP, the Maintainer, the Manufacturer or the relevant third party, respectively (unless assigned or transferred subject to Paragraph 1.16).
- 1.2 The TSP hereby grants to the Secretary of State an irrevocable, royalty-free, non-exclusive licence of the Maintainer IPR in the Assets and the Non-Depot IPR Assets, the TSP IPR in the Assets and the Non-Depot IPR Assets, the Third Party IPR in the Assets and the Non-Depot IPR Assets, and the Manufacturer IPR in the Assets and the Non-Depot IPR Assets, in each case for the Licence Term and to the extent reasonably necessary (including following any Variation in accordance with the provisions of Schedule 8 (*Variations*) for the purposes of:
- (a) in relation to that TSP IPR and Maintainer IPR, and the Manufacturer IPR, using, operating, leasing, maintaining, servicing, repairing, overhauling, refurbishing, modifying, converting and adapting the Assets;
 - (b) in relation to that Third Party IPR:
 - (i) using, operating, leasing, maintaining, servicing, repairing, overhauling and refurbishing the Assets; and
 - (ii) modifying, converting and adapting the Assets, but only to the extent that the TSP, the Manufacturer, the Maintainer, or any of their Affiliates is entitled to use that Third Party IPR for those purposes;
 - (c) in relation to the TSP IPR, the Manufacturer IPR and the Maintainer IPR, manufacturing any Spares, Special Tools or Capital Spares (as defined in the Manufacture and Supply Agreement) to the extent that there is any TSP IPR, Manufacturer IPR or Maintainer IPR in it, in each case, following the expiry or termination of this Agreement and:
 - (i) only to the extent that the Manufacturer, the Maintainer or any of their Affiliates is unable, or unwilling on reasonable terms (including as to lead times), to supply them to the Secretary of State or her nominee. In determining whether any terms so offered (including as to lead times) are "reasonable" for the purpose of this Paragraph 1.2(c)(i), due regard shall be given to the terms (including as to lead times) and standards prevailing in the UK rail industry at that time from other suppliers of spares and/or special tools substantially similar to the Spares, the Special Tools and/or the Capital Spares (as defined in the Manufacture and Supply Agreement) at the then current time; and

- (ii) only for use in the maintenance, service, repair, overhaul, refurbishment, modification, conversion or adaptation of the Sets and Vehicles;
- (d) inviting, processing, evaluating and negotiating tenders for any activities relating to this Agreement, any Relevant Franchise Agreement, any TARA and/or the Maintenance Agreement (or any replacement of any of those agreements);
- (e) notwithstanding any other provision of this Schedule 10, in the case of any information contained in the Technical Library or the Technical Documents relating to the rescue and/or diversionary haulage of the Sets and/or Vehicles (as described in the Train Technical Specification), using that document or information solely for the purposes of designing or adapting rolling stock to enable it to be coupled to the Sets and Vehicles for the purposes of rescue and/or diversionary haulage and using that rolling stock as so coupled, provided that none of the TSP IPR, the Manufacturer IPR, the Maintainer IPR or any Third Party IPR licensed to the Secretary of State under this Agreement may be used or incorporated in any rolling stock other than a Set or Vehicle save to the extent strictly necessary for the purposes of attaching that rolling stock to a Set or Vehicle for rescue and/or diversionary haulage;
- (f) using the Simulator Information to manufacture (or procure the manufacture of) any Simulators pursuant to Paragraph 7 of Appendix G (*Training*) of Schedule 1 (*Set Specification and Design*), and for using the Simulators;
- (g) using and reproducing the Simulator Information to the extent reasonably necessary in connection with the purposes specified in Paragraph 1.2(f); and
- (h) using and reproducing the Technical Documents and the Technical Library to the extent reasonably necessary in connection with any of the purposes specified in Paragraphs 1.2(a) to 1.2(e) (inclusive),

together with the right to sub-license (and the right to grant further subordinate licences) for the purposes set out in Paragraphs 1.2(a) to (h) (inclusive).

1.3 The TSP hereby grants to the Secretary of State an irrevocable, perpetual, transferable, assignable, sub-licensable (together with the right to grant further subordinate licences), royalty-free, non-exclusive licence of the TSP IPR, the Manufacturer IPR, the Maintainer IPR and the Third Party IPR, in each case, in the Depot Design Drawings for all purposes relating to or connected with the relevant Depot(s) (including following any Variation in accordance with the provisions of Schedule 8 (*Variations*)), including:

- (a) the carrying out of works at, and the operation, construction, completion, letting, management, sale, advertisement, extension, alteration, maintenance, reinstatement and repair of, those Depots; and
- (b) inviting, processing, evaluating and negotiating tenders for any activities relating to the Maintenance Agreement,

save that such licence shall not include a right to reproduce the design of any part of any Depot for the purpose of carrying out works other than in relation to that Depot (as altered, extended or otherwise varied from time to time).

- 1.4 The licences granted:
- (a) in Paragraphs 1.2 and 1.3 shall not include any right to use, reproduce, disseminate, adapt, transmit or publish in any form or by any means any TSP IPR, Maintainer IPR, Manufacturer IPR or Third Party IPR other than in accordance with the licences granted in those Paragraphs;
 - (b) in Paragraph 1.2 shall not include any licence of Non-Depot Source Code except to the extent, and for the period and the purposes, that it has been released from escrow or otherwise supplied pursuant to Paragraph 2.4 (and/or the IP Escrow Agreement); and
 - (c) in Paragraph 1.2 (other than Paragraphs 1.2(d), 1.2(e), 1.2(f) and 1.2(g)) and 1.3 shall, in respect of an Asset that has not been transferred or delivered to the Secretary of State or her nominee under Part J (*Asset Transfer*) of Schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*) only be exercisable by or on behalf of the Secretary of State, her nominee or either of their subordinate licensees (as applicable) to the extent reasonably necessary for the purposes contemplated under Part D (*Step-In*) of Schedule 4 (*Train Availability and Reliability Agreements*) of this Agreement and/or under the related provisions of a TARA.
- 1.5 The licences granted in Paragraph 1.2 shall not be transferable or assignable, except to the extent permitted in accordance with Clause 23.2.
- 1.6 The Secretary of State shall be liable for all acts and omissions of any person to whom she sub-licenses or otherwise provides any TSP IPR, Maintainer IPR, Manufacturer IPR or Third Party IPR that, if done or omitted to be done by the Secretary of State, would be a breach of the licences granted to the Secretary of State pursuant to this Schedule 10 or would otherwise breach any of the obligations of the Secretary of State contained in this Schedule 10.
- 1.7 The licences granted in Paragraphs 1.2 and 1.3 do not extend to, and no licence or right to use is granted in respect of, any trade or service marks or names (whether registered or unregistered), other than trade or service marks or names that are owned or used by the TSP, the Manufacturer or the Maintainer (or any of their Affiliates) and that are used to describe any of the Sets and Vehicles, in respect of which the licences granted in Paragraph 1.2 shall be deemed to include a sub-licensable licence to use those trade or service marks or names to describe or refer to any of the Sets and Vehicles, including:
- (a) to the extent desirable or necessary in connection with the marketing, promotion and description of the Sets and Vehicles; and
 - (b) the marketing, promotion and sale of passenger tickets for travel on the Sets and Vehicles.
- 1.8 The TSP and the Secretary of State shall agree the name by which the Sets and Vehicles shall be promoted. The Secretary of State agrees that she shall not, and the TSP agrees that it shall not, and that the TSP shall procure that the Manufacturer and the Maintainer shall not (and shall not authorise, permit, procure, assist or enable any of their Affiliates, sub-contractors or licensees or any third party to), use any trade or service mark or name to describe the Sets and Vehicles, other than such a mark or name:
- (a) issued by the Rolling Stock Library as the class of the Sets; or

- (b) in respect of which the Secretary of State and the TSP have given their prior written consent for that purpose.

Delivery and maintenance of Technical Library

- 1.9 The TSP shall supply and/or communicate to the Secretary of State (and shall procure that any Significant Contractor that creates the same (in the case of Paragraph 1.9(a)) or amends the same (in the case of Paragraph 1.9(b)) supplies and/or communicates to the TSP so that the TSP can supply the same to the Secretary of State) the latest copy of the Technical Library:
- (a) not later than the date provided for in the Training Plan, or if later the date which is the Actual Acceptance Date of the first Set; and
 - (b) in any event, as soon as reasonably possible after any amendment is made.
- 1.10 The TSP shall ensure that the Technical Library is maintained and kept up-to-date during the term of this Agreement.

Warranties

- 1.11 The TSP represents and warrants to the Secretary of State as at the date hereof that:
- (a) Hitachi, Ltd. and/or its Affiliates are the legal and beneficial owner(s) of all of the Intellectual Property Rights in the Non-Depot Proprietary Source Code;
 - (b) Hitachi, Ltd. is entitled to deposit the Non-Depot Source Code in accordance with the IP Escrow Agreement;
 - (c) so far as the TSP is aware, the TSP IPR, the Manufacturer IPR, the Maintainer IPR and the Third Party IPR comprise in all material respects, all the Intellectual Property Rights required for the purposes of using and operating the Sets, the Vehicles and the Non-Depot IPR Assets; and
 - (d) so far as the TSP is aware, the TSP IPR, the Manufacturer IPR, the Maintainer IPR and the Third Party IPR comprise in all material respects, all the Intellectual Property Rights required for the purpose of using the Depot Design Drawings in accordance with the licence of Intellectual Property Rights granted under Paragraph 1.3
- 1.12 Without prejudice to Paragraphs 1.11 and 1.13(b), but subject to Paragraph 1.15, the TSP shall indemnify and hold harmless the Secretary of State and the Relevant Operator on demand against any claim for infringement of any Intellectual Property Rights arising from the use by the Secretary of State and/or the Relevant Operator (or their sub-licensees) of the TSP IPR, the Maintainer IPR, the Manufacturer IPR, the Third Party IPR, the Assets and/or the IPR Assets, in each case, in accordance with, and/or as contemplated by, the licences granted in Paragraphs 1.2 and 1.3 (a **Claim**), provided that the Secretary of State complies with Paragraph 1.13.

Notification and Handling of Claims

- 1.13 If either party becomes aware of a matter which might give rise to a Claim:
- (a) that party shall immediately notify the other in writing (giving full particulars);

(b) and that matter involves, or may involve, a Claim against the Secretary of State, the Secretary of State shall, at the TSP's cost:

- (i) take such action as the TSP may reasonably request to:
 - (A) dispute, resist, appeal, compromise, defend, remedy or mitigate that Claim; or
 - (B) enforce the Secretary of State's rights in relation to that Claim; and
- (ii) subject to Paragraph 1.13(d), in connection with any proceedings related to that Claim, if the TSP so requests, allow the TSP, its Sub-contractor or the relevant licensor of the relevant Intellectual Property Rights exclusive conduct of those proceedings,

provided that the TSP shall indemnify and hold harmless the Secretary of State against all Losses incurred by the Secretary of State as a result of such request made by the TSP;

(c) the Secretary of State shall not admit liability in respect of or settle that Claim without first obtaining the TSP's prior consent, such consent not to be unreasonably withheld;

(d) where the TSP (or its Sub-contractor or the relevant licensor) exercises its right pursuant to Paragraph 1.13(b)(ii) to request exclusive conduct of any proceedings:

- (i) the TSP shall procure that those proceedings shall not be conducted in a manner that will:
 - (A) give rise to any criminal liability for the Secretary of State; or
 - (B) have a material and adverse effect on the reputation of the Secretary of State;
- (ii) if the total amount claimed by the claimant(s) in respect of the Claim exceeds two hundred thousand pounds Sterling (£200,000), the TSP (or its Sub-contractor or the relevant licensor) shall promptly provide the Secretary of State with a leading counsel's opinion summarising the Claim and the merits (including the likelihood of success) of the TSP's (or its Sub-contractor's or the relevant licensor's) defence; and
- (iii) the TSP (or its Sub-contractor or the relevant licensor) shall keep the Secretary of State informed of the progress of that Claim, and shall consult with the Secretary of State and allow the Secretary of State a reasonable period to express her opinions prior to the TSP (or its Sub-contractor or the relevant licensor) taking any decision material to the conduct of that Claim, including any admission of liability by the TSP (or its Sub-contractor or the relevant licensor) or the settlement or compromise by the TSP (or its Sub-contractor or the relevant licensor) of that Claim; and

(e) where the TSP (or its Sub-contractor or the relevant licensor) does not exercise its right pursuant to Paragraph 1.13(b)(ii) to request exclusive conduct of any proceedings within thirty (30) days of the date of the notification referred to in Paragraph 1.13(a), the TSP shall (and shall procure that its relevant Sub-

contractor or the relevant licensor shall), at its own cost, provide any assistance required by the Secretary of State to:

- (i) dispute, resist, appeal, compromise, defend, remedy or mitigate that Claim; and/or
- (ii) enforce the Secretary of State's rights in relation to that Claim.

Remedy for Infringement

1.14 Without prejudice to Paragraph 1.12, if the use of any Asset or IPR Asset in accordance with the licences granted pursuant to Paragraph 1.2 or 1.3 infringes, or in the reasonable opinion of the TSP is likely to infringe, the Intellectual Property Rights of a third party, the TSP shall, at its expense either:

- (a) procure for the Secretary of State (and her subordinate licensees) a licence to use those Intellectual Property Rights for the purposes of the relevant licence set out in Paragraph 1.2 or (to the extent relating to the Depot Design Drawings) 1.3; or
- (b) either (at the TSP's election):
 - (i) modify that Asset or IPR Asset so that it no longer infringes those Intellectual Property Rights; or
 - (ii) replace that Asset or IPR Asset with a non-infringing unit, part or item,

provided however that that modified or replacement unit, part or item shall comply in all material respects with all the requirements of this Agreement.

Exclusion

1.15 The provisions of Paragraphs 1.12 to 1.14 (inclusive) shall not apply to the extent that any infringement, or claim for any infringement, of Intellectual Property Rights is caused by:

- (a) the use by the Secretary of State (or her sub-licensees or the Relevant Operator) of any TSP IPR, Maintainer IPR, Manufacturer IPR, Third Party IPR, Asset or IPR Asset otherwise than in accordance with the licences granted pursuant to this Schedule 10 or any other breach by the Secretary of State (or her sub-licensees or the Relevant Operator) of, or non-compliance by the Secretary of State (or her sub-licensees or the Relevant Operator) with, those licences;
- (b) any modification or adaptation of any Asset or IPR Asset other than by the TSP, the Manufacturer, the Maintainer, or (in connection with the performance of the Manufacture and Supply Agreement or the Maintenance Agreement) any of their Affiliates, sub-contractors or licensees; or
- (c) the combined use of (i) Intellectual Property Rights not licensed (or purported to be licensed) to the Secretary of State under this Agreement (**Non-Licensed IPR**); and (ii) the Intellectual Property Rights licensed (or purported to be licensed) to the Secretary of State under this Agreement, except to the extent that: (A) this combination is in the ordinary course, or reasonably foreseeable, in connection with this Agreement and/or the Assets or the IPR Assets; and (B) the use of that Non-Licensed IPR does not itself infringe any third party Intellectual Property Rights.

Assignment of IPR

1.16 The TSP shall ensure:

- (a) in the event of any assignment, transfer, creation of a Security Interest or other disposal of any of the TSP IPR, the Manufacturer IPR, the Maintainer IPR or the Third Party IPR, that any such assignment, transfer, creation or disposal is subject to the licences set out in Paragraphs 1.2 and 1.3, and that those licences are binding on the relevant assignee, transferee, or beneficiary of a Security Interest or disposal;
- (b) that no right or interest in any of the TSP IPR, the Manufacturer IPR, the Maintainer IPR or the Third Party IPR is declared, created, granted, assigned, transferred or otherwise disposed of in a manner that is inconsistent with the licences set out in Paragraphs 1.2 or 1.3; and
- (c) in the event of any assignment or transfer of any of the Intellectual Property Rights in any Non-Depot Proprietary Source Code to a person other than Hitachi, Ltd., such that Hitachi, Ltd. is no longer entitled to grant the rights set out in the IP Escrow Agreement in relation to that Non-Depot Proprietary Source Code, that the Secretary of State is promptly notified of that transfer and, if the Secretary of State so requests, the TSP shall procure that obligations of Hitachi, Ltd. under the IP Escrow Agreement are (to the extent that those obligations relate to the assigned or transferred Intellectual Property Rights) assigned or novated to the relevant assignee or transferee of those Intellectual Property Rights within thirty days of that request, in such a manner as not to prejudice the rights and interests of the Secretary of State under the IP Escrow Agreement.

2. ESCROW

2.1 The Secretary of State, the TSP and Hitachi, Ltd. shall negotiate promptly and in good faith with NCC Escrow in order to enter into the IP Escrow Agreement as soon as reasonably practicable following the Commencement Date (and the TSP shall procure that Hitachi, Ltd. so negotiates and enters).

2.2 The TSP shall procure that, in respect of:

- (a) the Software referred to in limbs (f), (g) and (h) of the definition of Non-Depot Software; and
- (b) any other Software relating to the Assets (other than the Non-Depot Software described in limbs (a) to (e) (inclusive) of that definition), provided by a third party in connection with the Project after the date of this Agreement for which the Manufacturer seeks to enter into a source code escrow arrangement with the relevant third party,

the Manufacturer:

- (i) incorporates, in each invitation to tender or request for proposal issued for any of that Software after the date of this Agreement, a provision that states that the successful tenderer will be required to deposit the source code for that Software into escrow pursuant to the terms of the IP Escrow Agreement and to grant the Manufacturer (or any of its Affiliates) a sub-

licensable licence to use the executable object code version of that Software; and

- (ii) whether or not the relevant tender or request for proposal contains the provision referred to in limb (i), negotiates in good faith with the successful tenderer for that Software with a view to incorporating, in the final version(s) of the relevant contract(s) with that tenderer, the requirement to deposit the source code for that Software into escrow pursuant to the terms of the IP Escrow Agreement and to grant the Manufacturer (or any of its Affiliates) a sub-licensable licence to use the executable object code version of that Software.

2.3 The TSP shall procure that:

- (a) the Non-Depot Proprietary Source Code;
- (b) any Non-Depot Third Party Source Code relating to the following systems for the Sets:
 - (i) the traction package;
 - (ii) the train management systems;
 - (iii) the heating, ventilation and air conditioning system; and
 - (iv) the auxiliary power system (including battery chargers and auxiliary converters); and
- (c) any other Non-Depot Third Party Source Code (which will include source code for the Software referred to in Paragraph 2.2 to the extent that the Manufacturer has successfully negotiated the inclusion of the right to deposit the source code for that Software into escrow on the terms of the IP Escrow Agreement in the final version(s) of the relevant contract(s) pursuant to Paragraph 2.2),

shall be deposited in accordance with the IP Escrow Agreement for a period of thirty-five years with effect from the Effective Date. The TSP shall procure that the deposited Non-Depot Source Code is updated with all relevant upgrades, refreshes, releases, modifications and/or enhancements throughout that thirty-five year period, including by deleting any obsolete code as appropriate.

2.4 In respect of the IP Escrow Agreement, the standard escrow secure agreement provided by NCC Escrow shall be amended so that:

- (a) the cost of any verification of the Non-Depot Source Code by NCC Escrow shall be borne by the Secretary of State unless the Non-Depot Source Code fails that verification (in which case, those costs shall be borne by Hitachi, Ltd.);
- (b) the reference to the "date of this Agreement" in clause 2.1.1 of the IP Escrow Agreement shall be replaced with the date that is the first Actual Acceptance Date;
- (c) the TSP shall be the first "Licensee" for the purposes of the IP Escrow Agreement and that the rights of the TSP under the IP Escrow Agreement shall be transferable to any person to the extent that that person is the owner of any of the relevant Assets or the Technical Documents (each person that is the owner of any

of those relevant Assets or the Technical Documents from time to time being the *Licensee*);

- (d) the Secretary of State shall be a party to the IP Escrow Agreement so that she has the right to procure a transfer of the rights of the Licensee thereunder as referred to in Paragraph 2.4(c) (without the consent of any other party to the IP Escrow Agreement);
- (e) the "Release Events" in relation to the deposited Non-Depot Source Code shall be the following events:
 - (i) any of the following has occurred:
 - (A) an order is made for the winding up of Hitachi, Ltd., a resolution for winding up of Hitachi, Ltd. is passed (other than for the purposes of a solvent reconstruction or amalgamation), or a liquidator of Hitachi, Ltd. is appointed;
 - (B) an order is made for the appointment of an administrator of Hitachi, Ltd. or an administrator of Hitachi, Ltd. is appointed;
 - (C) any voluntary arrangement is made for a composition of debts or a scheme of arrangement is approved under the Insolvency Act 1986 or the Companies Act 2006 in respect of Hitachi, Ltd.;
 - (D) any receiver, administrative receiver or manager in respect of Hitachi, Ltd. is appointed, or possession is taken by or on behalf of any creditor, of all or substantially all of the assets or undertaking of Hitachi, Ltd. or of any of the Intellectual Property Rights in the Non-Depot Proprietary Source Code;
 - (E) Hitachi, Ltd. is dissolved;
 - (F) any event occurring which, under the law of any relevant jurisdiction, has an analogous or equivalent effect to any of the events listed in Paragraphs 2.4(e)(i)(A) to 2.4(e)(i)(E); or
 - (G) Hitachi, Ltd. ceases to carry on all or substantially all of its business; or
 - (ii) any of the events set out in Paragraph 2.4(e)(i) has occurred in respect of Hitachi Rail Europe Limited (in place of Hitachi, Ltd.), or the Manufacture and Supply Agreement, the Maintenance Agreement (to which Hitachi Rail Europe Limited is a party) or this Agreement has expired or been terminated, and:
 - (A) the Licensee notifies Hitachi, Ltd., requesting that Hitachi, Ltd. perform any obligations of the Manufacturer under the Manufacture and Supply Agreement or of the Maintainer under the Maintenance Agreement to carry out any maintenance, servicing, repair, overhaul, refurbishment, modification, conversion or adaptation of any Asset (other than the Technical Library), the Technical Documents or the Non-Depot Software (or such obligations as would exist if those agreements were in force), to the extent that the performance of those obligations requires access to any of the

Non-Depot Source Code (the **Modification Works**); and either Paragraph (B) or (C) applies;

- (B) where any Set or Vehicle is not fit to enter into passenger revenue earning service and requires Modification Works to render it fit to enter into passenger revenue earning service (the **Relevant Modification Works**) either:
 - (I) Hitachi, Ltd. has not responded to that request to carry out the Relevant Modification Works within five days of receipt of that notice by Hitachi, Ltd.;
 - (II) Hitachi, Ltd. has not responded to that request to carry out the Relevant Modification Works in terms that are reasonably satisfactory to the Licensee (including by requiring the payment of an unreasonable amount in relation to the performance of the Relevant Modification Works) within five (5) days of receipt of that notice by Hitachi, Ltd.;
 - (III) if Hitachi, Ltd. has responded to that request in terms that are reasonably satisfactory to the Licensee within five (5) days of that receipt, Hitachi, Ltd. has not carried out the Relevant Modification Works within a reasonable period of time following receipt of that notice by Hitachi, Ltd. (it being acknowledged by the Licensee that if Hitachi, Ltd. has responded to that request in terms that are reasonably satisfactory to the Licensee within five days of that receipt, the Licensee shall provide such access to the relevant Assets, Technical Documents and Non-Depot Software and information and assistance as Hitachi, Ltd. may reasonably request to perform the Relevant Modification Works and the Licensee shall not unreasonably delay that performance); or
- (C) where the Modification Works are not Relevant Modification Works and the request issued by the Licensee is issued as an invitation to tender to carry out the Modification Works and either:
 - (I) Hitachi, Ltd. has not responded to that invitation to tender, or has not responded in terms that provide the best value for money tender, within the relevant time period for responding to that tender (which shall not be less than thirty days from the date the request is issued to Hitachi, Ltd.); or
 - (II) Hitachi, Ltd. advises the Licensee that it does not wish to carry out those Modification Works; or
 - (III) in circumstances where the tender by Hitachi, Ltd. for the Modification Works is accepted by the Licensee, Hitachi, Ltd. has not carried out the Modification Works within a reasonable period of time or any other agreed period of time (it being acknowledged by the Licensee that if it has

accepted that tender, the Licensee shall provide such access to the relevant Assets, Technical Documents and Non-Depot Software and information and assistance as Hitachi, Ltd. may reasonably request to perform the Modification Works and the Licensee shall not unreasonably delay that performance); and

- (iii) only in respect of the deposited Non-Depot Third Party Source Code, (in addition to a circumstance described in Paragraph 2.4(e)(i) or 2.4(e)(ii) occurring) any of the following has occurred in relation to a relevant third party that owns the Intellectual Property Rights in that Non-Depot Third Party Source Code:
 - (A) an order is made for the winding up of that third party, a resolution for winding up of that third party is passed (other than for the purposes of a solvent reconstruction or amalgamation), or a liquidator of that third party is appointed;
 - (B) an order is made for the appointment of an administrator of that third party or an administrator of that third party is appointed;
 - (C) any voluntary arrangement is made for a composition of debts or a scheme of arrangement is approved under the Insolvency Act 1986 or the Companies Act 2006 in respect of that third party;
 - (D) any receiver, administrative receiver or manager in respect of that third party is appointed, or possession is taken by or on behalf of any creditor, of all or substantially all of the assets or undertaking of that third party or of any of the relevant Intellectual Property Rights in the Non-Depot Third Party Source Code;
 - (E) that third party is dissolved;
 - (F) any event occurring which, under the law of any relevant jurisdiction, has an analogous or equivalent effect to any of the events listed in Paragraphs 2.4(e)(iii)(A) to 2.4(e)(iii)(E);
 - (G) that third party ceases to carry on all or substantially all of its business; or
 - (H) that Non-Depot Third Party Source Code has been provided to the TSP, Hitachi, Ltd., the Manufacturer, the Maintainer or any of their Affiliates in connection with a release from a third party software escrow agreement which permits its use by the Secretary of State in accordance with the licence under Paragraph 1.2;
- (f) subject to Paragraph 2.4(g), if any Non-Depot Source Code is released to the Licensee in accordance with the IP Escrow Agreement (or is otherwise provided to the Secretary of State pursuant to Paragraph 2.4(g)(i)), the Licensee shall be entitled to use that Non-Depot Source Code (as if it were Manufacturer IPR) on and subject to the terms of the licences granted to the Secretary of State under Paragraph 1.2, provided that, for as long as none of the events set out in Paragraph 2.4(e)(i) has occurred in relation to Hitachi, Ltd.:

- (i) the Licensee shall notify Hitachi, Ltd. that the Licensee is intending to grant a sub-licence of the Intellectual Property Rights in the Non-Depot Source Code prior to granting such a sub-licence;
 - (ii) the Licensee shall only use that Non-Depot Source Code for the purpose of Modification Works; and
 - (iii) that sub-licence granted by the Licensee shall not include a right to grant further subordinate licences except to the extent reasonably necessary in connection with the performance of the Modification Works;
- (g) for as long as none of the events set out in Paragraph 2.4(e)(i) has occurred in relation to Hitachi, Ltd.:
- (i) if prior to the date on which the "Release Event" occurs:
 - (A) Hitachi, Ltd. or any of its Affiliates has supplied the relevant Non-Depot Source Code for the Modification Works to the Secretary of State, to the satisfaction of the Secretary of State, the relevant "Release Event" shall be deemed not to have occurred (at that time); or
 - (B) the Secretary of State and Hitachi, Ltd. have agreed which Non-Depot Source Code is required for the Modification Works, only that required Non-Depot Source Code shall be released. In all other circumstances all Non-Depot Source Code shall be released following a "Release Event";
 - (ii) the Licensee (and its sub-licensees) shall, in respect of that release, only be entitled to use that Non-Depot Source Code for the purpose of performing the Modification Works; and
 - (iii) the Licensee shall procure that upon the completion of such Modification Works all released Non-Depot Source Code (and all copies thereof) is promptly delivered to Hitachi, Ltd., and Hitachi, Ltd. shall then promptly deposit that Non-Depot Source Code into escrow again pursuant to the IP Escrow Agreement;
- (h) the obligation of Hitachi, Ltd. to continue to deposit the Non-Depot Source Code pursuant to the terms of the IP Escrow Agreement shall terminate upon the termination of the Maintenance Agreement provided that, unless agreed otherwise between the Secretary of State and the TSP, the IP Escrow Agreement shall continue for the remainder of the term of the IP Escrow Agreement in respect of any Non-Depot Source Code that Hitachi, Ltd. was obliged to deposit in escrow prior to the date of termination of the Maintenance Agreement. The TSP shall be responsible for putting in place an escrow agreement with the replacement Maintainer and the Secretary of State which provides equivalent protection to the TSP and the Secretary of State as the IP Escrow Agreement in respect of any Non-Depot Source Code that the replacement Maintainer provides; and
- (i) where this Agreement is terminated before the Minimum Fleet Acceptance Date, the IP Escrow Agreement will expire on the date of such termination.

3. **CONFIGURATION DATABASE**

3.1 The TSP shall provide to the Secretary of State and the Relevant Operator a then current configuration database (the **Configuration Database**) which, in respect of each Set or Vehicle, shall provide the information set out in Paragraph 3.2:

- (a) not later than the Actual Acceptance Date of such Set or, in the case of a Vehicle the Actual Acceptance Date of the Set in which that Vehicle was comprised on that date and thereafter no less frequently than once every six months; and
- (b) in any event, within fourteen (14) days of any request by the Secretary of State.

3.2 The Configuration Database shall contain as a minimum, the following information:

- (a) each Set's and each Vehicle's number;
- (b) all Operating and Maintenance Manuals and safety approval documents relating to each Set or Vehicle;
- (c) the Manufacturer's or Maintainer's serial numbers of all systems, sub systems and components and parts, to the extent that these are identified by a Manufacturer's or Maintainer's serial number;
- (d) the position of each part within each Set and/or Vehicle; and
- (e) the modification status of all systems and sub systems within each Set and/or Vehicle.

3.3 The TSP shall ensure that the Configuration Database is maintained and kept up-to-date during the term of this Agreement.

4. **BRANDING**

With effect from the Actual Acceptance Date with respect to a Set, the TSP shall not, and shall procure that the Manufacturer, the Maintainer and other third parties (except the Relevant Operator and any other third party agreed in writing by the Secretary of State) shall not:

- (a) use:
 - (i) any of their trade marks, service marks, symbols, logos, company names, trade names, domain names, designs, get-up, livery, taglines, advertising or other indicators of origin; or
 - (ii) any marketing, promotional and/or advertising material, in any media (whether now known or hereafter developed, including any printed media, display screen, transmission and/or telecommunications system),

on or in any part (including any interior or external surface) of that Set or Vehicles forming part thereof that is visible to passengers during normal operation; or

- (b) authorise, permit, procure, assist or enable any third party to do any of the acts referred to in Paragraph 4(a),

other than (i) applying the Manufacturer's logo on the footplate of each Vehicle, or (ii) as agreed in writing by the Secretary of State, or (iii) as permitted in accordance with the

relevant TARA, or (iv) in the same or a substantially similar manner as used at the Commencement Date in the class 395 rolling stock operating in the United Kingdom, or (v) as required by Applicable Laws and Standards.

SCHEDULE 11

Information and confidentiality

1. TSP'S RECORDS AND PROVISION OF INFORMATION

1.1 The TSP shall:

- (a) at all times maintain a full record of particulars of the costs to the TSP of performing the Services, including those incurred by the TSP relating to the design, construction, manufacturing, maintenance, operation and finance and including details of any commitments made by the TSP for future expenditure and details of any funds held by the TSP to cover such costs;
- (b) when requested by the Secretary of State, provide a summary of any of the costs referred to in Paragraph 1.1(a), including details of any funds held by the TSP specifically to cover such costs, in such form and detail as the Secretary of State may reasonably require to enable the Secretary of State to monitor the performance by the TSP of its obligations under this Agreement; and
- (c) provide such facilities as the Secretary of State may reasonably require for her representatives to visit any place, on reasonable notice, where the records are held and examine the records maintained under this Paragraph 1.

1.2 Compliance with the above shall require the TSP to keep (and to procure that the Significant Contractors and any Second Tier Suppliers shall keep) books of account in accordance with best accountancy practice with respect to this Agreement showing in detail:

- (a) administrative overheads;
- (b) payments made to Significant Contractors;
- (c) capital and revenue expenditure; and
- (d) such other items as the Secretary of State may reasonably require to conduct cost audits for verification of cost expenditure or estimated expenditure,

and the TSP shall have (and shall use reasonable endeavours to procure that the Significant Contractors and any Second Tier Suppliers shall have) the books of account evidencing the items listed in Paragraphs 1.2(a) to (d) inclusive available for inspection by the Secretary of State (and any expert) upon reasonable notice, and shall present a report of these to the Secretary of State as and when reasonably requested.

1.3 The TSP shall permit the records referred to in this Paragraph 1 to be examined and copied by the Secretary of State, and by the Comptroller and Auditor General and his representatives.

1.4 The records referred to in this Paragraph 1 shall be retained for a period of at least five (5) years after the TSP's obligations under this Agreement have come to an end.

1.5 Upon termination of this Agreement, and in the event that the Secretary of State wishes to enter into a New Contract, the TSP shall (and shall ensure that the sub-contractors will) comply with all reasonable requests of the Secretary of State to provide information relating to the TSP's costs of performing the activities required under this Agreement.

1.6 The TSP shall:

- (a) provide to the Secretary of State on 31 March, 30 June, 30 September and 31 December each year a document listing all information provided by it to the Senior Lenders during the preceding three (3) month period and, at the request of the Secretary of State, provide to the Secretary of State any information provided by it to the Senior Lenders during the Contract Period and any other information relating to this Agreement that the Secretary of State may reasonably require;
- (b) provide to the Secretary of State copies of its annual report and accounts within thirty (30) days of publication;
- (c) provide to the Secretary of State a copy of the Financial Model that is sent to the Senior Lenders at the Effective Date and at six (6) monthly intervals thereafter;
- (d) provide to the Secretary of State promptly upon request all relevant information that the TSP has, or could reasonably be expected to obtain, in relation to the Labour Re-basing Indexation Rate and the SPV Re-basing Indexation Rate at any point in time between the date that is twelve (12) months prior to the Effective Date and the then current date;
- (e) promptly upon the occurrence of a Financing Default notify the Secretary of State of such Financing Default;
- (f) use reasonable endeavours to assist the Secretary of State in her preparation of any report required by the Department for Transport from time to time; and
- (g) promptly notify the Secretary of State of, on the first Business Day of each Reporting Period during which any Additional Permitted Borrowing is, or may be, subsisting, the amount outstanding under the Senior Financing Agreements (as the same may be amended) and, to the extent it is aware (having made reasonable and proper enquiry):
 - (i) the amount of any Distribution made by the TSP; and
 - (ii) the amount of any credit balance on any account of the TSP.

1.7 The Secretary of State may, in the circumstances referred to in Paragraph 1.6(e) (regardless of whether the Senior Lenders have exercised any enforcement or similar rights under the Senior Financing Agreements) require the TSP to provide an interim project report (containing such information as the Secretary of State requests, including details of the Financing Default, what steps are being taken to remedy it, and the progress of any ongoing discussions with the Senior Lenders) and to attend, and use reasonable endeavours to ensure that the Senior Lenders attend, such meetings as the Secretary of State may convene to discuss such interim project report and the circumstances giving rise to it.

2. PUBLIC RELATIONS AND PUBLICITY

The TSP shall not by itself, its employees or its agents and it shall procure that its sub-contractors shall not communicate with representatives of the press, television, radio or other communications media on any matter concerning this Agreement without the prior written agreement of the Secretary of State.

3. CONFIDENTIALITY

- 3.1 (a) The parties agree that provisions of this Agreement and each Project Document shall, subject to Paragraph 3.1(b), not be treated as Confidential Information and may be disclosed without restriction.
- (b) Paragraph 3.1(a) shall not apply to provisions of this Agreement or a Project Document designated as Commercially Sensitive Information and listed in Appendix A (*Commercially Sensitive Contractual Provisions*) or Appendix B (*Commercially Sensitive Material*) of this Schedule 11 (*Information and Confidentiality*) which shall, subject to Paragraph 3.2, be kept confidential for the periods specified in the relevant Appendix.
- (c) The parties shall keep confidential all Confidential Information received by one party from the other party relating to this Agreement, the Project Documents or the Project and shall use reasonable endeavours to prevent their employees and agents from making any disclosure to any person of any such Confidential Information.
- 3.2 Paragraphs 3.1(b) and 3.1(c), shall not apply to:
- (a) any disclosure of information that is reasonably required by any person engaged in the performance of their obligations under this Agreement and/or the TARA for the performance of those obligations (including any sub-contractors);
- (b) any matter which a party can demonstrate is already or becomes generally available and in the public domain otherwise than as a result of a breach of this Paragraph 3;
- (c) any disclosure to enable a determination to be made under the Dispute Resolution Agreement or in connection with a dispute between the TSP and any of its sub-contractors;
- (d) any disclosure which is required pursuant to any statutory, legal (including any order of a court of competent jurisdiction) or Parliamentary obligation placed upon the party making the disclosure or the rules of any stock exchange or governmental or regulatory authority having the force of law or if not having the force of law, compliance with which is in accordance with the general practice of persons subject to the stock exchange or governmental or regulatory authority concerned;
- (e) any disclosure of information which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;
- (f) any provision of information to the parties' own shareholders, professional advisers or insurance advisers or to the Senior Lenders or the Senior Lenders' professional advisers or insurance advisers or, where it is proposed that a person should or may provide funds (whether directly or indirectly and whether by loan, equity participation or otherwise) or services to the TSP to enable it to carry out its obligations under this Agreement, or may wish to acquire shares in the TSP in accordance with the provisions of this Agreement to that person or their respective professional advisers but only to the extent reasonably necessary to enable a decision to be taken on the proposal;

- (g) any disclosure by the Secretary of State of information relating to the design, construction, operation and maintenance of the Project and such other information as may be reasonably required for the purpose of conducting a due diligence exercise, to:
 - (i) any proposed new contractor, its advisers and lenders, should the Secretary of State decide to retender this Agreement; or
 - (ii) any person in connection with Part E (*Market Testing, Benchmarking and Indexing*) of Schedule 8 (*Variations*);
- (h) any registration or recording of any Planning Permission applications or consents and property registration required for the Project;
- (i) any disclosure of information by the Secretary of State to any other department, office or agency of the Government, or the ORR, or their respective advisers or to any person engaged in providing services to the Secretary of State for any purpose related to or ancillary to this Agreement; or
- (j) any disclosure for the purpose of:
 - (i) the examination and certification of the Secretary of State's or the TSP's accounts;
 - (ii) any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Secretary of State has used her resources;
 - (iii) complying with a proper request from either party's insurance adviser, or insurer on placing or renewing any insurance policies; or
 - (iv) (without prejudice to the generality of Paragraph (d)) compliance with the FOIA and/or the Environmental Information Regulations,

provided that neither Paragraph (j)(iv) nor Paragraph (d) shall permit disclosure of Confidential Information otherwise prohibited by Paragraph 3.1(c) where that information is exempt from disclosure under section 41 of the FOIA.

- 3.3 Where disclosure is permitted under Paragraph 3.2, other than Paragraphs (b), (d), (e), (h) and (j), the party providing the information shall procure that the recipient of the information shall be subject to the same obligation of confidentiality as that contained in this Agreement.
- 3.4 For the purposes of the National Audit Act 1983 the Comptroller and Auditor General may examine such documents as he may reasonably require which are owned, held or otherwise within the control of the TSP and any sub-contractors and may require the TSP and any sub-contractors to produce such oral or written explanations as he considers necessary. For the avoidance of doubt it is hereby declared that the carrying out of an examination under section 6(3)(d) of the National Audit Act 1983 in relation to the TSP is not a function exercisable under this Agreement.
- 3.5 The TSP shall not make use of this Agreement or any information issued or provided by or on behalf of the Secretary of State in connection with this Agreement otherwise than for the purpose of this Agreement, except with the written consent of the Secretary of State.

3.6 The parties acknowledge that the National Audit Office has the right to publish details of this Agreement (including Commercially Sensitive Information) in its relevant reports to Parliament.

3.7 The provisions of this Paragraph 3 are without prejudice to the application of the Official Secrets Acts 1911 to 1989.

4. **FREEDOM OF INFORMATION**

4.1 The TSP acknowledges that the Secretary of State is subject to the requirements of the FOIA and the Environmental Information Regulations and shall facilitate the Secretary of State's compliance with her Information disclosure requirements pursuant to the same in the manner provided for in Paragraphs 4.2 to 4.7 inclusive.

4.2 Where the Secretary of State receives a Request for Information in relation to Information that the TSP is holding on her behalf the Secretary of State may refer to the TSP such Request for Information that she receives as soon as practicable and in any event within five (5) Business Days of receiving a Request for Information and, if she does so, the TSP shall:

(a) provide the Secretary of State with a copy of all such Information in the form that the Secretary of State requires as soon as practicable and in any event within ten (10) Business Days (or such other period as the Secretary of State may specify) of the Secretary of State's request; and

(b) provide all necessary assistance as reasonably requested by the Secretary of State in connection with any such Information, to enable the Secretary of State to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.

4.3 Following notification under Paragraph 4.2, and up until such time as the TSP has provided the Secretary of State with all the Information specified in Paragraph 4.2(a), the TSP may make representations to the Secretary of State as to whether or not or on what basis Information requested should be disclosed, and whether further information should reasonably be provided in order to identify and locate the information requested, provided always that the Secretary of State shall be responsible for determining at her absolute discretion:

(a) whether Information is exempt from disclosure under the FOIA and the Environmental Information Regulations; and

(b) whether Information is to be disclosed in response to a Request for Information,

and in no event shall the TSP respond directly, or allow its sub-contractors to respond directly, to a Request for Information unless expressly authorised to do so by the Secretary of State.

4.4 The TSP shall ensure that all Information held on behalf of the Secretary of State is retained for disclosure for at least fifteen (15) years (from the date it is acquired) and shall permit the Secretary of State to inspect such Information as requested from time to time.

4.5 The TSP shall transfer to the Secretary of State any Request for Information received by the TSP as soon as practicable and in any event within two (2) Business Days of receiving it.

- 4.6 The TSP acknowledges that any lists provided by him listing or outlining Confidential Information, are of indicative value only and that the Secretary of State may nevertheless be obliged to disclose Confidential Information in accordance with the requirements of the FOIA and the Environmental Information Regulations.
- 4.7 In the event of a request from the Secretary of State pursuant to Paragraph 4.2, the TSP shall as soon as practicable, and in any event within five (5) Business Days of receipt of such request, inform the Secretary of State of the TSP's estimated costs of complying with the request to the extent these would be recoverable if incurred by the Secretary of State under section 12(1) of the FOIA and the Fees Regulations. Where such costs (either on their own or in conjunction with the Secretary of State's own such costs in respect of such Request for Information) will exceed the appropriate limit referred to in section 12(1) of the FOIA and as set out in the Fees Regulations, the Secretary of State shall inform the TSP in writing whether or not she still requires the TSP to comply with the request and, where she does require the TSP to comply with the request, the ten (10) Business Days' period for compliance shall be extended by such number of additional days for compliance as the Secretary of State is entitled to under section 10 of the FOIA. In such case, the Secretary of State shall notify the TSP of such additional days as soon as practicable after becoming aware of them and shall reimburse the TSP for such costs as the TSP incurs in complying with the request to the extent it is itself entitled to reimbursement of such costs in accordance with its own FOIA policy from time to time.
- 4.8 The TSP acknowledges that (notwithstanding the provisions of Paragraph 3) the Secretary of State may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under part I of the Freedom of Information Act 2000 (the **Code**), be obliged under the FOIA, or the Environmental Information Regulations to disclose Information concerning the TSP or the Project:
- (a) in certain circumstances without consulting with the TSP; or
 - (b) following consultation with the TSP and having taken their views into account,
- provided always that where Paragraph 4.8(a) applies the Secretary of State shall, in accordance with the recommendations of the Code, draw this to the attention of the TSP prior to any disclosure.

Appendix A to Schedule 11

Commercially Sensitive Contractual Provisions

Column 1	Column 2
Commercially Sensitive Contractual Provisions	For period ending on date below
"Costs Plus Basis" limb (a) (to the extent it refers to and states the agreed mark up)	Duration of this Agreement
"Fleet Acceptance Drop Dead Date"	Duration of this Agreement
"Joint Insurance Account"	Duration of this Agreement
"Project Management Fees"	Duration of this Agreement
"Labour Re-basing Indexation Rate"	Duration of this Agreement
"SPV Re-basing Indexation Rate"	Duration of this Agreement
"Relevant Fleet Acceptance Security Account Balance"	Duration of this Agreement
"Secretary of State Default" limb (a) (to the extent it refers to the unpaid amounts and value thereof)	Duration of this Agreement
"Threshold Equity IRR"	Duration of this Agreement
"TSP's Share"	Duration of this Agreement
Clause 12 to the extent that this contains carve-outs from the indemnities, and exclusions from or limits of liability	Design Life
Appendix B (<i>Train Technical Description</i>) of Schedule 1 (<i>Set Specification and Design</i>)	Duration of this Agreement
Paragraph 2.7 of Part A (<i>Testing and Acceptance</i>) of Schedule 2 (<i>Introduction into Service</i>) – definition of "TMS"	Duration of this Agreement
Paragraph 2.8 of Part A (<i>Testing and Acceptance</i>) of Schedule 2 (<i>Introduction into Service</i>) – definition of "DBF"	Duration of this Agreement
Paragraph 8.1 of Part A (<i>Testing and Acceptance</i>) of Schedule 2 (<i>Introduction into Service</i>) (to the extent it refers to the value of the retention amount) and limb (b)	Duration of this Agreement
Paragraph 9.2 of Part A (<i>Testing and Acceptance</i>) of Schedule 2 (<i>Introduction into Service</i>) (to the extent it refers to the period after which Set Retention Amounts cease to apply)	Duration of this Agreement
Paragraph 3.1 of Part B (<i>Delayed Delivery and Delayed Acceptance</i>) of Schedule 2 (<i>Introduction into Service</i>) – definition on "n"	Duration of this Agreement

Column 1	Column 2
Commercially Sensitive Contractual Provisions	For period ending on date below
Paragraph 3.2 of Part B (<i>Delayed Delivery and Delayed Acceptance</i>) of Schedule 2 (<i>Introduction into Service</i>) (to the extent it refers to the notice period)	Duration of this Agreement
Initial TARA (to the extent provisions therein are commercially sensitive)	Duration of this Agreement
Paragraph 1 of Appendix A (<i>Cash Flows and Financial Model</i>) to Part C (<i>Usage Undertaking</i>) of Schedule 4 (<i>Train Availability and Reliability Agreements</i>)	Duration of this Agreement
Part B (<i>Required Insurances</i>) of Schedule 5 (<i>Insurance</i>)	Duration of this Agreement
Appendix C (<i>No Full Fleet Valuation Procedure</i>) to Part D (<i>TSP Default</i>) of Schedule 6 (<i>Expiry, Events of Default, Termination and Force Majeure</i>)	Duration of this Agreement
Appendix E (<i>Maintainer Replacement Refinancing</i>) to Part D (<i>TSP Default</i>) of Schedule 6 (<i>Expiry, Events of Default, Termination and Force Majeure</i>) and all associated definitions, but excluding Paragraph 1.1 of that Appendix.	Duration of this Agreement

Appendix B to Schedule 11

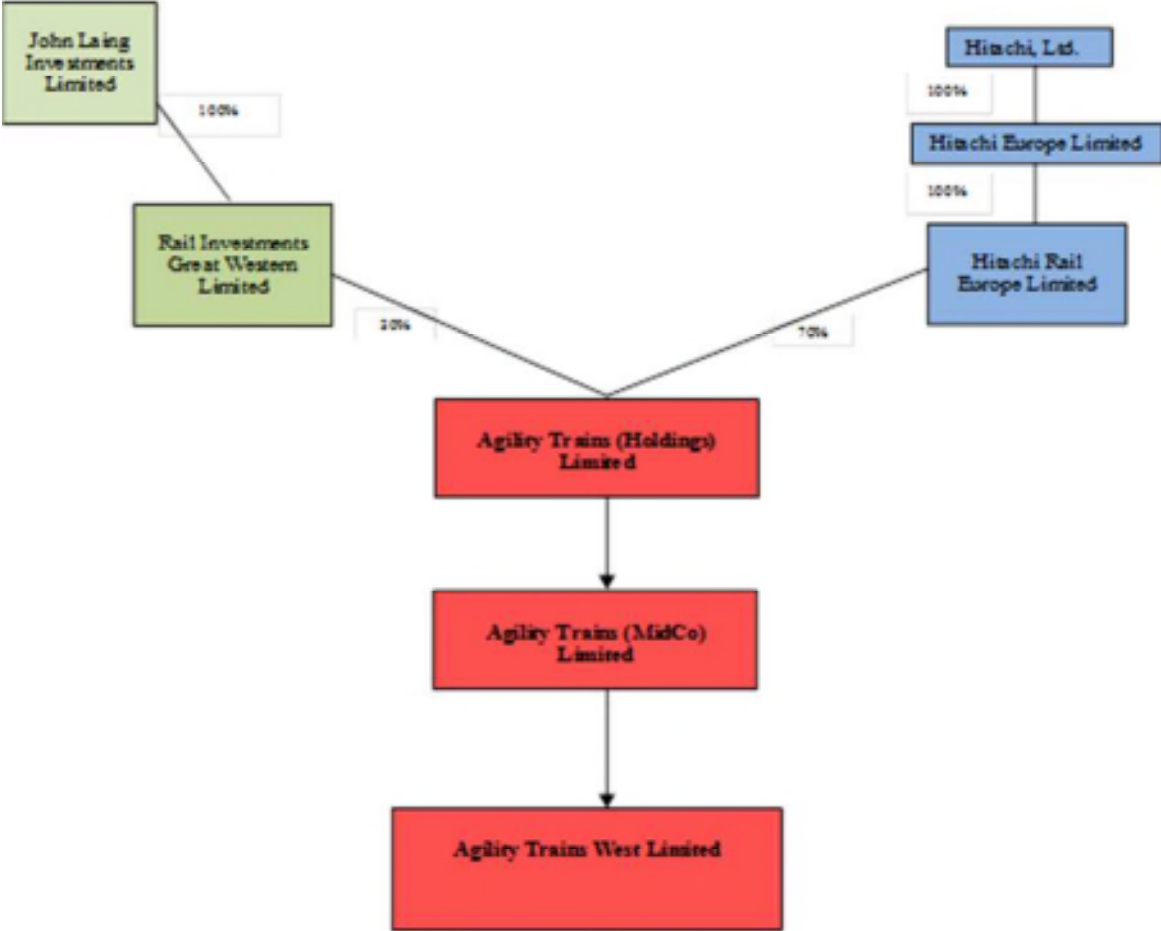
Commercially Sensitive Material

Commercially Sensitive Material	Period of Confidentiality
General	
Information obtained from the TSP relating to (i) the TSP's corporate structure and shareholdings, to the extent not in the public domain and (ii) funding, including any financial term sheets and related funding information relating to the Project.	Duration of this Agreement
Financial Information	
Financial models and any model assumptions (including all supporting documents produced on behalf of the TSP containing project specific information), budgets, estimates and/or quotations for undertaking services and forecasts relating to the Project.	Duration of this Agreement
Price breakdowns, including any financial models and supporting documents relating to the Project to the extent this reveals information about the TSP's, any Significant Sub-Contractor's or any of their sub-contractors or Affiliates costs, rates, build ups, forecasts and/or profit levels.	Duration of this Agreement
Information obtained from the TSP relating to Project risks and pricing of the same to the extent this reveals information about the TSP's, any Significant Sub-Contractor's or any of their sub-Contractors or Affiliates costs, rates, build ups, forecasts and/or profit levels.	Duration of this Agreement
Information on sums recovered from the TSP such as damages, liquidated damages, insurance claims, deductions and sums recovered under indemnities or warranties.	Duration of this Agreement
Contract accounts, turnover accounts and the TSP's, any Significant Sub-Contractor's or any of their sub-Contractors or Affiliates financial records or information made available pursuant to the Agreement or any TARA.	Duration of this Agreement
Any information made available pursuant to the Agreement or any TARA in connection with matters determined on a "Cost Plus Basis" or in connection with any matters referred to in Schedule 10 (<i>Intellectual Property</i>).	Duration of this Agreement
Bid Documentation	
The TSP's responses to the Project's Pre-Qualification Questionnaire, Invitation to Tender,	Duration of this Agreement

Commercially Sensitive Material	Period of Confidentiality
Revise and Confirm documentation and Fleet Deployment Statements, financial models including all variants, submission, responses, proposals, correspondence, clarifications, papers etc.	
Associated Contractual Documentation	
Any Project Documents to which the Secretary of State is not a party and the Intercreditor Agreement.	Duration of this Agreement
Intellectual Property	
TSP IPR, Third Party IPR, Manufacturer IPR and Maintainer IPR	Duration of this Agreement
All Intellectual Property Rights	Duration of this Agreement
Personal Information	
Personal information relating to any of the TSP's employees or employees of any Sub-Contractor to the extent it contains information exempt as personal data under section 40 of FOIA but without prejudice to the rights of access under the Data Protection Act 1998.	Duration of this Agreement
The TSP's Representative to the extent that this information is exempt as personal data under section 40 of the FOIA but without prejudice to the right of persons to make access requests under the Data Protection Act 1998.	Duration of this Agreement

Appendix C to Schedule 11

Ownership Structure of TSP



SCHEDULE 12

Conditions Precedent

Part A of Schedule 12

Secretary of State Conditions Precedent

1. A copy of each of the following documents being delivered to the Secretary of State:
 - (a) a resolution of the board of Directors of each of the TSP, MidCo, HoldCo, Hitachi Rail Europe Limited and RIGWL and, in the case of Hitachi, Ltd., an executive officer's resolution, in each case approving the execution, delivery and performance by the relevant company of the applicable Project Documents and authorising one or more directors of the relevant company (or their duly authorised attorney) to sign the applicable Project Documents on behalf of the relevant company, to approve any amendments to the applicable draft Project Documents produced to the Directors of the relevant company and authorising a specified person or persons to sign and despatch all notices and other communications required or permitted to be given by the relevant company under any applicable Project Documents;
 - (b) a certificate of each of the TSP, MidCo, HoldCo, Hitachi Rail Europe Limited, RIGWL and Hitachi, Ltd. setting out the specimen signature of each person authorised to sign and despatch all notices and other communications required or permitted to be given by the relevant company under any applicable Project Documents;
 - (c) the certificate of incorporation of each of the TSP, MidCo and HoldCo;
 - (d) the Memorandum and Articles of Association of each of the TSP, MidCo and HoldCo; and
 - (e) the duly executed Broker's letter of undertaking in the form set out in Appendix D (*Form of Broker's Letter of Undertaking*) to Part B (*Required Insurances*) of Schedule 5 (*Insurance*) duly executed by all parties thereto.
2. The following original documents each having been released from escrow in accordance with the Escrow Agreement:
 - (a) this Agreement duly executed by the TSP;
 - (b) the Secretary of State MSA Direct Agreement duly executed by all parties thereto other than the Secretary of State;
 - (c) the Hitachi, Ltd. guarantee in respect of the Secretary of State MSA Direct Agreement duly executed by all parties thereto other than the Secretary of State;
 - (d) the Secretary of State TSA Direct Agreement duly executed by all parties thereto other than the Secretary of State;
 - (e) the Hitachi, Ltd. guarantee in respect of the Secretary of State TSA Direct Agreement duly executed by all parties thereto other than the Secretary of State;

- (f) the Dispute Resolution Agreement duly executed by all parties thereto other than the Secretary of State;
- (g) the Asset Transfer Agreement duly executed by all parties thereto other than the Secretary of State;
- (h) the Network Rail Direct Agreement duly executed by all parties thereto other than the Secretary of State;
- (i) the BRBR Direct Agreement duly executed by all parties thereto other than the Secretary of State;
- (j) the Funder Direct Agreement duly executed by all parties thereto other than the Secretary of State;
- (k) the Intercreditor Agreement duly executed by all parties thereto other than the Secretary of State;
- (l) the duly executed Shareholder Support Agreement (as defined in the CTA);
- (m) the duly executed Hitachi, Ltd. guarantee in respect of the Shareholder Support Agreement;
- (n) each duly executed Qualifying Equity L/C (as defined in the CTA);
- (o) the duly executed Shareholders Agreement (as defined in the CTA);
- (p) each duly executed Borrower Loan Note Instrument (as defined in the Shareholder Support Agreement);
- (q) each duly executed MidCo Loan Note Instrument (as defined in the Shareholder Support Agreement);
- (r) the duly executed Manufacture and Supply Agreement;
- (s) the duly executed Hitachi, Ltd. parent company guarantee in respect of the Manufacture and Supply Agreement;
- (t) the duly executed Manufacturer Direct Agreement (as defined in the CTA);
- (u) the duly executed MSA Parallel Loan Agreement (as defined in the CTA);
- (v) the duly executed Maintenance Agreement;
- (w) the duly executed Hitachi, Ltd. parent company guarantee in respect of the Maintenance Agreement;
- (x) the duly executed Maintainer Direct Agreement (as defined in the CTA);
- (y) the duly executed TSA Parallel Loan Agreement (as defined in the CTA);
- (z) the duly executed Agreement for Lease (including the Agreed Form Lease, Underlease, Depot Letting Conditions, Depot Access Conditions and Depot Annexes) in respect of each of Stoke Gifford and Swansea Maliphant;

- (aa) the duly executed Agreement for Lease (including the Agreed Form Lease, Underlease, Depot Access Conditions and Depot Annexes) in respect of North Pole;
 - (bb) the duly executed Asset Protection Agreement in respect of Swansea Depot;
 - (cc) the duly executed Asset Protection Agreement in respect of Stoke Gifford;
 - (dd) the duly executed Depot Connection Agreement in respect of Swansea Maliphant;
 - (ee) the duly executed Depot Connection Agreement in respect of North Pole;
 - (ff) the duly executed Depot Connection Agreement in respect of Stoke Gifford;
 - (gg) the duly executed Works Agreement for building the connections to the main line at North Pole and Stoke Gifford;
 - (hh) the duly executed Supplemental Demarcation Agreement for North Pole;
 - (ii) each duly executed Secondment Agreement;
 - (jj) the duly executed Common Terms Agreement;
 - (kk) the duly executed Uncovered Facility Agreement;
 - (ll) the duly executed NEXI Covered Facility Agreement (as defined in the CTA);
 - (mm) the duly executed JBIC Facility Agreement (as defined in the CTA);
 - (nn) the duly executed EIB Finance Contract (as defined in the CTA);
 - (oo) the duly executed Equity Bridge Facility Agreement (as defined in the CTA);
 - (pp) the duly executed Account Bank Agreement;
 - (qq) the duly executed Borrower Debenture; and
 - (rr) the duly executed MidCo Debenture (as defined in the CTA).
3. Each duly executed Senior Hedging (as defined in the CTA) Agreement having been released from escrow in accordance with the relevant Escrow Letter (as defined in the CTA).

Part B of Schedule 12

TSP Conditions Precedent

1. A copy of each duly executed confirmation letter of delegated contractual authority from the Department for Transport to (i) the TSP and Hitachi Rail Europe Limited and (ii) the Security Trustee, each in relation to the execution by the Secretary of State of the Project Documents (and each attaching a copy of a letter of delegation and a specimen signature in respect of each delegate).
2. The following original documents each having been released from escrow in accordance with the Escrow Agreement:
 - (a) this Agreement duly executed by the Secretary of State;
 - (b) the Secretary of State MSA Direct Agreement duly executed by the Secretary of State;
 - (c) the Hitachi, Ltd. guarantee in respect of the Secretary of State MSA Direct Agreement duly executed by the Secretary of State;
 - (d) the Secretary of State TSA Direct Agreement duly executed by the Secretary of State;
 - (e) the Hitachi, Ltd. guarantee in respect of the Secretary of State TSA Direct Agreement Guarantee duly executed by the Secretary of State;
 - (f) the Network Rail Direct Agreement duly executed by the Secretary of State;
 - (g) the BRBR Direct Agreement duly executed by the Secretary of State;
 - (h) the Funder Direct Agreement duly executed by the Secretary of State;
 - (i) an original of the franchise letter from the Secretary of State to the TSP duly executed by the Secretary of State;
 - (j) the Dispute Resolution Agreement duly executed by the Secretary of State;
 - (k) the Asset Transfer Agreement duly executed by the Secretary of State;
 - (l) the Intercreditor Agreement duly executed by the Secretary of State; and
 - (m) an original of the letter from the Secretary of State to the TSP approving the shortlist of Depot Construction Sub-Contractors duly executed by the Secretary of State.

SCHEDULE 13

Form of Dispute Resolution Agreement

Dated _____

THE SECRETARY OF STATE FOR TRANSPORT

AGILITY TRAINS WEST LIMITED

(in its capacity as the TSP)

THE SECRETARY OF STATE FOR TRANSPORT

**(in her capacity as at the date hereof and from time to time as
the Relevant Operator under the MARA)**

BTMU (EUROPE) LIMITED.

(Security Trustee)

HITACHI RAIL EUROPE LIMITED

(in its capacity as the Maintainer)

DISPUTE RESOLUTION AGREEMENT

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THIS DISPUTE RESOLUTION AGREEMENT (this *Agreement*) is made as a deed on _____
_____ 2012

BETWEEN:

- (1) **THE SECRETARY OF STATE FOR TRANSPORT**, whose principal address is at 33 Horseferry Road, London, SW1P 4DR (the *Secretary of State*);
- (2) **AGILITY TRAINS WEST LIMITED**, whose registered number is 07930606 and whose registered address is at 7th Floor, 40 Holborn Viaduct, London, EC1N 2PB (the *TSP*);
- (3) **THE SECRETARY OF STATE FOR TRANSPORT**, whose principal address is at 33 Horseferry Road, London, SW1P 4DR (in her capacity as at the date hereof and from time to time as the Relevant Operator under the MARA, the *Relevant Operator* (as further defined below));
- (4) **BTMU (EUROPE) LIMITED** (the *Security Trustee*); and
- (5) **HITACHI RAIL EUROPE LIMITED**, whose registered number is 05598549 and whose registered address is at 40 Holborn Viaduct, London EC1N 2PB, (the *Maintainer*).

WHEREAS:

- (A) The parties to this Agreement are or will be parties to some or all contracts which are listed in Appendix C (*The Contracts*) to this Agreement (together, the *Contracts* and individually, a *Contract*).
- (B) The Secretary of State, the TSP and the Relevant Operator have agreed that any Dispute or Acceptance Dispute (as defined below) shall be resolved in the manner set out in this Agreement.
- (C) The parties acknowledge that the Security Trustee is a party to this Agreement only for the purpose of resolving a Liquid Market Dispute (as defined below).
- (D) The parties acknowledge that the Maintainer is a party to this Agreement only for the purpose of resolving a TSA Step-In Dispute (as defined below).
- (E) The parties to this Agreement have agreed that a New Relevant Operator may become a party to this Agreement by entering into a Deed of Adherence.
- (F) This Agreement is supplemental to each of the Contracts.

NOW THEREFORE in consideration of the provisions and mutual covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, **IT IS AGREED** as follows:

1. INTERPRETATION

1.1 In this Agreement, except to the extent the context otherwise requires:

- (a) any reference to this Agreement includes the Schedules and Appendices, each of which form part of this Agreement;
- (b) references in this Agreement to Recitals, Clauses and Schedules are to Recitals, Clauses and Schedules in each case, of this Agreement, unless expressly specified to the contrary;

- (c) references to this Agreement include this Agreement as amended or supplemented in accordance with its terms or otherwise by written agreement between the parties;
- (d) references to any enactment or statutory provision shall unless otherwise expressly specified, include any subordinate legislation made from time to time under such enactment or statutory provision and are to be construed as references to that enactment or statutory provision as for the time being amended or modified or to any enactment or statutory provision for the time being replacing or amending it and references to any subordinate legislation are to be construed as references to that legislation as for the time being amended or modified or to any legislation for the time being replacing or amending it;
- (e) references in this Agreement to any other agreement, document or instrument (other than an enactment or statutory provision) shall be construed as referring to that agreement, document or instrument as from time to time amended, varied, supplemented, replaced, assigned or novated in accordance with its terms;
- (f) the contents page, headings and references to headings are for convenience only and shall be disregarded in construing this Agreement;
- (g) the words **include**, **including** and **in particular** shall be construed without limitation;
- (h) words in the singular shall include the plural and vice-versa;
- (i) words importing one gender shall include other genders;
- (j) a reference to a person shall include a reference to a firm, body corporate, an unincorporated association, a partnership, limited partnership, limited liability partnership or to an individual's executors and administrators; and references to any person shall include its successors, transferees and assignees;
- (k) the terms **party** and **parties** shall refer to the Secretary of State, the TSP and the Relevant Operator, or any replacement Relevant Operator who has entered into a Deed of Adherence, except for a Former Party, and any reference to a **third party** is a reference to any person who is not a party;
- (l) unless otherwise stated in this Agreement, the costs of performing an obligation under this Agreement shall be borne by the party required to perform such obligation; and
- (m) words and expressions defined in the Interpretation Act 1978 have the same meanings when used in this Agreement.

Definitions

1.2 In this Agreement, except where the context otherwise requires: (a) words and expressions defined in the MARA shall have the same respective meanings; and (b) the following terms shall have the following meanings:

Acceptance Dispute has the meaning given to it in Clause 8.1;

Acceptance Disputes Procedure means the procedures set out in Clauses 8 and 9 and Appendix B (*Arbitration Procedure*);

Accelerated Arbitration means the procedure set out in Clause 9 and Appendix B (*Arbitration Procedure*);

Adjudicator means the person appointed pursuant to the terms of Clauses 6.1 and 6.2;

Applicable Laws and Standards means all or any laws, statutes, proclamations, by-laws, directives, regulations, statutory instruments, rules, orders, rules of court, delegated or subordinate legislation, rules of common law, or any European Union legislation at any time or from time to time in force in the United Kingdom which relate to this Agreement or the obligations to be performed under it, the Sets or any agreement or document referred to in this Agreement, including Industry Standards, Environmental Laws, the Railways (Interoperability) Regulations 2011 and the ROGS, in each case to the extent that they are so applicable;

Arbitrator means the person appointed by agreement between the parties pursuant to Clause 9.6;

Arbitration Procedure means the procedure set out in Appendix B (*Arbitration Procedure*);

Asset Transfer Agreement means the asset transfer agreement between the Secretary of State and the TSP on the Commencement Date;

Business Day means a day (other than a Saturday or Sunday) on which commercial banks are open for general business in London;

CEDR means the Centre for Effective Dispute Resolution;

Connected Dispute has the meaning given to it in Clause 5.5;

Construction Act Dispute has the meaning given to it in Clause 7.1;

Construction Act Dispute Party has the meaning given to it in Clause 7.2;

Contract has the meaning given to it in Recital (A);

Core Dispute Resolution Procedure means the procedures set out in Clauses 4 to 7 (inclusive) and Appendix A (*Core Disputes Adjudication Procedures*);

Counter Notice has the meaning given to it in Clause 8.5;

Deed of Adherence means a deed by which the New Relevant Operator will accede to this Agreement, in the form set out in Appendix D (*Form of Deed of Adherence*), executed by the New Relevant Operator;

Dispute has the meaning given to it in Clause 4.1;

Dispute Party means, in relation to a Dispute, a Party who is a party to that Dispute;

Dispute Parties' Representatives means, in relation to the Secretary of State the Secretary of State's Representative, in relation to the TSP the TSP Delivery Manager, in relation to the Maintainer the Maintainer Contract Manager and in relation to the Security Trustee, Miles Pool and Kiho Matsushiba;

Expert means the person appointed pursuant to the terms of Clause 8;

Expiry Date means the earlier of:

- (a) the date that the MARA is terminated in accordance with its terms; or
- (b) the RV Date;

First Notice of Adjudication has the meaning given to it in Clause 6.5;

Former Party means a party who ceased to be a party to this Agreement pursuant to Clause 3.3;

Funder Direct Agreement means the direct agreement dated the Effective Date and made between, amongst others, the Secretary of State, the TSP and the Security Trustee;

Initial Relevant Operator means the train operating company to be appointed by the Secretary of State, who shall be the first operator of the Sets pursuant to the Initial TARA;

Initial TARA means the TARA to be entered into by the TSP and the Initial Relevant Operator in the agreed form in accordance with the MARA;

IRODA means the Initial Relevant Operator Direct Agreement to be entered into between the TSP and the Initial Relevant Operator in accordance with the terms of the MARA;

LCIA means the London Court of International Arbitration;

LCIA Rules means the arbitration rules of the LCIA;

Liquid Market Dispute has the meaning given to it in clause 4.2 of the Funder Direct Agreement;

Maintenance Agreement has the meaning given to it in the MARA;

MARA means the master availability and reliability agreement between the Secretary of State and the TSP dated the date hereof;

MARA Dispute has the meaning given to it in Clause 4.1;

Mediation Notice has the meaning given to it in Clause 5.1;

New Relevant Operator means, in relation to the TARA, the train operating company that is a party to the TARA, excepting the first appointment of the Secretary of State or any appropriate person nominated by the Secretary of State to act as the Relevant Operator pursuant to the MARA but including, in relation to the Initial TARA and the IRODA, the Initial Relevant Operator;

Notice of Adjudication means any written notice given by a party pursuant to Clause 4.4(a) or Clause 7.2 requiring reference of a Dispute to an Adjudicator;

Notice of Appointment has the meaning given to it in Clause 6.4;

Notice of Dispute has the meaning given to it in Clause 4.1;

Notice of Expert Determination has the meaning given to it in Clause 8.3;

Operator has the same meaning as Relevant Operator and vice versa;

Other Agreement means where the Dispute is a MARA Dispute the TARA and where the Dispute is a TARA Dispute the MARA;

Relevant Operator means, in relation to the TARA, the train operating company that is a party to the TARA or:

- (a) prior to the appointment of the Initial Relevant Operator; and
- (b) prior to any replacement train operating company entering into such agreements as are required from time to time following the expiry or termination of the TARA in accordance with its terms,

the Secretary of State or any appropriate person nominated by the Secretary of State for this purpose;

Relevant Operator Representative has the meaning given to Operator Nominated Contact in the TARA;

Qualified Acceptance Dispute has the meaning given to it in Paragraph 15 of Appendix B (*Arbitration Procedure*);

Repeat Dispute has the meaning given to it in Clause 8.23;

Request for Arbitration means a written notice issued pursuant to Clause 9.1 or 9.2 complying with the requirements of Article 1 of the LCIA Rules;

RODA means any Relevant Operator Direct Agreement, including the IRODA;

Second Notice of Adjudication has the meaning given to it in Clause 6.5;

Secretary of State's Representative has the meaning given to it in the MARA;

Senior Personnel has the meaning given to it in Clause 4.3;

Set has the meaning given to it in the MARA;

TARA means a train availability and reliability agreement between the TSP and the Relevant Operator pursuant to which the TSP makes the Sets that are the subject matter of the TARA available to the Relevant Operator on the terms and conditions set out therein in order to allow the Relevant Operator to deliver certain railway passenger services, and includes (i) the Initial TARA and (ii) any successor TARA or further TARA entered into in accordance with the MARA;

TARA Dispute has the meaning given to it in Clause 4.1;

TARA Step-In Dispute means a Dispute arising under or in connection with schedule 11 (*Step-In and Step-Out*) to the TARA;

TSA Step-In Dispute means a Dispute arising under or in connection with schedule 11 (*Step-In and Step-Out*) to the Maintenance Agreement; and

TSP Delivery Manager has the meaning given to it in the MARA.

2. COMMENCEMENT AND TERM

This Agreement shall commence on the date of execution and shall end on the Expiry Date.

3. PARTIES

3.1 The parties hereby agree to admit as a party to this Agreement any Relevant Operator who is appointed by the Secretary of State under the MARA and who enters into a Deed of Adherence.

3.2 For the avoidance of doubt, notwithstanding any amendments to this Agreement necessary to permit the Initial Relevant Operator and any replacement Relevant Operators from time to time to enter into this Agreement, and save for the inclusion of the Initial Relevant Operator and any replacement Relevant Operator as a party to this Agreement, the parties agree that the terms of this Agreement shall remain the same unless otherwise agreed by the parties.

3.3 A Relevant Operator shall cease to be a party to this Agreement upon the termination or expiry of the TARA to which it is a party, provided always that, if at the date of such termination or expiry there are Disputes ongoing to which this Agreement applies and which involve the Relevant Operator it shall remain party to this Agreement until such time as the Disputes are finally resolved in accordance with this Agreement unless:

- (a) the Relevant Operator has obtained the prior written consent of both the Secretary of State and the TSP; and
- (b) the Relevant Operator has been replaced by a New Relevant Operator who:
 - (i) is a party to a TARA;
 - (ii) has acceded to this Agreement; and
 - (iii) has taken over the Relevant Operator's interest and liabilities in respect of any such Disputes and has substituted the outgoing Relevant Operator in any relevant proceedings.

Liquid Market Disputes

3.4 The Security Trustee is a party to this Agreement only for the purpose of a Liquid Market Dispute being determined pursuant to clause 4 of the Funder Direct Agreement.

3.5 The parties acknowledge that the Security Trustee shall have no rights or obligations under this Agreement other than in connection with the resolution of a Liquid Market Dispute.

Step-In Disputes

3.6 The Maintainer is a party to this Agreement only for the purpose of a TSA Step-In Dispute being determined pursuant to paragraph 5 of schedule 11 (*Step-In and Step-Out*) of the Maintenance Agreement.

3.7 The parties acknowledge that the Maintainer shall have no rights or obligations under this Agreement other than in connection with the resolution of a TSA Step-In Dispute.

4. ESCALATION PROCEDURE

Definition of Dispute and Escalation Procedure

- 4.1 Save as otherwise expressly provided, a dispute (**Dispute**) shall be deemed to arise when one party notifies the other in writing of a dispute or difference (**Notice of Dispute**) of whatever nature arising under or in connection with the terms of the MARA (a **MARA Dispute**), the TARA (a **TARA Dispute**), a RODA, the Maintenance Agreement, the Funder Direct Agreement, the Asset Transfer Agreement or this Agreement, in each case as amended or supplemented in accordance with their terms or otherwise, or under or in connection with any other obligations or rights the parties may acquire in relation to the MARA, the TARA, the RODA, the Maintenance Agreement, the Funder Direct Agreement, the Asset Transfer Agreement or this Agreement. For the avoidance of doubt, a Dispute may include claims for set-off, counterclaims and disputes or differences arising out of or in connection with: (i) the creation, validity, effect, interpretation, performance or non-performance of, or the legal relationships established by, the MARA, the TARA, a RODA, the Maintenance Agreement, the Funder Direct Agreement, the Asset Transfer Agreement or this Agreement; and (ii) any non-contractual obligations between the parties arising out of or in connection with the MARA, the TARA, a RODA, the Maintenance Agreement, the Funder Direct Agreement, the Asset Transfer Agreement or this Agreement including but not limited to any claim based on contract, tort, equity or Applicable Laws and Standards.
- 4.2 Upon one party serving on the other a Notice of Dispute, the Dispute Parties shall, before taking any further action, use reasonable endeavours to negotiate in good faith to settle the Dispute, as provided in Clauses 4.3 and 4.4.
- 4.3 If the Dispute is not settled through discussion between the Dispute Parties' Representatives within a period of seven (7) Business Days from the date on which the Dispute arose, either Dispute Party may by giving notice in writing escalate the Dispute to a director (or, if the Secretary of State is a Dispute Party, an equivalent senior civil servant nominated as suitable by the Secretary of State) (**Senior Personnel**), within five (5) Business Days after the referral period to the Dispute Parties' Representatives has expired. Notwithstanding any confidentiality obligations between the Dispute Parties in respect of a Dispute, whether arising pursuant to Clause 20 (*Dispute Resolution*) of the MARA, clause 19 (*Dispute Resolution*) of the TARA or otherwise, either Dispute Party may inform any other party to this Agreement who is not a Dispute Party that a Dispute has arisen and provide the other party to this Agreement with details of the Dispute.
- 4.4 If the Dispute is not resolved within fourteen (14) Business Days of referral to the Senior Personnel pursuant to Clause 4.3:
- (a) either Dispute Party may give notice of its intention to refer the Dispute to adjudication by issuing a Notice of Adjudication to all the other Dispute Parties, pursuant to the adjudication procedure set out at Clauses 6.1 to 6.23 (inclusive) within a period of fourteen (14) Business Days after the referral period to Senior Personnel has concluded; and/or
 - (b) subject to the time limits in Clause 6.24, either Dispute Party may commence proceedings, provided that:
 - (i) where a Dispute has been referred to adjudication pursuant to Clause 4.4(a):

- (A) the Adjudicator has issued his decision pursuant to Clause 6.17; or
- (B) pursuant to Clause 6.14, the Adjudicator has failed to give notice of his decision or the Adjudicator's appointment has been terminated and a replacement Adjudicator has not been appointed in accordance with Clause 6.14; or
- (ii) the Dispute Parties have agreed in writing not to refer a dispute to adjudication.

4.5 Every Notice of Adjudication shall contain:

- (a) a statement indicating which Contract or Contracts and which Clause or Clauses the Dispute arises under;
- (b) a concise summary of the nature of the Dispute and the issues arising; and
- (c) a statement of the relief or remedy sought.

5. **MEDIATION PROCEDURE**

5.1 If the Dispute is not resolved within fourteen (14) Business Days of referral to the Senior Personnel, either Dispute Party may at any time thereafter propose by notice given in writing to the other Dispute Party that a structured mediation or negotiation be entered into with the assistance of a mediator (a **Mediation Notice**), pursuant to the mediation procedure set out at Clauses 5.2 to 5.4 (inclusive).

5.2 The Dispute Parties must respond promptly and on an open basis to any Mediation Notice stating whether they agree to proceed to mediation and, if not, their reasons for not proceeding to mediation.

- (a) The Dispute Parties shall endeavour to agree a mediator.
- (b) If the Dispute Parties are unable to agree a mediator, or if the agreed mediator is unable or unwilling to act, within ten (10) Business Days of service of a Mediation Notice either Dispute Party may apply to CEDR in London to appoint a mediator.
- (c) The costs of that mediator shall be divided equally between the Dispute Parties, or as the Dispute Parties may otherwise agree in writing.

5.3 Where a Dispute is referred to mediation pursuant to Clause 5.1, the Dispute Parties shall attempt to settle such Dispute by mediation in accordance with the CEDR mediation procedures applicable as at the date a Mediation Notice is issued pursuant to Clause 5.1 or such other procedures as recommended by the mediator and agreed by the Dispute Parties and, pursuant to Clause 5.5, the parties to any Connected Dispute. Unless otherwise agreed by all parties to the Mediation or directed by a court a referral to mediation shall not in any way suspend or otherwise delay any other dispute resolution process under this Agreement or in connection with the Contracts.

5.4 If the Dispute Parties reach agreement on the resolution of the Dispute, such agreement shall be recorded in writing and, once signed by the Dispute Parties' Representatives, shall be final and binding on the Dispute Parties.

5.5 If any MARA Dispute relates to issues that are the same, similar to or connected with any TARA Dispute or vice versa (the **Connected Dispute**) and provided that the Connected

Dispute has not yet been finally decided or settled under this Agreement, the Connected Dispute may be joined with the Dispute so that both disputes are subject to the same mediation procedure with the agreement of all parties to the Dispute and the Connected Dispute.

6. ADJUDICATION PROCEEDINGS

Appointment of an Adjudicator

- 6.1 Should any Dispute Party give a Notice of Adjudication, then immediately thereafter the Dispute Parties shall endeavour to agree a shortlist of persons whom they would consider suitable to act as the Adjudicator and invite them (in turn in the order in which they appear on the agreed shortlist) to accept the reference of the Dispute referred to in the Notice of Adjudication.
- 6.2 In the event the Dispute Parties fail jointly to appoint a person willing and suitable to act as Adjudicator within ten (10) Business Days of the Notice of Adjudication, any Dispute Party may apply to the LCIA to appoint a suitable person to act as Adjudicator having regard to the nature of the Dispute within five (5) Business Days. The Dispute Party making the application may in the absence of agreement to share the cost from the other Dispute Parties pay the fee of the LCIA and the Adjudicator shall as part of his determination decide how the fee should be apportioned, such determination to be final and binding on the Dispute Parties regardless of whether any other matters determined by the Adjudicator are subsequently referred to litigation.
- 6.3 The Adjudicator may not, without the consent of the Dispute Parties, accept a second reference sent to him more than ten (10) Business Days after a first reference was sent to him and where he has accepted the first reference and it has not yet been concluded.

Remuneration of the Adjudicator

- 6.4 The terms of remuneration of the Adjudicator shall be agreed by the Dispute Parties and the Adjudicator as soon as is reasonably practicable after the Notice of Adjudication is given. The person requested to act as Adjudicator pursuant to Clause 6.1 or 6.2 (or in the case of a Construction Act Dispute, pursuant to Clauses 7.3 or 7.4) shall confirm that he is willing to act as Adjudicator within five (5) Business Days (or in the case of a Construction Act Dispute, within three (3) days) and shall issue a written notice to the parties confirming his appointment as Adjudicator (**Notice of Appointment**). Where the Adjudicator and the Dispute Parties fail to agree the terms of the Adjudicator's remuneration:
- (a) the Dispute Parties shall appoint a replacement Adjudicator pursuant to the terms of Clause 6.14; or
 - (b) where the Adjudicator has been appointed by the LCIA pursuant to Clause 6.2 (or in the case of a Construction Act Dispute, pursuant to Clause 7.4), any Dispute Party may refer the terms of the remuneration of the Adjudicator to the LCIA to be settled (and binding upon the Dispute Parties) by agreement between the LCIA and the Adjudicator (provided that the level of the Adjudicator's fees shall not exceed the level originally proposed to the Dispute Parties by the Adjudicator following his appointment by the LCIA).

Related Disputes

6.5 If a Notice of Adjudication (the **Second Notice of Adjudication**) is given within ten (10) Business Days of a previous Notice of Adjudication (the **First Notice of Adjudication**) and any Dispute Party believes that the Second Notice of Adjudication relates to any of the same or similar issues raised by the First Notice of Adjudication, then any Dispute Party may refer the Second Notice of Adjudication to the Adjudicator appointed (or to be appointed) under the First Notice of Adjudication for determination at the same time as the First Notice of Adjudication. In this event, the Adjudicator shall conduct the references in respect of the First Notice of Adjudication and the Second Notice of Adjudication at the same time and any decision given by the Adjudicator in respect of those Notices of Adjudication shall be made in accordance with Clause 6.17 (or in the case of a Construction Act Dispute, in accordance with Clause 7.7). Where any Dispute Party disputes that the Second Notice of Adjudication relates to any of the same or similar issues as the First Notice of Adjudication, the matter shall be referred to the Adjudicator within five (5) Business Days of receipt of the Adjudicator's acceptance of the reference of the Second Notice of Adjudication and the Adjudicator shall determine whether the references shall be determined at the same time as the First Notice of Adjudication in the same adjudication proceedings. If the Adjudicator determines that such references should not be determined in the same adjudication proceedings, the Dispute referred to in the Second Notice of Adjudication shall be considered in separate adjudication proceedings.

Joinder of a TARA Dispute to a MARA Dispute

6.6 Where any MARA Dispute relates to issues that are similar to or connected with a TARA Dispute, the TARA Dispute may be determined in the same adjudication as that MARA Dispute provided that:

- (a) all parties to the TARA agree;
- (b) either all parties to the MARA agree or the Adjudicator appointed in respect of the MARA Dispute, applying substantially the same principles as the High Court would apply, agrees to allow for the disputes to be heard in the same adjudication pursuant to the terms of Clause 6.7; and
- (c) the TARA Dispute has not yet been finally decided or settled pursuant to the terms of the TARA.

6.7 Any party to the MARA or the TARA who wishes to submit a request to the Adjudicator to determine a TARA Dispute in the same adjudication as the MARA Dispute pursuant to Clause 6.6 must do so in writing, setting out the grounds for determining the MARA Dispute and the TARA Dispute in the same adjudication, no later than five (5) Business Days after receipt of the Notice of Appointment in relation to the MARA Dispute (as defined in Appendix A (*Core Disputes Adjudication Procedures*)). Any objections to such a request shall be made in writing to the Adjudicator within two (2) Business Days of being notified that the request has been made. The Adjudicator shall issue his decision to all parties on any such objection within two (2) Business Days of receipt of the objection in terms of this Clause 6.7

6.8 Where a TARA Dispute is referred to the same adjudication as a MARA Dispute pursuant to Clause 6.6, the provisions of this Agreement shall be modified accordingly and the Adjudicator appointed in accordance with this Agreement shall have the same powers in relation to the TARA Dispute as he has in relation to the MARA Dispute and as if the

procedure of the High Court in relation to co defendants and non parties was available to the parties and to the Adjudicator.

- 6.9 For the avoidance of doubt, where a MARA Dispute and a TARA Dispute have been determined in the same adjudication before the Adjudicator and court proceedings are commenced in respect of the TARA Dispute, those court proceedings shall be of no effect in relation to the MARA Dispute and the Secretary of State shall not be bound by the outcome of the court proceedings unless the MARA Dispute is also the subject of, and determined in, the same proceedings.

Joinder of a MARA Dispute to a TARA Dispute

- 6.10 Where any TARA Dispute relates to issues that are similar to or connected with a MARA Dispute, the MARA Dispute may be determined in the same adjudication as that TARA Dispute provided that:

- (a) all parties to the MARA agree; and
- (b) either all parties to the TARA agree or the Adjudicator appointed in respect of the TARA Dispute, applying substantially the same principles as the High Court would apply, agrees to allow for the disputes to be heard in the same adjudication pursuant to the terms of Clause 6.11; and
- (c) the MARA Dispute has not yet been finally decided or settled pursuant to the terms of the MARA.

- 6.11 Any party to the TARA or the MARA who wishes to submit a request to the Adjudicator to determine a MARA Dispute in the same adjudication as the TARA Dispute pursuant to Clause 6.10 must do so in writing, setting out the grounds for determining the TARA Dispute and the MARA Dispute in the same adjudication, no later than five (5) Business Days after receipt of the Notice of Appointment in relation to the TARA Dispute (as defined in Appendix A (*Core Disputes Adjudication Procedures*) to this Agreement). Any objections to such a request shall be made in writing to the Adjudicator within two (2) Business Days of being notified that the request has been made. The Adjudicator shall issue his decision to all parties on any such objection within two (2) Business Days of receipt of the objection in terms of this Clause 6.11

- 6.12 Where a MARA Dispute is referred to the same adjudication as a TARA Dispute pursuant to Clause 6.10, the provisions of this Agreement shall be modified accordingly and the Adjudicator appointed in accordance with this Agreement shall have the same powers in relation to the MARA Dispute as he has in relation to the TARA Dispute and as if the procedure of the High Court in relation to co defendants and non parties was available to the parties and to the Adjudicator.

- 6.13 For the avoidance of doubt, where a TARA Dispute and a MARA Dispute have been determined in the same adjudication before the Adjudicator and court proceedings are commenced in respect of the MARA Dispute, those court proceedings shall be of no effect in relation to the TARA Dispute and the Relevant Operator shall not be bound by the outcome of the court proceedings unless the Dispute is also the subject of, and determined in, the same proceedings.

Termination of Appointment

- 6.14 The Dispute Parties may jointly terminate the Adjudicator's appointment at any time. If the Adjudicator fails to give notice of his decision within the period referred to in Clause 6.17 (or in the case of a Construction Act Dispute, within the period referred to in Clause 7.7) and the Dispute Parties do not jointly extend the time for his decision to be made, or, if at any time the Adjudicator declines to act or is unable to act as a result of his death, disability, resignation or otherwise, the Adjudicator's appointment shall automatically terminate. Where the Adjudicator's appointment has so terminated, a person shall be appointed as a replacement Adjudicator in accordance with the provisions of Clauses 6.1 and 6.2 (or in the case of a Construction Act Dispute, in accordance with Clauses 7.3 and 7.4) as if the Notice of Adjudication was given on the date such notice is given to the replacement Adjudicator and Clauses 6.1 to 6.23 (inclusive) (or, in the case of a Construction Act Dispute, the corresponding equivalent provisions set out in Clause 7) shall apply as if he were the first appointed Adjudicator. Provided that where an Adjudicator has failed to give notice of his decision in accordance with Clause 6.17 or any extended time jointly agreed between the Dispute Parties and any Dispute Party has commenced proceedings in accordance with Clause 4.4(b), no replacement adjudicator shall be appointed in accordance with this Clause 6.14 and the Dispute shall be determined by the Court.
- 6.15 In any case where the Adjudicator is appointed as a replacement pursuant to Clause 6.14, the Dispute Parties shall each send to the Adjudicator, as soon as reasonably practicable, copies of all documents supplied by them to the Adjudicator he replaces and the reference shall continue as if there had been no change of Adjudicator.

Conduct of Adjudication

- 6.16 As soon as reasonably practicable following receipt of the Notice of Appointment of the Adjudicator any Dispute Party who gave a Notice of Adjudication shall send to the Adjudicator:
- (a) a copy of the Notice of Adjudication (or, if applicable, the Notices of Adjudication);
 - (b) a copy of the Contract out of or in connection with which the Dispute arises;
 - (c) copies of any relevant documents referred to in or relevant to an understanding of the issues addressed in the Notice of Adjudication; and
 - (d) a statement of the determination, remedy or recourse which the referring party seeks.
- 6.17 (a) The Adjudicator shall conduct the adjudication in accordance with Appendix A (*Core Disputes Adjudication Procedures*) of this Agreement and no later than the thirtieth (30th) Business Day after issuing the Notice of Appointment (or where more than one Dispute is referred to the Adjudicator pursuant to Clause 6.5 no later than the thirtieth (30th) Business Day after receipt by him of the latest Notice of Adjudication, if later) or such later date as the parties shall agree, the Adjudicator shall give written notice that subject to payment of his fees pursuant to Clause 6.4 he is ready to deliver his decision to the Dispute Parties. Where any Dispute Party submits a request to the Adjudicator to determine a Dispute relating to the Other Agreement in the same adjudication as a Dispute pursuant to Clauses 6.6 to 6.13 (inclusive), the day referred to in this Clause 6.17(a) for the

Adjudicator to give notice of his decision shall be extended by five (5) Business Days.

- (b) The Adjudicator shall act as expert and not as arbitrator and in the absence of fraud or manifest error the Adjudicator's decision shall be final and binding upon the Dispute Parties and the Adjudicator unless and until the Dispute is finally determined by the Court pursuant to Clause 6.24 or by agreement. In the event that any Dispute Party serves Court proceedings pursuant to Clause 6.24 any Dispute Party may within two (2) Business Days of such service in the case of the issuing Dispute Party or deemed receipt of such service in the case of the receiving Dispute Party apply to the Adjudicator for directions as to how and to what extent his decision should be implemented pending resolution of the court proceedings. Any objections to such a request shall be made in writing to the Adjudicator within two (2) Business Days of being notified that the request has been made. The Adjudicator shall issue his directions within two (2) Business Days of the later of receipt of any such request or any such objection. The Adjudicator shall have full discretion to stay all or part of his decision on such terms as to security or otherwise as he shall see fit.
- (c) The Adjudicator may, within five (5) Business Days of delivery of the decision to the parties, correct his decision so as to remove any error arising from an accidental error or omission or to clarify or remove any ambiguity.

6.18 Neither Adjudicator nor employee, agent or advisor of the Adjudicator shall be held liable for anything done or omitted in the discharge of the Adjudicator's functions as adjudicator unless such act or omission is in bad faith.

Obligation to give reasons

6.19 Notice of the Adjudicator's decision (stating that it is given under Clause 6.17 (or in the case of a Construction Act Dispute, under Clause 7.7) shall include a summary of the Adjudicator's findings and, unless the Parties agree otherwise, a statement of the reasons for his decision.

6.20 The parties to the Contract to which any Dispute relates shall continue to observe and perform all the obligations contained in that Contract, notwithstanding any referral to the Adjudicator, and shall give effect forthwith to the Adjudicator's decision in every respect unless and until the decision of the Adjudicator is revised by the Court pursuant to Clause 6.24 or is deferred or stayed by the Adjudicator pursuant to Clause 6.17 (or in the case of a Construction Act Dispute, pursuant to Clause 7.7)). Any Dispute Party may apply to any appropriate court for enforcement of the Adjudicator's decision. Neither any form of enforcement of the Adjudicator's decision nor any form of challenge to the enforcement of the Adjudicator's decision nor any dispute arising out of or in connection with such enforcement or challenge shall be regarded and treated as a Dispute for the purposes of Clause 4.2.

6.21 Although a decision of an Adjudicator shall be final and binding pursuant to Clause 6.17(b) (or in the case of a Construction Act Dispute, pursuant to Clause 7.7(c)) and the Dispute Parties shall give effect to the Adjudicator's decision pursuant to Clause 6.20, if any decision of the Adjudicator shall be revised by the Court pursuant to Clause 6.24 a party shall be deemed not to have committed a breach of the Contract to which the Dispute relates by reason only of having acted in accordance with the Adjudicator's decision. Nothing in this Clause 6.21 or any other provision in the Contracts relating to a Dispute, Acceptance Dispute or Qualified Acceptance Dispute shall mean

that a party shall have waived or otherwise be debarred from their right to claim compensation if following the final determination of such dispute a party has suffered loss because the other party was in breach of contract in terms of the position that party adopted which led to or contributed to the dispute provided any such compensation claimed or awarded shall not put the party in a better position than it would have been in had the breach not occurred.

Payment of Adjudicator's remuneration and expenses

- 6.22 Subject to any agreement of the Dispute Parties, the Adjudicator shall allocate payment of his remuneration and expenses between the Dispute Parties. The Adjudicator may provide for such allocation in his decision or may deal with this issue after delivery of his decision to the Dispute Parties and outside the thirty (30) Business Day time limit (or in the case of a Construction Act Dispute, the twenty-eight (28) day time limit) for concluding the adjudication. Unless the Dispute Parties otherwise agree, the Adjudicator shall, applying substantially the same principles as the High Court would apply, award the payment of his remuneration and expenses on the general principle that costs should follow the event except where it appears to the Adjudicator that in the circumstances this is not appropriate in relation to the whole or part of his remuneration or expenses. The Dispute Parties agree to be bound by the Adjudicator's allocation of payment of his remuneration and expenses and shall pay such remuneration and expenses in accordance with the Adjudicator's direction unless and until the direction of the Adjudicator is set aside or revised by the court pursuant to Clause 6.24 hereto in which case the Dispute Parties agree that the court may substitute its own discretion as to the proper apportionment between them of such remuneration and expenses.
- 6.23 If the terms of the Adjudicator's appointment provide for the payment of his remuneration and expenses before giving notice of his decision to the Dispute Parties pursuant to Clause 6.17 (or in the case of a Construction Act Dispute, pursuant to Clause 7.7), the Dispute Parties shall pay such remuneration and expenses in equal amounts, and shall make adjustment payments between themselves following any direction made by the Adjudicator pursuant to Clause 6.21.

Court proceedings

- 6.24 If any Dispute Party is dissatisfied with the Adjudicator's decision thereon, then any party thereto, on or before the thirtieth (30th) Business Day (or in the case of a Construction Act Dispute, the twenty-eighth (28th) day) after the day on which it received notice of such decision or any decision varied or revised, pursuant to Clause 6.17 (or in the case of a Construction Act Dispute, pursuant to Clause 7.7 (or such later date as may be agreed between the parties pursuant to Clause 6.17(a) (or in the case of a Construction Act Dispute, pursuant to Clause 7.7(b)) may either issue and serve court proceedings for the determination of the Dispute or seek to join the other party to existing proceedings relating to Other Agreement, as appropriate. In the event that an application for joinder is unsuccessful then the party will have a further twenty-one (21) Business Days within which to issue proceedings pursuant to this Clause 6.24 from the date of any court order refusing joinder. If the Adjudicator fails to give notice of his decision on or before the thirtieth (30th) Business Day (or in the case of a Construction Act Dispute, the twenty-eighth (28th) day) after issuing the Notice of Appointment or any later day which the parties to the Dispute may have jointly agreed with the Adjudicator pursuant to Clause 6.17(a) (or in the case of a Construction Act Dispute, pursuant to Clause 7.7(a)) then any party to the Dispute, on or before the thirtieth (30th) Business Day after the day on which the said period of thirty (30) Business Days (or in the case of a Construction Act

Dispute, twenty-eight (28) days expired, or the thirtieth (30th) Business Day after any such longer period which the parties to the Dispute shall have jointly agreed pursuant to Clause 6.17 (or in the case of a Construction Act Dispute, pursuant to Clause 7.7) has expired, may issue court proceedings for determination of the Dispute.

6.25 In relation to any proceedings commenced pursuant to Clause 6.24:

- (a) in the absence of agreement between the Dispute Parties no Dispute Party may raise any wholly new substantive issue not in issue before the Adjudicator save where such issue was the subject of the escalation procedure set out in Clauses 4.2 to 4.4 (inclusive) of this Agreement but was not referred to adjudication;
- (b) no Dispute Party shall be limited in the proceedings before the Court to the evidence or arguments put before the Adjudicator;
- (c) the Adjudicator shall not be called as a witness nor required to give evidence before the Court on any matter whatsoever; and
- (d) any Dispute Party shall be entitled to refer to any such proceedings issues which arise from substantially the same or similar facts or issues as the Dispute whether or not such facts or issues have been escalated in accordance with the escalation procedure as set out in Clauses 4.2 to 4.4 (inclusive).

6.26 Save as otherwise provided herein any Dispute Party can request the Court to set aside or revise a direction by the Adjudicator in respect of payment by the Dispute Parties of the costs or fees of the adjudication (including payment of the remuneration and expenses of the Adjudicator).

Continuing obligations and rights

6.27 Without prejudice to any Dispute Parties' rights pursuant to schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*) of the MARA, the Dispute Parties shall continue to comply with their respective obligations under the Contracts, as relevant, without delay while any Dispute is being resolved pursuant to this Agreement.

6.28 No Dispute Party shall be prevented from, or delayed in, seeking any order for specific performance or for interim or final injunctive relief as a result of the provisions of this Agreement nor shall this Agreement apply in respect of any circumstances where such remedies are sought.

Liquid Market Disputes

6.29 The Adjudicator's determination in respect of a Liquid Market Dispute shall be limited to determining whether a Liquid Market (as defined in clause 4 of the Funder Direct Agreement) exists and he shall not be entitled to make any award which would give rise to obligations or liabilities (including any payment or other financial liability) between the parties.

Step-In Disputes

6.30 The Adjudicator shall not, as part of his determination in respect of a related TSA Step-In Dispute and a TARA Step-In Dispute, be entitled to make an award which would give rise to obligations (including any payment or other financial liability) directly as between the Operator and the Maintainer.

6.31 Where a TSA Step-In Dispute and a TARA Step-In Dispute are determined concurrently pursuant to the terms of the Maintenance Agreement and TARA, the Adjudicator shall issue his determination, together with reasons pursuant to Clause 6.19, for each of the TSA Step-In Dispute and the TARA Step-In Dispute to all parties to the proceedings.

7. CONSTRUCTION ACT DISPUTES

7.1 The following paragraphs of this Clause 7 shall apply to any Dispute that relates to the carrying out of "construction operations" (which shall have the meaning given to it in section 105 of the Housing Grants, Construction and Regeneration Act 1996 (1996 c 53)) (**Construction Act Dispute**) in place of, and to the exclusion of, Clauses 4.2 to 4.4 (inclusive), Clause 5, Clauses 6.1 to 6.3 (inclusive) and Clauses 6.16 and 6.17, each of which shall not apply.

7.2 Any party to the Construction Act Dispute (a **Construction Act Dispute Party**) may give notice at any time of its intention to refer the Construction Act Dispute to adjudication by serving a Notice of Adjudication on the other Construction Act Dispute Parties. Every Notice of Adjudication shall contain:

- (a) a statement indicating which Contract or Contracts and which Clause or Clauses the Construction Act Dispute arises under;
- (b) a concise summary of the nature of the Construction Act Dispute and the issues arising; and
- (c) a statement of the relief or remedy sought.

7.3 Should any Construction Act Dispute Party give a Notice of Adjudication, then immediately thereafter the Construction Act Dispute Parties shall endeavour to agree and appoint a person to act as Adjudicator.

7.4 In the event that the Construction Act Dispute Parties fail jointly to appoint a person willing and suitable to act as Adjudicator within three (3) days of the Notice of Adjudication, any Construction Act Dispute Party may apply to the LCIA within a further one (1) day requesting the LCIA to nominate and determine the terms of appointment of an Adjudicator within a further three (3) days of such request. The Construction Act Dispute Party making the application may in the absence of agreement to share the cost from the other Construction Act Dispute Party pay the fee of the LCIA and the Adjudicator shall as part of his determination decide how the fee should be apportioned, such determination to be final and binding on the parties regardless of whether any other matters determined by the Adjudicator are subsequently referred to litigation.

7.5 The Adjudicator may not, without the consent of all Construction Act Dispute Parties, accept a second reference sent to him more than ten (10) Business Days after a first reference was sent to him and where he has accepted the first reference and it has not yet been concluded.

7.6 Immediately following receipt of the Notice of Appointment of the Adjudicator any party who gave a Notice of Adjudication shall send to the Adjudicator:

- (a) a copy of the Notice of Adjudication (or, if applicable, the Notices of Adjudication);
- (b) a copy of the agreement out of or in connection with which the Construction Act Dispute arises;

- (c) copies of any relevant documents referred to in or relevant to an understanding of the issues addressed in the Notice of Adjudication; and
 - (d) a statement of the determination, remedy or recourse which the referring party seeks.
- 7.7
- (a) The Adjudicator shall conduct the adjudication in accordance with Appendix A (*Core Disputes Adjudication Procedures*) to this Agreement and subject to Clause 7.7(c) no later than the twenty-eighth (28th) day after issuing the Notice of Appointment or such later date as the Construction Act Dispute Parties may agree, the Adjudicator shall give written notice that he is ready to deliver his decision to the Construction Act Dispute Parties.
 - (b) Where the consent of the Construction Act Dispute Party who served the Notice of Dispute is obtained after the issue of the Notice of Appointment, the Adjudicator may extend this period by up to fourteen (14) days.
 - (c) The Adjudicator shall act impartially and as expert and not as arbitrator and in the absence of fraud or manifest error the Adjudicator's decision shall be final and binding upon the Construction Act Dispute Parties unless and until the Construction Act Dispute is finally determined by the Court pursuant to Clause 7.8 or by agreement. The Adjudicator shall have full discretion in ascertaining the facts and the law.
 - (d) The Adjudicator may, within five (5) Business Days of delivery of the decision to the Construction Act Dispute Parties, correct his decision so as to remove any clerical or typographical error arising from an accidental error or omission or to clarify or remove any ambiguity.
- 7.8 Subject to the time limits in Clause 6.24, either party may commence proceedings, provided that where a Construction Act Dispute has been referred to adjudication pursuant to this Clause 7:
- (a) the Adjudicator has issued his decision pursuant to Clause 7.7; or
 - (b) pursuant to Clause 6.14, the Adjudicator has failed to give notice of his decision or the Adjudicator's appointment has been terminated and a replacement Adjudicator has not been appointed in accordance with Clause 6.14

8. ACCEPTANCE DISPUTES

8.1 In any case where there is a Dispute arising under:

- (a) schedule 1 (*Set Specification and Design*) of the MARA;
- (b) schedule 2 (*Introduction into Service*) of the MARA;
- (c) part C (*Train Maintenance and Servicing*) of schedule 3 (*Depots*) of the MARA; and/or
- (d) any IRODA,

(an **Acceptance Dispute**) that Acceptance Dispute shall be determined in accordance with the terms of the Acceptance Disputes Procedure, for the avoidance of doubt, without recourse to the provisions of the Core Dispute Resolution Procedure.

- 8.2 In the case of any Acceptance Dispute where the MARA states that an obligation will be carried out by the Relevant Operator and the obligation is assumed under the RODA the parties to the Acceptance Dispute will be the TSP and the Relevant Operator. The Relevant Operator's total liability to the TSP, in relation to such an Acceptance Dispute, shall be limited as set out in paragraph 5.1 of the RODA and the TSP's total liability to the Relevant Operator in relation to such an Acceptance Dispute shall be limited as set out in paragraph 5.4 of the RODA. In addition, in accordance with paragraph 6.5 of the RODA, the TSP in bringing such an Acceptance Dispute may only rely on grounds:
- (a) which were identified in a notice served by the TSP in accordance with paragraph 6.1 of the RODA and/or a notice subsequently served by the TSP in accordance with paragraph 6.2 of the RODA;
 - (b) in respect of which it was not reasonable to have expected the TSP to have served notice in accordance with paragraphs 6.1 or 6.2 of the RODA; or
 - (c) of which the TSP was not aware, and of which it was not reasonable to expect the TSP to be aware, having regard to any information provided pursuant to paragraphs 6.4(a) or 6.4(b) of the RODA.
- 8.3 Any party to the MARA or to the RODA wishing to refer an Acceptance Dispute for determination by an Expert shall give written notice to the other party of its intention, setting out with adequate specificity the issue or issues to be investigated and resolved by the Expert (the **Notice of Expert Determination**). Service of the Notice of Expert Determination will initiate the Acceptance Dispute procedure.
- 8.4 The parties to the Acceptance Dispute must immediately try to agree a shortlist of persons whom they would consider suitable to act as the Expert, serve on them the Notice of Expert Determination and invite them (in turn in the order in which they appear on the agreed shortlist) to accept the reference of the Acceptance Dispute referred to in the Notice of Expert Determination.
- 8.5 Within two (2) Business Days of receipt of the Notice of Expert Determination the receiving party shall serve on the notifying party and the shortlisted Experts a counter notice either confirming that the issues for determination are agreed and/or clarifying any issue and/or listing with adequate specificity any additional issues for determination (the **Counter Notice**).
- 8.6 In the event that the parties to the Acceptance Dispute fail jointly to appoint a person willing and suitable to act as Expert within four (4) Business Days of the Notice of Expert Determination or within such further time as they may agree any party to the Acceptance Dispute may apply to the LCIA to appoint an Expert with the requisite expertise. Any application for the appointment of a replacement Expert pursuant to Clause 8.11 must be made within five (5) Business Days from the date that the Expert notifies the parties to the Acceptance Dispute that he is unable to continue to act as Expert pursuant to Clause 8.11. The fee of LCIA shall be shared equally between the parties to the Acceptance Dispute and if one party pays the whole of the fee the other party shall pay them their share of the fee upon demand.
- 8.7 The Expert shall notify both parties to the Acceptance Dispute of his acceptance of the appointment and confirm in the notification that he has the requisite availability in terms of his existing work and other commitments to be able to complete the determination within the timeframe envisaged by this Clause 8 and that he will not accept any commitment that would undermine or otherwise frustrate his ability to do so.

Escalation

- 8.8 The service of the Notice of Expert Determination shall initiate a process of Escalation pursuant to this Clause 8.8 to be undertaken contemporaneously with the process of appointing an Expert above. The parties to the Acceptance Dispute shall use reasonable endeavours to negotiate in good faith to settle any Acceptance Dispute.
- 8.9 If the Acceptance Dispute is not settled through discussion between the TSP Delivery Manager and Secretary of State's Representative or Relevant Operator Representative, as the case may be, within a period of two (2) Business Days from the date on which the Acceptance Dispute arose, any party to the Acceptance Dispute may escalate the Acceptance Dispute by giving notice in writing to the Senior Personnel within two (2) Business Days after the referral period to the TSP Delivery Manager and, the Secretary of State's Representative or the Relevant Operator Representative, as the case may be, has concluded.
- 8.10 If the Acceptance Dispute is not resolved within two (2) Business Days of referral to Senior Personnel pursuant to Clause 8.9:
- (a) either party may notify the appointed Expert that escalation has failed to resolve the Acceptance Dispute and request him to proceed with the Determination in accordance with the provisions of Clauses 8.11 to 8.31 or, if no Expert has been appointed, request the LCIA to complete an appointment with a minimum of further delay; or
 - (b) the parties by agreement may refer the Acceptance Dispute directly to Accelerated Arbitration pursuant to Clause 9.

Expert Determination

- 8.11 If at any time during an Acceptance Dispute the appointed Expert is unable to continue to act as Expert or otherwise resigns as Expert, the Expert will immediately notify both parties to the Acceptance Dispute in writing giving reasons and the parties to the Acceptance Dispute will seek to agree the appointment of a new Expert pursuant to the terms of Clauses 8.3 to 8.7 (inclusive).
- 8.12 Within two (2) Business Days of the Expert confirming his willingness, ability and availability to accept the appointment, the initiating party to the Acceptance Dispute shall serve on the Expert and the other party a written submission which sets out the nature of their case and append the supporting documentation which they consider relevant to the Acceptance Dispute and shall as a minimum:
- (a) set out with adequate specificity the issue or issues to be investigated and resolved by the Expert;
 - (b) be accompanied by any correspondence between the parties to the Acceptance Dispute that discusses the issues and the parties attempts to resolve them; and
 - (c) be accompanied by any relevant contractual documents, specifications and / or any technical documents or other data relevant to an initial understanding of the issue.
- 8.13 The other party to the Acceptance Dispute may within five (5) Business Days serve on the Expert and the initiating party a submission in reply setting out their response to the

initiating party's submission, clarifying or adding to the issues to be investigated and append any additional supporting documentation upon which they wish to rely.

- 8.14 The parties to the Acceptance Dispute shall agree, and in default of agreement the Expert shall make, any further directions for the conduct of the Expert reference. In making directions the Expert will always seek to conclude the determination within the timeframe envisaged by this Clause 8, however, where the Expert considers that that is not achievable then he shall notify the parties to the Acceptance Dispute as soon as possible with draft directions for an extended timetable and the Parties shall seek to agree the extended timetable. If the parties to the Acceptance Dispute fail to agree within two (2) Business Days of the Expert's proposal then the Expert shall determine the extended timetable taking account of any reasons advanced by either party for their disagreement.

Role of the Expert

- 8.15 The role of the Expert shall be to investigate using his professional skill and experience the issues raised by the Acceptance Dispute and to determine for himself the correct answer to any disagreement or issue that require to be resolved between the parties to the Acceptance Dispute which has been referred to him for determination pursuant to this Clause 8. The Expert shall not act in a judicial or quasi judicial capacity but instead will act on his own behalf and seek to determine on a wholly independent and objective basis his view of the correct answer or solution to any issues raised by the parties to the Acceptance Dispute. The Expert shall act as an expert and not as an arbitrator or adjudicator and the provisions of the Arbitration Act 1996 and the law relating to arbitration shall not apply to the Expert, his decision or the procedure by which he reached his decision.
- 8.16 The Expert shall not have jurisdiction to determine issues of fault in terms of responsibility for non-conformity with this Agreement flowing from any conclusion of the Expert, nor to determine the financial or other consequences arising from any non-conformity with this Agreement or delay in the performance of this Agreement. Any such matters which are outside the Expert's jurisdiction shall to the extent necessary be dealt with pursuant to the provisions of Clause 9.
- 8.17 The parties to the Acceptance Dispute agree and acknowledge that they shall co-operate promptly with the Expert, and shall provide (or, where applicable, shall use reasonable endeavours to procure that others provide) the Expert with such assistance and documentation as the Expert reasonably requires for the purpose of reaching his decision. This will include facilitating prompt access for the Expert to any individuals whom the expert needs to meet or the prompt provision of written answers to any written questions the Expert may seek to put to such individuals.
- 8.18 The parties to the Acceptance Dispute agree and acknowledge that the Expert may, acting reasonably, determine such other procedures to assist with the conduct of his investigation as he considers appropriate, including, but not limited to, instructing such other professional advisers and/or experts as he considers necessary. The costs of the appointment of such other experts or advisers shall be shared between the parties to the Acceptance Dispute. The Expert shall ensure that he only instructs advisers /experts who are available to assist within the timeframe envisaged by this Clause 8. If pursuant to Clause 8.11 the Expert has to withdraw from the Acceptance Dispute he shall use reasonable endeavours to ensure that any experts or advisers continue with their work and that they engage with any new Expert unless instructed by the parties jointly or, once appointed, the new Expert to desist.

The Expert's Determination

- 8.19 The Expert shall make his determination within fifteen (15) Business Days after receipt of the notice served in accordance with Clause 8.12 or such other time as may be agreed or determined pursuant to Clause 8.14. The Expert shall provide at the same time as his determination a written set of conclusions, including reasons for such conclusions, to the parties.
- 8.20 Without prejudice to Clause 8.19, the Expert shall be entitled, acting reasonably, to extend the time period within which he shall deliver his determination and conclusions to the parties to the Acceptance Dispute where he considers this is necessary, and shall give the parties notice in writing of such extension in any event being no more than ten (10) Business Days.
- 8.21 If no Request for Arbitration is served by either party in accordance with Clause 9.2, the Expert's determination will become final and binding upon the parties to the Acceptance Dispute in the absence of manifest error, fraud or bias within ten (10) Business Days of receipt by the parties of the Expert's determination. Where a Request for Arbitration is served which seeks to challenge only part of an Expert's Determination then the party serving the Request for Arbitration shall simultaneously serve on the receiving party a notice setting out those parts of the determination which are not challenged and such parts shall become final and binding pursuant to this Clause 8.21.
- 8.22 In the event that an Acceptance Dispute is referred to Accelerated Arbitration pursuant to Clause 9.2 the Expert shall make any documents retained by him pursuant to Clause 8.31 available and shall use reasonable endeavours to make himself available to participate in the Arbitration in any manner that the Arbitrator may direct.

Repeat Disputes

- 8.23 The parties may not refer for Expert Determination an Acceptance Dispute where the dispute relates to a different Set but arises out of the same facts in all material respects as an Acceptance Dispute referred to Expert Determination previously and where no new relevant facts or issues have arisen or come to light which either party considers would warrant further consideration by an Expert (a **Repeat Dispute**).
- 8.24 If a Notice of Expert Determination is given and the recipient party believes that this notice relates to a Repeat Dispute then the recipient party may require the Expert appointed in accordance with Clauses 8.3 to 8.7 to first determine whether the Acceptance Dispute is a Repeat Dispute if the issue cannot be resolved as part of the escalation procedure. The recipient party must raise any issue relating to a Repeat Dispute in their Counter Notice served pursuant to Clause 8.5 along with relevant submissions on the issue and a copy of the earlier Determination which it asserts is a Repeat Dispute. The other party to the Acceptance Dispute must reply within two (2) Business Days with submissions either disputing that it is a Repeat Dispute or justifying why such a determination is warranted pursuant to Clause 8.23. The Expert shall either:
- (a) determine this issue within three (3) Business Days of receipt of such reply submissions, and the time periods within this Clause 8.24 shall be extended accordingly; or
 - (b) the Expert may direct that the determination must continue and that he shall resolve the issue as part of his final determination.

8.25 If the Expert determines pursuant to Clause 8.23 that the Acceptance Dispute is not a Repeat Dispute, the Acceptance Dispute shall be determined in accordance with the provisions and procedure set out in this Clause 8. If the Expert determines that an issue or issues referred to him for Determination do not amount to a Repeat Dispute (notwithstanding that other issues referred by the same Notice of Acceptance Dispute have been determined to amount to a Repeat Dispute) then the Expert will continue to determine those issues pursuant to this Clause 8.

Remuneration of the Expert

8.26 The terms of remuneration of any Expert shall be agreed between the parties to the Acceptance Dispute and the Expert at the time the Expert is appointed. Where the Expert has been appointed by LCIA, the parties shall, in the absence of direct agreement with the Expert within three (3) Business Days of the nomination refer the terms of the remuneration of the Expert to LCIA to be settled and binding upon the parties to the Acceptance Dispute by agreement between LCIA and the Expert (provided that the level of the Expert's fees shall not exceed the level originally proposed to the parties to the Acceptance Dispute by the Expert following his appointment by LCIA).

Terms of appointment

8.27 The terms of appointment of any Expert shall be agreed by the parties to the Acceptance Dispute at the time of appointing the Expert and shall include and shall be consistent in all material respects with the Acceptance Disputes Procedure provisions contained in this Agreement. Where the Expert has been appointed by LCIA, either party may refer the terms of the remuneration and appointment of the Expert to LCIA to be settled and binding upon the parties to the Acceptance Dispute by agreement between LCIA and the Expert (provided that any terms so agreed shall include and shall otherwise be consistent in all material respects with the provisions of the Acceptance Disputes Procedure contained in this Agreement).

Termination of appointment of the Expert

8.28 The parties to the Acceptance Dispute may jointly terminate the Expert's appointment at any time. If the Expert fails to give notice of his determination within the period referred to in Clause 8.19, or, if at any time the Expert declines to act or is unable to act as a result of his death, disability, resignation or otherwise, the Expert's appointment shall automatically terminate. Where the Expert's appointment has terminated, a person shall be appointed as a replacement Expert in accordance with the provisions of Clauses 8.3 to 8.7 as if the Notice of Expert Determination was given on the date such notice is given and Clauses 8.3 to 8.27 shall apply as if he were the first appointed Expert save that, to the extent that such steps have been completed before the change of Expert, the parties will not have to repeat the exchange of Notices or Submissions contemplated by Clauses 8.12 and 8.13 and the new Expert will abide by any decision of his predecessor on the issue of any Repeat Dispute pursuant to Clause 8.23.

Expert's Costs

8.29 Each party shall bear its own costs in relation to any reference to the Expert. The Expert's fees and any costs reasonably and properly incurred by him in arriving at his determination (including any fees and costs of professional advisers and/or experts appointed by the Expert) shall be shared between the parties to the Acceptance Dispute.

Confidentiality

- 8.30 All matters concerning the process and result of the determination by the Expert, including but not limited to any documentation provided by the parties to the Acceptance Dispute, shall to the extent that they are not otherwise in the public domain be treated as confidential among the parties, their advisers and the Expert save that nothing in this Clause 8.30 shall prevent:
- (a) either party to the Acceptance Dispute from disclosing such matters or documentation to the Relevant Operator or Secretary of State (where the Relevant Operator or Secretary of State is not a party to the Acceptance Dispute) and/or the Manufacturer;
 - (b) the disclosure and/or consideration of any matters or documentation to the extent that such matters or documentation have to be referred to or are requested by another Expert in relation to another Acceptance Dispute or by an Arbitrator in the context of an Accelerated Arbitration or are requested or have to be referred to by any adjudicator or court in relation to any Dispute or Acceptance Dispute that is relevant to or arises out of the determination;
 - (c) the disclosure or use of any information or analysis created during an Expert Determination that is properly required for the future performance of the MARA, the TARA or the RODA following that Expert Determination; and
 - (d) the disclosure of matters or documentation as required by law, any governmental or regulatory authority or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, the disclosing party/entity gives the parties to the Acceptance Dispute as much advance notice of such disclosure as possible and takes into account the reasonable requests of the parties to the Acceptance Dispute in relation to the content of such disclosure.

Expert's Records

- 8.31 The parties to the Acceptance Dispute shall procure that the Expert shall keep his records (including any documentation and correspondence) in relation to the Acceptance Dispute for fifteen (15) years from the date of his appointment, and shall procure that the Expert will make such records available to any replacement or subsequent Expert or any Arbitrator. The Expert will not be required to disclose to either party to an Acceptance Dispute any working papers or other documents relating to the Expert's conclusions unless compelled to do so by a court of competent jurisdiction. Such working papers shall be disclosed to any subsequent Expert upon request of that Expert for the sole purpose of that Expert understanding more clearly the reasons for any conclusions of the Expert and upon the subsequent Expert undertaking not to make disclosure unless ordered to do so pursuant to the provisions of this Clause 8.31.

9. ACCELERATED ARBITRATION

- 9.1 If an Acceptance Dispute is not resolved within two (2) Business Days of referral to Senior Personnel pursuant to Clause 8.9 either party may, with the agreement of the other party to the Acceptance Dispute, refer the Acceptance Dispute to Accelerated Arbitration in accordance with the terms of Appendix B (*Arbitration Procedure*) by issuing a Request for Arbitration, such Request for Arbitration to be served within five (5) Business Days after the referral period to Senior Personnel has concluded.

- 9.2 Either party may within ten (10) Business Days of receipt of the Expert's determination, issued pursuant to Clause 8.19 issue a Request for Arbitration referring the Acceptance Dispute to Accelerated Arbitration in accordance with the terms of Appendix B (*Arbitration Procedure*). Where no Request for Arbitration has been served by either party pursuant to this Clause 9.2, the Expert's determination shall be final and binding upon the parties in accordance with Clause 8.21.
- 9.3 Notwithstanding whether or not either party to the Acceptance Dispute has issued a Request for Arbitration pursuant to Clause 9.2, either party to the Acceptance Dispute may, within fifteen (15) Business Days of receipt of the Expert's Determination issued pursuant to Clause 8.21, issue a Request for Arbitration in respect of any issues referred to in Clause 8.16.
- 9.4 Any Acceptance Dispute in respect of which either party has served the Request for Arbitration shall be referred to and finally resolved by arbitration under the LCIA Rules, subject to the terms of Appendix B (*Arbitration Procedure*). In the event of any conflict between the LCIA Rules and the terms of Appendix B (*Arbitration Procedure*), the terms of Appendix B (*Arbitration Procedure*) shall prevail. Any Request for Arbitration shall comply with the requirements of Article 1 of the LCIA Rules (The Request for Arbitration) and shall be sent to the Registrar of the LCIA at the same time it is sent to the other party (or as soon as possible thereafter). A response under Article 2 of the LCIA Rules (The Response) shall not be required from the other party to the Acceptance Dispute. The party sending the Request for Arbitration will therein request expedited formation of the tribunal under Article 9 of the LCIA Rules (Expedited Formation) and note that no response under Article 2 of the LCIA Rules is to be served.
- 9.5 The language of the arbitration shall be English and the seat of the arbitration shall be London.
- 9.6 The dispute shall be decided by a sole arbitrator who shall be appointed by agreement between the parties to the Acceptance Dispute (the **Arbitrator**) and shall be referred to and finally resolved by arbitration under the rules set out in Appendix B (*Arbitration Procedure*). If the parties to the Acceptance Dispute fail to agree a sole arbitrator within ten (10) Business Days from the date of service of the Request for Arbitration, the party who served the Request for Arbitration shall within two (2) Business Days thereafter (or such longer time as the parties may agree) request that a sole arbitrator shall be appointed by the LCIA. The parties to the Acceptance Dispute and/or the LCIA shall seek to appoint as arbitrator a senior lawyer of QC status or a retired judge who has good availability and is in a position to undertake an arbitration on an expedited basis. The party to the Acceptance Dispute making the application may in the absence of agreement to share the cost from the other parties to the Acceptance Dispute pay the fee prescribed in the LCIA Schedule of costs and the Arbitrator shall as part of his determination decide how the fee should be apportioned such determination to be final and binding on the parties to the Acceptance Dispute.
- 9.7 For the avoidance of doubt any arbitration will not be in the nature of an appeal or review of any earlier Expert Determination on the same issue and the arbitrator will not be bound by the determination but shall decide the matters in issue afresh. The parties to the Acceptance Dispute shall be free to present their cases in whatever manner they choose before the arbitrator (subject to any directions made by the arbitrator and the LCIA Rules) and may adduce any additional evidence they consider relevant that was not provided to the Expert. In making his decision the arbitrator may take such account as he considers appropriate of the Expert's determination. Further, in determining the issue of costs

following an arbitration, the arbitrator should, if relevant, take into account any additional costs incurred as a result of a significant change of position by either party from their position in the Expert determination.

- 9.8 Neither party to the Acceptance Dispute may apply to the Court to determine any question of law arising in the course of the arbitration pursuant to section 45 of the Arbitration Act 1996 or appeal to the Court on a question of law arising out of an award made in the arbitration pursuant to section 69 of the Arbitration Act 1996.

10. **NOTICES**

- 10.1 Any notice, notification or other communication 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 following addresses:

To the Secretary of State for Transport at:

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

Attention: Director – Major Projects and London

To the TSP at:

Address: 7th Floor
40 Holborn Viaduct
London EC1N 2PB

Attention: Chief Executive Officer

To the Relevant Operator at:

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

Attention: Director – Major Projects and London

To the Security Trustee at:

Address: Asset Management
Structured Finance Office for EMEA
The Bank of Tokyo-Mitsubishi UFJ, Ltd.
Ropemaker Place
25 Ropemaker Street
London EC2Y 9AN

Attention: Miles Pool and Kiho Matsushiba

To the Maintainer at:

Address: 7th Floor
40 Holborn Viaduct
London EC1N 2PB

Attention: Managing Director

or such other address in the United Kingdom as each party may specify by notice in writing to the other party by giving at least five (5) Business Days' notice.

Deemed Receipt

10.2 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 if delivered between 09:00 hours and 17:30 hours on a Business Day (otherwise on the next occurring Business Day);
- (b) if sent by pre-paid first class post, from and to any place within the United Kingdom, three (3) Business Days after posting unless otherwise proven; and
- (c) if sent by facsimile, upon sending, subject to confirmation of completed transmission to the intended recipient.

11. MISCELLANEOUS

Cumulative Rights

11.1 Each party's rights and remedies under this Agreement are cumulative and may be exercised as often as either of them considers appropriate. Any failure to exercise or any delay in exercising any of such rights shall not operate as a waiver or variation of that or any other such right, any defective or partial exercise of any of such rights shall not preclude any other or further exercise of that or any other such right, and no act or course of conduct or negotiation on either party's part or on its behalf shall in any way preclude that party from exercising any such right or constitute a suspension or any variation of any such right.

Further Assurance

11.2 Subject to other provisions of this Agreement, each of the parties agree, at its own expense, to perform (or procure the performance of) all further acts and things within its control, and execute and deliver (or procure the execution and delivery of) such further documents, as may be required by Applicable Laws and Standards (save where Applicable Derogations apply) or as may be necessary or reasonably desirable to implement and/or give effect to this Agreement and the transactions contemplated by this Agreement.

Waivers

11.3 (a) No term or provision of this Agreement shall be considered waived by any party to it unless a waiver is given in writing by that party.

- (b) No waiver under Clause 11.3(a) shall be a waiver of a past or future default or breach, nor shall it amend, delete or add to the terms, conditions or provisions of the remaining parts of this Agreement except where expressly provided herein.

Severability

- 11.4 If any term, condition or provision contained in this Agreement shall be held to be void, invalid, unlawful or unenforceable to any extent, such term, condition or provision shall not affect the validity, legality or enforceability of the remaining parts of this Agreement.

Entire Agreement

- 11.5 This Agreement and each of the Contracts together contain the entire agreement between the parties in relation to the subject matter of this Agreement and supersede all prior agreements and arrangements between the parties. In addition, 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 for a breach of the terms of this Agreement, to the exclusion of all other rights and remedies (including those arising in tort or arising under statute).

Counterparts

- 11.6 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. Delivery of a counterpart of this Agreement by facsimile shall be an effective mode of delivery.

Third Party Rights

- 11.7 A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement (but this does not affect any right or remedy of a third party which exists or is available apart from under that act).

General Obligations

- 11.8 The parties shall co-operate with each other and act reasonably and in good faith in and about the performance of their obligations and the exercise of their respective rights pursuant to this Agreement.

Amendment

- 11.9 No amendment to this Agreement shall be valid unless it is in writing and signed by all parties.

12. PAYMENTS

If either party fails to pay any amount payable under this Agreement on the date when it is due, interest will accrue (save where expressly stated otherwise) at the Interest Rate on such unpaid amount, calculated on a daily basis, from the due date for payment to the date on which payment is made. All such interest shall be calculated (save where expressly stated otherwise) on the basis of the actual number of days elapsed and a three hundred and sixty five (365) day year.

13. GOVERNING LAW AND JURISDICTION

Governing Law

13.1 This Agreement and any non-contractual obligations arising out of or in connection with this Agreement shall be governed by, and interpreted in accordance with, English law.

Jurisdiction

13.2 Except as expressly provided in this Agreement, the English courts shall have exclusive jurisdiction in relation to all disputes arising out of or in connection with this Agreement (including claims for set-off and counterclaims), including disputes arising out of or in connection with: (a) the creation, validity, effect, interpretation, performance or non performance of, or the legal relationships established by, this Agreement; and (b) any non contractual obligations arising out of or in connection with this Agreement. For such purposes each party irrevocably submits to the jurisdiction of the English courts and waives any objection to the exercise of such jurisdiction.

Waiver of Immunity

13.3 The Secretary of State irrevocably and unconditionally:

- (a) agrees that if the TSP brings legal proceedings against her or her assets in relation to this Agreement, no immunity from such legal proceedings (which will be deemed to include suit, attachment prior to judgement, other attachment, the obtaining of judgement, execution or other enforcement) will be claimed by or on behalf of herself or with respect to her assets;
- (b) waives any such right of immunity which she or her assets now has or may in the future acquire; and
- (c) consents generally in respect of any such proceedings to the giving of any relief or the issue of any process in connection with such proceedings including the making, enforcement or execution against any property whatsoever (irrespective of its use or intended use) of any order or judgement which may be made or given in such proceedings.

14. SOLE REMEDY

14.1 Subject to Clause 14.2, where this Agreement provides exclusively for any rights or remedies in respect of the breach or exercise of the other party's obligations under this Agreement, the entitlement to exercise those rights and remedies is to the exclusion of all other rights and remedies (other than available equitable remedies of specific performance and injunctive relief) of the first mentioned party howsoever arising at common law, under statute or in equity in respect of the circumstances relating to such exercise or breach.

14.2 Nothing in Clause 14.1 shall limit or exclude either party's liability for death or personal injury resulting from its negligence.

IN WITNESS whereof the parties hereto have executed this Agreement as a deed on the day and year first written before.

The Secretary of State

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

.....
Authenticated by authority of the
Secretary of State for Transport

The TSP

Executed as a deed by)
AGILITY TRAINS WEST LIMITED)
acting by a director in the presence)
of a witness:)

Signature.....
Director

Name

Witness signature:

Witness name:

Witness address:

Witness Occupation:

The Relevant Operator (in the Secretary of State's capacity as at the date hereof and from time to time as the Relevant Operator under the MARA)

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

.....
Authenticated by authority of the
Secretary of State for Transport

The Security Trustee

Executed as a deed by)
BTMU (EUROPE) LIMITED)
acting by its duly authorised attorney)
pursuant to a power of attorney:)

Signature.....
Director

Name

Witness signature:

Witness name:

Witness address:

Witness Occupation:

The Maintainer

Executed as a deed by)
HITACHI RAIL EUROPE LIMITED)
by a director in the presence of a)
witness:)

Signature.....
Director

Name

Witness signature:

Witness name:

Witness address:

Witness Occupation:

Appendix A

Core Disputes Adjudication Procedures

1. Forthwith upon the agreement or determination of his terms of remuneration the Adjudicator shall notify the Dispute Parties in writing of his appointment (the **Notice of Appointment**) and the address, e-mail address and the facsimile, if any, at which notices or other communications should be addressed to him.
2. All notices, written submissions and any other written communications between the Dispute Parties and the Adjudicator shall either be delivered by hand, sent by e-mail or facsimile. Copies of all communications by e-mail or facsimile between the Dispute Parties and the Adjudicator shall also be delivered by hand within one (1) Business Day by way of confirmation. Notices or communications between the Dispute Parties in respect of any Dispute will be made in accordance with the Notices provision under the Contract to which the Dispute relates unless specified otherwise in this Agreement.
3. Within five (5) Business Days of receipt of the Notice of Appointment (or where more than one Dispute is referred to the Adjudicator within five (5) Business Days of receipt of the latest Notice of Adjudication if later) each party to the Dispute may make one written submission to the Adjudicator and within five (5) Business Days from the date of receipt of the written submission of any other party to the Dispute may make a written response to that other party's submission. Any submission made by any Dispute Party shall contain copies of all documents on which that Dispute Party wishes to rely (or a list of such documents if they are already in the possession of any other Dispute Party). All written submissions and written responses shall either be delivered by hand or sent by email or facsimile in accordance with Paragraph 2 within the relevant periods referred to in this Paragraph 3. The Adjudicator shall consider such written submissions and written responses as may be made by the parties pursuant to this Paragraph 3.
4. Upon the written request of any party to the adjudication (to be served within five (5) Business Days of receipt of the Notice of Appointment) the Adjudicator shall appoint:
 - (a) in the case of a technically qualified Adjudicator, a financial adviser and/or legal adviser;
 - (b) in the case of a financially qualified Adjudicator, a technical adviser and/or a legal adviser; or
 - (c) in the case of a legally qualified Adjudicator, a technical adviser and/or financial adviser,to assist him in reaching his decision. For the avoidance of doubt, references to a financial adviser in this Paragraph 4 shall include an insurance adviser. Any advice received by the Adjudicator from any advisers appointed by him shall be appended to his decision.
5. The Adjudicator shall, subject to any limitation in this Agreement or the Contract to which the Dispute relates, have complete discretion as to how to conduct the adjudication, and may, in his discretion, but shall not be obliged to:
 - (a) convene meetings upon reasonable notice to Dispute Parties at which such Dispute Parties and their representatives shall be entitled to be present;

- (b) submit lists of questions to the Dispute Parties to be answered in such meetings or in writing within such reasonable time as he may require;
 - (c) require the Dispute Parties to provide him with such information, access and other facilities as he may reasonably require for the determination of the Dispute;
 - (d) otherwise take such action and adopt such procedures as do not conflict with any of the provisions of this Agreement Contract to which the Dispute relates or this Appendix A (*Core Disputes Adjudication Procedures*) and shall be reasonable and proper for the just, expeditious and economical determination of the Dispute; and/or
 - (e) carry out any inspection he considers necessary.
6. The Adjudicator shall adopt any other procedures (including any variation of the procedures provided for under this Appendix A (*Core Disputes Adjudication Procedures*)) which may be agreed between the Dispute Parties for determination of the Dispute.
 7. At the request of any party to the Dispute, the Adjudicator shall hold a hearing at which the parties may present oral submissions and arguments and call witnesses of fact and expert witnesses. The Adjudicator may decide on the length of hearing required and/or direct the parties as to the issues on which he wishes to hear argument/evidence. Any advisors appointed by the Adjudicator shall attend any hearing unless the parties, having consulted with the Adjudicator, agree otherwise.
 8. The Adjudicator shall act impartially and as an expert (not as an arbitrator) in the conduct of the adjudication and in reaching his decision.
 9. All information and correspondence of whatever nature provided to the Adjudicator by any party to the Dispute shall be copied to the other parties or (where copying is not practicable) the other parties to the Dispute shall be entitled to inspect it.
 10. All meetings shall be private and save as expressly provided in this Appendix A (*Core Disputes Adjudication Procedures*) or as required by law the Adjudicator shall keep confidential the Dispute, all information of whatever nature provided to him by or on behalf of any party and his decision. Nothing in this Paragraph will prevent disclosure of the outcome of the adjudication or any information or analysis relied on in the adjudication from being disclosed by any of the Parties in related litigation under either the Agreement or the TARA.

Appendix B

Arbitration Procedure

1. As soon as practicable after the appointment of the Arbitrator, and in any event no later than five (5) Business Days after the Arbitrator has been appointed or in the event the Arbitrator is appointed by the LCIA no later than five (5) Business Days after receipt of written notification of the appointment of the Arbitrator, the initiating party to the Acceptance Dispute (the **Claimant**) shall deliver to the other party to the Acceptance Dispute (the **Respondent**) (with copies to the Arbitrator) a statement of case, containing particulars of its claims and written submissions in support thereof, together with any documents relied on and proposed directions and a timetable for the conduct of the arbitration. This shall include, in any case where there has been an Expert Determination, a file or files consisting of the original Notice of Expert Determination and Counter Notice to the Expert, any submissions to the Expert, any documents provided to the Expert, any expert reports obtained and disclosed by the Expert and the Expert's determination and reasons.
2. Within ten (10) Business Days of the receipt of the Claimant's statement of case, the Respondent shall deliver to the Claimant (with copies to the Arbitrator) a statement of defence, a response to the other party's proposed directions and suggested timetable together with, in the case of a dispute which has not been the subject of an Expert Determination, any counter notice clarifying the issues to be determined by the arbitrator and/or setting out any additional issues to be resolved by him in the context of the dispute plus any additional documents relied upon.
3. As soon as practicable after his appointment the Arbitrator may contact the parties' representatives to give them the opportunity to comment on a proposed procedural timetable and directions. In any event, within five (5) Business Days after delivery of the Respondent's statement of defence and any counter notice in accordance with Paragraph 2, the Arbitrator shall establish and order a procedural timetable and give directions for the remaining steps in the arbitration. The timetable and directions shall provide for the Arbitrator to deliver his award on the issues in dispute within four months of the date of his appointment in accordance with Clause 9. The directions to be given by the Arbitrator shall include, as appropriate, directions:
 - (a) for service of any reply, defence to issues raised in the counter notice and any other statements of case that may reasonably be required;
 - (b) for service of any additional documents, requests for disclosure of specific documents by the other party and service of copies of documents so requested;
 - (c) for service of witnesses statements and experts' reports, if not already served with the pleadings;
 - (d) for service of replies to any witnesses statement and experts' reports;
 - (e) unless the Dispute Parties agree that a hearing is not required, for an oral hearing pursuant to Paragraph 6; and
 - (f) for service of final written submissions to be served simultaneously following conclusion of the hearing.
- 4.

- (a) Save as provided below the Arbitrator shall deliver his award, including in respect of any issues of quantum and/or costs (as may be relevant), within twenty (20) Business Days of the end of the oral hearing or, alternatively, where the Arbitrator considers it would be appropriate, he may split his award and deal with the issues of quantum and costs separately from the substantive issues in dispute to ensure the timetable referred to in Paragraph 3 is met in respect of such substantive issues.
- (b) Notwithstanding Paragraph 4(a), where requested by either party to the Acceptance Dispute, the Arbitrator shall split his award so as to issue part of his award in relation to the substantive issues of the dispute as expeditiously as possible before separately addressing and issuing the part of his award relating to issues of quantum and/or costs. Following such request, the Arbitrator may:
 - (i) issue such further directions as he considers appropriate in respect of issues of quantum and/or costs; and/or
 - (ii) pursuant to the terms of Paragraphs 3(e) and 6, hold a further hearing to address issues of quantum and/or costs.
- (c) Where the Arbitrator splits his award pursuant to Paragraph 4(a) or (b), he shall endeavour to issue the part of his award relating to issues of quantum and/or costs as expeditiously as possible and within four months of the date of his appointment pursuant to Clause 9.

5. The Arbitrator shall:

- (a) where he, of his own motion, considers it appropriate; or
- (b) if, following the request of any party to the Acceptance Dispute, he considers it appropriate,

appoint such professional advisers and/or experts to assist him in reaching his decision. Any advice received by the Arbitrator from any advisers appointed by him and relied on by him in making his award shall be appended to it.

- 6. An oral hearing shall not ordinarily exceed five (5) Business Days, however, the period may be extended up to a maximum of ten (10) Business Days where the arbitrator, at his sole discretion, considers it to be appropriate having regard to the number of distinct technical acceptance issues in dispute.
- 7. The Arbitrator, at his sole discretion, may limit as necessary the documentary or other evidence in the arbitration and may limit the length of oral submissions by the parties to the Acceptance Dispute at any hearing to ensure the timetable is met. The timetable for the arbitration will be set by reference to the time realistically required to comply with directions in an expedited context. Hearings shall be arranged during normal working hours on Business Days. If for reasons outside their reasonable control a witness or expert is unable to attend any hearing then the parties to the Acceptance Dispute and the arbitrator will be flexible in terms of either admitting their evidence in written form or taking their evidence using a video-link or other technology.
- 8. If at any stage of the process for determining an Acceptance Dispute the Arbitrator is persuaded that a decision cannot be reached within the timeframe set by him in his directions pursuant to either Paragraph 3 or any additional directions pursuant to

Paragraph 15(a), then the Arbitrator may give revised directions allowing up to a further ten (10) Business Days or such longer period as the parties may agree.

9. Where an element of an Acceptance Dispute concerns issues arising between the parties as to whether the Secretary of State has unreasonably refused Qualified Type Acceptance or the Relevant Operator has unreasonably refused Qualified Acceptance in accordance with Paragraphs 2, 3 and/or 6 of Part A (*Testing and Acceptance*) of Schedule 2 (*Introduction into Service*) of the MARA, the further procedures set out in Paragraphs 10 to 17 (inclusive) shall apply.
10. The Arbitrator shall from the outset make directions designed to ensure that any underlying issues which may impact upon the Secretary of State's decision to refuse Qualified Type Acceptance or the Relevant Operator's decision to refuse Qualified Acceptance are determined first and the Arbitrator shall issue his award in respect of such issues as expeditiously as possible. Where relevant, the Secretary of State shall issue a copy of such award to the Relevant Operator.
11. Where, following receipt of the Arbitrator's award on any issues referred to in Paragraph 9:
 - (a) the Secretary of State is obliged to make a new decision on Qualified Type Acceptance; or
 - (b) the Relevant Operator is obliged to make a new decision on Qualified Acceptance,

the arbitration proceedings shall be stayed until the Secretary of State has issued her new decision on Qualified Type Acceptance or the Relevant Operator has issued its new decision on Qualified Acceptance (as relevant) to the TSP pursuant to Paragraph 12.

12.
 - (a) The Secretary of State shall use reasonable endeavours to issue her new decision on Qualified Type Acceptance as expeditiously as possible and in any event shall issue her new decision on Qualified Type Acceptance within fifteen (15) Business Days of being notified of the Arbitrator's award in respect of any issues referred to in Paragraph 10, or such longer period as the parties may agree.
 - (b) The Relevant Operator shall use reasonable endeavours to issue its new decision on Qualified Acceptance as expeditiously as possible and in any event shall issue its new decision on Qualified Type Acceptance within fifteen (15) Business Days of being notified of the Arbitrator's award in respect of any issues referred to in Paragraph 10, or such longer period as the parties may agree.
13. The TSP will notify the Secretary of State and the Relevant Operator (if relevant) and the Arbitrator in writing within ten (10) Business Days of receipt of any new decision pursuant to Paragraph 12 whether such decision is disputed. In the absence of such notice the TSP will be deemed to have accepted the new decision of the Secretary of State or Relevant Operator (as appropriate).
14. Where the TSP has given notice that the Secretary of State's new decision on Qualified Type Acceptance or the Relevant Operator's decision on Qualified Acceptance is accepted pursuant to Paragraph 13, or the timescale for issuing such notice has expired,

the Arbitrator shall proceed with the stayed arbitration to determine any outstanding elements of the Acceptance Dispute.

15. Where the TSP has given notice that the Secretary of State's new decision on Qualified Type Acceptance or the Relevant Operator's new decision on Qualified Acceptance is disputed pursuant to Paragraph 13 (a **Qualified Acceptance Dispute**), the Arbitrator shall proceed with the stayed arbitration to determine any outstanding elements of the Acceptance Dispute together with the Qualified Acceptance Dispute and the following procedure shall apply:
 - (a) the Arbitrator shall, to the extent that he considers it necessary in light of his earlier directions, as soon as possible after receipt of the TSP's notice pursuant to Paragraph 13:
 - (i) give such further directions to the parties as he considers are required to enable him to determine the Qualified Acceptance Dispute; and
 - (ii) direct a procedural timetable for determining the Qualified Acceptance Dispute as expeditiously as possible; and
 - (b) the Arbitrator shall then seek to issue his award in respect of the Qualified Acceptance Dispute as soon as is reasonably possible and, in any event, no later than two (2) months of the date of receipt of the TSP's notice pursuant to Paragraph 13.
16. Pursuant to the terms of Paragraphs 3(e) and 6, the Arbitrator may hold a further oral hearing in respect of the Qualified Acceptance Dispute and/or any outstanding elements of the Acceptance Dispute.
17. Service of a notice by the TSP that the Secretary of State's new decision on Qualified Type Acceptance or the Relevant Operator's decision on Qualified Acceptance is disputed pursuant to Paragraph 13 shall initiate a process of Escalation to be undertaken contemporaneously with procedure in Paragraphs 15(a) and (b):
 - (a) the Secretary of State or the Relevant Operator (as relevant) and the TSP shall use reasonable endeavours to negotiate in good faith to settle the Qualified Acceptance Dispute;
 - (b) if the Qualified Acceptance Dispute is not settled through discussion between the Secretary of State's Representative or the Relevant Operator Representative (as relevant) and the TSP Delivery Manager within a period of two (2) Business Days from the date of receipt of the TSP's notice pursuant to Paragraph 13, the parties shall escalate the Qualified Acceptance Dispute by giving notice in writing to the Senior Personnel, within two (2) Business Days after the referral period to the Secretary of State's Representative or the Relevant Operator Representative (as relevant) and the TSP Delivery Manager has concluded; and
 - (c) if the Qualified Acceptance Dispute is not resolved within two (2) Business Days of referral to Senior Personnel pursuant to Paragraph 17(b), the parties shall notify the Arbitrator that escalation has failed to resolve the Qualified Acceptance Dispute.

Appendix C
The Contracts

1. The MARA
2. The TARA
3. A RODA
4. The Maintenance Agreement
5. The Funder Direct Agreement
6. The Asset Transfer Agreement

Appendix D

Form of Deed of Adherence

THIS DEED is made on _____ day of 20[]

BY:

[NEW RELEVANT OPERATOR] whose registered number is [•] and whose registered address is at [•] (the *New Relevant Operator*).

WHEREAS:

- (A) On [•] 2012, the Secretary of State, the TSP and the Relevant Operator entered into a Dispute Resolution Agreement (the *Agreement*) relating to the Contracts set out in Appendix C of the Agreement.
- (B) The Agreement contemplates the accession of additional parties.
- (C) [New Relevant Operator] wishes to become a party to the Agreement .

NOW THIS DEED WITNESSETH:

1. **DEFINITIONS AND INTERPRETATION**

- 1.1 Terms defined in the Agreement, and not otherwise defined herein, shall have the same meaning where used in this Deed.
- 1.2 This Deed shall be interpreted as if it formed part of the Agreement.

2. **OPERATIVE PROVISIONS**

[New Relevant Operator] hereby covenants to and undertakes with each party to the Agreement to be bound by and comply in all respects with the Agreement and to assume the benefits and obligations of the Agreement as if [the New Relevant Operator] had executed the Agreement and was named as an original party thereto.

3. **NOTICES**

[New Relevant Operator]'s address for Notices under Clause 10 (Notices) of the Agreement is:

Address:

Facsimile:

Email:

Attention:

4. **LAW**

- 4.1 This Deed shall be governed by and construed in accordance with the law of England and Wales.

4.2 Any dispute or difference relating to this Deed shall be resolved as if it were a dispute or difference relating to the Agreement.

IN WITNESS WHEREOF this Deed has been entered into on the day and year first above written.

SIGNED as a DEED by [NEW RELEVANT OPERATOR])
)
)

Director:
.....

Director/Secretary:
.....

SCHEDULE 14

Initial Financing Agreements

1. Common Terms Agreement
2. NEXI Covered Facility Agreement (as defined in the CTA)
3. Uncovered Facility Agreement
4. EIB Finance Contract (as defined in the CTA)
5. JBIC Facility Agreement (as defined in the CTA)
6. Intercreditor Agreement
7. Shareholder Support Agreement (as defined in the CTA)
8. Borrower Debenture
9. MidCo Debenture (as defined in the CTA)
10. Funder Direct Agreement
11. Manufacturer Direct Agreement (as defined in the CTA)
12. Maintainer Direct Agreement (as defined in the CTA)
13. Account Bank Agreement
14. Account Operating Mandates (as defined in the CTA)
15. Each Senior Hedging Agreement (as defined in the CTA)
16. Each Fee Letter (as defined in the CTA) entered into at the Effective Date
17. Hitachi Equity Guarantee (as defined in the CTA)
18. Each Qualifying Equity L/C (as defined in the CTA)
19. Equity Bridge Facility Agreement (as defined in the CTA)
20. Each Interest Rate Cap Agreement (as defined in the CTA)
21. Each Equity Bridge Fee Letter (as defined in the CTA)
22. Borrower Loan Stock Instruments (as defined in the Shareholder Support Agreement)
23. Midco Loan Stock Instruments (as defined in the Shareholder Support Agreement).