

**AGILITY TRAINS WEST LIMITED
(as TSP)**

**FIRST GREATER WESTERN LIMITED
(as Operator)**

as amended and restated on

31 January 2014

**GREAT WESTERN IEP NETWORK
TRAIN AVAILABILITY AND RELIABILITY AGREEMENT**



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THIS AGREEMENT is made as a deed on

2014

BETWEEN:

- (1) **Agility Trains West Limited**, whose registered number is 07930606 and whose registered address is at 4th Floor, 4 Cophall Avenue, London, EC2R 7DA (**TSP**); and
- (2) **First Greater Western Limited**, whose registered number is 05113733 and registered address is at Milford House, 1 Milford Street, Swindon, Wiltshire SN1 1HL (**Operator**).

WHEREAS:

- (A) the Secretary of State and the Operator have entered into a franchise agreement dated 2 October 2013 pursuant to which the Operator has been appointed the Secretary of State's franchisee to provide passenger railway services on the Great Western IEP Network (the **Franchise Agreement**); and
- (B) the Operator wishes to use the Sets to provide the passenger railway services on the Great Western IEP Network, and the TSP wishes to make the Sets available to the Operator pursuant to and in accordance with the terms of this Agreement.

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 of this Agreement, unless expressly specified to the contrary;
- (c) references in any Schedule to a Paragraph or Appendix are references to a Paragraph or Appendix of that Schedule, unless expressly specified to the contrary;
- (d) references to this Agreement include this Agreement as amended or supplemented in accordance with its terms;
- (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) words in the singular shall include the plural and vice-versa;
- (j) words importing one gender shall include other genders;
- (k) 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;
- (l) the terms **party** and **parties** shall refer to the TSP and/or the Operator, as appropriate, and any references to a third party is a reference to any person who is not a party to this Agreement;
- (m) the obligations of the TSP shall include the obligations of the TSP Contract Manager and the TSP Control Room Contact; the obligations of the Operator shall include the obligations of the Operator Contract Manager and the Operator Nominated Contact;
- (n) 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;
- (o) words and expressions defined in the Interpretation Act 1978 have the same meanings when used in this Agreement;
- (p) references to railway passenger services are to be construed subject to Section 40 of the Railways Act 2005; and
- (q) 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.

TARA Definitions

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

1.3 Cap has the meaning given to it in Paragraph 3.10(b) of Part A (*Availability Regime*) of Schedule 6 (*Performance Regime*);

1.6 Cap has the meaning given to it in Paragraph 3.10(c) of Part A (*Availability Regime*) of Schedule 6 (*Performance Regime*);

24/7 Basis means, in relation to hours of availability, on the basis of being available twenty four (24) hours per day, seven (7) days per week (other than 25 December in each calendar year);

Acceptance has the meaning given to it in the MARA;

Acceptance Process has the meaning given to it in the MARA;

Access Agreement has the meaning given to the term access agreement in Section 83(1) of the Act;

Accrued Benefits means the accrued benefits in respect of a Relevant Protected Person or a Relevant Indefeasible Rights Member (as applicable) as described in Paragraph 1.17 of Part E (*Transfer Provisions*) of Schedule 1 (*General Provisions*);

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 ETCS Fleet Mileage means the aggregate miles travelled by all Sets as from the ETCS Commencement Date where the ETCS is used as the primary train protection system on operational ETCS infrastructure or where the ETCS would have been the primary train protection system but for an ETCS Permitted Fault provided that if two (2) Half Sets are coupled:

- (a) only the miles travelled by the leading Half Set (the Set which has an active ETCS) shall be counted; and
- (b) the miles travelled by the rear Half Set shall be disregarded;

Actual Fuel Price means, in respect of any Invoiced Fuel Reporting Period, the average price in pounds Sterling per litre of the relevant Fuel that is procured and paid for by the TSP and supplied by the relevant fuel supplier(s) to the TSP in accordance with Paragraph 1.1 of Part D (*Reimbursable Charges*) of Schedule 6 (*Performance Regime*) in respect of that Invoiced Fuel Reporting Period, which is calculated by dividing:

- (a) the aggregate costs in pounds Sterling of such Fuel; by
- (b) the aggregate volume in litres of such Fuel;

Actual Operational Mileage means, in respect of a Set, the total miles travelled by that Set in a relevant Reporting Period;

Actual Ride Index means, in respect of any Set, the ride index generated by the Ride Compliance Test;

Actuaries' Letter means the letter attached as Appendix A to Part E (*Transfer Provisions*) of Schedule 1 (*General Provisions*);

Additional Availability Conditions has the meaning given to it in Paragraph 4(b) of Part G (*Obligations concerning Sets withheld from Service*) of Schedule 2 (*Availability*);

Additional TUPE Adjustment Amount means any amount calculated in accordance with Paragraph 3.10 of Part E (*Transfer Provisions*) of Schedule 1 (*General Provisions*);

Adjustment Component means, in respect of a Set on an Operational Day, an Availability Adjustment Component and/or a Reliability Adjustment Component;

Affected Party means the party that is prevented from carrying out its relevant 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 holding company and subsidiary shall have the meaning given to them in Section 1159 of the Companies Act 2006, 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;

Agreed Fuel Efficiency Action Completion Date has the meaning given to it in Paragraph 1.6 of Part B (*Compliance Testing*) of Schedule 4 (*Contract Management and Compliance*);

Agreed Fuel Efficiency Benchmark Action Completion Date has the meaning given to it in Paragraph 1.13 of Part B (*Compliance Testing*) of Schedule 4 (*Contract Management and Compliance*);

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

Allowable Availability Incident has the meaning given to it in Paragraph 3.5 of Part A (*Dispatch Requirements*) of Schedule 2 (*Availability*);

Allowable Availability Incident Threshold means, subject to Paragraph 3.6 of Part A (*Dispatch Requirements*) of Schedule 2 (*Availability*), four (4) Allowable Availability Incidents in each Reporting Period;

Alternative Connection has the meaning given to it in Paragraph 1.4 of Part D (*Deviation from Dispatch Requirements*) of Schedule 2 (*Availability*);

Alternative Set has the meaning given to it in Paragraph 2.1 of Part A (*Availability Regime*) of Schedule 6 (*Performance Regime*);

Ancillary Equipment means any equipment set out in the list of ancillary equipment developed in accordance with paragraph 14 of appendix D (*Design Plan*) of schedule 1 (*Set Specification and Design*) of the MARA;

Annual Fleet Fuel Efficiency Average has, in respect of each Set, the meaning given to it in Paragraph 1.11 of Part B (*Compliance Testing*) of Schedule 4 (*Contract Management and Compliance*);

Annual Fleet Fuel Efficiency Factor means the number calculated by dividing the Annual Fleet Fuel Efficiency Average by the Fleet Fuel Efficiency Benchmark;

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;

Arrival Time means the time of arrival of a Set onto a given Depot via a Connection;

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;

Audit and Reporting KPI Standards Failure means any failure by the TSP to comply with the obligations specified in Paragraphs 4.10 to 4.12 (inclusive) of Part C (*KPI Regime*) of Schedule 6 (*Performance Regime*);

Audit and Reporting Payment means that element of the KPI Payment for any Reporting Period that is calculated pursuant to Paragraph 2.4 of Part C (*KPI Regime*) of Schedule 6 (*Performance Regime*);

Authority to Proceed means a notice issued by the Secretary of State to the TSP pursuant to the terms of the MARA, authorising a variation to the terms of this Agreement;

Auto Coupler means the auto coupling and uncoupling system described in clause TS1839 of section 3.2 of the Train Technical Specification;

Availability Adjustment means, in respect of a Set on an Operational Day, an abatement in the availability adjustment for that Operational Day, calculated in accordance with Paragraph 4.1 of Part A (*Availability Regime*) of Schedule 6 (*Performance Regime*) with the components of the formula be based on one (1) Operational Day instead of a Reporting Period;

Availability Adjustment Component means, in respect of a Set on an Operational Day, the amount calculated by multiplying the Indexed Set Availability Payment for such Set (which may be a Half Set or Full Set) by each applicable availability component in the formula for the purposes of calculating the Availability Adjustment for that Operational Day. The availability component includes UM, PAM, RTSM, UUM, DUM, EUM, FUM and EFUM (as each has the meaning given to it in Part A (*Availability Regime*) of Schedule 6 (*Availability*));

Available Half Set Days or **AHSD** means the aggregate of the number of Maximum Available Sets on each of the days in the relevant Contract Year that relate to Half Sets;

Available Full Set Days or **AFSD** means the aggregate of the number of Maximum Available Sets on each of the days in the relevant Contract Year that relate to Full Sets;

Average Set Fuel Efficiency Ratio has the meaning given to it in Paragraph 1.1(b) of Part B (*Compliance Testing*) of Schedule 4 (*Contract Management and Compliance*);

Base Period Charge means the periodic charge calculated in accordance with Paragraph 2.1 of Part A (*TARA Payments*) of Schedule 5 (*Payment*);

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;

Bedding In Factor means:

- (a) during the First Bedding In Period, 0.25;
- (b) during the Second Bedding In Period, 0.5;
- (c) during the Third Bedding In Period, 0.75; and
- (d) thereafter, 1;

Benefit Scheme means any and all schemes required to be set up by the Maintainer to comply with its obligations under the Transfer Regulations to provide the same or substantially equivalent benefits to the Relevant Employees to those enjoyed by the Relevant Employee prior to his transfer to the Maintainer;

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;

BR-ATP System means the train borne aspects of the British Rail Automatic Train Protection System fitted on the Great Western IEP Network;

BR-ATP System Decommission Date means the date on which the BR-ATP System is decommissioned from the Great Western IEP Network;

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 any rates, taxes and other impositions payable by the Provider in respect of the Depots in accordance with the Local Government Finance Act 1988 or any rates, taxes and impositions of a similar nature payable by the Provider in respect of the Depots in accordance with other legislation;

Cancellation means a Passenger Service:

- (a) which is included in the Plan of the Day but which is cancelled, and such cancellation is attributed to the Operator pursuant to its Track Access Contract;
- (b) which is included in the Plan of the Day but which operates less than fifty per cent. (50%) of its scheduled mileage for reasons attributed to the Operator pursuant to its Track Access Contract; or

- (c) which is omitted from the Plan of the Day, or which is included in the Plan of the Day in a modified form and such form does not enable the Operator to operate more than fifty per cent. (50%) of such Passenger Service's mileage as scheduled in the Plan of the Day prior to such modification;

Capital Allowances means the allowances in respect of capital expenditure provided under the Capital Allowances Act 2001;

Category One Handover Failure means:

- (a) any presentation standards failure specified in Table 1 (*Handover Failures*) of the Presentation Standards Table in Appendix A (*Presentation Standard Table*) to Part B (*Handover*) of Schedule 2 (*Availability*) identified with a "1" in the column headed "Category" in the row corresponding to that presentation standards failure, the occurrence of which before the start of any Operational Day means a Set affected by it (whether wholly or partially, as the relevant presentation standard requires) is not permitted to enter service; or
- (b) any defect that results in a Set not complying with any mandatory requirements of the Rule Book or the Safety Management System;

Category One In-Service Failure means:

- (a) any presentation standards failure specified in Table 2 (*In-Service Failures*) of the Presentation Standards Table in Appendix A (*Presentation Standard Table*) to Part B (*Handover*) of Schedule 2 (*Availability*) identified with a "1" in the column headed "Category" in the row corresponding to that presentation standards failure, the occurrence of which during the Operational Day means a Set affected by it (whether wholly or partially, as the relevant presentation standard requires) is not permitted to remain in service; or
- (b) any defect that results in a Set not complying with any mandatory requirements of the Rule Book or the Safety Management System;

Category Three Handover Failure means:

- (a) any presentation standards failure specified in Table 1 (*Handover Failures*) of the Presentation Standards Table in Appendix A (*Presentation Standard Table*) to Part B (*Handover*) of Schedule 2 (*Availability*) identified with a "3" in the column headed "Category" in the row corresponding to that presentation standards failure, the occurrence of which before the start of any Operational Day does not affect the entry into service of a Set affected by it (whether wholly or partially, as the relevant presentation standard requires), but may have financial consequences; or
- (b) any failure that shall be deemed to have occurred pursuant to Paragraph 4.5 of Part C (*KPI Regime*) of Schedule 6 (*Performance Regime*);

Category Three In-Service Failure means any presentation standards failure specified in Table 2 (*In-Service Failures*) of the Presentation Standards Table in Appendix A (*Presentation Standard Table*) to Part B (*Handover*) of Schedule 2 (*Availability*) identified with a "3" in the column headed "Category" in the row corresponding to that presentation standards failure, the occurrence of which during any Operational Day does not affect whether a Set affected by it (whether wholly or partially, as the relevant presentation standard requires) remains in service, but may have financial consequences;

Category Two Handover Failure means any presentation standards failure specified in Table 1 (*Handover Failures*) of the Presentation Standards Table in Appendix A (*Presentation Standard Table*) to Part B (*Handover*) of Schedule 2 (*Availability*) identified with a "2" in the column headed "Category" in the row corresponding to that presentation standards failure, the occurrence of which before the start of any Operational Day means a Set affected by it (whether wholly or partially, as the relevant presentation standard requires) is permitted to enter service at the Operator's discretion;

Category Two In-Service Failure means any presentation standards failure specified in Table 2 (*In-Service Failures*) of the Presentation Standards Table in Appendix A (*Presentation Standard Table*) to Part B (*Handover*) of Schedule 2 (*Availability*) identified with a "2" in the column headed "Category" in the row corresponding to that presentation standards failure, the occurrence of which during any Operational Day means a Set affected by it (whether wholly or partially, as the relevant presentation standard requires) is permitted to remain in service at the Operator's discretion;

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

- (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;

CCTV means the closed circuit television monitoring system described in clause 5.1 of the Train Technical Specification;

Certificate of Temporary Specific Infrastructure Acceptance Conditions has the meaning given to it in the MARA;

Claim has the meaning given to it in Paragraph 1.13 of Schedule 9 (*Intellectual Property*);

Cleaning KPI Standards Failure means any failure to meet the standard required of a Key Performance Indicator which is specified in Table 2 (*KPI Regime – Handover Cleaning KPI Standards Failures*) of the Appendix A (*KPI Scorecards*) to Part C (*KPI Regime*) of Schedule 6 (*Performance Regime*) which occurs at or prior to the Entry Time of a Set;

Cleaning Payment means that element of the KPI Payment for any Reporting Period that is calculated pursuant to Paragraph 2.3 of Part C (*KPI Regime*) of Schedule 6 (*Performance Regime*);

Commercially Sensitive Information means the sub-set of Confidential Information listed in column 1 of Appendix A (*Commercially Sensitive Information*) of Schedule 13 (*Confidentiality*) for such period specified in that Schedule;

Compliance Notice means a Fuel Compliance Test Notice or a Standards Compliance Test Notice;

Compliance Test means:

- (a) a Fuel Compliance Test;
- (b) a Fleet Fuel Efficiency Test;
- (c) a Noise Compliance Test; and/or
- (d) a Ride Compliance Test;

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; and
- (b) Commercially Sensitive Information;

Configuration Database has the meaning given to it in Paragraph 2.2 of Schedule 9 (*Intellectual Property*);

Connecting Network has the meaning given to it in the Connection Agreement;

Connection means, in respect of any given Depot, the rail connection between the Depot and the Network, which shall be the timing point for the purposes of timetabling of train movements into or out of that Depot;

Connection Agreement means any connection agreement entered into from time to time between the TSP or the Maintainer and Network Rail in respect of a Depot;

Consumables means all materials and fluids required on a Set necessary for that Set to deliver the required level of performance and availability and to meet the standards of all Key Performance Indicators (but excluding catering consumables and Toilet Cubicle Materials);

Contagious Fault means a fault in a component of a Set which by its nature gives rise to a reasonable suspicion that it may also be present in other components in a Set or any other Sets;

Contemplated Variation has the meaning given to it in the MARA;

Contemplated Variation Notice has the meaning given to it in the MARA;

Contract Year means any period of twelve (12) months during the Term, beginning on 1 April and ending on 31 March, but provided that:

- (a) the first and last Contract Years during the Term may be for a period of less than twelve (12) months;
- (b) the first Contract Year shall begin on the date of this Agreement and end on the next occurring 31 March; and
- (c) the last Contract Year shall begin on 1 April of the relevant year and end on the last day of the Term;

Costs Plus Basis means:

- (a) in respect of any 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 Subcontractor 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];
- (b) in respect of any 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 price provided by that relevant manufacturer which shall be at least as favourable as the price provided by that relevant manufacturer to any other customer in the United Kingdom (other than an Affiliate of the Manufacturer) for use in the rail industry in the United Kingdom and for similar quantities and on similar terms (other than in respect of price itself); and
- (c) in respect of any Ancillary Equipment, the competitive, open-market price provided by the Manufacturer or an Affiliate of the Manufacturer which shall be at least as favourable as the price provided by that relevant manufacturer to any other customer in the United Kingdom (other than an Affiliate of the Manufacturer) for use in the rail industry in the United Kingdom and for similar quantities and on similar terms (other than in respect of price itself),

in each case, together with any relevant Labour Costs;

Current Calculation has the meaning given to it in Paragraph 5.7(c) of Part C (*KPI Regime*) of Schedule 6 (*Performance Regime*);

Current Reporting Period has the meaning given to it in Paragraph 5.7(c)(i) of Part C (*KPI Regime*) of Schedule 6 (*Performance Regime*);

Damage means damage to the Set when taking into account:

- (a) fair wear and tear; and
- (b) the standards set out in the KPI Standards Handbook,

and **Damaged** shall be construed accordingly; the meaning set out in this definition shall apply to any reference to Damage or Damaged in Part C (*KPI Regime*) of Schedule 6 (*Performance Regime*) only;

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*) of the MARA, 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*) of the MARA;

Damaged Set has the meaning given to it in Paragraph 2.2 of Part A (*Availability Regime*) of Schedule 6 (*Performance Regime*);

Data Protection Act means the Data Protection Act 1998;

Deduction means for the purposes of the calculation of the TARA Payment in accordance with Part A (*TARA Payments*) of Schedule 5 (*Payment*), any of the following:

- (a) a deduction to the Base Period Charge which forms part of a Reporting Period Availability Adjustment or a Reporting Period Reliability Adjustment, as calculated in accordance with either Part A (*Availability Regime*) of Schedule 6 (*Performance Regime*) or Part B (*Reliability Regime*) of Schedule 6 (*Performance Regime*), as applicable; or
- (b) an abatement to the Presentation KPI Standards Payment, Cleaning Payment or Audit and Reporting Payment, as calculated in accordance with Part C (*KPI Regime*) of Schedule 6 (*Performance Regime*);

Deemed Unavailable or DU has the meaning given to it in Paragraph 3.5 of Part A (*Availability Regime*) of Schedule 6 (*Performance Regime*);

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

Delay Event means an incident involving a Set from which Delay Minutes result and are recorded within the Performance System;

Delay Incident means a planned or unplanned incident (the occurrence and duration of which is determined in accordance with the Delay Attribution Guide and recorded by the Performance System) that is not specified in the applicable working timetable that relates to the Timetable and causes Delay Minutes to any Passenger Service;

Delay Minutes means, in relation to a Passenger Service and a Recording Point (as defined in the Track Access Contract), the delay at that Recording Point, as recorded in the Performance System;

Delegated Functions has the meaning given to it in Paragraph 1.5 of Part A (*Contract Management*) of Schedule 4 (*Contract Management and Compliance*);

Departure Time means, in respect of any Set, the time at which the Set departs from the appropriate depot departure signal from a given Depot via a Connection;

Depot Access Agreement or **DAA** means any depot access agreement relating to a Depot entered into from time to time between the TSP or the Maintainer and the relevant depot facilities operator in respect of the Sets;

Depot Employees means all those persons employed at each Depot or otherwise by the 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 Transfer means in relation to any individual Depot, the replacement of the Operator by the Provider as DFO at that Depot;

Depots means the railway depots located at Swansea Maliphant, London North Pole and Stoke Gifford;

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 Plan has the meaning given to it in the MARA;

Design Process has the meaning given to it in the MARA;

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

Designated Depot Handback Point means each of the locations identified as designated depot handback points set out in the relevant Physical Characteristics Table;

Designated Depot Handover Point means each of the locations identified as designated depot handover points set out in the relevant Physical Characteristics Table;

Designated Employer means a designated employer for the purposes of a single-employer section of the Railways Pension Scheme, as defined in Clause 1 of the Pension Trust;

Detailed Design Review Stage has the meaning given to it in the MARA;

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

DGO means driver guard operation;

Diagram means, in respect of the Timetable, the schedule of planned movements of a Set commencing at the Scheduled Handover Time and at the Handover Point at which the Set enters service from the Entry Depot and ending at the Scheduled Handback Time and at the Handback Point at which the Set finishes service at the Exit Depot which shall be, in each case, within:

- (a) the technical capabilities of the relevant Type, as set out in Appendix D (*Technical Capabilities of Relevant Type*) to Part A (*Dispatch Requirements*) of Schedule 2 (*Availability*); and
- (b) the parameters of the Rules of the Fleet;

Dispatch Requirements has the meaning given to it in Paragraph 1.3 of Part A (*Dispatch Requirements*) of Schedule 2 (*Availability*);

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 14 (*Dispute Resolution*) dated the MARA Commencement Date between the Secretary of State (in her capacity as the Secretary of State and as the Operator), the TSP, the Security Trustee and the Maintainer (as amended, varied and acceded to from time to time in accordance with its terms);

Disruption Capacity Parameters means, in respect of any Depot, the rules and constraints set out in:

- (a) the Physical Characteristics Table (with the exception of the maximum number of concurrent Half Set Equivalents); and
- (b) the "Disruption Capacity" parameter in the Workload and Capacity Table,

in each case, pertaining to that Depot;

Divergent Handover Set has the meaning given to it in Paragraph 2.3 of Part A (*Availability Regime*) of Schedule 6 (*Performance Regime*);

Divergent In-Service Evening Set has the meaning given to it in Paragraph 2.5 of Part A (*Availability Regime*) of Schedule 6 (*Performance Regime*);

Divergent In-Service Set has the meaning given to it in Paragraph 2.4 of Part A (*Availability Regime*) of Schedule 6 (*Performance Regime*);

DOO means driver only operation;

ECML ETCS Commencement Date means the date upon which the operator (who is party to the ECML Initial TARA) starts operating an ECML Set in the Operational Day (as defined in the ECML Initial TARA) with ETCS as the primary train protection system on the ECML IEP Network;

ECML ETCS Fleet Mileage means the aggregate miles travelled by all ECML Sets as from the ECML ETCS Commencement Date where the ETCS is used as the primary train protection system on operational ETCS infrastructure or where the ETCS would have been the primary train protection system but for an ETCS Permitted Fault (in respect of the ECML Sets) provided that if two (2) Half Sets (as defined in the ECML Initial TARA) are coupled:

- (a) only the miles travelled by the leading Half Set (as defined in the ECML Initial TARA and the ECML Set which has an active ETCS) shall be counted; and
- (b) the miles travelled by the rear Half Set (as defined in the ECML Initial TARA) shall be disregarded;

ECML ETCS Performance Holiday means a performance holiday period under the ECML Initial TARA which shall start from the earlier of the ETCS Commencement Date and the ECML ETCS Commencement Date, and end on the later of:

- (a) the date upon which the aggregate of the Actual ETCS Fleet Mileage accrued on the Great Western IEP Network by Sets under this Agreement and the ECML ETCS Fleet Mileage accrued on the ECML IEP Network by the ECML Sets under the ECML Initial TARA exceeds the ETCS Fleet Mileage Benchmark; and
- (b) the earlier of:
 - (i) the second anniversary of the commencement of the ECML ETCS Performance Holiday; and
 - (ii) the day upon which the aggregate number of days accumulated as part of the ETCS Performance Holiday under this Agreement and as part of the ECML ETCS Performance Holiday under the ECML Initial TARA exceeds seven hundred and thirty (730) days;

ECML MARA has the meaning given to it in the MARA;

ECML IEP Network means the routes specified 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*) of the MARA;

ECML Initial TARA means the train availability and reliability agreement to be entered into between Agility Trains East Limited and the train operating company to be appointed by the Secretary of State, who shall be the first operator of the trains provided by Agility Trains East Limited on the ECML IEP Network;

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

ECS means empty coaching stock;

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;

Employer Debt Regulations means the Occupational Pension Schemes (Employer Debt) Regulations 2005 (SI 2005/678), as amended from time to time;

Entity in Charge of Maintenance means the entity in charge of maintenance as registered on the national vehicle register for the relevant Vehicle in accordance with and for the purposes of the ROGS and any other Applicable Laws and Standards;

Entry Depot means, in respect of a Set made available by the TSP to satisfy the Dispatch Requirements, the Depot where such Set is to be made available as specified in the relevant Dispatch Requirements;

Entry Time means, in respect of any Set made available by the TSP to satisfy the relevant Dispatch Requirements or any Traffic Spare Set that has been Mobilised, the time at which that Set departs from the applicable Designated Depot Handover Point;

Environment means:

- (a) land, including surface land, sub-surface strata, sea bed and river bed under water (as defined in Paragraph (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 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;

Equivalent Project Relief has the meaning given to it in Paragraph 4.3 of Part E (*Costs Payable by Operator*) of Schedule 6 (*Performance Regime*);

ERTMS means European Rail Traffic Management System;

Estimated Labour Costs means the labour costs estimated by the TSP for the purposes of carrying out Repairs and calculated by multiplying the Labour Rate by the estimated number of labour hours in carrying out the relevant Repairs for the purpose of Paragraph 3 of Part E (*Costs Payable by Operator*) of Schedule 6 (*Performance Regime*);

ETCS has the meaning given to it in the Train Technical Specification;

ETCS Commencement Date means the date upon which the Operator starts operating a Set in the Operational Day with ETCS as the primary train protection system on the Great Western IEP Network;

ETCS Fleet Mileage Benchmark means fourteen million (14,000,000) miles;

ETCS Performance Holiday means the period of time specified in Paragraph 2 of Part F (*ETCS Performance Holiday and Mileage Records*) of Schedule 2 (*Availability*);

ETCS Permitted Fault means, in respect of a Set, any Fault of the train borne aspects of the ETCS that has occurred save for any Faults that have been caused by any of the EVC and/or TIU modules;

EVC means the European vital computer being part of the ETCS;

Evening Failed But Used or **EF** has the meaning given to it in Paragraph 3.8 of Part A (*Availability Regime*) of Schedule 6 (*Performance Regime*);

Evening Unavailable or **EU** has the meaning given to it in Paragraph 3.6 of Part A (*Availability Regime*) of Schedule 6 (*Performance Regime*);

Excused Set has the meaning given to it in Paragraph 2.6 of Part A (*Availability Regime*) of Schedule 6 (*Performance Regime*);

Excused Time has the meaning given to it in Paragraph 2.7 of Part A (*Availability Regime*) of Schedule 6 (*Performance Regime*);

Exit Depot means the Depot at which the Operator is scheduled to return a Set to the TSP in accordance with the relevant Dispatch Requirements and Part I (*Handback of Sets*) of Schedule 2 (*Availability*);

Exit Period means the period of two (2) years prior to the Expiry Date;

Expected Differential means the aggregate amount by which the TSP calculates that the Legacy Employment Costs will exceed the Maintainer Employment Costs for each Relevant Employee for the Protected Period;

Expiry Date means the earliest of:

- (a) the date this Agreement is terminated in accordance with its terms;
- (b) termination or expiry of the Franchise Agreement in accordance with its terms; and
- (c) the RV Date;

Exterior Clean means free from dirt, streaks and smears, in each case, as reasonably achievable by passing the Set through an automatic train-wash supplemented by periodic manual heavy cleaning of nose ends, windscreen, cab side lights, inter-vehicle body-ends, gangways, dead areas (such as yaw damper brackets) and vehicle roof. The automatic train-wash shall:

- (a) be operating in as good, serviceable and repair condition as it is capable of if it is maintained in accordance with the manufacturer's operating instructions; and

- (b) meet the standards that are generally accepted within the rail industry in Great Britain in respect of automatic train-washes for trains such as the Sets at the time when such automatic train-wash is purchased by the TSP;

Failed But Used or **F** has the meaning given to it in Paragraph 3.7 of Part A (*Availability Regime*) of Schedule 6 (*Performance Regime*);

Failed Set has the meaning given to it in Paragraph 2.1 of Part C (*In-Service Faults*) of Schedule 3 (*In-Service Provisions and Faults*);

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;

Final Acceptance Certificate has the meaning given to it in the MARA;

Final Warning Notice has the meaning given to it in Paragraph 4.2 of Part A (*Remedial Plans*) of Schedule 10 (*Remedies, Default and Termination*);

Financier means each person from time to time notified by the TSP to the Operator as providing finance to the TSP in respect of the Sets, whether by way of loan or otherwise;

First Bedding In Period means the period from the Initial Deployment Date until the last day of the thirteenth (13th) Reporting Period after such day;

Fit for Service has the meaning given to it in Paragraph 1.4 of Part B (*Handover*) of Schedule 2 (*Availability*);

Fleet means the fleet of Sets described in Appendix C (*Sets Comprised in the Fleet*) to Part A (*Dispatch Requirements*) of Schedule 2 (*Availability*);

Fleet Acceptance Bond has the meaning given to it in the MARA;

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 and excluding any Sets treated as a Total Loss;

Fleet Acceptance Drop Dead Date has the meaning given to it in the MARA;

Fleet Acceptance Security Account has the meaning given to it in the MARA;

Fleet Deployment Profile has the meaning given to it in Paragraph 4.1 of Part D (*Transition*) of Schedule 1 (*General Provisions*);

Fleet Fuel Efficiency Benchmark has the meaning given to it in Paragraph 1.10 of Part B (*Compliance Testing*) of Schedule 4 (*Contract Management and Compliance*);

Fleet Fuel Efficiency Factor Threshold means one point zero five (1.05);

Fleet Fuel Efficiency Test has the meaning given to it in Paragraph 1.12 of Part B (*Compliance Testing*) of Schedule 4 (*Contract Management and Compliance*);

Fleet Fuel Efficiency Test Date has the meaning given to it in Paragraph 1.11 of Part B (*Compliance Testing*) of Schedule 4 (*Contract Management and Compliance*);

Fleet Introduction Plan has the meaning given to it in Paragraph 5.1(b) of Part D (*Transition*) of Schedule 1 (*General Provisions*);

Flexible Apportionment Arrangement means an arrangement entered into by the Provider and the Trustee pursuant to Regulation 6E of the Employer Debt Regulations 2005;

Force Majeure Event means the occurrence after the date of signature of this Agreement 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 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;

Formal Warning Notice has the meaning given to it in Paragraph 4.1 of Part A (*Remedial Plans*) of Schedule 10 (*Remedies, Default and Termination*);

Forward Facing CCTV Systems or **FFCCTV** means the forward facing CCTV systems described in clause 4.17.2 of the Train Technical Specification;

Franchise Agreement has the meaning given to it in Recital (A);

Free Set has the meaning given to it in Paragraph 3.5 of Part A (*Dispatch Requirements*) of Schedule 2 (*Availability*);

Fuel means any diesel fuel that complies with "BS EN 590:2009+A1:2010" or "BS 2869:2010+A1:2011 Class A2" together with urea or similar chemicals used by the engine exhaust treatment system suitable for use in the Sets;

Fuel Adjustment has the meaning given to it in Paragraph 2.12 of Part A (*TARA Payments*) of Schedule 5 (*Payment*);

Fuel Benchmark Testing Period means, in respect of the Bi-Mode Sets, the period of thirteen (13) consecutive Reporting Periods commencing on the first day of the fourth (4th) Reporting Period after the Full Type Deployment Date;

Fuel Compliance Test has the meaning given to it in Paragraph 1.2 of Part B (*Compliance Testing*) of Schedule 4 (*Contract Management and Compliance*);

Fuel Compliance Test Notice has the meaning given to it in Paragraph 1.2 of Part B (*Compliance Testing*) of Schedule 4 (*Contract Management and Compliance*);

Fuel Efficiency Comparison Sets has the meaning given to it in Paragraph 1.3 of Part B (*Compliance Testing*) of Schedule 4 (*Contract Management and Compliance*);

Fuel Reconciliation Payment has the meaning given to it in Paragraph 1.5 of Part D (*Reimbursable Charges*) of Schedule 6 (*Performance Regime*);

Fuel Reconciliation Payment Reporting Period has the meaning given to it in Paragraph 1.5 of Part D (*Reimbursable Charges*) of Schedule 6 (*Performance Regime*);

Full Set means any set consisting of more than seven (7) Vehicles but fewer than or equal to twelve (12) Vehicles delivered by the TSP pursuant to the MARA and identified in Appendix C (*Sets Comprised in the Fleet*) to Part A (*Dispatch Requirements*) of Schedule 2 (*Availability*), including any replacement ordered pursuant to part I (*Total Loss*) of schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*) of the MARA;

Full Set Actual Electric Mileage or **FSAEM** means the total miles travelled by the Full Sets where the power source is provided solely by means of a twenty-five (25) Kilovolt overhead electricity supply, excluding any such miles travelled by any such Sets during the Operational Day in respect of which a Marginal Set Payment has been paid or is payable;

Full Set Electric Mileage Adjustment or **FSEMA** means any adjustment to the Base Period Charge calculated in accordance with Paragraphs 2.5 and 2.8 of Part A (*TARA Payments*) of Schedule 5 (*Payment*);

Full Set Expected Electric Mileage or **FSEEM** means the number of miles calculated in accordance with the following formula:

$$\text{FSEEM} = \frac{5,732,605 \times \text{AFSD}}{6,570};$$

Full Set Availability Adjustment means that proportion of the Reporting Period Availability Adjustment for any Reporting Period that relates to Full Sets which is calculated in accordance with Paragraph 4.3 of Part A (*Availability Regime*) of Schedule 6 (*Performance Regime*);

Full Type Deployment Date means the date upon which all Sets of a particular Type have each been issued with a Qualified Acceptance Certificate or a Final Acceptance Certificate;

Funder Direct Agreement has the meaning given to it in the MARA;

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 the Appendix A (*Great Western IEP Network*) to Part C (*Operator Covenants and Performance*) of Schedule 1 (*General Provisions*);

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 that it is good practice to comply), in each case, as prepared and updated by RSSB;

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

HABD means hot axle box detection;

Half Set means any set consisting of fewer than eight (8) Vehicles delivered by the TSP pursuant to the MARA and identified in Appendix C (*Sets Comprised in the Fleet*) to Part A (*Dispatch Requirements*) of Schedule 2 (*Availability*), including any replacement ordered pursuant to part I (*Total Loss*) of schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*) of the MARA;

Half Set Actual Diesel Mileage or **HSADM** means the total miles travelled by the Half Sets excluding:

- (a) all Half Set Actual Electric Mileage; and
- (b) the total miles travelled by any Half Sets during the Operational Day in respect of which a Marginal Set Payment has been paid or is payable;

Half Set Actual Electric Mileage or **HSAEM** means the total miles travelled by the Half Sets where the power source is provided solely by means of a twenty-five (25) Kilovolt overhead electricity supply, excluding any such miles travelled by any such Sets during the Operational Day in respect of which a Marginal Set Payment has been paid or is payable;

Half Set Availability Adjustment means that proportion of the Reporting Period Availability Adjustment for any Reporting Period that relates to Half Sets which is calculated in accordance with Paragraph 4.2 of Part A (*Availability Regime*) of Schedule 6 (*Performance Regime*);

Half Set Diesel Mileage Adjustment or **HSDMA** means any adjustment to the Base Period Charge calculated in accordance with Paragraphs 2.7 and 2.8 of Part A (*TARA Payments*) of Schedule 5 (*Payment*);

Half Set Electric Mileage Adjustment or **HSEMA** means any adjustment to the Base Period Charge calculated in accordance with Paragraphs 2.6 and 2.8 of Part A (*TARA Payments*) of Schedule 5 (*Payment*);

Half Set Expected Diesel Mileage or **HSEDM** means the number of miles calculated in accordance with the following formula:

$$\text{HSEDM} = \frac{2,504,582 \times \text{AHSD}}{11,680};$$

Half Set Expected Electric Mileage or **HSEEM** means the number of miles calculated in accordance with the following formula:

$$\text{HSEEM} = \frac{6,219,131 \times \text{AHSD}}{11,680};$$

Half Set Equivalent means a unit of depot stabling or workload capacity comprising up to five (5) Vehicles of any Set Type (such that six (6) to ten (10) Vehicles is equal to two (2) Half Set Equivalents and eleven (11) to fifteen (15) Vehicles is equal to three (3) Half Set Equivalents);

Handback means, in respect of a Set, the point at which physical possession and control of that Set is returned by the Operator to the TSP which shall occur when the Operator completes a Handback Certificate in respect of that Set in accordance with Paragraph 8 of Part I (*Handback of Sets*) of Schedule 2 (*Availability*) in either of the following circumstances:

- (a) the Operator returns the Set to the TSP at the Designated Depot Handback Point pursuant to Paragraph 1 of Part I (*Handback of Sets*) of Schedule 2 (*Availability*); or
- (b) in the case of a Withdrawn Set or Withdrawn Evening Set, the TSP and the Operator have agreed a location on the Great Western IEP Network, other than a Designated Depot Handback Point, at which physical possession and control of the Set is to be returned by the Operator to the TSP pursuant to Paragraph 7 of Part I (*Handback of Sets*) of Schedule 2 (*Availability*) and the physical possession and control of the Set is returned by the Operator to the TSP at such location, and Handed Back shall be construed accordingly;

Handback Certificate has the meaning given to it in Paragraph 8(a) of Part I (*Handback of Sets*) of Schedule 2 (*Availability*);

Handback Point means the location at which Handback takes place;

Handback Time means, in respect of a Set, the time at which Handback occurs;

Handover means, in respect of a Set, the point at which physical possession and control of that Set is conferred by the TSP to the Operator which shall occur at the earlier of:

- (a) the Scheduled Handover Time; and
- (b) the time at which the Operator collects the Set, provided that at the relevant time:
 - (i) the Set is allocated to a Diagram;
 - (ii) the Set is presented at a Designated Depot Handover Point, except in the case of a Traffic Spare Diagram where the Set is placed at any location on the Entry Depot but such location might not be a Designated Depot Handover Point; and
 - (iii) the TSP provides the Handover Certificate in respect of the relevant Set,

and **Handed Over** shall be construed accordingly;

Handover Certificate has the meaning given to it in Paragraph 4.1 of Part B (*Handover*) of Schedule 2 (*Availability*);

Handover Point means the location at which Handover takes place;

Handover Time means, in respect of a Set, the time at which Handover occurs;

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;

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;

HSE means the Health & Safety Executive;

HVAC means heating, ventilation and cooling;

IEP Network means the routes specified in appendix F (*IEP Network*) of schedule 1 (*Set Specification and Design*) of the MARA;

Incident has the meaning given to it in Paragraph 6 of Part I (*Handback of Sets*) of Schedule 2 (*Availability*);

Indexed means, in respect of any amounts stated to be Indexed, the adjustment of such amount by multiplying such amount by indexation factor I_2 , as defined in Paragraph 2.15 of Part A (*TARA Payments*) of Schedule 5 (*Payment*);

Indexed Set Availability Payment means, in respect of a Set Availability Payment, that Set Availability Payment indexed by indexation factor I_2 , as defined in Paragraph 2.15 of Part A (*TARA Payments*) of Schedule 5 (*Payment*);

Individual Set Fuel Efficiency Ratio has the meaning given to it in Paragraph 1.1(a) of Part B (*Compliance Testing*) of Schedule 4 (*Contract Management and Compliance*);

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, the Sets or Vehicles, issued by ATOC, HSE, Network Rail, the Notified Body, NRAP, the 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 annexe A (Alternative Standards) of the Train Technical Description;

Initial Deployment Date means the date on which the first Set in the Fleet is issued with a Qualified Acceptance Certificate or a Final Acceptance Certificate;

In-Service Fault means, in respect of a Set, any damage or Fault that occurs during the Operational Day that was not indicated on the Handover Certificate;

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;

Interest Rate means the Default Rate, as defined in the MARA;

Interior Clean means as free of litter, chewing gum, food debris, detritus, cobwebs, dust that is visible to the naked eye, stains, grease and other marks as is reasonably practicable when taking into account, in each case, the accessibility of the area concerned and by reference, in each case, to the standards set out in the KPI Standards Handbook and, in respect of Catering Equipment and catering areas, additionally means cleaned to food hygiene regulation standards;

Invoiced Fuel has the meaning given to it in Paragraph 1.2(a) of Part D (*Reimbursable Charges*) of Schedule 6 (*Performance Regime*);

Invoiced Fuel Cost has the meaning given to it in Paragraph 1.2 of Part D (*Reimbursable Charges*) of Schedule 6 (*Performance Regime*);

Invoiced Fuel Reporting Period has the meaning given to it in Paragraph 1.5 of Part D (*Reimbursable Charges*) of Schedule 6 (*Performance Regime*);

Joint Insurance Account has the meaning given to it in the MARA;

Joint Performance Improvement Plan has the meaning given to it in the Network Code;

Key Performance Indicator means a qualitative measure of the TSP's service quality performance specified in the Appendix A (*KPI Scorecards*) to Part C (*KPI Regime*) of Schedule 6 (*Performance Regime*);

KPI Failure means any Audit and Reporting KPI Standards Failure, Cleaning KPI Standards Failure or Presentation KPI Standards Failure;

KPI Payment means the payment added to the Base Period Charge for any Reporting Period referred to in Paragraph 2.4 of Part A (*TARA Payments*) of Schedule 5 (*Payment*) and calculated in accordance with Paragraph 2 of Part C (*KPI Regime*) of Schedule 6 (*Performance Regime*);

KPI Points means, in respect of any Key Performance Indicator, any points that are attributable for failure to meet the standard specified in that Key Performance Indicator;

KPI Regime means the incentive regime specified in Part C (*KPI Regime*) of Schedule 6 (*Performance Regime*) for measuring the TSP's performance against the Key Performance Indicators specified in Appendix A (*KPI Scorecards*) to Part C (*KPI Regime*) of Schedule 6 (*Performance Regime*);

KPI Scorecard means the scorecard in the agreed form marked "KPI", on which any KPI Failure shall be recorded which is identified during the carrying out of any TSP KPI Check, any Operator Audit or otherwise by the Operator during the Operational Day;

KPI Standards Handbook means the KPI standards handbook as developed pursuant to Paragraph 4.1 of Part C (*KPI Regime*) of Schedule 6 (*Performance Regime*);

Labour Costs means the labour costs incurred by the TSP for the purposes of carrying out:

- (a) Repairs; or
- (b) the repairs, replacement or upgrades of any Ancillary Equipment pursuant to Paragraph 1.1(d) of Part B (*TSP Covenants and Performance*) of Schedule 1 (*General Provisions*),

calculated by multiplying the Labour Rate by the reasonable number of labour hours that are reasonably and properly incurred by the TSP in carrying out the relevant works;

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

- (a) the average of the Labour Indexation Rate across the Labour Indexation Reference Period in respect of such Labour Indexation Re-basing Date; by
- (b) the average of the Labour Indexation Rate across the Labour Indexation Reference Period in respect of 1 April 2009;

Labour Indexation Re-basing Date means each anniversary of the MARA Commencement Date;

Labour Indexation Rate means the index "Labour Cost Index: Mechanical Engineering" published by BEAMA 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;

Labour 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;

Labour Rate means, the amount of seventy-two pounds Sterling and forty-four pence Sterling (£72.44), as indexed by the Labour Indexation Factor on each Labour Indexation Re-basing Date;

Layover means a visit by a Set to a specific Depot, listed in Appendix A (*Rules of the Depot*) to Part A (*Dispatch Requirements*) of Schedule 2 (*Availability*), during a Diagram:

- (a) in relation to which the Depot and the respective Scheduled Arrival Time and Scheduled Departure Time and the respective Connection(s) at the Depot through which the Set shall arrive and depart shall be defined in the Dispatch Requirements; and

- (b) during which:
 - (i) there is no Handover or Handback so that the Set remains in the Operator's care, custody and control and remains in the Operational Day and in the Diagram;
 - (ii) the specific location within the respective Depot at which any Set allocated to such Layover shall be deposited and collected by the Operator, shall be agreed between the parties from amongst the Designated Depot Handback Points or Designated Depot Handover Points, as applicable; and
 - (iii) the TSP may move the Set within the Depot during the Layover if, in the TSP's sole discretion, it deems such move necessary;

Legacy Employment Costs means the aggregate cost to the Maintainer of continuing to employ a Relevant Employee on the contractual terms and conditions of employment which apply to the Relevant Employee at the date on which their employment transfers to the Maintainer increased year on year by the TUPE Adjustment Indexation Rate, but excluding any costs under or in relation to any occupational pension scheme. The cost to the Maintainer of providing any non-cash contractual benefits will be determined by or on behalf of the TSP, acting reasonably;

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 9 (*Intellectual Property*), Hitachi Rail Europe Limited (or any successor, transferee or assignee of Hitachi Rail Europe Limited); and
- (b) for the purposes of Schedule 9 (*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 Employment Costs means the aggregate cost which would have been incurred by the Maintainer in employing the Relevant Employee pursuant to the Maintainer's own contractual terms and conditions of employment, increased year on year by the TUPE Adjustment Indexation Rate, but excluding any costs in relation to any entitlement of the employee to participate in an occupational pension scheme. The cost to the Maintainer of providing any non-cash contractual benefits will be determined by the Maintainer, acting reasonably;

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

Maintenance Agreement means the train services agreement between the Maintainer and the TSP dated the MARA Commencement Date;

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 Assignment Plan has the meaning given to it in Paragraph 1.2(b) of Part B (*Handover*) of Schedule 2 (*Availability*);

Maintenance Plan means the maintenance plan describing the Maintenance Arrangements as developed under the MARA which shall be maintained and developed in accordance with Part C (*Train Maintenance and Servicing*) of Schedule 4 (*Contract Management and Compliance*);

Maintenance Plan Structure Area has the meaning given to it in the MARA;

Maintenance Requirements has the meaning given to it in Paragraph 2.2 of Part C (*Train Maintenance and Servicing*) of Schedule 4 (*Contract Management and Compliance*);

Maintenance Window means, in respect of a Set at a given Depot, the period of time between the Handback Time and the subsequent Handover Time as enabled by the Diagrams;

Major Incident means any crash, collision or similar incident which:

- (a) involves a Set;
- (b) occurs during the Operational Day of that Set;
- (c) in respect of that Set, causes:
 - (i) a Safety Critical Fault;
 - (ii) a Category One Handover Failure or a Category One In-Service Failure (as applicable); or
 - (iii) damage or a Fault which, under Applicable Laws and Standards, prohibits the Operator from operating that Set in passenger revenue earning service; and
- (d) is not attributable to:
 - (i) the acts or omissions of the TSP or any of its employees, agents or Subcontractors in performing the activities contemplated under this Agreement; or
 - (ii) a Fault;

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*) of the MARA, 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*) of the MARA;

Manufacturer means Hitachi Rail Europe Limited;

Manufacture and Supply Agreement means the manufacture and supply agreement between the TSP and the Manufacturer dated the MARA Commencement Date;

Manufacturer IPR means the Intellectual Property Rights, whether existing at the MARA Commencement Date or arising thereafter, that are owned by the Manufacturer or (other than the Maintainer) its Affiliates, in the Relevant Non-Depot 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 Relevant Non-Depot 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 means the master availability and reliability agreement between the TSP and the Secretary of State dated 24 July 2012;

MARA Commencement Date means the date of the MARA;

Marginal Set Payment means:

- (a) in respect of a Full Set an amount equal to [REDACTED] of the Set Availability Payment for a Full Set; and
- (b) in respect of a Half Set an amount equal to [REDACTED] of the Set Availability Payment for a Half Set;

Marginal Set Payment Adjustment means the adjustment to the Base Period Charge for any Reporting Period calculated in accordance with Paragraph 2.10 of Part A (*TARA Payments*) of Schedule 5 (*Payment*);

Material Breach has the meaning given to it in Paragraph 1.6 of Part B (*TSP Default*) of Schedule 10 (*Remedies, Default and Termination*);

Maximum Audit and Reporting Payment means one hundred thousand pounds Sterling (£100,000);

Maximum Available Full Sets means the maximum number of Full Sets of each Type that the Operator can require be made available to it in its Dispatch Requirements, as specified in:

- (a) Appendix D (*Fleet Deployment Profile*) to Part D (*Transition*) of Schedule 1 (*General Provisions*) during the Transition Period; or
 - (b) the Rules of the Fleet after the Transition Period,
- whichever is applicable;

Maximum Available Half Sets means the maximum number of Half Sets of each Type that the Operator can require be made available to it in its Dispatch Requirements, as specified in:

- (a) Appendix D (*Fleet Deployment Profile*) to Part D (*Transition*) of Schedule 1 (*General Provisions*) during the Transition Period; or
 - (b) the Rules of the Fleet after the Transition Period,
- whichever is applicable;

Maximum Available Sets means together the Maximum Available Full Sets and the Maximum Available Half Sets;

Maximum Cleaning Payment means seventy thousand pounds Sterling (£70,000);

Maximum Presentation KPI Standards Payment means three hundred thousand pounds Sterling (£300,000);

Measurement Period has the meaning given to it in Paragraph 1.1(a)(i) of Part B (*Compliance Testing*) of Schedule 4 (*Contract Management and Compliance*);

Mileage Adjustment means any adjustment to the Base Period Charge calculated in accordance with Paragraphs 2.5 and 2.6 of Part A (*TARA Payments*) of Schedule 5 (*Payment*);

Missing Set has the meaning given to it in Paragraph 2.8 of Part A (*Availability Regime*) of Schedule 6 (*Performance Regime*);

Mobilised means the bringing into service of a Set that is a Traffic Spare Set by the Operator by providing the notification to the TSP pursuant to and in accordance with Paragraph 3.3 of Part E (*Rejection, Dispatch and Traffic Spares*) of Schedule 2 (*Availability*); and Mobilisation shall be construed accordingly;

Network means the IEP Network and the rest of the railway 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 Code means the set of rules, known as the network code, which is incorporated into the Track Access Contract or any equivalent code or agreement;

Network Information has the meaning given to it in Paragraph 2.13 of Part A (*Contract Management*) of Schedule 4 (*Contract Management and Compliance*);

Network Licence means the licence relating to the Network granted to Network Rail pursuant to section 8 of the Railways Act 1993 (as amended);

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 Network Rail Infrastructure Limited 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 Paragraph (a));

New Depots means the railway depots located at London North Pole, Bristol Stoke Gifford, Swansea Maliphant and any other railway depot at which services are performed by the Provider for the purposes of this Agreement by reason of the Provider being unable to take over as DFO of a Depot through delay or default;

New Depot Employees means all those persons employed by the 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 Depot; and **New Depot Employee** means any of them;

Noise Compliance Test means the test developed pursuant to the Design Plan and set out in the White Book Compliance Sheet for the purposes of assessing compliance of the Sets with the Noise Standard taking into account the requirements for Noise testing set out in clause 3.16 of the Train Technical Specification and in clause 4.7 of the Train Technical Description;

Noise Standard means the interior noise requirements described in clause 3.16 of the Train Technical Specification;

Non-Compliant Aggregate Deduction Amount means [REDACTED];

Non-Compliance Plan has the meaning given to it in Paragraph 4.1 of Part B (*Compliance Testing*) of Schedule 4 (*Contact Management and Compliance*);

Non-Compliant Set means any Set:

- (a) designated as such in accordance with any of the Paragraphs 1.9, 1.16 or 3.7 of Part B (*Compliance Testing*) of Schedule 4 (*Contact Management and Compliance*);
- (b) that fails to satisfy the Noise Standard after a Noise Compliance Test is carried out; or
- (c) is deemed to be a Non-Compliant Set pursuant to Paragraph 4.3 of Part B (*Compliance Testing*) of Schedule 4 (*Contact Management and Compliance*);

Non-Compliant Set Deduction Amount means [REDACTED];

Non-Operational Day means, in respect of each Set, all time other than an Operational Day;

Not Confident Response has the meaning given to it in Paragraph 3.5 of Part A (*Remedial Plans*) of Schedule 10 (*Remedies, Default and Termination*);

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

Notifiable Event means any Notifiable Unavailability Event or Notifiable Reliability Event;

Notifiable Reliability Event has the meaning given to it in Paragraph 5.5 of Part A (*Contract Management*) of Schedule 4 (*Contract Management and Compliance*);

Notifiable Unavailability Event has the meaning given to it in Paragraph 5.1 of Part A (*Contract Management*) of Schedule 4 (*Contract Management and Compliance*);

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

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

NRAP means the Network Rail Acceptance Panel;

Obstructed Set has the meaning given to it in Paragraph 2.9 of Part A (*Availability Regime*) of Schedule 6 (*Performance Regime*);

OHLE Variation has the meaning given to it in the MARA;

OHLE Works has the meaning given to it in the MARA;

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

Omnibus Section has the meaning given to it in clause 1 of the Pension Trust;

On Train Monitoring Recorder means a data recorder which is fitted to the train in compliance with the Railway Group Standard GM/RT2472;

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;

Operational Day means, in respect of each Set on any day or days, the period commencing at the Handover and ending at Handback;

Operator Actuary means the actuary nominated by the Operator and notified in writing to the TSP for the purposes of this Agreement;

Operator Audit has the meaning given to it in Paragraph 6.3 of Part C (*KPI Regime*) of Schedule 6 (*Performance Regime*);

Operator Contract Manager has the meaning given to it in Paragraph 1.2(a) of Part A (*Contract Management*) of Schedule 4 (*Contract Management and Compliance*);

Operator Default means any of the events in Paragraph 1 of Part C (*Operator Default*) of Schedule 10 (*Remedies, Default and Termination*);

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;

Operator Insurance has the meaning given to it in Paragraph 1 of Schedule 7 (*Insurance*);

Operator IPR means the Intellectual Property Rights that are owned by the Operator and that are required by the TSP to perform its obligations under this Agreement; and any Intellectual Property Rights owned by the Operator in any marketing, promotions, branding and/or advertising materials referred to in Paragraph 3 of Schedule 9 (*Intellectual Property*);

Operator Misconduct means conduct of the Operator which:

- (a) is not in accordance with reasonable written instructions (including email or other electronic instructions) given by the TSP to the Operator in writing and/or recorded verbal instructions given by the TSP to the Operator in accordance with the terms of this Agreement;
- (b) is not in accordance with reasonable instructions and/or guidance contained in the relevant Operating and Maintenance Manuals provided to the 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;

Operator Nominated Contact has the meaning given to it in Paragraph 1.2(b)(ii) of Part A (*Contract Management*) of Schedule 4 (*Contract Management and Compliance*);

Operator Property has the meaning given to it in Paragraph 1(b) of Schedule 8 (*Indemnities*);

Operator Relevant Approvals means all Relevant Approvals which, as a matter of law, only an operator of rolling stock may apply for;

Operator Relevant Derogations means all Derogations which, as a matter of law, only an operator of rolling stock may apply for;

Operator Responsible Damage means damage caused to a Set that:

- (a) is wholly or mainly attributable to Operator Misconduct;
- (b) is wholly or mainly attributable to a Major Incident;
- (c) is wholly or mainly attributable to vandalism where such vandalism occurs during the Operational Day of a Set;
- (d) arises during the Operational Day other than damage which the 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); or

(e) is wholly or mainly attributable to a malfunction of the Operator Equipment installed on a Set other than damage which the 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),

and which, in each case, is not attributable to: (i) the acts or omissions of the TSP or any of its employees, agents or Subcontractors in performing the activities contemplated under this Agreement; or (ii) a Fault;

Operator Section means the section of the Railways Pension Scheme of which the Operator is the Designated Employer immediately before the applicable Start Date;

Operator Transition Progress Report has the meaning given to it in Paragraph 3.2 of Part D (*Transition*) of Schedule 1 (*General Provisions*);

Original Dispatch Requirements means the Dispatch Requirements issued in accordance with this Agreement, other than any amended Dispatch Requirements issued pursuant to Paragraph 2.7 of Part A (*Dispatch Requirements*) of Schedule 2 (*Availability*), and in effect immediately prior to the amendment proposed by the Operator pursuant to Paragraph 2.7 of Part A (*Dispatch Requirements*) of Schedule 2 (*Availability*);

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;

Parallel Claim has the meaning given to it in Paragraph 4.3 of Part E (*Costs Payable by Operator*) of Schedule 6 (*Performance Regime*);

Parallel Claims Notice has the meaning given to it in Paragraph 4.3 of Part E (*Costs Payable by Operator*) of Schedule 6 (*Performance Regime*);

Partially Available or **PA** has the meaning given to it in Paragraph 3.2 of Part A (*Availability Regime*) of Schedule 6 (*Performance Regime*);

Participating Employer has the meaning given to it in clause 1 of the Pension Trust;

Passenger Services means the Operator's railway passenger services specified in any Timetable and/or in any Plan of the Day;

Payment Date means the date for the payment of any TARA Payment specified in accordance with Paragraph 3.3 of Part A (*TARA Payments*) of Schedule 5 (*Payment*);

Pension Amount means the amount described in Paragraph 1.26 of Part E (*Transfer Provisions*) of Schedule 1 (*General Provisions*);

Pension Trust means the pension trust which governs the Railways Pension Scheme and which is set out in the schedule to The Railways Pension Scheme Order 1994, as amended from time to time;

Pensionable Service has the meaning given to it in clause 1 of the Pension Trust;

Performance Default Start Date means the date which falls ten (10) Reporting Periods after the Actual Acceptance Date of the fifth (5th) last Set in the Fleet;

Performance Measurement Start Date means the date which falls six (6) Reporting Periods after the Scheduled Acceptance Date of the last Set in the Fleet;

Performance Regime means the performance regime set out in Schedule 6 (*Performance Regime*);

Performance Report means the report to be provided by the TSP to the Operator pursuant to Paragraph 6.7 and as specified in Paragraph 8 both of Part A (*Contract Management*) of Schedule 4 (*Contract Management and Compliance*);

Performance Review Meeting has the meaning given to it in Paragraph 6.6(a) of Part A (*Contract Management*) of Schedule 4 (*Contract Management and Compliance*);

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

Permitted Out-Stabling Location means the location specified in Table 3 (*Permitted Out-Stabling Location*) set out in Appendix B (*Rules of the Fleet: Requirements*) to Part A (*Dispatch Requirements*) of Schedule 2 (*Availability*);

Permitted Use means the use of the Sets for the provision of Passenger Services on the Great Western IEP Network;

Persistent Breach has the meaning given to it in Paragraph 1.1(a) of Part A (*Remedial Plans*) of Schedule 10 (*Remedies, Default and Termination*);

Persistent Failure has the meaning given to it in Paragraph 3.7 of Part A (*Remedial Plans*) of Schedule 10 (*Remedies, Default and Termination*);

Persistent Failure Default Event has the meaning given to it in Paragraph 4.3 of Part A (*Remedial Plans*) of Schedule 10 (*Remedies, Default and Termination*);

Personal Data has the meaning given to it in Paragraph 3.2 of Part A (*Contract Management*) of Schedule 4 (*Contract Management and Compliance*);

Physical Characteristics Table means the rules and constraints set out in the physical characteristics tables set out in Appendix A (*Rules of the Depot*) to Part A (*Dispatch Requirements*) of Schedule 2 (*Availability*), in each case, in respect of the relevant Depot;

Plan of the Day means, in relation to each day during the Term, the Passenger Services scheduled to be operated on that day through specification in the Timetable or as notified to the Operator by Network Rail from time to time prior to 22:00 hours on the previous day;

Presentation KPI Standards Failure means any failure to meet the standard required of a Key Performance Indicator which is identified at or prior to the Entry Time of a Set, as specified in Table 1 (*KPI Regime - Handover & In-Service Presentation KPI Standards Failures*) of Appendix A (*KPI Scorecards*) to Part C (*KPI Regime*) of Schedule 6 (*Performance Regime*);

Presentation KPI Standards Payment means that element of the KPI Payment for any Reporting Period that is calculated pursuant to Paragraph 2.2 of Part C (*KPI Regime*) of Schedule 6 (*Performance Regime*);

Presentation Standards Failure means the occurrence of any of the following failures:

- (a) Category One Handover Failure;
- (b) Category One In-Service Failure;
- (c) Category Two Handover Failure;
- (d) Category Two In-Service Failure;
- (e) Category Three Handover Failure; and
- (f) Category Three In-Service Failure,

and, in respect of any item, equipment, system, fixtures or components, any reference to "defective", "failed" or "damaged" in the Presentation Standards Tables means the inability to perform its function;

Presentation Standards Table means, together, Table 1 (*Handover Failures*) and Table 2 (*In-service Failures*) in Appendix A (*Presentation Standard Table*) to Part B (*Handover*) of Schedule 2 (*Availability*) and collectively headed "Presentation Standards Table and, in respect of any item, equipment, system, fixtures or components, any reference to "defective", "failed" or "damaged" means the inability to perform its function;

Price Adjustment Information has the meaning given to it in Paragraph 3.1(d) of Part E (*Transfer Provisions*) of Schedule 1 (*General Provisions*);

Priced Workload Parameters means, in respect of any Depot, the rules and constraints set out in:

- (a) the Physical Characteristics Table; and
 - (b) the "Priced Workload" parameter in the Workload and Capacity Table,
- in each case, pertaining to that Depot;

Primary Design Area Work Breakdown Structure has the meaning given to it in the MARA;

Principals' Meeting has the meaning given to it in Paragraph 6.8 of Part A (*Contract Management*) of Schedule 4 (*Contract Management and Compliance*);

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;

Project means the project for the provision of all of the matters covered by the MARA, including the design, manufacture, maintenance and financing of the Fleet and the

Depots, and making available the Sets to the Operator pursuant to this Agreement and the performance of the Services;

Project Document has the meaning given to it in the MARA;

Protected Period means, in respect of each Relevant Employee, six (6) years from the date on which such Relevant Employee transferred to the Provider under the Transfer Regulations (save that if the Relevant Employee's employment terminated before the relevant TUPE Adjustment Base Date, the Protected Period shall end on the date of termination and, if the Relevant Employee is under notice of termination at the relevant TUPE Adjustment Base Date, the Protected Period shall end on the date on which notice of termination is due to expire);

Protection Order means the Railway Pensions (Protection and Designation of Schemes) Order 1994, as amended from time to time;

Proven Fuel Inefficient Set has the meaning given to it in Paragraph 1.5 of Part B (*Compliance Testing*) of Schedule 4 (*Contract Management and Compliance*);

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

Provider Personnel means all employees engaged by the Provider in the provision of services by the Provider at the Depots and the New Depots;

Qualified Acceptance Certificate has the meaning given to it in the MARA;

Railways Pension Scheme is the occupational pension scheme established as the joint industry scheme for the purposes of schedule 11 to the Railways Act 1993 and governed by a pension trust deed dated 1 October 1994;

Railway Safety Directive means the Railway Safety Directive (2004/49/EC) issued by the European Railway Agency;

Reasonable Train Service Provider means a notional reasonable train service provider:

- (a) who (subject to Paragraph (b)) is under the obligations imposed on the TSP under this Agreement to repair any Set as soon as reasonably practicable, and all other obligations imposed on the TSP under this Agreement;
- (b) who holds:
 - (i) the number of Major Incident Spares;
 - (ii) the number of Damage and Vandalism Spares; and
 - (iii) a reasonable number of other spares, fittings and consumables required for the fitting and installation of the Damage and Vandalism Spares and Major Incident Spares set out in Paragraphs (b)(i) and (ii) of this definition;
- (c) who replaces any used Major Incident Spares, Damage and Vandalism Spares and other spares as soon as reasonably practicable; and

- (d) who commences and completes any repair of any Set, any Major Incident Spare and/or any Damage and Vandalism Spare as soon as reasonably practicable having regard to:
 - (i) the TSP's and the Maintainer's expertise and experience accumulated at the time of such repair with respect to the maintenance and repair of the Set or Spare, as applicable; and
 - (ii) where such repair is commenced and/or completed on a later date than the Operator may consider to be reasonable, such justifications as the TSP provides to the Operator, including any materials or evidence as are available to the TSP;

Receiving Scheme has the meaning given to it in Paragraph 1.12 of Part E (*Transfer Provisions*) of Schedule 1 (*General Provisions*);

Redundancy has the meaning given to it in section 139(1) of the Employment Rights Act 1996;

Reference Calculation has the meaning given to it in Paragraph 5.7(a) of Part C (*KPI Regime*) of Schedule 6 (*Performance Regime*);

Refinancing has the meaning given to it in the MARA;

Reimbursable Items Adjustment means the adjustment to the Base Period Charge for any Reporting Period, calculated in accordance with Paragraph 2.11 of Part A (*TARA Payments*) of Schedule 5 (*Payment*);

Reinstatement Plan has the meaning given to it in paragraph 2.11(a) of part A (*Insurance Provisions*) of schedule 5 (*Insurance*) of the MARA;

Rejected Set has the meaning given to it in Paragraph 2.11 of Part A (*Availability Regime*) of Schedule 6 (*Performance Regime*);

Related Loss has the meaning given to it in Paragraph 10 of Schedule 8 (*Indemnities*);

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 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;

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 Delay Incident means a Delay Incident that causes three (3) or more Delay Minutes to a Passenger Service and that is recorded in the Performance System;

Relevant Employees means the Depot Employees and the New 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 Indefeasible Rights Member means a Relevant Employee who has a right to continue to participate in the Railways Pension Scheme after the applicable Start Date pursuant to Article 11 of the Railway Pensions (Protection and Designation of Schemes) Order 1994;

Relevant Non-Depot IPR Assets means the Assets (other than the Spares and the Special Tools), the Software and the Technical Documents;

Relevant Non-Protected Person means a Relevant Employee who is a member of the Railways Pension Scheme immediately before the applicable Start Date and who is not a Relevant Protected Person or a Relevant Indefeasible Rights Member;

Relevant Pension Rights has the meaning given to it in part 1 of the Protection Order;

Relevant Performance Incident means a Relevant Delay Incident and/or an incident from which a Cancellation to a Passenger Service results and that, in each case, is recorded in the Performance System;

Relevant Protected Person means a Relevant Employee who is a "protected employee", as defined in the Railway Pensions (Protection and Designation of Schemes) Order 1994;

Relevant Reporting Period has the meaning given to it in Paragraph 1.1 of Part B (*Compliance Testing*) of Schedule 4 (*Contract Management and Compliance*);

Reliability Adjustment Component means, in respect of a Set on an Operational Day, the TSP Delay Minutes Reliability Adjustment Component and/or the Significant Delay Incident Reliability Adjustment Component;

Reliability Factor means the factor specified in Paragraph 5.4 of Part A (*Contract Management*) of Schedule 4 (*Contract Management and Compliance*);

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; or
- (c) failure by any statutory undertaker, utility company, local authority or any other like body to carry out works or provide services,

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

Relieved Set has the meaning given to it in Paragraph 2.10 of Part A (*Availability Regime*) of Schedule 6 (*Performance Regime*);

Remedial Event means, subject to Paragraph 2(b) of Part G (*Obligations Concerning Sets withheld from Service*) of Schedule 2 (*Availability*), the occurrence after the end of the Reporting Period in which the Performance Measurement Start Date occurs of any of the following:

- (a) [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

(b) any of the events listed in Paragraph 8.1 of Part C (*KPI Regime*) of Schedule 6 (*Performance Regime*),

and provided that no Missing Set, Rejected Set, Withdrawn Set or Withdrawn Evening Set:

(1) which is the subject of a notification from an authority under Paragraph 4 of Part C (*Safety Critical Fault*) of Schedule 2 (*Availability*) or Paragraph 4 of Part C (*In-Service Faults*) of Schedule 3 (*In-Service Provisions and Faults*), shall be treated as Unavailable, Deemed Unavailable or Evening Unavailable for the purposes of Remedial Event if the TSP has launched an appeal against such notification for the period commencing from the date of the launch by the TSP of such appeal and ending on the date when such appeal is determined. If the appeal is not determined in the TSP's favour, then such Missing Set, Rejected Set, Withdrawn Set or Withdrawn Evening Set shall be treated as Unavailable, Deemed Unavailable or Evening Unavailable for the purposes of Remedial Event as from the date of when such appeal is determined; or

(2) which is a Missing Set, Rejected Set, Withdrawn Set or Withdrawn Evening Set wholly or mainly attributable to the OHLE Works and/or the Swansea Maliphant OHLE Infrastructure shall be treated as Unavailable, Deemed Unavailable or Evening Unavailable for the purposes of Remedial Event in the period 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*) of the MARA) in accordance with its terms;

Remedial Plan has the meaning given to it in Paragraph 1.1 of Part A (*Remedial Plans*) of Schedule 10 (*Remedies, Default and Termination*);

Remedial Plan Notice has the meaning given to it in Paragraph 1.1 of Part A (*Remedial Plans*) of Schedule 10 (*Remedies, Default and Termination*);

Repair Notice has the meaning given to it in Paragraph 2.1 of Part E (*Costs Payable by Operator*) of Schedule 6 (*Performance Regime*);

Repairs has the meaning given to it in Paragraph 2.1 of Part E (*Costs Payable by Operator*) of Schedule 6 (*Performance Regime*);

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

- (a) the first such period shall commence on the date of this Agreement;
- (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 fourth last period shall end on the Expiry Date;

Reporting Period Availability Adjustment means, in respect of any Reporting Period, the adjustment to the Base Period Charge for any Reporting Period referred to in Paragraph 2.2 of Part A (*TARA Payments*) of Schedule 5 (*Payment*) and calculated in accordance with Part A (*Availability Regime*) of Schedule 6 (*Performance Regime*);

Reporting Period Reliability Adjustment means, in respect of any Reporting Period, the adjustment to the Base Period Charge for any Reporting Period referred to in Paragraph 2.3 of Part A (*TARA Payments*) of Schedule 5 (*Payment*) and calculated in accordance with Paragraph 3 of Part B (*Reliability Regime*) of Schedule 6 (*Performance Regime*);

Reporting Period TUPE Adjustment means any adjustment to the Base Period Charge calculated in accordance with Paragraph 2.13 of Part A (*TARA Payments*) of Schedule 5 (*Payment*);

Required Action has the meaning given to it in Paragraph 1.6 of Schedule 11 (*Step-In and Step-Out*);

Required Variation has the meaning given to it in the MARA;

Required Variation Notice means a notice issued by the Secretary of State to the TSP pursuant to the terms of the MARA, requiring a variation to the terms of this Agreement;

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 Operator, reasonably determine to be appropriate in the circumstances as meaning the Retail Prices Index for the purposes of this Agreement;

Returned Set has the meaning given to it in Paragraph 2.12 of Part A (*Availability Regime*) of Schedule 6 (*Performance Regime*);

Returned To Service or **R** has the meaning given to it in Paragraph 3.3 of Part A (*Availability Regime*) of Schedule 6 (*Performance Regime*);

Reversion Date has the meaning given to it in Paragraph 2.8(b)(i) of Part A (*Dispatch Requirements*) of Schedule 2 (*Availability*);

Ride Compliance Test means, in respect of any Set, the operation of such Set in order to generate a ride index that complies with the requirements for testing set out in railway standard DD ENV 12299:1999 "Railway applications: Ride comfort for passengers. Measurement and evaluation." for the purposes of assessing compliance of such Set with the Ride Standard in the manner set out in Paragraph 3 of Part B (*Compliance Testing*) of Schedule 4 (*Contract Management and Compliance*);

Ride Compliance Test Site has the meaning given to it in Paragraph 3.1(a) of Part B (*Compliance Testing*) of Schedule 4 (*Contract Management and Compliance*);

Ride Standard means the ride comfort requirement described in clause 3.15 of the Train Technical Specification;

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

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 TSP's rules of the depot specified in:

- (a) during the Transition Period, the Transition Period Rules of the Depot; or
- (b) after the Transition Period, Appendix A (*Rules of the Depot*) to Part A (*Dispatch Requirements*) of Schedule 2 (*Availability*),

whichever is applicable;

Rules of the Fleet means the TSP's rules of the fleet specified in:

- (a) during the Transition Period, the Transition Period Rules of the Fleet; or
- (b) after the Transition Period, the rules set out in Appendix B (*Rules of the Fleet: Requirements*) to Part A (*Dispatch Requirements*) of Schedule 2 (*Availability*),

whichever is applicable;

RV Date means, in respect of each Set, in the Fleet, 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;

Safety Critical Fault means a Fault or Contagious Fault which has caused or which, if not cured may cause, an incident involving a Set resulting in death or significant personal injury to an individual or individuals;

Safety Management System means the 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 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 this Agreement;

Scheduled Acceptance Date has the meaning given to it in the MARA;

Scheduled Arrival Time means, in respect of any Set, the time that Set is scheduled to arrive onto a given Depot via a Connection;

Scheduled Departure Time means, in respect of any Set, the time specified in the relevant Diagram for the Set to depart from the appropriate depot departure signal from a given Depot via a Connection;

Scheduled Entry Time means, in respect of any Set made available by the TSP to satisfy the relevant Dispatch Requirements or a Traffic Spare Set that has been Mobilised, the time at which that Set is scheduled to depart from the applicable Designated Depot Handover Point as specified in those Dispatch Requirements or in accordance with the Mobilisation;

Scheduled Exit Time means, in respect of any Set, the time that Set is scheduled to arrive at the Handback Point at a given Depot;

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

Scheduled Handback Time means, in respect of a Set, the time specified in the Dispatch Requirements at which the Operator is scheduled to Handback that Set;

Scheduled Handover Time means, in respect of any Set, the time specified in the Dispatch Requirements at which the TSP is scheduled to Handover that Set;

Scheme Actuary means the actuary appointed as the scheme actuary to the Railways Pension Scheme;

SDO means selective door opening;

Second Bedding In Period means the period from the day immediately following the end of the First Bedding In Period until the last day of the thirteenth (13th) Reporting Period after such day;

Second Tier Supplier means a Subcontractor (other than a Significant Contractor) whose sub-contract contains obligations to comply with requirements equivalent to those

set out in Paragraph 6.2 of Part E (*Costs Payable by Operator*) of Schedule 6 (*Performance Regime*);

Secretary of State means the Secretary of State for Transport;

Section means a single-employer section of the Railways Pension Scheme established under clause 3 of the Pension Trust;

Section 75 means section 75 or section 75A of the Pensions Act 1995 and any regulations made thereunder;

Section 75 Event means an employment cessation event (within the meaning of Regulation 6ZA of the Employer Debt Regulations) in relation to the Provider other than any act or omission on the part of the TSP or the Provider which has as its main purpose the intention of triggering a debt under Section 75 on a date that is earlier than such debt would otherwise have been triggered as a result of the effluxion of time;

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 has the meaning given to it in the MARA;

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

Service Introduction Plan has the meaning given to it in Paragraph 5.1(a) of Part D (*Transition*) of Schedule 1 (*General Provisions*);

Services means the maintenance and making available of Sets by the TSP to the Operator and provision of other services by the TSP under this Agreement;

Set means a Half Set or a Full Set;

Set Allocation Report has the meaning given to it in Paragraph 1.2(a) of Part B (*Handover*) of Schedule 2 (*Availability*);

Set Availability Payment means:

(a) for a Half Set, [REDACTED];
and

(b) for a Full Set, [REDACTED];

Set Fuel Efficiency Factor means, in respect of any Type, the number calculated by dividing the Individual Set Fuel Efficiency Ratio by the Average Set Fuel Efficiency Ratio for that Type in the relevant Measurement Period;

Set Fuel Efficiency Factor Threshold means one point one (1.1);

Set Retention Amount means the retention amount calculated in accordance with Paragraph 1 of Part B (*Set Retention Amounts*) of Schedule 5 (*Payment*);

Set Up Costs means:

(a) the costs of any legal and advisors' fees incurred in connection with the establishment or amendment of any Benefit Scheme; and

(b) the costs of applying into the ATOC Railway Travel Scheme,

properly attributable to each Relevant Employee in respect of their employment by the Provider (including on a pro-rata basis) as evidenced to the reasonable satisfaction of the Secretary of State by appropriate accounts of payments made;

Shared Remedial Plan has the meaning given to it in Paragraph 2.3 of Part A (*Remedial Plans*) of Schedule 10 (*Remedies, Default and Termination*);

Shareholder means any person from time to time holding share capital in the TSP or 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 Cophall Avenue, London, EC2R 7DA);

Significant Contractor means the supplier of goods and/or services to the TSP pursuant to the terms of any of the following contracts:

- (a) the Manufacture and Supply Agreement;
- (b) the train services agreement between the Maintainer and the TSP and dated the MARA Commencement Date; and
- (c) the sub-contract between the Manufacturer and the building contractor in respect of the construction, refurbishment and/or renovation of the Depots,

and, in each case, any further successor or replacement agreement relating to the subject matter of the foregoing, as the context requires;

Significant Delay Incident means a Delay Incident that causes thirty (30) or more TSP Delay Minutes;

Significant Delay Incident Reliability Adjustment Component means, in respect of a Set on an Operational Day, the amount calculated by multiplying the Indexed Set Availability Payment of that Set (which may be a Half Set or Full Set) by the number of Significant Delay Incidents that accrue on that Set on that Operational Day by the Bedding In Factor and:

- (a) zero point three three (0.33) in the case of a Half Set; or
- (b) zero point five two (0.52) in the case of a Full Set;

Simulator Information has the meaning given to it in the MARA;

Simulators means the simulators that the Operator is to procure and such simulators shall simulate accurately the functionality, design and performance of each Set Type;

Software means the executable object code version of software that is:

- (a) installed in any Asset or Technical Document; and/or
- (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 Subcontractors in connection with the MARA, this Agreement, the Manufacture and Supply Agreement and/or the Maintenance Agreement),

that has, in each case, been modified for the purposes of the Project and has not (at any time during the term of the MARA) been available for off-the-shelf purchase on reasonable terms;

Sole Remedial Plan has the meaning given to it in Paragraph 2.4 of Part A (*Remedial Plans*) of Schedule 10 (*Remedies, Default and Termination*);

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*) of the MARA;

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*) of the MARA; 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);

Specific Set means a particular Set of the Sets described in Appendix C (*Sets Comprised in the Fleet*) to Part A (*Dispatch Requirements*) of Schedule 2 (*Availability*);

Specified Connection has the meaning given to it in Paragraph 1.4 of Part D (*Deviation from Dispatch Requirements*) of Schedule 2 (*Availability*);

Standards has the meaning given to it in Paragraph 2.1 of Part B (*Compliance Testing*) of Schedule 4 (*Contract Management and Compliance*);

Standards Compliance Test Notice has the meaning given to it in Paragraph 2.2 of Part B (*Compliance Testing*) of Schedule 4 (*Contract Management and Compliance*);

Start Date means the date on which a Relevant Employee's employment is transferred to the Provider by operation of the Transfer Regulations;

Step-in Period has the meaning given to it in Paragraph 1.5(d) of Schedule 11 (*Step-in and Step-out*);

Step-in Trigger has the meaning given to it in Paragraph 1.1 of Schedule 11 (*Step-in and Step-out*);

Sterling and **£** means the lawful currency for the time being of the United Kingdom;

Subcontractor means any person who performs or supplies any part of the goods and/or services contemplated under this Agreement;

Substituted Set has the meaning given in Paragraph 1.4 of Part E (*Rejection, Dispatch and Traffic Spares*) of Schedule 2 (*Availability*);

Successor means any person who succeeds to the Provider as DFO at any Depot or any New Depot or who otherwise succeeds to the Provider in providing all or any of the services performed by the Provider at any Depot or New Depot;

Supplementary Availability Conditions has the meaning given to it in Paragraph 3.1(c)(i) of Part D (*Deviation from Dispatch Requirements*) of Schedule 2 (*Availability*);

Suspected Fuel Inefficient Set has the meaning given to it in Paragraph 1.2 of Part B (*Compliance Testing*) of Schedule 4 (*Contract Management and Compliance*);

Swansea Mainline Electrification Date has the meaning given to it in the MARA;

Swansea Maliphant OHLE Infrastructure has the meaning given to it in the MARA;

Switched Set has the meaning given to it in Paragraph 2.13 of Part A (*Availability Regime*) of Schedule 6 (*Performance Regime*);

TARA Default Notification has the meaning given to it in Paragraph 2.3(a) of Part C (*Operator Default*) of Schedule 10 (*Remedies, Default and Termination*);

TARA Joined Step-In Dispute has the meaning given to it in Paragraph 4.1 of Schedule 11 (*Step-In and Step-Out*);

TARA Payment means, in respect of any Reporting Period, the amount determined in accordance with Paragraph 1.1 of Part A (*TARA Payments*) of Schedule 5 (*Payment*);

TARA Step-In Dispute means a Dispute arising under or in connection with Schedule 11 (*Step-In and Step-Out*);

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 the:

- (a) Train Technical Specification;
- (b) Train Technical Description; and
- (c) Design Vision Style Guide;

Technical Inspector means a technical inspector of the TSP meeting the requirements of Paragraph 1 of Part E (*Technical Inspectors*) of Schedule 3 (*In-Service Provisions and Faults*);

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 Paragraph 1.2 of Schedule 9 (*Intellectual Property*) and Paragraph 2 of Part A (*Contract Management*) of Schedule 4 (*Contract Management and Compliance*):

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 Operator to exercise its 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 Spare;
- (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 Operator to exercise its rights pursuant to the licences granted under Paragraph 1.2 of Schedule 9 (*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 Operator to exercise its rights pursuant to the licences granted under Paragraph 1.2 of Schedule 9 (*Intellectual Property*);
- (m) system/equipment functional specifications relevant to the systems and equipment covered by the Primary Design Area Work Breakdown Structure sufficient to enable the Operator to exercise its rights pursuant to the licences granted under Paragraph 1.2 of Schedule 9 (*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 Operator to exercise its rights pursuant to the licences granted under Paragraph 1.2 of Schedule 9 (*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 Operator to exercise its rights pursuant to the licences granted under Paragraph 1.2 of Schedule 9 (*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);

Term means the period specified in Clause 2 (*Commencement and Term*);

Theoretical Ride Index means the ride index generated in accordance with Paragraph 3.3 of Part B (*Compliance Testing*) of Schedule 4 (*Contract Management and Compliance*);

Third Bedding In Period means the period from the day immediately following the end of the Second Bedding In Period until the last day of the thirteenth (13th) Reporting Period after such day;

Third Party IPR means the Intellectual Property Rights owned by a third party in the Relevant Non-Depot IPR Assets, whether existing at the MARA 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 Subcontractor 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 Paragraph (a), excludes the Secretary of State, the Operator, and any Subcontractor, employee or agent of either of them to the extent those Intellectual Property Rights exclusively relate to that sub-contract, employment or agency;

Timetable means the timetable which reflects the working timetable issued by Network Rail at the conclusion of its timetable development process, containing the departure and arrival times of all Passenger Services which call at stations, and principal connections at those stations and other stations;

Timetable Change Date means the date on which the Timetable comes into force;

TIU means train interface unit being part of the ETCS;

Toilet Cubicle Materials means the toiletries, paper towels and any other sanitary supplies or materials required within the toilet cubicles of the Set;

Top Up Amount means the amount described in Paragraph 1.20 of Part E (*Transfer Provisions*) of Schedule 1 (*General Provisions*);

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;

Track Access Contract means any Access Agreement between Network Rail and the Operator which permits the Operator to provide the Passenger Services on track operated by Network Rail and which incorporates the Network Code;

Track Geometry Data means a numerical representation of the geometry of the track, detailing both the alignment and roughness in terms of vertical, lateral, cross level and gauge;

Trade Dispute has the meaning given to it in section 218 of the Trade Unions & Labour Relations (Consolidation) Act 1992;

Traffic Spare Diagram means a zero mileage Diagram that has no schedule of movements defined in the Dispatch Requirements;

Traffic Spare Set means any Set allocated to a Traffic Spare Diagram;

Train Management System or **TMS** means the train management system described in clause 4.15 of the Train Technical Specification;

Train Technical Description or **TTD** has the meaning given to it in the MARA;

Train Technical Specification or **TTS** has the meaning given to it in the MARA;

Training Materials has the meaning given to it in the MARA;

Training Matrix has the meaning given to it in the MARA;

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;

Transfer Regulations means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246);

Transit Time means the time, for a given Depot, that should be allowed within the Operator's train crew and rolling stock Diagrams for movement in-service between the Connection and the Handback Point or between the Handover Point and the Connection;

Transition has the meaning given to it in Paragraph 1 of Part D (*Transition*) of Schedule 1 (*General Provisions*);

Transition Period means the period commencing on the Actual Acceptance Date of the first Set in the Fleet, and ending on the Actual Acceptance Date of the last Set in the Fleet;

Transition Period Rules of the Depot has the meaning given to it in Paragraph 6.2(a) of Part D (*Transition*) of Schedule 1 (*General Provisions*);

Transition Period Rules of the Fleet has the meaning given to it in Paragraph 6.2(b) of Part D (*Transition*) of Schedule 1 (*General Provisions*);

Transition Working Group has the meaning given to it in Paragraph 2 of Part D (*Transition*) of Schedule 1 (*General Provisions*);

TRUST means the 'Train Running System TOPS' operated by Network Rail to monitor train running and punctuality on the Network;

Trustee means the trustee of the Railways Pension Scheme;

TSA Step-In Dispute means a Dispute arising under or in connection with schedule 11 (*Step-In and Step-Out*) of the Maintenance Agreement;

TSA Joined Step-In Disputes has the meaning given to it in Paragraph 4.5 of Schedule 11 (*Step-In and Step-Out*);

TSP Actuary means the actuary nominated by the TSP and notified in writing to the Operator for the purposes of this Agreement;

TSP Contract Manager has the meaning given to it in Paragraph 1.1(a) of Part A (*Contract Management*) of Schedule 4 (*Contract Management and Compliance*);

TSP Control Room Contact has the meaning given to it in Paragraph 1.1(b)(ii) of Part A (*Contract Management*) of Schedule 4 (*Contract Management and Compliance*);

TSP Daily In-Service Check means any check carried out by the TSP during any Turnaround in relation to the satisfactory completion of any in-service cleaning;

TSP Daily Set Check has the meaning given to it in Paragraph 2.1 of Part B (*Handover*) of Schedule 2 (*Availability*);

TSP Default means any of the events in Paragraph 1 of Part B (*TSP Default*) of Schedule 10 (*Remedies, Default and Termination*);

TSP Delay Minutes means the aggregate Delay Minutes to a Passenger Service resulting from a Relevant Delay Incident that is agreed or determined to be the responsibility of the TSP pursuant to Paragraph 4.3 of Part A (*Contract Management*) of Schedule 4 (*Contract Management and Compliance*), provided that TSP Delay Minutes shall only accrue in relation to the first Set affected by that Relevant Delay Incident;

TSP Delay Minutes Benchmark means four hundred and thirty (430) minutes;

TSP Delay Minutes Reliability Adjustment Component means, in respect of a Set on an Operational Day, the amount calculated by multiplying the total TSP Delay Minutes

that accrue on that Set on that Operational Day by three hundred and forty pounds Sterling (£340) and the Bedding In Factor;

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 MARA 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 Relevant Non-Depot IPR Assets;

TSP KPI Check means that part of the TSP Daily Set Check that relates to the assessment of the TSP's performance against the KPI Regime;

TSP Property has the meaning given to it in Paragraph 4(b) of Schedule 8 (*Indemnities*);

TSP's Representative means the Chief Executive Officer of the TSP;

TSP Scheme means the pension scheme nominated by the TSP and notified in writing to the Operator for the purposes of this Agreement which shall comply with the requirements of sections 257 and 258 of the Pensions Act 2004;

TSP Sole Fuel Efficiency Action Completion Date has the meaning given to it in Paragraph 1.7(a) of Part B (*Compliance Testing*) of Schedule 4 (*Contract Management and Compliance*);

TSP Sole Fuel Efficiency Benchmark Action Completion Date has the meaning given to it in Paragraph 1.14(a) of Part B (*Compliance Testing*) of Schedule 4 (*Contract Management and Compliance*);

TSP Transition Progress Report has the meaning given to it in Paragraph 3.1 of Part D (*Transition*) of Schedule 1 (*General Provisions*);

TUPE Adjustment Amount means any amount calculated in accordance with Paragraph 3.8 of Part E (*Transfer Provisions*) of Schedule 1 (*General Provisions*);

TUPE Adjustment Base Date means:

- (a) the date falling six (6) calendar months after the Scheduled Acceptance Date of the first Set in the Fleet; and
- (b) the date falling at each six (6) monthly interval thereafter,

but provided that:

- (i) the final TUPE Adjustment Base Date shall be the first occurring TUPE Adjustment Base Date after the expiry of six (6) calendar months after the Scheduled Fleet Acceptance Date; and
- (ii) the TUPE Adjustment Base Date applicable to a Relevant Employee shall be the first TUPE Adjustment Base Date to occur after the date on which the Relevant Employee transferred to the Provider under the Transfer Regulations;

TUPE Adjustment Employee means any Relevant Employee who:

- (a) transferred to the Provider prior to the Scheduled Acceptance Date of the first Set in the Fleet, and whose transfer is not in dispute on the first TUPE Adjustment Base Date;
- (b) transferred to the Provider in the previous six (6) months since the previous TUPE Adjustment Base Date and whose transfer is not in dispute on the TUPE Adjustment Base Date; or
- (c) transferred to the Provider prior to the date falling six (6) months before the relevant TUPE Adjustment Base Date, and whose transfer is no longer in dispute but was in dispute on any previous TUPE Adjustment Base Date,

and in relation to a Relevant Employee who falls under either Paragraph (a), (b) or (c), remains in employment and is not under notice of termination on the relevant TUPE Adjustment Base Date;

TUPE Adjustment Indexation Rate means (subject to the provisions below in relation to the first year of the Protected Period) any amount by which the Provider is bound to increase the salary and other benefits of a Relevant Employee in accordance with the terms of the employee's contract of employment or any applicable collective agreement. In each year in which the Provider is not so bound the TUPE Adjustment Indexation Rate shall be two point seven five per cent. (2.75%) (or, in the first year of the Protected Period, one point three seven five per cent. (1.375%)). Accordingly, the TUPE Adjustment Indexation Rate shall be calculated as follows:

- (a) during the first (1st) year of the Protected Period, fifty per cent. (50%) of the contractual rate or (if no contractual rate) one point three seven five per cent. (1.375%);
- (b) during the second (2nd) year of the Protected Period, the aggregate of:
 - (i) the rate calculated in Paragraph (a); and
 - (ii) the contractual rate or (if no contractual rate) two point seven five per cent. (2.75%);
- (c) during the third (3rd) year of the Protected Period, the aggregate of:
 - (i) the rate calculated in Paragraph (b); and
 - (ii) the contractual rate or (if no contractual rate) two point seven five per cent. (2.75%);
- (d) during the fourth (4th) year of the Protected Period, the aggregate of:
 - (i) the rate calculated in Paragraph (c); and
 - (ii) the contractual rate or (if no contractual rate) two point seven five per cent. (2.75%);
- (e) during the fifth (5th) year of the Protected Period, the aggregate of:
 - (i) the rate calculated in Paragraph (d); and

- (ii) the contractual rate or (if no contractual rate) two point seven five per cent. (2.75%); and
- (f) during the sixth (6th) year of the Protected Period, the aggregate of:
 - (i) the rate calculated in Paragraph (e); and
 - (ii) the contractual rate or (if no contractual rate) two point seven five per cent. (2.75%);

TUPE Adjustment Year means, in respect of any Relevant Employee and for the purposes of calculating the TUPE Adjustment Amount and Additional TUPE Adjustment Amount, each twelve (12th) month period where:

- (a) the first such period shall commence on the first TUPE Adjustment Base Date in respect of that Relevant Employee and end on the date falling twelve (12) months later;
- (b) each such twelve (12th) month period thereafter, and
- (c) the sixth (6th) such period shall be the last TUPE Adjustment Year applicable to that Relevant Employee;

Turnaround means the period specified in the Dispatch Requirements between the completion of a Passenger Service in accordance with the Timetable and the commencement of the next Passenger Service in accordance with the Timetable on the same day using some or all of the same rolling stock vehicles, occurring at a Turnaround Location;

Turnaround Location means the location at which Turnarounds may occur, as specified in Table 2 (*Turnaround Locations*) of Appendix B (*Rules of the Fleet: Requirements*) to Part A (*Dispatch Requirements*) of Schedule 2 (*Availability*);

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*) of the MARA;

Types means the following types of Sets:

Type	Description	Specified Type Weight (tonnes)
Bi-Mode Set	5 Vehicles	249.3
Electric Set	9 Vehicles	399.8

Unattended Overhead Line Measurement System or **UOMS** has the meaning given to it in clause 4.17.5 of the Train Technical Specification;

Unattended Track Geometry Measurement System or **UGMS** has the meaning given to it in clause 4.17.3 of the Train Technical Specification;

Unavailable or **U** has the meaning given to it in Paragraph 3.1 of Part A (*Availability Regime*) of Schedule 6 (*Performance Regime*);

Unavailable But Used or **UU** has the meaning given to it in Paragraph 3.4 of Part A (*Availability Regime*) of Schedule 6 (*Performance Regime*);

Undisclosed Depot Employee means such persons who have not been disclosed as a Relevant Employee to the Maintainer in advance of any Scheduled Acceptance Date;

Uninsurable means, in relation to a risk, either that:

- (a) insurance is not available to the Operator of the Operator Insurances in the worldwide insurance market with insurers of good financial standing and reputation in respect of that risk; 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;

Validated Model means the model used by the TSP to generate a ride index in respect of any Ride Compliance Test Site which has been validated pursuant to the process set out in clause 4.4 of the Train Technical Description;

Value Added Tax or **VAT** means Value Added Tax as provided for in the Value Added Tax Act 1994 and VAT Regulations 1995/2518;

Variation means a variation of this Agreement that is required pursuant to an Authority to Proceed or a Variation Notice issued under the MARA;

Variation Notice has the meaning given to it in the MARA;

Vehicle means any vehicle of any configuration which forms part of a Set;

Vindicated Set has the meaning given to it in Paragraph 2.14 of Part A (*Availability Regime*) of Schedule 6 (*Performance Regime*);

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;

Weight Adjustment means the adjustment to the Base Period Charge for any Reporting Period, calculated in accordance with Paragraph 2.12 of Part A (*TARA Payments*) of Schedule 5 (*Payment*);

White Book Compliance Sheet has the meaning given to it in the MARA;

Withdrawn Evening Set has the meaning given to it in Paragraph 2.16 of Part A (*Availability Regime*) of Schedule 6 (*Performance Regime*);

Withdrawn Set has the meaning given to it in Paragraph 2.15 of Part A (*Availability Regime*) of Schedule 6 (*Performance Regime*); and

Workload and Capacity Tables means the workload and capacity tables set out in Appendix A (*Rules of the Depot*) to Part A (*Dispatch Requirements*) of Schedule 2 (*Availability*), in each case, in respect of the relevant Depot.

2. **COMMENCEMENT AND TERM**

2.1 The Term of this Agreement shall commence on the date on which it is signed by the parties.

2.2 The Term shall end on the Expiry Date.

2.3 The Operator shall promptly notify the TSP if it receives any notice from the Secretary of State that:

(a) she is extending the term of the Franchise Agreement; or

(b) she is terminating the Franchise Agreement.

3. **REPRESENTATIONS AND WARRANTIES**

The provisions of Part A (*Representations and Warranties*) of Schedule 1 (*General Provisions*) shall apply.

4. **TSP COVENANTS AND PERFORMANCE**

The TSP makes each covenant and shall perform its obligations under this Agreement in accordance with Part B (*TSP Covenants and Performance*) of Schedule 1 (*General Provisions*).

5. **OPERATOR COVENANTS AND PERFORMANCE**

The Operator makes each covenant and shall perform its obligations under this Agreement in accordance with Part C (*Operator Covenants and Performance*) of Schedule 1 (*General Provisions*).

6. **TRANSITION**

The provisions of Part D (*Transition*) of Schedule 1 (*General Provisions*) shall have effect between the parties and each party shall comply with its respective obligations thereunder.

7. **TUPE AND PENSIONS**

The provisions of Part E (*Transfer Provisions*) of Schedule 1 (*General Provisions*) shall have effect between the parties and each party shall comply with its respective obligations thereunder.

8. **AVAILABILITY, HANDBACK OF SETS**

The provisions of Schedule 2 (*Availability*) shall have effect between the parties and each party shall comply with its respective obligations thereunder.

9. **IN-SERVICE PROVISIONS AND FAULTS**

The provisions of Schedule 3 (*In-Service Provisions and Faults*) shall have effect between the parties and each party shall comply with its respective obligations thereunder.

10. **CONTRACT MANAGEMENT**

The provisions of Schedule 4 (*Contract Management and Compliance*) shall have effect between the parties and each party shall comply with its respective obligations thereunder.

11. **PAYMENT**

11.1 The Operator shall make payments to the TSP in accordance with Part A (*TARA Payments*) of Schedule 5 (*Payment*).

11.2 Subject to the Operator's other express rights under this Agreement (other than under Paragraph 1(c) of Schedule 8 (*Indemnities*)), the entitlement to make any Deduction to any TARA Payment in accordance with the Performance Regime and the provisions of Schedule 5 (*Payment*) (or any such entitlement that would exist but for any exclusion or limitation set out therein) shall, in each case, be the Operator's sole remedy in relation to:

- (a) the maintenance, making available, performance of, or faults or damage to, the Sets including failure to meet the required levels of availability, reliability and for Key Performance Indicators as a result of the relevant event; and
- (b) the provision of any other services under this Agreement to which the Performance Regime applies,

and the Operator agrees and acknowledges to the TSP that it shall not make any claim against the Secretary of State in respect thereof.

11.3 Nothing in this Clause 11 shall prevent or restrict the right of the Operator to seek injunctive relief or a decree of specific performance or other discretionary remedies of the court.

12. **PERFORMANCE**

The provisions of Schedule 6 (*Performance Regime*) shall have effect between the parties and each party shall comply with its respective obligations thereunder.

13. **INSURANCE**

The provision of Schedule 7 (*Insurance*) shall have effect between the parties and each party shall comply with its respective obligations thereunder.

14. **INDEMNITIES**

The provisions of Schedule 8 (*Indemnities*) shall have effect between the parties and each party shall comply with its respective obligations thereunder.

15. **INTELLECTUAL PROPERTY RIGHTS**

The provisions of Schedule 9 (*Intellectual Property*) shall have effect between the parties and each party shall comply with its respective obligations thereunder.

16. **REMEDIES, DEFAULT AND TERMINATION**

The provisions of Schedule 10 (*Remedies, Default and Termination*) shall apply and each party shall comply with its respective obligations thereunder.

17. **VARIATIONS**

The provisions of Schedule 12 (*Variations*) shall have effect between the parties and each party shall comply with its respective obligations thereunder.

18. **CONFIDENTIALITY**

The provisions of Schedule 13 (*Confidentiality*) shall have effect between the parties and each party shall comply with its respective obligations thereunder.

19. **DISPUTE RESOLUTION**

The Operator shall accede to the Dispute Resolution Agreement on the date of this Agreement, 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. **NOTICES**

Notices

- 20.1 Any notice, notification or other communication under or in connection with the matters specified in Part B (*TSP Default*) of Schedule 10 (*Remedies, Default and Termination*) or Part C (*Operator Default*) of Schedule 10 (*Remedies, Default and Termination*) 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 **TSP** at:

Address: Hitachi Rail Europe Limited
7th Floor
40 Holborn Viaduct
London
EC1N 2PB

Attention: Chief Executive Officer

To the **Operator** at:

Address: Milford House
1 Milford Street
Swindon
Wiltshire
SN1 1HL

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, and, in either case, with a copy to:

To the **Secretary of State for Transport** at:

Address: Great Minster House

33 Horseferry Road
London SW1P 4DR

Attention: Director – Rail Projects

20.2 Any notice, notification or other communication by the Operator to the TSP under or in connection with any Delegated Functions which the TSP has delegated to the TSP Control Room Contact and provided that the TSP has notified the Operator of such delegation pursuant to Paragraph 1.5 of Part A (*Contract Management*) of Schedule 4 (*Contract Management and Compliance*) shall, save as otherwise agreed, be in writing and shall be delivered by hand or recorded delivery or sent by pre-paid first class post to the TSP Control Room Contact at the address notified by the TSP to the Operator pursuant to Paragraph 1.5 of Part A (*Contract Management*) of Schedule 4 (*Contract Management and Compliance*), and a copy of the notice shall be delivered or sent by the same means to the TSP Contract Manager.

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

(a) in accordance with Clause 20.1 (except that it shall be marked for the attention of the TSP Contract Manager or the Operator Contract Manager as appropriate);

(b) by facsimile:

(i) if to the TSP, to 0203 402 2734 marked for the attention of the TSP Contract Manager; or

(ii) if to the Operator, to 01793 499 569 marked for the attention of the Operator Contract Manager; or

(c) by email:

(i) if to the TSP, to martin.garrett@agilitytrains.com; or

(ii) if to the Operator, to mark.hopwood@firstgroup.com,

or such other address in the United Kingdom, email address or facsimile number as each party may specify by notice in writing to the other party by giving at least five Business Days' notice.

Deemed Receipt

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

(a) if sent by hand or recorded delivery, when delivered 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 by email, upon sending, subject to receipt by the sender of a "delivered" confirmation (provided that the sender shall not be required to produce a "read" confirmation).

Access to Project Documents

20.5 The TSP shall, promptly upon request, provide the Operator with copies of the relevant parts of the Project Documents (to the extent that those relevant parts of the Project Documents are referred to and incorporated in this Agreement). If and to the extent that information provided within such copies contains information that is subject to paragraphs 3.1(b) and (c) of schedule 11 (*Information and Confidentiality*) of the MARA and/or Paragraph 2 of Schedule 13 (*Confidentiality*), and the TSP has notified the Operator that such information is confidential, the Operator agrees that such information shall be deemed Confidential Information for the purposes of this Agreement.

21. MISCELLANEOUS

Cumulative Rights

21.1 Each of the TSP's and the 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 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

21.2 Subject to the other provisions of this Agreement, each of the parties agrees, 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 any 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

- 21.3 (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 21.3(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

21.4 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

21.5 This Agreement (including the provisions of the Project Documents referred to 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

21.6 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

21.7 Subject to Clause 21.8, 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).

21.8 The Secretary of State may enforce the terms of this Agreement expressed to be for the benefit of or given by either party to or in favour of the Secretary of State.

22. TRANSFER

22.1 Subject to Clause 22.2, neither party to this Agreement may assign, transfer, novate or otherwise dispose of any of its rights and/or obligations under this Agreement without the prior written consent of the other party, such consent not to be unreasonably withheld.

22.2 The TSP shall be entitled to assign, transfer, novate or otherwise dispose of any of its rights and/or obligations under this Agreement:

- (a) to the extent required to perform its obligations under the MARA as evidenced by a notice issued by the Secretary of State to the TSP, pursuant to the MARA; and
- (b) by way of security to:
 - (i) 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;
 - (ii) any financier who provides funds on or in connection with any subsequent Refinancing; or
 - (iii) any person from time to time appointed by any financier to act as security trustee or security agent on behalf of such financier, and

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. GOVERNING LAW AND JURISDICTION

Governing Law

23.1 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

23.2 Except as expressly provided in this Agreement or 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.

24. SOLE REMEDY

24.1 Subject to Clause 24.2, 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.

24.2 Nothing in Clause 24.1 shall limit or exclude either party's liability to the other for death or personal injury arising from its negligence.

25. GENERAL OBLIGATIONS

Each of the parties shall act reasonably and in good faith in and about the performance of its obligations and the exercise of its rights pursuant to this Agreement, unless otherwise stated.

26. AMENDMENT

No amendment to this Agreement shall be valid unless it is in writing and signed by both parties.

IN WITNESS whereof the parties hereto have executed this Agreement as a deed on the day and year first before written.

Executed as a deed by **Agility Trains**)
West Limited by a director in the)
presence of a witness:)

Witness signature_____

Signature_____

Director

Name (block capitals)

Witness name_____

(block capitals)

Witness address_____

Executed as a deed for and behalf of)
First Greater Western Limited by:)
)

Witness
signature_____

Signature_____

Director

Name (block capitals)

Witness
name_____

(block capitals)

Witness
address_____

SCHEDULE 1

GENERAL PROVISIONS

Part A of Schedule 1

Representations and Warranties

1. TSP REPRESENTATIONS AND WARRANTIES

The TSP represents and warrants to the 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 it.

2. OPERATOR REPRESENTATIONS AND WARRANTIES

The Operator represents and warrants to the TSP on the date of execution of this Agreement that:

- (a) the Operator is a company properly organised and validly existing under the laws of England and Wales as a limited liability company;
- (b) the 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 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 Operator's Memorandum and Articles of Association;
 - (ii) conflict with any law or regulation applicable to the Operator; or
 - (iii) conflict with, or result in a breach of, any existing contract which is binding on it.

Part B of Schedule 1

TSP Covenants and Performance

1. PERFORMANCE OF TSP OBLIGATIONS

1.1 The TSP will:

- (a) carry out its obligations under this Agreement:
 - (i) with all due skill and care, diligence, prudence and foresight to be expected of an appropriately qualified and certified maintainer of rolling stock vehicles with demonstrable experience in carrying out work of a similar scope, type, nature and complexity;
 - (ii) in a safe manner and so that any risk to the health and well-being of persons using, operating, maintaining or who are involved in the management of the Sets is as low as reasonably practicable; and
 - (iii) in a manner consistent with the Operating and Maintenance Manuals;
- (b) ascertain, maintain and comply with all Applicable Laws and Standards (save to the extent an Applicable Derogation applies) and all Relevant Approvals with the exception that, subject to Paragraph 3.9, the Operator shall be responsible for maintaining all Operator Relevant Approvals;
- (c) at its own cost and during the term of this Agreement:
 - (i) provide the initial supply of Ancillary Equipment to the Operator, together with a twelve (12) month warranty that such Ancillary Equipment is free from defect in material or workmanship having due regard to the Train Technical Specification and in the normal course of operations for the Permitted Use, on the date that the relevant Set is presented for Acceptance or on any date otherwise agreed between the parties;
 - (ii) repair, replace and/or upgrade the Ancillary Equipment provided to the Operator pursuant to Paragraph 1.1(c)(i) upon request by the Operator if:
 - (A) the repair, replacement and/or upgrade are required due to a breach of the warranty referred to therein;
 - (B) the repair, replacement and/or upgrade are required due to a modification by the TSP or any of its Subcontractors (including the Significant Contractors), agents or employees of a Set or the Sets that is not subject to a Variation; or
 - (C) the upgrade is required when the hardware required to run any software that constitutes Ancillary Equipment provided pursuant to Paragraph 1.1(c)(i) ceases to be readily available for purchase; and
- (d) subject to Paragraph 1.1(c)(ii), repair, replace or upgrade any Ancillary Equipment provided to the Operator pursuant to Paragraph 1.1(c)(i) at the Operator's cost on a Costs Plus Basis during the term of this Agreement.

1.2 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.

2. **COST**

Without limiting Clause 1.1(n), and unless expressly stated otherwise in this Agreement, the TSP shall perform its obligations under this Agreement at its own cost and shall provide or procure, at its own cost, all equipment, support services and other facilities for the full performance by the TSP of its obligations under this Agreement.

3. **TSP COVENANTS**

Maintenance, Damage and Vandalism

3.1 The TSP shall at all times maintain and repair each Set in the Fleet (including renewal of components) so that it is able to make Sets available to the Operator in accordance with Schedule 2 (*Availability*).

3.2 The TSP shall carry out all maintenance and repair of any damage whatsoever to a Set (including renewal of components) whether caused by wear and tear (subject to fair wear and tear), vandalism, Operator Misconduct, Major Incidents or otherwise howsoever.

3.3 Without limiting Paragraph 2, the TSP shall bear all of the costs of maintenance and repair (including renewal of components) required for performance of its obligations under this Agreement and without right of reimbursement or contribution from the Operator, save only to the extent provided for in Part E (*Costs Payable by Operator*) of Schedule 6 (*Performance Regime*).

3.4 The TSP shall, subject to and in accordance with Part E (*Costs Payable by Operator*) of Schedule 6 (*Performance Regime*), repair any Set that is damaged but is not a Total Loss as soon as reasonably practicable, unless otherwise agreed by the parties, and, if applicable, in accordance with any agreed Reinstatement Plan.

3.5 The TSP shall promptly, and in any event within five (5) Business Days of it becoming aware, inform the Operator of:

- (a) any Set becoming a Damaged Set; and
- (b) the date by which the TSP will have repaired such Set so that it may be made available to the Operator to satisfy the Dispatch Requirements.

3.6 The TSP shall procure that the Maintainer registers and maintains its registration on the national vehicle register for all Vehicles as the Entity in Charge of Maintenance.

Co-operation with Operator's Performance Improvement Plans

3.7 The TSP shall co-operate with the Operator's reasonable initiatives and plans for performance improvements, including the management of its contractual relationship with Network Rail, and the Operator's and Network Rail's development, agreement and implementation of:

- (a) Joint Performance Improvement Plans; and

- (b) recovery plans in response to failures to achieve the performance levels specified in any Joint Performance Improvement Plans.

3.8 In performing its obligation under Paragraph 3.7, the TSP shall, amongst other things:

- (a) provide appropriate management resources for this purpose, and make available relevant personnel to attend any meetings between the Operator and Network Rail;
- (b) seek to participate in a positive and constructive manner; and
- (c) co-operate with the Operator in seeking to identify solutions that minimise overall rail industry costs, provided that the TSP shall not be obliged to incur material expenditure in doing so.

3.9 In respect of any Operator Relevant Approvals and Operator Relevant Derogations, as and when reasonably requested by the Operator, the TSP shall produce and provide to the Operator all materials and information (other than any materials and information in the possession, control or sole competence of the Operator) in a format that will not require any further formatting or reformatting by the Operator, which are reasonably necessary to enable the Operator to:

- (a) renew or maintain any Operator Relevant Approvals and Operator Relevant Derogations; or
- (b) if required due to a change in any aspect of the design, maintenance or use of the Sets (and subject of Schedule 13 (*Confidentiality*) of this Agreement and schedule 8 (*Variations*) and schedule 9 (*Change in Law*) of the MARA (in each case, as applicable)), amend any Operator Relevant Approvals or apply for new Operator Relevant Approvals,

and the TSP shall do everything that is within its competence, and that is reasonable for it to do, in order to minimise the actions required from the Operator in this regard.

4. **QUIET ENJOYMENT**

The TSP will not, and shall procure that any person claiming through it will not, at any time during the Operational Day in relation to any Set, interfere with the quiet use, possession and enjoyment of that Set by the Operator, save in the proper exercise of the TSP's rights or the performance of its obligations under this Agreement.

5. **USE AND OPERATION OF THE SETS**

The TSP shall not, and shall not allow any other person to use or operate the Sets:

- (a) other than for the purposes of performing its obligations under this Agreement; or
- (b) to travel unreasonable distances at any time during any Non-Operational Day.

Part C of Schedule 1

Operator Covenants and Performance

1. OPERATOR COVENANTS

1.1 The Operator will not:

- (a) do or omit to do or knowingly permit to be done or omitted any act or thing which might reasonably be expected to jeopardise the property rights of the TSP or any Financier in any Asset or Depot;
- (b) at any time:
 - (i) represent or hold out the TSP, its Subcontractors or any Financier as carrying goods or passengers on the Sets; or
 - (ii) pledge the credit of the TSP, its Subcontractors or any Financier;
- (c) create or permit to exist any Security Interest in respect of any Asset and Depot;
- (d) do or permit to be done anything which may reasonably be expected to expose any Asset or Depot to penalty, forfeiture, impounding, detention, appropriation, damage or destruction and without prejudice to the foregoing, if any such event occurs, the Operator will give the TSP prompt notice thereof and use best endeavours to procure the immediate release of such Asset and Depot;
- (e) abandon or part with possession of any Set, except for such limited and temporary time as is reasonably required where left with no reasonable option;
- (f) attempt, or hold itself out as having any power, to sell, lease or otherwise dispose of any Asset or Depot;
- (g) remove, or permit or acquiesce in the removal of, any Asset from Great Britain;
- (h) without prejudice to Paragraph 3, part with possession of any Asset (other than (i) to a licensed passenger operator or (ii) to the TSP or in accordance with its instructions), save with the TSP's prior consent; and
- (i) claim or take any steps to claim any Capital Allowances in respect of its operation and use of the Sets.

1.2 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 Operator's obligations under this Agreement are excluded to the fullest extent permitted by law.

2. COST

Without limiting Clause 1.1(n), and unless expressly stated otherwise in this Agreement, the Operator shall perform its obligations under this Agreement at its own cost and shall provide or procure, at its own cost, all equipment, support services and other facilities for the full performance by the Operator of its obligations under this Agreement.

3. SUB-LEASING

The Operator shall not sub-lease the Operator's right to use and operate the Sets under this Agreement, except in accordance with the following conditions:

- (a) the relevant sub-lessee shall be a licensed passenger operator and shall be required to operate the Sets substantially on the same terms as those set out in this Agreement; and
- (b) notwithstanding such sub-lease:
 - (i) the Operator shall remain liable under this Agreement for the performance of its obligations under this Agreement;
 - (ii) the acts or omissions of the sub-lessee shall be deemed to be the acts or omissions of the Operator for the purposes of this Agreement; and
 - (iii) any reference to a sub-contractor of the Operator shall be deemed to include the sub-lessee,as if such sub-leasing had not occurred.

4. LAWFUL, SAFE AND APPROVED OPERATION

4.1 The Operator will (at its own cost):

- (a) comply with all Applicable Laws and Standards and Relevant Approvals applicable to the use, operation and for possession of the Sets during the Operational Day, provided that the Operator shall not be in breach of this provision where a failure to comply with it is as a consequence of the TSP failing to perform its obligations under this Agreement, including to provide Sets in accordance with Paragraph 1.4(a) of Part B (*Handover*) of Schedule 2 (*Availability*);
- (b) obtain and maintain in full force and comply in all material respects with all Operator Relevant Approvals, provided that the Operator shall not be in breach of this provision where a failure to comply with it is as a consequence of the TSP failing to perform its obligations under this Agreement;
- (c) without prejudice to Paragraph 1.4(a) of Part B (*Handover*) of Schedule 2 (*Availability*), comply with any applicable regulations and recommendations of Network Rail, any Relevant Authority or other competent authority relating to the safety, or the safe operation, of the Sets with which it is generally accepted within the rail industry in Great Britain that it is good practice to comply;
- (d) ensure that the Sets are under the control of properly qualified, skilled and competent operational personnel in accordance with Applicable Laws and Standards, operating practices set out in the Rule Book and all Operating and Maintenance Manuals for the relevant Sets and any published route restrictions;
- (e) without prejudice to Paragraph 4.1(g), not use any Set in any manner contrary to, or inconsistent with, its Permitted Use;

- (f) ensure that its operational personnel have the qualifications and hold the licences required by the ORR, any Relevant Authority, Network Rail and Applicable Laws and Standards;
- (g) use the Sets solely in the ordinary course of business of providing Passenger Services (including the marketing of such Passenger Services) and, with the consent of the TSP (which may be withheld at the TSP's sole discretion), for the purposes of any other media activities that may extend beyond the ordinary course of the business of providing Passenger Services (provided that in no circumstances shall the Operator be required to pay any additional charges or provide any financial benefit, in each case, to the TSP in respect of such use or the TSP's consent to such use other than any such charges or financial benefit that is required by the terms of this Agreement, including any Marginal Set Payments);
- (h) not use any Set for, or in connection with, the carriage of any goods, materials or items of cargo or in any other manner, in each case, which could reasonably be expected to cause damage to such Sets or to diminish their expected operational or design life or which is not covered by the insurances or which would invalidate, avoid or otherwise prejudice any insurances or in contravention of any restriction imposed by insurances on lines, routes or depots;
- (i) not take out or permit to be taken out, without the consent of the TSP, any insurance or reinsurance in respect of the Sets other than the Operator Insurances which it is required to take out under this Agreement, provided, however, that the TSP will not withhold consent, unless it might prejudice the TSP's ability to recover under any insurances that it effects pursuant to this Agreement or the MARA;
- (j) provide the TSP promptly on request such information as the TSP may reasonably request for the purposes of effecting any insurances which the TSP is to maintain pursuant to this Agreement or the MARA or compiling a full historic insurance claims record for the Sets (including any historical claims data relating to claims made by the Operator in respect of damage to any rolling stock operated by or leased to the Operator); and
- (k) comply and procure compliance by any sub-lessee with the terms and conditions of the Operator Insurances and will not do, consent or agree to any act or omission which brings any particular liability within the scope of an exclusion or exception to the Operator Insurances.

4.2 The Operator agrees that during any requisition for use or hire of any Sets (whether pursuant to section 118 of the Act or otherwise) which does not constitute a Total Loss:

- (a) such Set shall be deemed to be an Excused Set; and
- (b) the Operator will be entitled to any hire or other compensation paid, by the requisitioning authority, in respect of such Set, save where such compensation relates to damage or loss which the TSP cannot recover from the Operator under this Agreement.

4.3 The Operator shall promptly notify the TSP of any loss, theft or destruction of the Sets of which it becomes aware.

4.4 The Operator agrees that, if required by the TSP, the TSP shall be permitted to maintain in a prominent position on each Vehicle, an engraved fireproof nameplate having dimensions of not greater than eight (8) centimetres by four (4) centimetres, including words to the effect that such Vehicle is owned by the TSP.

4.5 The Operator shall:

- (a) not make any modification or alteration to any Vehicle, or change the configuration or formation of any Set, without the prior written consent of the TSP;
- (b) not attach any accessories or parts to any Vehicle without the prior written consent of the TSP (and any accessories or parts attached to any Vehicle shall automatically become the property of the TSP or the owner of that Vehicle, except where otherwise agreed);
- (c) ensure that no part is removed from any Vehicle without the TSP's prior consent (except where reasonably necessary to enable the relevant Set or Vehicle to continue its journey and/or clear the line);
- (d) ensure that no component, furnishing or equipment is installed on the Sets without the prior written consent of the TSP; and
- (e) not couple a Set to any other train other than another Set, unless it is suitable to do so.

4.6 The Operator shall:

- (a) collect and make available to the TSP any utilisation and performance data to which the Operator has reasonable access without needing to incur additional material expenditure and to which the TSP does not otherwise have access, in respect of the Sets which the TSP may reasonably require; and
- (b) give the TSP and any potential subsequent operator of any Sets access to all information and records maintained by the Operator in relation to any Set to facilitate the integration of any Sets into the business of such subsequent operator,

provided that the Operator shall not be obliged to disclose any such data, information or records if:

- (i) such data, information or records is or are materially sensitive to the Operator's business; or
- (ii) the Operator is under a duty or contractual obligation of confidentiality with respect to such data, information or records and disclosure of such pursuant to this Paragraph 4.6 would be reasonably likely to result in a breach by the Operator of such duty or obligation of confidentiality.

4.7 The Operator also consents to the TSP and/or any subsequent operator using such information and records for the purposes of operating the Vehicles and any rolling stock of the same or a similar class as the Vehicles (but the Operator shall not be liable for the accuracy of the records to the TSP or any such subsequent operator).

4.8 The Operator acknowledges that, without prejudice to the obligations of the TSP under this Agreement, the TSP shall be entitled to allow potential subsequent operators of any

Sets to inspect any Vehicles (and any records of information relating thereto) and to carry out test runs on any Vehicles at any time outside the Operational Day in order to determine their condition, provided that a reimbursement arrangement has been agreed between the TSP and the Operator in respect of any Fuel consumption for such test runs.

5. **SWANSEA MALIPHANT**

The Operator shall 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 is 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
- (b) the date on which the TSP agrees in its absolute discretion that the Operator may do so.

Appendix A
to Part C of Schedule 1
Great Western IEP Network

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), Frome (& avoiding line) and Exeter St Davids	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		
(& 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	Diversionary Route	CNW	0	0000	0	0425	0.25	tbc
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	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		
direct (avoiding Gloucester) and 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
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

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)	Non Core Route	DCL	66	0705	86	0632	19.96	Primary
Didcot West to Foxhall Junction	Diversionsary 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
Standish Junction to Westerleigh Junction (for ECS and diversionsary purposes)	ECS Route	BGL2	99	1518	120	0069	20.17	Primary
Standish Junction to Westerleigh Junction (for ECS and diversionsary 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

RFS Sub-Route	RFS Route Description	ELR	Start		End		Approx Decimal Miles	Route Type (Simplified)
			Miles	Yards	Miles	Yards		
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
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

RFS Sub-Route	RFS Route Description	ELR	Start		End		Approx Decimal Miles	Route Type (Simplified)
			Miles	Yards	Miles	Yards		
Junction to Hawkeridge Junction)	Route							
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
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

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	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 Tondy	Diversionsary Route	BAL	0	0244	3	0308	3.04	Rural
Bridgend to Margam via Tondy	Diversionsary Route	POR	0	0000	2	0964	2.55	Freight only
Bridgend to Margam via Tondy	Diversionsary Route	OVE	0	1723	7	0902	6.53	Freight only
Margam Moors Junction to Margam Abbey East Junction	Diversionsary Route	MRJ	198	1417	199	0447	0.45	tbc
Briton Ferry to Llandello Jn via District Lines	Diversionsary Route	SDI1	206	0308	208	1071	2.43	Freight only

RFS Sub-Route	RFS Route Description	ELR	Start		End		Approx Decimal Miles	Route Type (Simplified)
			Miles	Yards	Miles	Yards		
Briton Ferry to Llandeilo Jn via District Lines	Diversionsary Route	SDI2	0	0000	10	1417	10.81	Freight only
Briton Ferry to Llandeilo Jn via District Lines	Diversionsary 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 Route (SDG)	USY	109	1330	110	0090	0.30	Siding
New Yard Depot (Exeter St Davids)	Core Route (SDG)	MLN1	193	0177	193	1285	0.63	Siding
Long Rock Depot (Penzance)	Non Core Route (SDG)	MLN4	325	0261	326	0594	1.19	Siding
Goodrington Carriage Sidings (Paignton)	Core Route (SDG)	TOR	222	0530	222	1320	0.45	Siding
Brickyard Siding (Cardiff)	Core Route (SDG)	SWM2	170	1639	171	0352	0.50	Siding
Hereford Sidings (Worcester Shrub Hill)	Core Route (SDG)	OWW	120	0289	120	1013	0.41	Siding
Down Carriage Sidings (Oxford)	Core Route (SDG)	DCL	63	1359	64	0066	0.27	Siding

RFS Sub-Route	RFS Route Description	ELR	Start		End		Approx Decimal Miles	Route Type (Simplified)
			Miles	Yards	Miles	Yards		
Up Carriage Sidings (Oxford)	Core Route (SDG)	DCL	63	1082	64	0066	0.42	Siding
Henwick Up Siding (Worcester Foregate Street)	Core Route (SDG)	WAH	121	1609	122	0308	0.26	Siding
Hereford Down Siding No. 1 (Hereford)	Core Route (SDG)	SHL	50	1660	51	0260	0.20	Siding
Edgar Street Sidings (Hereford)	Core Route (SDG)	SHL	51	0387	51	0818	0.24	Siding
(new) Depot (Reading)	Core Route (SDG)	MLN1	36	0424	37	1320	1.50	Siding
Alstone Carriage Siding (Cheltenham)	Core Route (SDG)	BAG2	84	0484	84	1048	0.32	Siding
Middle Siding (Worcester Shrub Hill)	Core Route (SDG)	OWW	120	0600	120	1012	0.23	Siding
Long Siding (Worcester Shrub Hill)	Core Route (SDG)	OWW	120	0317	120	0662	0.20	Siding
High Level Sidings (Bristol Temple Meads)	Core Route (SDG)	BSW	0	0205	0	0445	0.14	Siding
Cocklebury Yard (Swindon)	Core Route (SDG)	MLN1	76	0740	77	0222	0.70	Siding

Part D of Schedule 1

Transition

1. INTRODUCTION

This Schedule defines the rights, responsibilities and obligations of the parties in respect of the transition from the Operator operating and maintaining its existing rolling stock to provide the Passenger Services as at the date of this Agreement, to the TSP providing the Sets to the Operator on the Actual Acceptance Date of the last Set in the Fleet pursuant to the terms of this Agreement (the **Transition**) and the arrangements and process in accordance with which the parties shall manage that Transition.

2. TRANSITION WORKING GROUP

- 2.1 Within one (1) month of the date of this Agreement, the parties shall establish a working group of nominated individuals to manage the Transition in accordance with this Schedule and identify and resolve any issues arising from the Transition (the **Transition Working Group**).
- 2.2 The Transition Working Group shall comprise representatives of the TSP and the Operator, including at least the TSP Contract Manager and the Operator Contract Manager. The TSP shall be entitled to invite representatives of the Maintainer and, with the prior consent of the Operator, representatives of the Manufacturer and/or the Manufacturer's construction Subcontractor to any meeting of the Transition Working Group. The Secretary of State shall be entitled to attend any meeting of the Transition Working Group.
- 2.3 Commencing within two (2) months after the date of this Agreement, meetings of the Transition Working Group shall be held once a month or with such other frequency as the TSP and the Operator may agree.
- 2.4 The standing agenda for the meetings shall be, as a minimum, as set out in Appendix A (*Standing Agenda for Meetings of the Transition Working Group*) to this Part D (*Transition*) of Schedule 1 (*General Provisions*). Either party may add items to the agenda by providing reasonable prior notice of such items to the other party.
- 2.5 The time and location of any meeting of the Transition Working Group 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.
- 2.6 The minutes of any meeting of the Transition Working Group shall be prepared by the TSP Contract Manager and circulated by the TSP Contract Manager to the Operator as soon as reasonably possible after the date upon which such meeting was held, and in any event within ten (10) Business Days. The parties shall review and confirm the accuracy of the minutes as soon as reasonably possible, and in any event within (10) Business Days of their circulation by the TSP Contract Manager to the Operator.
- 2.7 Meetings of the Transition Working Group shall cease six (6) months after the Actual Acceptance Date of the final Set in the Fleet or at such other time as the TSP and the Operator may reasonably agree.

3. **TRANSITION PROGRESS REPORTS**

- 3.1 No later than three (3) Business Days prior to any scheduled meeting of the Transition Working Group, the TSP Contract Manager shall provide to the Operator a progress report in respect of the TSP activities relating to the Transition (a **TSP Transition Progress Report**) and which shall cover, as a minimum, the issues set out in Appendix B (*Issues for TSP Transition Progress Report*) to this Part D (*Transition*) of Schedule 1 (*General Provisions*).
- 3.2 No later than three (3) Business Days prior to any meeting of the Transition Working Group, the Operator Contract Manager shall provide to the TSP Contract Manager a progress report in respect of the Operator activities relating to the Transition (an **Operator Transition Progress Report**) and which shall cover, as a minimum, the issues set out in Appendix C (*Issues for Operator Transition Report*) to this Part D (*Transition*) of Schedule 1 (*General Provisions*).

4. **FLEET DEPLOYMENT PROFILE**

- 4.1 The table attached at Appendix D (*Fleet Deployment Profile*) to this Part D (*Transition*) of Schedule 1 (*General Provisions*) sets out the deployment profile for the Fleet (the **Fleet Deployment Profile**).
- 4.2 On each day during the Transition Period, the Maximum Available Sets for each Set Type on that day shall be the number set out in the column "Maximum available Sets" of the table attached at Appendix D (*Fleet Deployment Profile*) to this Part D (*Transition*) of Schedule 1 (*General Provisions*) corresponding to the aggregate number of Sets of that Type which have been issued with a Final Acceptance Certificate or a Qualified Acceptance Certificate on that day.
- 4.3 After the Transition Period, the Maximum Available Sets shall be as specified in the Rules of the Fleet.

5. **SERVICE INTRODUCTION PLAN AND FLEET INTRODUCTION PLAN**

- 5.1 In accordance with this Paragraph 5, the Operator shall develop:
- (a) a plan describing how it intends to introduce the Sets into its Passenger Services (the **Service Introduction Plan**) which plan shall specify the prioritised order that Diagrams will be introduced in respect of the Sets; and
 - (b) a plan describing how it intends to manage the introduction of the Fleet (the **Fleet Introduction Plan**) which plan shall specify when and how the Operator shall redeploy or demobilise its existing rolling stock and workforce (as appropriate) and train its staff in order to introduce the Fleet in accordance with the Service Introduction Plan.
- 5.2 The Service Introduction Plan shall:
- (a) recognise the TSP's Depot and Fleet delivery programme (as advised by the TSP in writing) and the Fleet Deployment Profile;
 - (b) ensure that at each stage during the Transition Period, the maximum numbers of Half Set Equivalents that may be handed back to, or accommodated on, any Depot (when aggregated with the Operator's existing rolling stock), and the

minimum time intervals between consecutive departures and arrivals on any Depot (for the Sets or the Operator's existing rolling stock), in each case, as specified in Appendix A (*Rules of the Depot*) to Part A (*Dispatch Requirements*) of Schedule 2 (*Availability*), are not exceeded;

- (c) enable the Operator to manage the training of its staff to enable it to operate Passenger Services using the Sets;
- (d) recognise the Depot at which Sets will be commissioned, stabled and maintained, as advised by the TSP to the Operator on request;
- (e) recognise the location of the main maintenance Depots supporting the Set Type being deployed and the ability to work such Sets back to the main maintenance Depots for maintenance, as advised by the TSP to the Operator on request;
- (f) so far as reasonably practicable, minimise the number of Depot locations used concurrently throughout the Transition Period to permit the TSP to implement a phased bringing into use of Depots and ramp up of resource;
- (g) so far as reasonably practicable, minimise ECS movements; and
- (h) provide sufficient opportunity, in terms of occasions, duration and location, to enable the TSP to effect maintenance, casualty repair and servicing on each particular Set Type of the transitional fleet at all stages of its deployment.

5.3 The Fleet Introduction Plan shall comply with the Service Introduction Plan.

5.4 No later than twelve (12) months prior to the Scheduled Acceptance Date of the first Set in the Fleet or within six (6) months of the date of this Agreement, whichever is earlier, the Operator shall provide an initial draft of each of the Service Introduction Plan and the Fleet Introduction Plan to the TSP for its review and discussion through the Transition Working Group.

5.5 Within fifteen (15) Business Days of receiving the first draft of the Service Introduction Plan and/or the Fleet Introduction Plan from the Operator, or such longer period of time as may be reasonably requested by the TSP, the TSP shall review the draft plan and provide its comments to the Operator or confirm that such plan is agreed.

5.6 Any comments received from the TSP shall be considered in good faith and shall be discussed between the parties at the next meeting of the Transition Working Group falling at least five (5) Business Days after receipt by the Operator of such comments.

5.7 As appropriate, the Operator shall submit a revised draft of the Service Introduction Plan and/or the Fleet Introduction Plan to the TSP within ten (10) Business Days of such meeting, or such longer period as may be reasonably requested by the Operator, for review by the TSP and, within ten (10) Business Days of receiving the revised draft Service Introduction Plan and/or the Fleet Introduction Plan from the Operator, or such longer period of time as may be reasonably requested by the TSP, the TSP shall review the draft plan and confirm that such plan is agreed or provide its comments to the Operator, in which case such comments shall be considered in good faith at the next meeting of the Transition Working Group falling at least five (5) Business Days after receipt by the Operator of such comments.

- 5.8 Subject to Paragraph 5.9, the Operator shall continue to revise and resubmit drafts of the Service Introduction Plan and the Fleet Introduction Plan to the TSP for review through the Transition Working Group in accordance with Paragraph 5.7 until the Service Introduction Plan and the Fleet Introduction Plan are agreed between the TSP and the Operator.
- 5.9 In any event, the Service Introduction Plan and the Fleet Introduction Plan shall be agreed by the parties no later than nine (9) months prior to the Scheduled Acceptance Date of the first Set in the Fleet.
- 5.10 When agreed, the parties shall implement the Service Introduction Plan and the Fleet Introduction Plan in accordance with their terms.

6. **TRANSITION PERIOD RULES OF THE DEPOT AND RULES OF THE FLEET**

6.1 The Rules of the Depot and the Rules of the Fleet shall apply from the Actual Acceptance Date of the last Set in the Fleet.

6.2 In accordance with this Paragraph 6, the TSP shall produce:

(a) Rules of the Depot which shall apply during the Transition Period (the ***Transition Period Rules of the Depot***) which shall be the same as those provided in Appendix A (*Rules of the Depot*) to Part A (*Dispatch Requirements*) of Schedule 2 (*Availability*), except that:

- (i) the minimum number of Half Set Equivalents; and
- (ii) the maximum number of units of the Operator's existing rolling stock,

in each case, that may be accommodated and serviced concurrently at each Depot at each stage during the Transition Period shall be varied to accommodate the TSP's Depot and Fleet delivery programme, the Fleet Deployment Profile, the Service Introduction Plan and the Fleet Introduction Plan; and

(b) Rules of the Fleet which shall apply during the Transition Period (the ***Transition Period Rules of the Fleet***) which shall be the same as those provided in Appendix B (*Rules of the Fleet: Requirements*) to Part A (*Dispatch Requirements*) of Schedule 2 (*Availability*), except that:

- (i) the minimum Maintenance Window requirements for each Set Type at each stage during the Transition Period shall be varied to accommodate the TSP's Depot and Fleet delivery programme, the Fleet Deployment Profile, the Service Introduction Plan and the Fleet Introduction Plan;
- (ii) the Maximum Available Full Sets and the Maximum Available Half Sets that the Operator can require be made available to it in its Dispatch Requirements shall be the maximum numbers set out in Appendix D (*Fleet Deployment Profile*) to Part D (*Transition*) of Schedule 1 (*General Provisions*);
- (iii) in the case of the Electric Sets, as successive Diagrams are introduced, the first Maintenance Window shall be nine (9) hours followed by Maintenance Windows of seven (7) hours until the total Maintenance Windows in Table 1 (*Minimum Maintenance Window Requirements*) of

Appendix B (*Rules of the Fleet: Requirements*) to Part A (*Dispatch Requirements*) of Schedule 2 (*Availability*) are provided; and

- (iv) in the case of the Bi-Mode Sets, as successive Diagrams are introduced:
 - (A) the first Maintenance Windows shall be nine (9) hours followed by Maintenance Windows of seven (7) hours located at Depot Location 1 until five (5) Maintenance Windows of seven (7) hours are provided; and
 - (B) when more than fifty per cent. (50%) of the Diagrams are introduced, the next Maintenance Window shall be nine (9) hours followed by Maintenance Windows of seven (7) hours until the total Maintenance Windows in Table 1 (*Minimum Maintenance Window Requirements*) of Appendix B (*Rules of the Fleet: Requirements*) to Part A (*Dispatch Requirements*) of Schedule 2 (*Availability*) are provided.

6.3 The Transition Period Rules of the Depot and Transition Period Rules of the Fleet shall:

- (a) comply with the TSP's Depot and Fleet delivery programme; and
- (b) have regard to the progressive increase of labour resources at the Depots required to support the Service Introduction Plan and the Fleet Introduction Plan and to ensure maintenance and servicing activities are delivered throughout the Transition Period.

6.4 So far as reasonably practicable, having regard to the TSP's ability to comply with its obligations under this Agreement and the MARA, optimise the operational flexibility provided to the Operator.

6.5 Within six (6) weeks of receiving the initial draft of the Service Introduction Plan and the Fleet Introduction Plan, the TSP shall provide an initial draft of each of the Transition Period Rules of the Depot and Transition Period Rules of the Fleet to the Operator for review and discussion through the Transition Working Group.

6.6 Within fifteen (15) Business Days of receiving the first draft Transition Period Rules of the Depot and/or Transition Period Rules of the Fleet from the TSP, or such longer period of time as may be reasonably requested by the Operator, the Operator shall review the draft rules and provide its comments to the TSP or confirm that such rules are agreed.

6.7 Any comments received from the Operator shall be considered in good faith and shall be discussed between the parties at the next meeting of the Transition Working Group falling at least five (5) Business Days after receipt by the TSP of such comments.

6.8 As appropriate, the TSP shall submit a revised draft of the Transition Period Rules of the Depot and/or Transition Period Rules of the Fleet to the Operator within ten (10) Business Days of such meeting, or such longer period as may be reasonably requested by the TSP, for review by the Operator and, within ten (10) Business Days of receiving the revised draft Transition Period Rules of the Depot and/or Transition Period Rules of the Fleet from the TSP, or such longer period of time as may be reasonably requested by the Operator, the Operator shall review the draft rules and confirm that such rules are agreed or provide its comments to the TSP, in which case such comments shall be considered in

good faith at the next meeting of the Transition Working Group falling at least five (5) Business Days after receipt by the TSP of such comments.

- 6.9 Subject to Paragraph 6.10, the TSP shall continue to revise and resubmit drafts of the Transition Period Rules of the Depot and Transition Period Rules of the Fleet to the Operator for review through the Transition Working Group in accordance with Paragraph 6.7 until the Transition Period Rules of the Depot and Transition Period Rules of the Fleet are agreed.
- 6.10 In any event, the Transition Period Rules of the Depot and Transition Period Rules of the Fleet shall be agreed by the parties no later than nine (9) months prior to the Scheduled Acceptance Date of the first Set in the Fleet.
- 6.11 When agreed, the Transition Period Rules of the Depot and Transition Period Rules of the Fleet shall be deemed the Rules of the Depot and Rules of the Fleet, respectively, for the purposes of this Agreement until and including the Actual Acceptance Date of the last Set in the Fleet.

7. TRANSITION PERIOD DISPATCH REQUIREMENTS

During the Transition Period, the Dispatch Requirements for the purpose of Part A (*Dispatch Requirements*) of Schedule 2 (*Availability*) and Part I (*Handback of Sets*) of Schedule 2 (*Availability*) shall be varied in accordance with the Service Introduction Plan.

Appendix A
to Part D of Schedule 1

Standing Agenda for Meetings of the Transition Working Group

1. Minutes of last meeting.
2. Delivery/acceptance of Sets.
3. Service Introduction Plan.
4. Fleet Introduction Plan.
5. Transition Period Rules of the Depot.
6. Transition Period Rules of the Fleet.
7. Delivery of Depots.
8. Redeployment and/or demobilisation of the Operator's existing fleet.
9. Transfer of existing maintenance workload at Depots to other locations.
10. Requirements for the Operator to continue to access Depots at which the Maintainer is DFO under regulated DAAs, in respect of rolling stock other than the Sets.
11. TSP maintenance of the Operator's existing fleet.
12. Any other business.

Appendix B
to Part D of Schedule 1

Issues for TSP Transition Progress Report

1. Update on the expected delivery programme for the Sets, the Relevant Approvals and scheduled dates for acceptance.
2. Progress with depot works.
3. Transfer process in respect of depot staff.
4. Any human resources and industrial relations issues.

Appendix C
to Part D of Schedule 1

Issues for Operator Transition Report

1. Service Introduction Plan and when each Set is to enter Passenger Service.
2. Fleet Introduction Plan.
3. Withdrawal of the Operator's existing rolling stock from Passenger Service.
4. Transfer process in respect of depot staff.
5. Any human resources and industrial relations issues.

Appendix D
to Part D of Schedule 1
Fleet Deployment Profile

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

Train number	Scheduled Acceptance Date	Maximum available Sets
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
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

Train number	Scheduled Acceptance Date	Maximum available Sets
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

Part E of Schedule 1

Transfer Provisions

1. TRANSFER PROVISIONS

Depot Transfers and New Depots

- 1.1 The Operator and the TSP acknowledge that the Transfer Regulations may apply in relation to the Depot Transfers and/or in relation to some or all of the services provided by the Provider at the New Depots. It is agreed that if so, the following provisions shall apply in connection therewith:
- (a) the Operator shall perform and discharge or procure the performance and discharge of all obligations of the employer in respect of all the Relevant Employees, as applicable for its own account up to and including the applicable Start Date including discharging all wages and salaries of the Relevant Employees as applicable, all employer's contributions to any relevant occupational pension scheme and all other costs and expenses related to their employment (including any Taxation, accrued holiday pay, accrued bonus, commission or other sums payable in respect of service prior to the close of business on the applicable Start Date) and shall indemnify the TSP and keep the TSP indemnified against all Losses incurred by the TSP and/or the Provider arising from the Operator's failure so to discharge; and
 - (b) the Operator shall indemnify the TSP and keep the TSP indemnified against all Losses which relate to or arise out of any breach or default by the Operator or any third party employer of its obligations up to and including the applicable Start Date and which the TSP and/or the Provider may incur in relation to any contract of employment or collective agreement concerning one or more of the Relevant Employees pursuant to the provisions of the Transfer Regulations including any breach or default relating to or arising out of the Provider's rights, powers, duties and/or liabilities (including any Taxation) under or in connection with any such contract of employment or collective agreement, which rights, powers, duties and/or liabilities (as the case may be) are or will be transferred to the Provider in accordance with the Transfer Regulations.
- 1.2 In the event that the Provider proposes to dismiss any Relevant Employee on or after the applicable Start Date by reason of Redundancy, the TSP shall procure that the Provider shall use all reasonable endeavours to identify suitable alternative employment for the Relevant Employee and the Operator shall co-operate with the TSP and the Provider to identify any suitable alternative roles that may exist within its business. If no suitable alternative employment can be identified and the Provider dismisses the Relevant Employee by reason of Redundancy within six (6) months of the applicable Start Date, then provided the TSP has complied with (and has procured that the Provider has complied with) its obligations under this Paragraph 1.2, the Operator shall indemnify the TSP against all statutory and enhanced redundancy payments (excluding liabilities in respect of claims to which Paragraph 1.43 applies), notice pay or pay in lieu of notice and accrued holiday pay which the Provider is required to pay to the Relevant Employee in accordance with the terms of the Relevant Employee's contract of employment, statute or the terms of any collective agreement or otherwise and which the TSP is required to pay to the Provider pursuant to an indemnity provided by the TSP to the Provider.

- 1.3 The Operator shall indemnify the TSP and keep the TSP indemnified against any awards of compensation (including any protective awards) payable to affected Relevant Employees by the TSP and/or the Provider and reasonable legal fees incurred by the TSP and/or the Provider in defending such claims which arise as a result of the Operator or a third party employer not complying with its obligations to inform and consult with Relevant Employees under Regulation 13 of the Transfer Regulations, provided that such non-compliance is not due to a failure on the part of the Provider to comply with its obligations under the Transfer Regulations.

TSP's obligations

- 1.4 The TSP shall indemnify the Operator and keep the Operator indemnified against all Losses arising out of or in connection with:
- (a) any dismissal or deemed dismissal of a Relevant Employee by reason of any actual or proposed substantial change required by the Provider to the working conditions of the Relevant Employee to his or her material detriment occurring on or after the applicable Start Date; and
 - (b) any claim by any Relevant Employee (whether in contract or in tort or under statute (including the Treaty of the European Community or European Union and any Directives made under any such Treaty or any successor thereof)) for any remedy (including for unfair dismissal, Redundancy, equal pay, sex or race discrimination) as a result of any actual or alleged breach or default by the Provider after the applicable Start Date.
- 1.5 The TSP shall indemnify the Operator and keep the Operator indemnified against all awards of compensation (including any protective awards) and reasonable legal fees incurred in defending such claims which arise as a result of the Provider not providing or not having provided, in accordance with its obligations under the Transfer Regulations, the Operator in writing with such information and at such time as will enable the Operator to carry out its duties under Regulations 13(2)(d) and 13(6) of the Transfer Regulations concerning measures envisaged by the Provider in relation to the Relevant Employees.
- 1.6 The TSP shall co-operate with the Operator in determining whether the Transfer Regulations will apply to the services provided by the Provider at each Depot and/or New Depot. Unless the Provider has good reason to believe that the Transfer Regulations will not apply to any services for which recruitment would otherwise be undertaken by the Provider at a Depot and/or New Depot (as applicable), the TSP shall procure that the Provider shall not recruit new staff or deploy its existing staff to the Depot and/or New Depot without the consent of the Operator (such consent not to be unreasonably withheld or delayed having regard to the skill set required for a particular role and/or the need to meet any service obligation) if such recruitment would increase the extent to which dismissals may result from the transfer of New Depot Employees to the Provider by operation of the Transfer Regulations in respect of which the Operator is liable to indemnify the TSP under Paragraph 1.2.

Details of Relevant Employees

- 1.7 The Operator undertakes to the TSP that it will disclose to the Provider (insofar as is lawful):
- (a) a list of all individuals who the Operator considers are Relevant Employees;

- (b) such information relating to the employment of the Relevant Employees (including but not limited to the employee liability information required by Regulation 11 of the Transfer Regulations) as the Provider may reasonably request; and
- (c) a list of all individuals who would otherwise be Relevant Employees but who the Operator intends to retain after the applicable Start Date.

The information in this Paragraph 1.7 shall be provided by the Operator no less than three (3) months prior to the anticipated Start Date in respect of the Relevant Employees. Any such information provided by the Operator shall be updated one (1) month prior to the applicable Start Date.

1.8 The Operator undertakes that it will disclose to the TSP details of:

- (a) the number of Relevant Employees who are expected to transfer on the Start Date in question;
- (b) the roles performed by such Relevant Employees; and
- (c) a summary of the standard terms and conditions of employment applicable to such Relevant Employees.

The information referred to in this Paragraph 1.8 shall, as far as reasonably practicable, be provided by the Operator twelve (12) months prior to the anticipated Start Date in respect of the Relevant Employees (and in any event shall be provided no less than six (6) months prior to the anticipated Start Date in respect of the Relevant Employees).

1.9 The Operator shall warrant that any information provided in accordance with Paragraphs 1.7(b) and (c) is complete and accurate in all respects as at the date it is provided.

Retirement benefits

Participation in the Railways Pension Scheme

1.10 The following provisions shall apply in respect of the Relevant Protected Persons and Relevant Indefeasible Rights Members of the Operator who it is anticipated will become members of the Receiving Scheme on and from their relevant Start Date.

1.11 The TSP shall procure that the Provider shall participate in either a new Section or the Omnibus Section in accordance with either Paragraph 1.11(a) or (b):

- (a) the Operator and the TSP may, in the period of six (6) months before the first Start Date, seek to obtain Trustee consent to permit the Provider to participate in the Railways Pension Scheme as the Designated Employer of a new Section for and in respect of such members, including by, but not limited to:
 - (i) submitting a formal written proposal to the Trustee, in a form and substance agreed between the Operator and the TSP, in support of the Provider being admitted to participate in a Section; and
 - (ii) promptly providing to the Trustee any documentation that the Trustee may reasonably request from the Provider or the TSP in connection with the proposal referred to in Paragraph 1.11(a)(i),

and (subject to Trustee consent) the Provider may establish or nominate a Section and participate in such Section for and in respect of such members with effect from their relevant Start Date; or

(b) the Provider may participate in the Railways Pension Scheme as a Participating Employer in the Omnibus Section in respect of such members on and from their relevant Start Date.

- 1.12 References to the **Receiving Scheme** in this Part E (*Transfer Provisions*) of Schedule 1 (*General Provisions*) shall be to the new Section or the Omnibus Section, as the context requires.
- 1.13 The Operator shall indemnify the TSP and keep the TSP indemnified against all Losses arising directly out of or in connection with any costs arising in connection with establishing a Section and the Provider becoming its Designated Employer.
- 1.14 The TSP shall procure that the Provider shall comply with all relevant employment and pensions legislation and shall perform its obligations under this Part E (*Transfer Provisions*) of Schedule 1 (*General Provisions*) in a manner which is consistent with the Protection Order.

Future service benefits

- 1.15 The TSP shall procure that the Provider shall offer membership of the Receiving Scheme for future service to the Relevant Protected Persons and Relevant Indefeasible Rights Members with effect from their applicable Start Date and shall provide (or procure that the Receiving Scheme provides) each such member who accepts membership of the Receiving Scheme with Relevant Pension Rights on and from his applicable Start Date for the duration of the Term required to be provided by the Protection Order.
- 1.16 In respect of the Relevant Non-Protected Persons, the TSP shall procure that the Provider shall offer them membership of the TSP Scheme on terms no less favourable than are offered to new employees of the Provider of the type or grade of each individual Relevant Non-Protected Person.

Past service benefits

- 1.17 The TSP shall procure that the Relevant Protected Persons and Relevant Indefeasible Rights Members will, by no later than one (1) month after joining the Receiving Scheme, be invited to transfer their accrued benefits under the Operator Section (**Accrued Benefits**) to the Receiving Scheme in accordance with the relevant provisions governing such transfers under the Pension Trust and the Protection Order.
- 1.18 The TSP shall and will procure that the Receiving Scheme shall, in consideration of receipt of the transfer payment in respect of each Relevant Protected Person and Relevant Indefeasible Rights Member who transfers his Accrued Benefits to the Receiving Scheme, ensure that each such person is credited in the Receiving Scheme with Pensionable Service on a year-for-year basis in respect of the period of Pensionable Service in relation to which the transfer payment is made.
- 1.19 Where a transfer payment is made in respect of a transfer of any Relevant Protected Persons' or Relevant Indefeasible Rights Members' Accrued Benefits from the Operator Section to the Receiving Scheme, the TSP will not and will procure that the Provider will

not give its consent to any request from the Trustee to make a transfer payment in respect of any deferred or pensioner member of the Operator Section.

Top Up Amount

- 1.20 Where the Receiving Scheme is to receive from the Operator Section a transfer in of liabilities in respect of Relevant Protected Persons' and Relevant Indefeasible Rights Members' Accrued Benefits pursuant to Paragraph 1.17, the Secretary of State shall procure that the Operator pays to the Receiving Scheme for and in respect of the Relevant Protected Persons and Relevant Indefeasible Rights Members each Top Up Amount as calculated by the Scheme Actuary in accordance with the terms of the Actuaries' Letter and verified by the parties in accordance with this Agreement.
- 1.21 The Operator and the TSP shall on 31 December after a transfer payment is made in respect of a transfer of any Relevant Employees' Accrued Benefits from the Operator Section to the Receiving Scheme, provide the Scheme Actuary with such information as the Scheme Actuary may reasonably require in order to calculate the Top Up Amount in relation to those Relevant Employees.
- 1.22 The Operator and the TSP shall use reasonable endeavours to procure that within one (1) month of the receipt by the Scheme Actuary of the information referred to in Paragraph 1.21, the Scheme Actuary shall calculate the Top Up Amount in accordance with the terms of the Actuaries' Letter and forward a note of his calculation to the Operator Actuary and the TSP Actuary for verification by the Operator Actuary and the TSP Actuary.
- 1.23 If the Operator Actuary and TSP Actuary agree the calculation of the Top Up Amount, the TSP Actuary and the Operator Actuary shall jointly certify the amount and the certificate shall become final and binding on the TSP and the Operator. If the Operator Actuary or TSP Actuary is unable to verify the Scheme Actuary's calculations within two (2) months of receipt of the calculations, the matter shall, in the absence of agreement between the Operator and the TSP, be dealt with in accordance with Paragraph 1.31.
- 1.24 The Operator shall procure that any Top Up Amount (being the amount certified pursuant to Paragraph 1.23 or, in the absence of agreement in accordance therewith, the amount determined by the independent actuary pursuant to Paragraph 1.31) shall be paid from the Operator Section to the Receiving Scheme or (at the election of the Operator) directly by the Operator to the Receiving Scheme within thirty (30) days from the date it is certified or determined.
- 1.25 If any Top Up Amount will be paid by the Operator to the Omnibus Section, the Operator and the TSP agree to use their reasonable endeavours to procure that the Top Up Amount shall be applied in the Omnibus Section in favour of the Provider.

Pension Amount

- 1.26 The Secretary of State shall procure that the Operator shall pay each Pension Amount to the TSP. Each Pension Amount shall be determined and paid on the basis set out below.
- 1.27 The Operator and the TSP shall on 31 December after each tranche of Relevant Employees' contracts of employment have transferred to the Provider by virtue of the operation of the Transfer Regulations provide the Scheme Actuary with such information as the Scheme Actuary may reasonably require in order to calculate the Pension Amount in relation to those Relevant Employees.

- 1.28 The Operator and the TSP shall use reasonable endeavours to procure that within one (1) month of the receipt by the Scheme Actuary of the information referred to in Paragraph 1.27, the Scheme Actuary shall calculate the Pension Amount in accordance with the terms of the Actuaries' Letter and forward a note of his calculation to the Operator Actuary and the TSP Actuary for verification by the Operator Actuary and the TSP Actuary.
- 1.29 If the Operator Actuary and TSP Actuary agree the calculation of the Pension Amount, the TSP Actuary and the Operator Actuary shall jointly certify the amount and the certificate shall become final and binding on the TSP and the Operator. If the Operator Actuary or TSP Actuary is unable to verify the Scheme Actuary's calculations within two (2) months of receipt of the calculations, the matter shall, in the absence of agreement between the Operator and the TSP, be dealt with in accordance with Paragraph 1.31.
- 1.30 Any Pension Amount (being the amount certified pursuant to Paragraph 1.29 or, in the absence of agreement in accordance therewith, the amount determined by the independent actuary pursuant to Paragraph 1.31) shall be included in the TARA Payment for the Reporting Period immediately following the certification or determination of the relevant Pension Amount as a Reimbursable Items Adjustment.

Independent Actuary

- 1.31 Any dispute between the Operator and the TSP or the Operator Actuary and the TSP Actuary concerning the verification of each Pension Amount, each Top Up Amount or any other matter of an actuarial or mathematical nature shall, in the absence of agreement between them, be referred to an independent actuary agreed by the parties or (failing agreement within fourteen (14) days of a written request from one party to the other to agree to the appointment of such an actuary) appointed at the request of either party by, or on behalf of, the President for the time being of the Institute and Faculty of Actuaries. The independent actuary shall have the power to verify each Pension Amount and each Top Up Amount as calculated by the Scheme Actuary and the decision of the independent actuary, including as to costs, shall be final. The independent actuary shall act as an expert and not as an arbitrator.

Discharge of obligations

- 1.32 The TSP shall procure that the Provider shall during the Term comply in all respects with those provisions of the Railways Pension Scheme which the Provider is required to observe as the Designated Employer of a new Section or as a Participating Employer in the Omnibus Section (as applicable). In particular, the TSP shall procure that the Provider shall pay in respect of the Relevant Protected Persons and Relevant Indefeasible Rights Members the contributions required of it under the schedule of contributions and any recovery plan applicable to the Receiving Scheme pursuant to part 3 of the Pensions Act 2004 and the Occupational Pension Schemes (Scheme Funding) Regulations 2005 (as amended).
- 1.33 The Operator may at any time during the Term seek reasonably available information from the Trustee with a view to satisfying itself that the Provider has fully discharged in all material regards its obligations under the Railways Pension Scheme, including its obligations in respect of the payment of contributions to the Receiving Scheme.
- 1.34 The TSP shall procure that the Provider shall, at its expense, promptly provide such information in relation to the Receiving Scheme, including actuarial advice and

information, as the Operator may from time to time reasonably request and shall authorise and consent to the Trustee doing so.

1.35 The TSP shall procure that the Provider shall, during the Term, use reasonable endeavours to provide to the Operator:

- (a) within one (1) month of the expiry of each year of the Term; and
- (b) at other times as soon as practicable following a request by the Operator,

a certificate signed by the Trustee in relation to the Receiving Scheme stating either that the Provider has fully complied with its obligations under the Railways Pension Scheme in all material regards, including its obligation to contribute to the Receiving Scheme or, if it has not so complied, stating the extent to which it has not done so. Where the certificate is given pursuant to Paragraph 1.35(a), it shall cover the relevant year of the Term; where the certificate has been given pursuant to Paragraph 1.35(b), it shall cover such period as the Operator shall reasonably specify.

1.36 If the Trustee does not certify under Paragraph 1.35 in relation to the Receiving Scheme that the Provider has complied in all material regards with its obligations under the Railways Pension Scheme and has not complied with its obligations in respect of the payment obligations to the Receiving Scheme, the Operator may be entitled to withhold from any payments payable by it under Paragraph 1.26 an amount which is, in its reasonable opinion, no greater than the amount of any contribution that the Provider has thereby failed to make or avoided making.

1.37 The Operator may, under Paragraph 1.36, withhold such amount until such time as it reasonably determines that the relevant contributions have been made in full by the Provider. Following that determination, the amount withheld shall become payable (without interest) on the next day after the relevant contributions have been made in full by the Provider and thereafter with interest.

Beckmann rights

1.38 The Operator shall indemnify the TSP against any claim made by any Relevant Employee or any dependant of any such employee that any liability to provide benefits by reference to any occupational pension scheme did not fall within the exclusion for old age, invalidity or survivor's benefits permitted under the Transfer Regulations provided any such claim arises out of or relates to:

- (a) the early retirement of the Relevant Employee at any time on and from their relevant Start Date (including the early retirement of the Relevant Employee from the Receiving Scheme but only to the extent that they claim liability to provide benefits greater than those they would have been entitled to on early retirement had they not transferred under the Transfer Regulations); or
- (b) the termination of employment of the Relevant Employee where such termination is effected by reason of redundancy at any time during the period of six (6) years commencing on each relevant Start Date in respect of each Relevant Employee.

1.39 To the extent that the consent of the TSP is required in relation to any early retirement or redundancy of the Relevant Employee for the purposes of Paragraph 1.38, prior to granting such consent, the TSP shall be required to obtain the prior written approval of the Operator (such approval not to be unreasonably withheld or delayed) provided that the

Operator shall remain indemnified in relation to any liability in respect of the claim under Paragraph 1.38. The prior written approval of the Operator shall not be required where annually the number of such early retirements or redundancies would be equal to or less than one hundred and fifty per cent. (150%) of the number of such occurrences assumed by the Scheme Actuary under the most recent actuarial valuation of the Operator Section or Receiving Scheme (whichever valuation applies) at the relevant time.

- 1.40 As soon as reasonably practicable after becoming aware of a claim to which Paragraph 1.38 applies, the TSP shall give written notification to the Operator, shall consult with the Operator in relation to its proposed course of action and shall, if requested by the Operator allow the Operator (at the Operator's expense, subject to the TSP being indemnified to its reasonable satisfaction) to take such action as the Operator in its opinion considers to be reasonable to resist, defend, negotiate or compromise the claim, provided that the Operator shall remain indemnified in relation to any liability in respect of the claim under Paragraph 1.38.

Termination provisions

- 1.41 This Paragraph 1.41 shall only apply to the extent that the Provider is appointed as the Designated Employer of its own Section under the terms of this Agreement. Where a transfer of Relevant Pension Rights of Relevant Protected Persons and/or Relevant Indefeasible Rights Members is required to be made on the termination of this Agreement (whether through default, effluxion of time or otherwise) from the Receiving Scheme to another Section, the TSP shall pay or procure the payment to the Trustee of such amount (if any) as may be required by Article 7 of the Protection Order to allow a transfer payment to be made in accordance with Article 6(2) and (3) of the Protection Order.
- 1.42 Where the Provider participates in the Omnibus Section under the terms of this Agreement, and where a transfer of Relevant Protected Persons and/or Relevant Indefeasible Rights Members is made on the termination of this Agreement (whether through default, effluxion of time or otherwise) from the Provider (or any subsequent employer of the Relevant Protected Persons and/or Relevant Indefeasible Rights Members) to another participating employer of the Omnibus Section, then the TSP shall pay or procure the payment to the Trustee of such amount (if any) as it would have been required to make under Paragraph 1.41 had the transfer of Relevant Pension Rights of Relevant Protected Persons and/or Relevant Indefeasible Rights Members been made to another Section of the Railways Pension Scheme.
- 1.43 If the Receiving Scheme (whether the Provider's own Section or the Omnibus Section) is wound up in whole or in part through any act or omission of the TSP or the Provider, then the TSP shall or shall procure that the Provider shall assign any surplus assets in the Receiving Scheme (to the extent legally possible) to the Operator and the right to any surplus assets in the Receiving Scheme shall vest to the extent legally possible in the Operator absolutely.
- 1.44 Paragraphs 1.44 to 1.50 (inclusive) shall only apply to the extent that the Provider is appointed as a Participating Employer in the Omnibus Section under the terms of this Agreement (for the avoidance of doubt, Paragraphs 1.44 to 1.50 (inclusive) shall not apply and shall have no effect to the extent that the Provider participates in a Section of the Railways Pension Scheme). The TSP undertakes to the Operator to procure that within a reasonable period prior to the occurrence of a Section 75 Event, the Provider will enter into a valid deed of cessation of participation on commercial terms acceptable to the Secretary of State (acting reasonably) and in a form determined by the TSP but agreed by

the Secretary of State, to enable the Provider validly to cease to participate in the Omnibus Section and cease to be an employer for the purposes of Section 75.

- 1.45 The TSP undertakes to the Operator to use all reasonable endeavours to procure that a valid Flexible Apportionment Arrangement is entered into in respect of the Provider's cessation of participation in the Omnibus Section pursuant to Paragraph 1.44, on commercial terms acceptable to the Secretary of State (acting reasonably) and in a form determined by the TSP but agreed by the Secretary of State, pursuant to which all of the liabilities (including any cessation expenses) attributable to the Provider under Section 75 in relation to Relevant Protected Persons and Relevant Indefeasible Rights Members of the Omnibus Section, as those liabilities stand immediately before the Flexible Apportionment Arrangement takes effect, are apportioned to the Secretary of State.
- 1.46 The Operator shall, within thirty (30) Business Days of being so requested by notice from the TSP, procure that the Secretary of State executes and delivers to the TSP the Flexible Apportionment Arrangement.
- 1.47 To the extent that a Flexible Apportionment Arrangement is not implemented in respect of any Section 75 Event in respect of the Provider and provided the Provider enters into such Flexible Apportionment Arrangement, the Operator shall indemnify the TSP for an amount equal to any payment due under Section 75 that falls due and payable by the Provider as a result of such Section 75 Event in relation to the Relevant Protected Persons and Relevant Indefeasible Rights Members. If the TSP or the Provider are entitled to corporation tax relief for their payments under this clause but are not subject to corporation tax on the receipts, the net gain shall be reimbursed to the Operator. Conversely, if the TSP or the Provider are not entitled to corporation tax relief for their payments under this clause but are subject to corporation tax on the receipts, the net loss shall be payable by the Operator to the TSP.
- 1.48 The TSP agrees that to the extent that the Flexible Apportionment Arrangement referred to in Paragraph 1.45 may or does become unenforceable due to revised Employer Debt Regulations (or any successor legislation to Section 75) coming into force, the TSP will take all necessary steps (subject to compliance with law), including procuring that the Provider enters into a further apportionment arrangement to give effect (as far as possible) to the Flexible Apportionment Arrangement envisaged in Paragraph 1.45.
- 1.49 The TSP shall not and shall procure that the Provider shall not, during and in respect of the period that the Provider participates in the Omnibus Section from the date of this Agreement:
- (a) amend, change or augment the interests of, or the benefits or prospective benefits under the Receiving Scheme payable or contingently payable to or in respect of any of the Relevant Protected Persons and Relevant Indefeasible Rights Members;
 - (b) do or omit to do anything that would or might result in a relevant event or employment cessation event (other than a Section 75 Event) in respect of the Provider's participation in the Omnibus Section for the purposes of Section 75; or
 - (c) do or omit to do anything that would or might result in the partial winding up of the Omnibus Section in respect of the Provider or which would or might otherwise increase the obligations of the Provider under Section 75.

- 1.50 The TSP shall indemnify and hold harmless from and against and shall pay on demand to the Operator an amount equal to any and all Losses that the Operator or the Secretary of State may after the date of this Agreement sustain, incur or pay arising from or in connection with any failure by the TSP to comply with its obligations under Paragraph 1.49.

Provider covenant rating

- 1.51 The TSP shall not and shall procure that the Provider shall not, prior to the calculation of the Top Up Amount and the Pension Amount in accordance with the terms of the Actuaries' Letter, take any action outside of the ordinary course of their trading the main purpose (or one of the purposes) of which is to result in a material weakening of the financial strength of the Provider, without the prior written consent of the Operator (such consent not to be unreasonably withheld) and shall use their respective reasonable endeavours to co-operate with the Trustee and promptly provide to the Trustee any documentation that the Trustee may reasonably request from the Provider or the TSP in connection with the employer covenant rating of the Provider.

2. EXIT

- 2.1 The parties acknowledge and agree that the termination of this Agreement may constitute a "relevant transfer" within the meaning of the Transfer Regulations.
- 2.2 The TSP shall procure that all obligations of the Provider in respect of Provider Personnel are performed and discharged for its own account up to the time of termination, without limitation, discharging all wages and salaries of its employees, all employer's contributions to any relevant occupational pension scheme and all other costs and expenses related to their employment (including any Taxation, accrued holiday pay, accrued bonus, commission or other sums payable in respect of service prior to the close of business on termination) and shall indemnify the Operator and any Successor against all Losses arising from the Provider's failure so to discharge.
- 2.3 The TSP shall indemnify the Operator and any Successor against all Losses which relate to or arise out of any breach or default by the Provider of its obligations prior to termination and which the Operator or the Successor may incur in relation to any contract of employment or collective agreement concerning one or more of the Provider Personnel pursuant to the provisions of the Transfer Regulations or otherwise.
- 2.4 On termination of this Agreement for whatever reason the Operator shall indemnify the TSP against all Losses incurred by the TSP and/or the Provider which relate to or arise out of:
- (a) the employment by the Operator or any Successor of the Provider Personnel on or after termination;
 - (b) any breach or default by the Operator or any Successor prior to termination; and
 - (c) the dismissal or deemed dismissal of any Provider Personnel by the Provider by reason of any actual or proposed substantial change required by the Operator or any Successor to working conditions to the material detriment of the Provider Personnel occurring on or after termination.
- 2.5 During the final twelve (12) months of the Exit Period the TSP shall procure that the Provider shall not without the prior written consent of the Operator other than in the

ordinary course of business, for the purpose of meeting service levels or to comply with any pre-existing contractual or any statutory or regulatory obligation:

- (a) make any material change or promise to make any material change to any of the Provider Personnel's terms and conditions of employment;
- (b) increase the salaries of any of the Provider Personnel, except in line with changes in the Retail Prices Index or the terms of any applicable collective agreement in force prior to the Exit Period;
- (c) assign any person to any Depot or any New Depot on terms and conditions of employment that are materially better than those of the Relevant Employees or other Provider Personnel as in force at the time; or
- (d) reduce, increase or vary the number or involvement of any of the Provider Personnel in the provision of services at any Depot or New Depot.

Details of Provider Personnel

2.6 The TSP undertakes, on the Operator's reasonable request at any time, such requests not to be made before the date of the commencement of the Exit Period and only at six (6) monthly intervals thereafter, to disclose to the Operator or any prospective Successor nominated by the Operator (insofar as is lawful):

- (a) such information relating to the employment of the Provider Personnel (including but not limited to the employee liability information required by Regulation 11 of the Transfer Regulations) as the Operator may reasonably require; and
- (b) a list of these Provider Personnel who the Provider intends to retain in its employment after the termination of the Agreement.

The TSP shall warrant that any information provided in accordance with Paragraphs 2.6(a) and (b) is complete and accurate in all respects as at the date the information is provided.

3. TUPE ADJUSTMENT

Price Adjustment Information

3.1 As soon as reasonably practicable following each TUPE Adjustment Base Date, the TSP shall notify the Secretary of State of:

- (a) the identity of each Relevant Employee;
- (b) the Maintainer Employment Costs for each Relevant Employee for the Protected Period;
- (c) the Set Up Costs; and
- (d) the Expected Differential (together, the **Price Adjustment Information**),

together with so far as is lawful all data reasonably required by the Secretary of State in order to verify that the TSP's assessment of the Maintainer Employment Costs and the Set Up Costs is accurate. If the TSP or Maintainer informs the Secretary of State that it is unable to provide copies of such data as a result of concerns arising under the Freedom

of Information Act 2000, the TSP shall procure that the Secretary of State and its representatives and advisers are provided with such access to the relevant data as they reasonably require in order to carry out any verification process.

- 3.2 The TSP will warrant to the Secretary of State that as at the date on which the Price Adjustment Information is provided in accordance with Paragraph 3.1 it is complete and accurate in all material respects.
- 3.3 The Secretary of State shall confirm to the TSP within twenty-one (21) days of the date on which the Price Adjustment Information is provided by the TSP whether or not it agrees with the TSP's calculation of the Expected Differential and the Set Up Costs.
- 3.4 Provided that the Secretary of State agrees with the TSP's calculations, the TUPE Adjustment Amount shall be paid in accordance with the provisions of Paragraph 1 of Part A (*TARA Payments*) to Schedule 5 (*Payment*).
- 3.5 In the event of a Dispute (including, for the avoidance of doubt, where the Secretary of State confirms in accordance with Paragraph 3.3 that it does not agree with the TSP's calculation of the Expected Differential and the Set Up Costs) under this Paragraph 3, it shall be resolved in accordance with the Dispute Resolution Agreement.

Claims

- 3.6 In the event that an Undisclosed Depot Employees alleges, claims or is found to be a Relevant Employee on or before any TUPE Adjustment Base Date and:
 - (a) a court of competent authority adjudicates that the person should have been and/or is a Relevant Employee;
 - (b) the Provider reasonably settles on the basis that the person should have been and/or is a Relevant Employee; and/or
 - (c) the Provider reasonably settles any such claims,(in the case of Paragraphs (b) and (c), subject to prior consultation with the Operator) the Additional TUPE Adjustment Amount shall include any costs, liabilities or expenses reasonably incurred in defending and/or settling such claims. For the avoidance of doubt, any such Undisclosed Depot Employee who continues to be employed by the Provider following a determination or settlement under Paragraphs 3.6(a) or (b) shall be included in the calculation of the Expected Differential as a Relevant Employee.
- 3.7 The Operator will at its own cost, on the request of the TSP, provide reasonable assistance in relation to any threatened or actual litigation by any Relevant Employee or Undisclosed Depot Employee (including providing access to relevant documentation, giving witness statements, meeting with their legal and other professional advisers, attending any hearing and giving evidence).

TUPE Adjustment Amount

- 3.8 On each TUPE Adjustment Base Date, the TUPE Adjustment Amount payable in respect of any TUPE Adjustment Employee for each Reporting Period that falls within the relevant TUPE Adjustment Years shall be calculated as follows:

$$TAA = \frac{(LEC - MEC)}{RP} \times (100\% - A)$$

where:

TAA means the TUPE Adjustment Amount for that Reporting Period;

LEC means Legacy Employment Cost for the Protected Period;

MEC means Maintainer Employment Cost for the Protected Period;

RP means the number of Reporting Periods that commences in the period between:

- (i) the first (1st) TUPE Adjustment Base Date after the date on which the relevant TUPE Adjustment Employee transferred to the Provider; and
- (ii) the date falling six (6) years after such TUPE Adjustment Base Date;

A means the applicable attrition rate for the TUPE Adjustment Year in which the commencement date of the relevant Reporting Period falls within the applicable TUPE Adjustment Year, as set out in the table below:

Applicable TUPE Adjustment Year	Attrition rate
First (1 st) TUPE Adjustment Year	4.00%
Second (2 nd) TUPE Adjustment Year	7.88%
Third (3 rd) TUPE Adjustment Year	11.53%
Fourth (4 th) TUPE Adjustment Year	15.07%
Fifth (5 th) TUPE Adjustment Year	18.46%
Sixth (6 th) TUPE Adjustment Year	21.72%

3.9 The TUPE Adjustment Amount in respect of each TUPE Adjustment Employee shall be payable by the Operator on each Reporting Period that has a commencement date that falls within the relevant TUPE Adjustment Years applicable to that TUPE Adjustment Employee as part of the Reporting Period TUPE Adjustment under the TARA Payments.

Additional TUPE Adjustment Amount

3.10 The Additional TUPE Adjustment Amount shall be calculated on any relevant TUPE Adjustment Base Date by adding:

- (a) the Set Up Costs incurred by the Provider, if any, in the period since the previous TUPE Adjustment Base Date;
- (b) the Expected Differential in respect of any Relevant Employee whose employment has terminated prior to the relevant TUPE Adjustment Base Date or who is under notice of termination on such date (and who was therefore excluded from the calculation of the TUPE Adjustment Amount); and
- (c) the costs, liabilities and expenses referred to in Paragraph 3.6.

3.11 The Additional TUPE Adjustment Amount shall be payable in full by the Operator in the Reporting Period immediately following the TUPE Adjustment Base Date on which the

Additional TUPE Adjustment Amount is calculated, as part of the Reporting Period TUPE Adjustment under each applicable TARA Payment.

Appendix A
to Part E of Schedule 1
Form of Actuaries' Letter

From: [*Operator Actuary*]

To: [*TSP Actuary*]

1. This is the Actuaries' Letter referred to in paragraphs 1.20 and 1.28 of part E (*Transfer Provisions*) of schedule 1 (*General Provisions*) of the Train Availability and Reliability Agreement (the **Agreement**) between Agility Trains West Limited (**TSP**) and the Operator dated [●]. It sets out the methodology and assumptions to be used to calculate the Top Up Amount and Pension Amount as described in paragraphs 1.20 and 1.26 of the Agreement.
2. Terms and expressions defined in the Agreement shall have the same meanings in this Letter except where the context otherwise requires.
3. Calculations will be undertaken in accordance with this Letter at each 31 December. For the purposes of this Letter, the date at which each calculation is determined under this Agreement is referred to as the "Calculation Date".

The Calculation Date is the date, by reference to which, the assumptions underlying calculations are determined. For the avoidance of doubt, the membership details of the Relevant Employees to be used in any calculations – e.g. age, service, salary – are determined by reference to the Start Date.

Calculation of the Top Up Amount

4. A calculation will be made for each Relevant Protected Person who is a member of the Railways Pension Scheme (**RPS**) immediately prior to transfer and who at transfer accepts active membership of, and joins, the section of the RPS offered to Relevant Protected Persons by the TSP (the **TSP Section**¹) and consents to a transfer of their accrued RPS service from the Operator's Section to the TSP Section.

A calculation will also be made for each Relevant Indefeasible Rights Member who is a member of the RPS immediately prior to transfer and who at transfer accepts active membership of, and joins, the TSP Section and consents to a transfer of their accrued RPS service from the Operator's Section to the TSP Section.

5. A calculation will be carried out for each Relevant Protected Person and Relevant Indefeasible Rights Member at the first Calculation Date after the transfer payment in respect of the Accrued Benefits of that employee has been made to the TSP Section (the **Pension Transfer Date**).
6. The Top Up Amount at any Calculation Date will be the sum of individual calculations described below.
7. The calculation is:

¹ The TSP Section is a section set up by the TSP/Provider in the RPS for members transferring under this Agreement or, failing a separate section being established, the multi-employer Omnibus Section if the Provider joins this section.

A – B

where:

A = the past service reserve for relevant transferring service of the Relevant Protected Person or Relevant Indefeasible Rights Member valued by the Scheme Actuary using the assumptions and methodology underlying the calculation of the technical provisions under part 3 of the Pensions Act 2004 at the most recent funding valuation or formal annual update of the TSP Section.

If no such valuation has been completed, the assumptions to be used will be those that would be prudently adopted within the RPS for a section with the same employer covenant strength and investment strategy as the TSP Section as determined by the Trustee of the RPS, with advice from the Scheme Actuary. In setting the actuarial assumptions, the Trustee should use the same criteria as for setting assumptions for calculating technical provisions under part 3 of the Pensions Act 2004, such that employer covenant and investment strategy are key criteria.

Where relevant, the financial assumptions will be updated by the Scheme Actuary in line with normal practice in the RPS, for market conditions at the Calculation Date.

If it is not reasonably possible to determine some or any of the required assumptions and methodology, then such other consistent and reasonable assumptions will be used as the TSP Actuary and Operator Actuary may agree, consistent with a technical provisions basis.

If the TSP Section is not the Omnibus Section the value of A shall not be greater than a value calculated by the Scheme Actuary as if the TSP Section were assumed to have a notional investment strategy of 70% index-linked gilts (over 15 years) and 30% return seeking (equity and equity-related) assets.

Provided that the value of A shall not be lower than the Cash Equivalent Transfer Value for the individual. For the purposes of this Letter, **Cash Equivalent Transfer Value** has the meaning given to it in parts D.4.6 to D.4.8 of the Board for Actuarial Standards' Pensions Technical Actuarial Standard (dated October 2010) or any successor standard (as amended from time to time).

B = the transfer payment, including any monies paid under article 7(4) of the Railways Pensions (Protection and Designation of Scheme) Order 1994, received by the TSP Section in respect of the member, or if the Omnibus Section is used, the assets notionally allocated at the Pension Transfer Date (including any assets notionally allocated in respect of monies received under article 7(4) of the Railways Pensions (Protection and Designation of Scheme) Order 1994), in respect of the Relevant Protected Person or Relevant Indefeasible Rights Member adjusted in line with average investment returns in the relevant TSP Section between the dates the amounts are received by the TSP Section and the Calculation Date.

8. The past service reserve figures above are calculated using a Projected Accrued Benefits methodology. Under this methodology, the value of accrued liabilities at the valuation date is taken to be the present value of all expected future benefit payments arising in respect of service prior to the valuation date. The actuarial liability includes an allowance for future salary increases up to the assumed date of retirement or earlier exit, and for subsequent revaluation and pensions increases.

9. The Top Up Amount calculated at the Calculation Date will be rolled forward from the Calculation Date to the date of payment using the pre-retirement discount rate relevant to that Calculation Date.

Calculation of the Pension Amount

10. A calculation will be made for each Relevant Protected Person and Relevant Indefeasible Rights Member who is a member of the RPS immediately prior to transfer and who at transfer accepts active membership of, and joins, the TSP Section.
11. A calculation will be carried out for each Relevant Protected Person and Relevant Indefeasible Rights Member at the first Calculation Date after the Relevant Employee's Start Date.
12. The Pension Amount at any Calculation Date will be the sum of the individual calculations described below.
13. The calculation is:

$$A \times [B - (C + D)]$$

where:

A = expected present value of the Member's Section Pay payable to the member while in active service from their Start Date in the TSP Section over the lifetime of the contract. The actuarial assumptions used to determine the present value will be those underlying the calculation of the technical provisions under part 3 of the Pensions Act 2004 at the most recent funding valuation or formal annual update of the TSP Section.

If no such valuation has been completed, the assumptions to be used will be those that would be prudently adopted within the RPS for a section with the same employer covenant strength and investment strategy as the TSP Section as determined by the Trustee of the RPS, with advice from the Scheme Actuary. In setting the actuarial assumptions, the Trustee should use the same criteria as for setting assumptions for calculating technical provisions under part 3 of the Pensions Act 2004, such that employer covenant and investment strategy are key criteria.

Where relevant, the financial assumptions will be updated by the Scheme Actuary in line with normal practice in the RPS, for market conditions at the Calculation Date.

If it is not reasonably possible to determine some or any of the required assumptions and methodology, then such other consistent and reasonable assumptions will be used as the TSP Actuary and Operator Actuary may agree, consistent with a technical provisions basis.

B = the total cost of future accrual of benefits (inclusive of an allowance for risk benefits and relevant ongoing expenses) in the TSP Section for the Relevant Protected Person or Relevant Indefeasible Rights Member (as applicable), expressed as a percentage of Member's Section Pay. The assumptions used to calculate the cost of future accrual will be the same as those used to determine A above.

If the TSP Section is a separate section set up by the TSP/the Provider in the RPS then the cost of future accrual in the TSP section at the date of transfer will be calculated using the Attained Age method. If the Provider joins the Omnibus Section then the cost of future

accrual will be the same as the standard ongoing cost of future accrual in the Omnibus Section that applies to all participating employers. For the purposes of this Letter, **Attained Age** has the meaning given to it in Actuarial Profession's Guidance Note (GN) 26 or any successor definition adopted by the Board for Actuarial Standards.

If the TSP Section is not the Omnibus Section the value of both A and B respectively shall not be greater than a value calculated by the Scheme Actuary as if the TSP Section were assumed to have a notional investment strategy of 70% index-linked gilts (over 15 years) and 30% return seeking (equity and equity-related) assets.

C = the initial rate of contributions paid by the Relevant Protected Person or Relevant Indefeasible Rights Member to the TSP Section as at their Start Date expressed as a percentage of Member's Section Pay.

D = notional rate of employer's contribution, expressed as a percentage of Member's Section Pay, under the Provider's own defined contribution pension arrangements at the Calculation Date had the relevant member contributed to it at the same level that they contributed to the Operator Section immediately prior to transfer.

D is subject to the minimum contribution rate as may be required to be paid pursuant to the Transfer Regulations with respect to a Relevant Protected Person or Relevant Indefeasible Rights Member.

14. The Pension Amount will be rolled forward from the Calculation Date to the date of payment using the pre-retirement discount rate relevant to that Calculation Date.

No double counting

15. Nothing in this Letter will entitle the TSP and/or Provider to recover twice in respect of the same liability. Any such amount that constitutes payment in respect of the same liability twice will be disregarded and will not be taken into account for the purposes of the relevant calculation.

Negative amounts

16. If any Top Up Amount or Pension Amount calculation results in a negative amount then that amount will be offset against any positive amounts relating to other calculations undertaken under this Letter at the same Calculation Date and, if the resulting amount is still negative after offsetting at the same Calculation Date, at future Calculation Dates after rolling forward using the pre-retirement discount rate relevant to that Calculation Date (or, in the first instance, against calculations already undertaken at a prior Calculation Date for which payment is outstanding). Once calculations have been undertaken for all of the Relevant Protected Persons and Relevant Indefeasible Rights Member, if the end balance is a negative amount then this should be set to zero.

Signed, Operator Actuary

Name:

Firm:

Date:

Signed, TSP Actuary

Name:

Firm:

Date:

SCHEDULE 2

AVAILABILITY

Part A of Schedule 2

Dispatch Requirements

1. DISPATCH REQUIREMENTS

1.1 The dispatch requirements issued by the Operator shall:

- (a) comply with:
 - (i) the Priced Workload Parameters; and
 - (ii) the parameters set out in the Rules of the Fleet;
- (b) state the following requirements of each Set that it wishes to be made available:
 - (i) the Type;
 - (ii) the Entry Depot;
 - (iii) the Diagram for which the Operator plans to use the Set and (except in the case of a Traffic Spare Diagram) the identity of the first scheduled movement of that Diagram on the Network;
 - (iv) the Scheduled Handover Time;
 - (v) the direction that the Set is to face;
 - (vi) the Scheduled Entry Time;
 - (vii) (where more than one Connection is available at the stated Entry Depot) the Connection through which the Set is to enter the Network;
 - (viii) in the case of coupled Sets, the order in which they are to be coupled in relation to the relevant Connection through which they are to enter the Network;
 - (ix) the location (which shall be limited to those locations and corresponding maximum quantities listed in Table 2 (*Turnaround Locations*) of Appendix B (*Rules of the Fleet: Requirements*) to Part A (*Dispatch Requirements*) of Schedule 2 (*Availability*)), scheduled start time and scheduled duration of each Turnaround within the Diagram;
 - (x) the details of any Layover within the Diagram, including the Depot and the relevant Scheduled Arrival Time and Scheduled Departure Time, and Connection at the Depot through which the Set will arrive and (if different) depart;
 - (xi) in relation to any Layover, whether fuelling, water tank replenishment, retention tank discharge and/or exterior wash will be required and/or the engines will be shut down (where agreed between the parties in

accordance with Paragraph 1 of Part H (*Layovers*) of Schedule 2 (*Availability*));

- (xii) the Exit Depot;
- (xiii) the Scheduled Exit Time;
- (xiv) the Scheduled Handback Time;
- (xv) the Scheduled Arrival Time; and
- (xvi) the Scheduled Departure Time,

provided that:

- (A) in relation to any Traffic Spare Diagram, the Operator shall not be required to specify the requirements in (vi), (vii), (ix) to (xiii) and (xv) to (xvi);
 - (B) the Scheduled Handover Time may not be more than ten (10) minutes prior to the Scheduled Entry time; and
 - (C) the Scheduled Handback Time may not be more than five (5) minutes after the Scheduled Exit Time; and
- (c) comply with the operating restrictions as described in the Certificate of Temporary Specific Infrastructure Acceptance Conditions issued from time to time.

1.2 The Operator shall issue its dispatch requirements to the TSP in respect of each timetable period (being the period between one Timetable Change Date and the next Timetable Change Date) not less than six (6) months before the Timetable Change Date on which that timetable period commences, and such dispatch requirements shall, unless otherwise expressly specified under this Agreement comply with the requirements set out in Paragraph 1.1.

1.3 Any dispatch requirements issued by the Operator pursuant to Paragraph 1.2, including as amended from time to time in accordance with this Agreement, shall be the ***Dispatch Requirements***.

2. **AMENDING DISPATCH REQUIREMENTS**

Imposition of Network Rail Changes eight (8) weeks in Advance

2.1 The Operator may issue revisions to its Dispatch Requirements submitted to the TSP in accordance with Paragraph 1.1 as and when required to accommodate changes in the operation of and access to the Great Western IEP Network implemented by Network Rail after the Dispatch Requirements were submitted, provided that such revisions:

- (a) are submitted to the TSP no less than eight (8) weeks in advance of the Timetable Change Date on which the timetable period to which the Dispatch Requirements relate commences; and
- (b) comply with the requirements specified in Paragraph 1.1.

Other Revisions to the Dispatch Requirements

2.2 The Operator may revise the Scheduled Entry Time (with a corresponding revision to the Scheduled Handover Time) and/or Scheduled Exit Time (with a corresponding revision to the Scheduled Handback Time) required in its Dispatch Requirements in relation to any Set and/or omit any Set from its Dispatch Requirements, provided that:

- (a) it gives not less than twenty-eight (28) days' notice of such revision to the TSP or such shorter notice period as may be agreed by the TSP (such agreement not to be unreasonably withheld);
- (b) the resultant Scheduled Handback Times and Scheduled Handover Times (incorporating such revisions) comply with, in each case, the Rules of the Depot;
- (c) the resultant Scheduled Handback Times and Scheduled Handover Times (incorporating such revisions) comply with the minimum Maintenance Window requirements set out in Paragraph 1(e) and Table 1 (*Minimum Maintenance Window Requirements*) both of Appendix B (*Rules of the Fleet: Requirements*) to Part A (*Dispatch Requirements*) of Schedule 2 (*Availability*); and
- (d) all other specified details in the Dispatch Requirements shall remain unchanged.

2.3 The Operator may also issue revisions to its Dispatch Requirements:

- (a) (subject to Paragraph 2.4) for up to (and including) eight (8) separate days in any Reporting Period by providing the TSP with not less than twenty-eight (28) days' notice of the change; or
- (b) as otherwise agreed by the TSP, and the TSP shall use reasonable endeavours to agree any such amendments,

provided that:

- (i) for these purposes the minimum number of Half Set Equivalents specified in the Rules of the Depot relating to each Depot location shall be reduced to zero;
- (ii) the Dispatch Requirements as amended by such revisions comply with the requirements specified in Paragraph 1.1 (as modified by Paragraph 2.3(b)(i)); and
- (iii) the Operator shall return, as a minimum, in advance on that day or previous days a number of Sets of each Type to the relevant Depots that corresponds with the number of outgoing Sets in the Dispatch Requirements as amended by such revisions.

2.4 The eight (8) days allowance referred to in Paragraph 2.3(a) is subject to the following:

- (a) in any Reporting Period the aggregate of:
 - (i) the number of days in respect of which the Operator may revise the Dispatch Requirements pursuant to Paragraph 2.3(a); plus
 - (ii) the number of days in respect of which the Operator may vary the agreed return of Sets pursuant to Paragraph 3(a) of Part I (*Handback of Sets*) of Schedule 2 (*Availability*),

shall be eight (8); and

- (b) the eight (8) days permitted per Reporting Period may be increased up to a maximum of thirteen (13) days in a Reporting Period in accordance with Paragraph 3(ii) of Part I (*Handback of Sets*) of Schedule 2 (*Availability*).

2.5 The Operator may also issue revisions to its Dispatch Requirements in respect of the number of Sets to be made available at any of the Depots where the Dispatch Requirements contemplate fewer Sets being made available than the Maximum Available Sets specified in Table 1 (*Minimum Maintenance Window Requirements*) of Appendix B (*Rules of the Fleet: Requirements*) to Part A (*Dispatch Requirements*) of Schedule 2 (*Availability*), as follows:

- (a) the Operator may, by not less than two (2) days' written notice to the TSP, revise its Dispatch Requirements to include any additional Set or additional Sets up to a total of the Maximum Available Sets specified in Table 1 (*Minimum Maintenance Window Requirements*) of Appendix B (*Rules of the Fleet: Requirements*) to Part A (*Dispatch Requirements*) of Schedule 2 (*Availability*) which revised Dispatch Requirements shall comply with the requirements specified in Paragraph 1.1; and
- (b) in respect of any additional Set the Operator requires to be made available pursuant to this Paragraph 2.5, if such Set is not and, but for the operation of this Paragraph 2.5(b), would not be at the Entry Depot at the Handover Time specified in the Dispatch Requirements for such Set, the Operator shall, in a timescale agreed with the TSP (such agreement not to be unreasonably withheld) move such Set to the Entry Depot specified in the Dispatch Requirements.

2.6 The Operator may also issue revisions to its Dispatch Requirements pursuant to Paragraph 3.3.

Network Rail Plan of the Day

2.7 The TSP acknowledges that, as a result of any Plan of the Day issued by Network Rail which affects the Operator's operations, it may be necessary to amend the Dispatch Requirements in respect of the affected day. Upon such event, the Operator shall notify the TSP of the amended Dispatch Requirements for the affected day as it reasonably requires as a result of the relevant Plan of the Day, as soon as the Operator is reasonably able to do so and such amended Dispatch Requirements shall comply with the Disruption Capacity Parameters and the requirements specified in Paragraph 1.1 (other than Paragraph 1.1(a)(i)). The TSP shall use reasonable endeavours to make Sets available to the Operator in accordance with such amended Dispatch Requirements.

2.8 Where the events or circumstances which have impacted on the Operator's operations pursuant to the relevant Plan of the Day as contemplated in Paragraph 2.7, in the reasonable opinion of the Operator, are likely to continue, the Operator and the TSP shall, without prejudice to Paragraph 2.7, consult with respect to amending the Dispatch Requirements for the anticipated duration of such events or circumstances, whether in the form proposed by the Operator pursuant to Paragraph 2.7 where the TSP is agreeable to such form or in such other form as otherwise agreed by the Operator and the TSP. If the proposed amended Dispatch Requirements are within the Disruption Capacity Parameters but exceed the Priced Workload Parameters, the TSP may agree to such amended Dispatch Requirements at its sole discretion. As part of the agreement by the

Operator and the TSP of a form of amended Dispatch Requirements, the Operator shall notify the TSP whether such amended Dispatch Requirements shall be:

- (a) the Dispatch Requirements for the purposes of this Agreement as from the effective date of such amendment as set out in the relevant agreement, in which case any subsequent amendments thereto shall be made in accordance with this Agreement; or
- (b) temporary Dispatch Requirements for the purposes of this Agreement as from the effective date of such amendment as set out in the relevant agreement, in which case the Operator shall be entitled to revert to the Original Dispatch Requirements upon notice to the TSP in accordance with the following:
 - (i) the Operator shall, as soon as reasonably practicable, notify the TSP of the proposed date of reversion to the Original Dispatch Requirements (the **Reversion Date**);
 - (ii) the Original Dispatch Requirements shall be the Dispatch Requirements as from the Reversion Date (as if the events or circumstances which have impacted on the Operator's operation had not occurred) without further action or notice by either the TSP or the Operator;
 - (iii) notwithstanding Paragraph 2.8(b)(ii), the relevant Handbacks immediately prior to the Reversion Date shall be carried out in accordance with the Original Dispatch Requirements;
 - (iv) the TSP shall, subject to Paragraph 2.8(b)(v), comply with the Dispatch Requirements in accordance with this Agreement as from the Reversion Date; and
 - (v) if the Operator has given less than three (3) days' notice of reversion to the TSP, the TSP shall use reasonable endeavours to Handover the Sets in accordance with the Original Dispatch Requirements between the Reversion Date and the later of:
 - (A) the date falling three (3) days after the notice of reversion; and
 - (B) the date upon which any backlog of the Maintenance Arrangements is cleared, provided that the TSP can demonstrate that such backlog:
 - (I) is wholly or mainly attributable to the temporary Dispatch Requirements amended pursuant to this Paragraph 2.8; and
 - (II) the temporary Dispatch Requirements under this Paragraph 2.8 are effective for a period of more than five (5) days,

and the TSP shall continue to mitigate the effect of such backlog on the Handover of Sets in accordance with the Original Dispatch Requirements as from the date of the notice of reversion.

Alternative Turnaround Locations

- 2.9 The Operator may request the TSP to agree, as a temporary measure, alternative turnaround location (different from the location specified in Table 2 (*Turnaround Locations*) of Appendix B (*Rules of the Fleet: Requirements*) to Part A (*Dispatch Requirements*) of Schedule 2 (*Availability*)) which, if agreed, shall for the agreed duration be deemed a Turnaround Location for the purposes of this Agreement, provided that the TSP shall not be responsible for:
- (a) providing any additional replenishment facilities or discharge facilities at such alternative turnaround location; or
 - (b) for any costs in gaining access to any shore supply at such alternative turnaround location.

3. AD-HOC AVAILABILITY

- 3.1 The Operator may request the TSP to make available a Set or Sets in excess of the Maximum Available Sets specified in Table 1 (*Minimum Maintenance Window Requirements*) of Appendix B (*Rules of the Fleet: Requirements*) to Part A (*Dispatch Requirements*) of Schedule 2 (*Availability*) provided such request complies with the requirements specified in Paragraph 1.1 in all respects, except for the Maximum Available Sets being exceeded.
- 3.2 The TSP shall use reasonable endeavours to make additional Sets available to satisfy any such Operator request, having regard to the TSP's resilience and maintenance requirements and subject to the TSP's ability to comply with its other obligations under this Agreement.
- 3.3 The TSP shall notify the Operator of whether it is able to make any additional Sets available pursuant to any such request by the Operator and, if it is able to do so, the Operator may require those Sets to be made available by providing to the TSP written notice confirming that it requires such Sets to be made available and amending the Dispatch Requirements for that day to include such Sets.
- 3.4 Except with respect to any additional Set provided pursuant to and in accordance with Paragraph 3.5, a Marginal Set Payment Adjustment shall be made pursuant to Paragraph 2.10 of Part A (*TARA Payments*) of Schedule 5 (*Payment*) in respect of each additional Set that the Operator notifies the TSP is required to be included in the relevant Dispatch Requirements for that day in accordance with Paragraph 3.3.
- 3.5 The Operator may, in respect of each occasion on which a Set would, but for the operation of the Allowable Availability Incident Threshold be Unavailable (an **Allowable Availability Incident**), request that the TSP make available to it a Set under Paragraph 3.1 on one occasion during the following six (6) month period (a **Free Set**). In these circumstances, the notice provided under Paragraph 3.1 shall specify that the Set is being requested in connection with the relevant Allowable Availability Incident.
- 3.6 If in any Contract Year in which the Operator has requested at least five (5) Free Sets, the TSP fails to make available at least fifty per cent. (50%) of the Free Sets requested by the Operator, then, in the following Contract Year only, the Allowable Availability Incident Threshold shall be three (3) Allowable Availability Incidents.

4. NO OTHER AMENDMENTS TO DISPATCH REQUIREMENTS

The Operator may not revise its Dispatch Requirements otherwise than in accordance with:

- (a) Paragraph 1, 2 or 3; or
- (b) the agreement (not to be unreasonably withheld) of the TSP, provided that the revisions comply with Paragraph 1.1.

5. REVIEW OF DISPATCH REQUIREMENTS

The TSP shall review the Dispatch Requirements issued or revised by the Operator pursuant to this Part A (*Dispatch Requirements*) of Schedule 2 (*Availability*) and if the TSP is of the opinion that the Dispatch Requirements do not comply with Paragraph 1.1, the TSP shall inform the Operator of its opinion and provide to the Operator the supporting details:

- (a) within twenty-eight (28) days from the date of issuance of the Dispatch Requirements or the date of issuance of the revised Dispatch Requirements, as the case may be, for the purposes of Paragraphs 1.2 and 2.1;
- (b) within fourteen (14) days from the date of issuance of the revised Dispatch Requirements for the purposes of Paragraphs 2.2 and 2.3;
- (c) within one (1) day from the date of issuance of the revised Dispatch Requirements for the purposes of Paragraph 2.5; and
- (d) as soon as reasonably practicable for the purposes of Paragraphs 2.6 and 2.8, which may be within the day in certain circumstances,

and such comments received from the TSP shall be considered in good faith and shall be discussed between the parties in accordance with Part A (*Contract Management*) of Schedule 4 (*Contract Management and Compliance*). The parties acknowledge and agree that any review by the TSP of the Dispatch Requirements and the provision of comments or opinions to the Operator shall not absolve the Operator from any of its obligations under this Agreement.

Appendix A
to Part A of Schedule 2
Rules of the Depot

Great Western Main Line- Phase 1	
Depot Location: Maliphant (Swansea)	Maliphant is located approximately 0.5 miles East of Swansea Station adjacent to the down main line

Workload and Capacity Table

Parameter	Rules and Constraints		Operational Arrangements
Priced Workload	Total number of Half Set Equivalents that may be Handed Back to the Depot in any 24 hour period (for a Maintenance Window) in accordance with the rules and constraints set out in the Physical Characteristics Table pertaining to the relevant Depot:	Max Min	18 Half Set Equivalents 6 Half Set Equivalents
Constant Maximum Workload	Potential total number of Half Set Equivalents that could be Handed Back to the Depot in any 24 hour period (for a Maintenance Window) subject to a Variation and in accordance with the rules and constraints set out in the Physical Characteristics Table pertaining to the relevant Depot:	Max Min	44 Half Set Equivalents 6 Half Set Equivalents
Disruption Capacity	Potential total number of Half Set Equivalents that may be accommodated in the Depot concurrently (excluding those Sets (expressed in Half Set Equivalents) that the TSP is entitled to withhold from service) as set out in the Physical Characteristics Table pertaining to the relevant Depot:	Max Min	16 Half Set Equivalents 0 Half Set Equivalents

Great Western Main Line- Phase 1	
Depot Location: Maliphant (Swansea)	Maliphant is located approximately 0.5 miles East of Swansea Station adjacent to the down main line

Physical Characteristics Table

Parameter	Rules and Constraints	Operational Arrangements
Maximum number of concurrent Half Set Equivalents	<p>Number of Half Set Equivalents that may be accommodated in the Depot concurrently (for a Maintenance Window, Layover, as a Traffic Spare Set or other reason) excluding those Sets (expressed in Half Set Equivalents) that the TSP is entitled to withhold from service):</p> <p>14 Half Set Equivalents</p>	<p>Maximum number of Full Sets that can be accommodated: 7</p> <p>The Handover Time for the 13th and 14th Half Set Equivalents that are the last Half Set Equivalents to be Handed Back to the Depot shall be any time after the expiry of the shortest Maintenance Window of that depot and such Maintenance Window shall only commence after that Depot has on it less than 13 Half Set Equivalents (excluding those Sets that the TSP is entitled to withhold from service).</p>
Arrival rate	<p>Minimum time interval between consecutive arrivals onto the Depot: Planned exit from traffic:</p> <p>4 arrivals per hour 10 minute interval</p>	<p>For the purposes of the Dispatch Requirements, the maximum arrival and departure formation is 10-vehicles Formations of more than 10-vehicles may be accommodated on a planned</p>

				basis subject to a Variation.
Departure rate	Minimum time interval between consecutive departures from the Depot: Planned entry to traffic:	4 departures per hour 10 minute interval		For the purposes of the Dispatch Requirements, the maximum arrival and departure formation is 10-vehicles. Formations of more than 10-vehicles may be accommodated on a planned basis subject to a Variation.
Connections	Connection to the Great Western IEP Network (Physical depot entry/exit points):	Connection via: Down Main / Carriage Washer Line (to / from Swansea Station Platforms 1, 2, 3 and 4) Connection via: Carriage Washer Line (to / from Swansea Station Platforms 3 and 4 only)		
Designated depot handback points	Designated depot handback point: (for Sets arriving on Depot)	The Reception Road and the Shed Approach road		The Diagrams and the Operator's driver diagrams shall include the Transit Time and any activity that the Operator's driver needs to undertake prior to Handback (such activity not to exceed 5 minutes). The TSP is responsible for all movements required during the Maintenance Window.
Transit Time to Handback Points	Transit Time: between the Connection and the Handback Point:	Transit Time – 5 minutes		
Designated depot handover points	Designated depot handover point (for Sets departing Depot):	Roads 1 to 8 and the Shed Approach road		The Diagrams and the Operator's driver diagrams shall include the Transit Time and any activity that the Operator's driver needs to undertake after Handover (such activity not to exceed 10 minutes).
Transit Time from Handover Points	Transit Time between the Handover Point and the Connection:	Transit Time – 5 minutes		

<p>Layover capability</p>	<p>Fuelling, water tank replenishment, toilet retention tank discharge and external train wash capability during a Layover:</p>	<p>Minimum time between Arrival Time and Departure Time for filling fuel and/or water tank to capacity (from empty) and discharging toilet retention tanks (including movements): 50 minutes</p>	<p>Where a Layover is less than 50 minutes, the TSP shall refill the fuel and/or water tank and/or empty the toilet retention tank to the level agreed with the Operator given the time available.</p>
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Great Western Main Line- Phase 1	
Depot Location: North Pole (London)	Former Eurostar Depot located approximately 2.0 miles west of Paddington Station on south side of GWML

Workload and Capacity Table

Parameter	Rules and Constraints		Operational Arrangements
Priced Workload	Max Min	Total number of Half Set Equivalents that may be Handed Back to the Depot in any 24 hour period (for a Maintenance Window) in accordance with the rules and constraints set out in the Physical Characteristics Table pertaining to the relevant Depot:	34 Half Set Equivalents 12 Half Set Equivalents
Constant Risk Maximum Workload	Max Min	Potential total number of Half Set Equivalents that could be Handed Back to the depot in any 24 hour period (for a Maintenance Window) subject to a Variation and in accordance with the rules and constraints set out in the Physical Characteristics Table pertaining to the relevant Depot:	50 Half Set Equivalents 12 Half Set Equivalents
Disruption Capacity	Max Min	Potential total number of Half Set Equivalents that may be accommodated in the Depot concurrently (excluding those Sets (expressed in Half Set Equivalents) that the TSP is entitled to withhold from service) as set out in the Physical Characteristics Table pertaining to the relevant Depot:	42 Half Set Equivalents 0 Half Set Equivalents
			Maximum concurrent number of Full Sets that can be accommodated: 20

Great Western Main Line- Phase 1	
Depot Location: North Pole (London)	Former Eurostar Depot located approximately 2.0 miles west of Paddington Station on south side of GWML

Physical Characteristics Table

Parameter	Rules and Constraints	Operational Arrangements
Maximum of concurrent Half Set Equivalents	Set Equivalents: Number of Half Set Equivalents that may be accommodated in the Depot concurrently (for a Maintenance Window, Layover, as a Traffic Spare Set or other reason) excluding those Sets (expressed in Half Set Equivalents) that the TSP is entitled to withhold from service): 32 Half Set Equivalents	Maximum number of Full Sets that can be accommodated: 16
Arrival rate	Minimum time interval between consecutive arrivals onto the Depot: Planned exit from traffic:	For the purposes of the Dispatch Requirements, the maximum arrival and departure formation is 10-vehicles. Formations of more than ten vehicles may be accommodated on a planned basis subject to a Variation.
Departure rate	Minimum time interval between consecutive departures from the Depot:	For the purposes of the Dispatch Requirements, the maximum arrival and departure formation is 10-vehicles.

	Planned entry to traffic:		Formations of more than ten vehicles may be accommodated on a planned basis subject to a Variation.
Connections:	Connection point(s) to the Great Western IEP Network: (Physical depot entry/exit points)	<p>East Connection 1 via: Down Main Line</p> <p>East Connection 2 and 3 via: Up and Down Engine and Carriage</p> <p>South Connections via: Down West London Line</p>	
Designated depot handback points:	Designated depot handback point: (for Sets arriving on Depot)	The 6 x roads designated as the Transfer Sidings at the east end of the depot	The Diagrams and the Operator's driver diagrams shall include the Transit Time and any activity that the Operator's driver needs to undertake prior to Handback (such activity not to exceed 5 minutes).
Transit Time to Handback Points:	Transit Time: between the Connection point and the Handback Point:	Transit Time – 5 minutes	The TSP is responsible for all movements required during the Maintenance Window.
Designated depot handover points:	Designated depot handover point: (for Sets departing Depot)	The 6 x roads designated as the Transfer Sidings at the east end of the depot	The Diagrams and the Operator's driver diagrams shall include the Transit Time and any activity that the Operator's driver needs to undertake after Handover (such activity not to exceed 10 minutes).
Transit Time from Handover Points:	Transit Time: between the Handover Point and the Connection:	Transit Time – 5 minutes	
Layover	Fuelling, water tank replenishment, toilet	Minimum time between Arrival	Where a Layover is less than 50 minutes, the

capability:	retention tank discharge and external train wash capability during a Layover:	Time and Departure Time for filling fuel and/or water tank to capacity (from empty) and discharging toilet retention tanks (including movements); 50 minutes	TSP shall refill the fuel and/or water tank and/or empty the toilet retention tank to the level agreed with the Operator given the time available.
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Great Western Main Line- Phase 1	
Depot Location: Stoke Gifford (Bristol)	Located West of Bristol Parkway on the Triangle between the Avonmouth Line and South Wales Line

Workload and Capacity Table

Parameter	Rules and Constraints		Operational Arrangements
Priced Workload:	<p>Max</p> <p>Min</p>	<p>34 Half Set Equivalents</p> <p>16 Half Set Equivalents</p>	
Constant Risk Maximum Workload:	<p>Total number of Half Set Equivalents that may be Handed Back to the Depot in any 24 hour period (for a Maintenance Window) in accordance with the rules and constraints set out in the Physical Characteristics Table pertaining to the relevant Depot:</p> <p>Potential total number of Half Set Equivalents that could be Handed Back to the Depot in any 24 hour period (for a Maintenance Window) subject to a Variation and in accordance with the rules and constraints set out in the Physical Characteristics Table pertaining to the relevant Depot:</p>		<p>Max</p> <p>Min</p>
Disruption Capacity:	<p>Potential total number of Half Set Equivalents that may be accommodated in the Depot concurrently (excluding those Sets (expressed in Half Set Equivalents) that the TSP is entitled to withhold from service) as set out in the Physical Characteristics Table pertaining to the relevant Depot:</p>		<p>Max</p> <p>Min</p>
		<p>54 Half Set Equivalents</p> <p>16 Half Set Equivalents</p>	<p>40 Half Set Equivalents</p> <p>0 Half Set Equivalents</p>
			<p>Maximum concurrent number of Full Sets that can be accommodated: 16</p>

Great Western Main Line- Phase 1	
Depot Location: Stoke Gifford (Bristol)	Located West of Bristol Parkway on the Triangle between the Avonmouth Line and South Wales Line

Physical Characteristics Table

Parameter	Rules and Constraints		Operational Arrangements
Maximum number of concurrent Half Set Equivalents:	Number of Half Set Equivalents that may be accommodated in the Depot concurrently (for a Maintenance Window, Layover, as a Traffic Spare Set or other reason) excluding those Sets (expressed in Half Set Equivalents) that the TSP is entitled to withhold from service):	34 Half Set Equivalents	Maximum concurrent number of Full Sets that can be accommodated: 13
Arrival rate:	Minimum time interval between consecutive arrivals onto the Depot: Planned exit from traffic:	5 arrivals per hour 10 minute interval	For the purposes of the Dispatch Requirements, the maximum arrival and departure formation is 15-vehicles. Formations in excess of 10-vehicles shall be limited to a maximum of 2 (aggregate) arrivals/departures per hour with a minimum separation of 30 minutes between such arrivals/departures. All other arrival/departure formations shall be a maximum of 10-vehicles.
Departure rate:	Minimum time interval between consecutive departures from the Depot: Planned entry to traffic:	5 departures per hour 10 minute interval	For the purposes of the Dispatch Requirements, the maximum arrival and departure formation is 15-vehicles. Formations in excess of 10-vehicles shall be limited to a maximum of 2 (aggregate) arrivals/departures per hour with a minimum

				separation of 30 minutes between such arrivals/departures. All other arrival/departure formations shall be a maximum of 10-vehicles.
Connections:	Connection to the Great Western IEP Network: (Physical depot entry/exit points)	East Connection A (mainly departures) via: - Down Tunnel Line East Connection B (mainly arrivals) via: - Avonmouth Line		
Designated Depot Handback Points:	Designated depot handback point: (for Sets arriving on Depot)	The Reception/Serviceing Roads (if the Sets are routed via East Connection B) and Stabling Sidings (if the Sets are routed via East Connection A) (15-vehicles clear of mainline)		The Diagrams and the Operator's driver diagrams shall include the Transit Time and any activity that the Operator's driver needs to undertake prior to Handback (such activity not to exceed 5 minutes). The TSP is responsible for all movements required during the Maintenance Window.
Transit Time to Handback Points:	Transit Time: between the Connection and the Handback Point:	Transit Time – 5 minutes		
Designated Depot Handover Points:	Designated depot handover point: (for Sets departing Depot)	The Reception/Serviceing Roads (if the Sets are routed via East Connection B) and Stabling Sidings (if the Sets are routed via East Connection A) (15-vehicles clear of mainline)		The Diagrams and the Operator's driver diagrams shall include the Transit Time and any activity that the Operator's driver needs to undertake after Handover (such activity not to exceed 10 minutes)
Transit Time	Transit Time: between the Handover	Transit Time – 5 minutes		

<p>from Handover Points:</p>	<p>Point and the Connection:</p>		
<p>Layover capability:</p>	<p>Fuelling, water tank replenishment, toilet refention tank discharge and external train wash capability during a Layover:</p>	<p>Minimum time between Arrival Time and Departure Time for filling fuel and/or water tank to capacity (from empty) and discharging toilet retention tanks (including movements); 50 minutes</p>	<p>Where a Layover is less than 50 minutes, the TSP shall refill the fuel and/or water tank and/or empty the toilet retention tank to the level agreed with the Operator given the time available.</p>

Appendix B

to Part A of Schedule 2

Rules of the Fleet: Requirements

Diagrams and Maintenance Windows

1. The Dispatch Requirements and any revisions thereto shall be configured by the Operator:
 - (a) to require a number of Diagrams for each Set Type that is not greater at any point in time than the Maximum Available Sets stated in Table 1 (*Minimum Maintenance Window Requirements*) of Appendix B (*Rules of the Fleet: Requirements*) to this Part A (*Dispatch Requirements*) of Schedule 2 (*Availability*) for that Set Type;
 - (b) to create for each Set Type at least one (1) sequence of successive Diagrams that will be capable of delivering a Set from the starting location of each Diagram for that Set Type to one of the seven (7) hour or nine (9) hour Maintenance Windows shown for Depot Location 1 for that Set Type in Table 1 (*Minimum Maintenance Window Requirements*) of Appendix B (*Rules of the Fleet: Requirements*) to this Part A (*Dispatch Requirements*) of Schedule 2 (*Availability*) within four (4) Operational Days:
 - (i) anticipating an appropriate allocation by the TSP of Sets to Diagrams at each Depot as necessary to fulfil such sequence;
 - (ii) without requiring out-of-course empty coaching stock movements or swapping of Sets between Diagrams during any Operational Day; and
 - (iii) without causing non-compliance with the minimum Maintenance Windows required for that Set Type in accordance with Paragraphs 1(e)(iii) and 1(e)(iv),
except:
 - (A) that the Operator shall be entitled to deliver Specific Sets to the TSP in accordance with Paragraph 2(d) of Part I (*Handback of Sets*) of Schedule 2 (*Availability*) instead of complying with Paragraphs 1(b)(i) to (iii) (inclusive) by specifying such intention in the Dispatch Requirements and such right can be exercised by the Operator at its sole discretion;
 - (B) in respect of the amended Dispatch Requirements issued under Paragraph 2.3, 2.7 or 2.8 of Part A (*Dispatch Requirements*) of Schedule 2 (*Availability*) and where the Operator is unable to comply with Paragraphs 1(b)(i) to (iii) (inclusive), in which case Paragraph 2(e) of Part I (*Handback of Sets*) of Schedule 2 (*Availability*) shall apply; or
 - (C) where otherwise agreed at the TSP's sole discretion;
 - (c) to cause the balancing of the Diagrams such that, for each location, the required quantity and orientation of Sets of each Type can be made available each day

solely from the Sets previously delivered to that location by the Diagrams on or prior to that day and not subsequently made available for service;

- (d) to cause, for each Set Type, not fewer than one (1) Diagram per day for which both the Handover Point and the Handback Point are located at the Depot Location 1 listed for such Set Type in Table 1 (*Minimum Maintenance Window Requirements*) of Appendix B (*Rules of the Fleet: Requirements*) to this Part A (*Dispatch Requirements*) of Schedule 2 (*Availability*) and pertained to a nine (9) hour Maintenance Window; and
- (e) to comply with the following Maintenance Window requirements:
 - (i) a Maintenance Window shall be provided at the end of each Diagram at one of the locations identified in the Rules of the Depot, in compliance with the requirements of Table 1 (*Minimum Maintenance Window Requirements*) of Appendix B (*Rules of the Fleet: Requirements*) to this Part A (*Dispatch Requirements*) of Schedule 2 (*Availability*) and no Diagram shall exceed thirty-six (36) hours in duration unless otherwise agreed at the TSP's sole discretion;
 - (ii) the TSP shall be permitted in all cases, except where otherwise specified under this Agreement, to determine the works appropriate to be undertaken during any given Maintenance Window;
 - (iii) a minimum quantity of Maintenance Windows having a minimum duration as set out in Table 1 (*Minimum Maintenance Window Requirements*) of Appendix B (*Rules of the Fleet: Requirements*) to this Part A (*Dispatch Requirements*) of Schedule 2 (*Availability*) shall be provided for each Set Type at the Depot locations shown; and
 - (iv) all Maintenance Windows for which a minimum duration is not specified in Table 1 (*Minimum Maintenance Window Requirements*) of Appendix B (*Rules of the Fleet: Requirements*) to this Part A (*Dispatch Requirements*) of Schedule 2 (*Availability*) shall have a minimum duration of three hours and forty-five minutes (3.75) (or three hours and thirty minutes (3.5) if the Operator has taken the relevant Set through the exterior wash at the respective Depot prior to the Handback).

- 2. The maximum mileage and duration that may be diagrammed between consecutive Maintenance Windows shall be the sooner to occur of one thousand and five hundred (1,500) miles or thirty-six (36) hours or such other longer period as agreed at the TSP's sole discretion.

Out-Stabling

- 3. The Operator shall be entitled to out-stable any Set at any Permitted Out-Stabling Location and during such out-stabling:
 - (a) no Handover or Handback shall take place so that the Set shall remain in the care, custody and control of the Operator and in the same Operational Day and in the same Diagram; and

- (b) the Operator shall provide access to the relevant Sets to enable the TSP to carry out minor ad-hoc maintenance activities such as checks, repairs and TSP Daily In-Service Checks,

provided that:

- (i) the total number of Sets out-stabled each day shall not exceed the maximum quantity listed in Table 3 (*Permitted Out-Stabling Locations*) of this Appendix B (*Rules of the Fleet: Requirements*) to this Part A (*Dispatch Requirements*) of Schedule 2 (*Availability*);
- (ii) each Set shall be out-stabled by the Operator such that the Set is electrically connected to the overhead line supply or a compatible shore supply;
- (iii) for a minimum of ninety (90) minutes, the Set shall be available at the Permitted Out-Stabling Location for the TSP to carry out such minor ad-hoc maintenance activities and, as a minimum at the commencement of such activities and the completion of such activities, the Operator shall position the Set for the TSP to reasonably gain access for staff bearing materials such as Consumables and spares, tools and test equipment and for such staff to board and alight without requiring personal track safety certificates, unless otherwise agreed; and
- (iv) the Operator shall provide access for the TSP staff to toilet facilities and basic shelter at no cost to the TSP.

4. The Operator shall be entitled to out-stable any Set at any other location (other than the Permitted Out-Stabling Location), and during such out-stabling:

- (a) no Handover or Handback shall take place so that the Set shall remain in the care, custody and control of the Operator and in the same Operational Day and in the same Diagram;
- (b) each Set shall be out-stabled by the Operator such that the Set is electrically connected to the overhead line supply or a compatible shore supply (unless otherwise agreed); and
- (c) the Operator shall provide access to the relevant Sets to enable the TSP to carry out minor ad-hoc maintenance activities and the TSP, having assessed the access provided by the Operator to the Set and contemplated by Paragraph 3(b)(iii), may, at its sole discretion, agree to carry out such activities.

5. The Operator shall, where either:

- (a) agreed between the Operator and the TSP in accordance with Paragraph 1 of Part H (*Layover*) of Schedule 2 (*Availability*); or
- (b) during the out-stabling of any Set in accordance with Paragraph 3 or 4,

ensure that the engines in such Set are shut down for such period as agreed with the TSP, and in any event the Operator shall not override the built in engine usage protections.

TABLE 1. MINIMUM MAINTENANCE WINDOW REQUIREMENTS

Set Type	Total Sets in Fleet	Maximum Available Sets			Maintenance Window	Minimum Quantity of Maintenance Windows per Day														
		Mon to Fri	Sat	Sun		Depot Location 1			Depot Location 2			Depot Location 3			Total					
						Depot	Minimum Quantity per 24 hour period	Minimum Quantity with overlap of not less than 3.75 hours	Depot	Minimum Quantity per 24 hour period	Minimum Quantity with overlap of not less than 3.75 hours	Depot	Minimum Quantity per 24 hour period	Minimum Quantity with overlap of not less than 3.75 hours						
Electric Set	21	18	18	18	9 hours	North Pole	1		Stoke Gifford	-		N/a	-		N/a	-		15		
					7 hours	North Pole	4	4	Stoke Gifford	3	3	N/a	-	-						
					3.75 hours	North Pole	-		Stoke Gifford	2		N/a	-							
Bi-Mode Set	36	32	32	32	9 hours	Stoke Gifford	2		North Pole	-		Maliphant	-		Maliphant	-		24		
					7 hours	Stoke Gifford	6	6	North Pole	1	-	Maliphant	2	-						
					3.75 hours	Stoke Gifford	-		North Pole	-		Maliphant	-							

TABLE 2. TURNAROUND LOCATIONS

Case	Turnaround Locations	Maximum number of Half Set Equivalents per day
GWML	London Paddington	210
GWML	Cardiff Central, Bristol Temple Meads, Oxford, Worcester, Great Malvern, Weston-super-Mare, Cheltenham Spa, Hereford, Exeter, Taunton, Swansea, Westbury and Paignton	190

TABLE 3. PERMITTED OUT-STABLING LOCATIONS

Permitted Out-Stabling Locations	Maximum number of Half Set Equivalents (total aggregate) that may be out-stabled per 24 hour period
Hereford, Exeter, Taunton and Worcester	10

Appendix C
to Part A of Schedule 2
Sets Comprised in the Fleet

Type	Number of Sets
Electric Sets	21
Bi-Mode Sets	36

Appendix D
to Part A of Schedule 2

Technical Capabilities of Relevant Type

The following technical capabilities of the Type shall be assumed for the purposes of creating Diagrams (and this list may be updated from time to time in accordance with the Design Process):

1. Maximum permitted speed – one hundred and twenty-five (125) miles per hour.
2. Indicative fuel range – planning limit for indicative purposes only: Bi-Mode 5-car set – seven hundred (700) self-power miles.

The fuel range is a function of multiple factors including route topography, passenger loading, duty cycle, driving style and headwinds. The above indicative fuel range is calculated in accordance with annex H (*Assumptions for the Calculation of Fuel Range*) of the Train Technical Specification for the Set operating in self-powered mode on a route having the characteristics defined in Diagram C for the section between Newbury and Paignton, and using the following parameters. The TSP shall not be obliged to achieve the indicative fuel range other than for the following specific combination of route and parameters:

- (i) a passenger loading of one hundred and eight (108) passengers per intermediate Vehicle;
- (ii) a passenger loading of eighty eight (88) passengers per driving Vehicle (where this contains seating);
- (iii) a mean passenger mass of eighty (80) kgs;
- (iv) the use of the existing infrastructure without any proposed enhancement;
- (v) the current line speed profiles without any stops or delays other than station stops;
- (vi) no allowances for en route or at destination performance, pathing or engineering times;
- (vii) maximum acceleration;
- (viii) still air;
- (ix) all braking with brake force equivalent to six per cent. (6%) g constant deceleration on level track;
- (x) an ambient temperature of thirty (30) degrees C;
- (xi) all station dwells to be assumed to take two (2) minutes;
- (xii) a turnaround time of thirty (30) minutes at the end of each leg;
- (xiii) the weight of the Sets are in accordance with the Train Technical Description;

- (xiv) the engine Fuel consumption is based on current Tier I engine (an engine which is non-compliant with the Non-Road Mobile Machinery Directive for stage IIIb emissions) plus three per cent. (3%) margin;
 - (xv) the engine data is based on the condition of one hundred (100) kPa barometric pressure, twenty five (25) degrees C inlet air temperature and one (1) kPa water vapour pressure; and
 - (xvi) best driving style is used for this simulation.
3. Maximum train formation:
- (a) In Passenger Service – the shorter of twelve (12) Vehicles or two (2) Sets;
 - (b) ECS working or rescue / recovery working – the shorter of four (4) Sets or twenty four (24) Vehicles;
 - (c) Depot arrivals and departures – the shorter of three (3) Sets or fifteen (15) Vehicles; and
 - (d) Providing traction power – the shorter of:
 - (i) formations of complete Sets not exceeding twelve (12) Vehicles in length; and
 - (ii) two (2) Sets.
4. Acceleration shall comply with the requirements of annex S (Acceleration Rates) of the Train Technical Description.
5. Door open and close times:
- (a) Door open time – four (4) seconds, measured from door release command by the driver to doors fully open (excluding any time lag between the passenger door open button becoming enabled and being operated by the passenger); and
 - (b) Door close time – eight (8) seconds, measured from door close command by the driver to doors fully closed (and completion of door interlock circuit), excluding any DOO / DGO procedures to check the platform and check that the doors are clear.
6. Service braking performance shall comply with Railway Group Standard GM/RT2044 Figure 3, Curve A3.
7. Route restrictions – Great Western IEP Network.
8. Maximum engine pre-heat time – sixty (60) minutes (or a lesser time to be agreed during the Detailed Design Review Stage), measured from the time engine pre-heat is initiated (provided shore supply or OLE supply is connected and supplying power) on a cold engine (at ambient temperature) to the point at which the engine has reached start temperature and can be started.
9. Maximum engine warm up time for a fully pre-heated engine – one (1) minute (or a lesser time to be agreed during the Detailed Design Review Stage), measured from the time the engine is started until the earliest point at which traction power is demanded under self-powered mode.

10. Maximum cab boot up time – three (3) minutes, measured from insertion of the driver's key until the train formation is available to operate. This shall include all train borne system reconfiguration activities such as ETCS, GSM-R Monitoring System, Train Management System and brake proving, but shall exclude any BR-ATP System start up time.
11. Maximum change end time – three (3) minutes, measured from the train formation being available to operate from one cab until the new train formation is available to operate from another cab. This shall include all train borne system reconfiguration activities such as ETCS, GSM-R Monitoring System, Train Management System and brake proving, but shall exclude:
 - (a) any train crew walking time between cabs; and
 - (b) any BR-ATP System start up time.
12. Maximum coupling cycle time – two (2) minutes, measured from the original train formation being available to operate individually until the new train formation is available to operate as a coupled train. This shall include all train borne system reconfiguration activities such as ETCS, GSM-R Monitoring System, Train Management System and brake proving, but shall exclude:
 - (a) any train crew walking time between cabs; and
 - (b) any BR-ATP System start up time.
13. Maximum uncoupling cycle time – two (2) minutes, measured from the original train formation being available to operate as a coupled train until each of the new train formations is available to operate individually. This shall include all train borne system reconfiguration activities such as ETCS, GSM-R Monitoring System, Train Management System and brake proving, but shall exclude:
 - (a) any train crew walking time between cabs; and
 - (b) any BR-ATP System start up time.
14. Maximum power changeover cycle times:
 - (a) Electric to self-power – twenty five (25) seconds, measured from the Sets being available to operate in electric mode until the Sets are available to operate in self-powered mode. This shall assume that no other reconfiguration is required; and
 - (b) Self-power to electric – twenty five (25) seconds, measured from the Sets being available to operate in self-powered mode until the Sets are available to operate in electric mode. This shall assume that no other reconfiguration is required and shall assume that the pantograph requires raising.
15. Maximum cab shut down times – five (5) minutes. This shall include all train borne system reconfiguration (including logging off) activities such as ETCS, GSM-R Monitoring System and Train Management System, but shall exclude any recording by the driver of In-Service Faults or other comments or notes on the Train Management System.

Part B of Schedule 2

Handover

1. AVAILABILITY

- 1.1 The TSP shall (or in the circumstances of Paragraphs 2.7 and 2.8(b)(v) of Part A (*Dispatch Requirements*) of Schedule 2 (*Availability*), Paragraphs 1.1 and 1.2 of Part D (*Deviation from Dispatch Requirements*) of Schedule 2 (*Availability*) and Paragraph 4 of Part I (*Handback of Sets*) of Schedule 2 (*Availability*) and subject to the terms thereof, the TSP shall use reasonable endeavours to) make Sets available to the Operator in accordance with the Operator's Dispatch Requirements and in compliance with this Part B (*Handover*) of Schedule 2 (*Availability*) and so that each Set is able to operate to the requirements of the respective Diagram for the relevant day.
- 1.2 The TSP shall allocate Specific Sets to Diagrams, in accordance with the Type of the Specific Sets required under the Dispatch Requirements and shall issue each day, prior to the first Scheduled Handover Time of that day and from time to time as necessary thereafter to reflect planning and any changes agreed between the Operator and the TSP to the Operator:
- (a) a report specifying which Specific Sets have been allocated to which Diagrams (the **Set Allocation Report**); and
 - (b) a plan (the **Maintenance Assignment Plan**) specifying the TSP's reasonable requirements in connection with:
 - (i) where relevant in relation to Specific Sets, the level of required maintenance or repair and the length of required Maintenance Window;
 - (ii) where relevant in relation to Specific Sets, specific Depots and dates at which those Sets shall be Handed Back to the TSP; and
 - (iii) where relevant, the allocation of Specific Sets to future Diagrams as part of a sequence of Diagrams such as are necessary for the fulfilment by the TSP of its reasonable requirements as stated in connection with Paragraphs 1.2(b)(i) and (ii) on future days.
- 1.3 For each Specific Set allocated to future Diagrams in the Maintenance Assignment Plan pursuant to Paragraph 1.2(b)(iii), the Operator may propose to the TSP an alternative sequence of Diagrams to deliver such Specific Set in accordance with Paragraph 1.2(b)(ii), which alternative sequence shall, if agreed by the TSP (such agreement not to be unreasonably withheld or delayed), be recorded in an amended Maintenance Assignment Plan issued by the TSP.
- 1.4 The TSP shall make Sets available to the Operator on each relevant day as follows:
- (a) subject to any amendments agreed pursuant to Paragraphs 3 and 4 of Part I (*Handback of Sets*) of Schedule 2 (*Availability*), of the Type, at the Handover Point, at the Scheduled Handover Time, facing the required direction of travel and, in the case of coupled Sets, coupled in the required order, in each case, as specified in the relevant Dispatch Requirements; and
 - (b) with, in each case (except where otherwise agreed by the parties):

- (i) all fuel tanks full to capacity;
 - (ii) all sanding reservoirs full to capacity;
 - (iii) all toilet retention tanks emptied;
 - (iv) all water tanks full to capacity; and
 - (v) all windscreen washer fluid filled to capacity;
- (c) holding a Qualified Acceptance Certificate or Final Acceptance Certificate;
- (d) complying with and capable of being operated in accordance with:
- (i) all Applicable Laws and Standards (save to the extent an Applicable Derogation applies); and
 - (ii) the Operating and Maintenance Manuals;
- (e) not subject to any Category One Handover Failure;
- (f) possessing all Relevant Approvals (other than Operator Relevant Approvals); and
- (g) in a condition that enables the Operator to operate each such Set to the requirements of the relevant Diagram for that day and in accordance with the Safety Management System,

(a Set complying with Paragraph 1.4(a) to (g) (inclusive) is hereafter referred to as ***Fit for Service***).

2. TSP DAILY SET CHECKS

2.1 Before offering any Set to the Operator pursuant to Paragraph 1.4, the TSP shall undertake a daily check on that Set (the ***TSP Daily Set Check***) to determine if on that Set there are any:

- (a) Presentation Standards Failures;
- (b) Presentation KPI Standards Failures; or
- (c) Cleaning KPI Standards Failures.

2.2 The results of the TSP Daily Set Check as recorded on the Handover Certificate shall constitute the TSP's representation to the Operator as to whether or to what extent any Presentation Standards Failure, Presentation KPI Standards Failure and/or Cleaning KPI Standards Failure exist at the Handover Time.

2.3 The TSP Daily Set Check shall consist of:

- (a) conducting a walk-through of the Set by a TSP member of staff;
- (b) checking the Set's on-board automated fault-detection systems; and
- (c) such other checks and inspections as are necessary to determine whether and to what extent any Presentation Standards Failures, Presentation KPI Standards Failures and/or Cleaning KPI Standards Failures exist at the Handover Time.

3. TSP NOTIFICATION OF FAILURES

3.1 The TSP shall, prior to the Handover of the relevant Set, if any Presentation Standards Failure exists (including following the carrying out of any TSP Daily Set Check):

- (a) in the case of a Set with any Category One Handover Failure, not offer that Set to the Operator to enter into service; and
- (b) in the case of a Set with Category Two Handover Failures and/or Category Three Handover Failures only, include full details of each such Category Two Handover Failure and Category Three Handover Failure on the relevant Set's Handover Certificate before offering that Set to the Operator to enter into service,

and in all cases notify the Operator Nominated Contact as soon as reasonably practicable on becoming aware of such Presentation Standards Failure, and of any operating restrictions arising from such failure, and maintain an accurate record of all Presentation Standards Failures.

3.2 The TSP shall, if any Presentation KPI Standards Failure or Cleaning KPI Standards Failure exists following the carrying out of any TSP Daily Set Check, record that failure in accordance with Paragraph 3.1(a) of Part C (*KPI Regime*) of Schedule 6 (*Performance Regime*).

4. HANDOVER

4.1 The TSP shall properly complete, in all material respects, a separate certificate (a **Handover Certificate**) to submit to the Operator in relation to each Set that the TSP offers for service and shall (taking into account Paragraph 4.2(a)(ix)) provide it to the Operator Nominated Contact and to the driver of each such Set when it is offered for service (the latter of which obligations shall be satisfied by leaving, making available or displaying any such Handover Certificate in a prominent or readily accessible position in the driver's cab of each such Set).

4.2 Each Handover Certificate shall:

- (a) include:
 - (i) the Specific Set identity;
 - (ii) the date, Entry Depot and Handover Time;
 - (iii) the Diagram to which the Set has been allocated and (except in the case of a Traffic Spare Diagram) the identity of the first scheduled movement of that Diagram on the Network;
 - (iv) except in the case of a Traffic Spare Diagram, the Entry Time and Handover Point;
 - (v) confirmation that the Set is Fit for Service (save in respect of the direction of travel, or, in the case of coupled Sets, to the extent agreed under Paragraph 1.1(e) of Part D (*Deviation from Dispatch Requirements*) of Schedule 2 (*Availability*));
 - (vi) confirmation that the TSP Daily Set Check has been carried out;

- (vii) details of any Presentation Standards Failures, Presentation KPI Standards Failures and/or Cleaning KPI Standards Failures (and details of any resulting operating restrictions);
 - (viii) details of any other Faults not covered by Paragraph 4.2(a)(vii); and
 - (ix) the stated period of validity of the Handover Certificate which shall be:
 - (A) thirty-six (36) hours following the Handover Time;
 - (B) such other longer period of time agreed at the sole discretion of the TSP; or
 - (C) such other shorter period of time agreed at the sole discretion of the Operator;
 - (b) be in a medium that accords with the prevailing technology of the time and as agreed with the Operator, which medium shall, for the purposes of notifying the driver that the Set is Fit for Service, include electronic display on the Train Management System; and
 - (c) be accepted by the Operator as valid for the shorter of the period stated on the Handover Certificate or until the subsequent Handback.
- 4.3 The TSP shall not be obliged to confirm that the Handover Certificate has been received or accepted by the Operator.

5. **EFFICIENT HANDOVER PROCESS**

The Operator may from time to time agree with the TSP any alternative practical working arrangements relating to the notification and administration of any KPI Failures under Paragraphs 2 to 4 (inclusive) of this Part B (*Handover*) of Schedule 2 (*Availability*).

Appendix A
to Part B of Schedule 2
Presentation Standard Table

TABLE 1: HANDOVER FAILURES

System	Set Presentation Failure	Category
Brake System	Regenerative brake inoperable on the Set	3
Coupling System	Auto Coupler unable to electrically couple and not required for planned service	3
Cab Systems and Train Controls	Cab HVAC unable to maintain temperature within range specified in TTS	2
	Any performance affecting driving controls or cab ancillary equipment on the Set is missing or is defective or damaged such that the relevant controls or equipment cannot perform its intended function	2
	Train control or safety circuits isolated on the Set (broken 'tell tales' or seals on safety circuit switches or circuit breakers) that are not required for planned service (not required for planned service includes those in intermediate cabs in a multiple unit formation)	2
	DOO dispatch system defective on the Set and required for service	2
	DOO dispatch system defective on the Set and not required for planned service (not required for planned service includes DOO system defects in intermediate cabs in a multiple unit formation)	3
	SDO system defective on the Set and required for service	1
	SDO system defective on the Set and not required for planned service (not required for planned service includes SDO system defects in intermediate cabs in a multiple unit formation)	3
	ERTMS/ETCS defective on the Set and required for service	1

System	Set Presentation Failure	Category
	ERTMS/ETCS defective on the Set and not required for planned service (not required for planned service includes ERTMS/ETCS defects in intermediate cabs in a multiple unit formation)	3
	A defective, or the absence of a, BR-ATP System on the Set provided that such system is required for service and the relevant Operational Day is prior to the BR-ATP System Decommission Date	1
	Windscreen wipers of cab to be used for reverse direction journeys not operating	2
	Forward Facing CCTV Systems not recording in any cab that is required for service	3
	Train Management System is unable to report normally reported non-safety critical defects to the train crew	3
Crew Systems	Door Cab to saloon or crew area doors of the Set defective – unable to close, open or lock	2
Saloon Interior Systems	Saloon interior lighting defective such that fifty per cent. (50%) of one or more Vehicles in the Set is unlit	2
	Saloon CCTV defective (no picture or recording) – on more than two Vehicle in the Set	3
	HVAC defect – saloon interior of more than twenty per cent. (20%) of Vehicles in the Set outside of temperature range specified within TTS	2
	Four or more gangway doors / interior doors (per doorway) in the Set not closing automatically	3
	Seat reservation system not working on more than one full Vehicle in Set	3
	PA defect – pre-recorded announcements not available in more than two Vehicles in Set	3

System	Set Presentation Failure	Category
	Defective toilet locked 'out of use' - more than two toilets or more than twenty-five per cent. (25%) of all toilets (whichever is the lesser) on the Set	2
Catering Equipment Systems	Catering facilities – three or more systems defective and required on the day (e.g. toaster, microwave, griddle, fridge etc as detailed in the "KPI Regime - KPI Scorecards")	3
Traction and Auxiliary Systems	Self powered energy source of the Set inoperative but Set is able to operate its planned/allocated Diagram	3
Cleaning	Sixty per cent. (60%) of total possible points for the Set using the standards set out in Table 2 of the "KPI Regime - KPI Scorecards" are attained prior to the Entry Time of that Set	2
	Graffiti either covering an area greater than 1 square metre or any size containing foul or abusive language present on the interior and/or exterior of any Vehicle of the Set	2
	Water – the catering water tank is not filled to a level sufficient to complete a full day's operation without becoming empty during normal service operation	3
	Consumables – except where otherwise agreed between the parties, the Set is not adequately stocked with Consumables	3
	Toilet retention tanks – except where otherwise agreed between the parties, the toilet retention tanks are not empty	3
Set	Handover of two coupled Bi-Mode Sets where the Operator's requirement is for an Electric Set	3

TABLE 2 : IN-SERVICE FAILURES

System	Set Presentation Failure	Category
Brake System	Regenerative brake inoperable on the Set	3
Cab Systems and Train Controls	Cab HVAC unable to maintain temperature within range specified in TTS	2
	Any performance affecting driving controls or cab ancillary equipment on the Set is missing or is defective or damaged such that the relevant controls or equipment cannot perform its intended function	2
	Crew communications defective – driver to crew or crew to crew communications not available on the Set	3
	The BR-ATP System failed on the Set provided that such system is required for service and the relevant Operational Day is prior to the BR-ATP System Decommission Date	1
	Train Management System is unable to report normally reported non-safety critical defects to the train crew	3
Crew Door Systems	Cab to saloon or crew area doors of the Set defective – unable to close, open or lock	2
Saloon Interior Systems	HVAC defect – saloon interior of more than twenty per cent. (20%) of all Vehicles in the Set outside of temperature range specified within TTS	2
	Four or more gangway doors / interior doors (per doorway) in the Set not closing automatically	3
	Seat reservation system failed on more than one full Vehicle in Set	3
	Saloon CCTV defective (no picture or recording) – on more than two Vehicles of the Set	3
	Defective toilet locked out of use on more than two toilets or more than twenty-five per cent. (25%) of all toilets (whichever is the lesser) on the Set	3

External Passenger Doors	Three or more external passenger doors of the Set not operating	2
Traction and Auxiliary Systems	Self powered energy source of the Set inoperative but Set able to complete its planned / allocated Diagram	3

Part C of Schedule 2

Safety Critical Fault

1. The parties agree that the Operator is to be unrestricted in its right to reject Sets where it considers it appropriate to do so on account of a Safety Critical Fault.
2. If either party considers a Safety Critical Fault exists it shall promptly notify the other party.
3. Following such notification, the parties shall consult as soon as reasonably practicable thereafter and seek in good faith to agree:
 - (a) whether the relevant Fault constitutes a Safety Critical Fault; and
 - (b) if it is agreed that the relevant Fault does constitute a Safety Critical Fault:
 - (i) the likelihood of that Safety Critical Fault existing in other Sets;
 - (ii) the likely impact upon passenger and third party safety resulting from that Safety Critical Fault;
 - (iii) any steps that can be taken to remedy, isolate or otherwise cure or control that Safety Critical Fault; and
 - (iv) whether any Sets should not be taken into service,and in the absence of agreement, the TSP shall promptly provide the Operator with its recommendations on each of the foregoing.
4. If the TSP or Operator receives a notification from an authority acting under Applicable Laws and Standards that a Set or Sets, including any Set that is coupled with another Set, must be withdrawn from, or not placed into, service for any reasons related to the safety of the Sets, the party receiving such notice shall notify the other party and shall withhold from service, or reject, such Sets until the safety concern has been cured to the satisfaction of the relevant authority.

Part D of Schedule 2

Deviation from Dispatch Requirements

1. FAILURE TO COMPLY WITH DISPATCH REQUIREMENTS

- 1.1 If the TSP is unable to fulfil the requirement in the Dispatch Requirements for any Set to face a particular direction as specified by the Operator in the Dispatch Requirements:
- (a) the TSP shall notify the Operator as soon as practicable;
 - (b) in order to mitigate the impact of such Set not facing the direction specified in the Dispatch Requirements, the TSP shall consult with the Operator regarding the allocation of such Set to an alternative Diagram and shall allocate such Set to the Diagram chosen by the Operator, except where such allocation would be reasonably likely to prevent the TSP from fulfilling its reasonable maintenance requirements, including Diagram cycling;
 - (c) the Operator shall, to the extent reasonably practicable, turn such Set following Handover or, if known sufficiently in advance, turn such Set or another Set prior to Handback;
 - (d) the TSP shall use reasonable endeavours to facilitate a later Handback or earlier Handover (as appropriate) where reasonably necessary to enable the Operator to meet its service obligations while also effecting the turn of the Set that is required; and
 - (e) in the case of coupled Sets, if both Sets are facing the wrong direction, if the Operator is to turn such Sets pursuant to Paragraph 1.1(c) following Handover, the TSP and the Operator may agree that the Sets be coupled in reverse order to that specified in the Dispatch Requirements (relative to the order that they will pass through the Connection Point), such that following turning of the Sets, they will be coupled in the order required by the Dispatch Requirements for the Operator to meet its service obligations.
- 1.2 Provided that the TSP complies with Paragraph 1.1, it shall not be held to be in breach of this Agreement as a result of its inability to fulfil any requirement in the Dispatch Requirements for a Set to face a particular direction.
- 1.3 If the TSP is unable to make a Set of the required Type available to the Operator:
- (a) the TSP shall use reasonable endeavours to make a different Set available to the Operator which shall (subject to the remainder of this Paragraph 1.3) be required to satisfy the requirements of Paragraph 1.4 of Part B (*Handover*) of Schedule 2 (*Availability*), except the requirement to be of the specified Type; and
 - (b) the TSP shall notify the Operator as soon as practicable that it is unable to make a Set of the required Type available and whether it is able to make a Set of another Type available.
- 1.4 In respect of each Set made available to the Operator in accordance with Paragraph 1.4 of Part B (*Handover*) of Schedule 2 (*Availability*) on any day, if such Set is not able to enter the Network through the Connection specified in the relevant Dispatch Requirements (the **Specified Connection**) because the Specified Connection is blocked,

restricted, impaired or impeded, or entry to the Network through such Specified Connection is otherwise not possible, where more than one Connection is available at the Entry Depot specified in the relevant Dispatch Requirements (each such Connection other than the Specified Connection being an **Alternative Connection**), the TSP shall use reasonable endeavours to enable the relevant Set to enter the Network through the Specified Connection and, where the Network remains inaccessible via the Specified Connection, shall use reasonable endeavours to enable the Set to access the Network through the Alternative Connection and the TSP and the Operator shall each use reasonable endeavours to minimise the disruption caused by such change to the Connection through which the Set has to enter the Network.

2. **ALTERNATIVE SETS**

- 2.1 If any Set is rejected by the Operator, the TSP shall use reasonable endeavours to make a different Set available.
- 2.2 If a Set is not made available to the Operator as required pursuant to Part B (*Handover*) of Schedule 2 (*Availability*), or is rejected pursuant to Part E (*Rejection, Dispatch and Traffic Spares*) of Schedule 2 (*Availability*), and the TSP considers that it is able to make available to the Operator a Set at a time that is later than the Scheduled Entry Time then the TSP shall as soon as reasonably practicable notify the Operator Nominated Contact of the time and place where that Set is able to be made available.
- 2.3 The Operator Nominated Contact shall, as soon as reasonably practicable after being notified in accordance with Paragraph 2.2, notify the TSP Control Room Contact of whether it wishes, subject to Paragraph 2.4, to accept that Set into service at that time and place or at such other time and/or place as the parties may agree.
- 2.4 Where a Set is offered to the Operator pursuant to Paragraph 2.1 or 2.2, the provisions of Part B (*Handover*) of Schedule 2 (*Availability*) shall apply to such Set when offered for service, save that Paragraph 1.4(a) of Part B (*Handover*) of Schedule 2 (*Availability*) shall not apply.

3. **SUPPLEMENTARY AVAILABILITY CONDITIONS**

- 3.1 Where any of the following applies:
- (a) Paragraphs 2.7 and 2.8(b)(v) of Part A (*Dispatch Requirements*) of Schedule 2 (*Availability*);
 - (b) Paragraphs 1.1 and 1.2 of Part D (*Deviation from Dispatch Requirements*) of Schedule 2 (*Availability*); and
 - (c) Paragraph 4 of Part I (*Handback of Sets*) of Schedule 2 (*Availability*),

and the TSP has exercised reasonable endeavours to make a Set available to the Operator and such Set can be made available by the TSP to the Operator in accordance with Part B (*Handover*) of Schedule 2 (*Availability*) and may incur Deductions if such Set is made available, the TSP shall not be in breach of its obligations under this Agreement if it does not make that Set available, provided that, to the extent that it is reasonable in the circumstances:

- (i) the TSP has notified and discussed with the Operator that it can make that Set available and specify whether and on what conditions (including

conditions relating to the Presentation Standards Table or Key Performance Indicators) such Set can be made available (the **Supplementary Availability Conditions**) and the parties have failed to agree the relevant Supplementary Availability Conditions for that Set when the TSP has acted reasonably; or

- (ii) the parties have agreed the relevant Supplementary Availability Conditions but the Operator does not require such Set to be made available to it and has promptly notified the TSP.

3.2 If the parties have agreed the relevant Supplementary Availability Conditions and the Operator does require such Set to be made available to it and has promptly notified the TSP, the TSP shall then make such Set (meeting the Supplementary Availability Conditions) available to the Operator.

Part E of Schedule 2

Rejection, Dispatch and Traffic Spares

1. REJECTIONS OF SETS

1.1 The Operator shall be entitled to reject a Set that the TSP has offered to it for service if:

- (a) that Set has suffered a Category Two Handover Failure;
- (b) that Set is not Fit for Service, other than in respect of:
 - (i) the Handover Time;
 - (ii) the Set not facing a particular direction of travel;
 - (iii) if agreed pursuant to Paragraph 1.1 of Part D (*Deviation from Dispatch Requirements*) of Schedule 2 (*Availability*), in the case of coupled Sets, the Sets being coupled in the reverse order to that specified in the relevant Dispatch Requirements;
 - (iv) the Set not being of the required Type, provided that the Operator is required to accept the Set in accordance with Paragraph 1.1(d); or
 - (v) the Set suffering from an ETCS Permitted Fault but which otherwise complies with the requirements of Part B (*Handover*) of Schedule 2 (*Availability*), including a fully functional BR-ATP System where required for service, provided that such Set is made available to the Operator pursuant to Paragraph 1.2 of Part F (*ETCS Performance Holiday and Mileage Records*) of Schedule 2 (*Availability*);
- (c) that Set is offered fifteen (15) minutes or more after the Scheduled Handover Time as, in each case, specified in the Dispatch Requirements;
- (d) that Set is a different Type to that required by the Operator, except that the Operator shall not be entitled to reject a Set offered to the Operator pursuant to Paragraph 1.3 of Part D (*Deviation from Dispatch Requirements*) of Schedule 2 (*Availability*) if the Operator's requirement under the Dispatch Requirements is for:
 - (i) an Electric Set and the TSP has offered to the Operator as an alternative two coupled Bi-Mode Sets provided that if the TSP has offered five (5) such coupled Bi-Mode Sets in a Reporting Period in accordance with this Paragraph 1.1(d)(i), the Operator shall not be required to accept any further substitute Sets in that Reporting Period offered pursuant to this Paragraph 1.1(d)(i); or
 - (ii) a Bi-Mode Set and the TSP has offered to the Operator as an alternative an Electric Set,and, in each case, such substitute Set is able to complete the relevant Diagram;
- (e) the TSP has not provided a Handover Certificate with that Set that is properly completed in all material respects; and/or

- (f) the circumstances set out in Part C (*Safety Critical Fault*) of Schedule 2 (*Availability*) apply.
- 1.2 The Operator may, at its sole discretion, accept a Set into service notwithstanding that it would be entitled to reject that Set under Paragraph 1.1.
- 1.3 The Operator shall promptly inform the TSP of any decision it makes in relation to a Set under this Paragraph 1.
- 1.4 If the Operator, at its sole discretion, accepts a Bi-Mode Set offered to it by the TSP in substitution for an Electric Set (a **Substituted Set**), a Set Availability Payment for a Half Set shall be payable in place of a Set Availability Payment for a Full Set.
- 1.5 If the Operator, at its sole discretion, accepts two coupled Bi-Mode Sets offered to it in place of an Electric Set in circumstances where the TSP has previously offered five (5) coupled Bi-Mode Sets pursuant to Paragraph 1.1(d)(i) in that Reporting Period, such coupled Bi-Mode Sets shall be deemed to be an Electric Set that is a Divergent Handover Set and not also a Switched Set for the purposes of the Availability Adjustment calculated in accordance with Paragraph 4.3 of Part A (*Availability Regime*) of Schedule 6 (*Performance Regime*) for the relevant Reporting Period.
2. **DISPATCH OF SETS**
- 2.1 Where the TSP makes a Set available to the Operator pursuant to Paragraph 1.4 of Part B (*Handover*) of Schedule 2 (*Availability*), then unless the Operator rejects that Set in accordance with Paragraph 1, the Operator shall:
- (a) (except where a Set is allocated to a Traffic Spare Diagram, or as otherwise agreed between the parties) remove such Set from the relevant Designated Depot Handover Point and Entry Depot as close to the Scheduled Entry Time and Scheduled Departure Time, respectively, or such later time to account for the TSP handing over the Set later than the Scheduled Handover Time, as is reasonably practicable; and
- (b) in relation to any Set allocated to a Traffic Spare Diagram, following any Mobilisation of such Set remove such Set from the relevant Designated Depot Handover Point and Entry Depot as close to the Scheduled Entry Time and Scheduled Departure Time, notified respectively pursuant to Paragraph 3.3, or such later time to account for the TSP making the Set available for collection at the Handover Point later than the required collection time notified pursuant to Paragraph 3.3, as is reasonably practicable,
- provided that the Operator shall not be required to remove a Set from the relevant Designated Depot Handover Point or Entry Depot if it is unable to do so for reasons attributable to the Set or any other train, the Depot infrastructure or act or omission of the TSP or any of its employees, agents or Subcontractors in performing the activities contemplated under this Agreement.
- 2.2 If, on any day, the Operator fails to remove a Set made available to it pursuant to Paragraph 1.4 of Part B (*Handover*) of Schedule 2 (*Availability*) which the Operator has not rejected in accordance with Paragraph 1 then, provided that the TSP has made reasonable endeavours to mitigate the consequences, if and to the extent that the TSP is unable to make one or more later Sets available in accordance with the Dispatch

Requirements as a direct consequence of the Operator failing to remove a Set, each Set shall constitute an Obstructed Set.

2.3 In the event that the Operator fails to remove a Set made available to it pursuant to Paragraph 1.4 of Part B (*Handover*) of Schedule 2 (*Availability*) which the Operator has not rejected in accordance with Paragraph 1 then if such Set has had, or is reasonably likely to have, an impact on the operations of the Depot at which Handover has taken place, or has resulted in or is reasonably likely to result in, any of the circumstances described in Paragraph 2.2, except where otherwise agreed between the parties:

- (a) the TSP shall be entitled to remove such Set to an alternative location within the Depot; and
- (b) the Set shall be treated as if allocated to a Traffic Spare Diagram.

2.4 If, in respect of any Set, on any day:

- (a) such Set is unable to enter, or is delayed entering, the Network for reasons that are not attributable to the TSP under this Agreement; and
- (b) the TSP or the Maintainer receives compensation from Network Rail or any other third party through any Connection Agreement or Depot Access Agreement in respect of such circumstances,

the TSP shall pay to the Operator an amount equivalent to such compensation in order to compensate the Operator for any Losses suffered as a result of such Set being unable to enter, or being delayed entering, the Network on that day.

3. **TRAFFIC SPARES**

3.1 In relation to any Traffic Spare Diagram specified in the Dispatch Requirements, the TSP shall make a Set available for Handover in accordance with this Part E (*Rejection, Dispatch and Traffic Spares*) of Schedule 2 (*Availability*) as if such Set were to enter service, and Handover of such Set shall be deemed to have occurred for the purposes of this Agreement upon the Scheduled Handover Time and the Operator shall not be required to remove such Set in accordance with Paragraph 2, until such Set has been Mobilised in accordance with Paragraph 3.3.

3.2 The TSP shall ensure that any Traffic Spare Set remains capable of being Mobilised for the Operator to collect at a Designated Depot Handover Point on fifteen (15) minutes' notice or, in respect of Sets which are to be coupled and to allow time for coupling, on thirty (30) minutes' notice.

3.3 If the Operator requires a Traffic Spare Set to be Mobilised, it shall notify the TSP Control Room Contact of:

- (a) the required collection time, being not less than fifteen (15) minutes, or, in respect of Sets which are to be coupled, thirty (30) minutes from the notice of Mobilisation being given to the TSP Control Room Contact;
- (b) the Scheduled Entry Time and Scheduled Departure Time, which must comply with the minimum time interval between consecutive Departures specified in the Physical Characteristics Table pertaining to that Depot; and

- (c) the items specified in subparagraphs (iii) and (vii) of Paragraph 1.1(b) of Part A (*Dispatch Requirements*) of Schedule 2 (*Availability*).
- 3.4 Promptly following receipt of the information in Paragraph 3.3, the TSP shall specify the Designated Depot Handover Point on the Depot at which the Operator may collect the Traffic Spare Set for Mobilisation.
- 3.5 In the event that a Traffic Spare Set has not been Mobilised by the Handback Time specified in accordance with Paragraph 1.1(b)(xiv) of Part A (*Dispatch Requirements*) of Schedule 2 (*Availability*) on any day, Handback shall be deemed to occur at that time, unless otherwise agreed.

Part F of Schedule 2

ETCS Performance Holiday and Mileage Records

1. A SET WITH BR-ATP SYSTEM

- 1.1 If a Set is not made available to the Operator pursuant to Part B (*Handover*) of Schedule 2 (*Availability*), or is rejected pursuant to Part E (*Rejection, Dispatch and Traffic Spares*) of Schedule 2 (*Availability*) due to an ETCS Permitted Fault that has occurred on that Set during the ETCS Performance Holiday, such Set shall be a Missing Set or a Rejected Set for the purposes of the Performance Regime.
- 1.2 The TSP shall then make a Set (which can be the same Set or a different Set) available to the Operator and such Set may suffer from an ETCS Permitted Fault but shall otherwise comply with the requirements of Part B (*Handover*) of Schedule 2 (*Availability*), including a fully functional BR-ATP System where such system is required for service. Any such Set shall be accepted by the Operator in accordance with Part E (*Rejection, Dispatch and Traffic Spares*) of Schedule 2 (*Availability*) and:
- (a) that Set shall be a Relieved Set for the purposes of the Performance Regime and
 - (b) the responsibility of a Relevant Delay Incident resulting from fleet equipment problems or fleet depot delay that are wholly or mainly attributable to that ETCS Permitted Fault shall be determined in accordance with Paragraph 4.3(b) of Part A (*Contract Management*) of Schedule 4 (*Contract Management and Compliance*) for the purposes of the Performance Regime.

2. ETCS PERFORMANCE HOLIDAY

- 2.1 The ETCS Performance Holiday shall start from the earlier of the ETCS Commencement Date and the ECML ETCS Commencement Date, and end on the later of:
- (a) the date upon which the aggregate of the Actual ETCS Fleet Mileage accrued on the Great Western IEP Network by Sets under this Agreement and the ECML ETCS Fleet Mileage accrued on the ECML IEP Network by the ECML Sets under the ECML Initial TARA exceeds the ETCS Fleet Mileage Benchmark; and
 - (b) the earlier of:
 - (i) the second anniversary of the commencement of the ETCS Performance Holiday; and
 - (ii) the day upon which the aggregate number of days accumulated as part of the ETCS Performance Holiday under this Agreement and as part of the ECML ETCS Performance Holiday under the ECML Initial TARA exceeds seven hundred and thirty (730) days.

3. NOTICE AND MILEAGE RECORDS

- 3.1 The TSP shall maintain records evidencing the Actual ETCS Fleet Mileage accumulated in respect of all Sets during the ETCS Performance Holiday.
- 3.2 The TSP shall use reasonable endeavours to obtain records evidencing the ECML Actual ETCS Fleet Mileage accumulated in respect of all ECML Sets during the ETCS Performance Holiday.

- 3.3 The TSP shall notify the Operator, following each third (3rd) Reporting Period, the Actual ETCS Fleet Mileage travelled by all Sets during each such period in the ETCS Performance Holiday. The TSP shall provide any records maintained pursuant to Paragraph 3.1 or obtained pursuant to Paragraph 3.2 to the Operator as soon as reasonably practicable following any written request by the Operator.

Part G of Schedule 2

Obligations concerning Sets withheld from Service

1. The TSP shall not be in breach of its obligations under this Agreement if and to the extent that, on any day, it is unable to (or in the case of Paragraph 1(b) where the Operator fails to take out or maintain the Operator Insurances, it is unwilling to) make one or more Sets available in accordance with the Dispatch Requirements without incurring (but for this Paragraph) one or more Deductions, wholly or mainly as a result of any one or more of the following:
 - (a) the relevant Set is an Excused Set on that day;
 - (b) a failure by the Operator to fulfil any of its obligations under this Agreement;
 - (c) rolling stock (other than a Set) that is operated by the Operator and situated at the relevant Depot, provided that any such failure to make one or more Sets available arising from such rolling stock is not wholly or mainly attributable to the acts or omissions of the TSP or any of its employees, agents or Subcontractors in performing the activities contemplated under this Agreement; or
 - (d) a Force Majeure Event in respect of which the TSP is the Affected Party.
2. The provisions of Paragraph 1 shall also apply to any Set that the TSP is not able to make available wholly or mainly as a result of any Relief Event and to any Set that the TSP is unable to make available to the Operator without incurring one or more Deductions wholly or mainly attributable to the OHLE Works and/or the 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) of the MARA) in accordance with its terms. However, any such Set:
 - (a) will be treated as Unavailable for the purposes of Part A (*Availability Regime*) of Schedule 6 (*Performance Regime*); but
 - (b) will not constitute an Unavailable Set for the purposes of calculating Remedial Events or Notifiable Unavailability Events.
3. If the TSP is unable to present a Set affected by any of the circumstances in Paragraph 1 or 2 due to its physical limitation or condition (or in the case of Paragraph 1(b) where the Operator fails to take out or maintain the Operator Insurances, its unwillingness), it shall promptly notify the Operator following becoming aware of such.
4. If any of the circumstances in Paragraph 1 or 2 apply, the TSP shall use reasonable endeavours to fulfil (in whole or in part) the Dispatch Requirements by carrying out the following actions in the following sequence of priority:
 - (a) first, the TSP shall consider:
 - (i) its maintenance programme and maintenance commitments to determine (taking account of any increase in cost and risk to its obligations under this Agreement) whether it can make available to the Operator any substitute Set; and/or

- (ii) its programme for the repair of any Damaged Set so that the same may be returned to service, either in full compliance with the requirements of Part A (*Dispatch Requirements*) of Schedule 2 (*Availability*) and Part B (*Handover*) of Schedule 2 (*Availability*), or (pending final completion of repairs at some later point) in any lesser state of compliance that either the Operator or the TSP may propose, at the earliest possible opportunity; and
 - (b) second, the TSP shall discuss with the Operator whether and on what conditions (including conditions relating to the requirements stated in Paragraph 1.1(b) of Part A (*Dispatch Requirements*) of Schedule 2 (*Availability*), the Presentation Standards Table or Key Performance Indicators) any additional Sets made available in accordance with Paragraph 5 would be accepted into service by the Operator (the **Additional Availability Conditions**).
5. If, in accordance with Paragraph 4, the TSP determines that it is able to make an additional Set that is not a Damaged Set available:
- (a) the TSP shall notify the Operator that it can make such Sets available, and specify the Additional Availability Conditions relating to each such Set;
 - (b) the Operator may require those Sets to be made available to it by notifying the TSP;
 - (c) the TSP shall make available to the Operator any Sets the Operator requires pursuant to this Paragraph 5 in accordance with the Additional Availability Conditions; and
 - (d) where the TSP makes a Set meeting the Additional Availability Conditions available to the Operator pursuant to Paragraph 5(c), a Marginal Set Payment Adjustment shall be made pursuant to Paragraph 2.9 of Part A (*TARA Payments*) of Schedule 5 (*Payment*) in respect of each such additional Set.
6. If, in accordance with Paragraph 4, the TSP determines that it is able to make a Damaged Set available (in circumstances where that Set constitutes an Excused Set):
- (a) the TSP shall notify the Operator that it can make such Sets available, and specify the Additional Availability Conditions relating to each such Set;
 - (b) the Operator may require those Sets to be made available to it by notifying the TSP;
 - (c) the TSP shall make available to the Operator any Sets the Operator requires in accordance with the Additional Availability Conditions; and
 - (d) where the TSP makes a Set meeting the Additional Availability Conditions available to the Operator pursuant to Paragraph 6(c), such Set shall continue to be an Excused Set for the purposes of Part A (*Availability Regime*) of Schedule 6 (*Performance Regime*) but no Marginal Set Payment Adjustment shall be made pursuant to Paragraph 2.9 of Part A (*TARA Payments*) of Schedule 5 (*Payment*) in respect of each such Set.

Part H of Schedule 2

Layovers

1. In respect of any Layover designated for any Set in the relevant Dispatch Requirements in accordance with Paragraph 1.1(b)(x) of Part A (*Dispatch Requirements*) of Schedule 2 (*Availability*), fuelling, replenishing water tanks, emptying of toilet retention tanks and/or exterior wash may be requested by either the TSP or the Operator and such request shall not be unreasonably withheld by the other party, and the agreement between the parties shall include whether the engines of that Set shall be shut down during such Layover and the period of time for which the engines of that Set shall be shut down during such Layover.
2. In respect of any Set for which refuelling, water tanks replenishing and/or toilet retention tank emptying is specified for a Layover for that Set in the relevant Dispatch Requirements, the TSP shall refill such Set's fuel and/or water tank to capacity and/or empty such toilet retention tank, provided that if the time of such Layover is insufficient to reasonably allow the TSP to refill the fuel and/or water tank to capacity and/or empty the toilet retention tank, the TSP shall refill the fuel and/or water tank or empty the toilet retention tank to the level appropriate given the time available and as agreed by the Operator.
3. In respect of any Layover designated for any Set in the relevant Dispatch Requirements, the TSP may, by written notice to the Operator Nominated Contact, request that such Layover become a Maintenance Window, and in such written notice shall suggest an appropriate Handback Time, Handback Point, Handover Time and Handover Point for such Set, provided that such arrangements shall enable the Operator to continue to run the Diagram to which such Set had previously been allocated.
4. The Operator Nominated Contact shall, as soon as reasonably practicable after being notified in accordance with Paragraph 3, notify the TSP Control Room Contact of whether it agrees (such agreement not to be unreasonably withheld) to such Layover becoming a Maintenance Window and the parties shall agree:
 - (a) the Scheduled Handback Time;
 - (b) the Handback Point;
 - (c) the Scheduled Handover Time; and
 - (d) the Handover Point for such Set,provided that if the parties are unable to agree such arrangements, the Operator Nominated Contact may withdraw its agreement and the Layover shall not become a Maintenance Window.
5. If the parties agree to a Layover becoming a Maintenance Window in accordance with Paragraph 4, unless the parties agree otherwise:
 - (a) the requirements of Paragraph 1 (excluding Paragraph 1.4(b)) of Part B (*Handover*) of Schedule 2 (*Availability*) and Paragraph 1.1 of Part E (*Rejection, Dispatch and Traffic Spares*) of Schedule 2 (*Availability*) shall apply to the Handover of the Set to the Operator at the end of such Maintenance Window in

accordance with the arrangements agreed by the parties pursuant to Paragraph 3;
and

- (b) if refuelling was originally specified for the Layover, the provisions of Paragraph 4 shall apply as if references to Layover were to the Maintenance Window.

Part I of Schedule 2

Handback of Sets

1. The Operator shall, prior to the expiry of the Handover Certificate, return each Set that has been made available to and accepted by the Operator to the TSP in accordance with the Dispatch Requirements and to a Designated Depot Handback Point, and the TSP shall take back physical possession and control of each such Set. The parties recognise that they need to work cooperatively and collegiately at all times in order to ensure that the operation of Passenger Services and the Maintenance Plan operate effectively and efficiently on a daily basis.
2. Subject to Paragraphs 3 to 6 (inclusive), the Operator shall, except as otherwise agreed with the TSP (such agreement not to be unreasonably withheld), on each day return each Specific Set in accordance with the Diagram to which such Set is allocated in the Set Allocation Report for that day, provided that:
 - (a) for any Sets not specified in the Maintenance Assignment Plan for that day the Operator may, in respect of any Depot and as necessary to ensure the operation of its services, return a different Specific Set of the same Type pertaining to the relevant Diagram;
 - (b) the Operator may, if more than one Connection is available at a given Depot or if it is unable to exit the Network through the Connection identified in the Dispatch Requirements for that day, return a Specific Set to such Depot via a Connection other than the one identified in the Dispatch Requirements for that day by agreement with the TSP (such agreement not to be unreasonably withheld);
 - (c) for any Specific Set specified in the Maintenance Assignment Plan for return to the Depot shown as Depot Location 1 in Table 1 (*Minimum Maintenance Window Requirements*) of Appendix B (*Rules of the Fleet: Requirements*) of Part A (*Dispatch Requirements*) of Schedule 2 (*Availability*) on any day, provided that not less than three (3) days' notice has been given to the Operator of the requirement pertaining to such Specific Set (such period of notice to be measured from the time that the requirement in respect of such Specific Set first appeared on the Maintenance Assignment Plan), if such Specific Set cannot be returned as so specified in the Maintenance Assignment Plan solely through appropriate allocation by the TSP of Sets to Diagrams at each Depot, the Operator shall return such Specific Set as specified in the Maintenance Assignment Plan by the swapping of Sets between Diagrams during the Operational Day, or by any other means agreed between the Operator and the TSP (to include appropriate allocation by the TSP of Sets to Diagrams at each Depot), giving due consideration to:
 - (i) the level of urgency and priority notified by the TSP to the Operator; and
 - (ii) the need of the Operator to ensure the normal course of operation of its passenger railway services,

provided that on any day the obligation in this Paragraph 2(c) shall apply to a maximum number of Sets of each Set Type that corresponds to the numbers set out in the column "Minimum Quantity per 24 hour period" for Depot Location 1 in Table 1 (*Minimum Maintenance Window Requirements*) of Appendix B (*Rules of*

the Fleet: Requirements) of Part A (*Dispatch Requirements*) of Schedule 2 (*Availability*);

- (d) where a sequence of Diagrams has not been provided in accordance with Paragraph 1(b)(A) of Appendix B (*Rules of the Fleet: Requirements*) of Part A (*Dispatch Requirements*) of Schedule 2 (*Availability*), the Operator shall deliver Specific Sets in accordance with the reasonable requirements of the TSP stated in the Maintenance Assignment Plan, provided that not less than three (3) days' notice has been given to the Operator of the requirement pertaining to such Specific Sets (such period of notice to be measured from the time that the requirement in respect of such Specific Sets first appeared on the Maintenance Assignment Plan) by utilising out-of-course empty coaching stock movements or the swapping of Sets between Diagrams during any Operational Day, or by any other means agreed between the Operator and the TSP (including appropriate allocation by the TSP of Sets to Diagrams at each Depot);
- (e) where Paragraph 1(b)(B) of Appendix B (*Rules of the Fleet: Requirements*) of Part A (*Dispatch Requirements*) of Schedule 2 (*Availability*) apply, the Operator shall deliver Specific Sets in accordance with the reasonable requirements of the TSP stated in the Maintenance Assignment Plan, provided that not less than three (3) days' notice has been given to the Operator of the requirement pertaining to such Specific Sets (such period of notice to be measured from the time that the requirement in respect of such Specific Sets first appeared on the Maintenance Assignment Plan) by the swapping of Sets between Diagrams during any Operational Day, or by any other means as agreed between the Operator and the TSP (including appropriate allocation by the TSP of Sets to Diagrams at each Depot); and
- (f) where the TSP reasonably requires a Specific Set to be returned to a Depot and amends the Maintenance Assignment Plan to incorporate that requirement but provides the Operator with less than three (3) days' notice of the change of requirement provided to the Operator and in circumstances where the TSP is unable to achieve compliance with its revised requirements in respect of such Specific Set through appropriate allocation by the TSP of Sets to Diagrams at each Depot as necessary, the Operator shall use reasonable endeavours to fulfil the requirement of the TSP by the swapping of Sets between Diagrams during the Operational Day, or by any other means as agreed between the Operator and the TSP, giving due consideration to:
 - (i) the level of urgency and priority notified by the TSP to the Operator;
 - (ii) the amount of notice provided by the TSP to the Operator of its revised requirements in respect of such Specific Set; and
 - (iii) the operational requirements of the Operator in respect of the Passenger Services.

Ad-hoc amendments

3. In respect of any Depot, the Operator may:

- (a) (subject to Paragraph 3(ii) on not more than five (5) days in any Reporting Period (or where in connection with that Reporting Period the Operator has issued revisions to the Dispatch Requirements pursuant to Paragraph 2.3(a) of Part A

(*Dispatch Requirements*) of Schedule 2 (*Availability*), such lower number of days as results from the operation of Paragraph 2.4(a) of that Schedule); or

- (b) as otherwise agreed by the TSP (such agreement not to be unreasonably withheld and provided that the parties have reached agreement in relation to any associated concessions required pursuant to Paragraph 3(iii)),

return to that Depot a number of Sets which is different to the number agreed for return with the TSP pursuant to Paragraph 2 but is, in each case, in accordance with the Rules of the Depot and the Rules of the Fleet, provided that:

- (i) the five (5) days referred to in Paragraph 3(a) shall be a total number of days for any Reporting Period (regardless of whether the number of Sets returned on each of those days differs in respect of one, some or all of the Depots);
- (ii) if, during any Reporting Period, the Operator does not utilise its full entitlement under Paragraph 3(a), any days which are not utilised may be rolled forward in to the next Reporting Period and the five (5) days per Reporting Period referenced in Paragraph 3(a) in respect of that Reporting Period shall be increased accordingly, provided that no more than five (5) days may be rolled forward in any Reporting Period; and
- (iii) in such circumstances the parties shall agree any concessions to the subsequent Dispatch Requirements for that or the following day to the extent reasonably necessary to accommodate the different number of Sets returned to that Depot.

Significant Network disruption

- 4. In the event of significant disruption on the Great Western IEP Network, the Operator may return to any Depot a number of Sets which is:

- (a) different to the number agreed for return with the TSP pursuant to Paragraph 2 and which is outside the tolerances set out in Paragraph 3; but
- (b) within the Disruption Capacity Parameters,

and the TSP shall use reasonable endeavours to make such Sets available in accordance with this Schedule and comply with its obligations under Part C (*KPI Regime*) of Schedule 6 (*Performance Regime*) provided that:

- (i) Paragraph 1 of Part G (*Obligations concerning Sets withheld from Service*) of Schedule 2 (*Availability*) shall continue to apply; and
- (ii) in such circumstances, the parties shall agree any concessions to the Dispatch Requirements for the subsequent planned Handover Times to the extent reasonably necessary to accommodate the different number of Sets returned to that Depot.

Flexing Handback Times

- 5. The Operator may return any Set to the Handback Point at a time which is different to the Scheduled Handback Time for that Set:

- (a) provided that:
 - (i) the actual Handback Time is within sixty (60) minutes of the Scheduled Handback Time;
 - (ii) the resultant Handback Times of the Sets on that day (incorporating such revision) comply with, in each case, the Rules of the Depot; and
 - (iii) the resultant Handback Times and Handover Times of the Sets (incorporating such revision) comply with the minimum Maintenance Window requirements set out in Paragraph 1(e) and Table 1 (*Minimum Maintenance Window Requirements*) both of Appendix B (*Rules of the Fleet: Requirements*) to Part A (*Dispatch Requirements*) of Schedule 2 (*Availability*); or
- (b) as otherwise agreed with the TSP, such agreement not to be unreasonably withheld provided that the parties shall have agreed any concessions to the Dispatch Requirements for the subsequent planned Handover Time of that Set to the extent reasonably necessary to accommodate the different Handback Time of such Set.

TSP disruption

6. The Operator shall not be in breach of its obligations under Paragraph 2, to the extent that the Operator is unable without disruption or further disruption to its services to return Sets to the locations, at the time, facing the direction and/or otherwise in accordance with Paragraph 2 by reason of a Set suffering an incident which results in the TSP incurring an Adjustment Component in respect of that Operational Day or would do but for any exclusion, relief or limitation set out in this Agreement (an ***Incident***). In such circumstances the Operator shall as soon as reasonably practicable consult with the TSP about the locations and times at which the Operator may be able to return the Sets to the TSP with minimum disruption or further disruption to its services on the day of the Incident and the following and any subsequent day (as appropriate) and agree a reasonable course of action. In considering the course of action to adopt:
- (a) the TSP and the Operator shall have regard to any contingency plans agreed between the Operator and the TSP in respect of service disruption;
 - (b) the Operator shall use its reasonable endeavours to mitigate the consequences of such Incident, having regard without limitation to the disruption or further disruption to its services and to the effects or likely effects on the TSP's ability to comply with the Dispatch Requirements subsequently and the TSP's reasonable maintenance requirements, including Diagram cycling; and
 - (c) the agreed return locations for the Sets shall be within the tolerances set out in the Disruption Capacity Parameters, so far as reasonably practicable. To the extent that it is necessary to return Sets to a Depot in excess of its Disruption Capacity Parameters, the course of action to be agreed by the TSP and the Operator pursuant to this Paragraph 6 shall:
 - (i) comply with all safety requirements relating to the return of Sets to such locations and the Operator's obligations under its Track Access Contract with Network Rail; and

- (ii) minimise any resulting disruption or further disruption to the services of any other train operator.
- 7. The Operator may return a Withdrawn Set or Withdrawn Evening Set to the TSP at a location on the Great Western IEP Network (other than a Designated Depot Handback Point) that is agreed between the Operator and the TSP as the point and time at which physical possession and control of that Set is to be returned by the Operator to the TSP, provided that the Operator shall ensure that no passengers are on such Set at such time. Any such agreed location shall be the Handback Point and any such agreed time shall be the Handback Time in respect of that Set.

Handback Certificate

- 8. The Operator shall:
 - (a) properly complete, in all material respects, a certificate to hand back to the TSP in relation to each Set that has been made available to the Operator and was the subject of a Handover Certificate (a **Handback Certificate**) (and such obligation may be satisfied by the driver logging off from the Train Management System);
 - (b) record all identified In-Service Faults:
 - (i) on the Handback Certificate; or
 - (ii) via the Train Management System (where they have not automatically been logged already),
- other than any In-Service Faults which also constitute KPI Failures, which shall be recorded on a KPI Scorecard in accordance with Part C (*KPI Regime*) of Schedule 6 (*Performance Regime*);
- (c) record any other faults not falling within the definition of a Fault either on the Handback Certificate, the relevant crew log or via the Train Management System if appropriate, or notify the TSP Control Room Contact in a medium agreed between the TSP and the Operator; and
 - (d) if the Operator is unable to record any In-Service Faults or other Faults identified via the Train Management System, the Operator shall inform the TSP Control Room Contact of any such In-Service Faults or other Faults as soon as reasonably practicable.

SCHEDULE 3

IN-SERVICE PROVISIONS AND FAULTS

Part A of Schedule 3

In-Service Provisions

Consumable Replenishment

1. Subject to paragraph 2 of this Part of this Schedule, the TSP shall be responsible for:
 - (a) discharging all toilet retention tanks on Sets during the Operational Day if deemed necessary by the TSP by providing adequate replenishment facilities and discharge facilities at Turnaround Locations and Permitted Out-Stabling Locations; and
 - (b) gaining access to any shore supply at Turnaround Locations and Permitted Out-Stabling Locations.
2. The TSP's responsibility for discharging toilet retention tanks on Sets during the Operational Day if deemed necessary by the TSP by providing adequate replenishment facilities and discharge facilities at Great Malvern and at Paignton shall be limited to the level of service that the TSP is reasonably able to provide. The TSP shall not be responsible for gaining access to any shore supply at Great Malvern or at Paignton.

Part B of Schedule 3

Safety Critical Faults

1. The parties agree that, notwithstanding any other provision of this Schedule 3 (*In-Service Provisions and Faults*), the Operator is to be unrestricted in its right to withdraw from service Sets (including any Set that is coupled with another Set) where it considers it appropriate to do so on account of a Safety Critical Fault.
2. If either party considers a Safety Critical Fault has occurred and is continuing during the Operational Day it shall promptly notify the other party.
3. Following such notification, the parties shall consult as soon as reasonably practicable thereafter and seek in good faith to agree:
 - (a) whether the relevant Fault constitutes a Safety Critical Fault; and
 - (b) if it is agreed that the relevant Fault does constitute a Safety Critical Fault:
 - (i) the likelihood of that Safety Critical Fault existing in other Sets;
 - (ii) the likely impact upon passenger and third party safety resulting from that Safety Critical Fault;
 - (iii) any steps that can be taken to remedy, isolate or otherwise cure or control that Safety Critical Fault; and
 - (iv) whether any Sets should be withdrawn from service,and in the absence of agreement the TSP shall promptly provide the Operator with its recommendations on each of the foregoing.
4. If the TSP or Operator receives a notification from an authority acting under Applicable Laws and Standards that a Set or Sets, including any Set that is coupled with another Set, must be withdrawn from, or not placed into, service for any reasons related to the safety of the Sets, the party receiving such notice shall notify the other party and shall remove such Sets from service until the safety concern has been cured to the satisfaction of the Relevant Authority.

Part C of Schedule 3

In-Service Faults

1. FAULT REPORTING

- 1.1 If at any time during the Operational Day the Operator becomes aware of any In-Service Fault on any Set (including any damage which might constitute Operator Responsible Damage), the Operator shall, subject to Paragraphs 1.2 and 1.3, promptly inform the TSP Control Room Contact and enter details of that In-Service Fault in the relevant crew log.
- 1.2 If a Set's Train Management System provides an indication that the Train Management System has relayed details of an In-Service Fault to the TSP, the TSP shall be deemed to have notice of that In-Service Fault, and without limiting Paragraph 7 of Part I (*Handback of Sets*) of Schedule 2 (*Availability*), the Operator's obligation under Paragraph 1.1 shall have been discharged in respect of that In-Service Fault.
- 1.3 The Operator's obligation under Paragraph 1.1 shall have been discharged in relation to any In-Service Fault that is a KPI Failure where the Operator notifies the TSP thereof in accordance with the requirements of Part C (*KPI Regime*) of Schedule 6 (*Performance Regime*).

2. FAULT INSPECTION AND REMEDY

Failed Sets

- 2.1 In this Part C (*In-Service Faults*) of Schedule 3 (*In-Service Provisions and Faults*), Failed Set means any Set with an In-Service Fault:
 - (a) that is a Category One In-Service Failure, Category Two In-Service Failure or Category Three In-Service Failure;
 - (b) which has caused that Set to suffer a Delay Event of at least thirty (30) minutes or which the Operator reasonably believes there is no realistic likelihood of avoiding a Delay Event of at least thirty (30) minutes;
 - (c) which actually or potentially creates a hazard to the safety of any person;
 - (d) which actually or potentially creates a hazard to the continued operation of any system, assembly or component on that Set or the Network infrastructure; and/or
 - (e) which is a hazard or potential hazard identified in operational procedures, the Rule Book or Applicable Laws and Standards as requiring the Set in question to be removed from service.
- 2.2 Nothing in Paragraph 2.1 shall be construed or applied such that a Set:
 - (a) which has a fully functional BR-ATP System where required for service; and
 - (b) which suffers from an ETCS Permitted Fault while operating during the ETCS Performance Holiday,is a Failed Set solely because of such ETCS Permitted Fault.

- 2.3 The TSP shall use reasonable endeavours to ensure a Technical Inspector attends a Failed Set as soon as reasonably practicable, with a view to enabling that Set to remain in service or, if already withdrawn from service by the Operator, to be returned to a condition in which it can be returned to service.

3. **WITHDRAWAL OF SETS FROM SERVICE**

The Operator may, subject to and in accordance with Paragraph 4, withdraw any Failed Set from service, other than a Set which is a Failed Set as a consequence only of having a Category Three In-Service Failure and not also as a consequence of any other provision of Paragraph 2.

4. **FAULT INSPECTION AND REMEDY**

Withdrawal of Sets from Service

- 4.1 Before withdrawing any Failed Set from service, the Operator:

- (a) shall seek, but not be bound by, the advice of the TSP Control Room Contact; and
- (b) shall give reasonable consideration to not withdrawing the Set from service, taking into account, amongst other things:
 - (i) the nature of any Presentation Standards Failures that have occurred;
 - (ii) the impact that any Presentation Standards Failures are likely to have on the safety and comfort of passengers; and
 - (iii) the Network locations where the TSP has resources deployed that are capable of attending to that Set without a withdrawal from service.

- 4.2 The Operator may not withdraw a Failed Set from service where the In-Service Fault occurs:

- (i) subject to sub-Paragraph (ii) below, at or within thirty (30) minutes of a Failed Set's arrival time at a Turnaround Location; or
- (ii) where the Turnaround Location is (1) Paignton, within the time between the relevant Set departing from Exeter St David's and its arrival time back at Exeter St David's or (2) Great Malvern, within the time between the relevant Set departing from Worcester Shrub Hill and its arrival time back at Worcester Shrub Hill, unless:
 - (a) the Operator does not consider it to be safe to continue operating the Set to the relevant Turnaround Location or Depot; or
 - (b) the TSP does not rectify the In-Service Fault at the Turnaround Location or Depot in sufficient time so that the Operator is reasonably able to arrange for the Set to depart in service from the Turnaround Location or Depot at its Scheduled Departure Time.

- 4.3 It shall in any event be reasonable for the Operator to withdraw a Failed Set from service if:

- (a) a Technical Inspector:

- (i) is unable to determine the cause of the relevant In-Service Fault and either rectify or isolate that In-Service Fault to the Operator's reasonable satisfaction within thirty (30) minutes of the earlier of the Operator's notice pursuant to Paragraph 1.1 and the TSP first becoming aware of that In-Service Fault; or
 - (ii) determines that the relevant In-Service Fault is such that that Failed Set cannot continue with that In-Service Fault isolated; or
 - (b) Network Rail directs that the relevant Failed Set be removed from service.
- 4.4 The Operator may withdraw a Failed Set from service at any time following the occurrence and continuation of a Category One In-Service Failure, provided that an attempt to remedy such failure has been made and such failure has not been remedied to the Operator's reasonable satisfaction within thirty (30) minutes of such attempted remediation, unless, having regard to its experience with failures similar to the relevant Category One In-Service Failure and the likelihood of it being possible to remedy the Category One In-Service Failure within thirty (30) minutes of a remediation attempt, the Operator is of the reasonable opinion that it is not possible to remedy the Category One In-Service Failure within thirty (30) minutes, in which case the Operator may withdraw the Failed Set from service immediately.
5. **SET RECOVERY**
- 5.1 The TSP shall procure that Failed Sets withdrawn from service are recovered and incidents that cause them are reported in accordance with all Applicable Laws and Standards.
- 5.2 If any Failed Set is incapable of moving under its own power, the TSP shall provide a Technical Inspector or other nominated call-out person to attend any such incident promptly upon its occurrence to:
- (a) assist the Operator in ascertaining the root cause of the incident;
 - (b) determine the extent of any damage (if any) caused at the time of the incident;
 - (c) determine the extent of any damage (if any) caused as a consequence of recovery of that Failed Set;
 - (d) advise on changes in procedures, method statements or maintenance practices to prevent recurrence;
 - (e) certify as fit to move or supervise the recovery of that Failed Set back to one of the Depots;
 - (f) assist with the use of any special tools required for recovery and advise on the use of lifting and jacking points where necessary; and
 - (g) provide to the Operator a report identifying the cause of the incident.
- 5.3 The physical recovery of any Failed Set following any such incident shall be carried out by the TSP following liaison with the Operator as soon as reasonably practicable thereafter. The TSP shall be responsible for providing rescue traction, including necessary drivers.

- 5.4 Should the Technical Inspector or other call-out person nominated by the TSP not attend any such incident, a statement of damage consequential to the recovery operation shall be provided by the Operator, which shall be deemed to form the record of the event.

Part D of Schedule 3

Service recovery after withdrawal of Failed Sets

1. Where any Failed Set is removed from service pursuant to this Schedule 3 (*In-Service Provisions and Faults*), and the TSP considers that it is able to make available to the Operator either a replacement Set or, following correction of the In-Service Fault, the same Set then the TSP shall as soon as reasonably practicable notify the Operator Nominated Contact of the time and place where a replacement Set is able to be made available.
2. The Operator Nominated Contact shall, as soon as reasonably practicable after being notified in accordance with Paragraph 1, notify the TSP Control Room Contact of whether it wishes, subject to Paragraph 3, to accept the replacement Set into service at that time and place or at such other time and/or place as the parties may agree.
3. Where a Set is offered to the Operator pursuant to this Part D (*Service recovery after withdrawal of Failed Sets*) of Schedule 3 (*In-Service Provisions and Faults*), the provisions of Paragraph 1.4 of Part B (*Handover*) of Schedule 2 (*Availability*) shall apply to such Set when offered for service, save that Paragraphs 1.4(a) and 1.4(b) of Part B (*Handover*) of Schedule 2 (*Availability*) shall not apply.

Part E of Schedule 3

Technical Inspectors

1. The TSP shall employ sufficient Technical Inspectors to respond as soon as is practical to the level of In-Service Faults that is likely to occur during the term of this Agreement in relation to rolling stock vehicles of the kind which comprise the Sets.
2. The Technical Inspectors shall each be mobile and together capable of attending a Set anywhere on the Great Western IEP Network, including diversionary routes. Their times of working and disposition shall have regard to:
 - (a) probability of an In-Service Fault at any given time of day;
 - (b) available time to carry out repairs at the locations any Set will visit such as terminals and stations at which Turnarounds are carried out; and
 - (c) the probability of more than one In-Service Fault occurring at the same time.
3. Technical Inspectors shall be sufficiently trained and skilled to be capable of undertaking rapid fault finding and diagnosis of any type of fault affecting the service, operational capability or safety of a Set and the correction and/or isolation of any components found to be faulty to enable a return of any such Set to service where practicable.
4. The Operator shall, at the request of the TSP, provide to the TSP such access to the Sets as is reasonable to facilitate the avoidance or remediation of In-Service Faults and KPI Failures, provided that:
 - (a) no such access shall delay the operation of any Set by the Operator in Passenger Services nor unreasonably disturb any passenger travelling on any Set at such time, unless otherwise agreed; and
 - (b) the TSP shall at all times during such access adhere to all reasonable instructions of the Operator.

SCHEDULE 4

CONTRACT MANAGEMENT AND COMPLIANCE

Part A of Schedule 4

Contract Management

1. APPOINTMENT OF PERSONNEL

TSP's Personnel

- 1.1 (a) The TSP shall appoint a contract manager who shall have the power and authority delegated to it by the TSP to act and to make decisions on behalf of the TSP (the **TSP Contract Manager**). The responsibilities of the TSP Contract Manager shall be as set out in this Part A (*Contract Management*) of Schedule 4 (*Contract Management and Compliance*).
- (b) The TSP shall also:
- (i) provide a senior representative, with a sufficient level of authority, to attend the Principals' Meetings;
 - (ii) provide a representative for the purposes of Schedule 2 (*Availability*) and Schedule 3 (*In-Service Provisions and Faults*) who shall be a person with suitable authority, qualification and experience to manage the day-to-day operational issues relating to the TSP's obligations under those Schedules and co-ordinate the management and, where appropriate, recovery of Failed Sets pursuant to Schedule 3 (*In-Service Provisions and Faults*) (the **TSP Control Room Contact**); and
 - (iii) notify the Operator of its Senior Personnel, from time to time, in accordance with paragraph 4.3 of the Dispute Resolution Agreement.
- (c) 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 Operator Contract Manager of a proposal to replace the TSP Contract Manager. In the case of emergency, the TSP shall give notice to the Operator Contract Manager of a proposal to replace the TSP Contract Manager no later than the day of replacement.

Operator's Personnel

- 1.2 (a) The Operator shall appoint a contract manager who shall have the power and authority delegated to it by the Operator to act and to make decisions on behalf of the Operator (the **Operator Contract Manager**). The responsibilities of the Operator Contract Manager shall be as set out in this Part A (*Contract Management*) of Schedule 4 (*Contract Management and Compliance*).
- (b) The Operator shall also:
- (i) provide a senior representative, with a sufficient level of authority, to attend Principals' Meetings; and

- (ii) provide a nominated contact for the purposes of Paragraphs 3.1 of Part B (*Handover*) of Schedule 2 (*Availability*) and Paragraphs 1 and 2 of Part D (*Service recovery after withdrawal of Failed Sets*) of Schedule 3 (*In-Service Provisions and Faults*), who shall be a person with suitable qualification and experience to perform the Operator's roles under, and co-ordinate the management and, where appropriate, recovery of Failed Sets pursuant to, those Schedules (the **Operator Nominated Contact**); and
 - (iii) notify the TSP of its Senior Personnel, from time to time, in accordance with paragraph 4.3 of the Dispute Resolution Agreement.
- (c) Except in cases of emergency, or as a consequence of the proper exercise of disciplinary procedures of the Operator, the Operator shall give a minimum of one (1) month's notice to the TSP Contract Manager of a proposal to replace the Operator Contract Manager.

Responsibilities of the TSP Contract Manager

- 1.3 The TSP Contract Manager shall be responsible for facilitating the TSP in fulfilling its obligations under this Agreement, including:
- (a) managing this Agreement, including being the TSP's single point of contact in the day-to-day commercial administration of this Agreement, on behalf of the TSP;
 - (b) monitoring the TSP's performance of its obligations under this Agreement (including in relation to the Performance Regime) and including:
 - (i) providing reports to the Operator reviewing the performance of the Sets with a view to identifying safety, reliability, service quality and operational improvements which will then be considered and discussed between the TSP and the Operator;
 - (ii) arranging and attending Performance Review Meetings; and
 - (iii) preparing the Performance Report required pursuant to Paragraph 6.7(a) which will cover the issues set out in Appendix A (*Performance Report*) to this Part A (*Contract Management*) of Schedule 4 (*Contract Management and Compliance*);
 - (c) developing and co-ordinating with the Operator Contract Manager on the joint management processes needed to facilitate the performance of this Agreement, including co-ordinating personnel and arranging any necessary Performance Review Meetings;
 - (d) advising the Operator Contract Manager of any proposed changes to the contract management processes, TSP safety and quality management system or TSP organisation;
 - (e) managing change control and the implementation process;
 - (f) managing compliance with the requirements of this Agreement in respect of keeping records, including in accordance with Paragraph 2.8; and
 - (g) identification and communication of disputes.

Responsibility of the Operator Contract Manager

- 1.4 The Operator Contract Manager shall be responsible for facilitating the Operator in fulfilling its obligations under this Agreement, including:
- (a) managing this Agreement, including being the Operator's single point of contact in the day-to-day commercial administration of this Agreement, on behalf of the Operator, including the Performance Regime;
 - (b) providing Operator input into and attending Performance Review Meetings arranged by the TSP Contract Manager and approving the minutes from each of those Performance Review Meetings;
 - (c) co-ordinating with the TSP Contract Manager on the joint management processes needed to facilitate the performance of this Agreement; and
 - (d) identification and communication of disputes.

Delegation

- 1.5 On or before the date of this Agreement, the TSP shall provide to the Operator an exhaustive list of those powers, functions and authorities of the TSP Contract Manager that the TSP has delegated to the TSP Control Room Contact (the **Delegated Functions**) and the address for service of the TSP Control Room Contact. The TSP agrees that the Maintainer may act on behalf of the TSP (and act as the TSP Control Room Contact) and bind the TSP in respect of the Delegated Functions without the Operator requiring further TSP approval in writing. The Operator agrees that the Maintainer does not have authority, without further TSP approval in writing, to act on behalf of the TSP and/or bind the TSP in respect of any matter other than the Delegated Functions. Without prejudice to the foregoing, the TSP Contract Manager shall be entitled to amend the list of Delegated Functions from time to time by notice in writing to the Operator, signed by the TSP Contract Manager, and such amendment will only be effective from the Operator's receipt of such notice.
- 1.6 The TSP Contract Manager may also, from time to time, delegate any of, but not all of, the powers, functions and authorities vested in him to assistants and/or agents (other than the Maintainer, to which Paragraph 1.5 shall apply) and may from time to time revoke any such delegation. Any such delegation or revocation shall be in writing, shall be signed by the TSP Contract Manager 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 Operator Contract Manager and such delegation or revocation shall not be retrospective, unless otherwise agreed between the TSP and the Operator.
- 1.7 The TSP Control Room Contact may, from time to time, delegate any of, but not all of, the powers, functions and authorities vested in him to assistants and/or agents and may from time to time revoke such delegation. Any such delegation or revocation shall be in writing, shall be signed by the TSP Control Room Contact 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 Operator Contract Manager and such delegation or revocation shall not be retrospective, unless otherwise agreed between the TSP and the Operator.

- 1.8 The Operator Contract Manager or the Operator Nominated Contact (as the case may be) may, from time to time, delegate any of, but not all of, the powers, functions and authorities vested in him to assistants and/or agents and may from time to time revoke such delegation. Any such delegation or revocation shall be in writing, shall be signed by the Operator Contract Manager or the Operator Nominated Contact (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 TSP Contract Manager and such delegation or revocation shall not be retrospective, unless otherwise agreed between the TSP and the Operator.

2. ACCESS AND MAINTENANCE OF RECORDS

Performance System and Records

- 2.1 The Operator Contract Manager will maintain a record of Relevant Performance Incidents in relation to each Set using the Performance System (and/or such other performance monitoring system as the Operator may reasonably specify to the TSP) and shall include the date, time, location, number and cause of each such Relevant Performance Incident.
- 2.2 The TSP Contract Manager shall at all times maintain an accurate record of all performance data which relate to the performance criteria under this Agreement, including:
- (a) the number of Half Sets and the number of Full Sets which are Unavailable, Deemed Unavailable, Evening Unavailable, Unavailable But Used, Failed But Used or Evening Failed But Used for each day; and
 - (b) the number of TSP Delay Minutes for each day,
- and shall share such records with the Operator Contract Manager, on request.
- 2.3 The Operator Contract Manager shall make the records of each of the matters specified in Paragraph 2.1 available to the TSP at the request of the TSP Contract Manager. The Operator Contract Manager shall also make available to the TSP at the reasonable request of the TSP:
- (a) driver and other relevant staff reports, in each case, as soon as reasonably practicable, upon receipt by the Operator Nominated Contact;
 - (b) daily control logs via real time access within the Operator's railway operations control room; and
 - (c) the results of any infrastructure investigation, in each case, as soon as reasonably practicable and to the extent they can be lawfully disclosed.

On-Set CCTV or Forward Facing CCTV Systems

- 2.4 The Operator shall be entitled to access any of the Sets at any time during the Operational Day and remove any data cartridge from the on-Set CCTV and/or Forward Facing CCTV Systems on such Sets, provided that the Operator notifies the TSP Control Room Contact of such removal before the end of that Operational Day.

2.5 Following any removal of such data cartridge from the on-Set CCTV and/or Forward Facing CCTV Systems on such Sets, the Operator shall return any such data cartridge to the TSP as soon as reasonably practicable.

2.6 If:

- (a) the Operator has removed any such data cartridge without providing the notification to the TSP pursuant to Paragraph 2.4; and
- (b) such Set is Handed Over by the TSP on the following Operational Day without the necessary data cartridge for the relevant on-Set CCTV and/or Forward Facing CCTV Systems but such Set would otherwise comply with the requirements as set out in Paragraph 1.4 of Part B (*Handover*) of Schedule 2 (*Availability*),

such Set that is made available shall not be regarded to have suffered any Category Three Handover Failures or Presentation KPI Standards Failures that are wholly or mainly attributable to an insufficient number of data cartridges for the relevant on-Set CCTV and/or Forward Facing CCTV Systems.

TSP Information

2.7 To the extent the TSP Contract Manager collects any of the following information, the TSP Contract Manager shall retain:

- (a) any downloads of on-Set CCTV or FFCCTV footage (which shall include footage from the passenger area, forward and rear facing and external body side cameras) for such period and in such manner as may be required by Applicable Laws and Standards and in accordance with this Agreement;
- (b) any 'On Train Monitoring Recorder' downloads for such period of time as may be agreed by the parties;
- (c) downloads of each Set's fault-monitoring systems, sufficiently frequently to ensure an accurate and complete history of each Set's fault history is maintained for such period of time as may be agreed by the parties; and
- (d) such other information in relation to the management of performance and reliability of the Fleet as may be agreed by the parties.

2.8 The TSP Contract Manager shall, at the reasonable request of the Operator Contract Manager, make records of each of the matters listed in Paragraph 2.7 (whether information retained by the TSP Contract Manager in accordance with Paragraph 2.7 or the corresponding contemporaneous information held on a Set at the time of such request) available to the Operator Contract Manager and any other relevant person or authority that may reasonably require access to such records in such format as the TSP Contract Manager and the Operator Contract Manager may reasonably agree from time to time.

2.9 The TSP Contract Manager shall, at the reasonable request of the Operator Contract Manager, make available any other information reasonably required, and/or reasonably incidental to the services provided to the Operator, by its insurance advisers or insurers that the TSP holds to the insurance advisers or insurers of the Operator (subject, where such information constitutes Commercially Sensitive Information, to the provisions of Schedule 13 (*Confidentiality*)).

- 2.10 The TSP Contract Manager shall maintain a server and shall provide the Operator with access to such server to enable the Operator to retrieve the following information:
- (a) GPS location data in respect of the train location as described in item 7 of annexe W of the Train Technical Description;
 - (b) TMS remote data transmission as described in item 20 of annexe W of the Train Technical Description;
 - (c) On-Train maintenance recorder data as described in item 11 of annexe W of the Train Technical Description;
 - (d) Passenger count data as described in item 13 of annexe W of the Train Technical Description;
 - (e) Energy consumption data as described in item 5 of annexe W of the Train Technical Description;
 - (f) Train maintenance recorder event data in respect of events onboard the train as described in item 18 of annexe W of the Train Technical Description;
 - (g) Daily timetable data as described in item 2 of annexe W of the Train Technical Description;
 - (h) Seat reservation data as described in item 8 of annexe W of the Train Technical Description; and
 - (i) Passenger information system real time messages as described in item 12 of annexe W of the Train Technical Description.

In-Service Fault Response and Records

- 2.11 The TSP Contract Manager shall ensure that the TSP Control Room Contact is available, and that, subject to the Operator's compliance with Paragraph 4.4(b), its facilities are appropriately resourced on a 24/7 Basis and the TSP Control Room Contact shall use his best endeavours to respond in person to all notifications pursuant to Paragraphs 1.1 and 1.2 of Part C (*In-Service Faults*) of Schedule 3 (*In-Service Provisions and Faults*) within sixty (60) seconds of any such notification, provided that in any event, he shall respond to all such notifications within ten (10) minutes.
- 2.12 Any such notification to the TSP (and subsequent action taken in respect thereof) shall be logged and recorded as follows:
- (a) time of occurrence of the fault (to the extent this is known by the Operator);
 - (b) time of notification;
 - (c) time of allocation of staff;
 - (d) time of attendance;
 - (e) problem reported;
 - (f) action taken; and
 - (g) time of clearance (where appropriate) of Failed Set or other outcome.

Network Information

2.13 The TSP shall collect and retain for such period of time and in such format as may reasonably be agreed between the TSP, the Operator and the Secretary of State, the data and information collected by the following systems:

- (a) the GSM-R Monitoring System;
- (b) UGMS; and
- (c) UOMS,

together, the **Network Information**.

2.14 The TSP acknowledges that all Network Information shall at all times be the property of the Secretary of State.

3. DATA PROTECTION

3.1 In this Paragraph 3, data controller, data processor, data subject, processing and personal data shall have the meanings given to them in the Data Protection Act.

3.2 For the purposes of the Data Protection Act, the Operator shall be the data controller and the TSP shall be the data processor of any personal data contained in the CCTV, FFCCTV and seat reservation data that the TSP may collect, retain and process pursuant to this Agreement. Any such personal data that the TSP may process shall be the **Personal Data**.

3.3 The TSP shall process Personal Data only to the extent and in such manner as is necessary for the purposes of performance of its obligations under this Agreement or the MARA and in accordance with the instructions of the Operator from time to time and shall not process the Personal Data for any other purpose.

3.4 The TSP shall comply and promptly carry out any request made by the Operator from time to time regarding any supply, amendment, transfer, copy and deletion of any Personal Data (in any format or any media) and upon termination of this Agreement, all Personal Data shall be returned by the TSP to the Operator and the TSP shall cease to use (or process in any other manner) any Personal Data.

3.5 The TSP shall ensure that appropriate technical and organisational measures shall be taken to maintain the security of, prevent the unauthorised or unlawful processing of, and prevent the accidental loss or destruction of, or damage to, the Personal Data and the TSP shall, from time to time, at the TSP's expense, comply with any reasonable request made by the Operator to:

- (a) take additional measures to ensure compliance with the requirements described in this Paragraph 3 and the compliance of the obligations imposed on either of the parties under the Data Protection Act;
- (b) take the measures set out in this Paragraph 3.5, having regard to the state of technological development and the cost of implementing the measures, so as to ensure a level of security appropriate to:
 - (i) the harm that may result from breach of such measures; and

- (ii) the nature of the Personal Data to be protected;
- (c) restore any Personal Data that is lost or destroyed or becomes damaged or corrupted and take reasonable action as is necessary to minimise the impact of such event and prevent such event from happening or recurring; and
- (d) allow its, or its sub processor's, data processing facilities, procedures, records and documentation which relate to the processing of the Personal Data to be inspected by the auditors or representatives of the Operator, provided that:
 - (i) reasonable notice shall be given by the Operator; and
 - (ii) the inspection shall cause as little disruption as is reasonable to the operations of the TSP,

having regard to the TSP's status of compliance of its obligations under this Paragraph 3.

3.6 The TSP shall only disclose or allow access to the Personal Data to employees of the TSP and/or the Maintainer who require access to the Personal Data for the performance of their obligations under this Agreement (or the MARA) (and where that disclosure or access is permitted by the Data Protection Act). The TSP shall take all reasonable steps to ensure the reliability (including appropriate training in applicable data protection laws and regulations and in the proper handling of Personal Data) of any such employees. No third parties shall be given access to, or have disclosed to them, any of the Personal Data other than in accordance with the Data Protection Act and with the prior agreement of the Operator.

3.7 Without prior written consent of the Operator, the TSP shall not:

- (a) appoint an agent or sub processor (other than the Maintainer); or
- (b) transfer the Personal Data outside the European Economic Area.

3.8 The TSP shall promptly notify the Operator:

- (a) if it becomes aware of the loss, damage, destruction or corruption of any Personal Data;
- (b) upon receiving a notice from any Relevant Authority, including the Information Commissioner, which relates directly or indirectly to the processing of Personal Data by the TSP or the Maintainer; and
- (c) upon receiving a request from a data subject for access to that person's Personal Data held by the TSP. The TSP shall provide full co-operation and assistance to the Operator in allowing data subjects to exercise their rights to access their Personal Data under the Data Protection Act.

4. CONSULTATION, ALLOCATION AND DISPUTES

Report

4.1 The Operator shall, on the next Business Day, provide a written report to the TSP Control Room Contact, in respect of the preceding Business Day and any intervening days since the preceding Business Day, in respect of each Set required in accordance with the Dispatch Requirements to be made available to the Operator on that day and stating:

- (a) in respect of any Set not made available in accordance with the Dispatch Requirements whether that Set was for purposes of Part A (*Availability Regime*) of Schedule 6 (*Performance Regime*):
- (i) a Damaged Set;
 - (ii) a Divergent Handover Set;
 - (iii) an Excused Set;
 - (iv) a Free Set;
 - (v) an Alternative Set;
 - (vi) a Missing Set;
 - (vii) an Obstructed Set;
 - (viii) a Vindicated Set;
 - (ix) a Relieved Set; or
 - (x) a Rejected Set;
- (b) in respect of any Set withdrawn from service before the end of the Operational Day whether that Set was for purposes of Part A (*Availability Regime*) of Schedule 6 (*Performance Regime*):
- (i) a Divergent In-Service Set;
 - (ii) a Divergent In-Service Evening Set;
 - (iii) a Returned Set;
 - (iv) a Switched Set;
 - (v) a Withdrawn Set; or
 - (vi) a Withdrawn Evening Set; and
 - (vii) the Availability Adjustment Component that the relevant Half Set or Full Set shall be falling within for the purposes of calculating the Availability Adjustment or the Reporting Period Availability Adjustment;
- (c) whether any Relevant Delay Incident occurred in relation to that Set and, if it did:
- (i) the attributions of responsibility for such Relevant Delay Incident in accordance with Paragraph 4.3 to be the responsibility of the TSP; and
 - (ii) the number, if any, of TSP Delay Minutes;
- (d) (i) any Relevant Delay Incidents attributed to be the responsibility of the Operator by Network Rail (other than those attributions which remain in dispute between the Operator and Network Rail). Such report shall record the attribution of responsibility between:

- (A) Relevant Delay Incidents which are the responsibility of the Operator; and
 - (B) such Relevant Delay Incidents that are the responsibility of the TSP; and
- (ii) to the extent that the outcome of any dispute with Network Rail results in Relevant Delay Incidents being attributed to the Operator, then the Operator shall attribute the responsibility for the same in accordance with Paragraph 4.1(d)(i) and update its records accordingly,

and shall include the date, time, location, number and cause of such TSP Delay Minutes; and

- (e) whether any Cancellation occurred in relation to that Set and, if it did the number of Cancellations that result from the fleet equipment problems or fleet depot delays, as defined in the Delay Attribution Guide and that are attributed to be the responsibility of the Operator therein.

4.2 When the outcome of any dispute regarding Relevant Performance Incidents is resolved with Network Rail, all relevant records and calculations shall be updated in accordance with the relevant provisions of this Agreement.

Attribution

4.3 The attribution of responsibility for any Relevant Delay Incident shall be conducted, in each case, in accordance with the following principles:

- (a) the Operator shall be responsible, unless the TSP is responsible; and
- (b) the TSP shall be responsible if such incident results from fleet equipment problems or fleet depot delays, as defined in the Delay Attribution Guide and attributed to the TSP, using the relevant responsible manager code, unless the fleet equipment problems or fleet depot delay were wholly or mainly attributable to:
 - (i) Operator Responsible Damage;
 - (ii) Operator Misconduct;
 - (iii) a failure by the Operator to fulfil any of its obligations under this Agreement;
 - (iv) any Force Majeure Event in respect of which the TSP is the Affected Party;
 - (v) Additional Availability Conditions agreed by the parties pursuant to Part G (*Obligations concerning Sets withheld from Service*) of Schedule 2 (*Availability*);
 - (vi) Supplementary Availability Conditions agreed by the parties pursuant to Paragraph 3 of Part D (*Deviation from Dispatch Requirements*) of Schedule 2 (*Availability*);

- (vii) problems with the Connecting Network that are not wholly or mainly attributable to acts or omissions of the TSP or any of its employees, agents or Subcontractors in performing the activities contemplated under this Agreement;
- (viii) any rolling stock (other than a Set) operated by the Operator, provided that any such problems or delay arising from such rolling stock is not wholly or mainly attributable to the acts or omissions of the TSP or any of its employees, agents or Subcontractors in performing the activities contemplated under this Agreement; or
- (ix) an ETCS Permitted Fault on that Set during the ETCS Performance Holiday.

Consultation

- 4.4 (a) Subject to the Operator's compliance with Paragraph 4.4(b), the TSP shall ensure that the TSP Control Room Contact shall be based and available in the Operator's railway operations control room, on a 24/7 Basis (unless otherwise agreed), to provide support and advice in the management of the Fleet and its deployment and maintenance, to respond to incidents and (where applicable) access the Performance System (and/or such other performance monitoring system as the Operator may reasonably specify to the TSP).
- (b) The Operator Contract Manager shall grant access to, and provide reasonable office facilities in, the Operator's railway operations control room to the TSP Control Room Contact in order that the TSP Control Room Contact may carry out his responsibilities under this Part A (*Contract Management*) of Schedule 4 (*Contract Management and Compliance*) or shall procure such access from other relevant person.
- 4.5 To the extent that the Operator intends to attribute all or part of the responsibility for any Relevant Delay Incident to the TSP pursuant to Paragraph 4.3, the Operator Contract Manager shall, as soon as reasonably practicable upon receipt of notification from Network Rail of any attribution of such Relevant Delay Incident between Network Rail and the Operator, notify and consult with the TSP Control Room Contact in respect of such attribution between Network Rail and the Operator.
- 4.6 The TSP Control Room Contact shall be entitled to request that the Operator places any Relevant Delay Incident referred to in Paragraph 4.2 into dispute with Network Rail in accordance with the terms of the relevant Track Access Contract, in which event the Operator shall accordingly place such Relevant Delay Incident into dispute with Network Rail.
- 4.7 Where the TSP requests that any Relevant Delay Incident is placed into dispute with Network Rail pursuant to Paragraph 4.6, the TSP shall provide such reasons and such appropriate supporting information as, in each case, are available at the time (and shall continue to provide such further reasons and such further information as each becomes available) to enable the Operator to dispute such Relevant Delay Incident with Network Rail.
- 4.8 The Operator shall procure that the TSP has appropriate access to the Performance System (and/or such other performance monitoring system as the Operator may reasonably specify to the TSP).

4.9 All notifications and/or elections made by either party in respect of Relevant Delay Incidents shall be entered on the Performance System (and/or such other performance monitoring system as the Operator may reasonably specify to the TSP).

Disputes relating to the Attribution of a Relevant Delay Incident

4.10 On each Business Day the TSP Control Room Contact and the Operator Contract Manager shall work together to establish the cause of and attribute responsibility for any Relevant Delay Incidents. If the TSP Control Room Contact and the Operator Contract Manager cannot agree to whom any Relevant Delay Incident should be attributed pursuant to Paragraph 4.3, the TSP Contract Manager and the Operator Contract Manager shall meet as soon as reasonably practicable (and in any event within five (5) Business Days of the dispute arising) to discuss the dispute. If such meeting does not resolve the relevant dispute, such dispute shall be dealt with at the next Performance Review Meeting.

Reliability Regime

4.11 In respect of any Delay Minutes which arises from a Relevant Delay Incident which has not been agreed or determined to be the TSP's responsibility, no Deductions shall be made under the provisions of Part B (*Reliability Regime*) of Schedule 6 (*Performance Regime*) and Part A (*TARA Payments*) of Schedule 5 (*Payment*) and those Delay Minutes shall not be taken into account for the purposes of Paragraph 5.4 until agreement or determination as aforesaid.

Co-operation relating to the Attribution of Cancellations

4.12 The Operator and the TSP shall provide such support, co-operation and information to each other as may reasonably be required in relation to the allocation of Cancellations as between Network Rail and the Operator as a result of fleet equipment problems or fleet depot delays, as defined in the Delay Attribution Guide and associated disputes under the Track Access Contract.

5. PERFORMANCE NOTICES

Unavailability Notices

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

[REDACTED]

5.2 Any Missing Set, Rejected Set, Withdrawn Set or Withdrawn Evening Set which is:

- (a) the subject of a notification from an authority under Paragraph 4 of Part C (*Safety Critical Fault*) of Schedule 2 (*Availability*) or Paragraph 4 of Part B (*Safety Critical Fault*) of Schedule 3 (*In-Service Provisions and Faults*) for which the TSP has launched an appeal against such notification shall not be treated as Unavailable, Deemed Unavailable or Evening Unavailable for the purposes of Notifiable Unavailability Event for the period commencing from the date of the launch by TSP of such appeal and ending on the date when such appeal is determined but otherwise Unavailable in all other respects (including the Performance Regime). If the appeal is not determined in the TSP's favour then such Missing Set, Rejected Set, Withdrawn Set or Withdrawn Evening Set shall continue to be treated as Unavailable, Deemed Unavailable or Evening Unavailable for the purposes of Notifiable Unavailability Event as from the date of the appeal is determined; or
- (b) a Missing Set, Rejected Set, Withdrawn Set or Withdrawn Evening Set wholly or mainly attributable to the OHLE Works and/or the 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*) of the MARA) in accordance with its terms shall not be counted for the purposes of Paragraph 5.1 above and the parties acknowledge and agree that no Notifiable Unavailability Event shall occur in connection with any such Set.

Reliability Notices

5.3 The TSP shall calculate the Reliability Factor for each Reporting Period five (5) Business Days after the end of that Reporting Period.

■ [REDACTED]

■ [REDACTED] ■ [REDACTED] ■ [REDACTED]

■ [REDACTED] ■ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

5.6 The Operator may also notify the TSP Contract Manager if and whenever it considers a Notifiable Unavailability Event or a Notifiable Reliability Event has occurred and, if it does so, it shall also provide a copy of such notification to the Secretary of State.

6. RELATIONSHIP AND PERFORMANCE REVIEW PROCESS

Communication

6.1 The TSP and the Operator shall ensure that at all reasonable times, the TSP Contract Manager and the Operator Contract Manager (respectively) or any other authorised representative are available to receive, deal with, agree, advise on and explain what the current position is concerning any issues regarding this Agreement, including safety related issues affecting the Sets and day-to-day operational and incident management.

6.2 All correspondence between the TSP and the Operator shall be sent in accordance with Clause 20 (*Notices*).

6.3 The TSP shall use a logical and structured system for correspondence reference. All correspondence between the TSP and the Operator shall be given a unique reference number.

6.4 The TSP shall maintain a sequentially numbered register of all correspondence relating to this Agreement which is outside of the day-to-day commercial administration of this Agreement. Such 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.

6.5 Save where otherwise agreed in writing between the TSP and the Operator, 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.

Performance Review Meetings

- 6.6 (a) A performance review meeting (a ***Performance Review Meeting***) shall be held within ten (10) Business Days of the end of each Reporting Period, or on such other date or with such frequency as may be agreed between the TSP and the Operator. Performance Review Meetings shall be attended by at least the TSP Contract Manager and the Operator Contract Manager. Representatives of the Maintainer shall attend each Performance Review Meeting, unless, in the reasonable opinion of either the TSP Contract Manager or the Operator Contract Manager, it would not be appropriate for them to attend a particular Performance Review Meeting, in which case the TSP Contract Manager shall notify the Maintainer accordingly.
- (b) The standing agenda for each Performance Review Meeting shall be as set out in Paragraph 8. Each party shall give reasonable notice to the other party of any other items it proposes to add to the agenda of a Performance Review Meeting.
- (c) The location of any Performance Review Meeting shall be at the offices of either the TSP or the Operator or such other location in the United Kingdom as may be agreed between the parties.
- (d) The TSP Contract Manager shall use reasonable endeavours to prepare the minutes of any 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 Operator Contract Manager 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 Contract 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 Contract Manager.

Performance Reports

- 6.7 (a) No later than three (3) Business Days prior to any Performance Review Meeting, the TSP Contract Manager shall provide to the Operator Contract Manager a Performance Report relating to the Reporting Period immediately preceding that Performance Review Meeting and which shall cover the issues set out in Appendix A (*Performance Report*) to this Part A (*Contract Management*) of Schedule 4 (*Contract Management and Compliance*).
- (b) The TSP Contract Manager shall provide to the Operator Contract Manager, within a reasonable time following a request, any additional performance reports and other reports as may be reasonably requested by the Operator Contract Manager.

Principals' Meetings

- 6.8 In addition to the Performance Review Meetings, the parties shall provide a senior representative, with a sufficient level of authority, to meet at least once every four (4) Reporting Periods 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.

Dispute Resolution

- 6.9 (a) If agreement cannot be reached on any issue at a Performance Review Meeting and the issue is one in respect of which agreement between the TSP and the Operator is required pursuant to the terms of this Agreement then, unless otherwise agreed between the parties, a Dispute shall arise and such Dispute will be resolved in accordance with the Dispute Resolution Agreement.
- (b) When a Dispute has been resolved, the liability, if any, of the TSP under the Performance Regime will be recalculated to reflect the outcome of such Dispute and the timing of the occurrence of the event giving rise to such Dispute.

7. RIGHTS OF ACCESS

- 7.1 During the Term of this Agreement, on the Operator giving reasonable notice to the TSP, the TSP shall grant or procure access to each Set and each Depot to allow the Operator, the Operator Contract Manager or any nominee of the Operator to monitor compliance by the TSP of its obligations under this Agreement, subject to the commercial and industrial operations of the TSP and/or the Maintainer (as the case may be) not being unreasonably disrupted.
- 7.2 The TSP shall make available any personnel to address all questions as may reasonably be required by the Operator, the Operator Contract Manager and/or a person nominated by the Operator upon the giving of reasonable notice, subject to the commercial and industrial operations of the TSP and/or the Maintainer (as the case may be) not being unreasonably disrupted.
- 7.3 The TSP shall at the request of the Operator, the Operator Contract Manager or a person nominated by the Operator upon the giving of reasonable notice, make available for inspection and copying (by any means) by the Operator, the Operator Contract Manager or a person nominated by the Operator any Technical Documents and/or other documents contained in the Technical Library (subject only to documents protected on the grounds of legal professional privilege or litigation privilege).
- 7.4 The Operator, the Operator Contract Manager or a person nominated by the Operator may, at the discretion of the TSP, be permitted to take photographs, film or make a video-recording, or make any other kind of record of any inspection.
- 7.5 Each of the Operator, the Operator Contract Manager and/or a person nominated by the Operator shall at all times comply with any relevant health and safety requirements of TSP (as notified to the Operator, the Operator Contract Manager and/or a person nominated by the Operator, as the case may be) when exercising its rights under Paragraphs 7.1 and 7.2.

8. STANDING AGENDA FOR PERFORMANCE REVIEW MEETING

- 8.1 The standing agenda for each Performance Review Meeting shall include, as applicable:
- (a) minutes of last meeting;
- (b) a review of safety performance;

- (c) a review of the progress made against the actions agreed at the previous Performance Review Meeting;
- (d) a review of any proposals for remedial plans;
- (e) a review of the relevant Performance Report, the content of which shall be as set out in Appendix A (*Performance Report*) to this Part A (*Contract Management*) of Schedule 4 (*Contract Management and Compliance*) or as may be agreed between the parties from time to time;
- (f) any forthcoming special events or other events for which the Operator may require or request, as applicable, additional Sets be made available to it;
- (g) planned timetable changes (including resulting from Restrictions of Use (as defined in schedule 4 of the Track Access Contract) and special events);
- (h) any Disputes, including Fault and Incident disputes and allocation of Delay Minutes for the purposes of the Reporting Period Reliability Adjustment and those Disputes that have settled and those that have arisen during the relevant Reporting Period and the progress made on any on-going disputes;
- (i) any other business; and
- (j) confirmation of the date and (if known) the location of the next Performance Review Meeting.

9. CONSULTATION

9.1 The TSP Contract Manager shall provide the Operator Contract Manager with:

- (a) such support, cooperation and information (such information as outlined in Appendix B (*Consultation*) to this Part A (*Contract Management*) of Schedule 4 (*Contract Management and Compliance*)), provided that the TSP shall not be obliged to incur material expenditure in doing so, unless:
 - (i) such support, cooperation and information are required by the Operator to comply with its obligations under the Applicable Laws and Standards in respect of the operation and maintenance of the Sets in relation to safety and environmental performance; and
 - (ii) such support, cooperation and information was reasonably required by the Operator and does not comprise of any information or action which the Operator (or a third party other than the TSP, the Maintainer or any of its employees, agents or Subcontractors (and subcontractors of any tiers in the case of the Maintainer)) could reasonably be expected to provide or undertake itself; and
- (b) where agreed, materials, in order to enable the Operator to comply with its obligations under Applicable Laws and Standards in respect of the operation and maintenance of the Sets.

9.2 The TSP Contract Manager and the Operator Contract Manager shall meet on the last Business Day of September each year throughout the Term of this Agreement, or on such other date or with such other frequency as the parties may agree, to discuss and review,

inter alia, any materials and information provided by the TSP to the Operator pursuant to Paragraph 9.1.

10. DAMAGE TO SETS IN THE OPERATIONAL DAY

The TSP shall as soon as reasonably practicable provide all information, assistance and cooperation to the Operator that it is reasonable for the Operator to request and reasonable to expect the TSP to provide in connection with any damage to a Set that may fall within the scope of Paragraph (d) of the definition of Operator Responsible Damage.

11. MAINTENANCE OF OPERATOR EQUIPMENT

11.1 If the Operator requires access to the Sets to maintain, repair or upgrade any Operator Equipment:

- (a) the Operator shall provide the TSP with reasonable notice in writing; and
- (b) the parties shall agree when and for how long the TSP will grant the Operator access to each Set (such timings being reasonable in the circumstances on the basis that the access to the Sets shall cause as little disruption as is reasonable to the operations of the TSP or the Maintainer).

11.2 In undertaking the maintenance and repair of the Operator Equipment on a Set, the Operator shall:

- (a) complete such maintenance or repair within the period agreed pursuant to Paragraph 11.1; and
- (b) not damage the Set in any way (and if such damage does occur, the Operator shall compensate the TSP for the cost of making good any damage caused to the Sets by the Operator during such maintenance or repair work).

11.3 Any Operator Equipment installed on a Set shall remain the property of the Operator at all times. The TSP shall remove such Operator Equipment from the Sets and return it to the Operator upon the Expiry Date.

Appendix A
to Part A of Schedule 4
Performance Report

This Appendix A details the items which should be included (to the extent they are applicable) in each Performance Report (excluding the subject areas marked "quarterly" which need only be included in a Performance Report once during any period of four (4) consecutive Reporting Periods) and remains subject to any amendments as may be agreed between the parties from time to time.

Subject	Performance Categories	Performance Data
Safety of Sets and Depots	Safety incidents (other than in relation to Safety Critical Faults) – incidents in the reporting period, trends, investigation and corrective actions and progress of recommendations	Category One Handover Failures and Category One In-Service Failures National Incident Reports received and dispatched TSP and Operator plans developed in accordance with the provisions of this Agreement
	Safety Critical Faults – incidents in the Reporting Period, trends, investigation, corrective actions and the appointment of any relevant industry experts	Defective on train equipment incidents (as specified in Rule Book and the Operator's Defective On-Train Equipment contingency plan, as required by the Operator's Safety Management System)
	Interventions by ORR, Rail Accident and Investigation Branch, incidents in the Reporting Period, trends, investigation and responses	
	Operational safety issues raised by the Operator or Network Rail – incidents in the reporting period, trends, investigations and responses	HABD, wheelchex or other monitoring system activations
Maintenance	Notice of deferrals or changes to regime as required in accordance with Part C (<i>Train Maintenance and Servicing</i>) of Schedule 4 (<i>Contract Management and Compliance</i>)	

	Notification of modifications as set out in Part C (<i>Train Maintenance and Servicing</i>) of Schedule 4 (<i>Contract Management and Compliance</i>)	
Damage and vandalism repairs	Repairs undertaken in the reporting period, trends, action plans to reduce incident rates and costs	Number of incidents collated by nature and cause
Audits	Internal and external TSP audits:	Planned
	Safety quality audits as required by Applicable Laws and Standards	Results including trends
	Environmental audits as required by Applicable Laws and Standards	Results including trends
	Supply chain audits as required by Applicable Laws and Standards	Results including trends
	Close out of corrective action plans required by compliance with Applicable Laws and Standards	
Compliance Tests	Noise, ride and fuel	
Performance Regime (to be conformed). Each category to address trends, repeat failures and significant service affecting incidents	Availability	
	Reliability (per Reporting Period and annual average)	
	Relevant Performance Incidents, including:	Category One In-Service Failures, Category Two In-Service Failures and Category Three In-Service Failures
	Relevant Delay Incidents	Notifiable Unavailability Events
	Cancellations (arising out of availability and reliability events)	
	KPI Regime	
	Relevant Performance Incident reports	Cancellations

Performance Management	All data required by the Performance Regime (to the extent not already covered above)	
	Information required pursuant to Paragraphs 2.2 and 2.10 of Part A (<i>Contract Management</i>) of Schedule 4 (<i>Contract Management and Compliance</i>)	
	Recovery incidents	
	Technical Inspector performance	
Mileage	Review of the estimated annual mileage of Sets	The mileage travelled by Sets and the Fleet in each Reporting Period
	Review of the mileage travelled by Sets in each Reporting Period	
Technical investigations (as provided for in this Agreement or pursuant to Applicable Laws and Standards)	Operator required technical investigations as provided for in this Agreement or pursuant to Applicable Laws and Standards	
	In-progress technical investigations	
	Final reports	
Insurance (as provided for in this Agreement)	Claims to be raised	
	Claims in progress	
	Events of Total Loss	
Damaged Sets or Excused Sets	Details of any Damaged Sets or Excused Sets	
Variations	Any Variations in progress	Progress report
Dispatch requirements	Amendments to Dispatch Requirements	
	Non compliant Dispatch Requirements	

Appendix B
to Part A of Schedule 4
Consultation

1. The overview of the current position of delivery of TARA outputs and their subsequent effect on:
 - (a) the Operator's Franchise Agreement and Track Access Contract;
 - (b) passenger satisfaction and feedback;
 - (c) safety and environmental performance;
 - (d) any relevant performance improvement plans;
 - (e) Operator staff areas on Depots or on the Sets; and
 - (f) Operator staff industrial relations in relation to the operation of the Sets.
2. The identification of key themes for the following year, including a focus on:
 - (a) specific deliverables within the following twelve (12) months for the TSP under this Agreement;
 - (b) specific deliverables within the following twelve (12) months for the Operator under its Franchise Agreement (in relation to the Sets);
 - (c) the potential for improvements in passenger satisfaction;
 - (d) the potential for improvements in safety and environmental performance; and
 - (e) the potential for improvements in operational performance and reliability.
3. Where agreed by the Parties, any action plans and deliverables to support the improvements identified in Paragraphs 2(c), (d) and (e).
4. Progress against the Joint Performance Improvement Plan will be monitored throughout the year at Performance Review Meetings.

Part B of Schedule 4

Compliance Testing

1. FUEL EFFICIENCY TESTING

Periodic Bi-Mode Set Testing

1.1 Commencing from the third (3rd) complete Reporting Period following the first (1st) anniversary of the relevant Full Type Deployment Date, and thereafter, each third (3rd) Reporting Period (for these purposes, a **Relevant Reporting Period**), the TSP shall within ten (10) Business Days of the end of each Relevant Reporting Period, provide to the Operator in respect of each Bi-Mode Set in the Fleet the following:

- (a) an individual fuel efficiency ratio for each Bi-Mode Set, calculated by:
 - (i) taking the total Fuel consumed by the relevant Set across all Operational Days falling within the Relevant Reporting Period and the two immediately preceding Reporting Periods (the **Measurement Period**); and
 - (ii) dividing that total by the total miles travelled under self power by that Bi-Mode Set during that Measurement Period,

the **Individual Set Fuel Efficiency Ratio**; and

- (b) an average fuel efficiency ratio for all Bi-Mode Sets, calculated by aggregating each of the Individual Set Fuel Efficiency Ratios derived under Paragraph 1.1(a) for Bi-Mode Sets and dividing this number by the total number of Bi-Mode Sets for which an Individual Set Fuel Efficiency Ratio has been calculated, to give an average ratio for that Measurement Period (the **Average Set Fuel Efficiency Ratio**),

and the TSP shall maintain records and information supporting the calculation of the Individual Set Fuel Efficiency Ratio for each Bi-Mode Set and the Average Set Fuel Efficiency Ratio for the Bi-Mode Sets.

1.2 If the Set Fuel Efficiency Factor of any Bi-Mode Set in respect of any Measurement Period exceeds the Set Fuel Efficiency Factor Threshold, the TSP shall, upon the service of a written request by the Operator (a **Fuel Compliance Test Notice**), conduct a fuel compliance test in accordance with Paragraph 1.3 (a **Fuel Compliance Test**) on the relevant Bi-Mode Set (the **Suspected Fuel Inefficient Set**).

1.3 The TSP shall compare the Individual Set Fuel Efficiency Ratio of the Suspected Fuel Inefficient Set with the Individual Set Fuel Efficiency Ratio of two (2) other Bi-Mode Sets as the Suspected Fuel Inefficient Set that the TSP may reasonably select by reference to each having operated as similar Diagrams as possible to those operated by the Suspected Fuel Inefficient Set and each being in as similar a position as possible in its Maintenance Arrangements to that of the Suspected Fuel Inefficient Set (together, the **Fuel Efficiency Comparison Sets**).

1.4 The TSP shall maintain records and information supporting the Fuel Compliance Test and shall provide any such records or information to the Operator as soon as reasonably practicable following any written request of the Operator.

- 1.5 Following any comparison pursuant to Paragraph 1.3, if the Individual Set Fuel Efficiency Ratio of the Suspected Fuel Inefficient Set is equal to or greater than [REDACTED] of the Individual Set Fuel Efficiency Ratio of either Fuel Efficiency Comparison Set, the Operator and the TSP shall consult in good faith to determine the causes of the Set Fuel Efficiency Factor of the Suspected Fuel Inefficient Set exceeding the Set Fuel Efficiency Factor Threshold (the **Proven Fuel Inefficient Set**) and agree, if any, actions to be taken in respect of such Proven Fuel Inefficient Set, in each case, to the Operator's reasonable satisfaction.
- 1.6 Where the TSP and the Operator have any agreed actions to be taken in respect of such Proven Fuel Inefficient Set to the Operator's reasonable satisfaction, the TSP shall commence the performance of such actions as soon as reasonably practicable and shall inform the Operator on a reasonably frequent basis in writing of its progress against such actions and, as soon as reasonably practicable after completion of such actions (the **Agreed Fuel Efficiency Action Completion Date**), that such actions have been completed.
- 1.7 (a) Where the TSP and the Operator have been unable to agree actions to be taken in respect of such Proven Fuel Inefficient Set to the Operator's reasonable satisfaction, the TSP may commence such actions as it considers necessary in order to rectify the causes of the Set Fuel Efficiency Factor of the Proven Fuel Inefficient Set exceeding the Set Fuel Efficiency Factor Threshold, provided that the completion date for such actions (the **TSP Sole Fuel Efficiency Action Completion Date**) shall be no later than the date falling on the last day of the third immediately following Reporting Periods.
- (b) The TSP shall inform the Operator on a reasonably frequent basis in writing of its progress against such actions and, on the TSP Sole Fuel Efficiency Action Completion Date, whether such actions have been completed.
- 1.8 Upon the expiry of the next occurring complete Measurement Period following the Agreed Fuel Efficiency Action Completion Date or the TSP Sole Fuel Efficiency Action Completion Date (as the case may be), the TSP shall calculate the Individual Set Fuel Efficiency Ratio for the Proven Fuel Inefficient Set in respect of such Measurement Period.
- 1.9 Where following any calculation pursuant to Paragraph 1.8 the Individual Set Fuel Efficiency Ratio of any Proven Fuel Inefficient Set exceeds the Set Fuel Efficiency Factor Threshold, the relevant Bi-Mode Set shall constitute a Non-Compliant Set for the purposes of Paragraph 4.

Benchmarking Average Set Fuel Efficiency Ratio

- 1.10 During the Reporting Period immediately after the relevant Fuel Benchmark Testing Period, the TSP shall calculate a fuel efficiency benchmark for the Bi-Mode Sets by aggregating the total Fuel consumed by all Bi-Mode Sets in all Operational Days occurring during the Fuel Benchmark Testing Period and dividing it by the total miles travelled under self power by those Bi-Mode Sets during those Operational Days (the **Fleet Fuel Efficiency Benchmark**).

Testing against the Fleet Fuel Efficiency Benchmark

- 1.11 Upon the expiry of each anniversary of the expiry of the relevant Fuel Benchmark Testing Period (the **Fleet Fuel Efficiency Test Date**), the TSP shall calculate an annual efficiency average for the Bi-Mode Sets by aggregating the total Fuel consumed by all Bi-Mode Sets

while operating in self-powered mode in all Operational Days falling within the immediately preceding thirteen (13) consecutive Reporting Periods and dividing it by the total miles travelled while operating in self-powered mode by those Bi-Mode Sets during those Operational Days (the **Annual Fleet Fuel Efficiency Average**).

- 1.12 The TSP shall, on each Fleet Fuel Efficiency Test Date, compare the Annual Fleet Fuel Efficiency Factor with the Fleet Fuel Efficiency Factor Threshold (the **Fleet Fuel Efficiency Test**). If on any such date, the Annual Fleet Fuel Efficiency Factor exceeds the Fleet Fuel Efficiency Factor Threshold, the Operator and the TSP shall consult in good faith to determine the causes of such excess and to agree, if any, actions to be taken in response to such excess, in each case, to the Operator's reasonable satisfaction.
- 1.13 Where the TSP and the Operator have agreed any actions to be taken pursuant to Paragraph 1.12 to the Operator's reasonable satisfaction, the TSP shall commence the performance of such actions as soon as reasonably practicable and inform the Operator on a reasonably frequent basis in writing of its progress against such actions and, as soon as reasonably practicable after completion of such actions (the **Agreed Fuel Efficiency Benchmark Action Completion Date**), that such actions have been completed.
- 1.14 (a) Where the TSP and the Operator have been unable to agree actions to be taken pursuant to Paragraph 1.12 to the Operator's reasonable satisfaction, the TSP shall notify the Operator in writing of its intention to pursue a sole remedy in respect of the causes of the Annual Fleet Fuel Efficiency Factor exceeding the Fleet Fuel Efficiency Factor Threshold, whereupon the TSP may commence such actions as it considers necessary in order to rectify such causes, providing that the completion date for such actions (the **TSP Sole Fuel Efficiency Benchmark Action Completion Date**) shall be no later than one hundred and eighty (180) days after the date of the TSP's written notice to the Operator.
- (b) The TSP shall inform the Operator on a reasonably frequent basis in writing of its progress against such actions and, on the TSP Sole Fuel Efficiency Benchmark Action Completion Date, whether such actions have been completed.
- 1.15 Upon the expiry of thirteen (13) consecutive Reporting Periods following the Agreed Fuel Efficiency Benchmark Action Completion Date or the TSP Sole Fuel Efficiency Benchmark Action Completion Date (as the case may be), the TSP shall calculate the Annual Fleet Fuel Efficiency Average and, if on such occasion the Annual Fleet Fuel Efficiency Factor exceeds the Fleet Fuel Efficiency Factor Threshold, the Operator and the TSP shall (unless the parties agree otherwise) consult in good faith to determine the causes of such excess and to agree, if any, actions to be taken in response to such excess, in each case, to the Operator's reasonable satisfaction.
- 1.16 Where the TSP and the Operator are not able to either determine the causes of, or agree actions in respect of, the excess above the Fleet Fuel Efficiency Factor Threshold for the purposes of Paragraph 1.15, the relevant Bi-Mode Sets shall constitute Non-Compliant Sets for the purposes of Paragraph 4.

2. NOISE AND RIDE STANDARDS

- 2.1 The Operator may, by service of written notice in accordance with Paragraph 2.4, require the TSP to demonstrate the compliance of any Set or Sets with any or all of:
- (a) the Noise Standard; and

(b) the Ride Standard,

together, the **Standards**.

- 2.2 Any notice served pursuant to Paragraph 2.1 shall specify the Set or Sets to which it relates and which Standard or Standards it concerns (in each case, a **Standards Compliance Test Notice**).
- 2.3 The Operator may withdraw any Standards Compliance Test Notice at any time before the TSP has commenced the relevant Compliance Test, whereupon the Operator shall be responsible in accordance with Paragraphs 6 and 7 of Part E (*Costs Payable by Operator*) of Schedule 6 (*Performance Regime*) for the reasonable costs reasonably and properly incurred by the TSP in preparing to carry out the relevant Compliance Test.
- 2.4 Subject to Paragraph 2.5, the Operator may serve a Standards Compliance Test Notice in respect of each Standard not more frequently than once in any calendar year in respect of each Set (but excluding the service of any Standards Compliance Test Notice that the Operator has withdrawn pursuant to Paragraph 2.3).
- 2.5 If and whenever any Set constitutes a Non-Compliant Set through failure of any Compliance Test other than a Fuel Compliance Test, the Operator may within a period of twenty-eight (28) days thereafter serve a further Standards Compliance Test Notice in respect of the Noise Standard and/or the Ride Standard (as the case may be) in relation to up to three (3) further Sets, if the Operator reasonably considers that non-compliance with the relevant Standard or Standards may be present more widely among the Sets.

3. **RIDE COMPLIANCE TESTING**

- 3.1 Within five (5) Business Days of receipt of a Standards Compliance Test Notice in respect of compliance with the Ride Standard (whether in isolation or in conjunction with the Noise Standard), the TSP shall:
- (a) select a section of the Great Western IEP Network which complies with railway standard DD ENV 12299:1999 "Railway applications: Ride comfort for passengers. Measurement and evaluation." on which the specified Set or Sets are to be tested for compliance with the Ride Standard (the **Ride Compliance Test Site**); and
- (b) provide written notice to the Operator of the Ride Compliance Test Site.
- 3.2 As soon as reasonably practicable after receipt of notice of the Ride Compliance Test Site, the Operator shall provide to the TSP the Track Geometry Data in respect of the Ride Compliance Test Site which was recorded not more than three (3) months prior to the date of the relevant Standards Compliance Test Notice by running a measurement train capable of recording Track Geometry Data over the relevant track.
- 3.3 The TSP shall create a VAMPIRE track data file for the Ride Compliance Test Site from the Track Geometry Data received from the Operator, and generate the Theoretical Ride Index in respect of the Ride Compliance Test Site by running the Validated Model with the VAMPIRE track data file for the Ride Compliance Test Site.
- 3.4 The TSP shall provide the Operator with not less than one (1) week's notice of the time when the Ride Compliance Test is to be conducted at the Ride Compliance Test Site, and

shall allow the Operator to be present when the Ride Compliance Test is carried out in respect of the relevant Set or Sets on the Ride Compliance Test Site.

- 3.5 The TSP shall carry out the Ride Compliance Test in respect of the relevant Set or Sets on the Ride Compliance Test Site in order to record the Actual Ride Index.
- 3.6 The relevant Set or Sets shall satisfy the Ride Compliance Test, provided that the Actual Ride Index does not exceed the Theoretical Ride Index by more than ten per cent. (10%) of the Theoretical Ride Index.
- 3.7 If the relevant Set or Sets satisfy the Ride Compliance Test, the Operator shall be responsible in accordance with Paragraphs 6 and 7 of Part E (*Costs Payable by Operator*) of Schedule 6 (*Performance Regime*) for the reasonable costs reasonably and properly incurred by the TSP in carrying out the relevant Ride Compliance Test. If the relevant Set or Sets do not satisfy the Ride Compliance Test, the costs of the Ride Compliance Test shall be for the account of the TSP and the relevant Set or Sets shall constitute Non-Compliant Sets for the purposes of this Agreement.

4. REMEDIES FOR NON-COMPLIANT SETS

- 4.1 The TSP shall as soon as reasonably practicable develop a remedial plan for the purpose of curing the failure of a Non-Compliant Set to meet the relevant Compliance Test (the **Non-Compliance Plan**). The procedure for agreeing and implementing such remedial plan and the requirements for such remedial plan shall be based upon the procedures and requirements set out in Paragraphs 1.1 to 3.7 (inclusive) of Part A (*Remedial Plans*) of Schedule 10 (*Remedies, Default and Termination*), provided that the Operator shall not be entitled to terminate this Agreement by reason of any failure by the TSP to cure the relevant non-compliance and/or implement the relevant Non-Compliance Plan.
- 4.2
 - (a) In respect of any Set, where by the end of the seventh (7th) Reporting Period following the date of any relevant Compliance Notice or the Fleet Fuel Efficiency Test Date, the TSP has not yet carried out the relevant Compliance Test in respect of any Set to which such Compliance Notice relates; or
 - (b) in respect of any Non-Compliant Set, where by the end of the seventh (7th) Reporting Period following the date on which the Set became a Non-Compliant Set for the purposes of this Agreement, any Non-Compliant Set which has not yet been cured pursuant to a Non-Compliance Plan or otherwise, provided that any Non-Compliant Set which failed the relevant Standard prior to the Fleet Acceptance Drop Dead Date shall be disregarded for the purposes of this Paragraph 4.2(b),

then, in either case, until such time as any such Set or Non-Compliant Set has been demonstrated to have been cured, such Set shall, without limiting the provisions of Part A (*Availability Regime*) of Schedule 6 (*Performance Regime*), on each occasion when made available to the Operator, be deemed a Divergent Handover Set, unless and until:

- (i) such Set has been cured of the identified non-compliance, in which case such Set shall no longer be a Non-Compliant Set; or
- (ii) (A) the aggregate Reporting Period Availability Adjustments for any non-compliance under this Part B (*Compliance Testing*) of Schedule 4 (*Contract Management and Compliance*) in respect of

such Non-Compliant Set for that Contract Year have equalled the Non-Compliant Set Deduction Amount; or

- (B) the aggregate Reporting Period Availability Adjustments for any non-compliance under this Part B (*Compliance Testing*) of Schedule 4 (*Contract Management and Compliance*) in respect of all Non-Compliant Sets for that Contract Year have equalled the Non-Compliant Aggregate Deduction Amount,

in which case there will be no further Deductions for non-compliance in respect of such Non-Compliant Set in that Contract Year and such Set shall not be deemed to be a Divergent Handover Set, in each case, during the remainder of that Contract Year.

- 4.3 Any Non-Compliant Set which has not yet been cured pursuant to a Non-Compliance Plan in a Contract Year shall be deemed a Non-Compliant Set without further test in the following Contract Years until the parties agree or it is established that the non-compliance is cured or no longer subsists. The provisions in Paragraphs 4.1 to 4.4 (inclusive) shall continue to apply to such Non-Compliant Set.
- 4.4 Subject to Paragraph 4.3, the provisions of Paragraph 4 shall be the exclusive remedy of the Operator in respect of a failure of any Set or Sets to satisfy any Compliance Test and any failure which causes a Set to be designated as a Non-Compliant Set.
- 4.5 Nothing in Paragraph 4 shall affect or prejudice any rights of the Operator to make a request for a Compliance Test and obligations of the TSP to conduct a Compliance Test pursuant to Paragraphs 1 to 3 (inclusive).

Part C of Schedule 4

Train Maintenance and Servicing

1. INTRODUCTION

- 1.1 This Part C (*Train Maintenance and Servicing*) of Schedule 4 (*Contract Management and Compliance*) defines the requirements in accordance with which the TSP shall operate, maintain and update the Maintenance Plan so as 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 the MARA).
- 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.
- 1.3 The parties acknowledge and agree that the Maintenance Plan shall be developed and verified in accordance with part C (*Train Maintenance and Servicing*) of schedule 3 (*Depots*) of the MARA and shall (with effect from the date of such verification) form the Maintenance Plan for the purposes of this Agreement.
- 1.4 No later than six (6) months prior to the Scheduled Acceptance Date of the first Set in the Fleet (or, if later, the date that is five (5) Business Days after the date of signature of this Agreement), the TSP Contract Manager shall provide the Operator Contract Manager with a copy (hard copy and electronic copy) of the Maintenance Plan together with confirmation from the relevant verification body 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.

2. MAINTENANCE PLAN REQUIREMENTS

- 2.1 The Maintenance Plan, as amended from time to time in accordance with this Schedule, 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, and any amendments thereto, shall be designed to ensure, and provide assurance to the Operator of, compliance by the TSP with the relevant requirements of this Agreement 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) the Safety Management System, in so far as it relates to the maintenance and operation of the Sets;
 - (d) the Performance Regime; and
 - (e) the Design (as the same may be amended from time to time in accordance with the MARA),

which requirements collectively shall constitute the ***Maintenance Requirements***.

2.3 Without prejudice to Paragraph 2.2, the TSP shall be, or shall procure that the Maintainer is, an Entity in Charge of Maintenance. Notwithstanding that the TSP may sub-contract its maintenance activities to the Maintainer, the TSP shall remain primarily responsible, at all times under this Agreement, for ensuring maintenance is carried out in accordance with the requirements of law, including the Railway Safety Directive, and to ensure compliance with, and support any amendment of, the Safety Management System (in so far as it relates to the maintenance and operation of the Sets), including achieving certification of maintenance arrangements where that is required.

3. THE MAINTENANCE PLAN

3.1 The parties acknowledge that, pursuant to the Applicable Laws and Standards, the 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*) of Schedule 4 (*Contract Management and Compliance*), the Maintenance Plan or any associated arrangements shall absolve the Operator from such obligations or responsibilities.

3.2 Notwithstanding Paragraph 3.1, the TSP shall be responsible for maintaining, updating and implementing the Maintenance Plan, and for delivering ongoing compliance with the Maintenance Requirements, and the Maintenance Plan shall at all times remain under the control of the TSP.

3.3 The TSP understands that the 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*) of Schedule 4 (*Contract Management and Compliance*), part C (*Train Maintenance and Servicing*) of schedule 3 (*Depots*) of the MARA and the Maintenance Plan in order to obtain the Relevant Approvals that the Operator requires in order to operate the Sets.

3.4 The TSP through its internal arrangements and processes or its subcontracts 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.

3.5 The TSP shall be responsible for identifying all information, materials and support required from any third parties by the TSP in order to operate, update and amend the Maintenance Plan, and the TSP shall be responsible for obtaining such information, materials and support.

3.6 Notwithstanding Paragraph 3.5, to the extent necessary to enable the TSP to meet its obligations under this Schedule, the Operator shall:

- (a) provide such information, materials and support that is or are within the possession, control or sole competence of the Operator and that are reasonably requested by the TSP Contract Manager; and
- (b) use its reasonable endeavours to procure from Network Rail or any other train operating companies operating rolling stock on the Great Western IEP Network such information that is reasonably requested by the TSP Contract Manager.

4. ACCESS TO THE MAINTENANCE PLAN AND RELATED MATERIALS

4.1 The TSP Contract Manager shall provide a copy of the Maintenance Plan and related materials (including all relevant maintenance history records) to the Operator Contract Manager on request as, when and to the extent reasonably required for the Operator:

- (a) to confirm that the TSP is fulfilling its obligations;
- (b) to perform the Operator's own obligations; and
- (c) to verify that the Operator and the TSP shall be able to perform their obligations in future,

in each case, under this Agreement, all Applicable Laws and Standards and all Relevant Approvals.

4.2 The TSP Contract Manager shall, whenever reasonably requested and when required in accordance with Paragraphs 4.1 and 5.2, provide the Operator Contract Manager with all materials and information reasonably necessary to enable the Operator Contract Manager to review the Maintenance Plan, and any subsequent changes proposed thereto, and understand how the Maintenance Plan satisfies or shall satisfy the requirements of this Schedule and the Maintenance Requirements, particularly to the extent reasonably required for the Operator Contract Manager to verify that the Operator shall be able to continue to comply with all Applicable Laws and Standards and Relevant Approvals and its own Safety Management System (as amended from time to time in accordance with this Agreement).

4.3 The TSP Contract Manager shall, as and when reasonably requested by the Operator Contract Manager, provide the Operator Contract Manager with all information relating to the TSP's obligations under this Agreement and that is necessary to enable the Operator to prepare its annual safety report.

4.4 The TSP Contract Manager shall provide the Operator Contract Manager with all materials and information that are necessary to enable the Operator to notify other duty holders of safety critical incidents pursuant to and in accordance with all Applicable Laws and Standards.

5. MAINTENANCE PLAN DEVELOPMENTS

5.1 The parties acknowledge that the Maintenance Plan in conjunction with the Safety Management System shall together form the suite of arrangements by which the Operator intends to fulfil its responsibilities and obligations under all Applicable Laws and Standards and Relevant Approvals with regard to the Maintenance Arrangements.

Changes to the Maintenance Plan

5.2 In respect of all changes to the Maintenance Plan following the Actual Acceptance Date of the first Set in the Fleet, the TSP Contract Manager shall:

- (a) notify the Operator Contract Manager in advance of making such change;
- (b) provide a copy (hard copy and electronic copy) of the amended Maintenance Plan (without any amendments which the Operator Contract Manager has not been notified of and, if applicable, reviewed or had the reasonable opportunity to review

in accordance with Paragraph 5.3) as soon as reasonably practicable following such amendment; and

- (c) if required in the opinion of the TSP or if reasonably requested by the Operator, 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 Operator Contract Manager.

5.3 In respect of any changes to the Maintenance Plan that may materially affect the ability of the Operator to comply with its obligations under this Agreement, any Applicable Laws and Standards, any Relevant Approvals or its Safety Management System the TSP Contract Manager shall:

- (a) consult with the Operator Contract Manager prior to implementing any such changes;
- (b) provide the Operator Contract Manager 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 Operator being in breach of, or unable to comply with, any Applicable Laws and Standards, Relevant Approvals, its Safety Management System or its obligations under this Agreement.

Changes affecting the Maintenance Plan or the Design of the Sets

5.4 The parties acknowledge that the Operator may make changes to the Safety Management System, at its sole discretion, at any time and in any manner.

5.5 If and whenever the Operator makes any temporary change to its Safety Management System with a view to enabling the Sets to be made available in circumstances where there is a continuing failure by the TSP to make Sets available in accordance with Schedule 2 (*Availability*) and:

- (a) the circumstances envisaged by Paragraphs 1 and 2 of Part G (*Obligations concerning Sets withheld from Service*) of Schedule 2 (*Availability*) do not apply;
- (b) such change is reasonable and proportionate in the circumstances; and
- (c) such change is agreed between the Operator and the TSP, both acting reasonably and in a timely manner,

then the TSP shall reimburse to the Operator any increased costs that it reasonably incurs as a result of any such change for so long as it is necessary to avoid or mitigate any continuing failure by the TSP to make Sets available in accordance with Schedule 2 (*Availability*).

- 5.6 If and whenever the Operator wishes to make a change to the Safety Management System and considers that the change may have an impact on the Maintenance Plan or on the ability of the TSP to comply with its obligations under this Agreement or the MARA or the cost of compliance by the TSP with those obligations, or require any modification to the Sets, the Operator may notify the TSP Contract Manager in advance of making such change and shall provide the TSP Contract Manager with details of the change or proposed change (as the case may be).
- 5.7 In respect of any changes to the Safety Management System proposed pursuant to either Paragraph 5.5 or 5.6, the TSP shall, as soon as reasonably practicable following their receipt assess their impact on the Maintenance Plan, on the TSP's ability to comply with its obligations under this Agreement and the MARA and the cost of compliance by the TSP with those obligations, and any requirement for a modification to be made to the Sets, and the TSP Contract Manager shall either:
- (a) notify the Operator Contract Manager and the Secretary of State that in the opinion of the TSP, such changes or proposed changes have a material and negative impact upon the Maintenance Plan or on the ability of the TSP to comply with its obligations under this Agreement or the MARA or the cost of compliance by the TSP with those obligations, or require a modification to be made to the Sets; or
 - (b) confirm to the Operator Contract Manager that such changes do not have a material and negative impact on the Maintenance Plan or on the ability of the TSP to comply with its obligations under this Agreement or the MARA or the cost of compliance by the TSP with those obligations, or require a modification to be made to the Sets; and
 - (c) if the TSP considers that there would nevertheless be some negative but immaterial impact on the Maintenance Plan or on the ability of the TSP to comply with its obligations under this Agreement or the MARA or the cost of compliance by the TSP with those obligations which the TSP cannot reasonably accommodate without seeking reimbursement of additional cost or modification of its obligations, propose reasonable terms of accommodation or modification.
- 5.8 In respect of any changes to the Safety Management System made by the Operator in the circumstances contemplated by Paragraph 5.5 or 5.10, the TSP shall:
- (a) continue to comply with its obligations under this Agreement (including ensuring the Sets are in a condition that enables the Operator to operate each such Set in accordance with its Safety Management System) and the MARA; and
 - (b) modify the Sets and/or amend the Design, the Maintenance Plan and any documents within the Technical Library (as appropriate and necessary).
- 5.9 If and to the extent that any changes to the Safety Management System are made by the Operator other than as contemplated by Paragraph 5.5 or 5.10, then the TSP shall not be in breach of any of its obligations under this Agreement if and to the extent that it is not able to comply with its obligations under this Agreement as a result of the change to the Safety Management System either at all or without modifying any of the Sets and/or incurring additional material expenditure and for such period of time as a Reasonable Train Service Provider would take to respond to such changes or, in circumstances where a modification to the Sets is required as a result of the change to the Safety Management

System and the TSP is not required to undertake such modification pursuant to Paragraph 5.8, for an unlimited period. Any Set affected during such period of time shall be treated as an Excused Set for the purposes of the Performance Regime. Save as aforesaid, the TSP shall continue to comply with its obligations under this Agreement and the MARA.

- 5.10 The changes to the Safety Management System contemplated by this Paragraph are any changes that are:
- (a) agreed between the TSP and the Operator pursuant to Paragraph 5.5 or 5.7(c) or otherwise; or
 - (b) the subject of a Required Variation or gives rise to a Contemplated Variation and the Secretary of State has issued a Required Variation Notice or a Contemplated Variation Notice (as the case may be) and the relevant Variation process has completed.
- 5.11 Where the Operator implements any change to the Safety Management System which has negative but immaterial impact on the Maintenance Plan or on the ability of the TSP to comply with its obligations under this Agreement or the MARA or the cost of compliance by the TSP with those obligations without having agreed to reasonable terms of accommodation or modification proposed by the TSP pursuant to Paragraph 5.7(c), the TSP shall be entitled to recover from the Operator the increased costs that it suffers as a result.

6. MODIFICATIONS TO THE SETS

- 6.1 Subject to the remainder of this Paragraph 6 and Schedule 2 (*Variations*) and schedule 8 (*Variations*) and schedule 9 (*Change in Law*) of the MARA, 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.
- 6.2 If the TSP proposes to make any modifications to the Sets, in advance of making any such modification, the TSP shall:
- (a) notify the Operator of all such modifications;
 - (b) consult with the Operator in respect of any such proposed modification to the extent that such amendment may impact on the way that the Operator operates the Sets and/or any Simulator, or would require the Operator to notify its staff in respect of such modification;
 - (c) procure through its internal arrangements and processes or through its subcontracts, that the competent design authority approves the modification to the Sets;
 - (d) make such amendments to the Maintenance Plan in accordance with this Schedule as are necessary to reflect such modification; and
 - (e) make such amendments to the Training Materials as are necessary to reflect such modification.
- 6.3 The TSP shall not make any modifications to the Sets without the prior written consent of:
- (a) the Operator, to the extent that any modification to the Sets would:

- (i) affect the Operator's revenues, costs or risks of operating the Sets and/or any Simulator; and/or
 - (ii) result (directly or indirectly) in the Operator being in breach of, or unable to comply with, any Applicable Laws and Standards, Relevant Approvals, Safety Management System or its obligations under this Agreement; and/or
- (b) 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;
 - (ii) result (directly or indirectly) in such Sets not complying with the Train Technical Description;
 - (iii) materially adversely affect the interoperability of the Sets with other IEP trains; 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, Relevant Approvals (where such Relevant Approvals are binding upon the Secretary of State) or the obligations under the MARA.

6.4 To the extent that the TSP modifies the Sets in accordance with this Paragraph 6, the Design shall be amended to reflect such modification.

7. **TSP PERSONNEL AND INTERFACES**

The TSP Contract Manager shall provide full details of its personnel having responsibility for developing, maintaining and delivering the Maintenance Plan, including:

- (a) a description of their required competencies and qualifications;
- (b) a description of the scope of their responsibility; and
- (c) a list of all positions within the TSP's organisation involved in developing, maintaining and delivering the Maintenance Plan that require a direct reporting interface with a corresponding position within the Operator's organisation.

8. **COMPLIANCE WITH APPLICABLE LAWS AND STANDARDS AND RELEVANT APPROVALS**

Any reference in this Part to a requirement to comply with any 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.

9. **DEEMED DISCHARGE**

The discharge by the TSP of its obligations to the Operator under part C (*Train Maintenance and Servicing*) of schedule 3 (*Depots*) of the MARA in respect of the Maintenance Plans shall be deemed a discharge of its equivalent obligation (to the extent that it is applicable and the obligation is satisfied) to the Operator under this Part C (*Train Maintenance and Servicing*) of Schedule 4 (*Contract Management and Compliance*).

SCHEDULE 5

PAYMENT

Part A of Schedule 5

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SCHEDULE 6
PERFORMANCE REGIME

Part A of Schedule 6

Availability Regime

1. REPORTING PERIOD AVAILABILITY ADJUSTMENT

The Reporting Period Availability Adjustment for any Reporting Period shall be calculated in accordance with this Part A (*Availability Regime*) of Schedule 6 (*Performance Regime*) and deducted from the Base Period Charge by way of an adjustment in accordance with Part A (*TARA Payments*) of Schedule 5 (*Payment*).

2. DEFINITIONS

2.1 **Alternative Set** means a Set offered to the Operator by the TSP pursuant to Paragraph 2 of Part D (*Deviation from Dispatch Requirements*) of Schedule 2 (*Availability*).

2.2 **Damaged Set** means a Set, other than a Vindicated Set, that:

- (a) the TSP is unable to make available to the Operator without incurring one or more Deductions; or
- (b) the Operator withdraws from service pursuant to Paragraph 3 of Part C (*In-Service Faults*) of Schedule 3 (*In-Service Provisions and Faults*),

wholly or mainly as a result of Operator Responsible Damage.

2.3 **Divergent Handover Set** means a Set that:

- (a) the Operator accepts into service in accordance with Paragraph 1.2 of Part E (*Rejection, Dispatch and Traffic Spares*) of Schedule 2 (*Availability*), except that where the Operator accepts a Set under that Paragraph which it would be entitled to reject solely by reason of Paragraph 1.1(c) of Part E (*Rejection, Dispatch and Traffic Spares*) of Schedule 2 (*Availability*) that Set shall only be a Divergent Handover Set where the Set is offered thirty (30) minutes or more after the Scheduled Handover Time;
- (b) the Operator accepts into service with a Category Three Handover Failure; or
- (c) is a Non-Compliant Set to which Paragraph 4.2 of Part B (*Compliance Testing*) of Schedule 4 (*Contract Management and Compliance*) applies; or
- (d) the Operator accepts into service pursuant to Paragraph 1.5 of Part E (*Rejection, Dispatch and Traffic Spares*) of Schedule 2 (*Availability*).

2.4 **Divergent In-Service Set** means:

- (a) a Set that:
 - (i) the Operator is entitled to treat as a Withdrawn Set as a result of suffering a Category One In-Service Failure or Category Two In-Service Failure at or before 21:00 hours but does not withdraw from service; and

- (ii) the TSP fails to rectify within sixty (60) minutes of the earlier of the Operator's notice to the TSP pursuant to Paragraph 1 of Part C (*In-Service Faults*) of Schedule 3 (*In-Service Provisions and Faults*) and the TSP first becoming aware of the relevant In-Service Fault;
- (b) a Set that, subject to Paragraph 2.4(c):
 - (i) suffers a Category Three In-Service Failure at or before 21:00 hours; and
 - (ii) that the TSP fails to rectify within sixty (60) minutes of the earlier of the Operator's notice to the TSP pursuant to Paragraph 1 of Part C (*In-Service Faults*) of Schedule 3 (*In-Service Provisions and Faults*) and the TSP first becoming aware of that Category Three In-Service Failure; and
- (c) Paragraph 2.4(b) shall not apply to any Set that suffers a Category Three In-Service Failure at or within thirty (30) minutes before that Failed Set's arrival time at a Turnaround Location (other than Paignton or Great Malvern), unless the Operator does not consider it to be safe to continue operating the Set to the Turnaround Location (other than Paignton or Great Malvern), where the TSP rectifies the Category Three In-Service Failure at the relevant Turnaround Location in sufficient time so that the Operator is reasonably able to arrange for the Set to depart in service from the Turnaround Location (other than Paignton or Great Malvern) at its scheduled departure time.

2.5 ***Divergent In-Service Evening Set*** means:

- (a) a Set that:
 - (i) the Operator is entitled to treat as a Withdrawn Set as a result of suffering a Category One In-Service Failure or Category Two In-Service Failure after 21:00 hours but does not withdraw from service; and
 - (ii) the TSP fails to rectify within sixty (60) minutes of the earlier of the Operator's notice to the TSP pursuant to Paragraph 1 of Part C (*In-Service Faults*) of Schedule 3 (*In-Service Provisions and Faults*) and the TSP first becoming aware of the relevant In-Service Fault; and
- (b) a Set that, subject to Paragraph 2.5(c):
 - (i) suffers a Category Three In-Service Failure after 21:00 hours; and
 - (ii) that the TSP fails to rectify within sixty (60) minutes of the earlier of the Operator's notice to the TSP pursuant to Paragraph 1 of Part C (*In-Service Faults*) of Schedule 3 (*In-Service Provisions and Faults*) and the TSP first becoming aware of that Category Three In-Service Failure.
- (c) Paragraph 2.5(b) shall not apply to any Set that suffers a Category Three In-Service Failure at or within thirty (30) minutes before that Set's arrival time at a Turnaround Location (other than Paignton or Great Malvern), unless the Operator does not consider it to be safe to continue operating the Set to the Turnaround Location (other than Paignton or Great Malvern), where the TSP rectifies the Category Three In-Service Failure at the relevant Turnaround Location in sufficient time so that the Operator is reasonably able to arrange for the Set to

depart in service from the Turnaround Location (other than Paignton or Great Malvern) at its scheduled departure time.

2.6 **Excused Set** means a Damaged Set but only for the duration of its Excused Time.

2.7 **Excused Time** means, in respect of a Set, the period of time starting if and whenever that Set becomes a Damaged Set and ending on the earlier of:

- (a) the date on which the TSP has recovered and, if need be, repaired such Set so that it may be made available to the Operator in accordance with Schedule 2 (*Availability*); and
- (b) the date by which a Reasonable Train Service Provider would have recovered and, if need be, repaired such Set so that it may be made available to the Operator in accordance with Schedule 2 (*Availability*) taking into account any periods during which the Operator has required such Set to be made available for service pursuant to Paragraph 6 of Part G (*Obligations concerning Sets withheld from Service*) of Schedule 2 (*Availability*).

2.8 **Missing Set** means a Set which the TSP was required to provide in response to a Dispatch Requirement but did not provide in accordance with Part B (*Handover*) of Schedule 2 (*Availability*). For the avoidance of doubt, the TSP is deemed not required to provide a Set in response to a Dispatch Requirements for the purposes of this Paragraph 2.8 in any of the following circumstances:

- (a) Paragraph 2.7 and 2.8(b)(v) of Part A (*Dispatch Requirements*) of Schedule 2 (*Availability*);
- (b) Paragraph 1.1 of Part D (*Deviation from Dispatch Requirements*) of Schedule 2 (*Availability*);
- (c) Paragraph 1.2 of Part D (*Deviation from Dispatch Requirements*) of Schedule 2 (*Availability*); or
- (d) Paragraph 4 of Part I (*Handback of Sets*) of Schedule 2 (*Availability*),

if a Set cannot be made available by the TSP without (were such Set to be made available) the TSP incurring a Deduction after exercising reasonable endeavours in accordance with the relevant provisions thereto.

2.9 **Obstructed Set** means, other than a Relieved Set:

- (a) a Set, other than an Excused Set, which the TSP is unable to (or in the case of Paragraph 1(b) of Part G (*Obligations concerning Sets withheld from Service*) of Schedule 2 (*Availability*) where the Operator fails to take out or maintain Operator Insurances, it is unwilling to) make available without incurring one or more Deductions wholly or mainly as a result of Paragraph 1(b) or 1(c) of Part G (*Obligations concerning Sets withheld from Service*) of Schedule 2 (*Availability*); or
- (b) a Set which is withdrawn from service wholly or mainly as a result of a failure by the Operator to fulfil any of its obligations under this Agreement.

2.10 **Relieved Set** means:

- (a) a Set, other than an Excused Set, which the TSP withholds from service pursuant to Paragraph 1(d) of Part G (*Obligations concerning Sets withheld from Service*) of Schedule 2 (*Availability*);
- (b) a Set, other than a Vindicated Set, which is withdrawn from service wholly or mainly as a result of a Force Majeure Event in respect of which the TSP is the Affected Party;
- (c) a Set accepted by the Operator pursuant to Paragraph 1.2 of Part F (*ETCS Performance Holiday and Mileage Records*) of Schedule 2 (*Availability*); or
- (d) a Set, other than an Excused Set, in respect of which the TSP notifies the Secretary of State and the Operator in writing of the occurrence of a Total Loss pursuant to paragraph 2.1(a) of part I (*Total Loss*) of schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*) of the MARA for the period commencing from the date of such notice to the date when the Variation process completes.

2.11 **Rejected Set** means a Set which the Operator rejected pursuant to and in accordance with Paragraph 1.1 of Part E (*Rejection, Dispatch and Traffic Spares*) of Schedule 2 (*Availability*).

2.12 **Returned Set** means a Set:

- (a) that the Operator accepts into service pursuant to Part D (*Service recovery after withdrawal of Failed Sets*) of Schedule 3 (*In-Service Provisions and Faults*); or
- (b) which it is agreed or determined that the Operator unreasonably refused to accept into service pursuant to Part D (*Service recovery after withdrawal of Failed Sets*) of Schedule 3 (*In-Service Provisions and Faults*), which was or could have been (had it been accepted by the Operator) returned to service without causing disruption to the Operator.

2.13 **Switched Set** means:

- (a) a Set that the TSP offers to the Operator pursuant to Paragraph 1.3 of Part D (*Deviation from Dispatch Requirements*) of Schedule 2 (*Availability*) and that the Operator accepts into service except: (i) any Set the Operator must accept into service pursuant to Paragraph 1.1(d) of Part E (*Rejection, Dispatch and Traffic Spares*) of Schedule 2 (*Availability*) and (ii) any coupled Bi-Mode Sets which the Operator at its sole discretion accepts into service in circumstances where the TSP has previously offered five (5) coupled Bi-Mode Sets pursuant to Paragraph 1.1(d)(i) of Part E (*Rejection, Dispatch and Traffic Spares*) of Schedule 2 (*Availability*) in that Reporting Period; and
- (b) an Alternative Set that the Operator accepts into service or which it is agreed or determined that the Operator unreasonably refused to accept into service,

provided that any Set offered to the Operator pursuant to Part G (*Obligations concerning Sets withheld from Service*) or Paragraph 1.5 of Part E (*Rejection, Dispatch and Traffic Spares*) of Schedule 2 (*Availability*) of Schedule 2 (*Availability*) shall not be considered a Switched Set.

2.14 **Vindicated Set** means a Set which the Operator:

- (a) without being required so to do by a competent authority or Network Rail, rejects pursuant to Part C (*Safety Critical Fault*) of Schedule 2 (*Availability*) or withdraws from service pursuant to Part B (*Safety Critical Faults*) of Schedule 3 (*In-Service Provisions and Faults*) either:
 - (i) without prior consultation with the TSP and in respect of which it is subsequently agreed by the parties or determined by an authority acting under the Applicable Laws and Standards that there is no Safety Critical Fault on that Set;
 - (ii) after consultation with the TSP but without the TSP's agreement, and it is subsequently agreed by the parties or determined by an authority acting under the Applicable Laws and Standards that there is no Safety Critical Fault on that Set or any Set which the Operator rejects pursuant to Part C (*Safety Critical Fault*) of Schedule 2 (*Availability*) or withdraws from service pursuant to Part B (*Safety Critical Faults*) of Schedule 3 (*In-Service Provisions and Faults*) in connection with the same concern; or
 - (iii) where it is agreed by the parties or determined by an authority acting under the Applicable Laws and Standards that the relevant Safety Critical Fault was wholly or mainly attributable to the Operator Responsible Damage or a Force Majeure Event in respect of which the TSP is the Affected Party; or
- (b) rejects pursuant to Paragraph 4 of Part C (*Safety Critical Fault*) of Schedule 2 (*Availability*) or withdraws from service pursuant to Paragraph 4 of Part B (*Safety Critical Faults*) of Schedule 3 (*In-Service Provisions and Faults*) and it is subsequently agreed by the parties or determined by an authority acting under the Applicable Laws and Standards that there is no Safety Critical Fault on that Set.

2.15 **Withdrawn Set** means a Set that the Operator withdraws from service at or before 21:00 hours in accordance with Part B (*Safety Critical Faults*) or Paragraph 3 of Part C (*In-Service Faults*) of Schedule 3 (*In-Service Provisions and Faults*).

2.16 **Withdrawn Evening Set** means a Set that the Operator withdraws from service after 21:00 hours in accordance with Part B (*Safety Critical Faults*) or Paragraph 3 of Part C (*In-Service Faults*) of Schedule 3 (*In-Service Provisions and Faults*).

3. FURTHER DEFINITIONS

3.1 **U** or **Unavailable** means, in relation to any day the greater of nil and:

- (a) the aggregate of the number of Sets on that day which are:
 - (i) Missing Sets; and
 - (ii) Rejected Sets,

but without double counting and without counting any Missing Sets or Rejected Sets that fall within the Allowable Availability Incidents Threshold in respect of the relevant Reporting Period;

- (b) less the aggregate of Sets on that day which are:
 - (i) Excused Sets;

- (ii) Obstructed Sets;
- (iii) Vindicated Sets;
- (iv) Relieved Sets;
- (v) Substituted Sets; and
- (vi) Switched Sets.

- 3.2 **PA** or **Partially Available** means, in relation to any day, the aggregate number of Switched Sets on that day.
- 3.3 **R** or **Returned To Service** means, in relation to any day, the aggregate number of Returned Sets on that day.
- 3.4 **UU** or **Unavailable But Used** means a Set (or the aggregate number of Sets, as the case may be) that, in any day, is a Divergent Handover Set on that day and is not also a Switched Set, an Excused Set, an Obstructed Set or a Relieved Set on that day.
- 3.5 **DU** or **Deemed Unavailable** means a Set (or the aggregate number of Sets, as the case may be) that, in any day, is a Withdrawn Set on that day and is not also a Returned Set, an Excused Set, an Obstructed Set, a Vindicated Set or a Relieved Set on that day.
- 3.6 **EU** or **Evening Unavailable** means a Set (or the aggregate number of Sets, as the case may be) that, in any day, is an Evening Withdrawn Set on that day and is not also a Returned Set, an Excused Set, an Obstructed Set, a Vindicated Set or a Relieved Set on that day.
- 3.7 **F** or **Failed But Used** means, in relation to any day, the aggregate number of Divergent In-Service Sets on that day that are not also Excused Sets, Obstructed Sets or Relieved Sets on that day.
- 3.8 **EF** or **Evening Failed But Used** means in relation to any day, the aggregate number of Divergent In-Service Evening Sets on that day that are not also Excused Sets, Obstructed Sets or Relieved Sets on that day.
- 3.9 **SS** means, in relation to any day, the aggregate number of Substituted Sets on that day.

Hierarchy of Availability Incidents and TSP Delay Minutes

- 3.10 (a) Where a Set is subject to one or more related or unrelated incidents in the same Operational Day that affects the availability and/or reliability of such Set which, but for this Paragraph 3.10, would require more than one Adjustment Component in respect of that Operational Day, the following provisions shall apply on a Set by Set basis.
- (b) Subject to Paragraph 3.10(c), for the purposes of calculating the Availability Adjustment in respect of that Operational Day and the "MDD" (described in Paragraph 3.1 of Part B (*Reliability Regime*) of Schedule 6 (*Performance Regime*)) used in calculating the Reporting Period Reliability Adjustment in respect of the relevant Reporting Period:
- (i) only the highest Availability Adjustment Component; and

- (ii) all Reliability Adjustment Components,

shall be made, provided that the aggregate amount of all Adjustment Components in respect of such Set for that Operational Day shall not be more than one point three (1.3) times the Indexed Set Availability Payment for that Set (the **1.3 Cap**).

- (c) Where a Set is a Switched Set, a Substituted Set or a Returned Set on an Operational Day and is the subject of another related or unrelated incident in the same Operational Day that affects the availability and/or reliability of that Set and which, but for this Paragraph 3.10, would require more than one (1) Adjustment Component in respect of that Operational Day, for the purposes of calculating the Availability Adjustment in respect of that Operational Day and the "MDD" (described in Paragraph 3.1 of Part B (*Reliability Regime*) of Schedule 6 (*Performance Regime*)) used in calculating the Reporting Period Reliability Adjustment in respect of the relevant Reporting Period:

- (i) in respect of a Set that is a Switched Set, a Substituted Set or a Returned Set, the Availability Adjustment Component for a Set which is Partially Available, a Substituted Set or Returned to Service (as appropriate);
- (ii) the highest Availability Adjustment Component in respect of any incident following such Set being accepted into service or accepted back into service (as appropriate); and
- (iii) all Reliability Adjustment Components other than any Reliability Adjustment Components relating to Delay Minutes accrued in respect of such Set for any delay that occurred prior to the Handover of such Set to the Operator for such Set to be introduced into or returned to service (as applicable),

shall be made, provided that the aggregate amount of all Adjustment Components in respect of that Set for that Operational Day shall not be more than one point six (1.6) times the Indexed Set Availability Payment for that Set (the **1.6 Cap**).

- (d) For the purpose of calculating more than one Adjustment Component in respect of the Operational Day which are capped under Paragraphs 3.10(b) or (c), the Adjustment Components should be applied in the following order of priority:
 - (i) first, the Availability Adjustment Components;
 - (ii) second, the TSP Delay Minutes Reliability Adjustment Component; and
 - (iii) third, the Significant Delay Incident Reliability Adjustment Component.

Two Coupled Half Sets

- 3.11 Where, pursuant to the Dispatch Requirements in relation to any Operational Day, any two (2) Half Sets are to be coupled for the purpose of delivering any Passenger Service, but the TSP has failed to make available such two (2) coupled Half Sets and has made available only one (1) of those Half Sets (or only one (1) Full Set as an alternative, if such Full Set is capable of completing the relevant Diagram), then provided that the Half Set or the Full Set made available otherwise complies with the requirements as set out in Paragraph 1.4 of Part B (*Handover*) of Schedule 2 (*Availability*):

- (a) the Half Set that is not made available and the Half Set (or Full Set) that is made available shall each be regarded as a separate Half Set for the purposes of the Availability Adjustment in respect of that Operational Day, such that the Half Set that is not made available shall be an Unavailable Half Set (unless it is an Excused Set, an Obstructed Set, a Vindicated Set or a Relieved Set); and
- (b) the Operator shall be obliged to accept such Half Set or Full Set.

3.12 Where, pursuant to the Dispatch Requirements in relation to any Operational Day, any two (2) Half Sets are to be coupled for the purpose of delivering any Passenger Service, those two (2) Half Sets shall be treated as two (2) Half Sets for the purposes of this Part A (*Availability Regime*) of Schedule 6 (*Performance Regime*) (including Paragraph 3.10). If an incident occurs when such Sets are coupled, notwithstanding such coupling, each Half Set shall be regarded as a Half Set for the purpose of the calculation in Paragraph 4.2 to the extent each such Half Set satisfies any of the availability factors defined in Paragraph 4.2 as a consequence of that availability incident.

4. [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

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Part B of Schedule 6

Reliability Regime

1. REPORTING PERIOD RELIABILITY ADJUSTMENTS

The Reporting Period Reliability Adjustment for any Reporting Period shall be calculated in accordance with this Part B (*Reliability Regime*) of Schedule 6 (*Performance Regime*) and deducted from the Base Period Charge for that Reporting Period by way of an adjustment in accordance with Part A (*TARA Payments*) of Schedule 5 (*Payment*).

2. DELAY MINUTES

All TSP Delay Minutes that occur in a Reporting Period shall be aggregated for the purpose of calculating the Reporting Period Reliability Adjustment for that Reporting Period pursuant to Paragraph 3.

3. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

4. **TSP DELAY MINUTES AND THE AVAILABILITY REGIME**

Paragraph 3.10 of Part A (*Availability Regime*) of Schedule 6 (*Performance Regime*) shall apply where a Set is subject to one or more incident in the same Operational Day that affects the reliability and/or availability of that Set.

5. **TWO COUPLED HALF SETS**

5.1 Where pursuant to the Dispatch Requirements during any Operational Day:

- (a) two (2) Half Sets are coupled for the purpose of delivering any Passenger Service, then:
 - (i) whilst those two (2) Half Sets are coupled:
 - (A) if TSP Delay Minutes are incurred:
 - (I) those two (2) Half Sets shall be treated as a single Set for the purpose of the calculation in Paragraph 3 until such Sets are decoupled;
 - (II) those two (2) Half Sets shall be treated as two (2) Half Sets with the applicable TSP Delay Minutes divided equally between such Half Sets for the purpose of calculating the TSP Delay Minutes Reliability Adjustment Component in Paragraph 3.10 of Part A (*Availability Regime*) of Schedule 6 (*Performance Regime*);
 - (B) subject to Paragraph 5.1(a)(i)(C), if a Significant Delay Incident occurs, that incident shall be deemed to have separately occurred in respect of each such Half Set; and
 - (C) if a Delay Incident occurs and those two (2) Half Sets are required to be decoupled so that one (1) Half Set can continue in Passenger Service then:
 - (I) the Half Set that does not continue in Passenger Service shall be subject to the relevant Availability Adjustment Component, which may include Availability Adjustment Component for a Set which is Deemed Unavailable or Evening Unavailable; and
 - (II) the Half Set that continues in Passenger Service shall be treated as a Half Set after decoupling but the Delay Minutes and/or the Significant Delay Incident (if any) that the two (2) Half Sets incur and/or suffer before decoupling shall be deemed to have accrued on such Half Set; and
 - (ii) after those two (2) Half Sets have been decoupled for the purpose of delivering two (2) Passenger Services, each such Half Set shall be

separately capable of incurring Delay Minutes for the purpose of the calculation in Paragraph 3; and

- (b) two (2) Half Sets operate independently for the purpose of delivering two (2) Passenger Services, but subsequently are coupled for the purpose of delivering any Passenger Service, then prior to any such coupling, each such Half Set shall be separately capable of incurring TSP Delay Minutes and Significant Delay Incidents for the purpose of the calculation in Paragraph 3.

5.2 Where pursuant to the Dispatch Requirements during any Operational Day, two (2) Half Sets are coupled for the purpose of delivering any Passenger Service, but the TSP has failed to make available such two (2) coupled Half Sets and has made available only one (1) of those Half Sets (or only one (1) Full Set as an alternative, if such Full Set is capable of completing the relevant Diagram) that would otherwise comply with the requirements as set out in Paragraph 1.4 of Part B (*Handover*) of Schedule 2 (*Availability*), the Half Set or the Full Set that is made available shall be regarded as a separate Half Set for the purposes of the Reporting Period Reliability Adjustment.

6. **DELAY MINUTES REPORTING AND CALCULATIONS**

Delay Minutes shall be reported and allocated in accordance with the provisions of Part A (*Contract Management*) of Schedule 4 (*Contract Management and Compliance*).

Part C of Schedule 6

KPI Regime

1. KPI PAYMENTS

The KPI Payment for any Reporting Period shall be calculated in accordance with this Part C (*KPI Regime*) of Schedule 6 (*Performance Regime*) and paid by way of an adjustment to the Base Period Charge for that Reporting Period in accordance with Part A (*TARA Payments*) of Schedule 5 (*Payment*).

2. CALCULATION OF KPI PAYMENTS

2.1 The KPI Payment for any Reporting Period shall be calculated in accordance with the following:

$$KPIP = (KPI_{ps} + KPI_{clean} + KPI_{Audit/Report}) \times \frac{A}{B}$$

where:

KPIP means the KPI Payment for that Reporting Period;

KPI_{ps} means the Presentation KPI Standards Payment for that Reporting Period, calculated in accordance with Paragraph 2.2;

KPI_{Clean} means the Cleaning Payment for that Reporting Period, calculated in accordance with Paragraph 2.3;

KPI_{Audit/Report} means the Audit and Reporting Payment for that Reporting Period, calculated in accordance with Paragraph 2.4;

A means the aggregate number of Maximum Available Sets in respect of each of the days in that Reporting Period; and

B means the amount derived from multiplying forty-nine (49) by the number of days within that Reporting Period.

Presentation KPI Standards Payment

2.2 The Presentation KPI Standards Payment for any Reporting Period shall be calculated in accordance with the following:

$$KPI_{ps} = \frac{315,000 - Score_{ps}}{493,500} \times £470,000$$

where:

KPI_{ps} means the Presentation KPI Standards Payment for that Reporting Period; and

Score_{ps} means the KPI Points incurred in relation to all Presentation KPI Standards Failures that are observed in and reported in relation to that Reporting Period pursuant to and in accordance with this Part C (*KPI Regime*) of Schedule 6 (*Performance Regime*).

Cleaning Payment

2.3 The Cleaning Payment for any Reporting Period shall be calculated in accordance with the following:

$$KPI_{Clean} = \frac{73,500 - Score_{Clean}}{493,500} \times £470,000$$

where:

KPI_{Clean} means the Cleaning Payment for that Reporting Period; and

$Score_{Clean}$ means the KPI Points incurred in relation to all Cleaning KPI Standards Failures that are observed in and reported in relation to that Reporting Period pursuant to and in accordance with this Part C (*KPI Regime*) of Schedule 6 (*Performance Regime*).

Audit and Reporting Payment

2.4 The Audit and Reporting Payment for each Reporting Period shall be calculated in accordance with the following:

$$KPI_{Audit/Report} = \frac{105,000 - Score_{Audit/Report}}{493,500} \times £470,000$$

where:

$KPI_{Audit/Report}$ means the Audit and Reporting Payment for that Reporting Period; and

$Score_{Audit/Report}$ means the KPI Points incurred in relation to all Auditing and Reporting KPI Standards Failures that are observed in and/or reported in relation to that Reporting Period pursuant to and in accordance with this Part C (*KPI Regime*) of Schedule 6 (*Performance Regime*).

Limitations

2.5 For the purpose of performing the calculation pursuant to:

- (a) Paragraph 2.2, $Score_{PS}$ shall be between zero (0) and three hundred and fifteen hundred thousand (315,000) (inclusive);
- (b) Paragraph 2.3, $Score_{Clean}$ shall be between zero (0) and seventy-three thousand and five hundred (73,500) (inclusive); and
- (c) Paragraph 2.4, $Score_{Audit/Report}$ shall be between zero (0) and one hundred and five thousand (105,000) (inclusive).

3. DAILY RECORDING OF KPI FAILURES ON KPI SCORECARDS

TSP Recording and Checking

3.1 The TSP shall record on any KPI Scorecard the following KPI Failures:

- (a) in relation to any Set that is to be made available on any day, any KPI Failure that is observed during the carrying out of any TSP Daily Set Check; and
 - (b) any other KPI Failure that the TSP is aware of that has occurred on that day in relation to any such Set, including any such failure that is identified by the Train Management System of any Set.
- 3.2 In the case of a KPI Scorecard completed pursuant to Paragraph 3.1(a), the TSP shall provide that scorecard to the Operator Nominated Contact and to the driver of the relevant Set at the same time as the Handover Certificate for that Set is handed over (the latter of which obligations shall be satisfied by leaving, making available or displaying any such scorecard in a prominent or readily accessible position in the driver's cab of each such Set).
- 3.3 The TSP shall duly record all such KPI Failures in a Reporting Period regardless of whether the maximum possible value of Score_{ps}, Score_{Clean}, or Score_{Audit/Report} (as appropriate) for that Reporting Period as specified in Paragraphs 2.5(a) to (c), respectively, has already been reached in that Reporting Period.

Operator Recording and Auditing

- 3.4 The Operator may update the KPI Scorecards that the TSP has completed during any TSP Daily Set Check during the course of any day, and before the end of the relevant Operational Day, to take account of any KPI Failure that is identified during the Operational Day of any Set, provided that the Operator may only update the KPI Scorecards in relation to a Cleaning KPI Standards Failure after undertaking an Operator Audit in accordance with Paragraph 6.3(b)(i) or 6.3(b)(ii).
- 3.5 The Operator shall record the findings of any Operator Audit and report those findings to the TSP in accordance with Paragraph 5.1(c)(ii) to the extent that any KPI Points arising from those findings are to be included in any calculation to be carried out pursuant to Paragraph 5.1.

4. KPI STANDARDS AND RECORDING OF KPI POINTS ON KPI SCORECARDS

KPI Standards Handbook

- 4.1 (a) On the later of:
- (i) the date which is not less than twelve (12) months prior to the Scheduled Acceptance Date of the first Set in the Fleet; and
 - (ii) the date that is fifteen (15) Business Days after the date of this Agreement,
- the TSP shall prepare and provide to the Operator a draft KPI Standards Handbook, a non-exhaustive list of whose contents is set out in Appendix B (*Contents of KPI Standards Handbook*) to this Part C (*KPI Regime*) of Schedule 6 (*Performance Regime*).
- (b) Within ten (10) Business Days of receipt from the TSP of the draft KPI Standards Handbook, including the contents referred to in Paragraph 4.1, the Operator shall provide to the TSP comments in respect of that draft KPI Standards Handbook.

- (c) Within ten (10) Business Days of receipt of the comments from the Operator or such longer period of time as may be agreed between the parties, the TSP and the Operator shall meet and discuss such comments in good faith.
- (d) Within ten (10) Business Days of the meeting or such longer period of time as may be reasonably requested by the TSP, the TSP shall provide to the Operator a revised draft of the KPI Standards Handbook incorporating all reasonable comments received by the TSP from the Operator.
- (e) Within ten (10) Business Days of receipt of the revised draft of the KPI Standards Handbook from the TSP, or such longer period of time as may be reasonably requested by the Operator, the Operator shall review the revised draft of the KPI Standards Handbook and confirm that such draft is agreed or provide its comments to the TSP.
- (f) If the Operator has not confirmed that the draft KPI Standards Handbook is agreed and has provided its comments to the TSP within the time periods specified in Paragraph 4.1(d), the TSP shall consider such comments in good faith and the TSP shall continue to revise and, subject to Paragraph 4.2, provide the revised drafts of the KPI Standards Handbook to the Operator for review in accordance with Paragraphs 4.1(c) to (e) (inclusive), until such time as the KPI Standards Handbook is agreed.
- (g) Once agreed, or determined pursuant to Paragraph 4.2, the parties shall operate the KPI Regime having regard to the KPI Standards Handbook.

4.2 The KPI Standards Handbook shall be agreed by the parties no later than the date falling six (6) months prior to the Scheduled Acceptance Date of the first Set in the Fleet.

Presentation KPI Standards Failures

4.3 For each Presentation KPI Standards Failure in Table 1 (*KPI Regime - Handover & In-Service Presentation KPI Standards Failures*) of Appendix A (*KPI Scorecards*) to Part C (*KPI Regime*) of Schedule 6 (*Performance Regime*) where that Presentation KPI Standards Failure is to be checked at Handover (indicated with a tick in the column headed "Handover") and either:

- (a) is observed prior to the Entry Time of any Set on any day, or
- (b) the TSP is otherwise aware has occurred prior to the Entry Time of any Set on any day (including any such failure that is identified by the Train Management System of any Set),

the relevant party shall fill in on a KPI Scorecard the row that relates to the Key Performance Indicator that is the subject of that Presentation KPI Standards Failure, as follows:

- (i) in the relevant sub-column under the column headed "Vehicle", the number of occurrences of such Presentation KPI Standards Failure in each Vehicle;
- (ii) in the column headed "Total failures per Set", the aggregate number of such Presentation KPI Standards Failures on the relevant Set; and

- (iii) in the column headed "Total score", the number of KPI Points specified in the column headed "Points per failure" multiplied by the aggregate number of such Presentation KPI Standards Failures on the relevant Set,

provided that the maximum number of KPI Points that may be awarded by the TSP or the Operator (as the case may be) for any Set in relation to any Presentation KPI Standards Failure at Handover shall be as stated in the cell that is in the column headed "Maximum Points per Half Set" or "Maximum Points per Full Set" (as applicable) and the row that relates to the Key Performance Indicator that is the subject of that Presentation KPI Standards Failure in Table 1 (*KPI Regime - Handover & In-Service Presentation KPI Standards Failures*) of Appendix A (*KPI Scorecards*) to Part C (*KPI Regime*) of Schedule 6 (*Performance Regime*).

4.4 For each Presentation KPI Standards Failure in Table 1 (*KPI Regime - Handover & In-Service Presentation KPI Standards Failures*) of Appendix A (*KPI Scorecards*) to Part C (*KPI Regime*) of Schedule 6 (*Performance Regime*) where that Presentation KPI Standards Failure is indicated with a tick in the column headed "In-Service" and either:

- (a) is observed during the Operational Day of any Set; or
- (b) the TSP is otherwise aware has occurred during the Operational Day of any Set, including any such failure that is identified by the Train Management System of any Set,

the relevant party shall fill in on a KPI Scorecard the row that relates to the Key Performance Indicator that is the subject of that Presentation KPI Standards Failure, as follows:

- (i) in the relevant sub-column under the column headed "Vehicle", the number of occurrences of such Presentation KPI Standards Failure in each Vehicle;
- (ii) in the column headed "Total failures per Set", the aggregate number of such Presentation KPI Standards Failures on the relevant Set; and
- (iii) in the column headed "Total score", the number of KPI Points specified in the column headed "Points per failure" multiplied by the aggregate number of such Presentation KPI Standards Failures on the relevant Set,

provided that the maximum number of KPI Points that may be awarded by the TSP or the Operator (as the case may be) for any Set in relation to any Presentation KPI Standards Failure in-service shall be as stated in the cell that is in the column headed "Maximum Points per Half Set" or "Maximum Points per Full Set" (as applicable) and the row that relates to the Key Performance Indicator that is the subject of that Presentation KPI Standards Failure in Table 1 (*KPI Regime - Handover & In-Service Presentation KPI Standards Failures*) of Appendix A (*KPI Scorecards*) to Part C (*KPI Regime*) of Schedule 6 (*Performance Regime*).

4.5 In the event that three (3) or more items of Catering Equipment are subject to any Presentation KPI Standards Failure at Handover, the parties shall disregard any KPI Point relating to such Presentation KPI Standards Failure and a Category Three Handover Failure shall be deemed to have occurred for the purposes of this Agreement.

4.6 If a Presentation KPI Standards Failure occurs that relates to Damage that constitutes either:

- (a) a mark, scratch, cut or similar damage to any window screen (exterior or interior) of a Set;
- (b) chipped paintwork of a Set; or
- (c) bodywork damage to livery vinyls,

no KPI Points shall be allocated in respect of that Damage until the expiry of the period of time that a Reasonable Train Service Provider would take to repair that Damage as from the date the Operator notifies the TSP in writing that it requires the TSP to commence the repairs of that Damage, provided that, in any event, the TSP shall be entitled to repair that Damage at any time after the earliest of:

- (i) the date falling twelve (12) months after the Damage occurred;
- (ii) the date falling six (6) months prior to the Expiry Date; and
- (iii) the TSP becoming aware of the occurrence of an Operator Default.

Cleaning KPI Standards Failures

4.7 For each Cleaning KPI Standards Failure, the relevant party shall fill in on a KPI Scorecard in the cells that are in the columns headed "Vehicle", "Total failures per Set" and "Total score" and the row that relates to the Key Performance Indicator that is the subject of that Cleaning KPI Standards Failure, the number of KPI Points specified in the cell that is in the column headed "Points per failure" and the same row in Table 2 (*KPI Regime - Handover Cleaning KPI Standards Failures*) of Appendix A (*KPI Scorecards*) to Part C (*KPI Regime*) of Schedule 6 (*Performance Regime*) multiplied by the number of Vehicles on which that Cleaning KPI Standards Failure is observed, where that Cleaning KPI Standards Failure is observed prior to the Entry Time of any Set on any day, provided that the maximum number of KPI Points that may be awarded by the TSP or the Operator (as the case may be) for any Set in relation to any Cleaning KPI Standards Failure, shall be as stated in the cell that is in the column headed "Maximum Points per Half Set" or "Maximum Points per Full Set" (as applicable) and the row that relates to the Key Performance Indicator that is the subject of that Cleaning KPI Standards Failure in the relevant table.

4.8 For the purposes of assessing whether a Cleaning KPI Standards Failure has occurred in relation to any stain, the relevant section of the KPI Standards Handbook shall apply and consideration shall be given to the status of the relevant Set in its maintenance and cleaning cycle relative to the next deep clean in accordance with the following:

- (a) all stains should be removed during a Maintenance Window before the next Handover where it is reasonably possible to do so and such stain does not require removal by a deep clean;
- (b) to the extent that it is not reasonably possible to remove a stain during a Maintenance Window and without a deep clean, the affected areas shall be identified and notified by the TSP to the Operator and no KPI Points shall be allocated in respect of that stain in the following Operational Days subsequent to such notification until the next deep clean; and

- (c) to the extent that the stain cannot be removed by a deep clean, no KPI Points shall be allocated in respect of that stain until such time as the Operator notifies the TSP in writing that it requires the TSP to replace the stained part (and if the stain constitutes Operator Responsible Damage, no KPI Points shall be allocated for the period of time that a Reasonable Train Service Provider would take to replace such part as from that notice), provided that, in any event, the TSP shall be entitled to replace such stained part at any time after the earliest of:
 - (i) the date falling twelve (12) months after the stain occurred;
 - (ii) the date falling six (6) months prior to the Expiry Date of this Agreement; and
 - (iii) the TSP becoming aware of the occurrence of an Operator Default.

4.9 Without prejudice to Paragraph 4.8, for the purposes of assessing whether a Cleaning KPI Standards Failure has occurred:

- (a) consideration shall be given to the fair wear and tear of that part of the Set; and
- (b) the relevant section of the KPI Standards Handbook shall apply.

Audit and Reporting KPI Standards Failures

4.10 If the TSP fails to check its performance pursuant to any TSP Daily Set Check (except where any of the circumstances in Paragraph 5.2 apply), the TSP shall include in the next calculation it makes pursuant to Paragraph 5.1, the KPI Points that are equal to the KPI Points that would have been recorded had the relevant check been appropriately carried out and the standard of each Key Performance Indicator related thereto not been met,

[REDACTED]

4.11 If:

- (a) any report produced by the TSP pursuant to Paragraph 5.3(b); or
- (b) any investigation carried out by the Operator pursuant to Paragraph 6.1,

reveals material inconsistencies in the TSP's actual performance in respect of this KPI Regime and the performance recorded by the TSP pursuant to this Part C (*KPI Regime*) of Schedule 6 (*Performance Regime*) in relation to any Reporting Period, including failures by the TSP:

- (i) to record accurately its performance on any KPI Scorecard;
- (ii) to calculate accurately its performance in accordance with Paragraph 5.1; and/or
- (iii) to take account of and/or report Faults recorded by the Train Management System of any Set,

then, provided that the TSP is notified of those material inconsistencies in advance of the date on which it next calculates KPI Points in accordance with Paragraph 5.1, the TSP shall include in such calculation a number of KPI Points that is equal to double the KPI

Points that were not recorded in the relevant Reporting Period due to those material inconsistencies.

- 4.12 If the number of KPI Points recorded by the Operator in relation to any Operator Audit carried out pursuant to Paragraph 6.3(a) is greater than the number of KPI Points recorded by the TSP in relation to any TSP KPI Check carried out simultaneously, then, without limiting Paragraph 7.1 (but subject to Paragraph 5.7), the TSP shall include in the next calculation it undertakes pursuant to Paragraph 5.1, KPI Points that are equal to the difference in addition to existing ones.

5. REPORTING

- 5.1 Subject to Paragraph 5.2, the TSP shall for the purpose specified in Paragraph 5.4, separately aggregate the number of KPI Points incurred in any Reporting Period in relation to each of the following:

- (a) Presentation KPI Standards Failures;
- (b) Cleaning KPI Standards Failures; and
- (c) Audit and Reporting KPI Standards Failures,

in each case including any such KPI Points that relate to failures that have been notified by the Operator to the TSP:

- (i) in accordance with Paragraph 5.5(c); or
- (ii) pursuant to any Operator Audit carried out in that Reporting Period and notified to the TSP within two (2) Business Days of the end of that Reporting Period.

- 5.2 For the purposes of this Part C (*KPI Regime*) of Schedule 6 (*Performance Regime*), the parties shall disregard any KPI Points:

- (a) that relate to any such Presentation KPI Standards Failure or Cleaning KPI Standards Failure:
 - (i) that occurs, in the case of any Presentation KPI Standards Failure only, during any Operational Day and is remedied to the reasonable satisfaction of the Operator:
 - (A) within three (3) hours of the earlier of first being reported by the Operator to the TSP and the TSP otherwise becoming aware of that failure;
 - (B) where the Presentation KPI Standards Failure occurs within the time between the relevant Set departing from Exeter St David's towards Paignton and its arrival back at Exeter St David's, within three (3) hours of the Set's return to Exeter St David's; or
 - (C) where the Presentation KPI Standards Failure occurs within the time between the relevant Set departing from Worcester Shrub Hill towards Great Malvern and its arrival back at Worcester Shrub Hill, within three (3) hours of the Set's return to Worcester Shrub Hill,

in each case except where that failure to meet the Key Performance Indicator has already occurred in the same Operational Day (in which case both, and any subsequent failures shall be included in such calculation, irrespective of any later rectification of the failure on that Operational Day);

- (ii) that occurs, in the case of any Presentation KPI Standards Failure only, during any Operational Day but that is not, where the Operator exercises its right pursuant to Paragraph 3.4 to update any KPI Scorecard, recorded by the Operator on that KPI Scorecard on that Operational Day in accordance with Paragraph 5.5(c);
 - (iii) that is caused by Operator Responsible Damage, but, without prejudice to Paragraphs 4.6 and 4.8(c), only for such period of time as a Reasonable Train Service Provider would take to repair such Set so that the Presentation KPI Standards Failure or Cleaning KPI Standards Failure was cured; or
 - (iv) if and to the extent that such KPI Failure is wholly or mainly as a result of the Operator returning the relevant Set to the TSP otherwise than in accordance with Part I (*Handback of Sets*) of Schedule 2 (*Availability*), but only for such period of time as a Reasonable Train Service Provider would take to repair such Set so that the Presentation KPI Standards Failure or Cleaning KPI Standards Failure was cured;
- (b) that relate to any KPI Failure where that failure is recorded on or relates to an Operational Day in respect of any Set or any Vehicle comprising part of a Set which on that same day incurs an Availability Adjustment pursuant to Paragraph 3 of Part A (*Availability Regime*) of Schedule 6 (*Performance Regime*);
 - (c) that relate to any KPI Failure caused by Operator Misconduct, a breach by the Operator of this Agreement or a Force Majeure Event in respect of which the TSP is the Affected Party;
 - (d) that relate to any KPI Failure which falls within the scope of the Additional Availability Conditions agreed by the parties pursuant to Part G (*Obligations concerning Sets withheld from Service*) of Schedule 2 (*Availability*) or Supplementary Availability Conditions; or
 - (e) that is caused by a Relief Event but solely for the purposes of calculating Remedial Events.

5.3 The TSP shall provide to the Operator:

- (a) within the timescale specified in Paragraph 3.1 of Part A (*TARA Payments*) of Schedule 5 (*Payment*), an accurate statement of the amount of the KPI Payment that should be made in respect of that Reporting Period, separately specifying the information required pursuant to Paragraph 5.1;
- (b) as part of the Performance Report for that Reporting Period, an accurate report of the TSP's performance over that Reporting Period, including:
 - (i) its assessment of any trends in that performance and the TSP's performance over the longer term, including its assessment of the KPI

Failures that are observed in relation to the same Key Performance Indicator on any Set or Sets of the same Type on three (3) or more occasions in the same Reporting Period or ten (10) or more occasions during any period of six (6) consecutive Reporting Periods;

- (ii) a root-cause analysis of the reasons for the occurrence of those trends and/or high-frequency failures;
 - (iii) a detailed account of the steps that the TSP will take in the next and subsequent Reporting Periods to prevent the recurrence of any KPI Failures that have been observed in that Reporting Period; and
 - (iv) if requested by the Operator no later than two (2) Business Days after the end of that Reporting Period, a root-cause analysis of the reasons for the occurrence of any particular KPI Failure that occurred in that Reporting Period; and
- (c) if requested by the Operator no later than two (2) Business Days after the end of that Reporting Period, copies of records of the checks carried out by the TSP in that Reporting Period to ensure its compliance with this KPI Regime, including copies of any KPI Scorecard populated by the TSP in that Reporting Period.

TSP self-certification

5.4 The TSP shall self-certify (such certification to be made by a director of the TSP) to the Operator every six (6) Reporting Periods the extent of the TSP's compliance with its obligations under this KPI Regime.

Operator reporting

5.5 The Operator shall:

- (a) inform the TSP of the result of any Operator Audit that is conducted simultaneously with the TSP personnel carrying out any part of a TSP KPI Check at the conclusion of such audit;
- (b) use reasonable endeavours to notify the TSP a reasonable period in advance of:
 - (i) the Entry Time of the result of any Operator Audit that is conducted prior to the Entry Time; and
 - (ii) any passengers boarding the relevant Set for the first leg of Passenger Services within the Diagram, of the result of any Operator Audit that is conducted prior to such time,

in each case, in order to permit the TSP, if it so wishes, to verify the results of that Operator Audit; and

- (c) return no later than the time when a Set is returned to the TSP on any day, any KPI Scorecard that has been provided to the Operator pursuant to Paragraph 3.2 and which the Operator has updated during the course of that day pursuant to Paragraph 3.4 to record any KPI Failures that have been identified during the Operational Day in relation to that Set.

TSP's performance

- 5.6 The TSP's performance in relation to this KPI Regime shall be tabled for discussion at each Performance Review Meeting with a view to identifying any issues arising from such performance, and agreeing on how to remedy them.
- 5.7 If any Dispute arises in relation to this KPI Regime, it shall be resolved in accordance with the Dispute Resolution Agreement, provided that, pending resolution of the Dispute, if the Dispute concerns the number of KPI Points that should be aggregated pursuant to Paragraph 5.1:
- (a) the following KPI Points shall be included in the next calculation the TSP makes pursuant to Paragraph 5.1 (the **Reference Calculation**):
 - (i) any KPI Points recorded by the Operator pursuant to any Operator Audit or Paragraph 5.5(c); and
 - (ii) any KPI Points not recorded by the TSP which the Operator believes should have been recorded;
 - (b) a Remedial Event shall not occur under Paragraph 8.1(a) or (b) if, but for this Paragraph 5.7(b), a Remedial Event would have occurred under Paragraph 8.1(a) or (b) solely because of the inclusion of those disputed KPI Points in the Reference Calculation;
 - (c) upon agreement or resolution of that Dispute, if the parties have agreed or it has been resolved that those KPI Points should not have been incurred, then in the next calculation the TSP makes pursuant to Paragraph 5.1 (the **Current Calculation**):
 - (i) the TSP shall reduce the total KPI Points that have been recorded in the Reporting Period that is the subject of the Current Calculation (the **Current Reporting Period**) by an amount equal to those disputed KPI Points and thereby receive, by way of an adjustment to the relevant KPI Payment, an amount that is equal to the difference between the amount it received in the Reporting Period that was the subject matter of the Reference Calculation and the amount it would have received, but for the recording of those disputed KPI Points; and
 - (ii) that reduction in KPI Points shall be disregarded for the purposes of determining whether a Remedial Event under Paragraph 8.1 has occurred in relation to the Current Reporting Period; and
 - (d) if a Remedial Event would have occurred under Paragraph 8.1 as a consequence of those disputed KPI Points being included in the Reference Calculation, but did not occur as a consequence of the application of Paragraph 5.7(b), then upon agreement or resolution to include those KPI Points in the Current Calculation, a Remedial Event will have occurred under Paragraph 8.1, as the case may be.
- 5.8 Within the timescales identified by the TSP pursuant to Paragraph 5.2(a)(iii), the TSP shall undertake the steps identified by it pursuant to the same Paragraph for the purpose of preventing the recurrence of any KPI Failures that have been observed in the relevant Reporting Period.

6. OPERATOR VERIFICATION, WITNESSING AND AUDITING

Right to verify TSP's reporting

6.1 The Operator shall have the right to:

- (a) verify the content of any KPI Scorecards completed by the TSP; and
- (b) verify the content of any reports provided by the TSP pursuant to Paragraph 5.3(b).

Right to witness TSP's procedures

6.2 The Operator shall have the right to witness any part of a TSP KPI Check, including the completion by TSP's personnel or Subcontractors of any KPI Scorecard.

Right to audit

6.3 The Operator shall have the right, subject to Paragraph 6.5, to carry out its own independent audit by itself completing a KPI Scorecard:

- (a) where practicable, but not limiting the Operator's right to carry out independent audits pursuant to Paragraph 6.3(b), simultaneously with the TSP personnel carrying out any part of a TSP KPI Check; and
- (b) independently of TSP's personnel or Subcontractors:
 - (i) in respect of any Set during the period between the Handover Time and the Entry Time; and
 - (ii) in respect of any Set that has been identified at, or in advance of, the Handover Time in writing by the Operator to the TSP during the period after the Entry Time but before any passengers board the Set for the first leg of Passenger Services within the Diagram,

in each case, an **Operator Audit**.

6.4 The Operator:

- (a) shall not be obliged to give the TSP prior written notice of its intention to conduct an Operator Audit (other than as referred to in Paragraph 6.3(b)(ii)); and
- (b) shall, in relation to any Operator Audit, use reasonable endeavours to ensure that the persons employed carry out such audits diligently and objectively.

6.5 The Operator may, subject to Paragraph 6.6, only conduct Operator Audits in relation to a maximum of ten per cent. (10%) of the Maximum Available Sets on any given day less the aggregate of the number of:

- (a) Unavailable Sets;
- (b) Excused Sets; and
- (c) Sets to which Paragraph 1 to Part G (*Obligations concerning Sets withheld from Service*) of Schedule 2 (*Availability*) applies,

in each case, on that same day, and on no more than five (5) days in any given Reporting Period.

- 6.6 Where the TSP is required to include additional KPI Points in the calculation it performs pursuant to Paragraph 5.1 as a consequence of the occurrence of any Audit and Reporting KPI Standards Failure in relation to two (2) Reporting Periods in any Contract Year, then:
- (a) the Operator shall be entitled to carry out as many Operator Audits as it determines in its sole discretion in the next three (3) consecutive Reporting Periods after the second Reporting Period in which an Auditing and Reporting KPI Standards Failure occurred and Paragraph 6.5 shall not apply during that time; and
 - (b) the TSP shall be liable to the Operator for one half of the costs reasonably and properly incurred by the Operator in carrying out such Operator Audits as are over and above the maximum number of Operator Audits specified in Paragraph 6.5 that may be carried out, but for this Paragraph 6.6.

Representative sample

- 6.7 Where the Operator exercises its right pursuant to Paragraph 6.6(a) to increase the number of Operator Audits it carries out, and in so doing, it carries out Operator Audits in relation to [REDACTED] or more of the Maximum Available Sets on any given day less the aggregate of the number of:
- (a) Unavailable Sets;
 - (b) Excused Sets; and
 - (c) Sets to which Paragraph 1.1 of Part B (*Handover*) of Schedule 2 (*Availability*) applies,

in each case, on any day, the numbers of each Presentation KPI Standards Failure and Cleaning KPI Standards Failure, in each case, duly recorded by the Operator in relation thereto, shall be increased to reflect the Operator carrying out an Operator Audit in relation to [REDACTED] of those Sets on that day and recording Presentation KPI Standards Failures and Cleaning KPI Standards Failures in the same proportions as those recorded Presentation KPI Standards Failures and Cleaning KPI Standards Failures, respectively.

Co-operation

- 6.8 The TSP shall co-operate with the Operator, in permitting the Operator to exercise its rights under this Paragraph 6 and shall grant such access to the facilities under its control as is necessary to enable the Operator and its employees and nominees on its behalf:
- (a) to witness any checks conducted by the TSP pursuant to the TSP Daily Set Check or otherwise; and
 - (b) to carry out any Operator Audit.

7. RESULTS OF OPERATOR AUDITS

- 7.1 Subject to Paragraph 5.7, the results of any Operator Audits that are carried out in any Reporting Period simultaneously with the TSP personnel carrying out any part of a TSP KPI Check shall, if duly notified by the Operator in accordance with Paragraph 5.5(a), be substituted for the results of the relevant part of that TSP KPI Check in the calculation the TSP makes pursuant to Paragraph 5.1 for that Reporting Period.
- 7.2 Subject to Paragraph 5.7, the results of any Operator Audits that are carried out in any Reporting Period independently of the TSP personnel carrying out any part of a TSP KPI Check shall, if duly notified by the Operator in accordance with Paragraph 5.5(b), be included in the calculation the TSP makes pursuant to Paragraph 5.1 for that Reporting Period.

8. OPERATOR REMEDY RIGHTS

Remedial Events

- 8.1 Subject to Paragraph 8.4, it shall be a Remedial Event if:
- (a) any Presentation KPI Standards Payment, Cleaning Payment or Audit and Reporting Payment is less than [REDACTED] of the Maximum Presentation KPI Standards Payment, Maximum Cleaning Payment or Maximum Audit and Reporting Payment (as appropriate) in any Reporting Periods;
 - (b) any Presentation KPI Standards Payment, Cleaning Payment or Audit and Reporting Payment is less than [REDACTED] of the Maximum Presentation KPI Standards Payment, Maximum Cleaning Payment or Maximum Audit and Reporting Payment (as appropriate) in any three (3) consecutive Reporting Periods in any consecutive period of twelve (12) months;
 - (c) the TSP fails to carry out [REDACTED] or more of required TSP KPI Checks in any three (3) consecutive Reporting Periods;
 - (d) the same Presentation KPI Standards Failure or Cleaning KPI Standards Failure in respect of which KPI Points have accrued remains unremedied in relation to any Set for seven (7) consecutive days:
 - (i) if and to the extent the relevant Set is a Damaged Set, in excess of the Excused Time; or
 - (ii) if the circumstances in Paragraph 5.2(c) to (e) apply, in excess of the time by which a Reasonable Train Service Provider would have remedied such Presentation KPI Standards Failure or Cleaning KPI Standards Failure, taking into account any periods during which the Operator has required such Set to be made available for service, with respect thereto;
 - (e) a KPI Failure is recorded in relation to the same Key Performance Indicator on Sets comprising [REDACTED] of the same Type two (2) times in any Reporting Period;
 - (f) the TSP fails to provide any of the information referred to in Paragraph 5.3 in accordance with the timescales set out therein;

- (g) thirteen (13) or more failures by the TSP to comply with the obligations specified in Paragraphs 4.11 and 4.12 in any consecutive period of twelve (12) months; or
- (h) the TSP fails to self-certify its performance pursuant to Paragraph 5.4.

8.2 The TSP shall have the right:

- (a) to review the results of any Operator Audit that has been conducted; and
- (b) to request of the Operator such further additional information as the TSP reasonably requires in order to satisfy itself as to the validity of any such results, including an explanation of the manner in which any such Operator Audit was carried out.

8.3 The Operator shall supply such results and further information as soon as reasonably practicable following receipt by the Operator of any such request from the TSP.

8.4 A KPI Failure wholly or mainly attributable to the OHLE Works and/or the 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*) of the MARA) in accordance with its terms shall not be treated as a KPI Failure for the purposes of this Paragraph 8 of Part C (*KPI Regime*) of Schedule 6 (*Performance Regime*) and the calculations envisaged by Paragraph 8.1 above shall assume that any such KPI Failure had not taken place.

Appendix A

to Part C of Schedule 6

KPI Scorecards

Table 1. KPI Regime – Handover & In-Service Presentation KPI Standards Failures																			
Train area, equipment or facility	Key performance indicator	Handover	In-Service	Points per failure	Maximum Points per Half Set	Maximum Points per Full Set	Vehicle (Vehicle Identity & No. of Failures)										Total failures per Set	Total score	
							[to match No. of Vehicles in Set]												
							1	2	3	4	5	6	7	8	9	10			
Air Systems	Compressor running continuously and audible inside the vehicle	✓		25	25	50													
Bogie/ Underframe	Wheel flats on vehicle and audible inside vehicle		✓	10	10	20													
Cab Equipment	Forward Facing CCTV Systems not recording		✓	125	250	250													
Door Systems	Body side indicator light not working		✓	25	75	150													
	Gangway door or Interior door (per doorway) not closing automatically	✓		75	150	225													
Saloon Interior	Saloon external doors not operating		✓	25	50	100													
	Saloon CCTV – no picture or recording – on up to two Vehicles	✓		150	300	300													
				150	150	150													
				75	75	75													

Table 1. KPI Regime – Handover & In-Service Presentation KPI Standards Failures																			
Train area, equipment or facility	Key performance indicator	Handover	In-Service	Points per failure	Maximum Points per Half Set	Maximum Points per Full Set	Vehicle (Vehicle Identity & No. of Failures)										Total failures per Set	Total score	
							[to match No. of Vehicles in Set]												
							1	2	3	4	5	6	7	8	9	10			
Saloon Interior	Saloon interior lighting defective – more than two (2) but less than fifty per cent. (50%) of the lights unlit on a Vehicle	✓		50	250	500													
	Saloon interior lighting defective – more than twenty-five per cent. (25%) of the lights unlit on a Vehicle		✓	75	375	750													
	Vehicle WiFi not working as a result of a Fault	✓		250	250	250													
	Seat reservation system not working on any Vehicle	✓	✓	125	125	125													
	Seat reservation system not working on any Vehicle	✓		250	250	250													
	Seat electrical supplies failure on any Vehicle and failure not remedied by a reset	✓	✓	125	125	125													
	Seat electrical supplies failure on any Vehicle and failure not remedied by a reset	✓		100	100	100													
	PA defect - pre-	✓		150	150	150													

Table 1. KPI Regime – Handover & In-Service Presentation KPI Standards Failures

Train area, equipment or facility	Key performance indicator	Handover	In-Service	Points per failure	Maximum Points per Half Set	Maximum Points per Full Set	Vehicle (Vehicle Identity & No. of Failures)										Total failures per Set	Total score	
							[to match No. of Vehicles in Set]												
							1	2	3	4	5	6	7	8	9	10			
Saloon Interior	recorded announcements not available on any Vehicles		✓	50	100	200													
	Saloon or external Passenger Information Systems (PIS) displays defective (no/partial data displayed) in any Vehicle		✓	100	200	300													
	Passenger Counting System not working on any vehicle	✓		75	75	150													
	HVAC defect - saloon interior of one or more Vehicles (up to 20% of total Vehicles in Set) outside of temperature range specified in TTS	✓		300	300	300													
	Seat armrests not present or Damaged	✓		5	100	200													
	Seat back tables not present or Damaged	✓		5	100	200													
	Saloon tables Damaged	✓		5	100	200													

Train area, equipment or facility	Key performance indicator	Handover	In-Service	Points per failure	Maximum Points per Half Set	Maximum Points per Full Set	Vehicle (Vehicle Identity & No. of Failures)										Total failures per Set	Total score
							[to match No. of Vehicles in Set]											
							1	2	3	4	5	6	7	8	9	10		
	Litter bins not present or Damaged	✓		5	100	200												
	Magazine racks not present or Damaged	✓		5	100	200												
	Signage or posters Damaged which affects legibility	✓		5	100	200												
	Interior panel Damaged	✓		5	100	200												
	Seat shell Damaged	✓		5	100	200												
	Item of emergency equipment missing	✓		50	150	250												
	Any equipment cubicles or covers missing or not securely closed on the Set	✓		25	125	250												
Toilets	Toilet Cubicle Materials not replenished	✓		10	50	100												
	Any defective toilet	✓		250	500	500												

Table 1. KPI Regime – Handover & In-Service Presentation KPI Standards Failures

Train area, equipment or facility	Key performance indicator	Handover	In-Service	Points per failure	Maximum Points per Half Set	Maximum Points per Full Set	Vehicle (Vehicle Identity & No. of Failures)										Total failures per Set	Total score	
							[to match No. of Vehicles in Set]												
							1	2	3	4	5	6	7	8	9	10			
	Locked "Out of Use" – (up to 2 toilets or 25% of the total toilets within the Set whichever is the greater)		✓	125	250	250													
	Lavatory seat Damaged but useable - in any Vehicle	✓		10	50	100													
Toilets	Toilet bowl Damaged but useable - in any Vehicle	✓		10	50	100													
	Mirror Damaged but useable - in any Vehicle	✓		10	50	100													
Catering Equipment (where applicable)	Catering Equipment – any item of equipment not working	✓		250	500	500													
		✓		150	1800	1800													
Train Exterior	Bodywork Damage to paint system of more than 1cm in diameter or 3cm in length or that penetrates paint system	✓		50	100	250													

Table 2. KPI Regime – Handover Cleaning KPI Standards Failures																
Train area, equipment or facility	Key performance indicator	Points per failure	Maximum Points per Half Set	Maximum Points per Full Set	Vehicle (Vehicle Identity & No. of Failures)										Total failures per Set	Total score
					[to match No. of Vehicles in Set]											
					1	2	3	4	5	6	7	8	9	10		
Toilet	Carpets and flooring: Interior Clean and dry	15	75	150												
	Interior panels: Interior Clean and dry	15	75	150												
	Litter bins: Interior Clean with clean liner	15	75	150												
	Interior glazing: Interior Clean and dry	10	50	100												
	Light diffusers: Interior Clean and dry	5	25	50												
	Safety & passenger information labels: Interior Clean and legible	5	25	50												
	Toilet free from unauthorised labels	5	25	50												
	Seats general (other than seat soft trim): Interior Clean	15	75	150												
	Seat soft trim: Interior Clean	15	75	150												
	Carpets and flooring: Interior Clean	15	75	150												
Passenger Saloon & Vestibule	Interior panels: Interior Clean	15	75	150												
	Litter bins: Interior Clean with clean liner	15	75	150												
	Interior glazing: Interior Clean	5	25	50												
	Light diffusers: Interior Clean	5	25	50												

Table 2. KPI Regime – Handover Cleaning KPI Standards Failures

Train area, equipment or facility	Key performance indicator	Points per failure	Maximum Points per Half Set	Maximum Points per Full Set	Vehicle (Vehicle Identity & No. of Failures)										Total failures per Set	Total score		
					[to match No. of Vehicles in Set]													
					1	2	3	4	5	6	7	8	9	10				
Staff areas including driving cabs	Safety and passenger information: Interior Clean and legible	5	25	50														
	Free from unauthorised labels	5	25	50														
	Magazine racks: full and neatly stowed	5	25	50														
	Seats general (except seat soft trim): Interior Clean	15	45	45														
	Seat soft trim: Interior Clean	15	45	45														
	Dials and other display equipment: Interior Clean	10	30	30														
	Communications equipment: Interior Clean and disinfected	10	30	30														
	Carpets and flooring: Interior Clean	10	30	30														
	Interior panels: Interior Clean	10	30	30														
	Litter bins: Interior Clean with clean liner	10	30	30														
	Interior glazing: Interior Clean	5	15	15														
	Light diffusers: Interior Clean	5	15	15														
	Catering Area	Safety information labels: Interior Clean and legible	5	15	15													
Cab desk: Interior Clean		5	15	15														
	Floor covering: Interior Clean and dry	50	50	50														

Table 2. KPI Regime – Handover Cleaning KPI Standards Failures

Train area, equipment or facility (where applicable)	Key performance indicator	Points per failure	Maximum Points per Half Set	Maximum Points per Full Set	Vehicle (Vehicle Identity & No. of Failures)										Total failures per Set	Total score	
					[to match No. of Vehicles in Set]												
					1	2	3	4	5	6	7	8	9	10			
(where applicable)	Food & drink preparation areas: Interior Clean	50	50	50													
	Food & drink storage areas: Interior Clean	50	50	50													
	Food cooking facilities (oven, toaster, hob etc): Interior Clean	50	50	50													
	Drink facilities (coffee/tea maker etc): Interior Clean	50	50	50													
	Washing facilities: Interior Clean	50	50	50													
	Serving facilities (shop, buffet etc): all surfaces Interior Clean	50	50	50													
	Interior panels: Interior Clean	50	50	50													
	Litter bins: Interior Clean with clean liner	15	15	15													
	Interior glazing: Interior Clean	15	15	15													
	Light diffusers: Interior Clean	10	10	10													
Catering Area (where applicable)	Safety & passenger information: Interior Clean	10	10	10													
	Ventilation ducts and grills: Interior Clean	10	10	10													

Table 2. KPI Regime – Handover Cleaning KPI Standards Failures

Train area, equipment or facility	Key performance indicator	Points per failure	Maximum Points per Half Set	Maximum Points per Full Set	Vehicle (Vehicle Identity & No. of Failures)										Total failures per Set	Total score	
					[to match No. of Vehicles in Set]												
					1	2	3	4	5	6	7	8	9	10			
Train Exterior	External labels, Passenger Information Systems and body side indicator lights: Exterior Clean	25	25	25													
	Exterior Door Pockets Exterior Clean	100	100	100													
	Exterior glazing: Exterior Clean	100	100	100													
	Exterior body side: Exterior Clean	100	100	100													
	Nose ends, windscreen and cab side lights: Exterior Clean	100	100	100													
Train Exterior (in accordance with periodic exterior heavy clean cycle)	Exterior Roof: (except pantograph well): Exterior Clean	25	25	25													
	Exterior Inter-car body end and gangway: Exterior Clean	25	25	25													
	'Dead' areas - areas which are in the shadow of other items such as yaw damper brackets. These tend to be inaccessible to wash plants and also attract dirt from the airflow: Exterior Clean	25	25	25													

Appendix B to Part C of Schedule 6

Contents of KPI Standards Handbook

1.	Introduction, Purpose and Scope			
2.	Aesthetic Condition for each feature/facility	<ul style="list-style-type: none"> • Daily/overnight clean standards • Heavy Clean standards • Acceptable standards between heavy cleans 		
3.	Litter, Dust and Cleanliness	<ul style="list-style-type: none"> • Governing Principles • Daily/overnight clean standards • Heavy Clean standards • Standards between heavy cleans 	Description of [Una]/[A]cceptable Standards	
4.	Vehicle Exteriors (Cleanliness)	<ul style="list-style-type: none"> • Body side • Doors & Door Pockets • Windows • Intervehicle Ends & Roof • Cabs & Windscreen 	Description of [Una]/[A]cceptable Standards	
5.	Vehicle Interiors (Cleanliness)	<ul style="list-style-type: none"> • Panels and Doors • Windows and Glass Panels • Floor Coverings • Tables • Seats and Arm Rests • Lighting Diffusers • Toilets • Catering Areas and Equipment • Vestibules and Gangways • Litter Bins 	Description of [Una]/[A]cceptable Standards	
6.	Vehicle Exteriors (Wear and Tear)	Body side	<ul style="list-style-type: none"> • Chips, scratches, dents • Corrosion • Repair quality/patching 	Description of [Una]/[A]cceptable Standards
		Doors and Door Pockets	<ul style="list-style-type: none"> • Chips, scratches, dents • Repair quality/patching 	
		Windows	<ul style="list-style-type: none"> • General • Discoloration • Etching 	
		Intervehicle Ends and Roof	<ul style="list-style-type: none"> • General • Chips, scratches, dents • Corrosion • Repair quality/patching 	
		Cabs and Windscreen	<ul style="list-style-type: none"> • Chips, scratches, dents 	

			<ul style="list-style-type: none"> • Corrosion • Branding • Repair quality/patching 	
7.	Vehicle Interiors (Wear & Tear)	Panels and Doors	<ul style="list-style-type: none"> • Scratches, cracks, dents • Graffiti • Discoloration • Colour matching 	
		Windows and glass panels	<ul style="list-style-type: none"> • General • Discoloration • Etching 	
		Floor coverings	<ul style="list-style-type: none"> • General • Step plate • Matting and carpets 	
		Tables	<ul style="list-style-type: none"> • Damages/cracks • Delamination 	
		Seats and Arm Rests	<ul style="list-style-type: none"> • General • Torn Covers • Upholstery pile degradation 	
		Lighting diffusers	<ul style="list-style-type: none"> • Discolouration • Cracks/damage 	
		Toilets	<ul style="list-style-type: none"> • Panel • Integrity/discolouration • Mirrors • Floor condition • Floor staining 	
		Catering Areas and Equipment	<ul style="list-style-type: none"> • General • Scratches, dents, damage 	
		Vestibules and gangways	<ul style="list-style-type: none"> • General • Damage 	
Litter Bins	<ul style="list-style-type: none"> • General • Dents/damage 			
8.	Photographic Examples			Photographs of [Una]/[A]cceptable Standards

Part D of Schedule 6

Reimbursable Charges

1. FUEL COST

Fuel Procurement and Reimbursement

1.1 The TSP shall procure the supply of all Fuel required by it in order to fulfil its obligations under this Agreement (including its obligation pursuant to Paragraph 1.4(b)(i) of Part B (*Handover*) of Schedule 2 (*Availability*)) at the best market rate reasonably available to it (taking into consideration the track record of the supplier in relation to the delivery of Fuel in accordance with customer requirements and the quality of the Fuel offered by the supplier). The TSP and the Operator shall consult with each other and discuss in good faith with a view to obtaining the best market rate available to the TSP.

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

[REDACTED]

1.3 In each notification pursuant to Paragraph 1.2, the TSP shall also include records, information and documents (each in reasonable detail) evidencing how the Invoiced Fuel Cost have been calculated. The TSP shall, upon request by the Operator, provide to the Operator such further records, information and/or documents as may be reasonably required by the Operator that evidence how the Invoiced Fuel has been, or is to be, procured.

Records and Reconciliation

1.4 The TSP shall keep a record of all Fuel used by each Set in respect of any Reporting Period.

1.5 The TSP shall notify the Operator, following the expiry of each Reporting Period in respect of which the Invoiced Fuel Cost has been calculated pursuant to Paragraph 1.2 (the ***Invoiced Fuel Reporting Period***) but not less than forty nine (49) days prior to the expiry of the three (3) Reporting Periods (the last Reporting Period of such three (3) Reporting Periods being the ***Fuel Reconciliation Payment Reporting Period***) immediately following the Invoiced Fuel Reporting Period, of a fuel reconciliation payment for the Invoiced Fuel Cost. The fuel reconciliation payment for the Invoiced Fuel Cost shall

be accounted for in the Fuel Adjustment in the Fuel Reconciliation Payment Reporting Period and calculated by deducting:

- (a) the Invoiced Fuel Costs; from
- (b) the aggregate amount derived from multiplying the relevant total Fuel consumption in litres of the Sets for the Invoiced Fuel Reporting Period by the relevant Actual Fuel Price,

where such payment may be a positive number and vice versa (the ***Fuel Reconciliation Payment***).

- 1.6 In each notification pursuant to Paragraph 1.5, the TSP shall include records, information and documents (each in reasonable detail) evidencing how the Fuel Reconciliation Payment has been calculated. The TSP shall, upon request by the Operator, provide to the Operator such further records, information and/or documents as may be reasonably required by the Operator that evidence how the Fuel (purchased at the Actual Fuel Price) has been procured.

2. **ELECTRICITY CHARGES**

The Operator shall be responsible for paying for a supply of electricity adequate to meet the needs of the Sets (excluding any electricity provided via any shore supplies at the Depots).

3. **BUSINESS RATES**

- 3.1 The Operator shall reimburse all Business Rates payable by the Provider during a Reporting Period to the TSP as part of the TARA Payments for that Reporting Period in accordance with this Part D (*Reimbursable Charges*) of Schedule 6 (*Performance Regime*).
- 3.2 The TSP shall keep (or shall procure the relevant Provider to keep) a record of all Business Rates incurred and payable by the Provider in respect of any Reporting Period.
- 3.3 The TSP shall notify the Operator promptly after it or the Provider becomes aware of the Business Rates payable by the Provider for any period of time (and in any event no later than the notice period required for the TARA Payments in respect of each applicable Reporting Period pursuant to Paragraph 3 of Part A (*TARA Payments*) of Schedule 5 (*Payment*)).
- 3.4 In each notification pursuant to Paragraph 3.3, the TSP shall also include records, information and documents (each in reasonable detail) evidencing the Business Rates invoiced, charged and paid by the Provider. The TSP shall, upon request by the Operator, provide to the Operator such further records, information and/or documents as may be reasonably required by the Operator in connection with the Business Rates.
- 3.5 If the Operator or the TSP reasonably determines that the Business Rates charged by the relevant authorities may be contested, the TSP and the Operator shall consult with one another, and the TSP shall (or shall procure the relevant Provider to) consult with the Operator, to consider what action may be taken to defend or contest the applicable Business Rates and the TSP shall co-operate (or shall procure the relevant Provider to co-operate) with the Operator in carrying out those actions, if, and to the extent, reasonably requested by the Operator, provided that the TSP shall not be required to

incur material expenditure in doing so unless otherwise agreed between the TSP and the Operator.

Part E of Schedule 6

Costs Payable by Operator

1. COSTS OF REMEDY FOR DAMAGE

1.1 Subject to Paragraph 1.2, the Operator shall reimburse the TSP for the reasonable and proper costs of remedying damage caused to the Sets to the extent that it is Operator Responsible Damage in the following way in respect of each Reporting Period:

- (a) the first [REDACTED] (Indexed) per Vehicle in that Reporting Period shall be for the TSP and the Operator shall not be liable to reimburse the TSP for such amounts;
- (b) [REDACTED] of all amounts between [REDACTED] and [REDACTED] per Vehicle in that Reporting Period shall be for the Operator; and
- (c) [REDACTED] of all amounts exceeding [REDACTED] per Vehicle in that Reporting Period shall be for the Operator,

provided that the TSP's share of such costs (including for the avoidance of doubt any amount up to [REDACTED] per Vehicle in each Reporting Period and any Labour Costs) shall, in each Reporting Period, be no more than [REDACTED].

1.2 If Operator Responsible Damage caused damage to a Set which the Set is then determined to be a Total Loss, the Operator shall pay the Agreed Value for that Set to the TSP on the earlier of:

- (a) one hundred and eighty (180) days after the Operator issues the notice of Total Loss pursuant to Paragraph 3.5(c)(i); and
- (b) fourteen (14) days of receipt of such Agreed Value from the insurers,

and the TSP shall then pay such proceeds into the Joint Insurance Account pursuant to paragraph 2.7 of part A (*Insurance Provisions*) of schedule 5 (*Insurance*) of the MARA as if such amounts were insurance proceeds as referred to in paragraph 2.7(a) of part A (*Insurance Provisions*) of schedule 5 (*Insurance*) of the MARA.

2. NOTICE OF DAMAGE AND LIKELY COSTS

2.1 If the TSP or any of its Subcontractors becomes aware that any repairs or other works are required in respect of any damage to any Set which falls within the scope of Paragraph 1 or a Total Loss may have occurred, the TSP shall as soon as reasonably practicable submit a written notice (a **Repair Notice**) by fax or email to the Operator Nominated Contact, notifying the Operator of the TSP's intention to undertake such repairs or other work (the **Repairs**). Any damage which is not notified in accordance with this Paragraph 2 shall be conclusively presumed to be outside the scope of Paragraph 1.

2.2 The Repair Notice shall include all relevant details of the circumstances requiring the Repairs, including the best estimate of the likely costs of the repairs in accordance with the estimated timeframe within which the TSP will undertake to perform the Repairs.

2.3 The TSP shall inform the Operator of any variation in the estimated costs of the Repairs notified in the Repair Notice, as soon as reasonably practicable upon it or its Subcontractors becoming aware of the same.

2.4 The TSP shall:

- (a) record all costs of Repairs through its maintenance management system; and
- (b) make and retain photographic evidence of all visible damage which is or will be the subject of a Repair Notice, as soon as reasonably practicable upon it or any of its Subcontractors becoming aware of such damage (and before commencing the Repairs).

3. OBLIGATION TO REPAIR

3.1 Subject to Paragraphs 3.3 and 3.5, the obligations of the TSP in respect of Repairs shall not be postponed or suspended pending agreement or determination of any question as to causation or of the amount of recoverable cost.

3.2 The TSP shall commence any Repairs if the costs of which the TSP considers to be reimbursable by the Operator under this Part E (*Costs Payable by Operator*) of Schedule 6 (*Performance Regime*) and which the TSP reasonably estimates in a Repair Notice will cost less than [REDACTED].

3.3 The TSP shall not commence any Repairs if the costs of which the TSP considers to be reimbursable by the Operator under this Part E (*Costs Payable by Operator*) of Schedule 6 (*Performance Regime*) and which the TSP reasonably estimates in a Repair Notice will cost [REDACTED]:

- (a) the day falling ten (10) Business Days after the TSP issues the Repair Notice to the Operator or the date of receipt of the Operator's notice to the TSP pursuant to Paragraph 3.5(c)(ii) (whichever is applicable); and
- (b) receipt by the TSP of confirmation from the Operator that the TSP may commence such Repairs.

3.4 In respect of any Repairs to which Paragraph 3.3 applies:

- (a) the Operator may, within two (2) Business Days after the date upon which the TSP issued the Repair Notice, notify the TSP in writing that it requires the TSP to suspend commencement of the Repairs. Following such notice, the TSP shall provide the Operator with such further information regarding the Repairs as the Operator may request, and the TSP shall give due consideration to any comments the Operator makes in respect of the Repairs; and
- (b) the TSP shall commence such Repairs following the earlier of:
 - (i) the written confirmation from the Operator that it may do so; and
 - (ii) the date falling ten (10) Business Days after the TSP issued the Repair Notice or the date of receipt of the Operator's notice pursuant to Paragraph 3.5(c)(ii) (whichever is applicable).

- 3.5 In respect of any Repairs to which it may amount to a Total Loss:
- (a) the Operator shall, within ten (10) Business Days after the TSP issue the Repair Notice to the Operator, notify the TSP in writing if a Total Loss may be applicable and request the TSP to suspend the commencement of any Repairs pending the insurer's determination of the relevant loss;
 - (b) the TSP shall provide all reasonable access to and information and records in respect of the relevant Set and support, co-operate and consult with the Operator and the Operator's insurers (including their representatives or professional advisers) to facilitate the assessment of relevant loss (including granting access to the relevant Set for inspection); and
 - (c) the Operator shall, as soon as reasonably practicable after receipt of the insurer's determination of the relevant loss, notify the TSP in writing of:
 - (i) the Set being a Total Loss, in which case the TSP shall not be required to commence any Repairs of the relevant Set; or
 - (ii) the Set not being a Total Loss, in which case Paragraph 3.3 shall apply.
- 3.6 Provided that the TSP has complied with its obligation in Paragraph 3.2, the Excused Time and the reference to the period of time that a Reasonable Train Service Provider would take to repair such Set under Paragraph 5.2(a)(iii) of Part C (*KPI Regime*) or Paragraph 2.7(b) of Part A (*Availability Regime*) of Schedule 6 (*Performance Regime*) shall be extended by such period of time as elapses between the TSP issuing the Repair Notice and:
- (a) the Operator confirming that the TSP may commence such Repairs;
 - (b) the TSP commencing such Repairs pursuant to Paragraph 3.4(a) or 3.4(b); or
 - (c) the receipt by the TSP of a notice pursuant to Paragraph 3.5(c)(ii).
- 3.7 The Operator may from time to time by giving not less than five (5) Business Days' notice in writing to the TSP, increase the amount of [REDACTED] referred to in Paragraphs 3.2 and 3.3.
- 3.8 Any confirmation provided by the Operator pursuant to Paragraph 3.3 shall be without prejudice to the operation of, and the Operator's rights and obligations under, this Part E (*Costs Payable by Operator*) of Schedule 6 (*Performance Regime*).
4. **DAMAGE CAUSED BY TRACK QUALITY**
- 4.1 The TSP and the Operator will each promptly notify the other of any concerns in respect of the track quality of the Great Western IEP Network and will consult about any actions that may need to be taken. For the purposes of this Paragraph 4.1, the TSP and the Operator will have regard to:
- (a) any data from on-Set infrastructure monitoring systems;
 - (b) any damage or increased wear to the Sets which is likely to be the result of poor infrastructure quality; and

- (c) any ride or noise issues experienced by the Operator's drivers or other on-train staff.
- 4.2 The actions that may initially be taken in respect of any concerns under Paragraph 4.1 include:
- (a) notification to Network Rail of any poor track quality and a requirement that it be rectified; and/or
 - (b) if the TSP or the Operator considers that Network Rail is failing to comply with the conditions of its Network Licence, a request to the ORR that it take enforcement action against Network Rail.
- 4.3 Without prejudice to Paragraphs 4.1 and 4.2, where any Set suffers damage and the TSP considers that such damage is the result of poor track quality, where the TSP wishes to establish a claim against the Operator in respect of such damage under this Agreement, and to the extent that, in the reasonable opinion of the TSP, having regard to the provisions of the Operator's Track Access Contracts, the Operator has equivalent rights, remedies and/or recourse (**Equivalent Project Relief**) against Network Rail under the Track Access Contract (a **Parallel Claim**), the TSP may request in writing (a **Parallel Claims Notice**) that the Operator take all reasonable steps to obtain the benefit of any such Equivalent Project Relief from Network Rail.
- 4.4 Subject to the TSP indemnifying the Operator against all claims, losses, damages and third party costs arising out of any action taken by the Operator against Network Rail in accordance with the Parallel Claim, the Operator shall either:
- (a) submit the Parallel Claim to Network Rail following which the TSP shall provide such additional details and/or information as may be requested by Network Rail in relation to the Parallel Claim. The Operator shall pursue the Parallel Claim with Network Rail and the TSP shall be entitled to attend meetings between Network Rail and the Operator at which the Parallel Claim is being discussed. The Operator shall upon the TSP's reasonable request invoke the dispute resolution procedure under the Track Access Contract and the Operator shall not make any compromise or admission of the Parallel Claim without first obtaining the TSP's consent (not to be unreasonably withheld or delayed); or
 - (b) the Operator may allow the TSP to directly pursue Network Rail in respect of the Parallel Claim, exercising such rights, remedies and/or recourse that the Operator has available to it under the Track Access Contract.
- 4.5 The Operator shall not reach any agreement with Network Rail nor waive nor agree with Network Rail any amendment to, nor release nor compromise any of its responsibilities, obligations, rights or entitlement under the Track Access Contract where to do so would have a material adverse effect upon the ability of the Operator or the TSP to recover compensation from Network Rail in respect of poor track quality, unless the Operator agrees to keep the TSP in a "no better or worse position".
- 4.6 To the extent that the Operator and/or the TSP succeed in any claim against Network Rail under this Paragraph 4:
- (a) any compensation paid by Network Rail in respect of the costs of repair of the Sets shall be paid to the TSP; and

- (b) any compensation paid by Network Rail in respect of loss of revenue by the Operator as a result of cancellation or partial cancellation of any Passenger Service resulting from damage to any Set shall be retained by the Operator.

4.7 The recourse available to the TSP to claim rights or benefits from the Operator in respect of damage to Sets resulting from poor track quality shall only exist where:

- (a) the Operator has equivalent recourse to Network Rail as described in this Paragraph 4 but to a no greater extent than the Operator receives such benefit or right from Network Rail; or
- (b) the event triggering the need for recourse was an event against which the Operator was required to maintain insurance to the extent recovery is made by the Operator having first discharged its own costs and losses.

5. COSTS OF RECOVERY OF FAILED SETS

The Operator shall reimburse the TSP for the TSP's reasonable and proper costs of recovering any Set that the TSP is required to recover pursuant to Part C (*In-Service Faults*) of Schedule 3 (*In-Service Provisions and Faults*) where that Set is being recovered as a result of Operator Responsible Damage.

6. COST CONTROL

6.1 The costs recoverable from the Operator by the TSP in the circumstances set out above shall be limited to (respectively):

- (a) the costs incurred by the TSP on the Costs Plus Basis in respect of the:
 - (i) performance of the Repairs; and
 - (ii) where Paragraph 1.1(d) of Part B (*TSP Covenants and Performance*) of Schedule 1 (*General Provisions*) applies, carrying out the repairs, replacement or upgrades of any Ancillary Equipment provided to the Operator pursuant to Paragraph 1.1(c)(i) of Part B (*TSP Covenants and Performance*) of Schedule 1 (*General Provisions*); or
- (b) the reasonable costs reasonably and properly incurred by the TSP in respect of:
 - (i) recovering any Set as contemplated under Paragraph 5; and
 - (ii) where Paragraph 3.7 of Part B (*Compliance Testing*) of Schedule 4 (*Contract Management and Compliance*) applies, carrying out the relevant Compliance Test (as appropriate), or if the Operator withdraws a Standards Compliance Test Notice pursuant to Paragraph 2.3 of Part B (*Compliance Testing*) of Schedule 4 (*Contract Management and Compliance*), preparing to carry out the relevant Compliance Test.

6.2 The TSP shall keep (and 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 all:

- (a) administrative overheads;

- (b) payments made to Significant Contractors and the Second Tier Suppliers (if applicable);
- (c) capital and revenue expenditure; and
- (d) such other items as the Operator may reasonably require to conduct cost audits for verification of cost expenditure or estimated expenditure under this Part E (*Costs Payable by Operator*) of Schedule 6 (*Performance Regime*),

and the TSP shall have (and shall use reasonable endeavours to procure that the Significant Contractors and any Second Tier Suppliers shall have) books of account evidencing the items listed in Paragraphs 6.2(a) to (d) (inclusive) available for inspection by the Operator upon reasonable notice, and shall present a report of these to the Operator as and when reasonably requested under this Part E (*Costs Payable by Operator*) of Schedule 6 (*Performance Regime*).

- 6.3 The Operator shall be entitled to inspect the records and photographic evidence referred to in Paragraph 2.4 upon reasonable notice. In addition, in relation to any Repairs the cost of which is estimated by the TSP in a Repair Notice to exceed [REDACTED], the Operator may require the TSP to provide the books of account of the TSP, the Significant Contractors and/or the Second Tier Suppliers in accordance with Paragraph 6.2 together, with benchmarking against reasonable third party comparables taking into account the liability, speed and quality of workmanship required for such works (but in the case of benchmarking information only where such information is available to the TSP without the TSP having to incur material additional cost).

7. **COST RECOVERY**

Costs recoverable under this Part E (*Costs Payable by Operator*) of Schedule 6 (*Performance Regime*) shall be recovered after they have been agreed or determined and on the Payment Date following such agreement or determination as the value of CPO pursuant to Paragraph 2.11 of Part A (*TARA Payments*) of Schedule 5 (*Payment*).

SCHEDULE 7

INSURANCE

Requirement to Maintain

1. The Operator shall during the term of this Agreement take out and maintain or procure the taking out and maintenance of:
 - (a) the insurances that it is required to have pursuant to the provisions of its licence requirements under the Act;
 - (b) the insurances that provide appropriate insurance for the Operator's rights and interests in the Project, including property damage insurance in respect of the Sets which are the property of the TSP for which the Operator is responsible under the terms of this Agreement, to cover "all risks" of physical loss, damage or destruction to the Sets in an amount equal to the Agreed Value; and
 - (c) any other insurance as may be required by law,

(collectively, the **Operator Insurances**) with insurers of good financial standing, and reputation in the international insurance market. The Operator Insurances must be effective, in each case, not later than the earliest date on which the Operator assumes the relevant risk under the terms of this Agreement.

Obligation on Parties

2. The Operator shall use reasonable endeavours to procure that any broker (who at all times shall be of good repute) of the Operator, or of any other relevant party, charged with the responsibility from time to time of placing or maintaining any of the Operator Insurances provides the TSP with a broker's letter of undertaking substantially in the form set out in Appendix A (*Form of Broker's Letter of Undertaking*) to Schedule 7 (*Insurance*).

Evidence of Policies

3. The Operator shall provide, on request, to the TSP:
 - (a) copies of all insurance policies relating to the Operator Insurances together with any other information reasonably requested by the TSP relating to the Operator Insurances; and
 - (b) evidence that the premiums payable under all Operator Insurances have been paid in full and that the Operator Insurances are in full force and effect in accordance with the requirements of Paragraph 1.

Notification of Cancellation

4. The Operator shall notify the TSP if any insurer cancels or gives notification of cancellation of any Operator Insurances 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 Operator from the insurers less than thirty (30) days prior to such cancellation.

Assistance with Reinstatement Plan

5. The Operator shall use reasonable endeavours to assist the TSP and the Secretary of State in the carrying out of any Reinstatement Plan and/or any Required Variation (pursuant to part I (*Total Loss*) of schedule 6 (*Expiry, Events of Default, Termination and Force Majeure*) of the MARA).

Appendix A to Schedule 7

Form of Broker's Letter of Undertaking

To: TSP and the Maintainer

Dear Sirs

Agreement dated [●] entered into between [●] Limited (the Operator) and Agility Trains West Limited (the TSP) (the Agreement)

1. We refer to the Agreement. Unless the context otherwise requires, terms defined in the Agreement shall have the same meaning in this letter.
2. We act as insurance broker to the Operator in respect of the insurances required under the terms of Paragraph 1 of Schedule 7 (*Insurance*) of the Agreement and in that capacity we confirm that:
 - (a) the Operator Insurances are, in our reasonable opinion as insurance brokers, as at today's date, in full force and effect;
 - (b) all premiums due to date in respect of the Operator Insurances are paid; and
 - (c) the Operator Insurances are, to the best of our knowledge and belief, placed with insurers which, as at the time of placement, are reputable and financially sound. We do not however make any representations regarding such insurers' current or future solvency, or ability to pay claims.
3. We further confirm that the attached cover notes confirm this position.
4. Pursuant to instructions received from the Operator and in consideration of your approving our appointment as brokers in connection with the Operator Insurances, we hereby undertake to comply with the obligations set out in clauses 5 to 8 (inclusive) in relation to the Operator Insurances.

Notification Obligations

5.
 - (a) To notify you at least thirty (30) days prior to the expiry of any of the Operator Insurances if we have not received instructions from the Operator to negotiate renewal and in the event of our receiving instructions to renew, to advise you promptly of the details thereof.
 - (b) To notify you at least thirty (30) days prior to ceasing to act as brokers to the Operator, unless, due to circumstances beyond our control, we are unable to do so in which case we shall notify you as soon as practicable.

Advisory Obligations

6.
 - (a) To notify you as soon as reasonably practicable of any default in the payment of any premium for any of the Operator Insurances.

- (b) To notify you if any insurer cancels or gives notification of cancellation of any of the Operator Insurances to us, 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 takes place less than thirty (30) days before it is to take effect.
- (c) To notify you as soon as reasonably practicable of any act or omission, breach or default of which we have been notified which in our reasonable opinion would either, invalidate or render unenforceable in whole or in part any of the Operator Insurances or, would otherwise materially impact on the extent of cover provided under the Operator Insurances.
- (d) In accordance with our duty to the Operator to notify the Operator of its pre-contractual duties of disclosure to insurers, including the duty to disclose all information that would be considered material in the context of such duty.

Disclosure Obligations

7.

- (a) Subject to the prior written consent of the Operator (and we undertake to notify you as soon as reasonably practicable if such consent is withheld) to disclose to insurers all information provided to those of our employees directly involved with the placement of the Operator Insurances in our capacity as insurance broker to the Operator, including any fact, change of circumstance or occurrence notified to such employees, which in our reasonable opinion is material to the risks insured against under the Operator Insurances and which properly should be disclosed to insurers, or in accordance with the policy terms and conditions of the Operator Insurances, as soon as reasonably practicable after we are in receipt of such information, fact, change of circumstances or occurrence whether prior to inception or renewal or otherwise.
- (b) To treat as confidential all information so marked or otherwise stated to be confidential and supplied to us by or on behalf of the Operator, the TSP or the Maintainer and not to disclose such information, without the prior written consent of the supplier, to any third party other than those persons who, in our reasonable opinion have a need to have access to such information from time to time, and for the purpose of disclosure to the insurers or their agents in respect of the Operator Insurances. Our obligations of confidentiality shall not conflict with our duties owed to the Operator and shall not apply to disclosure required by an order of a court of competent jurisdiction, or pursuant to any applicable law, government or regulatory authority having the force of law or to information which is in the public domain.

Administrative Obligations

8.

- (a) To hold copies of all documents relating to or evidencing the Operator Insurances, including (but without prejudice to the generality of the foregoing) insurance slips, contracts, policies, endorsements and copies of all documents evidencing renewal of the Operator Insurances, payment of premiums and presentation and receipt of claims.

- (b) To supply to the TSP and/or its insurance advisers (or the TSP's or its insurance advisers' authorised representatives) and to the Maintainer and/or its insurance advisers (or the Maintainer's or its insurance advisers' authorised representatives) promptly on written request copies of the documents set out in clause 8(a) of this letter, and to the extent available to make available to such persons promptly upon the TSP's or the Maintainer's request the originals of such documents.
- (c) To administer the payment of premiums due pursuant to the Operator Insurances such that, insofar as we hold appropriate funds, all such premiums shall be paid to insurers in accordance with the terms of the Operator Insurances.
- (d) To advise the TSP and the Maintainer as soon as reasonably practicable upon receipt of notice of any material changes which we are instructed by the Operator to make in the terms of the Operator Insurances and which, if effected, in our reasonable opinion as insurance brokers would result in any material reduction in limits or coverage or increase in deductibles, exclusions or exceptions.

Notification Details

9. Our obligations at clauses 5 to 8 (inclusive) of this letter to notify or inform you shall be discharged by providing the requisite information in hard copy to:

[●]

Facsimile No: [●]

Attention: [●]

10. The representations and obligations set out in this letter are subject to our continuing appointment as insurance brokers to the Operator in relation to the Operator Insurances concerned, and following termination of such appointment our immediate release from all our obligations set out in this letter to the extent those obligations arise on or after the termination, and subject to any right of lien we may have over the policy and policy documents regarding the Operator Insurances, arising through common law or otherwise.
11. Our aggregate liability to any persons, companies or organisations who act in reliance on this letter, or on any other broker's letter of undertaking issued by us in respect of the Operator Insurances for this Project, for any and all matters arising from them and the contents thereto shall in any and all events be limited to the sum of ten million pounds Sterling (£10,000,000) even if we are negligent. We do not limit liability for our fraud.
12. This letter is given by us on the instructions of the Operator and with their full knowledge and consent as to its terms.

Yours faithfully

For and on behalf of

[●]

We consent to the giving of this Letter of Undertaking by our insurance brokers.

**For and on behalf of
[Operator]**

SCHEDULE 8

INDEMNITIES

TSP Indemnities

1. The TSP shall, subject to Paragraphs 2 and 3, be responsible for, and shall release and indemnify the Operator, its employees, agents and sub-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 Operator or for which it is responsible (**Operator Property**)) but excluding loss of or damage to:
 - (i) the Assets which the TSP owns and/or is responsible for providing in accordance with this Agreement; and
 - (ii) any Network or infrastructure on which the Sets are operated from time to time; and
 - (c) any third party actions, claims, demands, costs, charges and expenses (including legal expenses on an indemnity basis),

which, in each case, may arise out of, or in consequence of:

- (i) the operation and use of the Sets (other than the operation and use of the Sets by the Operator during the Operational Day);
- (ii) the design, assembly, manufacture or maintenance of the Sets;
- (iii) any Fault to the extent it is caused by the TSP or any of its employees, agents or Subcontractors in connection with their activities contemplated under this Agreement;
- (iv) the performance or non-performance by the TSP of its obligations under this Agreement; or
- (v) the presence of the TSP, a Subcontractor of the TSP, their employees or agents on the Operator Property, in each case, in connection with this Agreement,

and each of Paragraphs (ii) to (v) (inclusive) shall apply whether or not occurring during, or arising by reference to, the operation and use of the Sets, whether during, or before or after the Operational Day.

2. The TSP shall be responsible for, and shall release and indemnify the Operator, its employees, agents and Subcontractors on demand from and against all liability the Operator incurs for damage caused by the Sets to any Network or infrastructure on which the Sets are operated from time to time to the extent that such loss or damage is caused by:
 - (a) the negligence or wilful misconduct of the TSP, its employees, sub-lessees, agents or Subcontractors; or

- (b) any breach by the TSP of its obligations under this Agreement.
3. The TSP shall not be responsible or be obliged to indemnify the Operator, its employees, agents or sub-contractors:
- (a) for any injury or Loss caused by the negligence or wilful misconduct of the Operator, its employees, agents, sub-lessees or sub-contractors or by the breach by the Operator of its obligations under this Agreement or otherwise attributed to the Operator by the Secretary of State under the MARA;
 - (b) for any of the matters referred to in Paragraphs 1(a) to (c) (inclusive) and Paragraph 2 which arises as a direct result of the TSP acting on the instructions of the Operator;
 - (c) for any injury, loss or damage, cost and expenses arising from Operator Responsible Damage;
 - (d) without prejudice to Paragraph 3(e), under this indemnity in respect of any amounts exceeding [REDACTED] in respect of any uninsured Loss in any one (1) occurrence or series of connected or related occurrences, provided that the maximum liability of the TSP shall be [REDACTED] in aggregate;
 - (e) in respect of any claims made pursuant to Paragraph 1(b) in respect of Operator Property or Paragraph 1(c) in respect of claims which the TSP is required by the MARA to insure where the amount of any claim is in excess of the level of cover required by the MARA (provided that the indemnity shall always extend to liability for any excess or deductible under any policy of insurance); or
 - (f) in respect of any Losses which arise from or in connection with risks that should be insured under the Operator Insurances or become Uninsurable (except to the extent such Losses result from, or the relevant risk becomes Uninsurable as a result of the wilful default or negligence of the TSP, its Subcontractors or its other agents and employees),

provided that nothing in this Paragraph 3 shall exclude or limit the TSP's liability for:

- (i) death or personal injury resulting from its or any of its employees', agent's or Subcontractors' negligence;
- (ii) its breach of the obligations arising from section 12 of the Sale of Goods Act 1979, to the extent applicable to this Agreement; or
- (iii) its fraud or deceit.

Operator Indemnities

4. The Operator shall, subject to Paragraph 5, be responsible for, and shall release and indemnify the TSP, its employees, agents and Subcontractors 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 but excluding the Sets (**TSP Property**)), and without prejudice to the Operator's obligations to reimburse the TSP for:
 - (i) the costs of repairs in accordance with Part E (*Costs Payable by Operator*) of Schedule 6 (*Performance Regime*); and/or
 - (ii) insurance deductibles or increase in insurance premiums in accordance with Paragraph 4(d);
- (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,

which, in each case, may arise out of or in consequence of:

- (i) the operation and use of the Sets during the Operational Day;
- (ii) the presence of the Operator, a sub-contractor of the Operator, their employees, sub-lessees or agents on any sites or property in the ownership of, leased to or otherwise used by the TSP or any of its Significant Contractors, in each case, for reasons in connection with this Agreement;
- (iii) the negligence or wilful misconduct of the Operator, its employees, agents or sub-contractors; or
- (iv) any breach by the Operator of its obligations under this Agreement.

5. The Operator shall not be responsible or be obliged to indemnify the TSP or any of its employees, agents or Subcontractors for:

- (a) any liability that the TSP is responsible for in respect of the indemnity provided by it pursuant to Paragraphs 1, 2 and 3;
- (b) any injury or Loss caused by the negligence or wilful misconduct of the TSP, its employees, agents or Subcontractors or by the performance or non-performance by the TSP of its obligations under this Agreement;
- (c) any of the matters referred to in Paragraphs 4(a) to (c) (inclusive) which arises as a direct result of the Operator acting on the instruction of the TSP;
- (d) without prejudice to Paragraph 5(e), under this indemnity in respect of any amounts exceeding [REDACTED] in respect of any uninsured Loss in any one (1) occurrence or series of connected or related occurrences, provided that the maximum liability of the Operator shall be [REDACTED] in aggregate; or
- (e) in respect of any claims made pursuant to Paragraph 4(b) in respect of TSP Property or Paragraph 4(c) in respect of claims which the Operator is required by this Agreement to insure where the amount of any claim is in excess of the level of cover required to be procured and maintained in accordance with this Agreement

(provided that the indemnity shall always extend to liability for any excess or deductible under any policy of insurance).

6. If either party (the ***indemnified party***) becomes aware of a matter which might give rise to a claim against the other party (the ***indemnifying party***) pursuant to Paragraph 1, 2 or 4 as the case may be:

- (a) the indemnified party shall immediately notify the indemnifying party in writing (giving full particulars);
- (b) the indemnified party shall, at the indemnifying party's cost:
 - (i) take such action as the indemnifying party may reasonably request to:
 - (A) dispute, resist, appeal, compromise, defend, remedy or mitigate that claim; or
 - (B) enforce the indemnified party's rights in relation to that claim; and
 - (ii) subject to Paragraphs 6(d) and (e), in connection with any proceedings related to that claim, if the indemnifying party so requests, allow the indemnifying party or its Subcontractors (or sub-contractors in the case of the Operator) exclusive conduct of those proceedings,

provided that the indemnifying party shall indemnify and hold harmless the indemnified party against all loss incurred by the indemnified party as a result of such request made by the indemnifying party;

- (c) the indemnified party shall not admit liability in respect of or settle any claim without first obtaining the indemnifying party's prior written consent, such consent not to be unreasonably withheld or delayed;
 - (d) where the indemnifying party exercises its right pursuant to Paragraph 6(b)(ii) to exclusive conduct of any proceedings, the indemnifying party shall keep the indemnified party informed of the progress of the relevant claim, and shall consult with the indemnified party prior to the indemnifying party taking any decision material to the conduct of that claim, including any admission of liability by the indemnifying party or the settlement or compromise by the indemnifying party of that claim; and
 - (e) where the indemnifying party does not exercise its right pursuant to Paragraph 6(b)(ii) to exclusively conduct any proceedings within thirty (30) days of the date of the notification referred to in Paragraph 6(a), the indemnifying party shall, at its own cost, provide any assistance required by the indemnified party to:
 - (i) dispute, resist, appeal, compromise, defend, remedy or mitigate the relevant claim; or
 - (ii) enforce the indemnified party's rights in relation to the relevant claim.
7. The parties agree that neither party nor any of their employees, agents or Subcontractors (or sub-contractors in the case of the Operator) shall in any circumstances have any liability to the other in respect of loss of profit, contracts, goodwill or reputation or any special or consequential loss, except as expressly agreed in this Agreement.

8. 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.
9. The indemnified party under any provision of this Agreement shall at all times take all reasonable steps to minimise and mitigate any Losses for which that indemnified party is entitled to bring a claim against the indemnifying party pursuant to this Agreement.
10. Notwithstanding any other provisions of this Agreement, to the extent that the Operator is liable to the TSP for any claim arising under this Agreement, the 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 Paragraph 10) suffer all or part of the relevant loss or damage (**Related Loss**) solely because such Related Loss is incurred by a Subcontractor of the TSP and such Subcontractor's right to recover such Related Loss from the TSP is deferred, suspended or dependent upon determination of the extent of entitlement under this Agreement or any subcontract (of any tier).

SCHEDULE 9

INTELLECTUAL PROPERTY

1. INTELLECTUAL PROPERTY RIGHTS

Licences

- 1.1 Nothing in this Agreement 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 Subcontractors (or sub-contractors in the case of the Operator) under this Agreement to any other party or Subcontractor (or sub-contractor in the case of the Operator). 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 1.17). All Operator IPR shall at all times remain the property of the Operator.
- 1.2 The TSP hereby grants to the Operator an irrevocable, royalty-free, non-transferable, non-assignable, non-exclusive licence of the TSP IPR, the Manufacturer IPR, the Maintainer IPR and the Third Party IPR, in each case, for the Term and to the extent reasonably necessary (including following any Variation in accordance with the provisions of the MARA) for the purposes of:
- (a) using and operating the Sets, the Vehicles and the Simulators;
 - (b) using and reproducing the Technical Documents, the Simulator Information and the Technical Library to the extent reasonably necessary in connection with any of the purposes in Paragraph 1.2(a); and
 - (c) using the Simulator Information to manufacture (or procure the manufacture of) the Simulators pursuant to paragraph 7.1 of appendix G (*Training*) of schedule 1 (*Set Specification and Design*) of the MARA, and for using the Simulators,
- 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 1.2(c) (inclusive).
- 1.3 The Operator hereby grants to the TSP a non-transferable, non-assignable, non-exclusive, royalty-free licence (carrying the right to grant sub-licences) to use the Operator IPR for the Term, only for the purposes of performing the obligations of the TSP under this Agreement.
- 1.4 The licences granted 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 Operator IPR, TSP IPR, Maintainer IPR, Manufacturer IPR or Third Party IPR other than in accordance with the licences granted by the parties in Paragraphs 1.2 and 1.3.
- 1.5 The Operator shall be liable for all acts and omissions of any person to whom it 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 Operator, would be a breach of the licences granted to the Operator pursuant to this Schedule 9 (*Intellectual Property*) or would otherwise breach any of the obligations of the Operator contained in this Schedule 9 (*Intellectual Property*).

- 1.6 The TSP shall be liable for all acts and omissions of any person to whom it sub-licenses or otherwise provides any Operator IPR that, if done or omitted to be done by the TSP, would be a breach of the licences granted to the TSP pursuant to this Schedule 9 (*Intellectual Property*) or would otherwise breach any of the obligations of the TSP contained in this Schedule 9 (*Intellectual Property*).
- 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, 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.

Maintenance of Technical Library and notification of updates

- 1.8 The TSP shall, promptly upon request, provide the Operator with any access to the Technical Library required by the Operator in connection with the Operator's use and/or operation of the Sets and/or the Vehicles during the Term. The TSP shall (and shall procure that its Significant Contractors shall) promptly notify the Operator of any changes, amendments or updates to the Technical Library that result in (or have arisen as a result of) any change to, or modification in, the manner in which the Sets or Vehicles are to be used or to be operated, together with sufficient information to enable the Operator to understand that change or modification.
- 1.9 The TSP shall ensure that the Technical Library is maintained and kept up-to-date during the Term.

Warranties

- 1.10 The TSP represents and warrants to the Operator as at the date hereof that 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 and the Vehicles.
- 1.11 Without prejudice to Paragraphs 1.10 and 1.13(b), but subject to Paragraph 1.15, the TSP shall indemnify and hold harmless the Operator on demand against any claim for infringement of any Intellectual Property Rights arising from the use by the Operator (or its sub-licensees) of the TSP IPR, the Maintainer IPR, the Manufacturer IPR, the Third Party IPR and/or the Relevant Non-Depot IPR Assets, in each case, in accordance with, and/or as contemplated by, the licences granted in Paragraph 1.2, provided that the Operator complies with Paragraph 1.13.
- 1.12 Subject to Paragraph 1.16, the Operator shall indemnify and hold harmless the TSP on demand against any claim for infringement of any Intellectual Property Rights arising from the use by the TSP (or its sub-licensees or Subcontractors) of the Operator IPR in accordance with, and/or as contemplated by, the licence granted in Paragraph 1.3, provided that the TSP 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 under Paragraphs 1.11, 1.12 or 3.2 (a **Claim**):

- (a) that party (the **indemnified party**) shall immediately notify the other (the **indemnifying party**) in writing (giving full particulars);
- (b) and that matter involves, or may involve, a Claim against the indemnified party, then the indemnified party shall, at the indemnifying party's cost:
 - (i) take such action as the indemnifying party may reasonably request to:
 - (A) dispute, resist, appeal, compromise, defend, remedy or mitigate that Claim, or
 - (B) enforce the indemnified party'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 indemnifying party so requests, allow the indemnifying party, its Subcontractor (or sub-contractor in the case of the Operator) or the relevant licensor of the relevant Intellectual Property Rights exclusive conduct of those proceedings,

provided that the indemnifying party shall indemnify and hold harmless the indemnified party against all Losses incurred by the indemnified party as a result of such request made by the indemnifying party;

- (c) the indemnified party shall not admit liability in respect of or settle that Claim without first obtaining the indemnifying party's prior consent, such consent not to be unreasonably withheld;
- (d) where the indemnifying party (or its Subcontractor or the relevant licensor (or sub-contractor in the case of the Operator)) exercises its right pursuant to Paragraph 1.13(b)(ii) to request exclusive conduct of any proceedings:
 - (i) the indemnifying party shall procure that the conduct of those proceedings shall not be conducted in a manner that will:
 - (A) give rise to any criminal liability for the indemnified party or the Secretary of State; or
 - (B) have a material and adverse effect on the reputation of the indemnified party or 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 indemnifying party (or its Subcontractor or the relevant licensor (or sub-contractor in the case of the Operator)) shall promptly provide the indemnified party with a leading counsel's opinion summarising the Claim and the merits (including the likelihood of success) of the indemnifying party's (or its Subcontractor's or the relevant licensor's (or sub-contractor's in the case of the Operator)) defence; and

- (iii) the indemnifying party (or its Subcontractor or the relevant licensor (or sub-contractor in the case of the Operator)) shall keep the indemnified party informed of the progress of that Claim, and shall consult with the indemnified party and allow the indemnified party a reasonable period to express its opinions prior to the indemnifying party (or its Subcontractor or the relevant licensor (or sub-contractor in the case of the Operator)) taking any decision material to the conduct of that Claim, including any admission of liability by the indemnifying party (or its Subcontractor or the relevant licensor (or sub-contractor in the case of the Operator)) or the settlement or compromise by the indemnifying party (or its Subcontractor or the relevant licensor (or sub-contractor in the case of the Operator)) of that Claim; and
- (e) where the indemnifying party (or its Subcontractor or the relevant licensor (or sub-contractor in the case of the Operator)) 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 indemnifying party shall (and shall procure that its relevant Subcontractor or the relevant licensor (or the relevant sub-contractor in the case of the Operator) shall), at its own cost, provide any assistance required by the indemnified party to:
 - (i) dispute, resist, appeal, compromise, defend, remedy or mitigate that Claim; and/or
 - (ii) enforce the indemnified party's rights in relation to that Claim.

Remedy for Infringement

1.14 Without prejudice to Paragraph 1.11, if the use of any Relevant Non-Depot IPR Asset in accordance with the licences granted pursuant to Paragraph 1.2 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 Operator (and its subordinate licensees) a licence to use those Intellectual Property Rights for the purposes set out in Paragraph 1.2; or (at the TSP's election); or
- (b) either:
 - (i) modify that Relevant Non-Depot IPR Asset so that it no longer infringes those Intellectual Property Rights; or
 - (ii) replace that Relevant Non-Depot 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 1.11, 1.13 and 1.14 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 Operator (or its sub-licensees) of any TSP IPR, Maintainer IPR, Manufacturer IPR, Third Party IPR or Relevant Non-Depot IPR Asset otherwise than in accordance with the licences granted to the Operator pursuant to this Schedule 9 (*Intellectual Property*), or any other breach by the Operator (or its sub-licensees) of, or non-compliance by the Operator (or its sub-licensees) with, those licences;
- (b) any modification or adaptation of any Relevant Non-Depot IPR Asset other than by the TSP, the Manufacturer, the Maintainer, or (in connection with the performance of the Manufacture and Supply Agreement and/or the Maintenance Agreement) any of their Affiliates, Subcontractors or licensees; or
- (c) any of the circumstances described in paragraphs 1.15(b) or 1.15(c) of schedule 10 (*Intellectual Property*) of the MARA occur.

1.16 The provisions of Paragraphs 1.12 and 3.2 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 TSP (or its sub-licensees or other Subcontractors) of any Operator IPR (or any of the marketing, promotions, branding and/or advertising materials referred to in Paragraph 3.2) otherwise than in accordance with the licence granted to the TSP pursuant to Paragraph 1.3 (or otherwise than in accordance with the instructions of the Operator, respectively), or any other breach by TSP (or its sub-licensees or other Subcontractors) of, or non-compliance by the TSP (or its sub-licensees or other Subcontractors) with, that licence (or those instructions, respectively); or
- (b) any modification or adaptation of any Operator IPR (or any of the marketing, promotions, branding and/or advertising materials referred to in Paragraph 3.2) other than by the Operator.

Assignment of IPR

1.17 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 Paragraph 1.2 and that those licences are binding on the relevant assignee, transferee, or beneficiary of a Security Interest or disposal; and
- (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 Paragraph 1.2.

2. CONFIGURATION DATABASE

2.1 In respect of each Set and/or Vehicle accepted by the Operator, the TSP shall maintain a configuration database from:

- (a) in the case of a Set, no later than the Actual Acceptance Date of that Set; and

- (b) in the case of a Vehicle, the Actual Acceptance Date of the Set in which that Vehicle was comprised.

2.2 The configuration database shall provide as a minimum the following information:

- (a) that Set's and that Vehicle's number;
- (b) all Operating and Maintenance Manuals and safety approval documents relating to that Set or Vehicle;
- (c) the Manufacturer's or Maintainer's serial numbers of all systems, sub systems, 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 that Set and/or Vehicle; and
- (e) the modification status of all systems and sub systems within each Set and/or Vehicle,

together, the **Configuration Database**.

2.3 The TSP shall, promptly upon request, provide the Operator with any access to the Configuration Database required by the Operator in connection with the Operator's use and/or operation of the Sets and/or the Vehicles during the Term. The TSP shall (and shall procure that its Significant Contractors shall) promptly notify the Operator of any changes, amendments or updates to the Configuration Database that result in (or have arisen as a result of) any change to, or modification in, the manner in which the Sets or Vehicles are to be used or to be operated, together with sufficient information to enable the Operator to understand that change or modification.

2.4 The TSP shall ensure that the Configuration Database is maintained and kept up-to-date during the Term.

3. **BRANDING**

3.1 The TSP acknowledges that, with effect from the Actual Acceptance Date of a Set, the Operator shall have the exclusive right to use (and to permit third parties to use) any area of that Set that is designated for marketing, promotions, branding and/or advertising, for the purposes of marketing, promotions, branding and/or advertising in any media (whether now known or hereafter developed, including any printed media, display screen, transmission and/or telecommunications system).

3.2 Subject to Paragraph 1.16, the Operator shall indemnify and hold harmless the TSP on demand against any claim for infringement of any Intellectual Property Rights arising from the use by the TSP (or its Subcontractors), in accordance with the instructions of the Operator, of marketing, promotions, branding and/or advertising materials supplied by the Operator to the TSP or those Subcontractors, or used by the Operator or its sub-contractors pursuant to Paragraph 1.3, provided that the TSP complies with Paragraph 1.13.

SCHEDULE 10

REMEDIES, DEFAULT AND TERMINATION

Part A of Schedule 10

Remedial Plans

1. REMEDIAL PLAN NOTICES

1.1 Without limiting the Operator's other rights under this Part A (*Remedial Plans*) of Schedule 10 (*Remedies, Default and Termination*), if:

- (a) a particular breach by the TSP of this Agreement, other than any breach for which a Deduction could have been or has been incurred, 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**); or
- (b) a Remedial Event has occurred and is continuing,

the Operator 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 or Remedial Event in a cost effective manner as soon as reasonably practicable (a **Remedial Plan Notice**). For the purposes of this Part A (*Remedial Plans*) of Schedule 10 (*Remedies, Default and Termination*), 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.

Contents of Remedial Plan Notices

1.2 Each Remedial Plan Notice shall specify:

- (a) the Persistent Breach, or the Remedial Event that has occurred and is continuing; 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 Operator 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 Operator.

Contents of Remedial Plans

1.4 Each Remedial Plan shall set out:

- (a) the Persistent Breach or Remedial Event to which it relates;

- (b) an explanation of the reasons for the occurrence of that Persistent Breach or Remedial Event;
- (c) the steps that the TSP proposes in order to cure the Persistent Breach or Remedial Event, 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 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 Operator shall respond in writing to the TSP, specifying:

- (a) that the Operator is satisfied with the contents of that Remedial Plan;
- (b) any amendments to that Remedial Plan that the Operator believes necessary or appropriate in order to achieve the aims of that Remedial Plan; or
- (c) such alternative course of action as the Operator believes necessary or appropriate in order to cure the Persistent Breach or Remedial Event.

2.2 If the Operator responds in accordance with Paragraph 2.1(b) or (c), the parties shall meet and discuss in good faith the Remedial Plan and the Operator's response to it with a view to agreeing a course of remedial action within ten (10) Business Days of the date of the Operator's response to the Remedial Plan (or such longer time period as the parties may agree).

2.3 If the Operator 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 Operator with a written reasoned explanation of its reasons for not adopting those of the Operator'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 Operator'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 Operator with reasonable frequency with all reasonable information about progress in and results to date of implementation.

- 3.2 If the TSP acts in accordance with a Shared Remedial Plan, any failure to cure the Persistent Breach or the Remedial Event pursuant to which that Shared Remedial Plan relates by the end of the time period for implementation specified in that Shared Remedial Plan, shall not in itself constitute a breach of this Agreement, provided that:
- (a) where the Persistent Breach or the Remedial Event 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 Operator 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*) of Schedule 10 (*Remedies, Default and Termination*) 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 Operator's consent, then (if the Persistent Breach or Remedial Event 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 Operator 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 Operator does not agree with the time period within which the TSP proposes to implement its Sole Remedial Plan, the Operator 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 or the Remedial Event pursuant 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 or the Remedial Event 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 Operator 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*) of Schedule 10 (*Remedies, Default and Termination*) 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 save that a further alternative response shall be available to the Operator pursuant to Paragraph 2.1 being:

"that the Operator is not confident that the TSP is able to implement a Remedial Plan that will cure that Persistent Breach or Remedial Event 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 Operator's consent, then (if the Persistent Breach or Remedial Event is continuing) the provisions of Paragraph 3.5 shall apply but with the additional requirements that:
 - (a) the explanation required in Paragraph 3.5(b) shall also address the reasons for such failure; and
 - (b) where the Operator 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.

Persistent Failure

- 3.7 Subject to Paragraph 3.8 where either:
 - (a) any Persistent Breach or Remedial Event is not cured by the end of the time period for implementation specified in the second or any subsequent Shared Remedial Plan that is applied to it;
 - (b) the Operator delivers a Not Confident Response following the failure of any Sole Remedial Plan to cure the Persistent Breach or Remedial Event to which it relates by the end of the time period for implementation specified in that Sole Remedial Plan; or
 - (c) the Operator 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 the relevant Persistent Breach or Remedial Event is continuing then the Operator may by written notice to the TSP designate that Persistent Breach or Remedial Event as a Persistent Failure (a **Persistent Failure**).

- 3.8 The Operator may not pursuant to Paragraph 3.7 designate as a Persistent Failure any Persistent Breach or Remedial Event that relates wholly or partly to circumstances which:
 - (a) arose prior to the Performance Default Start Date; and/or
 - (b) are wholly or mainly attributable to the OHLE Works and/or the 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*) of the MARA) in accordance with its terms.

4. **PERSISTENT FAILURE BY THE TSP**

- 4.1 If a Persistent Failure has occurred in accordance with Paragraph 3.7, the Operator 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 Persistent Failure; and
 - (c) stating that the occurrence of such Persistent Failure may, subject to Paragraph 4.2, entitle the Operator, at the Secretary of State's direction, to terminate this Agreement.
- 4.2 If, following service of a Formal Warning Notice, the Persistent Failure specified has subject to Paragraph 4.4, 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 Operator may serve another notice (a **Final Warning Notice**) on the TSP:
- (a) specifying that it is a Final Warning Notice;
 - (b) stating that the Persistent Failure specified has already been the subject of a Formal Warning Notice served under Paragraph 4.1; and
 - (c) stating that, subject to Paragraph 4.4, if such Persistent Failure either:
 - (i) continues for a further thirty (30) days; or
 - (ii) recurs in three (3) or more Reporting Periods within the six (6) Reporting Periods following the date of service of the Final Warning Notice, then this Agreement may be terminated by the Operator, at the Secretary of State's direction.
- 4.3 If, following service of a Final Warning Notice either of the circumstances in Paragraph 4.2(c) occurs, the Operator may by written notice to the TSP designate such Persistent Breach or Remedial Event as a persistent breach default event (a **Persistent Failure Default Event**).
- 4.4 Where any Persistent Failure arises in connection with a Remedial Event falling within Paragraph (a) of the definition of Remedial Event, then:
- (a) the requirement in Paragraphs 4.2 and 4.3 for the Persistent Failure to continue beyond thirty (30) days or recur in three (3) or more Reporting Periods within six (6) Reporting Periods of the Formal Warning Notice or Final Warning Notice (as the case may be) shall be disapplied; and
 - (b) such requirement shall instead be satisfied by the recurrence, after the Formal Warning Notice or Final Warning Notice (as the case may be) of a Remedial Event under Paragraph (a) of that definition in accordance with the frequency and timeframes set out therein.
- 4.5 A Formal Warning Notice or Final Warning Notice may not be served in respect of any Persistent Breach or Remedial Event that has previously been counted in the making of a separate Formal Warning Notice or Final Warning Notice.

5. **EFFECT OF FORCE MAJEURE EVENT**

Without prejudice to the operation of Part E (*Force Majeure*) of Schedule 10 (*Remedies, Default and Termination*), 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 Operator 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 5(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, and reasonable revisions to the terms of, 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. The parties shall endeavour to agree such revisions and/or such reasonable extension of time and, if they fail to do so, the Operator may determine such reasonable extension and shall as soon as reasonably practicable notify the TSP in writing of his decision.

Part B of Schedule 10

TSP Default

1. TSP DEFAULT

1.1 Each of the events set out in this Paragraph 1 is a TSP Default.

Insolvency

- 1.2
- (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; and
 - (e) any event occurs which, under the law of any relevant jurisdiction, has an analogous or equivalent effect to any of the events listed in Paragraphs 1.2(a) to (d) (inclusive).

Non-payment

1.3 The TSP failing to pay to the Operator any amount due to the Operator under this Agreement within thirty (30) days of notice of non-payment issued by the Operator to the TSP. The Operator may issue such notice at any time after the thirtieth (30th) Business Day of the due date for such payment.

Notifiable Events

1.4 Five (5) or more Notifiable Events (whether or not notified) occur in any two (2) year period following the end of the Reporting Period in which the Performance Default Start Date occurs.

Persistent Failure Default Event

1.5 A Persistent Failure Default Event occurs.

Material Breach

1.6 Any breach by the TSP of any of its obligations under this Agreement (other than those set out in Paragraph 1.1(a) of Part B (*TSP Covenants and Performance*) of Schedule 1 (*General Provisions*) and those addressed under the preceding paragraphs of this Paragraph 1), which materially and adversely affects the performance of the Services (excluding any breach wholly or mainly attributable to the OHLE Works and/or Swansea Maliphant OHLE Infrastructure in the period 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*) of the MARA) in accordance with its terms) (a **Material Breach**) and which is not rectified by the TSP within sixty (60) days of notice in writing from the Operator specifying the relevant Material Breach, requiring its remedy and stating that this Agreement may be terminated at the direction of the Secretary of State on or after sixty (60) days if the breach has not been rectified.

2. CONSEQUENCES OF TSP DEFAULT

- 2.1 The TSP shall notify the Operator as soon as reasonably practicable on, and in any event within twenty-four (24) hours of, it becoming aware of the occurrence of a TSP Default (and shall copy such notice to the Secretary of State). The TSP shall take such action as the Operator may require to remedy any TSP Default.
- 2.2 On the Operator becoming aware of the occurrence of a TSP Default, it shall promptly notify the Secretary of State.
- 2.3 On the occurrence of a TSP Default, the provisions of Paragraph 2.4 shall apply, but the provisions of Part A (*Remedial Plans*) of Schedule 10 (*Remedies, Default and Termination*) shall also continue to apply.
- 2.4 Subject to Paragraph 2.5, on and at any time after the occurrence of a TSP Default which is continuing, the Operator:
- (a) may request the Secretary of State to take enforcement action against the TSP in accordance with the terms of the MARA; and/or
 - (b) shall terminate this Agreement if directed to do so by the Secretary of State at a date and time as so directed.
- 2.5 The Operator may not exercise its rights under Paragraph 2.4 in respect of a TSP Default in relation to which:
- (a) it has issued a Remedial Plan Notice (unless the period has expired within which the TSP is required to deliver to the Operator 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, unless, in either case:
 - (i) in the Operator's opinion the circumstances surrounding the TSP Default in question have materially worsened in a manner not contemplated by the Remedial Plan; and
 - (ii) the parties have failed, within ten (10) Business Days of notification to the TSP by the Operator of such material worsening, to agree a course of remedial action in respect of such material worsening having met and discussed in good faith such material worsening.

Part C of Schedule 10

Operator Default

1. OPERATOR DEFAULT

1.1 Each of the events set out in this Paragraph 1 is an Operator Default.

Insolvency

- 1.2 (a) **Administration:** any step being taken by any person with a view to the administration of the Operator under part II of the Insolvency Act 1986;
- (b) **Insolvency:** any of the Operator stopping or suspending or threatening to stop or suspend payment of all or a material part of (or of a particular type of) its debts, or being unable to pay its debts, or being deemed unable to pay its debts under section 123(1) or (2) of the Insolvency Act 1986, except that in the interpretation of this Paragraph:
- (i) the words "it is proved to the satisfaction of the court that" in sub-section (1)(e) and sub-section (2) of section 123 of the Insolvency Act 1986 shall be deemed to be deleted;
 - (ii) section 123(1)(a) of the Insolvency Act 1986 shall have effect as if for "██████" there was substituted "██████" or such higher figure as the TSP may from time to time notify in writing to the Operator; and
 - (iii) the Operator shall not be deemed to be unable to pay its debts for the purposes of this Paragraph if any such demand as is mentioned in section 123(1)(a) of the Insolvency Act 1986 is being contested in good faith by such person with recourse to all appropriate measures and procedures and such person has adequate funds to discharge the amount of such demand or if any such demand is satisfied before the expiration of twenty-one (21) days from such demand;
- (c) **Arrangements with Creditors:** the directors of the Operator making any proposal under section 1 of the Insolvency Act 1986, or the Operator proposing or making any agreement for the deferral, rescheduling or other readjustment (or proposing or making a general assignment or an arrangement or composition with or for the benefit of creditors) of all or a material part of (or of a particular type of) its debts, or a moratorium being agreed or declared in respect of or affecting all or a material part of (or of a particular type of) its debts;
- (d) **Security Enforceable:** any step being taken to enforce security over or a distress, execution or other similar process being levied or served against any property of the Operator or the whole or a substantial part of the assets or undertaking of the Operator, including the appointment of a receiver, administrative receiver, manager or similar person to enforce that security;
- (e) **Stopping Business/Winding-Up:** any step being taken by the Operator with a view to its winding-up or any person presenting a winding-up petition or any of the Operator ceasing or threatening to cease to carry on all or a material part of its business, except for the purpose of and followed by a reconstruction,

amalgamation, reorganisation, merger or consolidation on terms approved by the Secretary of State before that step is taken;

- (f) **Railway Administration Order:** a railway administration order (as defined in Section 59 of the Act) being made in relation to the Operator; and
- (g) **Analogous Events:** 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 1.2(a) to (f) (inclusive),

unless, in the case of Paragraphs 1.2(d) and (e), the relevant petition, proceeding or other step is being actively contested in good faith by the Operator with recourse to all appropriate resources and procedures and the Operator has adequate funds to discharge the relevant debt.

Non-payment

- 1.3 The Operator failing to pay to the TSP any amount due to the TSP under this Agreement within five (5) Business Days of the due date for such payment.

Revocation of Licence

- 1.4 Revocation of the Operator's Railways Act licence.

Operator Covenants

- 1.5 Any material breach of this Agreement by the Operator which is not cured by the Operator within thirty (30) days of notice from the TSP specifying the relevant breach and requiring its remedy.

2. CONSEQUENCES OF OPERATOR DEFAULT

- 2.1 The Operator shall notify the TSP as soon as reasonably practicable on, and in any event within twenty-four (24) hours of, it becoming aware of the occurrence of an Operator Default (and shall copy such notice to the Secretary of State). The Operator shall take such action as the TSP may require to remedy any Operator Default.

- 2.2 On the TSP becoming aware of the occurrence of an Operator Default it shall promptly notify the Secretary of State.

- 2.3 On and at any time after the occurrence of an Operator Default which is unremedied or continuing, the TSP:

- (a) may provide written notice of its intention to terminate the TARA to the Secretary of State, including full details of the grounds for termination (a **TARA Default Notification**); and

- (b) may request the Secretary of State to take any available enforcement action against the Operator.

- 2.4 Following service of a TARA Default Notification to the Secretary of State pursuant to Paragraph 2.3(a) and paragraph 1.2 of part B (*Termination, Expiry and Replacement of the Relevant TARA*) of schedule 4 (*Train Availability and Reliability Agreements*) of the MARA, the TSP shall terminate this Agreement:

- (a) if directed to do so by the Secretary of State and at a date and time as so directed in accordance with paragraph 1.2 of part B (*Termination, Expiry and Replacement of the Relevant TARA*) of schedule 4 (*Train Availability and Reliability Agreements*) of the MARA; or
- (b) upon the expiry of thirty (30) days of the TARA Default Notification unless the relevant Operator Default has been remedied before such expiry date or such other date agreed between the TSP and the Operator pursuant to paragraph 1.4 of part B (*Termination, Expiry and Replacement of the Relevant TARA*) of schedule 4 (*Train Availability and Reliability Agreements*) of the MARA.

Part D of Schedule 10

Termination and Consequences of Termination

1. TERMINATION

This Agreement shall only terminate:

- (a) by effluxion of time or on the expiry of the TARA;
- (b) automatically on the date of termination of the MARA;
- (c) on the date specified by the Operator in exercising its right to terminate in accordance with Paragraph 2.4(b) of Part B (*TSP Default*) of Schedule 10 (*Remedies, Default and Termination*);
- (d) in accordance with Paragraph 2.4 of Part C (*Operator Default*) of Schedule 10 (*Remedies, Default and Termination*); or
- (e) in accordance with Part E (*Force Majeure*) of Schedule 10 (*Remedies, Default and Termination*),

but not otherwise.

2. DATE OF NOTICE

In imposing any requirement or giving any notice pursuant to Paragraph 1, the Secretary of State shall state the date and the time on which this Agreement is to terminate.

3. OBLIGATIONS PRIOR TO TERMINATION AND EXPIRY

Prior to any termination or expiry of this Agreement:

- (a) the Operator shall deliver up possession of any Sets to the TSP and all other Assets and property of the TSP or its Subcontractors in the possession or control of the Operator;
- (b) the Operator shall remove all property belonging to the Operator, its servants or agents from all premises occupied by the TSP or its Subcontractors; and
- (c) the Operator shall pay the TSP the aggregate of all amounts which have fallen due and are payable under this Agreement, including all TARA Payments (including the apportioned element of the period relating to the Reporting Period during which this Agreement is terminated or expires) which have then fallen due under this Agreement but remain unpaid.

4. ACCRUED RIGHTS AND LIABILITIES

Termination or expiry of this Agreement shall be without prejudice to accrued rights and liabilities.

5. CONTINUING OBLIGATIONS

- 5.1 Without prejudice to Paragraph 5.2, all of the following obligations shall survive and remain in full force and effect until the expiry of the last Reporting Period, notwithstanding the expiration or termination of this Agreement to the extent necessary in connection with

the payments envisaged in Paragraph 3.5 of Part A (*TARA Payments*) of Schedule 5 (*Payment*) and Schedule 6 (*Performance Regime*):

- (a) Paragraphs 4, 6, 8 and 9 of Part A (*Contract Management*) of Schedule 4 (*Contract Management and Compliance*); and
- (b) Schedule 5 (*Payment*) and Schedule 6 (*Performance Regime*).

5.2 All of the following indemnities and obligations shall survive, and remain in full force and effect for, unless otherwise provided for in this Paragraph, a period of two (2) years after the RV Date or, if earlier, the Termination Date (as defined in the MARA), notwithstanding the expiration or termination of this Agreement:

- (a) Paragraphs 1.41 to 1.50 (inclusive) of Part E (*Transfer Provisions*) of Schedule 1 (*General Provisions*);
- (b) Paragraphs 2.2 to 2.4 (inclusive) of Part E (*Transfer Provisions*) of Schedule 1 (*General Provisions*);
- (c) Paragraphs 3.4, 4.2, 4.12 and 9 of Part A (*Contract Management*) of Schedule 4 (*Contract Management and Compliance*);
- (d) Schedule 8 (*Indemnities*); and
- (e) to the extent that the Commercially Sensitive Information is subject to a confidentiality period beyond the expiry or termination of this Agreement, Schedule 13 (*Confidentiality*) in respect of such Commercially Sensitive Information and for the relevant period specified in that Schedule.

Part E of Schedule 10

Force Majeure

1. CONSEQUENCES OF FORCE MAJEURE EVENT

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 or damages 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, provided that nothing under this Part E (*Force Majeure*) of Schedule 10 (*Remedies, Default and Termination*) shall provide any relief to the Operator from its obligations to make the TARA Payments notwithstanding the occurrence of such Force Majeure Event.

2. The Affected Party shall notify the other party as soon as practicable after the Affected Party:

- (a) becomes aware of the Force Majeure Event has occurred; or
- (b) can reasonably foresee a Force Majeure Event occurring.

Any notice given pursuant to this Paragraph 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.

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). 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.

4. If the terms to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of the affected obligations are not agreed 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 by written notice to the Secretary of State (copied to the other party):

- (a) inform the Secretary of State that of the continuing Force Majeure Event, providing full and detailed particulars of the nature and extent of the Force Majeure Event and the effects of the Force Majeure Event on the Affected Party's ability to comply with its obligations under this Agreement; and
- (b) request the Secretary of State (at the Secretary of State's discretion) to direct the parties to terminate this Agreement.

5. 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.
6. 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.

SCHEDULE 11

STEP-IN AND STEP-OUT

1. STEP-IN

- 1.1 If the Operator reasonably believes that action needs to be taken in connection with the Services:
- (a) to avoid or mitigate against a serious and imminent risk that exists to the health or safety of persons or property or to the environment and which is caused by the Services; and/or
 - (b) to discharge a statutory duty binding on the Secretary of State or the Operator,
- (collectively, the **Step-in Trigger**) then the Operator shall be entitled to request written consent of the Secretary of State to take action in accordance with this Paragraph 1.
- 1.2 The Operator agrees that, where it is reasonable to expect it to do so having regard to the circumstances causing the Step-in Trigger to arise, it will request the TSP to take such action and will not request the written consent of the Secretary of State pursuant to Paragraph 1.1, unless the TSP has unreasonably refused or failed to do so, or has unreasonably delayed in doing so.
- 1.3 The parties agree that any dispute between them as to whether the Operator has complied with the requirements of Paragraph 1.2 shall not affect either the Operator's right to apply to the Secretary of State for her consent or the Operator's right to act in accordance with any consent that the Secretary of State may give.
- 1.4 The provisions of Paragraphs 1 and 2 apply from time to time and at any time when the requirements of Paragraph 1.1 are satisfied.

Procedure for Step-In

- 1.5 If Paragraph 1.1 applies and the Operator wishes to take action, the Operator shall notify the Secretary of State and the TSP's Representative in writing of the following:
- (a) the action it wishes to take;
 - (b) the reason for such action;
 - (c) the date it wishes to commence such action;
 - (d) the time period which it believes will be necessary for such action to be taken (the **Step-in Period**); and
 - (e) to the extent practicable, the effect on the TSP and its obligations to provide the Services during the period such action is being taken.
- 1.6 Following service of such notice, the Operator may or may require the TSP or the Maintainer to take such action (on behalf of the TSP) as notified in Paragraph 1.5 and any consequential additional action as the Operator reasonably believes is necessary (as notified by the TSP to the Maintainer) (**Required Action**), to the extent that:
- (a) the Required Action is within the scope of the Maintenance Requirements; or

- (b) if it is not within the scope of the Maintenance Requirements, it is reasonable in the circumstances for the Maintainer to be required to take the Required Action.

1.7 The TSP shall give all reasonable assistance to the Secretary of State and/or the Operator (as applicable) to carry out such Required Action.

Effect of Step-In Without TSP Breach

1.8 In the circumstances where the relevant Step-in Trigger does not arise out of, or is not in consequence of, a breach of the obligations of the TSP under this Agreement (including a breach for which a Deduction is or could have been incurred):

- (a) then to the extent that the Required Action prevents the TSP from providing or procuring the provision of all or any part of the Services, the TSP shall be relieved from its obligations to provide or procure the provision of such part of the Services; and
- (b) provided that the TSP and the Maintainer provides the Operator with reasonable assistance (such assistance to be at the expense of the Operator to the extent incremental costs are incurred), the Operator shall pay the TARA Payments that the TSP would receive if the TSP was providing the Services that are affected by the Required Action in full over that Step-in Period.

Effects of Step-In Following TSP Breach

1.9 In the circumstances where the relevant Step-in Trigger arises out of, or is in consequence of, a breach of the obligations of the TSP under this Agreement (including a breach for which a Deduction is or could have been incurred):

- (a) then to the extent that the Required Action prevents the TSP from providing or procuring the provision of all of any part of the Services, the TSP shall be relieved from its obligations to provide or procure such part of the Services; and
- (b) in respect of the Step-in Period and provided that the TSP and the Maintainer provides the Secretary of State and/or the Operator (as applicable) with reasonable assistance, the Operator shall pay the TARA Payments that the TSP would receive if it was providing the Services that are affected by the Required Action in full over that Step-in Period, less an amount equal to all the Operator's reasonable costs reasonably and properly incurred as a result of taking the Required Action.

Effects of Step-In

1.10 In respect of the Step-in Period:

- (a) the Operator shall act reasonably and in accordance with Good Industry Practice;
- (b) no liabilities of the TSP that were accrued on or prior to the Step-in Period shall be assumed by the Operator unless the Operator agrees otherwise; and
- (c) the Operator shall be entitled to, and shall continue to be able to enforce, any rights under this Agreement of:
 - (i) any TSP Default that has occurred before the Step-in Period and is still continuing; and

- (ii) any TSP Default that has occurred during the Step-in Period (to the extent that such TSP Default does not relate to the Services that are affected by the Required Action).

1.11 The Operator shall be responsible for, and shall release and indemnify the Secretary of State on demand from and against all liability for any Losses which may arise out of, or in consequence of the obligations and liabilities of the Secretary of State to indemnify the TSP for:

- (a) the Operator's failure to act reasonably and in accordance with Good Industry Practice pursuant to paragraph 1.3(a) of part D (*Step-In*) of schedule 4 (*Train Availability and Reliability Agreement*) of the MARA;
- (b) the Operator requiring the TSP 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 suffered or incurred directly as a result of taking the Required Action and:
 - (i) would not otherwise have been suffered or incurred in connection with the Maintenance Requirement; and
 - (ii) could not reasonably have been avoided by the TSP; and/or
- (c) any Deductions suffered as incurred by the TSP after the end of the Step-in Period as a result of the Required Action to the extent such Deductions:
 - (i) would not otherwise have been suffered or incurred; and
 - (ii) could not reasonably have been avoided by the TSP.

2. **STEP-OUT**

2.1 The Operator may at any time during the Step-in Period notify the TSP's Representative, the Maintainer and the Secretary of State that the Operator wishes the Required Action to cease being taken and the date on which the Required Action shall cease.

2.2 Notwithstanding Paragraph 2.1, the Operator shall notify the TSP's Representative, the Maintainer and the Secretary of State that the Required Action is to cease being taken and the date on which the Required Action shall cease (such date being no greater than five (5) Business Days of the date of such notice and in any event shall be such date which is no later than is reasonably necessary to avoid or mitigate the relevant risk or discharge the relevant statutory duty) when in the reasonable opinion of the Operator:

- (a) the relevant serious risk(s) (connected to that Required Action) to the health and safety of persons or property or to the environment has ceased, been avoided or mitigated against; and/or
- (b) the relevant statutory duty (connected to that Required Action) of the Secretary of State or the Operator can be discharged.

2.3 On receipt of the Operator's notification pursuant to Paragraph 2.2, the Operator and the TSP (and the Secretary of State if she opts to participate) shall consult with each other as to the method by which the Required Action shall cease pursuant to Part A (*Contract Management*) of Schedule 4 (*Contract Management and Compliance*).

- 2.4 On the date on which the Required Action ceases, the TSP shall resume all or any part of the Services which was the subject of the Required Action.

3. **WORKS TO THE SETS**

During any Step-in Period pursuant to Paragraph 1, the parties agree that the Operator shall not be entitled to modify or maintain the Sets, Spares or Special Tools (or otherwise carry out any works with respect to the Sets, Spares or Special Tools), save to the extent (if any) that the TSP is entitled (other than pursuant to Paragraph 1) to do so under the terms of the Maintenance Agreement.

4. **STEP-IN DISPUTES**

Joinder of a TARA Step-In Dispute with a deemed TSA Step-In Dispute

- 4.1 Where a TARA Step-In Dispute arises, either party may serve a copy of the Notice of Dispute on the Maintainer and the other party, which the parties acknowledge shall give rise to a TSA Step-In Dispute. In such circumstances, a TSA Step-In Dispute shall be determined concurrently with the TARA Step-In Dispute pursuant to the Dispute Resolution Agreement (***TARA Joined Step-In Disputes***).
- 4.2 The parties agree that TARA Joined Step-In Disputes shall be determined pursuant to the terms of the Dispute Resolution Agreement.
- 4.3 The TSP shall:
- (a) take all steps as may be reasonably practicable to allow the TARA Joined Step-In Disputes to be determined concurrently pursuant to this Paragraph 4.3; and
 - (b) promptly, upon request by the Operator, take all steps as may be reasonably practicable to enforce any decision or award made by an adjudicator in respect of the TARA Joined Step-In Dispute (as may be relevant) against the Maintainer.

Joinder of a TSA Step-In Dispute with a TARA Step-In Dispute

- 4.4 Where a TSA Step-In Dispute arises, the TSP shall serve a copy of the Notice of Dispute in respect of such TSA Step-In Dispute on the Operator either:
- (a) at the same time as it serves the Notice of Dispute on the Maintainer; or
 - (b) as soon as reasonably practicable following receipt of the Notice of Dispute from the Maintainer.
- 4.5 Where the Operator wishes a dispute or difference arising under this Agreement which relates to issues that are similar or connected with the TSA Step-In Dispute to be determined concurrently with the TSA Step-In Dispute, it shall serve a Notice of Dispute on the TSP pursuant to the terms of the Dispute Resolution Agreement within five (5) Business Days of receipt of the Notice of Dispute in respect of such TSA Step-In Dispute stating that it requires such TARA Step-In Dispute to be determined concurrently with the TSA Step-In Dispute (***TSA Joined Step-In Disputes***). The Operator shall serve a copy of the Notice of Dispute in respect of such TARA Step-In Dispute on the Maintainer at the same time as it serves the Notice of Dispute on the TSP.
- 4.6 The parties agree that TSA Joined Step-In Disputes shall be determined pursuant to the terms of the Dispute Resolution Agreement.

4.7 The TSP shall:

- (a) take all steps as may be reasonably practicable to allow the TSA Joined Step-In Disputes to be determined concurrently pursuant to this Paragraph 4.7; and
- (b) promptly, upon request by the Operator, take all steps as may be reasonably practicable to enforce any decision or award made by an adjudicator in respect of the TSA Joined Step-In Dispute (as may be relevant) against the Maintainer.

5. COURT PROCEEDINGS

Court Proceedings under this Agreement

- 5.1 The parties agree that the TSP shall give notice to the Maintainer of any court proceedings (including any proceedings in respect of any TARA Step-In Disputes or an application for interim relief) which concern issues or facts arising under or in connection with this Schedule 11 (*Step-In and Step-Out*).
- 5.2 The parties shall support an application made by the Maintainer to the court to join such proceedings as a party.
- 5.3 The TSP shall, promptly upon request by the Operator, take all steps as may be reasonably practicable to enforce any order, judgement or decree in any such court proceedings (as may be relevant) against the Maintainer.

Court Proceedings under the Maintenance Agreement

- 5.4 The TSP shall give notice to the Operator of any court proceedings (including any proceedings in respect of any TSA Step-In Disputes or an application for interim relief) which concern issues or facts arising under or in connection with schedule 11 (*Step-In and Step-Out*) of the Maintenance Agreement.
- 5.5 The TSP shall support any application made by the Operator to the court to join such proceedings as a party.
- 5.6 The TSP shall, promptly upon request by the Operator, take all steps as may be reasonably practicable to enforce any order, judgement or decree in any such court proceedings (as may be relevant) against the Maintainer.

SCHEDULE 12

VARIATIONS

- 1.1 The parties shall not vary the terms of this Agreement and no such agreement purporting to vary the terms of this Agreement shall be valid other than:
- (a) variations required pursuant to an Authority to Proceed or a Variation Notice issued under the MARA;
 - (b) variations that are expressly provided for and contemplated under the terms of this Agreement; and
 - (c) variations in respect of everyday working arrangements only and provided that such variations:
 - (i) do not materially affect the parties' liabilities under this Agreement; and
 - (ii) are agreed in writing between the Operator and the TSP in accordance with the provisions of this Agreement.
- 1.2 The parties shall enter into an agreement amending the terms of this Agreement in accordance with the requirements of any Authority to Proceed or a Variation Notice as soon as reasonably practicable.

SCHEDULE 13
CONFIDENTIALITY

Confidentiality

1. The parties agree that provisions of this Agreement shall, subject to Paragraph 2, not be treated as Confidential Information and may be disclosed without restriction.
2. Paragraph 1 shall not apply to provisions of this Agreement designated as Commercially Sensitive Information which shall, subject to Paragraphs 4 and 5, be kept confidential for the period specified in column headed "Period of Confidentiality" in the row corresponding to that information.
3. The parties shall keep confidential all Confidential Information received by one party from the other party relating to this Agreement and shall use reasonable endeavours to prevent their employees and agents from making any disclosure to any person of any such Confidential Information.
4. Paragraphs 2 and 3, 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 for the performance of those obligations (including any of the TSP's Subcontractors or any of the Operator's sub-contractors, as applicable);
 - (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 Paragraphs 2 or 3;
 - (c) any disclosure to enable a determination to be made in accordance with the Dispute Resolution Agreement or any disclosure reasonably required in relation to any dispute involving any of the TSP's Subcontractors or any of the Operator's sub-contractors, as applicable;
 - (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 lenders or their professional advisers or, where it is proposed that a person should or may provide funds to either party (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 the MARA 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; or

- (g) any disclosure by the Secretary of State as permitted under the MARA.
5. The Operator shall be entitled to disclose to the Secretary of State any information or materials (including Confidential Information) requested by the Secretary of State under the Franchise Agreement without any restriction.
 6. Each party acknowledges that the Secretary of State may disclose this Agreement to:
 - (a) any potential successor operator under a franchise agreement following the termination or expiry of the Franchise Agreement, including any person bidding for the right to become the franchisee under that new franchise agreement; and
 - (b) any other operator, or potential operator, of passenger franchise services to whom the Secretary of State is considering deploying some or all of the Sets pursuant to a remapping of the franchise map and/or a redeployment of the Sets.
 7. Where disclosure is permitted under Paragraphs 4(a), (c) and (f), the party providing the information shall procure that the recipient of the information is subject to the same obligation of confidentiality as that contained in this Agreement.

Appendix A to Schedule 13

Commercially Sensitive Information

Information / Contractual Provision	Period of Confidentiality
Paragraph (a) of the definition of "Costs Plus Basis" (to the extent it refers to and states the agreed mark up)	Duration of the MARA
"Marginal Set Payment"	Duration of the MARA
"Non-Compliant Aggregate Deduction Amount"	Duration of the MARA
"Non-Compliant Set Deduction Amount"	Duration of the MARA
Paragraph (b) of the definition of "Relevant Fleet Acceptance Security Account Balance"	Duration of the MARA
Paragraph (a) of the definition of "Remedial Event"	Duration of the MARA
"Set Availability Payment"	Duration of the MARA
Schedules	
Definition of "TMD" in Part A (<i>Contract Management</i>) of Schedule 4 (<i>Contract Management and Compliance</i>) and Paragraphs 5.1 and 5.4 and 5.5 of Part A (<i>Contract Management</i>) of Schedule 4 (<i>Contract Management and Compliance</i>)	Duration of the MARA
Paragraph 1 of Part B (<i>Compliance Testing</i>) of Schedule 4 (<i>Contract Management and Compliance</i>) (to the extent it refers to the fuel efficiency ratios)	Duration of the MARA
Schedule 5 (<i>Payment</i>)	Duration of the MARA
Paragraph 4 of Part A (<i>Availability Regime</i>) of Schedule 6 (<i>Performance Regime</i>)	Duration of the MARA
Paragraph 3 of Part B (<i>Reliability Regime</i>) of Schedule 6 (<i>Performance Regime</i>)	Duration of the MARA
Paragraph 2, Paragraph 4.10 (to the extent it specifies the KPI Point caps), Paragraph 6.7 (to the extent it states the percentages required in respect of representative samples), and Paragraph 8 (to the extent it states percentages required in respect of Remedial Events) of Part C (<i>KPI Regime</i>) of Schedule 6 (<i>Performance Regime</i>)	Duration of the MARA

Paragraph 1.2 of Part D (<i>Reimbursable Charges</i>) of Schedule 6 (<i>Performance Regime</i>)	Duration of the MARA
Paragraphs 1, 3 and 6.3 of Part E (<i>Costs Payable by Operator</i>) of Schedule 6 (<i>Performance Regime</i>) (to the extent they specify the amounts in respect of repair costs)	Duration of the MARA
Schedule 8 (<i>Indemnities</i>) (to the extent that it specifies liability limits)	Duration of the MARA
Paragraph 1.2(b)(ii) of Part C (<i>Operator Default</i>) of Schedule 10 (<i>Remedies, Default and Termination</i>) (to the extent it states the amount required for insolvency)	Duration of the MARA

SCHEDULE 14
DISPUTE RESOLUTION
FORM OF THE DISPUTE RESOLUTION AGREEMENT

Dated [●] 2012

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 Clause 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)
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 (4) 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 2012

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.

The [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**

[The 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

.....