

**C L I F F O R D
C H A N C E**

CLIFFORD CHANCE LLP

Execution version

ROCK RAIL SOUTH WESTERN PLC
AS LESSOR

AND

SOUTH WESTERN RAILWAY LIMITED
AS LESSEE

OPERATING LEASE AGREEMENT
RELATING TO
750 MULTIPLE UNIT VEHICLES

CONTENTS

Clause	Page
1. Definitions and Interpretation	1
2. Representations and Warranties	24
3. Conditions Precedent.....	25
4. Delivery, Leasing and Term.....	25
5. Payments	29
6. Warranty Regime	39
7. Quiet Enjoyment.....	42
8. Undertakings	43
9. Insurance	46
10. Indemnity.....	47
11. Loss, Damage and Requisition.....	50
12. [Not Used]	53
13. Return of Equipment	53
13A Bioreactor Toilets	62
14. Allocation of MSA Liabilities.....	64
15. Events of Default.....	65
16. Assignment and Transfer.....	69
17. Freedom of Information	71
18. Miscellaneous	72
Schedule 1 Representations and Warranties	79
Schedule 2 Conditions Precedent.....	82
Part 1 Lessor Conditions Precedent	82
Part 2 Lessee conditions precedent.....	83
Schedule 3 Payments	84
Part 1 Unit Rent applicable to 5-Car Units	84
Part 2 Unit Rent applicable to 10-Car Units	84
Part 3 Associated Equipment Rent	84
Part 4 Maintenance Rentals	84
Schedule 3A Modified Rent and Maintenance Rental.....	85
Schedule 4 Delivery and Redelivery Condition Schedule.....	87
Part 1 [NOT USED].....	87
Part 2 Redelivery Condition Schedule.....	88
Part 3 Inspection Schedule.....	94
Schedule 5 Form of Inspection Security Account Charge.....	95

Appendix 1 Form of Notice	101
Appendix 2 Form of Acknowledgment	102
Schedule 6 Form of Redelivery Certificate	105
Schedule 7 Operational Undertakings	106
Schedule 8 Maintenance	126
Schedule 9 Insurance Requirements	143
Appendix 1	152
Appendix 2 Form of Broker's Letter of Undertaking	155
Appendix 3 Form of Policy Endorsement	158
Schedule 10 Events of Default.....	164
Schedule 11 No Fault Event	168
Schedule 12 Dispute Resolution Procedure	169
Schedule 13 Unit Details	173
Schedule 14 Owner Owned Spares.....	176
Schedule 15 Special Tools	194
Schedule 16 Driving Cab Simulator Replacement Cost	212
Schedule 17 Form of QEL	213
Schedule 18 Heavy Maintenance Events.....	215

THIS OPERATING LEASE AGREEMENT is made on 25 May 2025 .

BETWEEN:

- (1) **ROCK RAIL SOUTH WESTERN PLC**, a company incorporated under English law (registered number 10754652) whose registered office is at Capital Tower, 91 Waterloo Road, London, United Kingdom, SE1 8RT ("**Lessor**"); and
- (2) **SOUTH WESTERN RAILWAY LIMITED**, a company incorporated under English law (registered number 03266760) whose registered office is at Great Minster House 4th Floor, Public Ownership Programme Team, 33 Horseferry Road, London, England, SW1P 4DR ("**Lessee**").

WHEREAS:

Lessor wishes to lease, and Lessee wishes to take on lease, the Equipment in accordance with this Agreement.

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement (including the recital above):

"**Acceptance Date**" means:

- (a) in relation to each Unit that is an Undelivered Unit (and each Vehicle making up such Unit), the date on which a Provisional Acceptance Certificate or Qualified Provisional Acceptance Certificate is issued in relation to that Unit (whichever occurs first);
- (b) in relation to each Owner Owned Spare that is an Undelivered Owner Owned Spare, the date on which such Owner Owned Spare is Accepted pursuant to the MSA;
- (c) in relation to each Special Tool that is an Undelivered Special Tool, the date on which such Special Tool is Accepted pursuant to the MSA; and
- (d) in relation to:
 - (i) each Delivered Unit (and each Vehicle making up such Unit);
 - (ii) each Delivered Owner Owned Spare;
 - (iii) each Delivered Special Tool;
 - (iv) the Computer Based Training Package; and
 - (v) each Driving Cab Simulator,

the Effective Date.

"Accepted" has the meaning given to such term in the MSA.

"Account Bank" means Lloyds Bank plc (a company incorporated in England and Wales with registered number 00002065 whose registered office is 25 Gresham Street, London EC2V 7HN).

"Act" means the Railways Act 1993 (as amended and/or superseded from time to time, including by the Transport Act 2000 and the Railways Act 2005, and as subsequently amended and/or re enacted from time to time) and any regulations or orders made under the Railways Act 1993, the Transport Act 2000 or the Railways Act 2005.

"Agreed Value" means, for each Unit for a particular period, the minimum amount of insurance coverage required from time to time under the insurances as such amount is referred to in paragraph 2 (*Agreed Values*) of Schedule 9 (*Insurance Requirements*), calculated in the manner set out in paragraph 2 (*Agreed Values*) of Schedule 9 (*Insurance Requirements*).

"Agreement" means this Operating Lease Agreement.

"Anticipated Maintenance Reserve Balance on Expiry" means the balance of the Maintenance Reserves which is modelled to exist on the Scheduled Expiry Date (or, when calculated in accordance with Clause 5.5.1 (*End of lease adjustment*), on the Expiry Date) pursuant to the Lessor Whole Life Cost and Maintenance Reserve Model (such amount being Lessee's pro-rata contribution to the Major Maintenance and Overhaul Work and Half-Life Refurbishment as adjusted in accordance with the methodology in the Lessor's Whole of Life Cost Model).

"Applicable Laws and Standards" means , depending on the context, all or any laws, statutes, proclamations, by-laws, directives, regulations, statutory instruments, rules, orders, rules of court, delegated or subordinate legislation, rules of common law or any European Union legislation at any time or from time to time in force in the United Kingdom and which are or may become applicable to this Agreement, any agreement or document referred to in this Agreement or any of the Equipment, including Industry Standards.

"Assessment Party" has the meaning defined in RIS-2700-RST.

"Associated Equipment" means:

- (a) the Owner Owned Spares;
- (b) the Special Tools;
- (c) the Computer Based Training Package; and
- (d) the Driving Cab Simulators.

"Associated Equipment Rent" means the rent specified in Part 2 (*Associated Equipment Rent*) of Schedule 3 (*Payments*).

"Authorisation" means any authorisation, consent, registration, filing, agreement, notarisation, registration, certificate, licence, approval, permit, authority, resolution or exemption and any corporate, creditors' and shareholders' approval or consent.

"Base Unit Value" means the amount specified in paragraph 2 (*Agreed Values*) of Schedule 9 (*Insurance Requirements*).

"Business Day" means a day (other than a Saturday or a Sunday or holidays scheduled by law) on which banks are open for domestic business in the City of London.

"Common Terms Agreement" means the common terms agreement dated on or about the date hereof between among others, the Lessor, Rock Rail South Western (Holdings) 2 Limited, Deutsche Bank Luxembourg S.A. as noteholder agent and noteholder registrar, Deutsche Bank Luxembourg S.A. as intercreditor agent and security trustee and the original senior creditors named therein.

"Computer Based Training Package" has the meaning given to such term in the MSA, save that for the purposes of the leasing thereof pursuant to this Agreement, it shall exclude the Third Simulator (as defined in the MSA).

"Conditions Precedent" means the conditions specified in Schedule 2 (*Conditions Precedent*).

"Contract Documents" means:

- (a) the Direct Agreement; and
- (b) the Lessee Documents,

and each notice, acknowledgement, any agreements directly with any Financier and other document executed pursuant to or in connection with the transactions contemplated by such documents.

"Contract Programme" has the meaning given to such term in the MSA.

"Corporation Tax" means United Kingdom corporation tax and/or tax of a similar nature if provided for in addition to or in substitution for corporation tax, together with any interest thereon and penalties and fines with respect thereto.

"Criminal Offence" means any of the following criminal offences, as applicable, fraud, corruption, coercion, collusion, obstruction, money laundering and financing of terrorism.

"Daily Rate" means, in relation to any Vehicle at any time, an amount per day equal to the monthly Rent for such Vehicle, multiplied by twelve (12) and divided by three hundred and sixty-five (365).

"Default" means any Event of Default or any event or condition which with the giving of notice, lapse of time, determination of materiality or the fulfilment of any other applicable condition or any combination of the foregoing is reasonably likely to become an Event of Default.

"Default Rate" means two per cent. (2%) per annum above the Bank of England base rate at such time.

"Delivered Owner Owned Spare" means each Owner Owned Spare that is not an Undelivered Owner Owned Spare.

"Delivered Special Tool" means each Special Tool that is not an Undelivered Special Tool.

"Delivered Unit" means each Unit that is not an Undelivered Unit.

"Delivery" means the delivery of the Equipment by Lessor to Lessee under this Agreement.

"Depot" means:

- (a) the maintenance depot known as Wimbledon depot; or
- (b) such other light maintenance depot or railway facility as may be agreed in writing between Lessor and Lessee from time to time.

"Depot Licence" has the meaning given to the term "light maintenance depot licence" in section 83(1) of the Act.

"Design Defect" has the meaning given to such term in the MSA.

"Designated Body" means a Designated Body appointed under regulation 31 of the RIRs.

"Direct Agreement" means the direct agreement between the Secretary of State and Lessor dated on or about the date hereof in relation to this Agreement.

"Discount Rate" means, in relation to any particular series of amounts ("**Relevant Payments**") payable on future dates ("**Future Dates**") which are required to be discounted to present value at a particular date ("**Present Date**") the fixed interest rate per annum which would be payable on a deposit, made with a prime bank in London at the market rate on the Present Date, of an amount necessary to produce repayment instalments (including interest) on the Future Dates equal to the Relevant Payments.

"Dispute" means any difference, controversy, claim, or dispute of whatever nature between Lessee and Lessor arising under, out of or in connection with this Agreement or any related agreement (including, without limitation, any question of breach, interpretation, validity, effect, performance or termination of this Agreement or any related agreement).

"Documentation" means the specifications, drawings, programmes of work, computer standards, listings, programs, data, test scripts, test procedures, test plans, test certificates, quality plans, quality programmes, quality certification, operating manuals, maintenance manuals, list of illustrated parts and all information and know-how whether on paper or magnetic format or in any other form which is prepared by Lessee or its sub-contractors in accordance with or in relation to the TSSSA or otherwise in relation to the maintenance of the Units.

"Driving Cab Simulator Replacement Cost" means the replacement cost for a Driving Cab Simulator which shall be determined by reference to the "Lump sum payable (NPV of outstanding cash flows)" in the cash flow for the Driving Cab Simulators set out in Schedule 16 (*Driving Cab Simulator Replacement Cost*), having regard to the rental year and rental period.

"Driving Cab Simulators" means the two (2) enclosed full driving cab simulators for Class 701 units, as more particularly described in Variation 023 (as defined in the MSA), but excluding the Third Simulator (as defined in the MSA).

"ECM" means the entity in charge of maintenance for the purposes of EU Directive 2008/110/EC and all Applicable Laws and Standards.

"Economic Life" has the meaning given to it in paragraph 7.9.(a) of Schedule 7 (*Operational Undertakings*).

"Effective Date" means the later of (i) 02:00 on 25 May 2025, subject to confirmation of the satisfaction (or waiver or deferral by Lessor or Lessee (as applicable)) of the Conditions Precedent set out in Part 1 (*Lessor Conditions Precedent*) of Schedule 2 (*Conditions Precedent*) and in Part 2 (*Lessee Conditions Precedent*) of Schedule 2 (*Conditions Precedent*).

"Engineering Certification" means certificates of verification issued by a Notified Body or certificates issued by a Designated Body or attestation statements issued by an Assessment Party and the supporting information for such.

"Engineering Certification Body" means a Notified Body or a Designated Body or an Assessment Party.

"Environment" means air, water or land (including, without limitation, air, water or land within natural or man-made structures above or below ground).

"Environmental Approval" means any Authorisation required by Environmental Law.

"Environmental Claim" means any claim, proceeding, formal notice or investigation by any person in respect of any Environmental Law.

"Environmental Law" means laws and regulations applicable in the United Kingdom or any part thereof of which a principal objective is the preservation, protection or improvement of the Environment.

"Environmental Permits" means all or any permits, licences, consents, approvals, certificates, qualifications, specifications, registrations and other authorisations, including any conditions attaching thereto, required under environmental laws for the operation, leasing, maintenance, repair, safety and delivery of the Units, or the performance by Lessor or Lessee of any of its obligations under this Agreement.

"Equipment" means (as the case may be):

- (a) any Unit;
- (b) any Vehicle; and/or

(c) any item of Associated Equipment.

"Escrow Agreement" has the meaning given to such term in the MSA.

"Escrow Materials" has the meaning given to such term in the MSA.

"Escrow Release Event" has the meaning given to such term in the MSA.

"Event of Default" means an event or condition specified in Schedule 10 (*Events of Default*).

"Event of Loss" means, with respect to any Item, or other item of Equipment, the occurrence of any of the following:

- (a) the actual or constructive total loss of such Equipment (including any damage to such Equipment) 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 (including, without limitation, destruction or damage caused by an act of terrorism or act of war); or
- (c) the requisition of title, or other compulsory acquisition, requisition, expropriation or confiscation for any reason of such Item by any Government Authority, but excluding requisition for use or hire not involving requisition of title; or
- (d) the condemnation, confiscation, capture, deprivation, seizure or requisition for use or hire of such Equipment (other than requisition for use or hire by any Government Authority) which deprives any person permitted by this Agreement to have possession and/or use of such Equipment of its possession and/or use for more than one hundred and eighty (180) days.

"Excusable Delay" means, with respect to the redelivery of Equipment by any party (or its subcontractor or agent), delay or non-performance by such party due to or arising out of acts of God or insurrection, fire, flood, other extreme weather condition, explosion, epidemic, any act of Government Authority affecting, directly or indirectly, such Equipment, strike or labour dispute (other than a strike by, or labour dispute involving, such party's own employees or subcontractors or agents) causing cessation, slowdown or interruption of work, damage, destruction or loss, or any other cause (whether above mentioned or not, and whether or not similar to the foregoing) to the extent that such cause is beyond the control of such party, **provided always that** the party seeking to rely on any such cause shall have used all reasonable endeavours to mitigate the effect of such cause on its ability to redeliver (as the case may be) the relevant Equipment.

"Existing Lease Redelivery Condition Non-Compliances" has the meaning given to such term in the Tripartite Letter.

"Expected Delivery Date" has the meaning given to such term in the MSA.

"Expiry Date" means, with respect to each Unit and each other item of Equipment, the earliest of the following dates:

- (a) the Scheduled Expiry Date;
- (b) the date of any earlier termination of the leasing pursuant to this Agreement (including, for the avoidance of doubt, under Clause 15.2 (*Rights*)), or (if later), the date on which such Unit or other item of Equipment is actually redelivered to Lessor pursuant to Clause 12 (*Return of Equipment*) following such termination; and
- (c) in relation to each Unit, the date on which Lessor receives the applicable Agreed Value for such Unit following an Event of Loss,

(and subject to extending the Expiry Date in relation to any Equipment which is subject to requisition for hire to the end of the relevant requisition for hire, where the provisions of Clause 11.3.3 (in relation to requisition for hire) require the extension of the Term in relation to such Equipment.)

"Extension Period" has the meaning given to the term in Clause 11.3.3.

"Fault" means, in relation to a Unit, Vehicle, Part, Special Tool or Owner Owned Spare that such Unit, Vehicle, Part, Special Tool or Owner Owned Spare does not comply with the Specification or the requirements of this Agreement or is not Fit for Purpose, as a consequence of any defect in its design, any defect in the quality of the materials used in its manufacture, bad workmanship employed in its manufacture or as a consequence of any Fault in any other Part.

"Fault Rectification Work" means the work necessary to correct a Fault and the consequences of that Fault.

"Financial Indebtedness" means any indebtedness in respect of:

- (a) moneys borrowed or raised;
- (b) any liability under any debenture, bond, note, loan stock, acceptance, documentary credit or other security;
- (c) any liability under any interest or currency exchange agreement, forward interest rate or forward currency exchange rate agreement or other hedging instrument;
- (d) the acquisition cost of any asset, to the extent payable before or after the time of acquisition or possession of such asset (to the extent not falling within paragraph (a) of this definition) by the party liable where the advance or deferred payment is arranged primarily as a method of raising finance or financing the acquisition of that asset; and
- (e) any guarantee, indemnity or similar assurance against financial loss of any person in respect of any of the above.

"Financial Year" means, in relation to a person, any period for which the person draws up accounts.

"Financier" means each of the following, as notified in writing by Lessor to Lessee:

- (a) any financial institution which from time to time agrees to provide financing facilities to, or for the benefit of, Lessor or any person referred to in (b) below and/or for whose benefit security over, or rights relating to, Equipment and/or this Agreement is granted;
- (b) any financial institution which from time to time serves as security agent and/or trustee for one or more financial institutions falling within (a) above; and
- (c) with respect to any of the Equipment, the owner of such Equipment (if not Lessor) and any other person (other than a person falling within (a) or (b) above) who has a leasehold or proprietary interest in such Equipment which is superior to that of Lessor.

"Financier Liens" means any Lessor Lien granted in favour of any Financier.

"Fit for Purpose" means:

- (a) in relation to each Unit, on the assumption that such Unit is operated in accordance with the Manuals, the Maintenance Plan, and all Applicable Laws and Standards, that:
 - (i) all Relevant Approvals in respect of that Unit have been obtained; and
 - (ii) such Unit is in a condition which meets the Specification and which is suitable to enable the Lessee to operate such Unit on the Relevant Network in revenue earning service with passengers in accordance with the Train Plan and is capable of meeting the requirements of the Performance Regime (as defined in the TSSSA);
- (b) in relation to each Owner Owned Spare or any Key Component that such Owner Owned Spare or any Key Component, when incorporated into a Unit, does not of itself prevent such Unit from being Fit for Purpose as defined in (a) above; and
- (c) in relation to a Special Tool that such Special Tool is able to perform the specification in accordance with the Manuals and the Maintenance Plan.

"Fleet" means all of the Units.

"Fleet Enhancement Fund" means an amount of [REDACTED] (or the remaining balance of such amount from time to time) which shall be made available by Lessor to Lessee in accordance with paragraph Schedule 77.13 (*Fleet Enhancement Fund*) of Schedule 7 (*Operational Undertakings*).

"Fleet Quantum" has the meaning given to it in Clause 13.8.1(a).

"Fleet Threshold" has the meaning given to it in Clause 13.8.2.

"Government Authority" means any national, supra-national (including the European Union), state or local government, any political subdivision thereof or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, authority, body or other similar entity and includes the Department for Transport, the Secretary of State, Network Rail, the RSSB, the ORR and the HSE.

"Group" means, in relation to any company, that company and any company which is a holding company or subsidiary of that company and any subsidiary of any such holding company.

"Group Standards Organisation" means any authorised person which from time to time produces mandatory standards associated with safety and interworking for the operation of rolling stock on Network Rail facilities and infrastructure.

"Half-Life Refurbishment" means those tasks necessary to refurbish the Units at around the mid-point in their 35 year design life, including (but without limitation) a general interior and exterior refresh, exterior repainting, interior repainting (including cabs), re-coating of handrails and grab poles, renewing floor covering and renewing seat covers and such other additional tasks as may be necessary to ensure the continuing aesthetic appeal of the Units for the travelling public.

"Handover Package" has the meaning given to it in Clause 3 of Part 2 (*Redelivery Condition Schedule*) of Schedule 4 (*Delivery and Redelivery Condition Schedule*).

"Hazardous Substances" means any or all materials or substances of any form whether natural or artificial, solid, liquid, gas or vapour or any mixture thereof which are present in such quantities and concentrations as:

- (a) are likely to be harmful or prejudicial to the Environment or human health or living organisms; or
- (b) are specifically regulated under any Environmental Law; or
- (c) would require investigation or remediation under any Environmental Law.

"HSE" means the Health and Safety Executive, or any successor to all or part of its functions.

"Improper Use" has the meaning given to such term in the MSA.

"Indemnatee" means any of Lessor and any New Lessor, including any of their respective successors and assigns, and any of their or their successors' or assigns' directors, officers and employees.

"Industry Standards" means all the laws, rules, regulations, recommendations and instructions, including guidance, codes of practice and conduct which have the force of law or with which it is generally accepted within the United Kingdom rail industry that it is good practice to comply, relating to the performance of this Agreement and/or applicable to the Units, Vehicles, Special Tools or Owner Owned Spares which are or have been issued by the HSE, RDG, RSSB, the British Railways Board, Network Rail or any other Government Authority or other person from time to time legally authorised

to set standards in respect of the rail industry and shall include Railway Group Standards and the Rule Book.

"Inspection Security Account" means the Sterling account in the name of Lessee with the Account Bank which may be opened pursuant to this Agreement for the purpose of Clause 13.8 (*Security for Intermediate Inspection Condition*) and (if so opened) charged in favour of Lessor by the Inspection Security Account Charge.

"Inspection Security Account Charge" means an account charge between Lessee as chargor and Lessor as chargee, substantially in the form set out in Schedule 5 (*Form of Inspection Security Account Charge*).

"Insurances" means the insurances required to be maintained pursuant to Schedule 9 (*Insurance Requirements*), or (as the case may require) all policies and contracts of insurance (including any reinsurances) taken out in respect of the Equipment and all the benefits of such policies and contracts of insurance, including all claims of whatsoever nature thereunder and returns of premium in respect thereof.

"Intellectual Property Rights" means copyrights (including rights in drawings, computer software and other computer programmes), patents, utility models, trademarks, trade names, service marks, business names (including internet domain names), design rights, database rights, semi-conductor topography rights, rights in undisclosed or confidential information (such as know-how, trade secrets and inventions (whether patentable or not)) and all other intellectual property or similar proprietary rights or protections of whatever nature (in each case whether registered or not and including applications to register or rights for registration and including any such items which are the subject of legally enforceable obligations of confidence or secrecy) which may now or in the future subsist anywhere in the universe.

"Inspection Schedule" means the condition specified in Part 3 (*Inspection Schedule*) of Schedule 4 (*Delivery and Redelivery Condition Schedule*).

"Irrecoverable VAT" means any amount paid or payable by or on behalf of Lessor in respect of VAT under or as contemplated by any provision of this Agreement to the extent that Lessor determines that neither Lessor nor any other member of the Lessor Group has received or retained nor will receive or retain a credit (whether by way of set-off or repayment) for that amount as input tax (as that expression is defined in section 24(1) the Value Added Tax Act 1994) under sections 24 to 26 of the Value Added Tax Act 1994 nor receive or retain a credit for it under any similar or equivalent legislation.

"Item" has the meaning given to it in Clause 11.2.2.

"Keeper" has the meaning given to it in EU Directive 2008/110/EC (as amended or replaced from time to time) for the purposes of EU Directives 2004/49/EC, 2008/110/EC and all other Applicable Laws and Standards.

"Key Component" in relation to each Unit, each of:

- (a) the bodyshell;
- (b) the brake systems mechanical and electrical;

- (c) the paintwork;
- (d) the door systems;
- (e) the wheel sets;
- (f) the seats;
- (g) the traction motors and traction systems;
- (h) the bogie frames;
- (i) the couplers;
- (j) the main transformer (where fitted);
- (k) the gangway;
- (l) the electrical cabinets (enclosures and fixtures, not electrical components therein); and
- (m) the air conditioning units.

"Lease" means this Agreement.

"Lessee Documents" means:

- (a) this Agreement;
- (b) the Tripartite Agreement; and
- (c) the TSSSA,

and each notice, acknowledgement, any agreements directly with any Financier and other documents to which Lessee is a party or recipient executed pursuant to or in connection with the transactions contemplated by such documents.

"Lessee Group" means Lessee, each holding company of Lessee and all of those holding companies' subsidiaries and subsidiary undertakings.

"Lessee Modification" means a Modification (that is not a Mandatory Modification) which it is determined in accordance with paragraph 7.1 (*General*) of Schedule 7 (*Operational Undertakings*) shall be removed from the Vehicles/Units on or prior to the Scheduled Expiry Date.

"Lessee Owned Spares" means spares procured by Lessee during the Term not being Owner Owned Spares.

"Lessee Permitted Delay" has the meaning given to the term in Clause 4.6.1.

"Lessee's Representative" means:

- (a) the individual whose appointment as such has been notified by Lessee to Lessor before the date of this Agreement; and
- (b) any successor whose appointment by Lessee is notified by Lessee to Lessor.

"Lessee's Warranty Period" means, in relation to a particular act of Workmanship, the period beginning on the date on which that act of Workmanship was completed by Lessee (or any subcontractor of Lessee) and ending on the second (2nd) anniversary of that date.

"Lessor Group" means the Lessor and its ultimate holding company (if any) from time to time, any company which is from time to time a subsidiary of that holding company and any company which is from time to time a subsidiary of the Lessor and its subsidiaries for the time being.

"Lessor Lien" means, with respect to any of the Equipment:

- (a) any relevant Security Assignment or Mortgage and any encumbrance in respect of this Agreement or such Equipment from time to time created by or through Lessor or the owner (if Lessor is not the owner);
- (b) any other encumbrance over such Equipment which results from acts of or claims against Lessor or owner or Lessor's or owner's (if Lessor is not the owner) property not related to the transactions contemplated by or permitted under this Agreement; and
- (c) encumbrances in respect of such Equipment for Taxes imposed on the overall net income, profits or gains of Lessor or owner (if Lessor is not the owner).

"Lessor Permitted Delay" has the meaning given to the term in Clause 4.6.2.

"Lessor's Account" means the following bank account of Lessor:

Bank:	Lloyds Bank Plc
Sort Code:	
Account number:	
IBAN:	
Account Name:	

or such other account as Lessor may from time to time specify to Lessee.

"Lessor's Maintenance Reserve Account" means the following bank account of Lessor:

Bank:	Lloyds Bank Plc
Sort Code:	
Account number:	
IBAN:	
Account Name:	

or such other account as Lessor may from time to time specify to Lessee.

"Lessor's Representative" means:

- (a) the individual whose appointment as such has been notified by Lessor to Lessee before the date of this Agreement; or
- (b) any successor whose appointment by Lessor is notified by Lessor to Lessee.

"Lessor Whole Life Cost and Maintenance Reserve Model" means Lessor's cost model in respect of Major Maintenance and Overhaul Work on each Unit for its design life, as sent to Lessee by way of email, and receipt of which was confirmed by Lessee.

"Lessor Whole Life Cost and Maintenance Reserve Model Assumptions" means each of the assumptions specified in the Lessor Whole Life Cost and Maintenance Reserve Model.

"LG3P Letter" means the letter agreement dated 29 March 2023 between the Lessor, First MTR South Western Trains Limited and the Manufacturer in relation to the performance of "LG3P Works" in relation to the Units, as transferred to the Lessee on or about the date of this Agreement.

"Losses" means any losses (other than loss of profit), costs, charges, expenses, interest, fees (including legal fees), licence duties, registration, recording, titling, filing or other fees, payments, demands, liabilities, claims, actions, proceedings, penalties, fines, damages, adverse judgments, orders or other sanctions, charges or levies, but excluding Taxes.

"Maintenance Contractor" means Alstom Engineering and Services Limited a company incorporated in England and Wales with registered number 2235994 whose registered office is Litchurch Lane, Derby, Derbyshire, DE24 8AD.

"Maintenance Information" means all information of the following types which is produced by Lessee or a Maintenance Sub contractor, in whatever form, for the purpose of, or are used in, the carrying out of the Maintenance Services on the Units and/or the Vehicles:

- (a) to the extent not available on the then applicable Technical Records Database and in the Manuals or the Maintenance Plan: (i) mileage information relating to the Units; (ii) the date of the last maintenance services performed on each Unit and Vehicle, and details of any work carried out at such exam; (iii) the date of the next maintenance services due for each Unit and Vehicle; (iv) performance information and data in relation to reliability growth;
- (b) all instruction manuals for the operation and maintenance of all Special Tools supplied by Lessor to Lessee, together with all instruction manuals for the operation and maintenance of any Lessee's Special Equipment purchased by Lessor pursuant to Schedule 8 (*Maintenance*);
- (c) the Manuals; and
- (d) the Maintenance Plan.

"Maintenance Instructions" has the meaning given to such term in the MSA.

"Maintenance Plan" means the maintenance programme for the Units originally produced by the Manufacturer under the MSA (and defined therein as the "Maintenance Plan"), as such programme may be amended from time to time subject to the prior approval of Lessor in accordance with Schedule 8 (*Maintenance*).

"Maintenance Rental" means all amounts paid by Lessee to Lessor pursuant to Clause 5.3 (*Maintenance Rental*).

"Maintenance Reserves" means the aggregate of all Maintenance Rentals paid by Lessee to Lessor pursuant to Clause 5.3 (*Maintenance Rental*) less the aggregate amount paid (or to be paid) by Lessor to Lessee pursuant to Clause 5.5 (*Maintenance Reserve withdrawals*).

"Maintenance Rental Review Date" has the meaning given to such term in Clause 5.4.1.

"Maintenance Services" means in relation to the Units, Vehicles and Parts (to the extent required during the Term):

- (a) the carrying out (whether at the Depot, at any outbase, or on the Relevant Network) of all maintenance, overhaul or repair work prescribed by the Manuals and the Maintenance Plan, including, without limitation, the Major Maintenance and Overhaul Work;
- (b) the carrying out of all Fault Rectification Work;
- (c) the carrying out (whether at the Depot, at any outbase, or on the Relevant Network) of all other repair work required from time to time;
- (d) the carrying out of all cleaning from time to time required by the Units, including the provision of all necessary consumable materials;
- (e) the handling, management, control and stewardship of the Owner Owned Spares in accordance with Schedule 8 (*Maintenance*);
- (f) the provision, handling, management and control of all Lessee Owned Spares necessary to carry out the services referred to in (a) to (e) above;
- (g) the provision of all plant, equipment, consumables and materials (other than Owner Owned Spares) necessary to carry out the services referred to in (a) to (e) above; and
- (h) the creation, maintenance and updating of all records on the maintenance management systems operated by Lessee as are required by Lessee's Safety Management System relating to the Units and/or the provision of the Maintenance Services.

"Maintenance Subcontractor" means any person (including the Maintenance Contractor) to whom a contract has been let by Lessee in accordance with Schedule 8 (*Maintenance*) for any work to be performed or for the supply of Parts, materials or

services as part of, or in connection with, the performance of the Maintenance Services, and, unless the context otherwise requires, includes a sub-contractor or supplier of any such person.

"Major Maintenance and Overhaul Work" means all overhaul and component exchange activities that are designated as "Heavy Maintenance" in (a) the Maintenance Plan and Manuals, and (b) in the Lessor Whole Life Cost and Maintenance Reserve Model.

"Mandatory Modification" means a Modification to a Unit, Vehicle or Part which is required to be made under Applicable Laws and Standards.

"Manuals" has the meaning given to such term in the MSA.

"Manufacture and Supply Agreement" or "MSA" means the manufacture and supply agreement dated 19 June 2017 between First MTR South West Trains Limited, Lessor (as owner), and Manufacturer (as varied from time to time and as transferred to the Lessee by virtue of the transfer scheme dated on or around the date of this Agreement as created by the Secretary of State in exercise of powers under section 12 and schedule 12 of the Railways Act 2005).

"Manufacturer" means Alstom Engineering and Services Limited a company incorporated in England and Wales with registered number 2235994 whose registered office is Litchurch Lane, Derby, Derbyshire, DE24 8AD.

"Milestone" has the meaning given to such term in the MSA.

"Minimum Liability Coverage" means, for the Units, the minimum amount of insurance coverage required under the insurances referred to in paragraph 1.2 (*Third Party Liability Insurance*) of Schedule 9 (*Insurance Requirements*).

"Modification" means any modification or addition to a Unit.

"Modified Rent and Maintenance Rental" means, in relation to an item of Equipment subject to an Extension Period, the amounts calculated pursuant to Schedule 3A (*Modified Rent and Maintenance Rental*) that shall be payable as Rent and Maintenance Rental (as applicable) for that item of Equipment during an Extension Period.

"Mortgage" means any mortgage or charge over Equipment made by Lessor or an owner in favour of any Financier in connection with the financing of such Equipment.

"National Vehicle Register" has the meaning given to it in the RIRs.

"Network Rail" means Network Rail Infrastructure Limited (company number 02904587), or any successor to all or part of its functions.

"New Lessor" has the meaning given in Clause 16.3.

"No Fault Event" means an event or condition specified in Schedule 11 (*No Fault Event*).

"Notice of Default" has the meaning given to that term in the Direct Agreement.

"Notice of Dispute" means a notice executed by Lessor's Representative or Lessee's Representative notifying the other that a Dispute has arisen and is continuing between Lessee and Lessor.

"Notified Body" means a Notified Body, being a body appointed under regulation 30 of the RIRs.

"Operator" means Lessee or any successor operator of the Units over the Relevant Network.

"ORR" means the Office of Rail and Road (formerly known as the Office of Rail Regulation) established by section 15 of the Railways and Transport Safety Act 2003 and having duties and obligations as set out in the Act or any successor to all or part of its functions.

"Owner Owned Spares" means the Owner Owned Spares listed in Schedule 14 (*Owner Owned Spares*).

"Owner's Senior Project Manager" means the project manager identified as the Owner's Senior Project Manager in the Manufacture and Supply Agreement.

"Part" means any part, component (which may comprise a number of parts and including, without limitation, a Key Component), an assembly or sub-assembly which is incorporated in, or fixed to, or should have been fixed to, or is designated for incorporation in or fixing to any Unit, Vehicle or Owner Owned Spare, or any furnishing or equipment furnished with such Unit, Vehicle or Owner Owned Spare under this Agreement including (without limitation) all documentation relating to such part, component, assembly or sub-assembly, furnishing or equipment and all test equipment supplied to the Owner in respect of the Vehicles, the Units, Special Tools or the Owner Owned Spares.

"Passenger Licence" has the meaning given to that term in section 83(1) of the Act.

"Performance Audit" means the auditing by Lessor of any or all of the following:

- (a) the contents of the Maintenance Information; or
- (b) Lessee's performance of its obligations under Schedule 8 (*Maintenance*).

"Permitted Delay" has the meaning given to such term in the MSA.

"Permitted Lien" means:

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

but only if (in the case of both (a) and (b)) in the opinion of Lessor (i) adequate resources have been provided by Lessee for the payment of the Taxes or obligations and (ii) such proceedings or the continued existence of the encumbrance do not give rise to any likelihood of the sale, forfeiture or other loss of the Equipment which is the subject of the encumbrance or any interest in such Equipment or of criminal liability on Lessor or any Financier or any New Lessor.

"Permitted Operator" has the meaning given in Clause 16.2 (*By Lessee*).

"Permitted Transfer" has the meaning given in Clause 16.2 (*By Lessee*).

"Permitted Use" means the operation of the Units by Lessee (or any sublessee of Lessee permitted by Lessor under this Agreement) during the Term on any cleared routes including any such routes on the Relevant Network.

"Purchased Equipment" has the meaning given to such term in the MSA.

"Prohibited Corruption Acts" means:

- (a) offering, giving or agreeing to give to any director, officer, employee, representative or agent of a Public Sector Body any gift or consideration of any kind as an inducement or reward:
 - (i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other contract with a Public Sector Body; or
 - (ii) for showing or not showing favour or disfavour to any person in relation to this Agreement or any other contract with a Public Sector Body;
- (b) entering into this Agreement or any contract with a Public Sector Body in connection with which commission has been paid or has been agreed to be paid by the relevant party or on its behalf, or to its knowledge, unless before the relevant agreement is entered into particulars of any such commission and of the terms and conditions of any such agreement for the payment thereof have been disclosed in writing to the other party;
- (c) committing any offence:
 - (i) under the Modern Slavery Act 2015; or
 - (ii) under the Bribery Act 2010; or
 - (iii) under the Criminal Finance Act 2017; or
 - (iv) under the Economic Crime and Corporate Transparency Act 2023;
 - (v) under legislation creating offences in respect of fraudulent acts; or
 - (vi) at common law in respect of fraudulent acts in relation this Agreement or any other contract with a Public Sector Body; or

- (d) defrauding or attempting to defraud or conspiring to defraud a Public Sector Body;
- (e) without prejudice to limbs (a) to (d) above, committing any of the offences set out in Schedule 6 of the Procurement Act 2023; or
- (f) being or becoming:
 - (i) the subject of any sanctions administered or enforced by His Majesty's Treasury (including the Sanctions and Anti-Money Laundering Act 2010), the United Nations Security Council, the United States of America Department of the Treasury and/or the European Union (collectively, "**Sanctions**");
 - (ii) located, organised or resident in a country or territory that is the subject of Sanctions (provided that the foregoing shall not apply to individual officers or directors); or
 - (iii) knowingly engaged in any dealings or transactions in any country or territory that is the subject of Sanctions.

"Project Manager" has the meaning given to such term in the MSA.

"Project Management Agreement" means the project management agreement dated 17 June 2017 entered into between the Lessor and First MTR South West Trains Limited (as transferred to the Lessee by virtue of the transfer scheme dated on or around the date of this Agreement as created by the Secretary of State in exercise of powers under section 12 and schedule 12 of the Railways Act 2005).

"Provisional Acceptance Certificate" or "**PAC**" has the meaning given to such term in the MSA.

"PS Non Compliance" has the meaning given to it in Clause 13.7.1 (*Preliminary Final Inspections*).

"Public Sector Body" means all ministers of the crown, government departments, crown agencies and authorities, local authorities or similar public sector bodies and any body corporate owned or controlled by any of them (including, for the avoidance of doubt, the Lessee).

"Public Sector Company" has the meaning given in Clause 16.2 (*By Lessee*).

"QEL" means a quiet enjoyment letter in favour of the Operator in the form set out in Schedule 17 (*Form of QEL*).

"Qualified Provisional Acceptance Certificate" or "**QPAC**" has the meaning given to such term in the MSA.

"R2" means the rail industry on-line records system managed by RSSB which replaced the Rolling Stock Library and RAVERS.

"Rail Services Contract" means the agreement relating to services for the carriage of passengers by railway over the Relevant Network made between the Secretary of State, DfT Operator Limited and the Lessee dated on or about the date of this Agreement.

"Rail Services Operator" means any rail services operator appointed by the Secretary of State to operate railway passenger and other services on any route on the United Kingdom rail network, other than the Lessee.

"Railway Service" means the passenger rail service to be provided from time to time by Lessee on the Relevant Network.

"RAVERS" means the Rail Vehicle Records System.

"RDG" means the Rail Delivery Group.

"Redelivery Certificate" means a certificate in substantially the form set out in Schedule 6 (*Form of Redelivery Certificate*) to be executed by or on behalf of Lessor.

"Redelivery Condition" means the redelivery condition set out in Part 2 (*Redelivery Condition Schedule*) of Schedule 4 (*Delivery and Redelivery Condition Schedule*).

"Redelivery Date" means, in relation to any Unit, the date on which such Unit is redelivered to Lessor by Lessee in accordance with the terms of this Agreement.

"Redelivery Location" means the Depot or such other location as the parties may agree in writing.

"Release Fee" means any release fee payable by the Lessor to the escrow agent under the relevant Escrow Agreement.

"Relevant Approval" means a consent, approval or permission including any relevant derogation required from time to time or which would, in accordance with the standards of a reasonable and prudent person, normally be obtained in connection with the servicing, maintaining and operation of the Units on, or for use on, the Relevant Network or the performance of modifications to the Units in order to permit the operation of such Units, with or without passengers on the Relevant Network.

"Relevant Casualty Amount" means [REDACTED] per Vehicle.

"Relevant Losses" has the meaning given to it in Clause 13.4 (*Compensation for Late Redelivery*).

"Relevant Network" means has the meaning given to the terms "Routes" in schedule 20 of the MSA.

"Relevant Terms" has the meaning given to that term in Clause 19.1.1(b).

"Relief" means any loss, relief, allowance, exemption, set off, deduction, right to repayment or credit or other relief of a similar nature, in each case granted or available in relation to Tax pursuant to any legislation or otherwise.

"Rent" means any amount payable pursuant to Clause 5.1.1 (*Rent and Rent Dates*) and Schedule 3 (*Payments*), as adjusted in accordance with this Agreement.

"Rent Date" means the first day of each Rent Period.

"Rent Period" means each period ascertained in accordance with Clause 5.2 (*Rent Periods*).

"RIRs" means the Railways (Interoperability) Regulations 2011.

"ROGS" means the Railways and Other Guided Transport Systems (Safety) Regulations 2006, as amended.

"RSSB" means the Rail Safety and Standards Board Limited (company number 4655675), or any successor to all or part of its functions, and any other authorised person which from time to time produces mandatory standards associated with safety and interworking for the operation of rolling stock on Network Rail facilities and infrastructure.

"Rule Book" means GE/RT8000 and related documents published by the RSSB.

"Safety Certificate" means the certificate issued by the ORR pursuant to paragraph 7 of the ROGS.

"Safety Management System" means the arrangements (including the statement of procedures, standards and internal regulations) designed to achieve the safe provision or operation of passenger rail services prepared by Lessee and accepted by the applicable Government Authority pursuant to the ROGS so as to allow Lessee to operate the Railway Service.

"Sanctions" has the meaning given to it in the definition of Prohibited Corruption Acts.

"Scheduled Expiry Date" means 01:59:59 hours on 26 May 2030.

"Secretary of State" means the Secretary of State for Transport, or any successor to all or part of his rights and functions.

"Secured Obligations" means the obligations and liabilities of Lessee to Lessor under Clause 13.3.2.

"Security Assignment" means any assignment of the benefit of this Agreement and/or the Insurances relating to Equipment made by Lessor in favour of any Financier.

"Security Interest" means:

- (a) any right of ownership, lien, mortgage, charge, pledge, hypothecation, attachment, security interest, assignment by way of security, right of possession, right of detention, right of set-off or other encumbrance,
- (b) any other preferential arrangement resulting in a secured transaction or having the same economic or legal effect as any of the foregoing,

- (c) any agreement to give any of the foregoing, or
- (d) the interest of the Lessor or Lessee under any conditional sale agreement, lease, hire purchase agreement or other title retention arrangement.

"Special Tools" means the special tools listed in Schedule 15 (*Special Tools*).

"Specification" has the meaning given to such term in the MSA.

"Sterling" and **"£"** denotes lawful currency of the United Kingdom as at the date of this Agreement.

"SoS Comfort Letter" means the letter from the Secretary of State in favour of Lessor, in relation to the Secretary of State's ownership of Lessee, dated on or about the date hereof.

"Sub-Contractor" means any person with whom the Lessee has entered into a contract, written or unwritten, for any work to be performed or for the supply of Parts and Owner Owned Spares or materials as part of, or in connection with, the performance of the Lessee's obligations under this Agreement, and, unless the context herein otherwise requires, includes the Maintenance Contractor.

"Sub-Contractor Warranty Period" means:

- (a) in relation to a particular act of Workmanship, other than in relation to a Part pursuant to the TSSSA, the longer of:
 - (i) the period beginning on the date on which that act of Workmanship was completed by any subcontractor of Lessee and ending on the second anniversary of that date, and
 - (ii) the period of the relevant Sub-Contractor's warranty; and
- (b) in relation to a particular act of Workmanship relating to a Part pursuant to the TSSSA, the period of the relevant Sub-Contractor's warranty.

"SubLessee" has the meaning given to it in paragraph 2.2 (*Permitted SubLeasing*) of Schedule 7 (*Operational Undertakings*).

"Taxes" means all present and future taxes and all charges, assessments, imposts, duties, levies, charges, deductions, compulsory loans and withholdings in the nature of tax, payable at the instance of or imposed by any governmental or other taxing authority, together with any penalties, additions, fines, surcharges or interest relating thereto; and **"Tax"** and **"Taxation"** shall be construed accordingly.

"Technical File" means the technical file in respect of the Units required by Applicable Laws and Standards to be set up and maintained.

"Technical Records" means the Documentation, the Engineering Certification, the Manuals, the Maintenance Plan, and, in relation to the maintenance of the Units, the Maintenance Information.

"Technical Records Database" means R2 or such other computer records system as may be approved by Lessor from time to time.

"TSSSA" means the technical support and supply spares agreement dated on or about the date of this Agreement and entered into, in relation to the Units, between the Manufacturer and the Lessee.

"Term" means, in relation to each item of Equipment, the period commencing at the relevant Acceptance Date and ending on the Expiry Date.

"Termination Sum" means, in respect of any Unit, the amount determined in accordance with Clause 15.2.4 (*Rights*).

"Third Party IPR" means such of the Intellectual Property Rights which do not belong to the Manufacturer, Lessee or Lessor.

"Track Access Contract" means any access contract (as defined in section 17 of the Act) under which a person is permitted to use track for the purposes of the operation of trains on that track.

"Train Plan" has the meaning given to such term in the MSA.

"Tripartite Letter" means the side letter – handback and delivery conditions dated on or about the date of this Agreement between First MTR South Western Trains Limited, Lessor and Lessee.

"Undelivered Owner Owned Spare" means, as at the date of this Agreement, each Owner Owned Spare which has yet to be Accepted pursuant to the MSA.

"Undelivered Special Tool" means, as at the date of this Agreement, each Special Tool which has yet to be Accepted pursuant to the MSA.

"Undelivered Unit" means, as at the date of this Agreement, each Unit for which a Provisional Acceptance Certificate or Qualified Provisional Acceptance Certificate has yet to be issued.

"Unit" means each of the 60 ten-car and 30 five-car new multiple units which are listed in Schedule 13 (*Unit Details*) (subject to any variation pursuant to this Agreement), including any Part of such Unit and the Technical Records relating to such Unit.

"Unit Price" shall have the meaning given to such term in the MSA.

"Unit Rent" has the meaning given to it in Schedule 3.

"Variation Order 023" means a variation to the MSA entitled "Variation Order 023 Driving Cab Simulators" dated 17 September 2018 and made in accordance with the Variation Procedure (as defined in the MSA).

"Variation Procedure" has the meaning given to such term in the MSA.

"VAT" means value added tax as provided for in the Value Added Tax Act 1994 and legislation (whether delegated or otherwise) supplemental thereto or in any primary or

secondary legislation promulgated by the European Union or any official body or agency of the European Union and any similar sales, consumption or turnover Tax replacing or introduced in addition to the foregoing.

"Vehicle" means any individual vehicle forming part of a Unit, including any Part of such Vehicle and the Technical Records relating to such Vehicle.

"Workmanship" means any act of any Sub-Contractor in the performance of the Maintenance Services, including (i) the installation or re-installation of any Part by Lessee (or any such subcontractor), including where Lessee (or any such subcontractor) has not undertaken or been required to undertake any work directly on the Part; (ii) any work carried out by Lessee (or any such subcontractor) on any Part installed on any Unit; and (iii) the manufacture, overhaul or repair by Lessee (or any such subcontractor) of any Part.

1.2 Construction

In this Agreement, unless the contrary intention is stated, each reference to:

- 1.2.1 a **"certified true copy"** of any document shall be construed as a reference to a photostatic copy of such document which has annexed to it, or printed on its front page, a certificate signed by an officer of Lessee or Lessor (as the case may be) or by the legal advisers to Lessee or Lessor (as the case may be), confirming that such photostatic copy is a true, complete and up to date copy of the original (including all amendments and supplements to such original);
- 1.2.2 each of **"Lessor"** or **"Lessee"** or any other person includes, without prejudice to the provisions of this Agreement restricting transfer or assignment, its (and any subsequent) successor(s) in title, transferee(s) or assignee(s);
- 1.2.3 an **"operationally comparable unit"** or **"operationally comparable item of rolling stock"** is a reference to a unit or item of rolling stock which, at the relevant time, is owned by, or leased to, Lessor and is not at such time leased or committed to be leased by Lessor to a third party and which is able to be used for substantially the same Permitted Use, is capable of meeting substantially the same performance criteria and has substantially the same passenger capacity as the Unit with which it is being compared. For the avoidance of doubt, Lessee acknowledges that Lessor shall not be obliged to take any steps whatsoever to purchase, lease or otherwise acquire any such rolling stock in order to satisfy any of its obligations under this Agreement in respect of any "operationally comparable item of rolling stock";
- 1.2.4 **"operational personnel"** of Lessee is a reference to personnel (including drivers and engineers) employed by Lessee (whether as employees, sub-contractors, agents or otherwise) in connection with the operation and maintenance of the Units;
- 1.2.5 a **"person"** shall be construed as a reference to any person, firm, company, corporation, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the foregoing;

- 1.2.6 **"rolling stock"** and **"train"** shall have the meanings given to those terms in section 83(1) of the Act;
- 1.2.7 any **"document"** includes that document as amended, varied, novated or supplemented;
- 1.2.8 a **"law"** includes any (A) statute, decree, constitution, regulation, order, judgment or directive of any Government Authority; (B) any order, directive or decree of the European Union or European Commission; (C) any treaty, pact, compact or other agreement to which any Government Authority is a signatory or party (and which has the force of law in the United Kingdom); and (D) judicial or administrative interpretation or application thereof, in each case having the force of law in the United Kingdom and, in each such case, is a reference to the same as amended, substituted or re-enacted from time to time;
- 1.2.9 a **"clause"** or a **"Schedule"**, or a **"Part"** of a Schedule, is a reference to a clause of, or a schedule to, or a part of a schedule to, this Agreement;
- 1.2.10 the terms **"holding company"** and **"subsidiary"** shall be construed in accordance with section 1159 of the Companies Act 2006 and the term **"subsidiary undertaking"** shall be construed in accordance with section 1162 of the Companies Act 2006; and
- 1.2.11 **"includes"** or **"including"** shall be construed as meaning includes or including without limitation.

The headings in this Agreement are to be ignored in construing this Agreement.

2. REPRESENTATIONS AND WARRANTIES

2.1 Lessee's Representations

The representations and warranties set forth in paragraph 1 (*Lessee's Representations and Warranties*) of Schedule 1 (*Representations and Warranties*) are hereby made by Lessee to Lessor with reference to the facts and circumstances existing on the date hereof.

2.2 The following representation and warranties set forth in paragraph 1 (Lessee's Representations and Warranties) of Schedule 1 (Representations and Warranties) will be deemed to be repeated by Lessee on each Acceptance Date with reference to the facts and circumstances then existing:

- 2.2.1 paragraph 1.1 (Status);
- 2.2.2 paragraph 1.2 (Power and authority);
- 2.2.3 paragraph 1.3 (Legal validity);
- 2.2.4 paragraph 1.4 (Non-conflict);
- 2.2.5 paragraph 1.5 (Authorisation);

2.2.6 paragraph 1.6 (Pari Passu); and

2.2.7 paragraph 1.9 (Accounts).

2.3 Lessor's Representations and Warranties

The representations and warranties set forth in paragraph 2 (*Lessor's Representations and Warranties*) of Schedule 1 (*Representations and Warranties*) are hereby made by Lessor to Lessee with reference to the facts and circumstances existing on the date hereof.

3. CONDITIONS PRECEDENT

3.1 Lessor's obligations under this Agreement to deliver and begin the leasing of Equipment are subject to satisfaction of each of the Conditions Precedent set out in Part 1 (*Lessor Conditions Precedent*) of Schedule 2 (*Conditions Precedent*).

3.2 Lessee's obligations under this Agreement to begin the leasing of Equipment are subject to satisfaction of each of the Conditions Precedent set out in Part 2 (*Lessee Conditions Precedent*) of Schedule 2 (*Conditions Precedent*).

3.3 The Conditions Precedent set out:

3.3.1 in Clause 3.1 are for the sole benefit of Lessor and may be waived or deferred (in whole or in part, and with or without conditions) by Lessor; and

3.3.2 in Clause 3.2 are for the sole benefit of Lessee and may be waived or deferred (in whole or in part, and with or without conditions) by Lessee.

4. DELIVERY, LEASING AND TERM

4.1 Acceptance and Leasing

4.1.1 Lessor will lease to Lessee, and Lessee will take on lease from Lessor, each Unit in accordance with this Agreement from its Acceptance Date for the duration of its Term.

4.1.2 Lessor will lease to Lessee, and Lessee will take on lease from Lessor, each item of Associated Equipment in accordance with this Agreement from its Acceptance Date for the duration of its Term.

4.2 Delivery

4.2.1 The parties agree that the Term for each Vehicle, Unit and item of Associated Equipment shall commence on the Acceptance Date in relation to such Vehicle, Unit and item of Associated Equipment.

4.2.2 Lessee acknowledges and agrees that, with effect on and from the Effective Date, in relation to each Delivered Unit and each item of Associated Equipment that is a Delivered Owner Owned Spare or a Delivered Special Tool:

- (a) such Units and items of Associated Equipment have been delivered to Lessee and that Lessee is in possession of such item of Associated Equipment (thereby constituting "Delivery" of such Equipment for the purposes of this Agreement) and no further physical delivery of such Unit and item of Associated Equipment is required or contemplated under this Agreement; and
 - (b) Lessee accepts such Equipment for the purposes of this Agreement in "as-is, where-is" condition.
- 4.2.3 In relation to each Unit, Owner Owned Spare and Special Tool that is an Undelivered Unit, Undelivered Owner Owned Spare and Undelivered Special Tool respectively, the Lessee shall not, as against the Lessor, be entitled to reject or to refuse to take:
- (a) that Unit (and the Vehicles forming part of that Unit) on lease in accordance with this Agreement if a Provisional Acceptance Certificate or Qualified Provisional Acceptance Certificate is issued under and in accordance with the terms of the MSA in respect of that Unit (and the Vehicles forming part of that Unit);
 - (b) that Owner Owned Spare on lease in accordance with this Agreement if that Owner Owned Spare is Accepted;
 - (c) that Special Tool on lease in accordance with this Agreement if that Special Tool is Accepted; and
 - (d) each such Equipment shall be delivered in "as-is, where-is" condition as at the relevant Acceptance Date.

4.3 Risk

- 4.3.1 As between Lessor and Lessee after Delivery of each item of Equipment pursuant to the remaining provisions of this Clause 4, Lessee will bear all risk of loss, theft, damage or destruction to such item of Equipment from any cause whatsoever during the Term applicable to such item of Equipment, unless expressly provided herein to the contrary.
- 4.3.2 Safe operation of the Equipment is Lessee's responsibility, without prejudice to Lessor's express obligations to Lessee under the Lessee Documents. Lessor shall have no liability, and Lessee shall bring no claim or proceedings, in respect of the exercise or non-exercise by Lessor of any rights and powers under this Agreement, including (but not limited to) rights of inspection, audit, testing, the giving and receiving of information, the giving and withholding of consents (other than in circumstances where Lessor has exercised such a right or power or withheld consent contrary to this Agreement) and all Lessor's rights and powers under Schedule 7 (*Operational Undertakings*), in so far as the same relate to potential or actual safety concerns or events.
- 4.3.3 If, after Delivery of any item of Equipment by Lessor to Lessee under this Agreement, the relevant item of Equipment is delivered by the Lessee to the

Lessor and accepted in writing by the Lessor, then from such date of delivery by the Lessee until such time as the relevant item of Equipment is subsequently delivered by Lessor to Lessee in accordance with the terms of this Agreement, the Lessor will bear all risk of loss, theft, damage or destruction in relation to such item of Equipment from any cause whatsoever, other than any loss, theft, damage or destruction which arises directly out of or in connection with any act or omission of the Lessee.

4.4 **Exclusion of Warranties**

4.4.1 Save as expressly stated in this Agreement, Lessor has not made or given, and will not be deemed to have made or given, and Lessee is not relying on, any warranties or representations, express or implied, with respect to any item of Equipment, including (but not limited to):

- (a) the description, conformity to Industry Standards, quality, fitness for any use or purpose, value, condition, operation, performance or design of the Equipment (including, for the avoidance of doubt, any Part installed on the Units or Vehicles from time to time); or
- (b) the completeness, correctness or suitability of either the Specification or the Maintenance Plan.

4.4.2 Consequently, Lessor shall have no obligation or liability to Lessee (whether in contract or in tort, at law or otherwise) for any loss or damage to the Equipment, any liability of Lessee to any third party, or any other direct, indirect, incidental or consequential losses or damages resulting from any excluded warranty or excluded representation referred to in this Clause 4.4.

4.4.3 Consequently, Lessee hereby waives, as between Lessee and Lessor, all rights in respect of any warranty or representation, express or implied, on the part of Lessor and all claims against Lessor, howsoever and whenever arising, in respect of or out of any excluded warranty or excluded representation referred to in this Clause 4.4.

4.5 **[Not Used]**

4.6 **Permitted Delays**

4.6.1 Insofar as the Manufacturer would otherwise have been liable to pay liquidated damages under clause 22.1 of the MSA in relation to any Unit, but the Project Manager grants the Manufacturer an extension of time to any Expected Delivery Date to any item of Purchased Equipment, to any date in the Contract Programme or to any other date by which the Manufacturer is required to perform its obligations or to any other Milestone in accordance with clause 11.12 of the MSA as a result of a Permitted Delay under paragraphs (a)(i), (c), (d) or (e) of the definition of Permitted Delay, (each being a "**Lessee Permitted Delay**"), then the Lessee shall, to the extent that the Manufacturer would otherwise have been liable to pay liquidated damages to Lessor under clause 22.1 of the MSA in relation to any Unit and is not obliged to as a result of such Lessee Permitted Delay, pay to the Lessor liquidated damages at the MSA Rate

per Unit per day or part thereof for each day of such Lessee Permitted Delay from such Expected Delivery Date, such other date in the Contract Programme, such other date by which the Manufacturer is required to perform its obligations, or such other Milestone (as applicable), until the earlier of the date upon which:

- (a) such Lessee Permitted Delay ceases to apply to that Unit; and
- (b) a Provisional Acceptance Certificate or Qualified Provisional Acceptance Certificate is issued in relation to that Unit.

4.6.2 Insofar as the Manufacturer would otherwise have been liable to pay liquidated damages under clause 22.1 of the MSA in relation to any Unit, but the Project Manager grants the Manufacturer an extension of time in accordance with clause 11.12 of the MSA as a result of a Permitted Delay under paragraph (a)(ii) of the definition of Permitted Delay (a "**Lessor Permitted Delay**"), then the Lessor shall, to the extent that the Manufacturer would otherwise have been liable to pay liquidated damages to Lessee under clause 22.1 of the MSA in relation to any Unit and is not obliged to as a result of such Lessor Permitted Delay, pay to the Lessee liquidated damages at the MSA Rate per Unit per day or part thereof for each day of such Lessor Permitted Delay from such Expected Delivery Date, such other date in the Contract Programme, such other date by which the Manufacturer is required to perform its obligations, or such other Milestone (as applicable), until the earlier of the date upon which:

- (i) such Lessor Permitted Delay ceases to apply to that Unit; and
- (ii) a Provisional Acceptance Certificate or Qualified Provisional Acceptance Certificate is issued in relation to that Unit.

4.6.3 For the purposes of this Clause 4.6, "**MSA Rate**" means:

- (a) in respect of liquidated damages payable by the Lessee pursuant to Clause 4.6.1 in relation to any Unit and any day, the rate that would (but for the existence of the Lessee Permitted Delay) be payable by the Manufacturer to the Lessor in relation to the delivery of that Unit in respect of that day, pursuant to clause 22.1 of the MSA (such rates being subject to upward adjustment to reflect the proportionate cost of exercise of any of the options in Clause 17 (*Options*) or any variation under the MSA); and
- (b) in respect of liquidated damages payable by the Lessor pursuant to Clause 4.6.2 in relation to any Unit and any day, the rate that would (but for the existence of the Lessor Permitted Delay) be payable by the Manufacturer to the Lessee in relation to a delay to the delivery of that Unit in respect of that day, pursuant to clause 22.1 of the MSA.

4.6.4 The maximum liability of:

- (a) the Lessee pursuant to Clause 4.6.1 shall not exceed [REDACTED] and
- (b) the Lessor pursuant to Clause 4.6.2 shall not exceed [REDACTED]

4.6.5 Each payment arising under this Clause 4.6 (*Permitted Delays*) in respect of any day shall be invoiced promptly and shall be made within ten (10) Business Days after the end of the month in which such day occurs (or within five (5) Business Days of the date of receipt of the invoice, if later).

4.6.6 If the amount of liquidated damages paid by the Lessee pursuant to Clause 4.6.1 exceeds [REDACTED] the Lessee shall provide to the Lessor a remedial plan for the remedy of the circumstances giving rise to the existence of the Lessee Permitted Delay. The plan will set out:

- (i) the steps proposed for the purpose of remedying such circumstances; and
- (ii) the timeframe within which the Lessee proposes to implement the steps, and

upon the remedial plan being approved by the Lessor (such approval not to be unreasonably withheld or delayed), the Lessee shall implement the remedial plan in accordance with its terms.

5. PAYMENTS

5.1 Rent and Rent Dates

5.1.1 Lessee will pay Rent to Lessor (or to its order) in advance on each Rent Date.

5.1.2 The Rent will be the amounts specified in:

- (a) Part 1 (*Unit Rent applicable to 5-Car Units*) and Part 2 (*Unit Rent applicable to 10-Car Units*) of Schedule 3 (*Payments*); and
- (b) Part 3 (*Associated Equipment Rent*) of Schedule 3 (*Payments*).

5.2 Rent Periods

5.2.1 The first Rent Period for:

- (a) each Unit will commence on its Acceptance Date; and
- (b) each item of Associated Equipment will commence on its Acceptance Date,

being the "**Rent Commencement Date**" in relation to such item of Equipment.

5.2.2 Each subsequent Rent Period will commence on the first day of each subsequent calendar month. Each Rent Period will end on the day immediately preceding the commencement date for the next Rent Period, except that if a Rent Period would otherwise overrun the Expiry Date, it shall end on the Expiry Date.

5.2.3 If first and last Rent Periods for any item of the Equipment is less than a full calendar month, the Rent for such Rent Period shall be reduced *pro rata* on a

daily basis (assuming a thirty (30) day month) to take account of the actual number of days comprised in such Rent Period.

5.3 **Maintenance Rental**

On each Rent Date during the Term the Lessee shall pay to Lessor in respect of each Unit Accepted on or before that Rent Date the amount specified in Part 4 of Schedule 3, as Maintenance Rental, as such amount may be adjusted from time to time pursuant to Clauses 5.4 (*Maintenance Rental Adjustment*) to 5.5.1 (*End of lease adjustment*).

5.4 **Maintenance Rental Adjustment**

5.4.1 The Maintenance Rentals shall be recalculated by Lessor on:

- (a) 31 August 2025; and
- (b) annually thereafter on of each year (or, in each case, the next following Working Day if such day is not a Working Day) or on such other date as may otherwise be agreed between the Lessor and the Lessee from time to time),

(each such date being a "**Maintenance Rental Review Date**"). Such recalculation shall take into account the assumptions contained within the Lessor Whole Life Cost and Maintenance Reserve Model (as adjusted from time to time pursuant to Clause 5.4.2).

5.4.2 Upon (or prior to) each of the dates specified in Clause 5.4.1, Lessor may conduct a review of the Lessor Whole Life Cost and Maintenance Reserve Model to ensure Lessee continues to pay its fair share of the cost of Major Maintenance and Overhaul Work, which shall include a review of, and adjustments to, the Lessor Whole Life Cost and Maintenance Reserve Model Assumptions including the following key assumptions:

- (a) labour and materials inflation reflecting RPI indexation in the immediately preceding period, and forecast future RPI indexation for the remaining operation life of the Units;
- (b) the foreign currency conversion rates (having regard to the relevant currencies in which relevant maintenance costs will be incurred);
- (c) the interest rates reflecting average rates achieved on (the positive balances in) the Maintenance Reserves held in the Lessor's Maintenance Reserve Account;
- (d) financing rate assumptions for funding any negative Maintenance Reserve balances;
- (e) the current unit mileage at the Maintenance Rental Review Date, and the future expected annual mileage of the units or, where applicable, the specific mileage or operational hours of any major component installed on a Unit;

- (f) the quoted and actual cost of individual maintenance tasks, as set out in Schedule 18 (*Heavy Maintenance Events*), as may be updated from time to time and subject to RPI indexation;
- (g) any changes to the Manuals or the Maintenance Plan which impact the Maintenance Rentals calculation, approved by the Lessor as an engineering change; and
- (h) any other matters which have a material impact on the model.

5.5 Maintenance Reserve withdrawals

5.5.1 Lessee shall promptly undertake all scheduled Major Maintenance and Overhaul Work that falls due in the Term in accordance with the agreed Maintenance Plan and the Manuals.

5.5.2 In relation to each Major Maintenance and Overhaul Work event:

- (a) Lessee shall use reasonable endeavours to obtain from the Maintainer evidence of the specific costs incurred to complete such Major Maintenance and Overhaul Work on each Unit, including material costs, labour costs and any other associated costs;
- (b) Lessee shall confirm in writing to Lessor the completion of such Major Maintenance and Overhaul Work and shall provide to Lessor, as soon as reasonably practicable, all relevant information in Lessee's control related to the Lessee's direct costs incurred in completing such Major Maintenance and Overhaul Work; and
- (c) Lessee shall provide to Lessor a copy of a work completion statement (relating to such Major Maintenance and Overhaul Work event) within 10 days of the end of the month in which such Major Maintenance and Overhaul Work was completed, and such work completion statement shall set out:
 - (i) details of the Heavy Maintenance work completed (including the dates on which such work was completed);
 - (ii) the mileage of each Unit that was subject to such work;
 - (iii) details of any additional work completed (including any work falling outside the scope of Major Maintenance and Overhaul Work);
 - (iv) details of any concessions agreed to in connection with such work (whether with the Maintenance Contractor or otherwise) and details of any work or tasks (including parts used) deviating from the Maintenance Plan and Manuals; and
 - (v) and any other information requested by the Lessor (acting reasonably); and

- (d) within 60 days of receipt by Lessor of the information and work completion statement specified in Clause 5.5.1 with respect to such event, and subject to Clause 5.5.3, Lessor shall pay to Lessee the lower of:
 - (i) the total cost of such event as set out in Schedule 18 (*Heavy Maintenance Events*), as may be updated in accordance with Clause 5.4.2 from time to time; and
 - (ii) the actual cost of the Major Maintenance and Overhaul Work completed by the Lessee, if such information has been obtained from the Maintenance Contractor in accordance with Clause (a) to enable the actual cost to be determined.

5.5.3 Lessee shall promptly (upon the issuance of such invoice) provide to Lessor a copy of each invoice issued by the Maintenance Contractor to Lessee evidencing the cost of the Heavy Maintenance work performed by the Maintenance Contractor under the TSSSA (and as referred to in the Lessor Whole Life Cost and Maintenance Reserve Model) for each Railway Period (as referred to in the TSSSA), each such invoice being a "**Relevant Invoice**". The Lessor and Lessee shall, from time to time, calculate (and maintain a record of) the aggregate value of all Relevant Invoices, such amount (from time to time) being the "**Relevant Total Amount**". The aggregate of the amounts paid (or payable) by the Lessor in accordance with Clause 5.5.2(d) shall not exceed the Relevant Total Amount and any reasonable direct labour costs incurred by the Lessee in order to complete the Heavy Maintenance activities.]

5.6 End of lease adjustment

- 5.6.1 In relation to any Equipment, on the relevant Expiry Date, Lessor (acting reasonably) shall update the Lessor Whole Life Cost and Maintenance Reserve Model to take into account the expiry of the relevant Term (or early termination of the leasing of the relevant Equipment) and any changes to Lessor Whole Life Cost and Maintenance Reserve Model Assumptions that have arisen (since the date of this Agreement) in order to determine:
 - (a) the revised Anticipated Maintenance Reserve Balance on Expiry calculated by reference to the updated Lessor Whole Life Cost and Maintenance Reserve Model; and
 - (b) any final balancing payment or rebate of Maintenance Rentals required in order for the balance of the Maintenance Reserves on such Expiry Date to equal the revised Anticipated Maintenance Reserve Balance on Expiry.
- 5.6.2 If the Lessor determines (acting reasonably) that a balancing payment or rebate should be made, then the amount of that balancing payment (by Lessee) or rebate (by Lessor) shall be made within five (5) Business Days (or offset against other payments which are due and owing at that time).

5.7 Maintenance Rental Adjustment disputes

- 5.7.1 In the event that the Lessee disputes the Lessor's revised calculation of the Maintenance Rentals in accordance with any of Clauses 5.4 (*Maintenance Rental Adjustment*) to 5.5.1 (*End of lease adjustment*), the Lessee shall have the right to require the Lessor to appoint an independent expert, to act as experts and not as arbitrators, to verify whether the Lessor's re-calculation has been carried out correctly and in accordance with this Agreement.
- 5.7.2 The identity of such independent expert shall be agreed between the Parties, and in the absence of such agreement such expert shall be appointed, at the request of either party, by the President for the time being of the Institute of Chartered Accountants.
- 5.7.3 Each of the Lessee and the Lessor shall provide such assistance and information as the independent expert shall reasonably require in order to come to his determination.
- 5.7.4 The determination of the independent expert as to the correctness or otherwise of the calculation shall be final and binding on the parties. However, if the dispute relates to the applicable overhaul periodicities, the costs of materials or labour, or any other matters which are of a purely engineering nature, then the Lessee and the Lessor shall appoint an engineering expert (and, in default of agreement as to the identity of such expert, the expert shall be appointed, at the request of either party, by the President for the time being of the Institute of Mechanical Engineers) to act as an expert and not as an arbitrator, to determine the relevant engineering question(s). The determination of such expert in respect of the relevant engineering question(s) shall be final and binding on the parties.
- 5.7.5 The costs and expenses of the independent expert, and/or of any engineering expert, shall be borne by the parties in such shares and/or amounts as may be determined by such auditors or expert, having regard to their decision.

5.8 [NOT USED]

5.9 Payments

All payments by Lessee to Lessor under this Agreement other than payments in respect of Maintenance Rental will be made on the due date in cleared funds to Lessor's Account. Payments in respect of Maintenance Rental will be made on the due date in cleared funds to Lessor's Maintenance Reserve Account. If any payment falls due under this Agreement on a day which is not a Business Day, such payment shall be made on the immediately preceding Business Day but the amount of such payment shall not be adjusted as a consequence.

5.10 Tax indemnity for breach

The Lessee agrees to indemnify the Lessor for and against any Taxes or loss of Relief (other than VAT and Taxes imposed on the overall net income, profits or gains of the Lessor) imposed on the Lessor, in either case, because of any breach by the Lessee of

its obligations under this Agreement. The amount which is to be treated as payable under such indemnity shall be an amount which the Lessor determines (acting reasonably and in good faith) shall leave the Lessor in no better and no worse position than it would have been in if no loss of Relief had occurred or no such Taxes had been imposed (as the case may be).

5.11 Payments and Taxes

- 5.11.1 All sums payable by Lessee to Lessor pursuant to or in connection with the Lessee Documents, or any document contemplated by or entered into pursuant hereto, shall be paid in full without any set off or counterclaim whatsoever and free and clear of all deductions or withholdings whatsoever, save only as may be required by law.
- 5.11.2 If any deduction or withholding is required by law in respect of any payment due from Lessee to Lessor pursuant to or in connection with the Lessee Documents or any document contemplated by or entered into pursuant hereto, Lessee shall:
- (a) ensure or procure that the deduction or withholding is made and that it does not exceed the minimum legal requirement therefor;
 - (b) pay, or procure the payment of, the full amount deducted or withheld to the relevant Taxation or other authority in accordance with the applicable law;
 - (c) increase the payment in respect of which the deduction or withholding is required so that the net amount received and retained by Lessor after the deduction or withholding (and after taking account of any further deduction or withholding which is required to be made which arises as a consequence of the increase) shall be equal to the amount which Lessor would have been entitled to receive in the absence of any requirement to make a deduction or withholding; and
 - (d) promptly deliver or procure the delivery to Lessor of appropriate receipts evidencing the deduction or withholding which has been made.
- 5.11.3 If Lessor determines in its absolute discretion that it has received, realised, utilised and retained a Tax refund or credit by reason of any deduction or withholding in respect of which Lessee has made an increased payment under this Clause 5.11, Lessor shall, provided it has received all amounts which are then due and payable by Lessee under any of the provisions of the Lessee within one hundred and twenty (120) days of receipt of such Tax benefit documents, notify Lessee in writing of the amount of such Tax benefit and pay to Lessee (to the extent that Lessor determines it can do so without prejudicing the amount of that benefit or the right of Lessor to obtain any other benefit, relief or allowance which may be available to it) such amount, if any, as Lessor shall determine in its absolute discretion will leave Lessor after that payment in no worse and no better after tax position than Lessor would have been in if the deduction or withholding had not been required, **provided that**:

- (a) Lessor shall have an absolute discretion as to:
 - (i) the manner in which it arranges its Tax affairs; and
 - (ii) the time at which and the order and manner in which it realises or utilises any Tax benefit;
- (b) Lessor shall not be obliged to disclose any information regarding its business, Tax affairs or Tax computations;
- (c) if Lessor has made a payment to Lessee pursuant to this Clause 5.11.3 on account of any Tax benefit and it subsequently transpires that Lessor did not receive that Tax benefit, or received a lesser Tax benefit, Lessee shall pay on demand to Lessor such sum as Lessor may determine as being necessary to restore the after tax position of Lessor to that position which it would have been had no adjustment under this proviso (c) been necessary. Any sums payable by Lessee to Lessor under this proviso (c) shall be subject to the provisions of Clause 5.14 (*Deductibility*); and
- (d) Lessor shall not be obliged to make any payment under this Clause 5.11 if, by doing so, it would contravene the terms of any applicable law or any notice, direction or requirement of any governmental or regulatory authority (whether or not having the force of law).

5.12 Value Added Tax

- 5.12.1 All payments to be made by Lessor or Lessee to each other under the Lessee Documents are calculated without regard to VAT. If any such payment constitutes the whole or any part of the consideration for a taxable or deemed taxable supply (whether that supply is taxable pursuant to the exercise of an option or otherwise) whether by Lessor or Lessee, the amount of that payment shall be increased by an amount equal to the amount of VAT which is chargeable in respect of the taxable supply in question, on provision of a valid VAT invoice.
- 5.12.2 If Lessor makes any supply for VAT purposes pursuant to or in connection with the Lessee Documents or any transaction or document contemplated herein or therein otherwise than to Lessee, Lessee shall pay on demand to Lessor an amount equal to any VAT which is payable in respect of that supply and which Lessor has taken reasonable steps appropriate to the circumstances to, but has been unable to, recover from the recipient of the supply.

5.13 Grossing-up of Indemnity Payments

If Lessor makes a payment or suffers a loss in respect of which it is entitled to be indemnified, compensated, reimbursed or otherwise kept harmless pursuant to any provision of this Agreement, and Lessor determines in its absolute discretion (and applying the same provisos as set out in Clauses 5.11.3(a) to 5.11.3(d) inclusive) that:

5.13.1

- (a) the loss or payment is not or will not be wholly deductible in computing the profits of Lessor for the purposes of Tax, whilst the payment to be made by way of indemnity or reimbursement (for the purpose of this Clause 5.13.1, the "**Payment**") will give rise to a liability to Tax or a loss of Relief for Lessor; or
- (b) the Payment or any part of it has given or will give rise to a liability to Tax for Lessor in any accounting period of Lessor earlier than the accounting period in which the corresponding loss or payment (or the corresponding part of the loss or payment) is deductible,

then, at the time of the Payment, Lessee shall pay such an amount (for the purposes of this Clause 5.13.1, the "**Additional Payment**") as will, after taking into account any liability to Tax or loss of Relief which has been or will be suffered or incurred by Lessor in respect of the Payment or the Additional Payment, leave Lessor in the same after Tax position as it would have been in had the Payment not given rise to any such liability to Tax or loss of Relief and the loss or payment had not been so deductible, **provided that** if at the time of the Payment Lessor considers that no Additional Payment is necessary but Lessor subsequently determines in its absolute discretion that an Additional Payment is necessary so as to indemnify Lessor, the Additional Payment shall be paid promptly by Lessee to Lessor following a demand by Lessor; or

- 5.13.2 the loss or payment has proved to be deductible (in whole or in part) in computing the profits of Lessor for the purposes of Tax whilst the Payment by Lessee has proved not to give rise to any liability to Tax or loss of Relief for Lessor, to a corresponding extent or has given rise to a liability to Tax or loss of Relief in respect of a later accounting period, then Lessor shall (provided Lessor has received all amounts which are then due and payable by Lessee under any of the provisions of the Lessee Documents) pay to Lessee a rebate of Rent (for the purposes of this Clause 5.13, the "**Rebate**") of such amount as will leave Lessor in the same after-Tax position (taking account of the time value of money) as it would have been in if the Payment had not given rise to a liability to Tax or loss of Relief for Lessor and the loss or payment had not been so deductible,

provided that if Lessor subsequently determines in its absolute discretion that any payment by Lessee to Lessor under this Clause 5.13 by way of an Additional Payment or, as the case may be, any payment by Lessor to Lessee by way of a Rebate was calculated on an incorrect basis, such adjustment shall be made between Lessor and Lessee as Lessor determines necessary in its absolute discretion to restore the after Tax position of Lessor to that which it would have been if no such adjustment had been necessary.

5.14 **Deductibility**

Notwithstanding anything contained in this Agreement, if Lessor determines that any payment which it is required to make to Lessee under this Agreement (excluding any repayment by Lessor of an amount overpaid by Lessee), by way of rebate of rental or otherwise, will not or may not be fully deductible in computing Lessor's liability to Corporation Tax for the accounting period of Lessor in which the payment is made, Lessor shall be entitled to withhold and retain from that payment such amount as Lessor

determines to be necessary to enable it to occupy the same after Tax position as it would occupy if the payment were fully deductible as aforesaid, **provided that**:

5.14.1 if:

- (a) any such payment is made without withholding and Lessor subsequently determines in its absolute discretion that the payment will not or may not be fully deductible as aforesaid; or
- (b) any such payment is made subject to withholding and Lessor subsequently determines in its absolute discretion that no such withholding ought to have been made or the basis on which the withholding was calculated was incorrect,

such adjustment shall be made between Lessor and Lessee as Lessor determines necessary in its absolute discretion to restore the after Tax position of Lessor to that which it would have been if no such adjustment had been necessary. Any sum payable by Lessee to Lessor under this proviso shall be subject to the provisions of Clause 5.13 (*Grossing up of Indemnity Payments*); and

5.14.2

- (a) if, otherwise than as a result of any action or inaction effected or required under any provision of this Agreement or as the result of anything requested or caused by Lessee, Lessor does not carry on a trade, the deductibility of any payment by way of rebate of Rent or otherwise shall, for the purpose of this Clause 5.14, be determined as if Lessor did so trade; and
- (b) Lessor undertakes that unless Lessor's auditors advise otherwise, and unless an Event of Default has occurred, Lessor will prepare its accounts, tax computations and returns in so far as they relate to any rebate of Rent on a basis consistent with that rebate being fully deductible.

5.15 Documentary and Other Taxes

All stamp, documentary, registration or other like duties or Taxes, including any penalties, additions, fines, surcharges or interest relating thereto, which are imposed or chargeable on or in connection with this Agreement shall be paid by Lessee, and Lessee shall indemnify Lessor against any loss which Lessor may suffer or incur as a result of any delay in paying or failure to pay any such Taxes (other than where the delay would not have arisen but for any failure or delay by Lessor in filing any relevant tax return, tax computation or other statement or document which Lessor was obliged to file by any applicable law in a manner required by such law), **provided that** Lessor shall be entitled but not obliged to pay any such duties or Taxes (whether or not they are its primary responsibility) in any case where Lessor determines that a delay in so paying (including a failure so to pay) would prejudice Lessor's interests, whereupon Lessee shall on demand indemnify Lessor against those duties or Taxes.

5.16 **Default Interest**

If either party fails to pay any amount payable under this Agreement on the date when it is due, interest will accrue (both before and after judgment) on such unpaid amount from day to day (compounding monthly) during the period commencing on the due date and ending on the date of payment in full, at the Default Rate. All such interest will be calculated on the basis of the actual number of days elapsed and a three hundred and sixty five (365) day year and will be payable on demand of the non defaulting party.

5.17 **Lessee's Payment Obligations Absolute**

Lessee's obligations to make any payments under this Agreement are absolute and unconditional and, save as otherwise expressly provided in this Agreement, no amount payable by Lessee hereunder shall cease to be payable or shall be suspended or reduced by reason of any cause, event or circumstance whatsoever, including (but not limited to):

- 5.17.1 any right of set-off, counterclaim, netting, recoupment, defence or other right which either party to this Agreement may have against the other; or
- 5.17.2 any unavailability of any of the Equipment for any reason including, but not limited to, a requisition of such Equipment or any prohibition on or interruption of or interference with Lessee's use or possession of such Equipment (but without prejudice to the provisions of Clause 5.2.1 regarding the commencement of the first Rent Period); or
- 5.17.3 the fact that any of the Equipment has been lost or damaged; or
- 5.17.4 any lack of, or defect in title to the Equipment; or
- 5.17.5 any defect in the conformity to Industry Standards, quality, fitness for any purpose, condition, design, performance or operation of the Equipment; or
- 5.17.6 any insolvency, bankruptcy, reorganisation, arrangement, adjustment of debt, dissolution, liquidation, protection from creditors, railway administration, administration or similar proceedings by or against Lessor or Lessee or any other person; or
- 5.17.7 any invalidity or unenforceability or lack of due authorisation of, or other defect in, this Agreement; or
- 5.17.8 any other cause which (but for this Clause 5.17) would or might otherwise have the effect of terminating or in any way affecting any obligation of Lessee under this Agreement.

Nothing in this clause 5.17 shall be construed so as to limit Lessee's right to institute separate legal proceedings (including proceedings for specific performance or injunction relief) against Lessor in the event of Lessor's breach of its obligations or the incorrectness of any representation or warranty given by Lessor under this Agreement, or to limit Lessee's rights and remedies against any other person.

5.18 **Duration**

The indemnities set out in this Clause 5 will continue in full force after the Expiry Date in respect of events occurring during the Term, notwithstanding any breach or repudiation by Lessor or Lessee of this Agreement or any termination of this Agreement or the leasing of the Equipment hereunder.

6. **WARRANTY REGIME**

6.1 **Manufacturer's Warranties**

6.1.1 Lessee shall and shall be entitled to enforce during the Term, on Lessor's behalf, any unexpired Manufacturer warranties under the MSA and/or the TSSSA relating to the Equipment of which Lessee may have the benefit, subject to and in accordance with this Clause 6.

6.1.2 For the purposes of interpretation of this Clause 6 (*Warranty Regime*), reference to warranties given by and warranty rights against the Manufacturer, shall be deemed to include, without limitation any rights the Lessor has to require the Manufacturer to remedy Endemic Defects or Epidemic Defects (each as defined in the MSA) under clause 24.6 (*Epidemic and Endemic Defects*) of the MSA.

6.2 **Exercise of Warranty Rights**

In determining whether to exercise any such warranty rights against the Manufacturer which it may be entitled to enforce Lessee shall, in addition to considering its own interests, have regard to the interests of Lessor and to the protection of the long term value of the Equipment, provided that the Lessee shall be entitled to take into account the potential impact of the timing of the carrying out of any warranty work on the commercial operations of the Lessee (with particular regard to any impact on the commercial interests of Lessee as an operator of passenger services) in respect of the procedure for enforcing any such Warranty and / or agreeing a programme of works for the Manufacturer to rectify the consequences of any breach giving rise to a right to enforce such warranty rights to the extent these may subsist in relation to items of Equipment which have been Accepted.

6.3 **Reports to Lessor**

6.3.1 Lessee shall:

- (a) inform Lessor promptly of any material Fault of which Lessee's maintenance team are reasonably aware; and
- (b) promptly after the same is issued, provide to the Lessor a copy of the Performance Report produced for the purposes of the TSSSA.

6.3.2 Lessee shall keep Lessor regularly informed of the number of warranty claims brought by Lessee against the Manufacturer in relation to any Faults during each three month period (commencing at the Acceptance Date in relation to the first Unit), providing in tabular format details of the number of claims and the subject-matter of the claim.

- 6.3.3 Lessee shall notify Lessor of any warranty claim which Lessee proposes to bring against the Manufacturer and shall not waive any of its rights in relation to such warranty claims, or enter into any agreement with the Manufacturer to settle or compromise any such claim, without Lessor's prior written consent (not unreasonably to be withheld).
- 6.3.4 Lessee shall promptly notify Lessor upon Lessee becoming actively aware that the Manufacturer is not fulfilling its warranty obligations or any part thereof.
- 6.3.5 Lessee shall promptly provide Lessor with such further information in relation to the exercise of warranty rights against the Manufacturer as Lessor may from time to time reasonably request.

6.4 **Costs**

Subject to clause 6.7, Lessee shall perform all its obligations under this Clause 6 at its own cost and expense, and shall not be entitled to claim reimbursement from Lessor for any amounts it has paid or liabilities it has incurred in connection with such obligations.

6.5 **Effect of Maintenance Services on Warranties**

In performing the Maintenance Services, Lessee shall not do or permit or omit to be done and shall procure that no Sub-Contractor shall permit or omit to be done any act which it is aware (or ought reasonably to be aware) will prejudice or invalidate any warranties given by original manufacturers or equipment maintainers, overhaulers or repairers (including the Manufacturer), and shall act in relation to such warranties on the same basis as specified in Clauses 6.3 (*Exercise of Warranty Rights*) to 6.4 (*Costs*) (with references to the Manufacturer being deemed to be references to the relevant manufacturer or maintainer, overhauler or repairer and relevant supply, maintenance, overhaul or repair contract, as applicable).

6.6 **Lessee's and Sub-Contractor Warranties**

- 6.6.1 Lessee warrants in favour of the Lessor that any goods or any Parts, Owner Owned Spares or materials produced, overhauled or repaired by Lessee in carrying out the Maintenance Services are fit for the purpose for which they were intended during the Lessee's Warranty Period.
- 6.6.2 If the Lessee enters into any arrangement with a Sub-Contractor in respect of the performance of any of the Maintenance Services the Lessee shall procure that any such Sub-Contractor warrants in favour of the Lessor that any goods or any Parts, Owner Owned Spares or materials produced, overhauled or repaired by such Sub-Contractor in carrying out the Maintenance Services are fit for the purpose for which they were intended during the Sub-Contractor Warranty Period.
- 6.6.3 Lessee shall further procure that any Sub-Contractor referred to in Clause 6.6.2 above shall:
 - (a) at all times comply with all Applicable Laws and Standards; and

- (b) ensure that the Maintenance Information, is complete and fully updated in all respects.

6.6.4 Upon termination or expiry of this Agreement, Lessee will if Lessor so requires, assign to Lessor (or its nominee, which may include Lessee) the benefit of any unexpired supplier's or manufacturer's warranties relating to any Part title to which has passed to Lessor as contemplated by paragraph 6 (*Parts*) of Schedule 7 (*Operational Undertakings*), to the extent that the benefit of such warranties can be so assigned **provided that** if a claim has arisen on any such warranty which Lessee is pursuing at the time when such warranty is so assigned (and the underlying defect has been fully rectified) Lessee shall be entitled to continue to pursue such a claim to the exclusion of Lessor.

6.6.5 Lessee undertakes to Lessor to use reasonable endeavours to ensure that all contracts entered into from time to time by Lessee in relation to carrying out any of the Maintenance Services or the supply of any Part permit the assignment of the benefit of all warranties to Lessor upon termination or expiry of this Agreement.

6.7 Warranty Proceeds

6.7.1 All proceeds of any claim under any Manufacturer warranty to which this Clause 6 applies shall, unless otherwise agreed in writing, be paid directly to Lessor and Lessor shall apply such proceeds in remedying the cause of such claim, **provided that**, if such payment relates to:

- (a) a claim in relation to a defect affecting the Equipment which Lessee has (at Lessee's own cost) rectified to the reasonable satisfaction of Lessor;
- (b) compensation, or as applicable, the pro rata portion of any compensation, which is payable for loss of use or shortfall in performance of such Equipment exclusively during the Term, or as applicable, the remainder of the Term, or the cost of arranging for the use of alternative equipment arising from such loss of use or shortfall in performance exclusively during the Term, or as applicable, the remainder of the Term (with the Lessor being entitled to any compensation, or as applicable, the pro rata portion of any compensation of the nature described above which is not referable to the Term); and/or
- (c) any Losses incurred by Lessee (including any Losses of Lessee incurred in pursuing such claim),

then Lessor shall pay such amount received to Lessee as soon as reasonably practicable following receipt by Lessor of a receipt in respect of the same, provided that, if at such time for payment an Event of Default has occurred and is continuing, Lessor shall have no obligation to make such payment until such Event of Default is no longer continuing.

7. QUIET ENJOYMENT

7.1 Lessor's Covenant

Provided that no Event of Default has occurred and is continuing, Lessor shall ensure the quiet use, possession and enjoyment by Lessee of the Equipment and shall not (and shall procure that all employees and contractors and all Financiers shall not) otherwise interfere with such quiet use, possession and enjoyment by Lessee of the Equipment.

7.2 QEL

The Lessor will obtain a QEL from:

- 7.2.1 without prejudice to clause 16.3, any assignee or transferee of any of its rights (other than rights solely to receive payments) and/or obligations under this Agreement, as a condition precedent to any assignment or transfer to such assignee or transferee and it shall be a condition of any such assignment or transfer and any subsequent assignment or transfer that any assignee or transferee shall be obliged to procure the same QEL, mutatis mutandis, from its assignees or transferees of any of its obligations;
- 7.2.2 any Financier (other than to the extent that such Financier is granted security solely over rights of payment under this Agreement), as a condition precedent to such entity becoming a Financier (provided that where there is a Financier falling within limb (b) of the definition of "Financier" acting as security agent or trustee for the other Financiers, it shall only be necessary to obtain a QEL from that Financier); and
- 7.2.3 any other person required to give a covenant for quiet enjoyment pursuant to the Direct Agreement.

7.3 Lessor Liens

Lessor will remove at its own cost all Lessor Liens (other than Financier Liens) existing in relation to any Item of Equipment and will deliver each Item of Equipment to Lessee free and clear of such Lessor Liens (other than Financier Liens). If and to the extent that any Lessor Lien becomes enforceable (other than as a result of an act or omission by Lessee) in respect of an Item of Equipment during its Term (including, for the avoidance of doubt, any Financier Liens), Lessor will ensure that such Lessor Lien is discharged in full as soon as practicable.

7.4 Lessor's Audit and Inspection Rights

The proper exercise by or on behalf of Lessor of its audit or inspection rights under and in accordance with Clauses 13.2 (*Final Inspections*) or 13.7 (*Preliminary Final Inspections*) or paragraph 3 (*Registration*) of Schedule 7 (*Operational Undertakings*) will not constitute a breach of Clause 7.1 (*Lessor's Covenant*).

7.5 Assignees

To the extent (in the case of a Financier or other assignee or transferee) that such person has not provided a QEL pursuant to Clause 7.2 (QEL), Lessor shall procure that any

Financier or New Lessor or other assignee or transferee of Lessor's rights and/or obligations under this Agreement shall:

- 7.5.1 execute in favour of Lessee a direct undertaking as to quiet enjoyment substantially in the form of Clause 7.1 (*Lessor's Covenant*); and
- 7.5.2 undertake that upon enforcement of Lessor's rights and/or obligations pursuant to any security assignment held by that party in respect of this Agreement, such party will, unless Lessee has the right to and has terminated the leasing of the Units under the Lease and provided no Event of Default has occurred, be bound by, and will comply with, all of the obligations of the Lessor under this Agreement.

8. UNDERTAKINGS

8.1 Information: General

Lessee will (at its own cost):

- 8.1.1 give notice to Lessor immediately upon the occurrence of any Event of Default or any other event which the Lessee considers is reasonably likely adversely to affect Lessee's ability to perform any of its obligations under this Agreement in any material respect;
- 8.1.2 deliver to Lessor:
 - (a) in relation to Lessee on the earliest of:
 - (i) as soon as practicable after becoming available;
 - (ii) not later than fourteen (14) days after filing with the Registrar of Companies; and
 - (iii) not later than two hundred and seventy (270) days after the last day of each Financial Year of Lessee,

its audited balance sheet as of the last day of its Financial Year and its audited profit and loss statement for the year ending on such day; and
 - (b) at the same time as it is issued to the creditors of Lessee, a copy of each notice or circular and any other information issued to Lessee's creditors as a group;
- 8.1.3 provide to Lessor such other information in Lessee's possession regarding Lessee and its business and affairs as Lessor may from time to time reasonably request in order for Lessor to carry out any credit and/or risk analysis. For the avoidance of doubt, Lessee shall have no obligation to disclose information which Lessee reasonably considers to be of a confidential or sensitive nature;
- 8.1.4 provide to Lessor such data in relation to maintenance of the Units as Lessor may reasonably request for the purposes of Clause 5.4 (*Maintenance Rental Adjustment*) and, where Lessor reasonably requires to check the accuracy or

integrity of any such data, provide Lessor with access to such books and records of Lessee as may be reasonably necessary to audit such data;

- 8.1.5 deliver to Lessor, within five (5) Business Days after the date on which any extension to the Rail Services Contract is executed by the Secretary of State and notified to Lessee, an update statement from either Lessee or the Secretary of State to Lessor and (as soon as Lessee is aware or receives notice of the same) provide Lessor with written notice of the terms of any extension applicable and/or effective with respect to the Scheduled Expiry Date (provided in each case that where any applicable terms of confidentiality prevent Lessee from so doing, such obligations shall be suspended until Lessee may provide such update statement or notice without breaching such terms);
- 8.1.6 without prejudice to any other provision hereof, promptly deliver to Lessor all information in Lessee's possession or control which Lessor from time to time requests regarding the Equipment, for the purpose of replying to enquiries made of Lessor by any Taxation authority and promptly deliver to any such Taxation authority any such information (to the extent it is in Lessee's possession or control) which such Taxation authority may from time to time request from Lessee in each case subject to any restrictions of confidentiality to which Lessee is subject;
- 8.1.7 promptly deliver to Lessor full details of:
 - (a) any changes or proposed changes to the routes on which the Vehicles are permitted to operate; and
 - (b) any operational restrictions or limitations imposed on the operation of the Vehicles on any route or any relaxation of any such restrictions or limitations, in each case including upon Lessee entering into a new Track Access Contract or revision or extension agreement (in each case excluding temporary restrictions not imposed as a result of matters affecting the Units themselves); and
- 8.1.8 promptly deliver to Lessor all performance and reliability data in relation to the Units as the Lessor may reasonably request from time to time.

8.2 **Operational Undertakings**

Lessee and Lessor each undertakes to comply with its respective obligations set out in Schedule 7 (*Operational Undertakings*) throughout the Term.

8.3 **Maintenance Undertakings**

- 8.3.1 Lessee and Lessor each undertake to comply with its respective obligations set out in Schedule 8 (*Maintenance*).
- 8.3.2 Lessee undertakes that it will at all times:
 - (a) fully and punctually pay and perform its obligations under the TSSSA;

- (b) exercise (to such extent as is reasonable in the circumstances) its rights and enforce, and monitor performance of, the obligations of the Maintenance Contractor under the TSSSA in a manner consistent with Lessor's rights and interests in each item of Equipment, including with a view to ensuring that the Maintenance Contractor maintains and repairs each item of Equipment in accordance with the TSSSA; and Lessee will pay such amounts and afford such access to each item of Equipment to the Maintenance Contractor as it is required to do under the TSSSA for such purpose;
 - (c) notify all proposed amendments, variations or waivers in respect of the TSSSA, and to the extent that the Lessor (acting reasonably) notifies the Lessee (following such notification) that it considers any such amendment, variation or waiver in respect of the TSSSA to be material, not without the prior written consent of Lessor (not to be unreasonably withheld or delayed) to agree to such material amendment, variation or waiver in respect of the TSSSA;
 - (d) promptly notify Lessor upon becoming aware of any breach or non-performance of any material obligation under the TSSSA by the Maintenance Contractor to the extent such breach may reasonably be considered likely, if not promptly remedied, to affect the long term value of the Equipment and thereafter consult with Lessor regarding the action taken or to be taken by Lessee to require remedy of such breach or non-performance, and have due regard to Lessor's representations regarding such breach or non-performance (and in particular, relating to any matters concerning safety of the Units), and if requested by Lessor, Lessee shall promptly enforce any rights it may have under the Contract Documents in relation to such breach or non-performance **provided always that** if no Event of Default has occurred and is continuing any such enforcement by Lessee shall have full regard to Lessee's operation of the Units in the ordinary course of its business and any reasonable extra costs or expenses incurred by Lessee in connection with any such enforcement shall be reimbursed by Lessor to Lessee on demand. Nothing in this clause shall require Lessee to exercise any right to terminate the TSSSA; and
 - (e) maintain and repair (or procures that any relevant service provider maintains and repairs) the Driving Cab Simulators in accordance with the Simulator Delivery Documents (as defined in the Variation Order 023).
- 8.3.3 If the TSSSA is terminated by either party during the Term, Lessee shall not appoint or enter into an agreement with any other person to maintain and repair the Units without the prior written consent of Lessor (not to be unreasonably withheld or delayed) as to the identity of such person and the substance of such agreement.

8.4 Lessor Audit Rights

Lessor (and each of its nominees) shall (to the extent the same may reasonably be considered likely, if performed defectively, to affect the long term value and re-marketability of the Equipment) be entitled to audit the Maintenance Contractor's performance of its obligations under the TSSSA and Lessee agrees upon reasonable notice to take such steps as may be reasonably requested by Lessor, including granting Lessor rights to inspect each item of Equipment in order to facilitate such audit, **provided that:**

- 8.4.1 such audit shall not interfere with Lessee's operation of the Units in the ordinary course of its business or the Maintenance Contractor's performance of its obligations under the TSSSA; and
- 8.4.2 such audit shall be at no cost to Lessee unless a connected Event of Default has occurred and is continuing or there is a continuing material breach by Lessee of its obligations under Clause 8.3.2 (in which case Lessee shall reimburse Lessor for its reasonable costs and expenses properly incurred relating to such audit and each subsequent audit until Lessor has confirmed such Event of Default or breach has been remedied).

8.5 Infrastructure Work

If during the Term Lessee amends the Relevant Network with Lessor's prior approval, Lessee acknowledges and agrees that Lessor shall not bear the cost of any Network Rail infrastructure work required to be carried out, (nor the costs of any consents or approvals required in relation to the Equipment) in connection with such change of use (including any such work required in order for Lessee to continue to hold an approved Safety Management System in order to operate the Units fully laden on additional routes at maximum speed in revenue earning passenger service).

9. INSURANCE

- 9.1 Each of Lessor and Lessee undertakes to comply with its obligations set out in Schedule 9 (*Insurance Requirements*). Lessee undertakes to comply with its obligations in paragraph 1.2 (*Third Party Liability Insurance*) of Schedule 9 (*Insurance Requirements*) in relation to third party liability insurance for its train drivers.
- 9.2 Lessee shall obtain the approval of Lessor prior to granting its approval to the Maintenance Contractor in respect of any "loss payee" clause in the insurances to be taken out and maintained in accordance with Schedule 9 (*Insurance Requirements*) of the TSSSA.
- 9.3 Lessee shall procure that any insurance certificate (and/or cover notice, and/or other equivalent evidence of the placing or renewal of insurances and identification of the insurers at risk) and/or broker's letter of undertaking relating to the insurances to be maintained and/or procured at any time by:
 - 9.3.1 the Maintenance Contractor pursuant to Schedule 9 (*Insurance Requirements*) of the TSSSA; and/or
 - 9.3.2 Lessee hereunder,

is in form and substance reasonably satisfactory to Lessor. Lessee will ensure that Lessor is fully involved in the agreeing of and/or commenting upon of any such documents.

10. INDEMNITY

10.1 General Indemnity

Lessee shall defend, indemnify on demand and hold harmless each of the Indemnitees on demand from and against any and all Losses (regardless of when the same are made or incurred and including any liability for death or personal injury, loss of or damage to property and/or third party actions, claims or demands) which may arise:

- 10.1.1 directly or indirectly as a result of or in connection with the possession, delivery, performance, transportation, installation, removal, sub leasing, wet leasing, storage, management, ownership, registration, control, maintenance, repair, modification, condition, leasing, use, operation or redelivery of the Equipment;
- 10.1.2 out of the breach or non-performance by Lessee of any Contract Document (including without limitation any act or omission which invalidates or which renders voidable any of the Insurances);
- 10.1.3 as a result of an Event of Default (except to the extent that such Losses are compensated by the payment of a Termination Sum); or
- 10.1.4 in connection with an Event of Loss or other insurable event relating to any of the Equipment or any Part (but without double-counting in respect of any amount payable pursuant to Clause 11 (*Loss, Damage and Requisition*) in respect of such Event of Loss).

10.2 Duration

The indemnities set out in Clause 10.1 (*General Indemnity*) will (in respect of any act, omission or event occurring during the Term) continue in full force after the relevant Expiry Date, notwithstanding any breach or any termination of this Agreement or the leasing of Equipment hereunder.

10.3 Information

If any Indemnitee has suffered or will suffer any Loss for which it is indemnified pursuant to Clause 10.1 (*General Indemnity*), such Indemnitee will notify Lessor as soon as reasonably practicable after it becomes aware of the same and Lessor will promptly thereafter notify Lessee.

10.4 Subsequent Rebate to Lessee

If Lessor reasonably determines that the aggregate amounts received by it in respect of a particular Loss from Lessee pursuant to Clause 10.1 (*General Indemnity*) and from one or more third parties exceed the amount of such Loss actually suffered or incurred by Lessor, Lessor shall pay to Lessee by way of rebate such amount, if any, as Lessor shall reasonably determine will leave Lessor in no better or no worse position than Lessor would have been in if such Loss had not been suffered or incurred.

10.5 Exclusions

The indemnities contained in Clause 10.1 in favour of an Indemnitee shall not extend to, and the Lessee shall not be responsible or be obliged to indemnify that Indemnitee in relation to:

- 10.5.1 any Losses which are the subject of another indemnity or other payment provision of this Agreement or the MSA in favour of such Indemnitee (or would be the subject of such indemnity or other payment provision, but for the application of any relevant limitation or exclusion applicable to such indemnity or other payment provision);
- 10.5.2 any Losses in respect of which the Indemnitee has actually been compensated pursuant to any other provision of this Agreement and/or by the proceeds of any Insurance;
- 10.5.3 any Losses to the extent arising as a result of any act or omission, misconduct, recklessness, negligence or breach of contract of the Lessor or the Manufacturer (or any of their respective employees, servants, agents, sub-contractors, directors or officers);
- 10.5.4 any Losses resulting from a breach by the Lessor of the MSA, or this Agreement;
- 10.5.5 any Losses arising as a result of, or the costs of remedying, any Fault attributable for any reason to the Manufacturer or its employees, sub-contractors or suppliers or the employees of any of them;
- 10.5.6 any Losses which arise by reference to:
 - (a) any date or period falling prior:
 - (i) in relation to particular Vehicle or item of Associated Equipment, its Acceptance Date; or
 - (ii) other than in relation to a particular Vehicle or item of Associated Equipment, the first Expiry Date to occur,

and is not attributable to any event or circumstance occurring after that date; and
 - (b) any date or period falling after:
 - (i) in relation to a particular Vehicle or item of Associated Equipment, its Expiry Date; or
 - (ii) other than in relation to a particular Vehicle or item of Associated Equipment, the last Expiry Date to occur,

and is not attributable to any event or circumstance occurring prior to that date;

- 10.5.7 any Losses which arise as a result of the Units or the Associated Equipment being in the possession of the Lessor, and risk having passed to the Lessor in relation to such Unit or Associated Equipment, in each case in accordance with Clause 4.3.3;
- 10.5.8 any Losses in respect of any amount payable to any Financier (but without prejudice to Lessor's rights in relation to the payment of a Termination Sum under clause 15 (Events of Default));
- 10.5.9 any Losses representing a liability to Tax or loss of any relief;
- 10.5.10 any Losses arising as a result of the loss of any income, profit or gain (but without prejudice to Lessor's rights in relation to the payment of a Termination Sum under Clause 15 (*Events of Default*));
- 10.5.11 any Losses which arises as a result of the enforcement by Lessee of its rights under this Agreement;
- 10.5.12 any Losses which arise as a result of any Lessor Lien;
- 10.5.13 any Losses which represent a cost, or expense, payment or liability that the Lessor has expressly agreed to pay or bear under any Contract Document; and
- 10.5.14 any Losses relating to the depreciation of the Units in the financial accounts of the Lessor, a reduction in the residual value of the Units or any increase in the costs of ownership or operation of any Vehicle on or after the Expiry Date where such depreciation, reduction in residual value or increase in costs (or changes in the rate of depreciation, reduction in residual value or costs) are not the direct result of any breach by the Lessee of its obligations under this Agreement during the Term.

10.6 Conduct of Claims

Lessee shall be entitled to the conduct of any claim in relation to a Loss for which it is required to indemnify an Indemnatee pursuant to Clause 10.1 (*General Indemnity*), subject to Lessee:

- 10.6.1 being required to regularly consult with the relevant Indemnatee in relation to the conduct of such claim; and
- 10.6.2 the Lessee not admitting any liability or settling the relevant claim without the relevant Indemnatee's express prior written consent.

10.7 Mitigation

- 10.7.1 Without limiting the obligations of the Lessee under this Clause 10 each Indemnatee shall:
 - (a) take all reasonable steps as may be open to it to mitigate the amount of any such claim against the Lessee under or pursuant to Clause 10.1 (*General Indemnity*); and

- (b) undertake, at the cost of the Lessee, all reasonable action to recover and/or enforce any other rights of recovery available against any third party in respect of such Losses as paid by the Lessee.

10.7.2 In the event that the Lessee shall have paid an amount to an Indemnatee pursuant to this Clause 10 and such Indemnatee is reimbursed from any third party any sum in respect of the matter giving rise to the relevant claim against the Lessee, such Indemnatee shall promptly pay to the Lessee the amount of such reimbursement so received (plus interest, if any, received from the relevant third party that is attributable thereto), less costs, if any, of recovery of such amounts and any Tax payable by the Indemnatee in respect of such reimbursed sum, **provided that** the amount paid to the Lessee shall in no event exceed the original amount paid by the Lessee to such Indemnatee.

11. LOSS, DAMAGE AND REQUISITION

11.1 Pre-delivery Event of Loss

In relation to a Unit that is an Undelivered Unit, if an Event of Loss with respect to such item of Equipment occurs prior to its Acceptance Date, subject to Clause 11.2.3, this Agreement (insofar as it relates to such Equipment) will immediately terminate and except as expressly stated herein neither party will have any further obligation or liability under this Agreement in relation to such Equipment.

11.2 Post delivery Event of Loss

11.2.1 Without prejudice to Lessor's obligations under paragraph 7.1 of Schedule 9 (*Insurance Requirements*), if an Event of Loss occurs with respect to any Item (after the relevant Acceptance Date), Lessee will pay the Agreed Value for such Item to Lessor on or prior to the earlier of:

- (a) one hundred and twenty (120) days after the Event of Loss; and
- (b) the date of receipt of the property insurance proceeds in respect of that Event of Loss.

Lessee shall continue to pay the Rent for such Item until payment in full of the Agreed Value.

11.2.2 For the purposes of this Clause 11.2, "**Item**" shall mean a Unit where Lessee's insurers determine that an Event of Loss with respect to any Vehicle comprised in such Unit constitutes an Event of Loss.

11.2.3 Upon irrevocable payment in full to Lessor (or satisfaction in accordance with paragraph 7 (*Application of Insurance Proceeds*) of Schedule 9 (*Insurance Requirements*)) of the Agreed Value for an Item and all other amounts which may have become payable to Lessor under this Agreement in relation to such Item, the leasing of such Item under this Agreement will immediately terminate and neither party shall have any further obligation or liability under this Agreement in respect of such Item (save for Lessee's continuing obligations under Clauses 5.10 (*Tax indemnity for breach*), 10 (*Indemnity*) and 15.2.5 (*Rights*)).

- 11.2.4 Upon such termination, **provided that** no Event of Default has occurred and is continuing and subject to the rights of any insurers, reinsurers or other third parties, Lessee may require Lessor to transfer to it, without any further consideration, all of Lessor's rights, title and interest to such Item. If upon payment in full of the aforementioned amounts an Event of Default has occurred and is continuing, Lessor may nevertheless elect to transfer to Lessee all of Lessor's rights, title and interest to such Item, but subject to the rights of any insurers, reinsurers or other third parties. Any such transfer by Lessor to Lessee shall be without recourse or warranty (except that there are no Lessor Liens and Lessor has good title) and on an "as-is, where-is" basis and Lessor will, at Lessee's expense, execute and deliver such bills of sale and other documents and instruments as Lessee may reasonably request to evidence the transfer and the vesting of Lessor's rights, title and interest thereto in Lessee, free and clear of all rights of Lessor and Lessor Liens. However, Lessor shall not be required to execute and deliver any such document if stamp duty or any other documentary tax would be payable in respect thereof, unless Lessor receives an adequate indemnity for its liability in respect of such stamp duty or other documentary tax.
- 11.2.5 Lessor will consider in good faith any request by Lessee to replace any Unit (in which a Vehicle that has suffered an Event of Loss is comprised) with an operationally comparable item of rolling stock, manufactured by the Manufacturer and of the same Aventura type as the Units supplied under the MSA, on the basis that (if Lessor agrees in writing to such request) Lessor will hold the relevant property damage insurance proceeds on trust for Lessee to enable Lessee to acquire such replacement for Lessor and vest title in Lessor, in order that such replacement Unit can be leased to Lessee hereunder for the remainder of the relevant Term.
- 11.2.6 If an Event of Loss occurs with respect to an item of Associated Equipment other than in respect of the Driving Cab Simulators (in relation to which Clause 11.2.7 shall apply) (the "**destroyed item**") after the relevant Acceptance Date, Lessee shall promptly notify Lessor and, at Lessee's cost, promptly procure a replacement item from either the original equipment manufacturer (or such other supplier as Lessor may agree in writing), demonstrating to Lessor's satisfaction that such item has the same specification as the destroyed item, and ensure that title to such item passes to Lessor. Lessor pay to Lessee (following such replacement) any proceeds of property damage insurance received by Lessor with respect to the destroyed item.
- 11.2.7 If an Event of Loss occurs with respect to a Driving Cab Simulator after the relevant Acceptance Date, Lessee shall promptly notify Lessor. Following such Event of Loss, and subject to mutual agreement between the Parties, Lessee shall as soon as is reasonably practicable:
- (a) procure a replacement item from the original equipment manufacturer (or such other supplier as Lessor may agree in writing), demonstrating to Lessor's satisfaction that such item has the same specification as the Driving Cab Simulator, and ensure that title to such item passes to Lessor; or

- (b) pay to the Lessor the Agreed Value in respect of such Driving Cab Simulator,

and Lessor shall pay to the Lessee (following replacement of the Driving Cab Simulator in accordance with Clause 11.2.7(a) or receipt in full of the Agreed Value in accordance with Clause 11.2.7(b)) any proceeds of property damage insurance received by Lessor with respect to the destroyed Driving Cab Simulator. Lessee shall continue to pay the Rent for such Driving Cab Simulator until receipt by Lessor in full of the Agreed Value, at which point the leasing of such Driving Cab Simulator will immediately terminate and Clause 11.2.8 shall apply.

- 11.2.8 If the Lessor receives the Agreed Value in respect of a single Driving Cab Simulator, the Rent for the Driving Cab Simulators shall be reduced accordingly to reflect that the Agreed Value for such Driving Cab Simulator has been received by the Lessor and the leasing of such Driving Cab Simulator has been terminated.

11.3 Requisition

- 11.3.1 During any requisition for use or hire of any Equipment (whether pursuant to section 118 of the Act, Section 20 of the Civil Contingencies Act 2004 or otherwise) which does not constitute an Event of Loss:

- (a) the Rent and other charges payable under this Agreement in relation to such Equipment will not be suspended or abated in whole or in part, and Lessee will not be released from any of its other obligations under this Agreement (other than operational obligations with which Lessee is unable to comply solely by virtue of the requisition); and
- (b) for so long as no Event of Default has occurred and is continuing, Lessee will be entitled to any hire paid by the requisitioning authority in respect of such part of the requisitioning period as falls within the Term applicable to the Equipment in question, and if Lessor receives any such hire, Lessor will pay an amount equal to such hire to Lessee unless an Event of Default has occurred and is continuing, in which event:
 - (i) Lessor shall apply all such hire in or towards settlement of any amounts due and payable by Lessee under this Agreement; and
 - (ii) Lessor shall, after all subsisting Events of Default have been remedied or otherwise ceased, pay to Lessee all subsequent amounts of hire received by Lessor.

- 11.3.2 If any change in the condition of the requisitioned Equipment arises during the period of requisition, then:

- (a) Lessee will, as soon as practicable after the end of any such requisition and at its cost, cause the relevant Equipment to be put into the condition required by this Agreement; and

- (b) the Lessor shall be entitled to all compensation payable by the requisitioning authority in respect of any change in the structure, state or condition of the relevant Equipment arising during the period of requisition, and Lessor shall as soon as practicable apply such compensation in reimbursing Lessee for the cost of complying with its obligations under this Clause 11.3.2(b) in respect of any such change, **provided that**, if any Event of Default has occurred and is continuing, Lessor may apply the compensation in or towards settlement of any amounts due and owing by Lessee under this Agreement and any balance shall be paid by Lessor to Lessee.

11.3.3 If any Equipment is under requisition for hire at its Expiry Date, the Term for such Equipment will automatically be extended and this Agreement will remain in force until the requisition has terminated and the provisions of this Clause 11.3 will apply throughout that period as described in Clause 13.1.2 (such period being, for these purposes, an "**Extension Period**").

11.3.4 During any Extension Period specified in Clause 11.3.3, the Rent and Maintenance Rental payable by the Lessee shall be the Modified Rent and Maintenance Rental. The Maintenance Rental element of the Modified Rent and Maintenance Rental shall be subject to adjustment in accordance with Clause 5.4 (*Maintenance Rental Adjustment*) from time to time.

11.3.5 Any Rent or Modified Rent and Maintenance Rental paid to, or requisition proceeds received by Lessor in relation to a requisition for hire pursuant to this Clause 11.3 shall be without prejudice to any rights which the Lessor may have to claim and retain additional compensation from the requisitioning authority in relation to any additional loss which it may have suffered as a result of such requisition for hire and which is not compensated for by such Rent, Modified Rent and Maintenance Rental or requisition proceeds (as the case may be).

11.3.6 Any Agreed Value paid to Lessor in relation to any requisition of title resulting in an Event of Loss shall also be without prejudice to any rights which the Lessor may have to claim and retain additional compensation from the requisitioning authority in relation to any additional loss which it may suffer as a result of such requisition of title and which is not compensated for by such Agreed Value.

12. [NOT USED]

13. **RETURN OF EQUIPMENT**

13.1 **Return**

13.1.1 On the Expiry Date, Lessee will:

- (a) (unless an Event of Loss in relation to such Unit has occurred and subject to proviso (i) below and unless an Event of Loss has occurred in relation to such Driving Cab Simulator in circumstances where the Lessee has elected to pay the Agreed Value in accordance with Clause 11.2.7) redeliver each item of Equipment to Lessor at the Redelivery Location;

- (b) deliver to Lessor the Handover Package in accordance with Part 2 (*Redelivery Condition Schedule*) of Schedule 4 (*Delivery and Redelivery Condition Schedule*);
- (c) assign to Lessor (to the extent that Lessee is entitled to do so without breaching (i) any Applicable Law or Standard or (ii) any contractual restriction on assignment in the contract or agreement under which such rights and remedies are granted) the benefit of all rights and remedies (including warranties) which Lessee may have against any person relating to the Equipment (provided that where, pursuant to (ii) above there is a contractual restriction on assignment to Lessor, Lessee will use reasonable endeavours to procure a waiver of such restriction in order that the benefit of such rights and remedies may be validly assigned); and
- (d) comply with its obligations under paragraph 5.2 (*Sale of Lessee Owned Spares on Termination*) of Schedule 8 (*Maintenance*),

provided that:

- (i) notwithstanding Clause 13.1.1(a), Lessor acknowledges that, where a Unit is to be used, pursuant to a lease from Lessor, by another operator of passenger rail services following its Expiry Date to provide services previously provided by Lessee, Lessor will where practicable agree that redelivery can be made by Lessee at the location where such Unit would normally be situated at such time, to be notified by Lessee to Lessor not later than seven (7) days prior to the scheduled date for redelivery; and
- (ii) Lessee shall deliver to Lessor all Owner Owned Spares and Special Tools free from any Security Interests (other than any Lessor Liens) in each case (having regard to age and extent of use) in a fully serviceable condition, in complete and good and substantial repair, free from Faults and fit for immediate use in the provision of services equivalent to the Maintenance Services (save in the case of Owner Owned Spares or Special Tools which are in an overhaul cycle prescribed by the Manuals or the Maintenance Plan at the time as part of the Maintenance Services).

13.1.2 If an Event of Loss has occurred with respect to a Driving Cab Simulator and such Driving Cab Simulator has not been replaced in accordance with Clause 11.2.7(a), Lessee shall not be obliged to redeliver such Driving Cab Simulator. If an Event of Loss has occurred with respect to a Unit on or prior to the Expiry Date, Lessee shall not be obliged to redeliver such Unit. If any Equipment is under requisition for hire at its Expiry Date, the Term for such Equipment will automatically be extended and this Agreement will remain in force until the requisition has terminated and the provisions of Clause 11.3 (*Requisition*) will apply throughout that period.

- 13.1.3 Each Unit (and the Associated Equipment) shall, at redelivery, be free and clear of all Security Interests (other than Lessor Liens), and each Unit shall have Engineering Certification.
- 13.1.4 Lessor shall execute and deliver to Lessee a duly completed Redelivery Certificate on or promptly (and in any event within seven (7) days) after the date of redelivery (which, for the avoidance of doubt, shall be the deferred date of redelivery where Clause 13.3.1 applies). The execution of such Redelivery Certificate shall be without prejudice to Lessor's rights in respect of any defects or non-compliance which are specified in the Redelivery Certificate, but shall otherwise (as between Lessor and Lessee) be conclusive as to the matters stated therein.
- 13.1.5 Lessee shall at redelivery redeliver the Equipment in compliance with the Redelivery Condition.
- 13.1.6 Lessee hereby grants to Lessor, and agrees to grant to Lessor (to the extent the Lessee is entitled to do so without breaching (x) any Applicable Law or Standard or (y) any contractual restriction on the grant of the licences contemplated below in any contract or agreement under which Lessee has acquired or obtained a license of relevant Intellectual Property Rights):
 - (a) an irrevocable, royalty free, non-exclusive, sub-licensable licence of all Intellectual Property Rights owned by Lessee in respect of each item of Equipment returned to Lessor in accordance with this Agreement, or in connection with the maintenance and repair of such Equipment or any other purpose contemplated by paragraph 7.6 (*IPRs*) of Schedule 7 (*Operational Undertakings*) or paragraph 6.7 (*Lessor's Rights to use Maintenance Information*) of Schedule 8 (*Maintenance*); and
 - (b) an irrevocable, royalty free, non-exclusive, sub-licensable sub licence of all Intellectual Property Rights licensed to Lessee by any third party in respect of each item of Equipment returned to Lessor in accordance with this Agreement, or in connection with the maintenance and repair of such Equipment or any other purpose contemplated by paragraph 7.6 (*IPRs*) of Schedule 7 (*Operational Undertakings*) or paragraph 6.7 (*Lessor's Rights to use Maintenance Information*) of Schedule 8 (*Maintenance*), and which constitute Intellectual Property Rights used or developed after Acceptance of the Equipment and which are not covered by any of the licences granted by the Manufacturer under the MSA, and which exclude Intellectual Property Rights in respect of "off the shelf" software,

provided that:

- (i) where, pursuant to (y) above there is a contractual restriction on the grant of any of the above licences to Lessor, Lessee will use reasonable endeavours to procure a waiver of such restriction in order that such licences may validly be granted; and

- (ii) such licence and sub-licence shall not include Intellectual Property Rights in respect of Lessee Modifications which Lessee is entitled to remove (and does remove) from the Units prior to redelivery or in respect of standard, off the shelf software.

13.1.7 Unless otherwise agreed by Lessor, Lessee may at Lessee's cost remove (and shall at Lessee's cost remove, if Lessor so requires) any Modification requested by Lessee or carried out by Lessee (unless such Modification is a Mandatory Modification or a Modification funded in whole or part by Lessor). Such removal shall be completed on or prior to the Expiry Date relevant to the Units to which such Modification is made, so as to leave each such Unit in the same condition as it would have been in if such Modification had not been made. Title to any Part forming part of a Modification to which this Clause 13.1.7 applies which is removed from a Unit in the course of removal of such Modification shall, upon such removal, without further act, vest in Lessee. This Clause 13.1.7 shall not apply if Lessee is taking a new lease of the relevant Units immediately following the Expiry Date.

13.1.8 If any Excusable Delay occurs in connection with the redelivery on the Scheduled Expiry Date of any Unit hereunder, Lessee may delay tendering such Unit for redelivery and Lessor may delay accepting redelivery of such Unit, and the Scheduled Expiry Date shall be extended to the day following the date on which the Excusable Delay ends. The period of Excusable Delay may not in any circumstances exceed six (6) months. Any period of Excusable Delay shall not otherwise affect Lessee's obligations pursuant to this Agreement, including, but not limited to, the obligation of Lessee to pay Rent in accordance with Clause 5 (*Payments*) and all compensation for late redelivery pursuant to Clause 13.4 (*Compensation for Late Redelivery*).

13.2 Final Inspections

13.2.1 During the period of six (6) months prior to the Scheduled Expiry Date, Lessor and/or any person designated by Lessor will be entitled to inspect the Equipment on one or more occasions (at the request of Lessor to Lessee) in order to verify that its condition will meet the requirements referred to in Clause 13.1 (*Return*), **provided that** Lessor complies with all Applicable Laws and Standards and all matters properly notified by Lessee to Lessor in order to meet the Safety Management System and that (for so long as no Event of Default has occurred and is continuing) such inspections shall not unreasonably disrupt the commercial operations of the Units, with the intent (amongst other things) that passenger services shall not be interrupted by reason of Lessor exercising its rights under this Clause 13.2.

13.2.2 Subject to the provisions of paragraph 3.2 of Schedule 7, at Lessor's request and at Lessee's expense Lessee shall position the Equipment in an inspection pit and/or road with roof access inspection facilities. Each such inspection will be long enough to permit Lessor and/or any person designated by Lessor to inspect the relevant Equipment. For the avoidance of doubt, Lessor shall be entitled to inspect the Equipment both during the said period of six (6) months and on the Expiry Date.

13.3 Non Compliance

If at the time of any final inspection or upon the required Redelivery Date for any Equipment pursuant to Clause 13.1 (*Return*), Lessee has not fully complied, or (in Lessor's reasonable opinion) will not fully comply, with the requirements referred to in Clause 13.1 (*Return*), Lessor will provide to Lessee details of such non-compliance and Lessee will, at Lessor's option (to be exercised by written notice to Lessee):

- 13.3.1 rectify the non-compliance no later than the Scheduled Expiry Date (in the case of non-compliance notified to Lessee prior to the Scheduled Expiry Date) or as soon as reasonably practicable (in any other case), and, to the extent necessary, the Term for such Equipment will automatically be extended and this Agreement will remain in force until the non-compliance has been rectified, but the Rent payable for such Equipment in respect of such extended Term shall be the amount determined pursuant to Clause 13.4.2; or
- 13.3.2 redeliver such Equipment to Lessor on the Expiry Date and indemnify Lessor on demand on terms (as set out in the notice) satisfactory to Lessor (acting reasonably) against the cost of putting such Equipment into the condition required by Clause 13.1 (*Return*).

13.4 Compensation for Late Redelivery

- 13.4.1 For the purposes of this Clause 13.4, "**Relevant Losses**" means: (i) an amount equal to the Daily Rate for the relevant Equipment multiplied by the number of days from and including the Expiry Date for such Equipment to and including the date on which the Lessee has complied with its obligations under Clause 13.1 (*Return*) (other than the requirement to comply with such obligations on the Expiry Date); plus (ii) any additional Losses suffered or incurred by Lessor (and which are not covered by the payment in (i) above) as a consequence of Lessor being unable to lease or otherwise dispose of such Equipment on or after the Scheduled Expiry Date, when Lessor would have been able to do so were it not for a failure by Lessee to redeliver such Equipment to Lessor on the date and at the place required by this Agreement.
- 13.4.2 Without prejudice to Clause 13.3 (*Non-Compliance*), if Lessee fails to redeliver any Equipment to Lessor in accordance with Clause 13.1 (*Return*) (other than as a result of an Event of Loss to which Clause 11.2 (*Post-delivery Event of Loss*) or Clause 11.2.7 in circumstances where such Driving Cab Simulator has not been replaced in accordance with Clause 11.2.7(a) applies) and, as a consequence, Relevant Losses arise, Lessee shall pay to Lessor on demand, by way of agreed compensation for such Relevant Losses, an amount equal to the amount certified by Lessor as being its Relevant Losses attributable to the period from (and including) the required Redelivery Date for such Equipment to (but excluding) the date on which such failure by Lessee is cured.
- 13.4.3 Lessor shall use reasonable endeavours to mitigate the extent of any Relevant Losses.

13.5 Deregistration

Upon redelivery Lessor may sell, lease or otherwise deal with the Equipment as if this Agreement had never been entered into. To this end, upon redelivery Lessee at the request of Lessor, but at Lessee's cost, will take all steps necessary to effect deregistration of its interest (and/or the interest of any sublessee permitted under paragraph 2.2 of Schedule 7 (*Operational Undertakings*)) as operator of the Units from the R2 maintained by RSSB. Lessee will also provide such assistance as Lessor may reasonably require in registration of the interest of any new operator of such Units in such register, but at cost of Lessor and no cost to Lessee.

13.6 Access to Technical Records and Running Maintenance Plan

- 13.6.1 To facilitate the integration of the Units into the business of a subsequent operator following redelivery of such Units by Lessee hereunder, Lessee will, during the period commencing on the earlier of (i) the date which is twelve (12) months prior to the last day of the Term, and/or (ii) the appointment of the successor rail services operator to Lessee, give any such persons (including, without limitation, any shortlisted bidders) such access as may reasonably be required and on reasonable notice to the Maintenance Information.
- 13.6.2 Lessee consents to the giving of such access during such period and agrees to afford to Lessor and any such persons such assistance as they may reasonably require in understanding and analysing the Maintenance Information.
- 13.6.3 Lessee further consents to Lessor and/or any subsequent operator of the Units utilising such Maintenance Information for the purposes of future maintenance and repairs to such Units, and confirms that it will not make any claim (financial or otherwise) against Lessor or any subsequent operator or new franchisee (as the case may be) in respect of the same provided that the same is used in accordance with and as contemplated by this Agreement. For the purposes of this Clause 13.6 only, any reference to the Maintenance Information shall be a reference to them as they exist on the relevant Redelivery Date.

13.7 Preliminary Final Inspections

- 13.7.1 Without prejudice to Lessor's rights under Clause 13.2 (*Final Inspections*) and the general inspection rights of the Lessor pursuant to paragraph 3 (*Inspection*) of Schedule 7 (*Operational Undertakings*), Lessor and/or any person designated by Lessor will be entitled:
 - (a) at any time up to twenty-four (24) months prior to the Scheduled Expiry Date ("**24 Month Preliminary Inspection**"); and
 - (b) at any time during the period from the date falling twenty-four (24) months prior to the Scheduled Expiry Date to the date falling twelve months prior to the Scheduled Expiry Date ("**12 Month Preliminary Inspection**"),

upon giving Lessee notice of its intention to do so, to inspect the Vehicles and each item of Associated Equipment in order to verify that its condition will, in

the reasonable opinion of the Lessor, meet the requirements referred to in Clause 13.1 (*Return*), and any non-compliance shall be a "PS Non Compliance".

- 13.7.2 For so long as no Event of Default has occurred and is continuing, such inspections shall not unreasonably disrupt the commercial operations of the Units, with the intent that passenger services shall not be interrupted by reason of Lessor exercising its rights under Clauses 13.7.1 or 13.7.4, and Lessee shall use reasonable endeavours to facilitate Lessor's exercise of its rights under this Clause 13.7. In conducting such inspections or re-inspections, Lessor shall comply with all Applicable Laws and Standards and all matters properly notified by Lessee to Lessor in order to meet the Safety Management System.
- 13.7.3 Lessee will pay to Lessor on demand all reasonable out-of-pocket expenses properly incurred by Lessor in connection with any inspection pursuant to Clauses 13.7.1 or 13.7.4 if:
- (a) an Event of Default has occurred and is continuing at the time of such inspection; or
 - (b) if Lessor is re inspecting (either at Lessee's request or otherwise) to determine (for the purposes of confirming whether the security provided under Clause 13.8 (*Security for Intermediate Inspection Condition*) can be released) whether the Fleet Quantum has been reduced below the applicable threshold specified in Clause **13.10.1**.
- 13.7.4 Lessee may at any time request Lessor to carry out a re-inspection of the Equipment pursuant to Clause 13.7.1, and Lessor will, at Lessee's cost, carry out such re inspection as soon as reasonably practicable.
- 13.7.5 Lessor shall have no duty or liability to carry out any inspections referred to in Clause 13.7.1, and the provisions of Clauses 13.1 to 13.6 (inclusive) shall continue to apply to the Units whether or not Lessor shall exercise its rights under this Clause 13.7. Furthermore, Lessor shall have no liability arising out of any such inspection other than for damage or personal injury caused by its employees during the course of conducting such inspection and the discharge of their duties.

13.8 **Security for 12 Month Preliminary Inspection**

- 13.8.1 If, as a result of the 12 Month Preliminary Inspection, Lessor determines that Lessee is not in compliance with the requirements referred to in Clause 13.1 (*Return*) in respect of all or some of the Units or other items of Equipment, the following provisions shall apply:
- (a) Lessor will provide to Lessee details of such PS Non-Compliance, together with details of Lessor's reasonable estimate of the quantum of cost in relation to all of the Units (the "**Fleet Quantum**") of procuring full compliance;
 - (b) Lessee shall, within five (5) Business Days of Lessor providing such details to Lessee, provide to Lessor a plan for the remedy, at Lessee's

expense, of such PS Non-Compliance. Such remedial plan will set out the steps proposed for the purpose of remedying such PS Non-Compliance and the timeframe within which Lessee proposes to implement the steps. Lessor shall, acting reasonably, confirm to Lessee whether or not it approves such remedial plan within ten Business Days of receipt by Lessor;

- (c) if such remedial plan is approved by Lessor, Lessee shall implement such remedial plan in accordance with its terms, at Lessee's cost; and
- (d) if such remedial plan is not approved by Lessor within fifteen (15) Business Days of receipt by Lessor, Lessee shall use all reasonable endeavours to remedy such PS Non-Compliance, at Lessee's expense, within sixty (60) days (or such longer period as the parties may agree in writing, each acting reasonably) following the expiry of such fifteen (15) Business Day period.

13.8.2 Notwithstanding the requirements of Clause 13.8.1 and subject to Clause 13.8.2 (in relation to the applicability of this Clause 13.8.2), if the Fleet Quantum (as determined by Lessor in its absolute discretion) exceeds [REDACTED] (the "**Fleet Threshold**") Lessee will, within five (5) Business Days after Lessor provides details of the Fleet Quantum to Lessee, either (at the option of Lessee):

- (a) make a deposit of Sterling cash in an amount equal to the Fleet Quantum into the Inspection Security Account (or such other bank account that Lessor and Lessee agree in writing from time to time); or
- (b) provide in a Sterling amount equal to the Fleet Quantum, either a parent company guarantee or a bank guarantee from an entity reasonably satisfactory to Lessor and in form and substance reasonably satisfactory to Lessor; or
- (c) any combination of the security referred to above.

13.9 Non-Compliance revealed by a Final Inspection

If, at the time of any final inspection pursuant to Clause 13.2 (*Final Inspections*) or on the required Redelivery Date for any of the Units:

- 13.9.1 Lessor (acting reasonably) determines that Lessee has not performed or procured the performance of all required maintenance and repairs for all the Units in accordance with Clause 8.3 (*Maintenance Undertakings*); and
- 13.9.2 (to the extent Clause 13.8.2 does not apply, and Lessee has not provided a parent company or bank guarantee in accordance with Clause 13.8.2) the Fleet Quantum is greater than the Fleet Threshold, or where Lessee has paid cash into the Inspection Security Account in accordance with sub-clause 13.8.2, the Fleet Quantum is greater than the amount held in the Inspection Security Account,

then, without prejudice to Clause 13.3 (*Non-Compliance*), Lessee will, within five (5) Business Days after Lessor provides the details to Lessee pursuant to Clause 13.3

(*Non-Compliance*) and details of the Fleet Quantum pursuant to sub-clause 13.9.2 above, pay additional cash into the Inspection Security Account to rectify the non-compliance or (at Lessor's option) to indemnify Lessor against the reasonable cost of putting such Vehicles into the condition required by Clause 13.1 (*Return*), in an amount such that the aggregate amount of cash paid into the Inspection Security Account pursuant to this Clause 13.9 and sub-clause 13.8.2 (if any) and held by Lessor at the end of such five (5) Business Day period is equal to the Fleet Quantum.

13.10 Release of Security

13.10.1 If Lessee has paid cash into the Inspection Security Account under sub-clause 13.8.2 but, following an inspection or re-inspection pursuant to sub-clause 13.7.1 or 13.7.3, Lessor determines that the Fleet Quantum is less than

[REDACTED]

[REDACTED] and provided no Event of Default has occurred and is continuing, Lessee shall be entitled to ask Lessor for permission to withdraw (subject to clauses 3 and 5 of the Inspection Security Account Charge) the amount standing to the credit of the Inspection Security Account (including interest accrued to the Inspection Security Account in accordance with sub-clause 13.11.2 below).

13.10.2 On the Expiry Date of the last Unit to be redelivered under this Agreement or at any date thereafter in circumstances where:

- (a) Lessor is not entitled to realise any security pursuant to sub-clause 13.11.1; and
- (b) the Secured Obligations have been fully discharged,

Lessor shall release to Lessee the amount standing to the credit of the Inspection Security Account (including interest accrued to the Inspection Security Account) and release and discharge the Inspection Security Account Charge and/or Lessor shall immediately release and discharge in full any outstanding bank or parent company guarantee provided pursuant to Clause 13.8.2 and neither any provider of such security nor Lessor shall have any further liability in respect of the same.

13.11 Realisation of Security

13.11.1 Lessor shall be entitled to withdraw funds standing to the credit of the Inspection Security Account if:

- (a) the Expiry Date has occurred; and
- (b) either:
 - (i) Lessee has failed to rectify any non-compliance by Lessee with its obligations to put the Units into the condition required pursuant to Clause 13.1 (*Return*), to the extent that Lessee has failed to comply in full with its obligations under 13.3.1; or

- (ii) Lessee has failed to comply with the notice Lessor has served requiring Lessee to indemnify Lessor on demand in accordance with Clause 13.3.2, to the extent that Lessee fails to indemnify Lessor on demand and in full in the circumstances specified in, and in accordance with, Clause 13.3.2.

13.11.2 Interest accrued to the Inspection Security Account from time to time shall be retained in the Inspection Security Account as additional security pursuant to Clause 13.8 (*12 Month Preliminary Inspection*) for the performance of Lessee's obligations under Clause 13.3 (*Non-Compliance*), but may be withdrawn by Lessor in the circumstances described in sub-clause 13.11.1.

13.12 Lessee and Lessor acknowledge and agree that at all times when Lessee or a subsequent lessee is: (i) a Public Sector Company that is wholly owned by the Secretary of State; (ii) the Secretary of State; or (iii) a nominee of the Secretary of State that is not a Franchisee or Franchise Operator (as each is defined in the Act), the provisions of Clauses 13.7.3(b), 13.8.2, 13.9, 13.10 and 13.11 shall not apply.

13A BIOREACTOR TOILETS

- (a) Lessee shall be required by the date of the 24 Month Preliminary Inspection contemplated by Clause 13.7.1(a) (**Preliminary Final Inspection**) (the "**24 Month Inspection Date**"), either:
 - (i) to have demonstrated to the reasonable satisfaction of Lessor that (without prejudice to the Manufacturer's obligations under the MSA or assuming responsibility for the Manufacturer's obligations in respect thereof) the bioreactor sub-system of the toilets in the Units as specified in the Specification is (assuming the Manufacturer has complied with its obligations under the MSA) adequate and sufficiently robust to allow the Units to operate to the timetable contemplated by the Rail Services Contract using the infrastructure on the Relevant Network (the "**Bio-Reactor Compliance Condition**"); or
 - (ii) to have begun to implement a remedial plan (a "**Bio-Reactor Remedial Plan**"), proposed by, and satisfactorily funded by the Lessee, and approved by the Lessor (acting reasonably), which is intended to remedy non-compliance with the Bio-Reactor Compliance Condition prior to the Scheduled Expiry Date.
- (b) Lessor acknowledges for the purposes of clause 13A(a)(ii) that any remedy for non-compliance pursuant to a Bio-Reactor Remedial Plan may involve an infrastructure or operational solution as well as, or in substitution for, remedial work on the bioreactor sub-system itself.
- (c) To the extent that a Bio-Reactor Remedial Plan commenced pursuant to Clause 13A(a)(ii) above has an overall cost exceeding [REDACTED] Lessee shall be required, at the option of Lessee to either:

- (i) make a deposit of Sterling cash in an amount equal to the cost of the Bio-Reactor Remedial Plan into a bank account agreed between Lessor and Lessee charged in favour of the Lessor; or
- (ii) provide in a Sterling amount equal to the cost of the Bio-Reactor Remedial Plan either a parent company bank guarantee or a bank guarantee from an entity reasonably satisfactory to Lessor and in form and substance reasonably satisfactory to Lessor,

provided that this requirement shall not apply to the extent that Lessee or a subsequent lessee is: (i) a Public Sector Company that is wholly owned by the Secretary of State; (ii) the Secretary of State; or (iii) a nominee of the Secretary of State that is not a Franchisee or Franchise Operator (as each is defined in the Act).

- (d) To the extent that by the date of the 12 Month Preliminary Inspection contemplated by Clause 13.8 (*Security for 12 Month Preliminary Inspection*) the Lessor, following the commencement of a Bio-Reactor Remedial Plan by the Lessee pursuant to Clause 13A(a)(ii) above, believes that there is a reasonable likelihood of the Lessee failing to complete the Bio-Reactor Remedial Plan by the Expiry Date, the Lessor will be entitled to estimate (without double-counting any amount in respect of which security has already been granted pursuant to Clause 13A(c)) above) the cost that would be incurred by the Lessor and any subsequent operator of the Units of completing the Bio-Reactor Remedial Plan after the Expiry Date (the "**Estimated Rectification Cost**"), and the Lessee will be required at the option of Lessee to either:
 - (i) make a deposit of Sterling cash in an amount equal to the Estimated Cost of Rectification into a bank account agreed between Lessor and Lessee charged in favour of the Lessor; or
 - (ii) provide in a Sterling amount equal to the Estimated Cost of Rectification either a parent company bank guarantee or a bank guarantee from an entity reasonably satisfactory to Lessor and in form and substance reasonably satisfactory to Lessor,

provided that this requirement shall not apply to the extent that Lessee or a subsequent lessee is: (i) a Public Sector Company that is wholly owned by the Secretary of State; (ii) the Secretary of State; or (iii) a nominee of the Secretary of State that is not a Franchisee or Franchise Operator (as each is defined in the Act).

- (e) To the extent that the Lessee, following the commencement of a Bio-Reactor Remedial Plan pursuant to Clause 13A(a)(ii) above, has not completed the Bio-Reactor Remedial Plan by the Expiry Date, the Lessee shall be required to compensate the Lessor for Lessor's reasonable estimated cost of completing the Bio-Reactor Remedial Plan after the Expiry Date (the "**Final Rectification Cost**").
- (f) In relation to any security provided under Clause 13A(c) or (d) above, Lessor shall be entitled to withdraw monies from the relevant charged account or claim

under the relevant guarantee on the Expiry Date to apply the proceeds against the Final Rectification Cost. To the extent that the Lessor has recovered the full Final Rectification Cost pursuant to such withdrawals or claims, the Lessee shall have no further liability in respect thereof. To the extent that the Lessor has recovered less than the full Final Rectification Cost, the Lessee shall remain liable for any balance outstanding. To the extent there is any excess in any charged account provided under Clause 13A(c) or (d) above after paying the full Final Rectification Cost, such excess shall be released to Lessee at the Expiry Date.

14. ALLOCATION OF MSA LIABILITIES

14.1 Upon a party becoming aware that the maximum liability of the Manufacturer (the "**Manufacturer Liability Cap**") has been reached under the MSA, that party shall notify the other party.

14.2 If either party would have had the right to make a claim under the MSA but for the fact that the Manufacturer Liability Cap has been reached, the claiming party shall notify the other party in writing of the details and amount of such claim (each an "**MSA Claim**").

14.3 On the date which is a year after the Manufacturer Liability Cap has been reached, and annually thereafter until the limitation period for claims pursuant to the MSA has expired, the parties shall (acting in good faith) agree the quantum of:

14.3.1 the aggregate of all successful historic claims which have contributed to reaching the Manufacturer Liability Cap paid by the Manufacturer to each party prior to the Manufacturer Liability Cap being reached ("**Actual Claims**"); and

14.3.2 all claims with a high prospect of success that could have been made by each party against the Manufacturer under the MSA, but for the fact that the Manufacturer Liability Cap has already been reached ("**Subsequent Claims**").

14.4 Within thirty (30) days of the quantum of the Actual Claims and Subsequent Claims for each party being agreed, there shall be a reconciliation and the Lessor shall pay the Lessee or the Lessee shall pay the Lessor (as the case may be) the amount required to ensure that, as at the date of such reconciliation, the Manufacturer Liability Cap is apportioned between the parties in accordance with the following percentages:

14.4.1 the Lessee is entitled to:

$$\frac{\text{Lessee's Claims}}{\text{Aggregate MSA Claims}} \times 100$$

14.4.2 the Lessor is entitled to:

$$\frac{\text{Lessor's Claims}}{\text{Aggregate MSA Claims}} \times 100$$

where:

- (a) "Lessee's Claims" means the aggregate of the Lessee's Actual Claims and Subsequent Claims;
- (b) "Lessor's Claims" means the aggregate of the Lessor's Actual Claims and Subsequent Claims; and
- (c) "Aggregate MSA Claims" means the aggregate of the Lessee's Claims and the Lessor's Claims.

14.5 Claims by the Lessor or the Lessee for payment of liquidated damages from the Manufacturer in respect of delay pursuant to clause 22.1 of the MSA and for payment of the Simulator Liquidated Damages pursuant to clause 22.2(a) of the MSA shall be excluded from, and disregarded for the purposes of, this Clause 14.

14.6 The provisions of this Clause 14 shall survive the termination of this Agreement.

14A. **MANAGEMENT OF MSA TERMINATION RIGHTS**

Lessor agrees that where, pursuant to clause 18 (*Manufacturer Events of Default*) of the MSA, Lessor has the sole right to terminate the MSA, Lessor will only exercise that right if either: (a) Lessee has (acting reasonably) consented to such termination in writing; or (b) Lessee has not notified Lessor in writing of Lessee's refusal to so consent, together with the reasons for such refusal, within ten (10) Business Days of a notice from Lessor of its intention to terminate the MSA.

15. **EVENTS OF DEFAULT**

15.1 **Events of Default**

The occurrence of any of the Events of Default will constitute a breach of condition, and a repudiation (but not a termination) by Lessee, of this Agreement, **provided that** to the extent that any event or condition specified in Schedule 10 (*Events of Default*) arises solely and directly out of the occurrence of a No Fault Event, such event or condition shall not constitute an Event of Default for the purposes of this Clause 15.1.

15.2 **Rights**

If any Event of Default occurs, Lessor may at its option (and without prejudice to any of its other rights under this Agreement), at any time thereafter whilst such Event of Default is continuing:

- 15.2.1 accept the repudiation of this Agreement by Lessee and, by notice to Lessee, with immediate effect terminate the leasing of the Equipment (but without prejudice to any outstanding and continuing obligations of Lessee under this Agreement), whereupon all rights of Lessee to take on lease the Equipment under this Agreement shall cease, but Lessee shall pay to Lessor all amounts then due and payable by Lessee to Lessor under any Lessee Document; and/or
- 15.2.2 proceed by appropriate court action or actions (i) to enforce performance of this Agreement insofar as it relates to the Equipment the leasing of which has been terminated, or (ii) to recover damages for the breach of this Agreement; and/or

- 15.2.3 require Lessee by notice in writing to redeliver to Lessor in accordance with Clause 13.1 (*Return*) and deregister in accordance with Clause 13.5 (*Deregistration*), the Equipment the leasing of which has been terminated at the Redelivery Location. If Lessee fails to redeliver such Equipment forthwith upon being required so to do, Lessor may, without prejudice to the provisions of Clause 13 (*Return of Equipment*), take possession of such Equipment and, for this purpose, Lessor may enter any premises belonging to or in the occupation of or under the control of Lessee where such Equipment and/or any part thereof may be located, and/or may cause such Equipment to be redelivered to Lessor at the specified Redelivery Location, by any lawful means; and/or
- 15.2.4 require Lessee to pay on demand an amount, calculated as at the date of termination, being a sum equal to the aggregate of the following (the "**Termination Sum**") applicable to all the Equipment in respect of which the leasing has been terminated pursuant to Clause 15.2.1, being:
- (a) all arrears of Rent and all other amounts accrued and due under the terms of this Agreement, net of any Rent paid in advance;
 - (b) any reasonable costs and expenses incurred by the Lessor in locating, repossessing, recovering, maintaining, insuring and storing the Units and Associated Equipment;
 - (c) any reasonable costs and expenses incurred by the Lessor in rectifying the Units and Associated Equipment to put the Units and Associated Equipment into the Redelivery Condition;
 - (d) any reasonable costs and expenses incurred by the Lessor in exercising the Lessor's rights under this Agreement and collecting any payments due under this Agreement; and
 - (e) the Rent which (but for the termination) would have fallen due in respect of such Units and Associated Equipment during the period from the date of termination up to and including the Scheduled Expiry Date (the "**Qualifying Period**"), discounted to present value at the Discount Rate, calculated on the basis of the number of days elapsed and a 365 day year (the "**Foregone Rent**"). Where this Agreement is terminated prior to the Acceptance Date for all the Units and Associated Equipment, such Foregone Rent shall be determined on the assumption that the Units and Associated Equipment would have been delivered in accordance with the latest contract programme in force pursuant to the MSA (but taking into account the effect of any applicable instances of Permitted Delay occurring under and as defined in the MSA in respect of such Units); and/or
- 15.2.5 without being in any way obliged to do so or responsible for so doing, having first given Lessee notice and (unless Lessor reasonably believes that remedy must be immediate) the opportunity to remedy the same, effect compliance on behalf of Lessee, whereupon Lessee shall become liable to pay immediately any sums properly expended by Lessor together with all costs and expenses (including legal costs) properly incurred in connection therewith.

Any action under Clauses 15.2.1 to 15.2.5 shall be:

15.2.6 without prejudice to:

- (a) the existing rights of Lessor as at the date of occurrence of the Event of Default, and
- (b) any other action or remedy available to Lessor under Applicable Laws and Standards; and

15.2.7 subject to the exercise by the Secretary of State of its rights under any Direct Agreement.

15.3 Lessor shall use reasonable endeavours to mitigate its Losses arising from termination of leasing of the Equipment including by re-leasing the Units and Associated Equipment following the termination of their leasing under this Agreement.

15.4 Upon the termination of this Agreement or the leasing of any Equipment prior to the Scheduled Expiry Date pursuant to Clause 15.2 (*Rights*), Lessee shall, if required to do so by the Lessor pursuant to Clause 15.2.4, pay to Lessor on the date of such termination (or, if later, on the date on which Lessee receives notice of such requirement) (the "**Termination Payment Date**") an amount equal to the Termination Sum.

15.5 Administration Order

If a railway administrator or an administrator appointed in respect of Lessee obtains a court order (the "**order**") pursuant to section 15 of the Insolvency Act 1986 or paragraph 72 of Schedule B1 of the Insolvency Act 1986 authorising the disposal of any Equipment then, in addition and without prejudice to other amounts payable to Lessor hereunder, Lessee will (immediately upon the disposal of such Equipment) pay to Lessor the net proceeds (within the meaning of the said section 15 of the Insolvency Act 1986 or paragraph 72 of Schedule B1 of the Insolvency Act 1986) of the disposal of such Equipment together with any sum which the court determines may be required to make good the deficiency referred to in section 15(5)(b) of the Insolvency Act 1986 (which section, for the purposes of railway administration, has been modified pursuant to paragraph 5(2) of Schedule 6 to the Act) or paragraph 72(3)(b) of Schedule B1 of the Insolvency Act 1986.

15.6 Illegality

15.6.1 If:

- (a) it is or becomes unlawful for Lessee or Lessor (for the purposes of this Clause 15.6, such party the "**Affected Party**") to perform all or any of its obligations under this Agreement; or
- (b) this Agreement is or becomes wholly or partly invalid or unenforceable,

then Lessor or Lessee shall give notice to the other party thereof as soon as practicable after becoming aware thereof. Following such notice, Lessor and Lessee shall discuss in good faith as to how the effects of any such illegality, invalidity or unenforceability might be avoided or remedied so as to permit the

Affected Party to perform such obligations or, as the case may be, substantially to give effect to such obligations in a manner which is not unlawful.

- 15.6.2 If, within thirty (30) days of such notice being given, or such shorter period as may be permitted by applicable law, order, regulation or official directive, Lessor and Lessee have not completed arrangements satisfactory to the party which is not the Affected Party to avoid or remedy the effect of such illegality, invalidity or unenforceability, such party shall be entitled to terminate the Term at any time thereafter by giving written notice to the Affected Party thereof (but in the case of partial illegality, invalidity or unenforceability, the party which is not the Affected Party may only terminate if such illegality, invalidity or unenforceability has a material adverse effect).
- 15.6.3 Upon such termination:
- (a) Lessee shall:
 - (i) redeliver all the Equipment to Lessor under Clause 13 (*Return of Equipment*) and in the condition required by Clause 13 (*Return of Equipment*);
 - (ii) take all such other action specified by Clause 13.1 (*Return*) as if references to the Expiry Date or Scheduled Expiry Date (as the case may be) were references to the date of termination;
 - (iii) if at the time of redelivery of any Equipment pursuant to (i) above, Lessee has not fully complied, or (in Lessor's reasonable opinion) will not fully comply, with the requirements referred to in Clause 13.1 (*Return*), indemnify Lessor on demand on terms (as set out in the notice) satisfactory to Lessor (acting reasonably) against the cost of putting such Equipment into the condition required by Clause 13.1 (*Return*); and
 - (iv) if Lessee fails to redeliver all the Equipment to Lessor under Clause 13 (*Return of Equipment*) and in the condition required by Clause 13 (*Return of Equipment*) pay compensation to Lessor in respect of Relevant Losses as contemplated by Clause 13.4 (*Compensation for Late Redelivery*); and
 - (b) (where the illegality, invalidity or unenforceability arises as a direct result of the acts or omissions of Lessee) Lessee shall on the date of termination pay the Termination Sum to Lessor. If Lessee does not fully comply with such obligations on the termination date, such failure shall constitute an immediate Event of Default and Lessor shall have all the rights specified in Clause 15.2 (*Rights*).

15.7 Re-Lease or sale

- 15.7.1 If Lessor sells or re-leases the Equipment during the period commencing on the Termination Payment Date and ending on the Scheduled Expiry Date, then subject always to Clause 15.7.2 below, the Lessor shall pay to or to the order of

the Lessee, by way of rebate of Rent (and, to the extent that such rebate exceeds the aggregate Rent paid by the Operator, by way of rebate of Termination Sum) , an amount equal to:

- (a) in the case of a re-leasing, the aggregate rentals payable under the new lease(s) in respect of the Units and Associated Equipment during or in respect of the Qualifying Period, discounted to present value at the Discount Rate, calculated on the basis of the number of days elapsed and a 365 day year; or
- (b) in the case of a sale or other disposal, the aggregate sale or disposal proceeds payable in respect of the Units and Associated Equipment during or in respect of the Qualifying Period, less the Lessor's reasonable costs and expenses incurred in respect of such sale or disposal, and then discounted by multiplying such resulting sum by A/B, where A is the number of months in the Qualifying Period and B is the remaining economic life (in months) of such Units and Leased Equipment as at the date of termination,

(such amount being the "**Clawback Amount**"). The Lessor shall deliver to the Lessee a credit note (valid for VAT purposes) for the Clawback Amount.

15.7.2 The Clawback Amount payable by the Lessor to the Lessee under Clause 15.7.1 above shall not, in any circumstances, exceed in aggregate the amount of the Termination Sum payable by the Lessee.

15.7.3 Where the Clawback Amount can be calculated as at the date on which the Termination Sum is payable (whether by virtue of the operation of the Direct Agreement or otherwise), it shall be netted off against the Foregone Rent and the Foregone Rent payable by the Lessee as part of the Termination Sum under Clause 15.2.4 shall be reduced accordingly, provided that the Foregone Rent shall not reduce below zero.

16. ASSIGNMENT AND TRANSFER

16.1 Agreement Binding

This Agreement shall bind and enure to the benefit of Lessor and Lessee and their respective successors, permitted transferees and permitted assigns.

16.2 By Lessee

Lessee will not assign any or all of its rights, transfer (whether voluntarily or involuntarily, by operation of law or otherwise) or create or permit to exist any Security Interest over, any of its rights and/or obligations under this Agreement or any other Contract Document without the consent of the Lessor (whether on termination of the Rail Services Contract or otherwise) transfer by novation all (but not part) of its rights and obligations to (i) (provided that Lessor has received a letter from the Secretary of State in relation to such Public Sector Company which is on substantially the same terms as the SoS Comfort Letter) a Public Sector Company; or (ii) the Secretary of State, such transfer by novation to be a "**Permitted Transfer**".

For the purposes of this Clause 16.2, "**Public Sector Company**" means any "public sector company" (as such term is defined in Section 30C of the Act) which either:

- (a) is a person that holds a "passenger licence" and a "track access contract" (as both terms are defined in the Act) and a "safety certificate" (as defined in and issued by the relevant regulator pursuant to the ROGS) permitting it to operate passenger revenue services on the Relevant Network ("**Permitted Operator**"); or
- (b) concurrently with becoming Lessee under this Agreement, has subleased the Equipment for use on the Relevant Network in accordance with the terms and conditions of this Agreement to a Permitted Operator until the Scheduled Expiry Date.

16.3 By Lessor

16.3.1 Lessor may (at its own cost) without the consent of Lessee:

- (a) assign any of its rights; or
- (b) transfer by novation any of its rights and obligations,

(in the case of both (a) and (b) above) under this Agreement to any other company within the Lessor Group (the "**New Lessor**"), provided that:

- (i) Lessor remains primarily liable for its obligations under this Agreement;
- (ii) prior to any such transfer or assignment, the New Lessor shall have given the covenant and undertaking referred to in Clause 7 (*Quiet Enjoyment*) and entered into a confidentiality undertaking on terms no less onerous than the provisions of Clause 18.10 (*Confidentiality*); and
- (iii) Lessee will not be required to make any payment or perform any obligation under this Agreement following any assignment or transfer as contemplated by this Clause 16.3.1 in excess of the amount or obligation which Lessee would have been required to pay or perform had the relevant transaction not taken place and any such transaction shall not, as a direct and immediate consequence, increase any other or impose any additional obligation or liability on Lessee or cause any diminution in the rights of Lessee under this Agreement (including in relation to Taxation).

16.3.2 Any other assignment or transfer by the Lessor or the Lessee shall require the prior written consent of the other party, such consent not to be unreasonably withheld or delayed, provided that the Lessor may without the consent of the Lessee:

- (a) assign any of its rights; or

(b) transfer by novation any of its rights and obligations,

(in the case of both (a) and (b) above) under this Agreement to any Financier by way of security for a purpose connected to the provision of financing in connection with the leasing of the Equipment, subject to such Financier entering into the covenant and undertaking referred to in Clause 7 (*Quiet Enjoyment*).

16.3.3 Neither Lessor nor Lessee shall create, purport to create or grant any Security Interest over any Unit, Vehicle or Part or any of the Associated Equipment, provided that the Lessor may without the consent of the Lessee grant a Security Interest over the Units, any Vehicle or Part and the Associated Equipment in favour of any Financier, subject to such Financier entering into the covenant and undertaking referred to in Clause 7 (*Quiet Enjoyment*).

16.3.4 Lessee will, at Lessor's cost, co-operate with any of Lessor, any New Lessor, any Financier and any other assignee, transferee, purchaser or beneficiary of any encumbrance contemplated by this Clause 16.3 in implementing any assignment, sale, transfer, conveyance or creation or existence of any encumbrance as contemplated by this Clause 16.3 (including, without limitation, by complying with all requests of Lessor or any such other person in respect of any such assignment, sale, transfer, conveyance or creation or existence of any encumbrance) and will, at Lessor's cost, take all such steps and execute all such documents (including any agreements directly with any Financier or any New Lessor) as Lessor or any such other person may reasonably request to give effect to the provisions of this Clause 16.3.

17. FREEDOM OF INFORMATION

17.1.1 The Lessor acknowledges that the Lessee is subject to the requirements of the Freedom of Information Act 2000 ("**FOIA**") and/or the Environmental Information Regulations 2004 ("**EIR**"). Accordingly, and subject to Clause 17.1.3, the Lessor shall:

- (a) provide all necessary assistance and co-operation as reasonably requested by the Lessee to enable the Lessee to comply with its obligations under the FOIA, including in consideration of the Lessee's compliance with the timescales for compliance set out in Section 10 of FOIA or Regulation 5 of EIR as applicable;
- (b) transfer to the Lessee any request for information made under FOIA or EIR and relating to this Agreement (a "**Request for Information**") received by the Lessor as soon as practicable and in any event within two (2) Working Days of receiving any such Request for Information; and
- (c) provide the Lessee with a copy of all information held on behalf of the Lessee and stipulated in a Request for Information which is in the Lessor's possession or control in the form that the Lessee requires within five (5) Working Days (or such other period as the Lessee may reasonably specify) of the Lessee's request for such information.

- 17.1.2 The Lessor shall not respond to any Request for Information unless expressly authorised to do so by the Lessee.
- 17.1.3 The Lessor acknowledges that the Lessee may be required under the FOIA and/or EIR (as applicable) to disclose information without consulting or obtaining consent from the Lessor. However, to the extent that it is permissible and reasonably practical for it to do so, the Lessee agrees to promptly:
- (a) notify the Lessor of any Request for Information that seeks disclosure of information (including, without limitation, confidential information) of the Lessor; and
 - (b) liaise with the Lessor in good faith (taking reasonable cognisance of any representations made by the Lessor) as to whether (and on what legally-justified basis) it is possible to treat any of the information stipulated in the given Request for Information as exempt from disclosure in accordance with the provisions of FOIA and/or EIR (as applicable) ("**Commercially Sensitive Information**").
- 17.1.4 The Lessor acknowledges, however, that (notwithstanding any other provision in this Agreement), the Lessee shall ultimately be the party responsible for determining in its absolute discretion whether any particular piece(s) of information (including, without limitation, confidential information) can be treated as Commercially Sensitive Information and/or be otherwise exempt from disclosure in accordance with the FOIA and/or EIR (as applicable).
- 17.1.5 The obligations of the parties under this Clause 17 shall survive the expiry or the termination of this Agreement for whatever reason.

18. MISCELLANEOUS

18.1 Waivers, Remedies Cumulative

The rights of Lessor and Lessee under this Agreement are cumulative, may be exercised as often as Lessor or Lessee (as the case may be) considers appropriate and are in addition to their respective rights under the general law. The rights of Lessor against Lessee or Lessee against Lessor or in relation to the Equipment (whether arising under this Agreement or the general law) shall not be capable of being waived or varied otherwise than by an express waiver or variation in writing; and in particular any failure to exercise or any delay in exercising any of such rights shall not operate as a waiver or variation of that or any other such right; any defective or partial exercise of any of such rights shall not preclude any other or further exercise of that or any other such right; and no act or course of conduct or negotiation on Lessor's or Lessee's (as the case may be) part or on its behalf shall in any way preclude it from exercising any such right or constitute a suspension or any variation of any such right.

18.2 Delegation

Lessor may delegate to any person or persons all or any of the rights, powers or discretions vested in it by this Agreement, and any such delegation may be made upon such terms and conditions and subject to such regulations (including power to

sub-delegate) as Lessor in its absolute discretion thinks fit. Lessor will consult with Lessee prior to any such delegation and will have due regard to Lessee's representations, if and to the extent that such delegation affects the performance by the parties of their respective obligations hereunder or the exercise of their respective rights hereunder. Notwithstanding any such delegation, Lessor shall remain primarily liable for the performance and observance of all of its obligations under this Agreement to the same extent as if no such delegation had occurred.

18.3 **Certificates**

Save where expressly provided in this Agreement, any certificate or determination by Lessor as to any rate of interest or as to any other amount payable under this Agreement will, upon production of reasonable supporting evidence, in the absence of manifest error, be conclusive and binding on Lessee.

18.4 **Appropriation**

If any sum paid or recovered in respect of the liabilities of Lessee under this Agreement is less than the amount then due, Lessor may apply that sum to amounts due under this Agreement in such proportions and order and generally in such manner as Lessor may determine.

18.5 **Set-Off**

Lessor may, if and for so long as a Default or an Event of Default has occurred and is continuing, set off any matured obligation owed by Lessee under this Agreement (to the extent beneficially owned by Lessor) against any matured obligation owed by Lessor to Lessee under this Agreement. Lessor will not be obliged to pay any amounts to Lessee under this Agreement so long as any sums which are then due to Lessor by Lessee under this Agreement remain unpaid and any such amounts which would otherwise be due will fall due only if and when Lessee has paid all such sums except to the extent Lessor otherwise agrees or sets off such amounts against such payment pursuant to the foregoing.

18.6 **Severability**

If a provision of this Agreement is or becomes illegal, invalid or unenforceable in any jurisdiction, that will not affect:

- 18.6.1 the legality, validity or enforceability in that jurisdiction of any other provision of this Agreement; or
- 18.6.2 the legality, validity or enforceability in any other jurisdiction of that or any other provision of this Agreement.

18.7 **Expenses**

18.7.1 Whether or not the Equipment is delivered to Lessee pursuant to this Agreement:

- (a) each party shall bear its own legal and other costs and expenses incurred in connection with the preparation, negotiation and execution of the Contract Documents; and

(b) Lessee shall pay to Lessor on demand all expenses (including reasonable legal and other costs properly incurred and any VAT thereon) payable or incurred by Lessor in contemplation of, or otherwise in connection with:

(i) the enforcement of any of Lessor's rights under this Agreement, or in respect of the repossession of the Equipment; and

(ii) the preservation of any of Lessor's rights under this Agreement.

18.7.2 All expenses payable pursuant to this Clause 18.7 will be paid in Sterling or, as appropriate, the Sterling equivalent of the amount of such expense in the currency in which the same is incurred by Lessor.

18.8 Time of the Essence

The time stipulated in this Agreement for all payments payable by Lessee to Lessor and for the performance of Lessee's other obligations under this Agreement (or in the case of any grace period, the date on which such grace period ends) will be of the essence of this Agreement.

18.9 Notices

18.9.1 All notices under, or in connection with, this Agreement will, unless otherwise stated, be given in writing by letter or email on a Business Day. Any such notice is deemed to be given as follows:

(a) if sent by post, on the third Business Day after posting (first class postage pre-paid);

(b) if sent by email, when the email message is sent, provided that no message is received by the sender indicating that such message has not been delivered to the intended recipient; and

(c) if sent by courier, when delivered.

18.9.2 The physical address and email address of Lessee and Lessor are as follows (or such other physical address or email address notified by the relevant party):

(i) Lessee:

Address: South Western Railway Limited
Great Minster House 4th Floor
Public Ownership Programme Team
33 Horseferry Road
London
England
SW1P 4DR

Email:



Attention: Lawrence Bowman, Managing Director

(with a copy to the Company Secretary)

(ii) Lessor:

Address: Rock Rail South Western Trains PLC
Capital Tower
91 Waterloo Road
London, SE1 8RT
United Kingdom

Email:



Attention: Mike Keen, Director

18.10 Confidentiality

- 18.10.1 Each party agrees that it will keep this Agreement and all documents related hereto, and all information and data furnished hereunder or in connection with the transactions contemplated by this Agreement, confidential and that this Agreement and all such documents, information and data will not be furnished or disclosed by it to any other person (except as specified in Clause 18.10.4) without the other party's prior written consent.
- 18.10.2 Without prejudice to the restrictions in Clause 18.10.1, Lessor shall keep details of the Maintenance Plan confidential throughout the Term and always thereafter, save that Lessor may disclose the Maintenance Plan to any preferred bidder selected by the Secretary of State or to any potential future lessee of the Equipment to the extent required by the Secretary of State, who enters into a confidentiality undertaking with Lessee in terms equivalent to this Clause 18.10.2 or in such other form as may be prescribed by the Secretary of State.
- 18.10.3 In fulfilling its obligations under this Clause 18.10, each party shall only be required to use the same degree of care to prevent unauthorised disclosure of the information described above as it would use to prevent the disclosure of its own commercial and financial information of the same or similar nature and which it considers proprietary or confidential.
- 18.10.4 The restrictions in Clause 18.10.1 shall not apply to any disclosure of any information referred to above:
- (a) to the ORR, Secretary of State, the London Stock Exchange, the Bank of England, the Prudential Regulation Authority, the Financial Conduct Authority, the Competition Commission, any taxation authority or as required as mandatory by any Applicable Laws and Standards;
 - (b) to any member of the group of companies of which the disclosing party is a member, or lawyers, accountants and others providing professional services to Lessee or to Lessor, or any financier of Lessor, any New Lessor or any permitted Sub-Contractor, **provided that** (save with respect to lawyers or accountants) the party disclosing such information has obtained an undertaking of confidentiality from such member,

advisors, consultants, financiers or permitted Sub-Contractors in terms of equivalent to those set out this clause 18;

- (c) to any financier or prospective financier of the Lessor **provided that** the party disclosing such information has obtained an undertaking of confidentiality from such recipient in terms of equivalent to those set out in this clause 18;
- (d) in connection with obtaining any insurance;
- (e) in connection with the maintenance of any Vehicle or Unit after the Term where disclosure is reasonably required and is limited to the extent necessary to enable Lessor or Lessee to procure maintenance and repair of the Equipment and **provided that** the party providing such information has obtained an undertaking of confidentiality from the recipient in terms equivalent to those set out this clause 18;
- (f) which is in the public domain other than as a result of the breach of any obligation of confidentiality;
- (g) which is required to be disclosed by Applicable Law or in connection with any litigation relating to any Contract Document;
- (h) which is required in connection with an assignment, transfer or other disposition of rights permitted hereunder (including, without limitation to any potential future lessee of the Equipment to the extent required by the Secretary of State) where the proposed assignee or transferee has agreed in writing to be bound by the provisions of this Clause 18;
- (i) which is required in connection with a sale or other disposition of shares in Lessee or any parent company of any party **provided always that** any recipient of such information has provided an undertaking of confidentiality in substantially the same form as set out in this Clause 18;
- (j) which was made available to the disclosing party on a non-confidential basis; or
- (k) as required by any Applicable Laws and Standards, the rules of any recognised stock exchange or regulatory body or any written requirements of any taxation authority or as expressly permitted by this Agreement.

18.11 Indemnities, Contracts (Rights of Third Parties) Act 1999

All rights expressed to be granted to each Indemnatee under this Agreement (other than Lessor) are given to Lessor (subject to compliance with Clause 16.3.1 and 16.3.2) on behalf of that Indemnatee. However, in other respects Lessor and Lessee hereby agree that the Contracts (Rights of Third Parties) Act 1999 shall not apply to the provisions of this Agreement or (except as expressly stated therein) to the other Contract Documents.

18.12 Sole and Entire Agreement

The Contract Documents between *inter alios* Lessor and Lessee and other documents (if any) entered into between Lessor and Lessee on the date of this Agreement in connection with the leasing of the Equipment to Lessee is the only and entire agreement between Lessor and Lessee in relation to the leasing of the Equipment to Lessee, and supersedes all previous agreements in relation to each such transaction.

18.13 Counterparts

This Agreement may be executed in counterparts each of which will constitute one and the same document.

18.14 Variation

The provisions of this Agreement shall not be varied otherwise than by an instrument in writing executed by or on behalf of Lessor and Lessee.

18.15 Law

This Agreement and any issue or Dispute arising out of or in connection with it (whether contractual or non-contractual, including claims in tort or for breach or statute or regulation or otherwise) are governed by and to be construed in accordance with English law.

18.16 Disputes

18.16.1 Lessor and Lessee agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly neither Lessor nor Lessee will argue to the contrary.

18.16.2 Subject to the terms of Schedule 12 (*Dispute Resolution Procedure*), the English courts have exclusive jurisdiction to hear or otherwise decide any suit, application, action or other proceedings ("**Proceedings**") which may arise out of or in connection with this Agreement (including in relation to any non-contractual obligations arising out of or in connection with this Agreement) and, for these purposes, each party irrevocably submits to the jurisdiction of the English courts.

18.16.3 Each party irrevocably (i) waives any objection which it might at any time have to the English courts being nominated as the forum to hear or otherwise decide any Proceedings, and (ii) agrees not to claim that the English courts are not a convenient or appropriate forum.

18.16.4 Any Dispute shall be resolved in accordance with Schedule 12 (*Dispute Resolution Procedure*).

19. ANTI BRIBERY AND ANTI-CORRUPTION COMPLIANCE

19.1 General

19.1.1 The parties shall each:

- (a) comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010;
- (b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the United Kingdom;
- (c) have and shall maintain in place their own, and/or be subject to, throughout the term of this Agreement policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with all applicable laws, statutes, regulations, codes relating to anti-bribery and anti-corruption (including the Bribery Act 2010) and Clause 19.1.1(b), and the Lessor, and/or the Lessee will enforce them where appropriate;
- (d) promptly report to each other party any request or demand for any undue financial or other advantage of any kind received by that party in connection with the performance of this Agreement;
- (e) promptly notify each other party (in writing) if a foreign public official becomes an officer or employee of the notifying party or acquires a direct or indirect interest in that notifying party;
- (f) warrant that it has no foreign public officials as direct or indirect owners, officers or employees at the date of this Agreement; and
- (g) provide the other party with such supporting evidence of compliance with this Clause 19.1 as that other party may reasonably request in writing, from time to time.

19.1.2 For the purposes of this Clause 19.1, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with Section 7(2) of the Bribery Act 2010 (and any guidance issued under Section 9 of that Act), sections 6(5) and 6(6) of that Act and Section 8 of that Act respectively. For the purposes of this Clause 19.1 a person associated with a party includes but is not limited to any sub-contractor or agent of that party.

19.2 Prohibited Corruption Acts

Each party warrants to and agrees with the other party that it shall not commit a Prohibited Corruption Act.

IN WITNESS WHEREOF the parties hereto have executed this Agreement and the same is intended to be and is hereby delivered on the date shown at the beginning of this Agreement.

SCHEDULE 1 REPRESENTATIONS AND WARRANTIES

1. LESSEE'S REPRESENTATIONS AND WARRANTIES

Lessee's representations and warranties to Lessor are as follows:

- 1.1 **Status:** Lessee is a company duly incorporated and validly existing under the laws of England and Wales, and has the corporate power to own its assets and carry on its business as it is being conducted and is or at the requisite time will be the holder of all necessary licences and permits required in connection therewith and with the use and operation of the Units (save to the extent the Manufacturer has agreed to obtain such licences and permits pursuant to the MSA);
- 1.2 **Power and authority:** Lessee has the corporate power to enter into and perform, and has taken all necessary corporate action to authorise the entry into, performance and delivery of, the Contract Documents to which it is a party and the transactions contemplated by the Contract Documents to which it is a party;
- 1.3 **Legal validity:** the Contract Documents to which it is a party have been duly authorised, executed and delivered by Lessee, and the Contract Documents to which it is a party constitute legal, valid and binding obligations of Lessee, enforceable in accordance with their respective terms except as such enforceability may be limited by:
 - (a) bankruptcy, insolvency, or other laws of general application affecting the enforcement of creditors' rights;
 - (b) application of equitable principles; and
 - (c) the non-availability of the equitable remedies of specific performance or injunctive relief;
- 1.4 **Non-conflict:** the entry into and performance by Lessee of, and the transactions contemplated by, the Contract Documents to which it is a party do not and will not conflict with any laws binding on Lessee or with the Memorandum and Articles of Association of Lessee, or conflict with or result in default by Lessee under any document which is binding upon Lessee or any of its assets, nor (except as expressly contemplated by this Agreement or any other Contract Document to which it is a party) result in the creation of any Security Interest over it or any of its assets;
- 1.5 **Authorisation:** all authorisations, consents, registrations and notifications required by Lessee in connection with the entry into, performance, validity and enforceability of, the Contract Documents to which it is a party and the transactions contemplated by the Contract Documents to which it is a party, have been obtained or effected (as appropriate) and are in full force and effect;
- 1.6 **Pari Passu:** the obligations of Lessee to Lessor under the Lessee Documents rank at least *pari passu* with all other present and future unsecured and unsubordinated obligations (including contingent obligations) of Lessee, with the exception of such obligations as are mandatorily preferred by law and not by virtue of any contract;

- 1.7 **Material Adverse Change:** there has been no material adverse change in the financial condition of Lessee since the date to which any audited documents/materials/accounts most recently provided to Lessor were drawn up;
- 1.8 **Litigation:** except as disclosed to Lessor in writing prior to the date of this Agreement, no litigation, arbitration or administrative proceedings are pending or (to Lessee's knowledge) threatened against Lessee which, if adversely determined, would have (in the reasonable opinion of Lessor) a material adverse effect and whose current status is such that an adverse determination is likely;
- 1.9 **Accounts:** the audited accounts (unconsolidated and consolidated if available) of Lessee most recently delivered to Lessor have been prepared in accordance with accounting principles and practices generally accepted and consistently applied in the United Kingdom, and fairly represent the financial condition of Lessee as at the date to which they were drawn up;
- 1.10 **No Default:** no Event of Default has occurred and is continuing or might be reasonably expected to result from the entry into or performance by Lessee of the Contract Documents to which it is a party; and no other event has occurred and is continuing which constitutes (or with the giving of notice, lapse of time, determination of materiality or the fulfilment of any other applicable condition or any combination of the foregoing, might be reasonably expected to constitute) a material default by Lessee under any Contract Document to which Lessee is a party and which is binding on Lessee or any assets of Lessee; and
- 1.11 **Rail Services Contract:** the Rail Services Contract is in full force and effect.

2. LESSOR'S REPRESENTATIONS AND WARRANTIES

Lessor's representations and warranties to Lessee are as follows:

- 2.1 **Status:** Lessor is a company duly incorporated and validly existing under the laws of England and Wales, and has the corporate power to own its assets and carry on its business as it is now being conducted and is the holder of all necessary licences and permits required in connection therewith;
- 2.2 **Power and authority:** Lessor has the corporate power to enter into and perform, and has taken all necessary corporate action to authorise the entry into, performance and delivery of, and the transactions contemplated by the Contract Documents to which it is a party;
- 2.3 **Legal validity:** this Agreement has been duly authorised, executed and delivered by Lessor and constitutes Lessor's legal, valid and binding obligation enforceable in accordance with their respective terms except as such enforceability may be limited by:
 - (a) bankruptcy, insolvency, or other laws of general application affecting the enforcement of creditors' rights;
 - (b) application of equitable principles; and
 - (c) the non-availability of the equitable remedies of specific performance or injunctive relief;

- 2.4 **Non-conflict:** the entry into and performance by Lessor of, and the transactions contemplated by, the Contract Documents to which it is a party do not and will not conflict with any laws binding on Lessor or the Memorandum and Articles of Association of Lessor, or conflict with or result in default under any document which is binding upon Lessor or any of its assets, nor (except as expressly contemplated by this Agreement or any other Contract Document to which it is a party) result in the creation of any Security Interest (other than Financier Liens) over it or any of its assets; and
- 2.5 **Authorisation:** all authorisations, consents, registrations and notifications required by Lessor in connection with the entry into, performance, validity and enforceability of, and the transactions contemplated by, the Contract Documents to which it is a party have been obtained or effected and are in full force and effect.

**SCHEDULE 2
CONDITIONS PRECEDENT**

**PART 1
LESSOR CONDITIONS PRECEDENT**

1. CONDITIONS

Receipt by Lessor of the following, each in form and substance satisfactory to Lessor:

1.1 Corporate Documents:

On or before the date of this Agreement:

- (a) [not used]
- (b) a certified true copy of a resolution of the board of directors of Lessee approving the terms of, and the transactions contemplated by, this Agreement, resolving that it enter into this Agreement, and authorising a specified person or persons to execute this Agreement and accept delivery of the Equipment on its behalf; and
- (c) [not used].

1.2 [Not used]

1.3 Documents:

On or before the date of this Agreement, evidence (in form and substance approved by Lessor) that the Lessee has the benefit of the TSSSA (together with evidence that all of the conditions precedent specified therein have been satisfied and the obligations of the parties to the TSSSA are in (and will continue to be throughout the Term) full force and effect.

1.4 Other Agreements: on or before the date of this Agreement, an original of each of the other Contract Documents and the SoS Comfort Letter, duly executed by the parties thereto (other than the Lessor).

1.5 Receipt by Lessor of all sums falling due to Lessor under this Agreement on or before the earlier of the Effective Date or the first Acceptance Date to occur.

1.6 Receipt by Lessor of evidence that Lessee has obtained an approved Safety Management System and a Safety Certificate and that these remain in full force and effect.

1.7 Receipt by Lessor of evidence in a form satisfactory to Lessor showing that Lessee has effected the Insurances in compliance with Schedule 9 (*Insurance Requirements*).

1.8 As at the date of this Agreement no Default shall have occurred and be continuing.

1.9 As at the date of this Agreement the representations of Lessee under Clause 2 (*Representations and Warranties*) shall be true and correct.

PART 2
LESSEE CONDITIONS PRECEDENT

1. CONDITIONS

Receipt by Lessee of the following, each in form and substance satisfactory to Lessee:

1.1 Corporate Documents:

On or before the date of this Agreement,

- (a) certified true copies of the Memorandum and Articles of Association of Lessor (or a certificate of a duly authorised officer of Lessor confirming that the certified true copies of the Memorandum and Articles of Association of Lessor previously delivered to Lessor under this Agreement remain true, complete and up-to-date);
- (b) a certified true copy of a resolution of the board of directors of Lessor approving the terms of, and the transactions contemplated by, this Agreement, resolving that it enter into this Agreement, and authorising a specified person or persons to execute this Agreement and accept delivery of the Equipment on its behalf; and
- (c) a certificate of an officer of Lessor setting out a specimen signature for each person authorised in the resolution(s) referred to in 1.1.2 above.

1.2 Documents: on or before the date of this Agreement, an original of:

- (a) the Direct Agreement; and
- (b) each of the other Contract Documents to which the Lessor is a party,

duly executed by the Lessor.

1.3 Quiet Enjoyment Undertaking: on or before the date of this Agreement, a covenant and undertaking in the form of Clause 7 (*Quiet Enjoyment*) provided by the Financiers as of the date of this Agreement in favour of the Lessee.

**SCHEDULE 3
PAYMENTS**

Each amount calculated pursuant to this Schedule is subject to any adjustment as set out in this Agreement:

**PART 1
UNIT RENT APPLICABLE TO 5-CAR UNITS**

The amount of [REDACTED] per Vehicle per month

**PART 2
UNIT RENT APPLICABLE TO 10-CAR UNITS**

The amount of [REDACTED] per Vehicle per month

**PART 3
ASSOCIATED EQUIPMENT RENT**

The amount of [REDACTED] per month in respect of the Owner Owned Spares, Special Tools and Computer Based Training Package.

The amount of [REDACTED] per month in respect of the Driving Cab Simulators.

**PART 4
MAINTENANCE RENTALS**

The amount of [REDACTED] per Vehicle per month as at the date of this Agreement (and as recalculated in accordance with Clause 5.4 (*Maintenance Rental Adjustment*)).

SCHEDULE 3A MODIFIED RENT AND MAINTENANCE RENTAL

1. GENERAL

- 1.1 The amounts of Modified Rent and Maintenance Rental specified in this Schedule 3A shall only be applicable in relation to an item of Equipment subject to (and only during) an Extension Period pursuant to Clause 11.3 (*Requisition*).
- 1.2 Each amount calculated pursuant to this Schedule is (1) exclusive of VAT, and (2) subject to adjustment to provide the Lessor with full protection in relation to any impact arising from a change in law.

2. ADJUSTMENT FORMULA

In this Schedule, the "**Adjustment Formula**" means:

$$X = (Y \times 0.8) + ((Y \times 0.2) \times (RPI \div \text{Base RPI}))$$

where:

Base RPI = the retail prices index for February 2017 (as published by the Office for National Statistics).

RPI = from 1 April in a given year until 31 March in the following year, the retail prices index for February of that year (as published by the Office for National Statistics or any relevant successor thereto).

3. MODIFIED RENT AND MAINTENANCE RENTAL

- 3.1 In relation to each Unit (that is subject to an Extension Period) that is identified as being a "five-car" Unit in Schedule 13 (*Unit Details*), the Rent shall be an amount of £X per Vehicle per month, where X is calculated as follows:

In relation to any Extension Period resulting from requisition or hire as described in Clause 11.3 (*Requisition*), the amount recalculated annually such that for each rent period during the year (i) from (and including) 1 April in any calendar year, (ii) to (but excluding) 1 April in the immediately following calendar year:

X = the amount calculated using the Adjustment Formula where Y =



In each case, in relation to any rent period comprising less than one calendar month, the relevant amount shall be calculated in a time apportioned manner in accordance with this Agreement.

- 3.2 In relation to each Unit (that is subject to an Extension Period) that is identified as being a "ten-car" Unit in Schedule 13 (*Unit Details*), the Rent shall be an amount of £X per Vehicle per month, where X is calculated as follows:

In relation to any Extension Period resulting from requisition or hire as described in Clause 11.3 (*Requisition*), the amount recalculated annually such that for each rent

period during the year (i) from (and including) 1 April in any calendar year, (ii) to (but excluding) 1 April in the immediately following calendar year:

X = the amount calculated using the Adjustment Formula where $Y =$

██████████

In each case, in relation to any rent period comprising less than one calendar month, the relevant amount shall be calculated in a time apportioned manner in accordance with this Agreement.

- 3.3 In relation to Associated Equipment (that is subject to an Extension Period), the Rent shall be an amount of £ A per month, where A is calculated as follows:

In relation to any Extension Period resulting from requisition or hire as described in Clause 11.3 (*Requisition*), the amount recalculated annually such that for each rent period during the year (i) from (and including) 1 April in any calendar year, (ii) to (but excluding) 1 April in the immediately following calendar year:

A = the amount of X calculated using the Adjustment Formula where $Y =$ ██████████ (based on the spares and special tools contemplated as at the date hereof in this Agreement).

In each case, in relation to any rent period comprising less than one calendar month, the relevant amount shall be calculated in a time apportioned manner in accordance with this Agreement.

- 3.4 The Maintenance Rental (in relation to a Unit that is subject to an Extension Period) shall be an amount of ██████████ per Vehicle per month as at the date of this Agreement (and as recalculated in accordance with Clause 5.4 (*Maintenance Rental Adjustment*)).

SCHEDULE 4
DELIVERY AND REDELIVERY CONDITION SCHEDULE

PART 1
[NOT USED]

PART 2

REDELIVERY CONDITION SCHEDULE

Each Unit, and the Associated Equipment (as regards paragraphs (c) and (d) of paragraph 1 of this Part 2 of Schedule 4), shall comply with the following requirements on the Expiry Date.

1. MAIN PRINCIPLES

1.1 General Condition

- (a) Each Vehicle shall be:
 - (i) in the same condition as at the relevant Acceptance Date, with the Existing Lease Redelivery Condition Non-Compliances rectified, and incorporating all works performed in respect of the Vehicles by the Manufacturer (whether pursuant to the MSA or the LG3P Letter or otherwise in connection with the MSA) following the Acceptance Date, subject to fair wear and consistent with such Vehicle's position in the maintenance and overhaul cycle for the Units specified in the Manuals and the Maintenance Plan; and
 - (ii) in a condition which qualifies for the relevant Engineering Certification and would permit the immediate operation of the Unit on the Relevant Network (subject only to the new operator meeting the Safety Management System for its operation of the Unit).
- (b) The Units shall be stripped of Lessee's livery (excluding carpets and seat covers) and free of Lessee's branding, logos and specific advertisements, **provided that**:
 - (i) Lessor agrees to act reasonably in relation to the livery and/or branding in which the Units are accepted for redelivery hereunder, with a view to avoiding any unnecessary change of livery and/or branding;
 - (ii) Lessor will accept redelivery of any Unit in branding and/or livery where Lessee has provided to a successor lessee of such Unit an irrevocable licence of such branding and/or livery or an irrevocable undertaking that no rights will be enforced in relation to that branding and/or livery in a form specified by the Secretary of State, and the Secretary of State has confirmed this to Lessor; and
 - (iii) where the circumstances described under paragraph (b)(ii) above do not arise, but Lessee is liable under its rail services contract with the Secretary of State to pay to a successor rail services operator the costs of removing livery and/or branding, Lessor agrees to accept redelivery of the relevant Units in livery and/or branding specified at the time of redelivery as acceptable to the Secretary of State, **provided that** such Units are to be used by a successor rail services operator and it is agreed by the Secretary of State and Lessor, acting reasonably, that no additional cost will be incurred by Lessor by reason of acceptance of such Units in such livery and/or branding.
- (c) The pool of Owner Owned Spares shall be:

- (i) complete and, subject to fair wear and consistent with its position in the maintenance and overhaul cycle, each Owner Owned Spare shall not be life expired and shall be in an overhauled state and fit for immediate operational use on the Units in compliance with Applicable Laws and Standards; and
 - (ii) consistent and compatible with the configuration of the Units as at the Expiry Date, and any Owner Owned Spares of a type which has become obsolete due to a change in the configuration of the Units during the Term shall (without prejudice to any obligation of the Manufacturer with regard to the supply of Owner Owned Spares under the MSA) have been replaced (at Lessee's sole cost) with Owner Owned Spares compatible with such amended configuration of the Units.
- (d) The Special Tools shall be complete, and each item shall not be life-expired and shall be fit for use in compliance with Applicable Laws and Standards. To the extent only that there is a requirement to remove the AVIS Special Tool(s) because either:
- (i) there is a change to the Maintenance Plan which no longer requires these for the maintenance of the Units; or
 - (ii) the Units are not being re-leased after the Expiry Date into the South Western Relevant Network,
- all costs of removal of the AVIS Special Tool(s) shall be for the account of Lessee).
- (e) The Driving Cab Simulators shall be:
- (i) in the same condition as at the relevant Acceptance Date, subject to fair wear and consistent with its position in the maintenance cycle as specified in the Simulator Delivery Documents (as defined in the Variation Order 023); and
 - (ii) fit for the use specified in the Simulator Specification (as defined in the Variation Order 023) by a subsequent operator.

1.2 Maintenance Plan

All maintenance, overhaul and repair work (and related examinations and inspections) which the Manuals or the Maintenance Plan contemplate as being carried out to a Vehicle prior to the Expiry Date shall (subject to fair wear and having due regard to the position of such Vehicle within the maintenance cycle and without requiring any work to be undertaken in relation to Faults which are the subject of any Manufacturer warranty, in respect of which the provisions of paragraph 1.3 below shall apply) have been completed and no such work or examinations or inspections shall have been deferred. In respect of the Driving Cab Simulators, all maintenance and repair work which the Simulator Delivery Documents (as defined in the Variation Order 023) contemplate as being carried out to a Driving Cab Simulator prior to the Expiry Date shall (subject to fair wear and having due regard to the position of such Driving Cab

Simulator within the maintenance cycle) have been completed and no work or examination shall have been deferred.

1.3 **Defect Rectification**

All Fault Rectification Work (and related examinations and inspections) in relation to warranties given by the Manufacturer or any Maintenance Sub-contractor shall have been completed or, if such programme of work extends beyond the Expiry Date, the work required to be carried out before the Expiry Date shall have been fully completed and a programme for completion of the remaining work agreed with Lessor (acting reasonably).

1.4 **Modifications**

- (a) All Mandatory Modifications and other modifications which it has been agreed Lessee will install shall have been completed and installed and will be fully operational or, if the programme of work extends beyond the Expiry Date, that part of such Mandatory Modification or other modification as is required (by the modifications programme or Applicable Laws and Standards) to be installed before the Expiry Date shall have been completed and installed and (where practicable) will be fully operational, and Lessee shall have used reasonable endeavours to agree a programme for completion of the remaining part of that Mandatory Modification or other modification with Lessor.
- (b) Unless otherwise agreed, any other modifications or equipment installed on the Units by Lessee shall have been removed in accordance with Clause 13.1.7.

1.5 **Standards/Safety Management System**

Each Vehicle shall comply with all Relevant Approvals required by Applicable Laws and Standards for the operation of the Vehicles on the Relevant Network on the Expiry Date.

1.6 **Configuration**

The Vehicles shall have the same design configuration as at the relevant Acceptance Date, save for any Modifications and permitted variations which are not required to have been removed under the terms of this Agreement.

2. **SPECIFIC EQUIPMENT**

2.1 **Running Gear, Traction, Braking**

Vehicle running gear, traction equipment and braking equipment shall be in a functional and operational condition and in compliance with the Manuals and the Maintenance Plan. The useful life of each such item of equipment will reflect its position in the maintenance and overhaul cycle for the Units in the Manuals and the Maintenance Plan.

2.2 **Exteriors**

Vehicle exteriors shall have a satisfactory standard of cleanliness, and exhibit no significant damage to paintwork, vinyl or to the body structure (and shall be free from

dents and abrasions, excluding minor scratches and marks). Paintwork and vinyl in respect of colour and gloss levels shall be appropriate to the life of the coating, and paintwork and vinyl shall have been maintained in accordance with the requirements of the Manuals and the Maintenance Plan.

2.3 Bodywork Repairs

All Vehicle bodywork and structural repairs carried out by or on behalf of Lessee shall be permanent repairs, and shall have been undertaken in accordance with Applicable Laws and Standards and Industry Standards with the intention of ensuring the long-term integrity of the Unit.

2.4 Windows

Windows shall be free from (a) scratches, chips or blemishes and (b) internal or external graffiti and etchings.

2.5 Interiors

Vehicle interior fittings, surfaces and coverings shall be in a clean condition and clear of stains, defects and damage and in the same configuration as at the relevant Acceptance Date. The condition of the interior shall reflect the age of the Vehicle interior in terms of wear and the position of the Vehicle in the cleaning cycle specified in the Maintenance Plan, but in any event none of the soft furnishings shall be torn or slashed.

2.6 Systems and Services

Subject to the relevant Vehicle's position in the maintenance and overhaul cycle for the Units specified in the Manuals and the Maintenance Plan, all systems and services, including interior lighting, air conditioning and passenger information systems and catering systems, shall be fully functional in accordance with the Specification.

2.7 Removable Assemblies

Removable assemblies such as seats, seat cushions and tables shall be robustly mounted in the correct position, with no defects in the securing mechanism.

2.8 Toilets

Subject to the relevant Vehicle's position in the vehicle maintenance schedule specified in the Manuals and the Maintenance Plan, all toilet areas including the bioreactor shall have been serviced in accordance with the Manuals and the Maintenance Plan, and all toilets shall be fully operational, clean and clear of leakage and blockage.

2.9 Fluid Levels and Sand

All fluid levels (other than fuel) shall be fully charged with appropriate fluids, and the sanders will be fully loaded with appropriate sand.

2.10 **Graffiti**

The Vehicles shall be clear of any internal and external graffiti and etchings.

2.11 **Corrosion**

The Vehicles shall be free from corrosion, and will be adequately treated, and any corrosion prevention programme specified in the Maintenance Plan and the Manuals will be in operation. Fuel tanks will be free from contamination and corrosion and any tank treatment programme specified in the Maintenance Plan and the Manuals will be in operation. There shall be no ingress of water into the bodysell when all the doors and windows are closed. .

2.12 **Lights**

All bulbs shall be functional, and each Vehicle shall be fitted with the same colour and tone of bulbs.

3. **HANDOVER PACKAGE**

The following information (the "**Handover Package**") shall be provided to Lessor on the Expiry Date:

3.1 **Log Books/Configuration**

The log books for each Unit, including:

- (a) the configuration of each Unit in terms of Vehicle numbers and major system and Component serial numbers; and
- (b) the current and as-built configuration, including modification level of major systems and equipment and software versions, together with known outstanding programmes not completed.

3.2 **Overhaul Work**

Documentary evidence shall be **provided that** all overhaul work prescribed by the Manuals and the Maintenance Plan and the Simulator Delivery Documents (as defined in the Variation Order 023), if applicable, has been undertaken and completed in accordance with the Maintenance Plan and the Simulator Delivery Documents (as defined in the Variation Order 023), if applicable, or, if any Vehicles are undergoing overhaul work on the Expiry Date, documentary evidence as to progress of the overhaul and the repairs identified.

3.3 **Documentation**

All relevant documentation and electronic documents, including:

- (a) the Manuals and the Maintenance Plan and the Simulator Delivery Documents (as defined in the Variation Order 023), fully updated to include any modifications and updated records;

- (b) a complete list of Parts for the Units;
- (c) a list of the names and addresses of all suppliers of all Parts for the Units, indicating which Parts each supplies;
- (d) the Maintenance Information, complete and fully updated in all material respects;
- (e) the Technical Records, complete and fully updated in all material respects, including work that has been undertaken, scheduled and unscheduled;
- (f) Records of recent faults, including repeat faults and "no faults found" (in the preceding three (3) months); and
- (g) Records of major incidents, failures, collisions and derailments incurred by each individual Vehicle or Unit since the relevant Acceptance Date.

Lessee shall also deliver to Lessor a catalogue listing the complete contents of the Technical Records Database.

3.4 **Software**

Soft copies of all relevant software packages related to the Units or any of the other Equipment (including, without limitation, the Special Tools and (insofar as such software package has been provided to the Lessee by the Manufacturer) the Driving Cab Simulators).

PART 3
INSPECTION SCHEDULE

1. Unless otherwise agreed with Lessor and save as modified by Lessor or by Mandatory Modification, each Vehicle must be in a condition consistent with its position within the Maintenance Plan. To the extent that such position allows, and subject to normal wear and tear, each Vehicle will be in fully operational condition, in the same state of assembly as at the relevant Acceptance Date and with all its Parts fitted and operational.
2. Without prejudice to the foregoing, the Vehicles shall, at all times throughout the Term, comply with the following:
 - 2.1 the cabs of each Vehicle shall contain driver's log books and/or fault record books as appropriate;
 - 2.2 all internal and external surfaces shall have a satisfactory standard of cleanliness and shall be clear of graffiti and visible etching; and
 - 2.3 all accident and crash damage to the Vehicles shall have been permanently repaired in accordance with Applicable Laws and Standards.

SCHEDULE 5 FORM OF INSPECTION SECURITY ACCOUNT CHARGE

A DEED OF SECURITY made on [] 20[]

BETWEEN:

- (1) **FIRST MTR SOUTH WESTERN TRAINS LIMITED**, a company incorporated under English law (registered number 7900320) whose registered office is at 50 Eastbourne Terrace, Paddington, London, W2 6LG ("**Lessee**"); and
- (2) **ROCK RAIL SOUTH WESTERN PLC**, a company incorporated under the laws of England (registered number []) whose registered office is at [] ("**Lessor**").

WHEREAS:

- (A) Pursuant to the Lease, Lessor has agreed to lease, and Lessee has agreed to take on lease the Equipment on the terms of the Lease.
- (B) As security for certain obligations and liabilities in relation to the condition of the Equipment under the Lease, Lessee has agreed pursuant to Clause 13.8 (*Security for 12 Month Preliminary Inspection*) and Clause 13.9 (*Non-Compliance revealed by a Final Inspection*) of the Lease that it will in certain circumstances place and thereafter maintain certain monies on deposit with the Account Bank and has agreed to assign by way of security such deposits to Lessor.

IT IS AGREED as follows:

1. INTERPRETATION

- 1.1 In this Deed, capitalised terms shall, unless stated to the contrary, have the meanings given to them in the Lease, and the terms defined below have the meanings there given:

"**Acceptable Security**" means any deposit or deposits of cash made by Lessee to the Inspection Security Account.

"**Acceptable Security Value**" means at any time the aggregate amounts of cash deposits standing to the credit of the Inspection Security Account at that time, which amount shall be determined:

- (a) excluding accrued interest until the same shall have been credited to the Inspection Security Account; and
- (b) after deduction of any withholding tax or any other actual or contingent tax liability which Lessee or the Account Bank is required to deduct from the amounts standing to the credit of the Inspection Security Account in accordance with Applicable Laws and Standards.

"**Account Bank**" means [].

"Guarantee" means either a (i) parent company guarantee or (ii) bank guarantee provided by the Lessee, from an entity reasonably satisfactory to Lessor and in form and substance reasonably satisfactory to Lessor.

"Guaranteed Amount" means the amount guaranteed pursuant to any Guarantee issued pursuant to Clause 13.8.2 of the Lease.

"Inspection Security Account" means the Sterling account numbered [] held in the name of Lessee with a United Kingdom branch of the Account Bank on terms which are acceptable to Lessor.

"Lease" means the operating lease agreement dated [] 20[] between Lessee as lessee and Lessor as lessor.

"Security Interest" means any mortgage, charge, pledge, lien, assignment, encumbrance, right of set off or security interest whatsoever, howsoever created or arising or any other agreement, arrangement or court order having substantially the same economic effect as the foregoing.

"Secured Obligations" means the obligations and liabilities of Lessee to Lessor pursuant to Clause 13.3.1 of the Lease remaining unpaid or unperformed in accordance with the Lease.

"Security Period" means the period commencing on the date of the opening of the Inspection Security Account and ending on the date on which the last Vehicle is redelivered under the Lease.

1.2 Where the context admits, the definitions and rules of construction used in the Lease shall apply.

2. MAINTENANCE OF ACCEPTABLE SECURITY VALUE

2.1 As continuing security for the payment and discharge of the Secured Obligations, Lessee hereby agrees to maintain the Acceptable Security so that, at any time during the Security Period, the sum of (A) the Acceptable Security Value and (B) the Guaranteed Amount (if any) shall not be less than the greater of (i) the Fleet Quantum (save as otherwise provided in Clause 13.10 (*Release of Security*) of the Lease), and (ii) £1.00.

2.2 Subject to Clause 13.10 (*Release of Security*) of the Lease, if at any time during the Security Period Lessor determines that the sum of (A) the Acceptable Security Value and (B) the Guaranteed Amount (if any) is less than the Fleet Quantum, Lessor shall give Lessee written notice specifying the amount of the deficit and Lessee shall, forthwith upon receipt of such notice and at the option of Lessee, either (i) make a cash deposit equal to such deficit into the Inspection Security Account, (ii) provide a Guarantee in respect of an amount equal to such deficit, or (iii) any combination of the security referred to in (i) and (ii) above.

2.3 Lessee agrees to maintain a credit balance in the Inspection Security Account of at least £1 at all times during the Security Period and under no circumstances shall the balance of the Inspection Security Account ever be reduced to an amount less than £ 1 during the Security Period.

3. CREATION AND RELEASE OF SECURITY

3.1 Lessee with full title guarantee hereby irrevocably and unconditionally charges and assigns to Lessor as continuing security for the payment and discharge of the Secured Obligations all rights and title in and to:

- (a) the Inspection Security Account; and
- (b) all sums of money which may now or which may from time to time or at any time be standing to the credit of the Inspection Security Account together with all interest thereon and all rights to receive interest and all other rights and benefits accruing to or arising in connection therewith including all of its rights against the Account Bank in connection with the Inspection Security Account and together with any certificates of deposit, deposit receipts or other instruments or securities relating thereto.

3.2 The security created pursuant to this Deed shall become immediately enforceable if and to the extent that Lessee fails to perform its obligations and discharge its liabilities in full in the circumstances specified below and:

- (a) the Expiry Date has occurred; and
- (b) either:
 - (i) Lessee has failed to rectify any non-compliance by Lessee with its obligations to put the Units into the condition required pursuant to Clause 13.1 (*Return*) of the Lease to the extent that Lessee has failed to comply in full with its obligations under Clause 13.3.1 of the Lease; or
 - (ii) Lessor has served the notice requiring Lessee to indemnify Lessor in accordance with Clause 13.3.2 of the Lease and Lessee has not complied with such notice in accordance with Clause 13.1.1 of the Lease.

3.3 At any time after the security constituted by this Deed has become enforceable in accordance with Clause 3.2 of this Deed, Lessor may call all or any part of the sums then standing to the credit of the Inspection Security Account but only to the extent that Lessee has not previously indemnified Lessor in accordance with the Lease.

3.4 Lessee shall be entitled to request Lessor to, and upon receipt of such request Lessor shall, release amounts then standing to the credit of the Inspection Security Account together with accrued interest thereon (but subject to the requirements of Clause 2.3 above) following satisfaction of the conditions specified in Clauses 13.10.1 or 13.10.2 of the Lease and shall be entitled to request Lessor to, and upon receipt of such request Lessor shall, release the security constituted by this Deed following satisfaction of the conditions specified in Clause 13.10.2 of the Lease.

4. NEGATIVE PLEDGE

Save for the security created by this Deed, Lessee shall not create, agree to create or permit to exist any trust, interest or Security Interest (howsoever ranking in point of priority) of any nature whatsoever (including such as arises by operation of law or any

enactment) in, over or affecting the Inspection Security Account or any amounts from time to time standing to the credit thereof.

5. NO WITHDRAWAL

Subject to Clause 3.4 of this Deed, until the Secured Obligations have been repaid or discharged in full, Lessee agrees that there shall be no withdrawal of any amounts from the Inspection Security Account without Lessor's prior written instructions, nor any transfer from or dealings in the Inspection Security Account nor any variation of the terms of the agreement with the Account Bank relating to the Inspection Security Account, without in each case Lessor's prior written consent.

6. ACKNOWLEDGMENT OF RIGHT TO ASSIGN

6.1 Lessor may (at its own cost) without the consent of Lessee create or permit to exist any encumbrance over the property described in Clause 3 of this Deed in favour of any other person and/or assign by way of security its rights under this Deed in favour of any Financier.

6.2 Lessee will, at Lessor's cost, co-operate with any of Lessor, any Financier and any other assignee, transferee, purchaser or beneficiary of any encumbrance contemplated by this Clause 6 in implementing any assignment, sale, transfer, conveyance or creation or existence of any encumbrance as contemplated by this Clause 6 (including, without limitation, by complying with all reasonable requests of Lessor or any such other person in respect of any such assignment, sale, transfer, conveyance or creation or existence of any encumbrance), **provided that** such implementation will not have any adverse effect on Lessee's rights or obligations under any Lessee Documents, and will take all such steps and execute all such documents (including any agreements directly with any Financier) as Lessor or any such other person may reasonably request to give effect to the provisions of this Clause 6.

7. NOTICE TO ACCOUNT BANK

Lessee shall as soon as reasonably practicable on execution of this Deed give notice to the Account Bank in the form set out in Appendix A (or such other form as is approved by Lessor) and shall use all reasonable endeavours to procure that the Account Bank returns a confirmation to Lessor in the form set out in Appendix B (or such other form as is approved by Lessor).

8. FURTHER ASSURANCE

Without prejudice to Clause 6.2 of this Deed, each of Lessee and Lessor shall, at its own cost, do and execute, or arrange for the doing and executing of, each act, document and thing which is reasonably necessary and which is within its own power or control to implement or establish the obligations imposed on it under this Deed.

9. ACCOUNT ADMINISTRATION EXPENSES

All expenses incurred in relation to the administration of the Inspection Security Account and (other than in relation to tax) shall be for the account of Lessee and Lessee shall not be entitled to deduct from the amounts standing to the credit of the Inspection Security Account any amount in respect of such costs and expenses. If any amounts

are deducted by the Account Bank from the Inspection Security Account which results in the Acceptable Security Value of the Inspection Security Account being less than the Fleet Quantum and such deduction relates to costs or expenses (other than tax), Lessee will as soon as reasonably practicable after becoming aware of such deduction credit the Inspection Security Account in an amount equal to such deduction.

10. NO WAIVER

No failure to exercise nor delay in exercising any right, power or remedy under or in connection with this Deed shall operate as a waiver thereof, and no single or partial exercise of any right, power or remedy shall preclude any further or other exercise thereof, or the exercise of any other right or remedy.

11. AMENDMENTS AND CONTRACTS (RIGHTS OF THIRD PARTIES) ACT

No amendment to this Deed shall be effective unless made in writing and signed or executed by an authorised representative of each of Lessor, Lessee and any Financier which has been granted an encumbrance over any of Lessor's rights hereunder. The rights expressed to be granted to such Financier in this Clause 11 shall be enforceable by such Financier pursuant to the Contracts (Rights of Third Parties) Act 1999. Save as otherwise provided in this Clause 11, Lessor and Lessee agree that the Contracts (Rights of Third Parties) Act 1999 shall not apply to the provisions of this Agreement nor shall any amendment to this Deed need to be signed or executed by any Financier or any other person.

12. NOTICES

12.1 All notices under, or in connection with, this Deed will, unless otherwise stated, be given in writing by letter or facsimile on a Business Day. Any such notice is deemed to be given as follows:

- (a) if sent by post, on the third Business Day after posting (first class postage pre-paid);
- (b) if sent by courier, when delivered; and
- (c) if sent by facsimile, when transmitted **provided that** a successful transmission report has been received by the transmitting party.

12.2 The address and facsimile numbers of Lessee and Lessor are as follows (or such other address or facsimile number notified by the relevant party):

Lessee:

Address: First South Western Trains Limited
50 Eastbourne Terrace, Paddington, London, W2 6LG

Attention: Hugh Clancy, with a copy to the Company Secretary (at the same address)

Lessor:

Address: Rock Rail South Western PLC
[]

Attention: []

13. GOVERNING LAW

This Deed and any issue or Dispute (as defined in the Lease) arising out of or in connection with it (whether contractual or non-contractual, including claims in tort or for breach or statute or regulation or otherwise) shall be governed by and construed in accordance with English law.

14. DISPUTES

Any disputes arising out of or in connection with this Deed shall be resolved in accordance with Clause 18.16 (*Disputes*) of the Lease, *mutatis mutandis*, as if that Clause 18.16 (*Disputes*) were set out in full herein.

15. COUNTERPARTS

This Deed may be executed in counterparts, each of which when executed and delivered shall be an original, and together constitute the same document.

16. EXCLUSION OF LIMITATIONS

Sections 93 (*Restriction on consolidation of mortgages*) and 103 (*Regulation of exercise of power of sale*) of the Law of Property Act 1925 shall not apply to this Deed.

17. ILLEGALITY, ETC

If any one of the provisions of this Deed is or becomes invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions of this Deed shall not in any way be affected or impaired thereby.

**APPENDIX 1
FORM OF NOTICE**

From: FIRST MTR SOUTH WESTERN TRAINS LIMITED

To: [Bank]

Copy: ROCK RAIL SOUTH WESTERN PLC ("**Lessor**")

Dated: []

Dear Sirs

1. We hereby give you notice that we have assigned absolutely to Lessor all our right, title and interest in and to all sums deposited or to be deposited with you in our account bearing account number [] with sort code [] (the "**Account**"), and so that all interest credited to the Account shall, until further notice, be rolled up and retained in the Account.
2. We further notify you that no withdrawal or payment may be made from the Account without the prior written instructions of Lessor.
3. We should be grateful if you would:
 - 3.1 acknowledge to Lessor receipt of this letter;
 - 3.2 confirm Lessor's interest and that you have not received notice of any prior assignment;
 - 3.3 confirm that you waive all rights of combination, consolidation, merger or set-off that you may have over all sums deposited with you in the Account; and
 - 3.4 confirm to Lessor that you will not seek to modify, vary or amend the terms upon which the sums are deposited in the Account without Lessor's prior written consent,and, for this purpose, we would be obliged if you would send a letter in the form of the enclosed draft to Lessor.

Yours faithfully

.....
For and on behalf of
FIRST MTR SOUTH WESTERN TRAINS LIMITED
Name:
Title:

APPENDIX 2 FORM OF ACKNOWLEDGMENT

From: [Bank]

To: ROCK RAIL SOUTH WESTERN PLC

Dated: []

Dear Sirs

[] **Limited ("Lessee")**

1. We hereby acknowledge receipt of your Notice of Assignment dated [] 20[].
2. We confirm that:
 - 2.1 the account held by Lessee bearing account number [] (the "**Account**") has been opened with us;
 - 2.2 so far as we are aware, the Account and the amounts from time to time standing to the credit of the Account are free of all charges, equities or adverse interests of any kind including any right of set-off, combination of account or other such rights and the said moneys (including amounts of interest credited to the Account from time to time) are payable by us to you; and
 - 2.3 we have not received any prior notice of assignment from Lessee or any third party relating to the Account or the sums deposited therein.
3. We irrevocably undertake with you that until receipt of notice by us from you confirming that you no longer have any interest in the said sums:
 - 3.1 we shall not exercise any right of combination, consolidation, merger or set-off which we may have in respect of any moneys standing or accruing to the credit of the Account;
 - 3.2 we shall only permit moneys to be drawn on or debited to the Account against the signature of one of your authorised signatories;
 - 3.3 we shall send to you copies of all statements, orders and notices given by us in connection with the Account; and
 - 3.4 we shall notify you promptly upon our receipt of any notice of any third party interest in the Account or in the sums deposited therein.
4. We further acknowledge that you shall have no liability for any costs and expenses incurred in respect of the maintenance and operation of the Account.

Yours faithfully

For and on behalf of

[BANK]

Name:

Title:

EXECUTED AS A DEED by the parties on the date first above mentioned.

EXECUTED as a **DEED** by)
ROCK RAIL SOUTH WESTERN PLC)
acting by: _____)
in the presence of:

Signature of Witness

Name of Witness:

Title of Witness:

SIGNED and **DELIVERED** as a **DEED**)
for and on behalf of)
FIRST MTR SOUTH WESTERN TRAINS LIMITED)
acting by: _____)
its duly authorised attorney)
in the presence of:)

Signature of Witness

Name of Witness:

Title of Witness:

**SCHEDULE 6
FORM OF REDELIVERY CERTIFICATE**

From: Rock Rail South Western PLC

To: []

Date: []

1. REDELIVERY CERTIFICATE

We refer to the Operating Lease Agreement dated [] 20[] between [Rock Rail [South West Trains] SPV]] ("**Lessor**") and [] ("**Lessee**") (the "**Agreement**").

2. Capitalised terms used herein shall have the meanings given to such terms in the agreement.

3. Lessor confirms that the equipment specified below has been redelivered by Lessee to Lessor after inspection by Lessor and accepted by Lessor from Lessee on [] 20[], in a condition required by and otherwise all in accordance with the Agreement [subject to the exceptions specified below].

4. UNITS

[Full description of Units, including details of any non-conformity with Return Condition which requires correction.]

5. ASSOCIATED EQUIPMENT

[Full description of Associated Equipment, including details of any non-conformity with Return Condition which requires correction.]

For and on behalf of

.....
Rock Rail South Western PLC

Name:

Title:

SCHEDULE 7 OPERATIONAL UNDERTAKINGS

1. TITLE

Lessee will:

- 1.1 not do or knowingly omit to do any act or thing which might reasonably be expected to jeopardise the property rights of Lessor or any Financier in the Units;
- 1.2 not at any time represent or hold out Lessor or any Financier as carrying goods or passengers on the Units or pledge the credit of Lessor or any Financier;
- 1.3 if so requested by Lessor and at Lessor's cost, ensure that there is always affixed, and not removed or in any way obscured, a fireproof plate, of a reasonable size and type agreed between Lessor and Lessee in a reasonably prominent position on each Vehicle which bears an inscription (in such form as Lessor may direct acting reasonably) describing the property interests of Lessor and/or any relevant Financier in such Unit as may be notified by the Lessor; and not place or permit to be placed any name plates or other inscriptions in or on any Unit or major component constituting a claim as to title thereto or any Security Interest therein or which might reasonably be expected otherwise to be inconsistent with the rights and interests of Lessor and each Financier, **provided always that** the requirements of this paragraph 1.3 to affix any plate shall not operate so as to require an unreasonable disruption of the commercial operations of the Units;
- 1.4 not create or permit to exist any Security Interest (other than Permitted Liens) upon the Units;
- 1.5 not do or knowingly omit to do anything which may reasonably be expected to expose the Units to penalty, forfeiture, impounding, detention, appropriation, damage or destruction, and (without prejudice to the foregoing), if any Unit is forfeited, impounded, detained or appropriated Lessee shall give Lessor prompt notice thereof upon becoming aware of the same and shall use best endeavours to procure the immediate release of such Unit (unless the same is caused by a Lessor Lien or a breach by Lessor of its obligations under this Agreement);
- 1.6 not abandon any Unit, except for such limited and temporary time as is reasonably required where left with no reasonable option by reason of weather or the risk to human health;
- 1.7 promptly (or within any applicable grace period) pay and discharge or cause to be paid and discharged when due and payable all debts, damages, claims, fees and liabilities (including liabilities in respect of Taxes, other than Taxes imposed on the overall net income, profits or gains of Lessor, any member of the Lessor Group or any Financier or any New Lessor) which under the terms of this Agreement are properly for Lessee's account and might reasonably be expected to give rise to a Security Interest over or affecting any of the Units;
- 1.8 not attempt, or hold itself out as having any power, to sell, lease or otherwise dispose of the Units (except as permitted by paragraph 3 (*Inspection*) below);

- 1.9 not remove, or permit or acquiesce in the removal of, any Unit from England, Scotland and Wales without the prior written consent of Lessor; and
- 1.10 not (without the prior written consent of Lessor) operate any item of Equipment on any diagram other than on the Relevant Network.

2. SUBLEASING

2.1 General Restriction

Lessee will not sub-lease or otherwise part with possession of the Units other than:

- (a) to an Engineering Certification Body or any other person approved by Lessor for testing or similar purposes, or to any Maintenance Sub-Contractor for service, repair, maintenance or overhaul work, or alterations, modifications or additions to the extent required or permitted by this Agreement; or
- (b) as expressly permitted by this Agreement.

Lessee will not be considered to have parted with possession of a Unit if Lessee has not given up operational control of such Unit.

2.2 Permitted SubLeasing

Provided that no Event of Default has occurred and is continuing at the commencement of the relevant sub-lease, and subject to paragraphs 2.3 (*Lessee Primarily Liable*) to 2.10 (*Insurances under a Sub-Lease*) (inclusive) of this Schedule 7, Lessee may sub-lease any Unit, solely for the purposes of its operation and use within the United Kingdom, to any person (a "**SubLessee**") which is (x) a legal entity established and existing under the laws of England and Wales or Scotland and resident for tax purposes in the United Kingdom and (y) the holder of a Passenger Licence:

- (a) without the consent of Lessor if such sub-lease is for a period not to exceed 48 hours and, in the reasonable opinion of Lessee, is required in an emergency situation; or
- (b) without the consent of Lessor if such sub-lease is for a period or periods not to exceed in aggregate thirty (30) days (per Vehicle) in any calendar year (and, for these purposes, a "**day**" shall include any part thereof), but subject to:
 - (i) Lessee having notified Lessor in writing prior to the commencement of such sub-lease of:
 - (i) the identity of the SubLessee;
 - (ii) the term of the sub-lease; and
 - (iii) the use of the Unit during the term of the sub-lease; and
 - (ii) the sub-lease being on terms which are substantially similar to the terms of this Agreement as regards insurance, operational covenants, covenants to protect the title and interests of Lessor and any Financier

and covenants to redeliver, but for the avoidance of doubt the sub-lease may impose additional, or more stringent, obligations on the SubLessee than are imposed on Lessee under this Agreement and the rentals payable thereunder may be less or more than the Rent payable hereunder. In particular (without limitation) the sub-lease must provide that its term does not extend beyond the Scheduled Expiry Date; and

- (c) with the consent of Lessor in any other case, which consent shall be granted if:
 - (i) the sub-lease is on terms which are substantially similar to the terms of this Agreement as regards insurance, operational covenants, covenants to protect the title and interests of Lessor and any Financier and covenants to redeliver, save that the sub-lease may impose additional, or more stringent, obligations on the SubLessee than are imposed on Lessee under this Agreement and the rentals payable thereunder may be less than the Rent payable hereunder. In particular (without limitation) the sub-lease must provide that its term does not extend beyond the Scheduled Expiry Date; and
 - (ii) the SubLessee is either:
 - (i) a rail services operator or company owned by the Secretary of State and at the outset of such sub-leasing is not in default in respect of its obligations under any operating lease transaction relating to rolling stock to which it is a party; or
 - (ii) a person whose financial status and condition is approved by Lessor, such approval to be granted or withheld in Lessor's discretion;
 - (iii) the SubLessee would, in Lessor's opinion, be able to operate (and maintain) the Unit to the required safety standards and, in particular, comply with the Safety Management System applicable thereto;
 - (iv) the maintenance of the Units will continue to be undertaken by the Lessor or the Maintenance Sub-contractor or pursuant to other arrangements approved in writing by Lessor;
 - (v) any Government Authority undertakings and any security interests in the Unit in favour of either Lessor or any Financier, are maintained and not prejudiced;
 - (vi) the sub-leasing of the Unit to such SubLessee will not have an adverse effect on the quality, reliability or value of the Unit; and
 - (vii) Lessor receives the consent of its Financier to such subleasing (which Lessor agrees to use reasonable endeavours to obtain at Lessee's cost, **provided that** Lessee shall only be liable to Lessor for Lessor's and any Financier's reasonably and properly incurred fees, costs and/or expenses in connection with such consent of any such Financier).

2.3 Lessee primarily liable

Lessee shall remain primarily liable hereunder for the performance and observance of all of its obligations under this Agreement to the same extent as if any sub-lease and/or any subordination letter had not been entered into.

2.4 Security assignment

Lessor may request by written notice that Lessee enters into an assignment by way of security (on terms reasonably acceptable to Lessor and any Financier) in respect of its rights under any sub-lease which has a term of six (6) months or more, and Lessee agrees to enter into any such assignment if so required by Lessor. Such assignment shall be on terms that Lessee (as sublessor) shall be entitled to receive the rentals under the sub-lease for such time as no Event of Default has occurred and is continuing. Each party shall bear its own costs in relation to the preparation, negotiation and execution of any such assignment.

2.5 Additional losses

If in connection with any sub-lease of a Unit (including a sub-lease in respect of which Lessor has given its consent under paragraph 2.2(c) above), Lessor suffers or incurs any Losses which, were it not for such sub-lease, Lessor would not have suffered or incurred, Lessee shall pay and indemnify Lessor on demand for such Losses (other than any costs to be borne by Lessor under paragraph 2.4 (*Security Assignment*) above).

2.6 No pooling

Lessee shall not without the prior written consent of Lessor enter into, and shall not permit the entering into of, any agreement or arrangement in respect of the Units or any Owner Owned Spares (including, for the avoidance of doubt, any Part) or Special Equipment which involves pooling with other operators or with other lessors of rolling stock or spares.

2.7 Subordination Letters

In relation to any sub-lease (excluding a sub-lease falling within paragraph 2.2(a) of this Schedule 7), the SubLessee shall on the date of such sub-lease provide Lessor and each Financier (in existence at the date of such sub-lease) with a subordination letter addressed to Lessor and each Financier. Upon written request of Lessor, Lessee shall (at the cost of Lessor) promptly procure and ensure that any sublessee shall issue a subordination letter to any Financier who has come into existence after the date of the sub-lease relating to such SubLessee.

2.8 No amendment of sub-lease

Lessee shall not materially amend, vary, waive and/or supplement any provision of (or right under) a sub-lease without the prior written consent of Lessor.

2.9 No further sub-leasing

Neither Lessee nor any sub-lease shall permit any SubLessee to further grant or enter into any sub-lease of any item of Equipment without the prior written consent of Lessor.

Lessor confirms that its prior written consent is not needed in relation to any such further sub-lease if such further sub-lease is for a period not to exceed 48 hours and, in the reasonable opinion of the SubLessee, is required in relation to an emergency situation.

2.10 Insurances under a sub-lease

- (a) Each sub-lease shall contain provisions relating to insurance matters (connected with the items of Equipment) which are in form and substance satisfactory to Lessor (and no less stringent, *mutatis mutandis*, than the insurance provisions set out in this Agreement).
- (b) Prior to the commencement of any sub-lease, Lessor shall have received a broker's letter of undertaking and an insurance certificate (both in form and substance satisfactory to Lessor) in relation to the relevant SubLessee's insurance obligations under such sub-lease.
- (c) Lessee agrees that it will not exercise any right or discretion it may have under any provision of any sub-lease relating to insurance matters connected with any item of Equipment without the prior written consent of Lessor.

3. INSPECTION

3.1 Lessor and any person designated by Lessor may at all reasonable times visit, inspect and survey each of the Units:

- (a) for the purpose of determining that Lessee is in compliance with its obligations under this Agreement or in connection with any potential safety concerns or environmental concerns of Lessor, and Lessor will have the right to carry out a safety and environmental audit of the Units and of Lessee's records in respect of the Units in order to satisfy any such concerns; or
- (b) in accordance with Clause 13.2 (*Final Inspections*).

Lessor's rights under this paragraph 3 are without prejudice to Lessor's inspection and access rights under Clause 13.2 (*Final Inspections*), Clause 13.7 (*Preliminary Final Inspections*) and Schedule 8 (*Maintenance*).

3.2 For so long as no Event of Default has occurred and is continuing, Lessor shall exercise its inspection rights upon reasonable prior written notice and so as not to disrupt unreasonably the commercial operations of the relevant Unit, with the intent (among other things) that passenger services shall not be interrupted by reason of Lessor exercising its inspection rights, but Lessee shall use its reasonable endeavours to utilise an operationally comparable item of rolling stock available to Lessee in providing such passenger services in order to facilitate Lessor's exercise of its inspection rights, provided that Lessor shall not exercise such rights more than once in any period of 12 months following Acceptance of the first Unit unless Lessor reasonably demonstrates to Lessee that more frequent inspection is necessary to protect the long-term value or re-marketability of the Equipment.

3.3 All costs and expenses of any such visit, inspection or survey shall be for the account of Lessor, save that Lessee will pay to Lessor on demand all out-of-pocket expenses

incurred by Lessor in connection with any such visit, inspection or survey if: (i) an Event of Default has occurred and is continuing; or (ii) such visit, inspection or survey is, in the opinion of Lessor (acting reasonably), desirable as a prudent measure because any previous visit, inspection or survey has shown that the relevant Unit or any other Unit is not in the condition required by this Agreement in any material respect.

- 3.4 Lessee shall permit, or procure permission for, Lessor and any person designated by Lessor at all reasonable times on written notice to visit any maintenance or repair depot at which Maintenance is carried out by or on behalf of Lessee and/or any Maintenance Sub-contractor appointed by Lessee, for the purpose of inspecting and surveying the maintenance and repair facilities for the Units and procedures relating thereto at such depot.
- 3.5 Lessor will have no duty or liability to make any such visit, inspection or survey pursuant to this paragraph 3, and will have no liability arising out of any such visit, inspection or survey other than for the acts or omissions of its employees or designated persons during the course of conducting such visit, inspection or survey and the discharge of their duties.
- 3.6 Lessee will (at its own cost) comply with all mandatory inspection requirements arising from Applicable Laws and Standards.
- 3.7 In exercising its rights under this paragraph 3 (*Inspection*) and under Clause 12 (*Return of Equipment*), Lessor will, and will use reasonable endeavours to procure that any person exercising such rights will:
 - (a) comply with all Applicable Laws and Standards and Industry Standards and safety regulations; and
 - (b) not do or omit to do anything which would jeopardise or impair the safety of the Units.

4. **REGISTRATION**

- 4.1 Lessor will ensure that each Unit has, on its Acceptance Date, all relevant Engineering Certification and shall promptly provide copies of the same to Lessee.
- 4.2 Lessor will, at its own cost, ensure that each Unit has all valid and subsisting Engineering Certification (as is obtained and provided by the Manufacturer) at the Acceptance Date and is registered at such Acceptance Date in the R2 maintained by RSSB. Lessee shall, at its own cost, take all other steps which only it, in its capacity as an operator of passenger carrying units, can take (and cannot be taken by the Manufacturer or Lessor) in connection with maintaining Engineering Certification for each of the Units in full force throughout the Term.
- 4.3 Lessor will use reasonable endeavours to assist Lessee, at Lessee's expense, in obtaining evidence of the registration of each Unit in the R2 maintained by RSSB and evidence of any limitations on purpose and use, and evidence of any derogations, temporary non-conformances and other non-conformances relating to any of the Vehicles, to the extent that the Lessee, despite using all endeavours to do so, has been unable to obtain such evidence itself.

- 4.4 Without prejudice to paragraph 4.6, neither Lessor nor Lessee will at any time during the Term do or knowingly omit to do any act or thing which could prejudice the existing Engineering Certification for the Units or the existing registration of such Units in the R2 maintained by RSSB.
- 4.5 The Lessee shall procure that to the extent permitted by Applicable Laws and Standards:
- (a) it is registered as the Keeper; and
 - (b) it is registered as the ECM,
- in the National Vehicle Register in respect of each Unit throughout its Term.
- 4.6 If, in relation to any Unit:
- (a) Lessor consents to any change in its Permitted Use pursuant to paragraph 5.3 (*Permitted Use*) of this Schedule; or
 - (b) any addition or variation is made to the Maintenance Plan; or
 - (c) such Unit is sub-leased in accordance with paragraph 3 (*Inspection*) of this Schedule; or
 - (d) any Modification is made to such Unit in accordance with paragraph 7 (*Modifications*) of this Schedule,
- then, in any such case, Lessee shall take whatever steps (if any) are necessary (at Lessee's cost) in order to ensure that the Engineering Certification for such Unit and the registration of such Unit in the R2 maintained by RSSB, in each case, reflects (to the extent possible, if at all) such change or addition or variation or sub-lease or Modification (as the case may be) (a "**Registration Event**").
- 4.7 Notwithstanding anything to the contrary contained in this Agreement, no such Registration Event shall be permitted hereunder unless and until any necessary revised Engineering Certification will be issued and/or the necessary revised registration has been effected (or, in any such case, Lessor, acting reasonably, is satisfied that the relevant revised certificate(s) will be issued and/or the relevant revised registration will be effected when the applicable Registration Event first takes effect).
- 4.8 The provisions of this paragraph 4 may be amended by agreement between the parties if and to the extent that the applicable procedures from time to time relating to the registration of railway rolling stock differ from those contemplated in this paragraph 4.

5. **LAWFUL, SAFE AND APPROVED OPERATION**

Lessee will (at its own cost):

- 5.1 **Applicable Law and Safety:** comply with all Applicable Laws and Standards (including, without limitation, those relating to safety of passengers and safe operation of the Units) for the time being in force applicable to the Units or concerning the use, operation, maintenance, repair and modification of the Units;

5.2 Regulations and Safety:

- (a) subject to paragraph 7 (*Modifications*) and without prejudice to paragraph 5.1 (*Applicable Law and Safety*), comply with any applicable regulations and recommendations (in the case of recommendations, to the extent Lessee is obliged to comply with the same or a prudent operator of passenger train services would comply) of any Government Authority relating to the safety, or the safe operation, of the Units; and it is acknowledged that Lessor has no responsibility for the safety, or the safe operation, of the Units;
- (b) ensure that the Units are operated by properly qualified operational personnel in accordance with Industry Standards, operating practices set out in the "Rule Book" (including its appendices) published from time to time and instruction manuals for the Units and any published route restrictions; and
- (c) insofar as not undertaken pursuant to paragraph 5.1 (*Applicable Law and Safety*) or 5.2.(a) or 5.2.(b) above, take all appropriate steps to ensure the safety of passengers and the safe operation of the Units, not do anything which might jeopardise or impair the safety of the Units or of passengers, and not fail knowingly or omit to do anything if such failure or omission might jeopardise or impair the safety of the Units or of passengers (and Lessee acknowledges that if any event or matter adversely affects the safety of passengers and/or the safe operation of a Unit, such steps may include Lessee suspending operation of such Unit until such matter is satisfactorily remedied, if that is the only prudent course) **provided that** nothing in this paragraph (c) shall require Lessee to act otherwise than in a manner consistent with that of a prudent passenger rail operator.

5.3 Permitted Use: not use any Unit (or permit or allow any Unit to be used) in any manner contrary to, or inconsistent with, its Permitted Use. If Lessee wishes to change the Permitted Use of the Units, then:

- (a) Lessee shall obtain the prior consent of Lessor to the change, and Lessor may not withhold its consent unless the Units are technically incompatible with the proposed new Permitted Use or the Track Access Contract to which Lessee or any relevant SubLessee is a party does not permit such proposed new Permitted Use; and
- (b) if Lessor grants its consent, Lessor may impose conditions related to the change of Permitted Use and any acceleration in the expected diminution in the value of the Units which would not have occurred if the Permitted Use had not so changed. If Lessor grants its consent, the change shall be recorded in a document signed by or on behalf of Lessor and Lessee, and shall take effect from the date on which both parties have executed such document;

5.4 Personnel Qualifications: ensure that its operational and maintenance personnel have the qualifications and hold the licences required by the applicable Government Authorities, Secretary of State, Network Rail and Applicable Laws and Standards;

- 5.5 **Authorised Commercial Operations:** use the Units solely in commercial or other operations for which Lessee is duly authorised or permitted by the Secretary of State and any other relevant Government Authority;
- 5.6 **Track Access Contract:** comply in all material respects with its obligations under each Track Access Contract to which it is a party, the Rail Services Contract, its Passenger Licence, the Safety Certificate and the Safety Management System;
- 5.7 **Prohibited Goods:** not use the Units for, or in connection with, the carriage of any goods, materials or items of cargo which could reasonably be expected to cause damage to the Units and which would not be adequately covered by the Insurances;
- 5.8 **Training:** not use the Units for the purposes of training, qualifying or re-confirming the status of operational personnel except (i) for the benefit of Lessee's or any SubLessee's operational personnel and (ii) for the purposes of familiarising properly qualified drivers with routes or the operation of the Units; provided always, in any such case, that the Insurances relating to the Units remain in full force and effect and are not thereby prejudiced;
- 5.9 **Certificates and Licences:** save to the extent that Lessor undertakes responsibility for obtaining the same under paragraph 4 (*Registration*) of this Schedule or the same have been obtained by the Manufacturer prior to the Acceptance Date, obtain and maintain in full force all certificates, licences, permits and authorisations required for the time being for the use, operation, maintenance, repair and modification of each Unit as and from the Acceptance Date and for compliance by Lessee with its obligations under this Agreement;
- 5.10 **Amendments to Drivers' Manuals:** notify Lessor of any amendment to any drivers' manual, and Lessee hereby consents to Lessor giving any subsequent operator of the Units access to any such amendment which impacts on safety or efficient operation of the Units; and Lessee confirms that it will not make any claim (financial or otherwise) against Lessor or any such subsequent operator in respect of the same; and
- 5.11 **Hazardous Substances:** ensure that no Hazardous Substances are at any time used in the operation or maintenance of the Units, unless such Hazardous Substance has the prior written approval of Lessor or would reasonably be expected to be used by a prudent operator of the same or similar business to Lessee.
- 5.12 **Design Life:** ensure that the Units are operated, maintained, and overhauled in accordance with the Maintenance Plan and the Manuals and not subjected to any Improper Use such as not to invalidate the Manufacturer's Design Life and Key Component Warranties in Clause 24.5 (Design Life and Key Component Warranties) of the MSA.

6. PARTS

- 6.1 Lessee will ensure that no Part installed on any Unit is at any time removed from such Unit unless:
 - (a) it is replaced as expressly permitted or required by this Agreement; or

- (b) the removal is of an obsolete or damaged item and is in accordance with the Maintenance Plan; or
- (c) the removal is during the course of maintaining or repairing that Part or the relevant Unit; or as part of a part rotation programme contemplated in the Maintenance Plan; or for the purpose of making any Modifications,

and then, in any such case, only if the removed Part is reinstalled or replaced (unless such Part has become superfluous) by a component, furnishing or item of Equipment complying with the requirements of paragraph 6.2 of this Schedule as soon as practicable and in any event no later than the earlier of (1) the date falling one (1) month after removal and (2) the Expiry Date relating to the applicable Unit.

6.2 Lessee will ensure that, except as permitted or required by this Agreement, no component, furnishing or equipment is installed on a Unit in replacement for a Part unless:

- (a) it is of the same or a more advanced make and model, as the replaced Part;
- (b) it is approved by Lessor;
- (c) its installation will not materially diminish the value, utility, performance or condition of the Unit on which it is installed;
- (d) it is in as good operating condition as the replaced Part (assuming that the replaced Part was in the condition and repair in which it is required to be maintained under this Agreement) and, without prejudice to the generality of the foregoing, if it is time or life limited and is not being replaced as part of a part rotation programme contemplated in the Maintenance Plan, has at least equal or a better number of hours and/or miles available until the next scheduled maintenance check or depot visit; and
- (e) upon installation, it becomes the property of Lessor (or any relevant Financier which is the owner or mortgagee of the applicable Unit) free from Security Interests (other than Permitted Liens) and subject to this Agreement in accordance with paragraph 6.6.

6.3 If no Event of Default has occurred and is continuing, Lessee will be entitled to install a part on a Unit by way of replacement notwithstanding paragraph 6.2 if:

- (a) there is not available to Lessee at the time and in the place that the part is required to be installed on such Unit a replacement part complying with the requirements of paragraph 6.2; or
- (b) it would result in an unreasonable disruption of the operation of the relevant Unit to cease commercial operation of such Unit until a part complying with paragraph 6.2 becomes available for installation on such Unit,

provided that in case of either 6.3.(a) or 6.3.(b), and as soon as practicable after installation of the same on such Unit but, in any event, unless otherwise agreed, no later than the earlier of: (1) the relevant Expiry Date; and (2) the date falling thirty (30) days

after such installation, Lessee removes such part and replaces it with the Part it replaced or a part complying with paragraph 6.2.

- 6.4 Nothing in this paragraph 6 (*Parts*) or in any approval given by Lessor with respect to the standard of manufacture or repair of any Part shall constitute a representation or warranty by Lessor, express or implied, with respect to the description, conformity to standards, its satisfactory quality, fitness for any use or purpose, value, condition, performance or design of such Part.
- 6.5 Lessee will:
- (a) ensure that any Part which is not installed on the Unit to which it relates is, except as expressly permitted by this Agreement, properly and safely stored, and kept free from Security Interests other than Permitted Liens; and
 - (b) promptly notify Lessor if any removed or detached Part is in the possession of any person other than Lessee, any Maintenance Contractor or any permitted SubLessee, and from time to time use all reasonable endeavours to procure that any such person acknowledges in writing to Lessor that it will respect the interest of Lessor (and the Financier of the relevant Unit) in such Part and will not seek to exercise any rights whatsoever (other than by way of Permitted Liens) in relation to it.
- 6.6 Title to all Parts (other than Lessee Parts) installed on any Unit whether by way of replacement, as the result of a Modification or otherwise will on installation, without further act, vest in Lessor (subject to any Lessor Lien) or, as the case may be, any relevant Financier which is the owner (or, as the case may be, mortgagee) of such Unit subject to this Agreement, free and clear of all Security Interests other than Permitted Liens. Lessee will at its own expense take all such steps and execute and procure the execution of, all such instruments as Lessor may reasonably require and which are necessary to ensure that title so passes to Lessor or, as the case may be, the Financier according to Applicable Laws and Standards.
- 6.7 Except as referred to in paragraph 6.6 above, any Part at any time removed from a Unit will remain the property of Lessor or, as the case may be, the relevant Financier which is the owner (or, as the case may be, mortgagee) of such Unit until a replacement has been made in accordance with this Agreement and until title in that replacement has passed, according to Applicable Laws and Standards, to Lessor (or the Financier) subject to this Agreement, free of all Security Interests other than Permitted Liens, whereupon title to the removed Part will pass to Lessee or its nominee free of Lessor Liens.

7. MODIFICATIONS

- 7.1 **General:** Lessee may not make any Modification to any Unit (other than any Mandatory Modification, as to which paragraphs 7.7 to 7.11 apply) without the prior written consent of Lessor (such consent not to be unreasonably withheld or delayed), **provided that** such determination to grant or withhold consent to a proposed Modification pursuant to this paragraph 7.1 will have regard to, without limitation, the nature of the Modification, its likely impact on the value, utility and condition of the relevant Unit and other rolling stock of the same or a similar type or class and the

identity of the person carrying out such Modification and its financability. If Lessor grants its consent, it may do so subject to conditions, including:

- (a) Lessee shall not make any Modification to Units otherwise than as provided in this paragraph 7 (*Modifications*); and
- (b) if Lessee is instructed by Network Rail to fix miniature snow ploughs to Units at any time, then such fixing shall constitute a Modification under paragraph 7.1(a) if the Unit is fitted with appropriate brackets for such miniature snow ploughs.

7.2 **Costs of Modifications:** Unless otherwise agreed in writing by Lessor, Lessee shall (subject to paragraphs 7.8 and 7.13 below) pay all costs of any Modification (which shall include, without limitation, costs incurred as a result of any changes in specification or drawing amendments, and the costs of labour and parts incurred in carrying out such Modification) made pursuant to paragraph 7.1(a) or 7.1(b) above. Any agreement by Lessor to fund the cost of Modifications will be conditional on agreement of the basis of rentalisation and the amount of increased Rent required as a consequence of such modification.

7.3 **Removal of Lessee-funded Modifications:** Where the costs of a Modification are paid for wholly by Lessee, Lessee may at its own cost remove such Modification from a Vehicle, provided Lessee complies with paragraph 7.5 (*Further Removal Provisions*).

7.4 **Removal of Lessor-funded Modifications:** Where the costs of a Modification are paid for (wholly or in part) by Lessor, all components, furnishing and equipment comprising such Modification shall become the property of Lessor (or any relevant Financier which is the owner of the applicable Units) free from Security Interests and subject to this Agreement. However, Lessor may direct Lessee to remove such a Modification from a Vehicle on or before the Expiry Date (at Lessor's cost).

7.5 **Further Removal Provisions:** Lessee shall not remove a Modification if its removal would result in the Vehicle not complying with any Applicable Laws and Standards in force at the relevant date or which, at that date, have been mandated in relation to a Mandatory Modification. In removing any Modification, Lessee shall comply with all relevant Industry Standards and so as to leave such Vehicle in materially the same condition as it would have been in if such Modification had not been made and Lessee shall, at its own expense, make any necessary specification and/or drawing amendments to reflect the removal of such Modification. Title to any Part forming part of a Modification which is removed from Units in the course of removal of such Modification pursuant to the above shall, upon such removal, without further act vest in Lessee or its nominee. However, if the costs of the Modification are paid for either wholly or in part by Lessor, the Modification will (unless Lessor otherwise directs) remain on the Vehicles, the Redelivery Condition of the relevant Vehicle shall be amended by Lessor to reflect this and Lessor will automatically become the owner of any Part removed in installing the Modification.

7.6 **IPRs:** Lessee shall ensure that (i) any Modification made by it pursuant to this paragraph 7 (*Modifications*) shall be carried out by Lessee, the Maintenance Contractor or by another person approved by Lessor, in accordance with any relevant Industry Standards; and (ii) Lessee shall promptly disclose to Lessor in writing full details of all

intellectual property rights and warranty rights (including knowhow) of which it becomes aware or should reasonably have become aware arising as a result of carrying out any Modification or maintenance. The following provisions shall apply to any such intellectual property rights:

- (a) where (x) the subject matter of any such intellectual property right does not impact on the safety of rolling stock generally or (y) Lessor was not involved in the design process leading to the creation of such intellectual property right, then Lessee shall, or in the case of any intellectual property rights owned by any third party shall use reasonable endeavours to, grant to Lessor (or procure the grant to Lessor of) a non-exclusive irrevocable, royalty-free perpetual licence (including the right to sub-licence) to use such intellectual property right for the purpose of:
 - (i) leasing and operating the Units, or to permitting any future lessee of the Units to operate the Units;
 - (ii) undertaking, or having undertaken on its behalf:
 - (A) maintenance of the Units, Vehicles and Parts;
 - (B) repairs or overhauls of the Units, Vehicles or Parts (which includes repair of collision damage and the undertaking of "face-lift", refurbishment, and life-extension programmes) the remedying of Faults and the rectification of faults in software;
 - (C) modifications to the Units, Vehicles or Parts;
 - (D) modification to parts or equipment for use in connection with the Units, Vehicles or Parts including to enable the Units or Vehicles to be operated with other railway vehicles;
 - (E) the training of personnel to enable them to carry out any of the activities described in sub-paragraphs (A) to (D) above (inclusive),

(together, the "**Relevant Purposes**"); and
- (b) where (x) the subject matter of any such intellectual property right does impact on the safety of rolling stock generally and/or (y) Lessor was involved in the design process leading to the creation of such intellectual property right, then Lessee hereby grants to Lessor (or shall procure the grant to Lessor of) a non-exclusive irrevocable, royalty-free perpetual licence (including the right to sub-licence) to use such intellectual property right for the purpose of maintaining, operating, leasing and repairing rolling stock generally.

7.7 Mandatory Modifications: Lessee shall be responsible for ensuring that all Mandatory Modifications to Units are carried out, at Lessee's expense, in accordance with any relevant Industry Standards, and within any time limit set by Applicable Laws and Standards for completion thereof.

7.8 **Cost of Mandatory Modifications:**

In the case of any Mandatory Modification mandated after the Acceptance Date, other than in circumstances where the relevant Manufacturer is responsible for the cost of such Mandatory Modification in accordance with the terms of the MSA, Lessee may request that the Lessor provides rentalised funding to cover the cost of such Mandatory Modification. In relation to any Mandatory Modification in respect of which Lessor has been requested to provide rentalised funding to cover the relevant cost, Lessor will provide such funding and pay such cost, **provided that:**

- (a) Lessor shall have approved in writing (acting reasonably) the works programme, and the scope and cost of carrying out such Mandatory Modification;
- (b) Lessor and Lessee shall have agreed in writing the increased Rent in accordance with paragraph 7.9 (*Rentalisation Basis*); and
- (c) Lessor shall be satisfied in its absolute discretion that such Mandatory Modification will not be uneconomic to implement.

7.9 **Rentalisation Basis:** Lessor shall rentalise the cost of a Mandatory Modification on the following basis (and provide Lessee with full details of its calculations as below):

- (a) Lessor shall amortise such cost fully during the period commencing on the date on which Lessor pays such cost and ending on the last day of the economic life of the Vehicle or, if earlier, the last day of the economic life ("**Economic Life**") of such Mandatory Modification (as determined by Lessor in its absolute discretion);
- (b) if the Scheduled Expiry Date is after the last day of the Economic Life, the Lessor shall rentalise such cost during the period up to the last day of the Economic Life;
- (c) if the Scheduled Expiry Date is earlier than the last day of the Economic Life, Lessor shall rentalise over the remaining portion of the Term the proportion of such cost which (i) the number of whole months remaining, as at the date of Lessor's payment, until the Scheduled Expiry Date; bears to (ii) the number of whole months remaining, as at the date of such payment, until the last day of the Economic Life;
- (d) If Lessor pays such cost by stage payments, Lessor's calculation of the amortisation and rentalisation of such cost shall take into account the timing of such stage payments;
- (e) Rentalisation shall be on the basis of such interest rate and margin as is obtainable by the Lessor and is demonstrated to the Lessee (acting reasonably) as being the then current interest rate and margin applicable to comparable debt financings (including as to tenor) of the same credit quality for the relevant rentalisation period; and
- (f) if, after the increased Unit Rent (as defined in Schedule 3 (*Payments*)) has been so determined, the Scheduled Expiry Date is extended, Lessor shall recalculate

and notify to Lessee the amount of increased Rent in accordance with the above principles (taking account of such extension).

7.10 **Consultation:** As soon as practicable after either party first becomes aware that a Mandatory Modification is required to be made, it shall notify the other party, and both parties shall consult in good faith with a view to agreeing:

- (a) the extent of the Mandatory Modification;
- (b) any potential mitigating actions pursuant to paragraph 7.11, including whether it would be appropriate to seek a derogation from the requirement for such Mandatory Modification or terminating and releasing the Units and if, despite any such mitigating action, such Mandatory Modification continues to be required, a suitable schedule for carrying out such Mandatory Modification, with a view to minimising, to the greatest extent reasonably practicable, the impact of any such schedule on the commercial operations of Lessee as an operator of passenger services; and
- (c) a list of suitable repairers who could be approached in connection with carrying out such Mandatory Modification.

If, following such consultations, agreement is not reached with respect to any of the matters referred to above, Lessor will determine such outstanding matter in its reasonable discretion (without prejudice to Lessor's funding obligation under paragraph 7.8 above).

7.11 **Mitigation:** If Lessor determines that the cost of any proposed Mandatory Modification is such that it will be uneconomic to proceed with the making of that Mandatory Modification, then the parties shall consult in good faith, acting reasonably, to agree what steps may be taken to mitigate the effects of the requirement to implement such Mandatory Modification (including, without limitation, by applying for a derogation or exemption, or by terminating the leasing of the Units and entering into a new lease transaction in relation to operationally comparable units, on financial terms acceptable to the parties (a "**Replacement Lease Transaction**")).

If notwithstanding the above, no later than 5 Business Days prior to the date that operation of the Equipment with the relevant Mandatory Modification is required to be made under Applicable Laws and Standards (the "**Modification Date**"):

- (a) the Lessee is unable, using best endeavours, to obtain a derogation from the requirement for such Mandatory Modification; and
- (b) the parties have been unable to agree and implement a Replacement Lease Transaction or implement any other reasonable mitigation,

the Lessee may by notice to Lessor, with effect from the Modification Date, terminate with effect from that date the leasing of the Equipment, whereupon all rights of Lessee to take on lease the Equipment under this Agreement shall cease and redeliver to Lessor in accordance with Clause 13.1 (*Return*) and deregister in accordance with Clause 13.5 (*Deregistration*) the Equipment the leasing of which has been terminated at the Redelivery Location.

7.12 Rectification modification:

- (a) Lessor may, at its election, perform or procure the performance of any Modification in relation to any item of Equipment due to faulty design and/or manufacture of such item of Equipment ("**Rectification Modification**"), **provided that** for the avoidance of doubt, the Lessor shall be under no obligation to undertake any Rectification Modification in relation to any item of Equipment. If the Lessor notifies the Lessee in writing of its intention to undertake a Rectification Modification in relation to the Units, the Lessor and the Lessee shall consult in good faith with a view to agreeing a suitable schedule for the Lessor to carry out the relevant Modification with a view to minimising, to the greatest extent reasonably practicable, the impact of any such schedule on the commercial operations of Lessee as an operator of passenger services and in any event on a basis no less favourable to Lessee than if the Unit were proposed for removal from revenue earning service by the Manufacturer under the MSA. Lessor shall pay 100% of the cost of any such Modification undertaken in accordance with this paragraph 7.12.
- (b) During the period from the date on which such item of Equipment is delivered by the Lessee into the possession of the Lessor and accepted by the Lessor for the purposes of undertaking the relevant Rectification Modification until the date on which the Lessor delivers such item of Equipment to the Lessee (such period being the "**Rectification Modification Period**"), the Lessor shall pay to the Lessee liquidated damages at the rate of [REDACTED] per Unit per day or part thereof.
- (c) Where the parties are unable to agree pursuant to paragraph 7.12(b) a suitable schedule for such Rectification Modification to be carried out, the matter shall be referred for final determination pursuant to Schedule 12 (*Dispute Resolution Procedure*).

- 7.13 **Fleet Enhancement Fund:** In relation to any Modification that will improve the reliability of the Units or otherwise increase the value of the Units (any such Modification, a "**Fleet Enhancement Modification**"), Lessee may request that the cost of such Fleet Enhancement Modification is funded (in whole or in part) by Lessor through a payment from the Fleet Enhancement Fund. In such request, Lessee shall explain the expected benefits to the Units of the Fleet Enhancement Modification (including any benefits that are expected to be realised during the Term), the likely lifespan of that Fleet Enhancement Modification and the effect (if any) on the maintenance of the Units as a result of that Fleet Enhancement Modification. Following receipt of a proposal by Lessor, Lessor and Lessee (each acting reasonably) shall negotiate with each other with a view to agreeing whether or not that Fleet Enhancement Modification should be undertaken to the Units and funded from the Fleet Enhancement Fund. If such Fleet Enhancement Modification is (a) a Mandatory Modification, or (b) any other Modification to which Lessor has provided its prior written consent (such consent to be in Lessor's absolute discretion, and which may be subject to conditions imposed by Lessor or any Financier), Lessor shall (on completion of such Fleet Enhancement Modification) make a payment from the Fleet Enhancement Fund equal to the lower of (i) the cost of such Fleet Enhancement Modification; and (b) the remaining balance of the Fleet Enhancement Fund, and the balance of the Fleet Enhancement Fund shall be reduced by the amount of each such payment.

8. MISCELLANEOUS

8.1 **Environment:** The Lessee shall ensure that the Units are operated and maintained at all times in compliance with Environmental Law and that all requisite Environmental Approvals for the operation and maintenance of the Units are obtained and maintained.

8.2 **Integrity:** The Lessee shall:

- (a) promptly inform the Lessor of a genuine allegation, complaint or information with regard to Criminal Offences related to the procurement, leasing, operation or maintenance of the Units of which it is aware;
- (b) keep books and records of all financial transactions and expenditures by the Lessee in connection with the procurement, leasing, operation or maintenance of the Units; and
- (c) in relation to an alleged Criminal Offence, allow the Lessor to review the books and records of the Lessee in relation to the procurement, leasing, operation or maintenance of the Units and to take copies of documents as permitted by law, in each case to the extent reasonably requested.

8.3 **Information Requirements:**

- (a) Where reasonably practicable and subject to paragraph 8.3(b) below, Lessee shall:
 - (i) provide to Lessor such information, and at such times, as Lessor may reasonably request relating to the Equipment (provided that (i) the Lessee shall not be held liable for providing information pursuant to this provision until the later of 3 (three) months after the Effective Date and such time that the relevant systems are able to deliver the required data, and (ii) in relation to information the provision of which is not automated, such information shall be provided not more than once per Reporting Period) including information relating to:
 - (A) Maintenance Information and all defects, work arising, and any other work orders raised in the Lessee's maintenance management system for the Units;
 - (B) railway period and cumulative mileage data for each Unit, and (to the extent that Lessee tracks them separately) any major components which are contained in the Lessor Whole Life Cost and Maintenance Reserve Model and tracked separately as part of the maintenance plan;
 - (C) in the form of a summary report from the applicable mileage management system, the diagrammed mileage and the average daily mileage of the Units and the anticipated change to average daily mileage as a result of a Long Term Plan timetable change, nominally occurring in December and May each year;

- (D) in the form of a summary report, Unit availability, including details of any long term stop Units;
- (E) to the extent provided by the Manufacturer under the TSSSA, performance and reliability data in the form of a summary fleet performance report;
- (F) to the extent possible through the automated system, the EC4T energy usage data recorded on the Unit's energy metering system (provided that information shall not be required in relation to meters that are not operational or under repair);
- (G) a fleet safety report which details safety related defects affecting the Units;
- (H) to the extent that the system is operational, all data generated by the Automatic Vehicle Inspection Systems (AVIS) monitoring the Units;
- (I) condition monitoring data that is relevant to the scheduling of maintenance events; and
- (J) configuration status, modification status and software status of the Units and Vehicles, as appropriate;

in each case, in an electronic and machine readable format (to the extent available is such format). Where reasonably practicable, data transfer should be automated, or via an interface to the relevant system (provided that the Lessee shall not be required to automate the data transfer if the Lessee would need to incur unreasonable or disproportionate costs or time to do so);

- (ii) supply such other information or documents within Lessee's possession concerning the procurement, operation, or maintenance of the Units and/or environmental matters relating to the Units as the Lessor (either itself or at the request of, or for the benefit of its Financiers) may reasonably request;
- (iii) use all reasonable endeavours to provide Lessor with the raw and derived data generated by the Unit's train control and monitoring system (TCMS) and any ancillary system connected via the TCMS, status information, fault messaging and any related environment data which is recorded, including but not limited to data transmitted via:
 - (A) TSSP;
 - (B) Push Interface; and
 - (C) STFP;
- (iv) promptly inform the Lessor of:

- (A) any action or protest initiated or non-vexatious objection raised by any third party or any genuine complaint received by the Lessee or any material Environmental Claim that is to its knowledge commenced, pending or threatened against it with regard to environmental or other matters affecting the procurement, leasing, operation or maintenance of the Units;
- (B) any genuine allegation, complaint or information with regard to Criminal Offences related to the procurement, leasing, operation or maintenance of the Units;
- (C) any material non-compliance with any applicable Environmental Law; and
- (D) any suspension, revocation or modification of any material Environmental Approval,

and (in each case) set out the action to be taken in relation to such matters.

- (b) The Lessee shall not be required to provide the information in paragraphs 8.3(a)(i) or (iii) to the extent that:

- (i) the Lessee would need to incur unreasonable or disproportionate costs or time in order to make the requested information available; and
- (ii) by sharing such information, the Lessee would contravene Data Protection Legislation or any other Applicable Law. For purposes of this paragraph 8.3(b)(ii):

- (A) **“Data Protection Legislation”** means all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder); the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party;
- (B) **“Personal Data”** as defined in the Data Protection Legislation; and
- (C) **“UK GDPR”** has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the DPA 2018.

8.4 Data Tools:

- (a) Lessor and Lessee shall discuss the use cases and requirements for data tools to analyse and interpret the information described in paragraph 8.3 above ("**Data Tools**").
- (b) Commencing on 1 January 2026, Lessor may, in its absolute discretion, develop Data Tools, taking into account discussions with Lessee. Subject to Lessor having received the information set out in paragraphs 8.3(a)(i) and 8.3(a)(iii) above, Lessor shall bear the cost (of up to [REDACTED] per calendar year, allocated at Lessor's discretion) of development and operation of such Data Tools.
- (c) If Lessor develops Data Tools, Lessor shall grant Lessee a non-transferable and non-exclusive licence to access and use such Data Tools during the Term (but subject always to Clause 18.10 (*Confidentiality*) for use in connection with the leasing of the Equipment. Lessor shall retain all Intellectual Property Rights in and to the Data Tools.
- (d) Lessor shall have no obligation or liability to Lessee (whether in contract or in tort, at law or otherwise) for any loss, damage or liability of Lessee (including to any third party) or any other direct, indirect, incidental or consequential losses or damages resulting from Lessee's access to or use of any Data Tools. Lessor makes no warranty or representation, and shall have no obligation or liability to Lessee, as to the quality, fitness for any use or purpose, availability, completeness, accuracy or performance of any Data Tools, which will be used entirely at Lessee's own risk.

SCHEDULE 8 MAINTENANCE

1. PROVISION OF SERVICES AND PERFORMANCE STANDARDS

1.1 Maintenance Standards

Throughout the Term, Lessee shall provide and perform, or procure the provision or performance of, the Maintenance Services:

- (a) in accordance with the provisions of this Schedule 8 (*Maintenance*);
- (b) in accordance with the Manuals and the Maintenance Plan, the relevant maintenance and overhaul standards and all Applicable Laws and Standards;
- (c) so as to ensure that the Units, subject to their position from time to time in the maintenance and overhaul cycle specified in the Manuals and the Maintenance Plan: (i) are at all times fit for the operational and safety requirements of providing passenger railway services on the Lessee's Routes; and (ii) are at all times capable of being maintained in a safe and reasonably efficient manner free from any unreasonable risk to the health and well-being of persons maintaining them and from any avoidable risk of pollution, nuisance, interference or hazard; and
- (d) with the degree of diligence, care and skill to be expected of a professional maintainer of railway vehicles providing services similar in scope, nature, complexity and extent to the Maintenance Services.

1.2 No Deferrals of Work

Lessee shall not defer or delay any planned maintenance (outside the tolerances specified in the Manuals and the Maintenance Plan) and shall not change the maintenance periodicities relating to the Units, or make any other change to the Maintenance Plan without the consent of the Lessor (Lessor's consent thereunder not to be unreasonably withheld or delayed).

1.3 Subcontracting

- (a) Lessee may subcontract its obligations under this Schedule 8 (*Maintenance*) (either in whole or in part) to any person or organisation, **provided that** such person or organisation:
 - (i) is the Maintenance Contractor; or
 - (ii) is approved in writing by Lessor (such approval not unreasonably to be withheld or delayed); and
 - (iii) is accredited in accordance with Applicable Laws and Standards.
- (b) The appointment or authorisation by Lessee of any Maintenance Sub-contractor, or agent, officer or employee shall not relieve Lessee of any obligation under this Schedule 8 (*Maintenance*) or the Agreement, and the acts and omissions of

any such Maintenance Sub-contractor, or agent, officer or employee shall, for the purposes of this Schedule 8 and of this Agreement, be deemed to be the acts or omissions of Lessee.

- (c) Lessee shall ensure that any sub-contracts entered into by it in relation to its obligations under this Schedule 8 shall prohibit sub-contracting by the counterparty without Lessee's prior consent, and Lessee shall not consent to any such sub-contracting without Lessor's prior written consent (such consent not unreasonably to be withheld or delayed) **provided that** no such consent shall be required in respect of any sub-contractors within the same group as the Maintenance Contractor.

1.4 **Licences, Fees, etc**

Lessee shall give all notices which it is required to give, and pay all fees required (including, but not limited to, licence application and renewal fees required to be given or paid under any Applicable Laws and Standards) in relation to the provision by it of the Maintenance Services. Lessee shall, in particular, obtain and maintain at its cost for the Term the Depot Licence and any other licence (or any exemption from obtaining that licence) and any accreditation which Lessee shall be required to hold under any Applicable Laws and Standards.

1.5 **Interface with Operation of Units**

Lessee shall ensure that appropriate interfaces are maintained between Lessee's maintenance and operational staff, to ensure that issues arising out of the operation of the Units which have an impact on the Maintenance Services are properly recorded and promptly brought to Lessee's maintenance staff's attention.

1.6 **Cleaning Standard**

Lessee shall develop a specific standard for the interior and exterior cleaning of the Units and Vehicles, based upon the cleaning manual for the Units developed by the Manufacturer, and shall submit such standard to Lessor for approval (such approval not unreasonably to be withheld or delayed) at or before the Acceptance Date. Lessee shall modify the draft standard to accommodate any reasonable requests and/or suggestions for amendment made by Lessor (and provided such requests or suggestions do not adversely affect or interfere with the commercial operation of the Units by Lessee) and, following acceptance by Lessor, such standard shall constitute the Cleaning Standard.

1.7 **Corrosion**

- (a) Any corrosion prevention programme specified in the Maintenance Plan will be in operation, and any corrosion on Units or Vehicles will be treated in accordance with the Maintenance Plan and the Manuals.
- (b) Any tank treatment programme specified in the Maintenance Plan and the Manuals will be in operation.
- (c) The Units will be watertight in that there shall be no ingress of water through damage, all window seals shall be in effective working order, and opening windows shall be operable and shut.

2. MAINTENANCE INFORMATION

2.1 Maintenance Information

Lessee shall establish the facility for storage of the Maintenance Information and update such Maintenance Information in accordance with paragraph 6. Lessee shall promptly update the Maintenance Information to reflect (a) all relevant information developed and provided from time to time to Lessee by the Manufacturer or any subcontractor of the Manufacturer, and (b) any relevant information of which Lessee becomes aware as the operator and maintainer of the Units and which necessitates an amendment to the Maintenance Information.

2.2 Manuals

- (a) Lessee shall, where the performance of the Maintenance Services by it requires an amendment to the Manuals (including the Maintenance Instructions), notify Lessor of the need for such amendment (including the proposed wording of such amendment, which shall comply with the requirements of paragraph 6.1.7), and agree the amendment with the Manufacturer. Once Lessee has agreed in principle the change to the Manuals with the Manufacturer, Lessee shall then seek the consent of Lessor, as owner of the Units, to such change. Lessor may withhold its consent to such change where it reasonably considers that the change would adversely affect the maintenance and/or safety of the Units, Vehicles or Parts, and/or would have an adverse effect on the residual value of the Units and/or the ability of the Units to be operated in passenger revenue-earning service on the Relevant Network.
- (b) Where the Manufacturer proposes any changes to the Manuals (including the Maintenance Instructions), Lessor and Lessee shall consult in good faith in relation to such changes. Lessor may withhold its consent to any such change in the same circumstances as set out in paragraph 2.2 (a). Lessee may withhold its consent to any such change where it reasonably considers that the change would adversely affect the maintenance (including the cost of such maintenance) and/or safety of the Units, and/or would have an adverse effect on the commercial operations of Lessee as a provider of passenger services including the ability of the Units to be operated in passenger revenue-earning service on the Relevant Network. Where any such change is acceptable to both Lessor and Lessee, Lessee shall so notify the Manufacturer.

3. RECORDS; MONITORING OF PERFORMANCE

3.1 Records and Information

Lessee will, in relation to the Equipment, at its own cost:

- (a) procure that all information which is required to be entered on the Technical Records Database is promptly entered on it. Lessee shall ensure that all Unit mileage data and component fitting data are entered into on a system compatible with, and which populates, the Technical Records Database, which enables Lessor to download all such data, but Lessor shall not alter the data held on the Technical Records Database. Lessee shall further update the design code data,

vehicle data identified by Railway Group Standard GM/RT 2453 and certificate data relating to the Units on the R2 database. To the extent that such information is not accessible to Lessor through the Technical Records Database, Lessee shall provide Lessor with such information as Lessor may reasonably request in order for Lessor to assess the total cost of operating and maintaining the Units, and in relation to the reliability of the Units;

- (b) if so requested by Lessor from time to time in order to supplement the information on the Technical Records Database, provide to Lessor such further information relating thereto in Lessee's possession or control on reasonable notice (subject to any duties of confidentiality to which Lessee and/or any of its subcontractors is subject and provided that to do so does not interfere with the commercial operations of Lessee) as Lessor may reasonably require;
- (c) without prejudice to paragraphs (a) and (b) above, procure that the Technical Records are kept in accordance with Applicable Laws and Standards and the requirements from time to time of Network Rail and any Government Authority and, if required for any continuing warranty and to the extent Lessee is aware or should reasonably be aware of the same, the recommendations of the manufacturer thereof;
- (d) without prejudice to paragraphs (a), (b) or (c) above, promptly following receipt of five (5) Business Days' notice in relation to any visit, inspection and/or survey contemplated by this Schedule 8 Lessee will procure that Lessor is granted access (to the fullest extent that Lessee, acting reasonably, is able to grant the same and subject to Lessor entering into any relevant confidentiality agreements as required by Lessee) to all Technical Records of (or held by) Lessee (or any person carrying out any Maintenance on any Unit) relating to the Maintenance or Modification of all or any of the Units. Unless an Event of Default has occurred and is continuing, any additional cost of such access will be for the account of Lessor; and
- (e) set up and maintain a Technical File(s) in accordance with, and to the extent required by, Applicable Laws and Standards, and on the Redelivery Date relating to each Item, Lessee will deliver to Lessor the Technical File(s) relating to such Item, complete and up to date (to the extent required by Applicable Laws and Standards).

3.2 Access for Lessor

- (a) Lessor (or its agent) shall (to the extent the same may reasonably be considered likely, if performed defectively, to affect the long term value of the Equipment, and provided that such access does not interfere with the quiet enjoyment of Lessee of the Equipment or Lessee's commercial operations) at all times during working hours on reasonable notice to Lessee and have access to the premises of Lessee (including the Depot) where Lessee carries out, or stores records relating to, the Maintenance Services in order (to the extent Lessor, acting reasonably, considers necessary for the purposes of this Agreement) to monitor the progress of the Maintenance Services, to inspect any work, to carry out any quality surveillance or audit of Lessee's performance of its obligations under

this Schedule 8 and otherwise for any purpose in connection with this Schedule 8.

- (b) Lessee shall use all commercially prudent reasonable endeavours to secure access for Lessor to the premises of any Maintenance Sub-contractor on the same basis as the access which Lessee is obliged to provide in respect of its own premises. In exercising any of its rights of access under this paragraph 3.2, Lessor shall not unreasonably impede or hinder any work being carried out at the relevant premises.
- (c) Lessor shall not have access to the premises of Lessee or any Maintenance Sub-contractor unless accompanied by a representative of Lessee, and Lessee shall ensure that such representative shall, on reasonable notice make himself or herself available for such visits.
- (d) Lessor (or its agent) may monitor Lessee's progress in meeting its obligations under this Schedule 8 and may inspect, verify, and audit any train maintenance information produced by Lessee under this Schedule 8 from time to time.

3.3 Maintenance Review Meetings

Lessee (and any maintenance contractor appointed by Lessee) shall attend maintenance review meetings with Lessor and any Financier, to review and discuss the performance of Maintenance by Lessee or a third party maintenance contractor, to highlight any areas of difficulty and the action taken or to be taken by Lessee to rectify these, and to answer any questions which Lessor or any Financier may have. Such maintenance review meetings shall be held on a quarterly basis (or at such other frequency as may from time to time be agreed). Lessee and Lessor shall each nominate suitably qualified and experienced representatives to attend the maintenance review meetings.

4. OWNER OWNED SPARES AND SPECIAL TOOLS

4.1 Supply to Lessee

The Owner Owned Spares and Special Tools (including the Undelivered Owner Owned Spares and the Undelivered Special Tools) shall be supplied on an "as-is, where-is" basis in accordance with the MSA, without any warranty, representation or covenant as to their state, quality, condition, description, fitness for purpose or otherwise, save for the warranties provided by the Manufacturer in relation to the Owner Owned Spares and the Special Tools.

4.2 Risk

In relation to (i) the Delivered Owner Owned Spares and Delivered Special Tools respectively, risk in respect of such Equipment remains (as at the date of this Agreement) with Lessee; and (ii) the Owner Owned Spares and the Special Tools that are Undelivered Owner Owned Spares and Undelivered Special Tools respectively, risk in respect of such Equipment shall pass to Lessee on delivery to Lessee in accordance with the MSA, and (in each case) shall remain at the risk of Lessee from the time when they are made available until such time as they are returned to Lessor on termination of

this Agreement (whether or not at such time they are incorporated into Vehicles or Units).

4.3 Title and Identification

- (a) Title in the Owner Owned Spares and Special Tools shall remain with Lessor (or any relevant Financier) at all times. Lessee shall promptly and duly execute, do and deliver to Lessor all acts, deeds, assurances or things which may reasonably be required by Lessor from time to time to confirm that all Parts installed in or attached to the Units or the Owner Owned Spares, and items of Special Tools, are and remain the property of Lessor.
- (b) While the Owner Owned Spares are in Lessee's possession, they shall be stored by Lessee at a suitable place or places at the Depot, details of which shall be notified to Lessor and indoors and in reasonably protective conditions and which comply with all applicable Group Standards and guidance notes (including, in relation to wheelsets, guidance note GM/GN2498), in such a way as enables them to be clearly identified as being separate from the assets of Lessee or third parties. Lessee shall clearly identify the Owner Owned Spares and Special Tools as being Lessor's property, and shall not remove any identifying marks placed on the Owner Owned Spares or Special Tools by Lessor (or at Lessor's order). Lessee shall maintain a record of the location of the Owner Owned Spares (setting out, against each Owner Owned Spare's catalogue number, the location of such Owner Owned Spare, whether at the Depot, at other premises of Lessee or on a Unit), and shall allow Lessor to inspect and (if required) to take copies of such register.
- (c) Lessee shall promptly notify any mortgagee or chargee of all or any of its assets (whether under a fixed or floating charge) that the Owner Owned Spares and Special Tools are the property of Lessor, and Lessee shall provide satisfactory evidence of such notification and, where requested by the Lessor, a written acknowledgement from any mortgagees or chargees that the Owner Owned Spares and Special Tools are not within the scope of any such mortgage or charge.
- (d) Lessee shall not lease, sell, charge, pledge, mortgage or otherwise dispose of any of the Owner Owned Spares or Special Tools or any interest therein or permit any Security Interest (other than Permitted Liens) to arise over any of the Owner Owned Spares or any of the Special Tools (or purport to do any of the foregoing).

4.4 Management by Lessee

- (a) After the Owner Owned Spares and the Special Tools have been made available to Lessee under paragraph 4.1 (*Supply to Lessee*), Lessee shall:
 - (i) be responsible for the effective handling, management, control, storage and stewardship of the Owner Owned Spares and the Special Tools at all times during the Term, and

- (ii) Lessee shall only use the Owner Owned Spares and the Special Tools, in the performance of the Maintenance Services during the Term, and for no other purpose, and if any part of an Owner Owned Spare is temporarily removed for any purpose connected with the Maintenance Services, it shall promptly be replaced with a part of equal value and utility and state of repair.
- (b) Where Lessee uses any of the Owner Owned Spares in the performance of the Maintenance Services or any Owner Owned Spare becomes life-expired or no longer capable of use, Lessee shall replace such Owner Owned Spares with items of the same type as soon as reasonably practicable, and in any event before the end of the Term, and such replacement items shall (i) be operationally equivalent with the same or enhanced functionality in comparison to the Owner Owned Spares they replace, (ii) fit for purpose, (iii) have a remaining life of not less than half of their expected life from new, (iv) in an overhauled condition, and (v) ready for immediate use.
- (c) Lessee shall only use replacement spares procured from or maintained by the original equipment manufacturer of the relevant replacement spares (except with Lessor's prior written consent, not to be unreasonably withheld or delayed), and shall only use other spares (including Lessee Owned Spares) where:
 - (i) the use of such spares would not invalidate or otherwise prejudice the warranties given by the Manufacturer in relation to the Units, Vehicles and Parts, or by other relevant original manufacturers in relation to such spares; and
 - (ii) such spares comply with the requirements of the Manuals and the Maintenance Plan.
- (d) Lessee shall at its own cost carry out, or procure the carrying out of, any servicing, maintenance, overhaul, repair or refurbishment required by the Owner Owned Spares and Special Tools from time to time to keep them in a condition in which, subject to fair wear and tear and the relevant Owner Owned Spare's position in the maintenance and overhaul cycle specified in the Manuals and the Maintenance Plan, they are fit for use on the Units and/or in the performance of the Maintenance Services and so that at any point in time such Owner Owned Spares and Special Tools will not be time-expired (subject to paragraph 5.1 (*Lessee Owned Spares*)) or otherwise unfit for service.
- (e) Lessee shall promptly furnish the Lessor with all information arising out of any Modification of the Units which results in Owner Owned Spares becoming obsolete, and:
 - (i) Lessee and Lessor shall co-operate in good faith to agree amendments to the list of Existing Owner Owned Spares; and
 - (ii) Lessee shall promptly update or replace such obsolete Owner Owned Spares with replacement Owner Owned Spares compatible with such amended configuration of the Units,

provided that in relation to any Owner Owned Spares which become obsolete as a result of any Modification to rectify a Fault, Lessee may (but without prejudice to Lessee's obligations under this Agreement) seek to recover the costs of replacing such obsolete Owner Owned Spares from the Manufacturer.

- (f) Save to the extent the same arises from any act or omission of Lessor, Lessee shall be entirely responsible for any Fault in or caused by any Owner Owned Spare or any of Special Tool, or for any shortage of the Owner Owned Spares which arises as a result of carrying out Fault Rectification Work.
- (g) Lessee shall while the Owner Owned Spares and Special Tools are in its possession and/or control (including when they are on its premises) as far as reasonably practicable protect them from theft, injury, breakage or damage by exposure to the weather and take all reasonable precautions against theft, accident, injury or breakage or damage from any cause.
- (h) Lessee shall keep the Owner Owned Spares and Special Tools in a manner suited to their specialist requirements, and shall be liable for and shall indemnify Lessor against all loss, theft, injury, breakage or damage to the Owner Owned Spares and Special Tools whilst the same are in the possession and/or control of Lessee or any Maintenance Sub-contractor.
- (i) Lessee shall not make any charge for the performance of its obligations under this paragraph 4 (*Owner Owned Spares and Special Tools*).

4.5 Possession

- (a) Save as required by law, Lessee shall not part with possession of any of the Owner Owned Spares or Special Tools in any circumstances, other than as part of the carrying out of the Maintenance Services or with Lessor's prior written consent.
- (b) Lessee shall not permit any of the Owner Owned Spares or the Special Tools to be seized or taken out of its possession or control under any distress, execution or other legal process applicable to Lessee, and if any of them are so seized or taken, Lessee shall promptly notify Lessor of that fact and shall indemnify Lessor fully on demand against all Losses incurred by Lessor by reason of such seizure in re-taking possession or otherwise in re-acquiring the Owner Owned Spares and/or Special Tools or in acquiring substitutes therefor (save to the extent the same arises as a consequence of any act or omission of Lessor).

5. LESSEE OWNED SPARES

5.1 Lessee Owned Spares

- (a) Lessee shall at its cost procure, handle, manage, control and maintain, at its own expense all Lessee Owned Spares in the quantities required by Lessee fully and properly to perform its obligations under this Schedule 8.
- (b) Title to any Lessee Owned Spare provided by Lessee in the performance of the Maintenance Services will pass to Lessor, free from Security Interests (other than any Lessor Liens), when such Lessee Owned Spare is fitted to a Unit or

Vehicle, and title to any Owner Owned Spare replaced by such Lessee Owned Spare shall at the same time pass to Lessee.

- (c) Lessee shall promptly advise Lessor of any Lessee Owned Spares which are purchased or manufactured specifically for the purposes of this Agreement and would be available as part of the list of Lessee Owned Spares to be offered to Lessor pursuant to paragraph 5.2.
- (d) Prior to expiry or termination of the TSSSA, Lessee shall obtain written confirmation from Lessor of those Maintainer Owned Spares (as defined in the TSSSA) (if any) which Lessor requires Lessee to purchase (at Lessor's cost) from the Maintenance Contractor pursuant to clause 7.1(b) of the TSSSA.

5.2 Sale of Lessee Owned Spares on Termination

- (a) Lessee shall, at the Expiry Date, provide Lessor with a list of Lessee Owned Spares as are held by the Lessee exclusively for the purposes of this Agreement, and Lessor shall be entitled, within a period of three (3) months from the Expiry Date, to purchase some or all of such Lessee Owned Spares from Lessee.
- (b) If Lessor wishes Lessee to exercise its rights to purchase any Lessee Owned Spares pursuant to the terms of the TSSSA, then:
 - (i) Lessor will advise Lessee in writing, Lessee will acquire such Lessee Owned Spares under the terms of the TSSSA and Lessor will purchase such items from the Lessee with full title guarantee and free from any Security Interest, at the price which Lessee paid for them under the TSSSA, and such items shall be delivered by Lessee to such place as Lessor may specify; and
 - (ii) (to the extent Lessee is entitled to do so without breaching (x) any Applicable Law or Standard or (y) any contractual restriction on assignment in the contract or agreement under which such rights and remedies are granted) Lessee shall assign to Lessor in full the benefit of any unexpired third party manufacturers' or overhaulers' warranties relating to such items (provided that where, pursuant to (y) above there is a contractual restriction on assignment to Lessor, Lessee will use reasonable endeavours to procure a waiver of such restriction in order that the benefit of such rights and remedies may be validly assigned).

5.3 Continued access to Lessee Owned Spares following Termination

- (a) If any of the Lessee Owned Spares are held by Lessee both for the purposes of this Schedule 8 and for the Lessee's other maintenance businesses, and those Lessee Owned Spares are capable of refurbishment, Lessee shall, following termination or expiry of this Agreement for whatever reason, allow Lessor to use those Lessee Owned Spares, on the basis that:
 - (i) Lessee shall operate a pool of Lessee Owned Spares, and shall supply new or reconditioned Lessee Owned Spares as replacements for Owner Owned Spares (where the spares are the same); and

- (ii) Lessor shall pay a reasonable fee to Lessee for the supply of such Lessee Owned Spares, representing a *pro rata* contribution to the book value of the relevant Lessee Owned Spare (based on the number of other parties to whom Lessee provides maintenance services in relation to which such item is required), and a reasonable handling charge for the use by Lessee of the relevant item,

(provided always that Lessee shall have no obligation to supply such Lessee Owned Spares where to do so would (or in Lessee's reasonable opinion, would be likely to) have a material adverse effect on Lessee's commercial operations as an operator of passenger services).

- (b) Title to the relevant Lessee Owned Spare shall pass to Lessor (with full title guarantee and free from any Security Interest) on its supply by Lessee to Lessor, and title to the relevant Owner Owned Spare which Lessor provides to Lessee in exchange for such Lessee Owned Spare shall pass to Lessee (with full title guarantee and free from any Security Interest) on its supply by Lessor to Lessee.

6. INTELLECTUAL PROPERTY RIGHTS

6.1 Establishment and Updating of Maintenance Information

Lessee shall:

- (a) at all times throughout the Term ensure that the Maintenance Information existing at the date of this Agreement (and as supplemented, updated or replaced from time to time during the Term) is securely stored;
- (b) as and when additional Maintenance Information is produced from time to time:
 - (i) where such additional Maintenance Information is produced by Lessee or any company in the Lessee's Group, promptly ensure that a copy of that additional Maintenance Information is made available to Lessor in accordance with paragraph 6.4(a); and
 - (ii) where such additional Maintenance Information is produced by any Maintenance Sub-contractor other than a company in the Lessee's Group, use reasonable endeavours promptly to ensure that a copy of that additional Maintenance Information is made available to Lessor in accordance with paragraph 6.4(a);
- (c) as and when additional Maintenance Information is produced from time to time:
 - (i) where such additional Maintenance Information is produced by Lessee or any company in the Lessee's Group, promptly ensure that a copy of that additional Maintenance Information is placed in the facility established under paragraph (e); and
 - (ii) where such additional Maintenance Information is produced by any Maintenance Sub-contractor other than a company in the Lessee's Group, use reasonable endeavours promptly to ensure that a copy of that

additional Maintenance Information is made available to Lessor in accordance with paragraph (e);

- (d) update or replace any Maintenance Information where such updating or replacement is required and as and when such Maintenance Information is updated or replaced from time to time:
 - (i) where any such Maintenance Information is updated or replaced by Lessee or any company in the Lessee's Group promptly ensure that an updated copy of that Maintenance Information is made available to Lessor in accordance with paragraph 6.4(a); and
 - (ii) where any such Maintenance Information is updated or replaced by any Maintenance Sub-contractor other than a company in the Lessee's Group, use reasonable endeavours promptly to ensure that an updated copy of that Maintenance Information is made available to Lessor in accordance with paragraph 6.4(a);
- (e) establish a catalogue, in a format approved by Lessor, of all Maintenance Information existing at the date of this Agreement and as supplemented, updated or replaced from time to time, and update that catalogue from time to time;
- (f) deliver one copy of the data from the catalogue established under paragraph (e) (and any updated version from time to time) to Lessor; and
- (g) produce, and shall use reasonable endeavours to procure that any Maintenance Sub-contractor produces, Maintenance Information in a suitable and appropriate format for use by Lessee or any third party needing to carry out maintenance in relation to the Units (save that no regard shall be had to the characteristics or functionality of any operating system, computer hardware or software used by Lessee in assessing whether such format is suitable or appropriate for use by any third party).

6.2 Lessor Access to Maintenance Information

Lessor may at any time and from time to time, by notice to Lessee, request access during normal business hours to and/or a copy of any Maintenance Information, where access to and/or a copy of such Maintenance Information is reasonably required by Lessor for any purpose in connection with this Agreement.

6.3 Lessor Performance Audit

- (a) Lessor may request and Lessee shall grant access to the Maintenance Information from time to time during normal business hours in order for Lessor to carry out a Performance Audit (provided that (while no Event of Default has occurred and is continuing) Lessor shall only be able to exercise such right once in every period of 12 months following the Effective Date unless Lessor reasonably demonstrates to Lessee that more frequent inspection is necessary to address issues which, if not rectified, would materially and adversely affect the long-term value of the Equipment). Any such request shall be made in writing to Lessee with reasonable notice, and shall indicate with reasonable clarity the

Maintenance Information or the type of Maintenance Information which is required for review. As part of its request Lessor shall indicate the identity and number of individuals who will be responsible for carrying out the Performance Audit.

- (b) Lessee shall grant access to Lessor upon receipt of Lessor's request on the basis set out in such request and, subject to paragraph 6.3(a), shall supply a copy of any Maintenance Information to which Lessor is entitled pursuant to the provisions of paragraph 6.2 (*Lessor Access to Maintenance Information*) as soon as reasonably practicable, and in any event within five (5) Working Days of receipt of Lessor's request.
- (c) If, following such a Performance Audit, Lessor (acting reasonably) notifies Lessee that it considers any faults or shortcomings in the Maintenance Information or in performance of the Maintenance Services have been identified which, if not rectified, would (or would be reasonably likely) materially to impair the long-term residual value of the Units, Lessee shall promptly discuss the same with Lessor with a view to identifying whether such faults or shortcomings if not rectified, would (or would be reasonably likely) if not rectified materially to impair the long-term residual value of the Units and if so produce a remedial plan for approval by Lessor (acting reasonably), and following such approval Lessee shall promptly implement such remedial plan and keep Lessor informed of its progress.
- (d) Any Performance Audit carried out by Lessor is without prejudice to, and shall not in any way affect Lessee's obligations in relation to return of the Equipment under Clause 13 (*Return of Equipment*) or Schedule 4 (*Delivery and Redelivery Condition Schedule*) of this Agreement.

6.4 Other Communications and Updates

- (a) Lessee shall ensure that any Maintenance Information produced by a Maintenance Sub-contractor in the Lessee's Group is supplied to Lessor within ten (10) Business Days of receipt of Lessor's request under paragraph 6.2 (*Lessor Access to Maintenance Information*), and shall use reasonable endeavours to ensure that any Maintenance Information produced by any Maintenance Sub-contractor other than a company in the Lessee's Group is supplied to Lessor within twenty (20) Business Days of receipt of Lessor's request under paragraph 6.2 (*Lessor Access to Maintenance Information*), but in the case of Maintenance Information produced by a Maintenance Sub-contractor other than a company in the Lessee's Group Lessee shall not be under an obligation to supply any such Maintenance Information to Lessor under paragraph 6.2 (*Lessor Access to Maintenance Information*) to the extent that it is unable, notwithstanding the use of reasonable endeavours, to secure such rights.
- (b) As and when Lessee or a Maintenance Sub-contractor updates or otherwise amends any Maintenance Information previously communicated to Lessor, Lessee shall promptly notify Lessor, and if Lessor so requests:

- (i) in the case of any Maintenance Information which is updated or amended by Lessee or any Maintenance Sub-contractor in the Lessee's Group, promptly communicate to Lessor the updated or amended version of that Maintenance Information; and
 - (ii) in the case of any Maintenance Information which is updated or amended by any Maintenance Sub-contractor other than a company in the Lessee's Group, use reasonable endeavours to ensure that the updated or amended version of that Maintenance Information is promptly communicated to Lessor.
- (c) In the event that the Technical Records Database is R2, Lessee shall establish and maintain a computer link between its computer systems and the Technical Records Database, to enable Lessor's maintenance monitoring computer systems to access maintenance records from the Technical Records Database, and shall permit Lessor to download any such information or records.

6.5 Communications with Manufacturer

- (a) Lessee shall (at Lessee's sole cost and expense) furnish the Manufacturer with all information developed by Lessee from time to time as a result of the performance of the Maintenance Services which is reasonably necessary in order for the Manufacturer to update the Manuals, and request that the Manufacturer update such documentation accordingly. Lessor may withhold consent to such amendment to the Manuals where it reasonably considers that the change:
 - (i) would adversely affect the maintenance and/or safety of the Vehicles or Parts; and/or
 - (ii) would have a material adverse effect on the long-term value of the Vehicles and/or the ability of the Vehicles to be operated in passenger revenue-earning service on the Relevant Network.
- (b) Lessee shall (at Lessee's sole cost and expense) furnish the Manufacturer with all information developed by Lessee as a result of the performance of the Maintenance Services which is reasonably necessary in order for the Manufacturer to update the Manuals, and request that the Manufacturer update such documentation accordingly.
- (c) Lessee shall update the Maintenance Information where appropriate to reflect the information developed by the Manufacturer which is reasonably necessary in order for Lessee to perform the Maintenance Services and update the Maintenance Information, and which has been furnished by the Manufacturer to Lessee.
- (d) Lessee shall promptly furnish the Manufacturer with all information arising out of the operation of the Units which it reasonably considers may require an amendment to the Manuals, and where such information necessitates an amendment to the Manuals, request that the Manufacturer promptly update the Manuals as a result of any such information on the basis specified in

paragraph 2.2 (*Manuals*). Lessor may withhold consent to such amendment to the Manuals on any of the grounds listed in paragraph 6.5(a)(i) to 6.5(a)(ii) inclusive. Where such information requires an amendment to the Maintenance Information, Lessee shall update the Maintenance Information accordingly.

6.6 Information Release

At any time after the occurrence of an Event of Default, and until such Event of Default is no longer occurring, Lessee shall immediately upon written request by Lessor grant unlimited and unrestricted access to the Maintenance Information, and the restrictions contained in paragraph 6.2 (*Lessor Access to Maintenance Information*) shall not apply.

6.7 Lessor's Rights to use Maintenance Information

Lessor may, subject to the Direct Agreement, use the Maintenance Information delivered to it from time to time under this Agreement (in respect of any period during which Lessee is not providing any of the same in respect of the Units pursuant to this Agreement):

- (a) to operate the Units, or to permit any future lessee of the Units to operate the Units;
- (b) to undertake, or to have undertaken on its behalf:
 - (i) maintenance of the Units, Vehicles and Parts;
 - (ii) repairs or overhauls of the Units, Vehicles or Parts (which includes repair of collision damage and the undertaking of "face-lift", refurbishment, and life-extension programmes) the remedying of Faults and the rectification of faults in software;
 - (iii) modifications to the Units, Vehicles or Parts;
 - (iv) modification to parts or equipment for use in connection with the Units, Vehicles or Parts including to enable the Units or Vehicles to be operated with other railway vehicles; and/or
 - (v) the training of personnel to enable them to carry out any of the activities described in paragraphs (i) to (iv) above (inclusive);
- (c) for the purpose of inviting tenders for any of the activities described in paragraph 6.7(b), **provided that** Lessor shall ensure that on completion of the tender process all such Maintenance Information as was supplied to the prospective tenderers (including any copies made by such tenderers) is provided to such tenderers on equivalent conditions of confidentiality as are provided for under clause 18.10 of this Agreement and returned to Lessor by all tenderers other than the tenderer to whom the contract is awarded; and
- (d) to comply or co-operate with any enquiries or inquiries raised by Government Authorities or any other person carrying out any judicial or quasi-judicial function,

and Lessor may provide copies of such Maintenance Information to any Financier, **provided that** such Financier is under the same obligations as Lessor under this Agreement in relation to the use of such Maintenance Information and confidentiality.

6.8 Licensing of Intellectual Property Rights

(a) Other than in respect of any Intellectual Property Rights licensed pursuant to the MSA, the Lessee hereby grants to the Lessor an irrevocable, perpetual royalty free, sub-licensable, non-transferable and non-exclusive licence of all Intellectual Property Rights owned by the Lessee in:

- (i) the Documentation (to the extent permitted by the terms of the TSSSA, in relation to Documentation created pursuant to the TSSSA);
- (ii) the Technical Records Database;
- (iii) the Manuals and the Maintenance Plan; and
- (iv) the Maintenance Information,

for all purposes in connection with the Lessor's ownership of the Units (but subject always to Clause 18.10 (*Confidentiality*)). For the avoidance of doubt, Intellectual Property Rights in respect of Performance Reports and TSSSA Documentation (each as defined in the TSSSA) are licensed pursuant to the MSA and no further licence shall be provided under this Agreement.

(b) The Lessee hereby agrees that it will not amend the provisions of the licence in clause 17 of the TSSSA without obtaining prior consent from the Lessor (which consent shall not be unreasonably withheld).

(c) Lessee hereby grants to Lessor an irrevocable, perpetual, royalty free, sub-licensable, non-transferable and non-exclusive licence of Lessee's Intellectual Property Rights in all Train Data and Output Data owned by Lessee for all purposes in connection with the Lessor's ownership of the Units (but subject always to Clause 18.10 (*Confidentiality*)). For the avoidance of doubt such licence shall allow, in order for Lessor to be able to use, measure, record, process, transmit, alter, amend, adapt, convert or in any other way change any and all of the Train Data and Output Data, including for the purposes of creating its own digital tools from, or for the purposes of using, such data. For the purposes of this paragraph 6.8(b):

- (i) "**Train Data**" means all data (including performance data, fault data and condition monitoring data) that is measured, recorded and transmitted on or from each Equipment including to the extent it is converted and/or combined with other data for the purpose of transmission including any data referred to in paragraph 8.3 of Schedule 7 (*Operational Undertakings*); and
- (ii) "**Output Data**" means all data and other information generated, derived from, or produced using, Train Data by the Lessor.

6.9 Licence by Lessor

- (a) Lessor hereby grants and agrees to grant to Lessee an irrevocable, royalty-free, non-exclusive licence to use (and to permit Lessee's sub-contractors to use) such of the Lessor's Intellectual Property Rights to the extent necessary for Lessee or its sub-contractors to provide the Maintenance Services.
- (b) Lessor undertakes to Lessee that the exercise by Lessee of its rights under paragraph 6.9(a) will not result in the infringement of any Third Party IPR.
- (c) Lessor shall indemnify Lessee on demand in respect of all Losses suffered or incurred by Lessee, as a result of any claim that the use by Lessee of the licence granted under paragraph 6.9(b) infringes any Intellectual Property Rights of any third party. The foregoing indemnity shall not cover any claim of infringement that relates to, and is caused by:
 - (i) modifications made to the Units without any involvement by Lessor;
 - (ii) improper use of the Units;
 - (iii) breach by Lessee of its obligations under this Agreement; or
 - (iv) any other act or omission by the Lessee inconsistent with the terms of the licence granted to it pursuant to Clause 6.9(a) above,

or where the Lessee's Losses are recoverable by the Lessee pursuant to another indemnity or right of recourse under either this Agreement, the MSA or the TSSSA (or would be so recoverable but for any limitation on recovery under such provision).

6.9A Licence by Lessor on occurrence of Escrow Release Event

If an Escrow Release Event occurs, the Lessor shall notify the Lessee without delay of such Escrow Release Event, and if Lessee requests access to relevant Escrow Materials within 5 Business Days of such notice, the Lessor shall promptly following the Lessee's request (at its option) either:

- (a) release the Escrow Materials to the Lessee; or
- (b) allow Lessee access rights to the relevant Escrow Materials,

in each case to the extent it is entitled to do so pursuant to clause 17 (*Intellectual Property Rights*) of the MSA, and the Lessee shall pay the Release Fee to the Lessor where the Lessee has requested the release of or access rights to the Escrow Materials.

6.10 Third Party IPR

- (a) Lessee shall be responsible, at its cost, for procuring licences over Third Party IPR which Lessee requires in order for it to carry out the Maintenance Services.
- (b) Where Lessee obtains any licences over Third Party IPR for the purposes of carrying out the Maintenance Services, Lessee shall use reasonable endeavours

to obtain a perpetual, irrevocable, royalty-free, non-exclusive licence in favour of Lessor (with the right to sub-license) of such Third Party IPR as Lessor may request for the purposes set out in paragraph 6.7 (and to permit Maintenance Sub-contractors to use those rights).

- (c) Lessee shall execute, and shall procure that any Maintenance Sub-contractor shall execute, such further documents, and do such other things, as Lessor may reasonably request in order for Lessor to obtain the full benefit of paragraph 6.7 (*Lessor's Right to Use Maintenance Information*) and paragraphs 6.10(a) and 6.10(b).

6.11 **Survival; Termination of Agreement**

- (a) The parties' rights and obligations under this paragraph 6 shall survive the termination or expiry of this Agreement howsoever arising.
- (b) If this Schedule 8 or this Agreement is terminated or expires for whatever reason, Lessee shall grant to Lessor access to the computer link created and maintained under paragraph 6.7 (*Lessor's Rights to use Maintenance Information*) and shall permit Lessor to download any of the Maintenance Information which is maintained on Lessee's computer systems and which is used in the provision of the Maintenance Services, and Lessor shall be permitted to use the Maintenance Information for the purposes in paragraph 6.7 (*Lessor's Rights to use Maintenance Information*).
- (c) Following the Expiry Date, Lessor shall have the right to pursue a claim against Lessee for delivery up of the Maintenance Information and/or damages if, in the opinion of Lessor, Lessee has failed to keep the Maintenance Information updated under the terms of this Schedule 8 or failed to make available to Lessor in accordance with this Schedule 8.

7. **CO-OPERATION ON TERMINATION**

To the extent that Lessee is able, having regard to the fact that the Rail Services Contract may have ended contemporaneously with the termination or expiry of this Agreement and Lessee may have transferred its assets or rights relating to the Rail Services Contract to a third party, Lessee shall offer, at a reasonable cost payable by Lessor (except where termination is as a result of an Event of Default, where Lessee shall bear the costs), for a period of six (6) months, co-operation and support to Lessor to assist it in ensuring an orderly handover of the provision of maintenance services in relation to the Units from Lessee to a successor maintainer of the Units. This may include (without limitation) provision of personnel, permitting access to the Depot and release of Owner Owned Spares, Lessee Owned Spares and other equipment, and continuing to operate Lessee's internal maintenance management systems with the intention of enabling an orderly, seamless and continuous transfer of maintenance information relating to Lessee's maintenance of the Units to such successor maintainer.

SCHEDULE 9 INSURANCE REQUIREMENTS

1. REQUIRED TYPES OF INSURANCE

Lessee will, at its own cost and expense, throughout the Term, effect and maintain the following Insurances:

1.1 All Risks Property Insurance

All risks property insurance for all insurable risks of physical loss of or damage to such Equipment during the Term (and thereafter until such Equipment is actually redelivered by Lessee to Lessor in accordance with the Lease) for an amount not less than the Agreed Value for each such item of Equipment, but subject to an aggregate loss limit of not less than £250,000,000 per incident or other such amount as may be determined by the Lessee (the "**Probable Maximum Loss Limit**"), as a first loss limit adequate for the probable maximum loss for Equipment and other property for which the Lessee is responsible to insure at one location, subject always to the provisions of 8 (*General Requirements for Insurances*) of this Schedule 9. The said limit is approved by Lessor on the basis that Lessee will keep Lessor informed as to Lessee's arrangements for stabling the Units (and in particular, the maximum number of Vehicles which are stabled overnight in a single location at any one time), and any change in the arrangements notified to Lessor prior to the date of this Agreement shall be subject to Lessor's prior written approval. In the event that there are any proposed changes to Lessee's arrangements for stabling the Units that would result in an aggregation of the Units (taking into account, the maximum number of Vehicles which are stabled overnight in a single location at any one time) being a higher amount than the Probable Maximum Loss Limit referred to above, the Lessee shall increase the Probable Maximum Loss Limit to an amount which is sufficient to cover such aggregation of values.

Without limiting the requirements set out elsewhere in this Schedule 9, this insurance shall comply with the requirements of Section 1 (*All Risks Property Insurance*) of Appendix 1 of this Schedule 9 and shall incorporate an endorsement substantially in the form and substance of the endorsement wording set out in Appendix 3 of this Schedule 9.

1.2 Third Party Liability Insurance


Insurance covering legal liability for death, bodily injury to or disease of any person (including any actions of any directors, officers, agents, employees, servants and secondees of Lessee) and accidental loss of or damage to property caused by or arising directly or indirectly from or in connection with the use and/or operation of the Equipment by Lessee or as may be customary from time to time for operators and/or lessors of rolling stock in the United Kingdom to insure against, but at a minimum will include the operation, maintenance, renewal and/or control of such item of Equipment and such other third party liability risks as may be required by Applicable Laws and Standards or as Lessor may from time to time reasonably require following advice from its insurance advisers in an amount not less than £155,000,000 for any one incident or event (and an aggregate of £155,000,000 in respect of Products Pollution) (or such

amount as the ORR or Secretary of State may from time to time approve) (the "**Minimum Liability Coverage**").

Without limiting the requirements set out elsewhere in this Schedule 9, this insurance shall comply with the requirements of Section 2 (*Third Party Liability Insurance*) of Appendix 1 of this Schedule 9 and shall incorporate an endorsement substantially in the form and substance of the endorsement wording set out in Appendix 3 of this Schedule 9, subject always to the provisions of 8 (*General Requirements for Insurances*) of this Schedule 9.

2. **AGREED VALUES**

The Agreed Value of any Unit which suffers an Event of Loss shall be an amount in Sterling calculated by multiplying (i) the Base Unit Value of such Unit (being the Unit Price of such Unit, or such greater amount as may result from any variation or modification to such item agreed between the parties) by (ii) the percentage set out in column 2 of the following table opposite the calendar year in which such Event of Loss occurs:

Column 1 Years elapsed since Acceptance	Column 2 Percentage of Base Unit Value
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	

The Agreed Value for each other item of Equipment (other than a Driving Cab Simulator) shall be its full replacement cost. The Agreed Value of any Driving Cab Simulator shall be the Driving Cab Simulator Replacement Cost.

3. **INSURANCE OR REINSURANCE**

3.1 Insurances will be effected and maintained either:

- (a) on a direct basis with insurers of recognised standing authorised by any relevant authority to undertake railway rolling stock insurance programmes and led by reputable underwriter(s) approved by Lessor (such approval not to be unreasonably withheld or delayed); or
- (b) with a single insurer or group of insurers approved by Lessor who does not retain the risk but effects substantial reinsurance with reinsurers, for a percentage approved by Lessor of all risks insured (the "**Reinsurances**");

3.2 In particular (without limitation) if Lessee proposes to insure all or part of any risk through a captive insurer, Lessor's prior written approval will be required for such insurance, and Lessor will require to be satisfied as to the credit standing and management of the captive insurer and as to the reinsurance arrangements implemented by such captive insurer.

4. **REQUIREMENTS FOR ALL RISKS PROPERTY INSURANCES**

The all risks property insurances will:

- 4.1 be in the name of Lessee and will name Lessor, any Financier and their respective successors and assigns as additional insureds for their respective rights and interests (warranted, either in the policy itself or in another related document, in the case of any relevant Financier and its successors and assigns, as to itself only, no operational interest);
- 4.2 contain a loss payee clause reflecting the relevant provisions of paragraph 7 of this Schedule 9 and otherwise in form and substance satisfactory to Lessor;
- 4.3 (where appropriate and required by Lessor) include a notice and/or acknowledgement of assignment (relating to the assignment of Lessor's interest in the Insurances to any Financier) in a form reasonably acceptable to Lessor; and
- 4.4 confirm that the insurers are not entitled to replace the relevant item of Equipment in the event of an Event of Loss in relation to that item of Equipment without the consent of Lessor.

5. **REQUIREMENTS FOR THIRD PARTY LIABILITY INSURANCES**

The third party liability insurances will:

- 5.1 be in the name of Lessee and will name Lessor, any Financier and their respective successors and assigns and their respective shareholders, subsidiaries, directors, officers, agents, employees, servants and secondees as additional insureds for their respective rights, liabilities and interests (warranted, in the case of each additional insured other than Lessor, as to itself only, no operational interest);
- 5.2 indemnify each insured in respect of claims made by any of them against any other insured to the extent of the limits of liability; and
- 5.3 accept and insure the indemnity provisions in Clause 10 (*Indemnity*) of this Agreement to the extent of the risks covered by the policies and the relevant terms of this Schedule 9.

5.4 Comply with the requirements of Appendix 1 and 3 of this Schedule 9

6. INSURANCE COVENANTS

6.1 Lessee will ensure that all legal requirements as to insurance of the Units which may from time to time be imposed by Applicable Laws and Standards, insofar as those requirements affect or concern the operation of such Units, are complied with.

6.2 Lessee will not use, cause or permit any Equipment to be used for any purpose or in any manner not covered by the Insurances or in contravention of any restriction imposed by the Insurances on lines of route or depots.

6.3 Lessee will comply with the terms and conditions of the Insurances and not do anything or consent or agree to any act or omission which:

- (a) invalidates or would reasonably be expected to invalidate the Insurances; or
- (b) renders or would reasonably be expected to render void or voidable the whole or any part of the Insurances; or
- (c) brings any particular liability within the scope of an exclusion or exception to the Insurances.

6.4 Lessee will not take out, without the consent of Lessor, any insurance or reinsurance in respect of any Equipment other than the Insurances which it is required to take out under this Agreement; Lessor will not withhold consent unless it is reasonably likely to prejudice Lessor's ability to recover under any of the Insurances.

6.5 In relation to each renewal date for the Insurances, Lessee will:

- (a) commence renewal procedures at least sixty (60) days prior to such renewal date, and provide to Lessor a written status report of renewal negotiations fourteen (14) days prior to such renewal date **provided that** during the period between commencement of the renewal procedures and the renewal date the Lessee shall upon Lessor's request provide Lessor with updates on any renewal negotiations and any information relating to the renewal which Lessor reasonably requests in order to comply with its obligations under the Common Terms Agreement. If at any time during renewal negotiations the Lessee reasonably determines that it will not be possible to maintain insurance in compliance with the terms of this Agreement it shall immediately notify Lessor; and
- (b) provide to Lessor:
 - (i) confirmation of completion of renewal prior to such renewal date, transmitted by e-mailed copy of scanned originals or by facsimile transmission; and
 - (ii) within fourteen (14) days after such renewal date, a new certificate of insurance (in a form reasonably acceptable to Lessor, detailing the coverage and confirming the insurers' agreement to the specified insurance requirements of this Schedule) addressed to Lessor and the

Financier of such item of Equipment (or, where there is more than one Financier, addressed to the agent or trustee for the Financiers), and a broker's letter of undertaking (substantially in the form of the appendix 2 to this Schedule 9) addressed to Lessor and the Financier (or agent/trustee), which will include, *inter alia*, a provision for at least thirty (30) days' written notice to be given of the insurers' intention to cancel or avoid the Insurances in the event of non-payment of premium or for any other reason (including at Lessee's request) or any material reduction in the cover provided under the Insurances (including at Lessee's request).

- (iii) As and when the broker's letters of undertaking is required to be provided over the course of this Agreement, the limit of liability to be specified in such letters shall be agreed between the Lessor and the Lessee acting reasonably and taking into account the prevailing insurance market practice.

6.6 Lessee will promptly pay any premiums due in respect of the Insurances which it is required to effect and maintain under this Agreement.

6.7 Lessee will:

- (a) provide to Lessor (or procure that its brokers provide to Lessor) any information, documents and assistance in respect of the Insurances which Lessor may reasonably require from time to time; and
- (b) preserve in a safe location (either at its own premises or with its brokers) all placing slips, certificates, renewal receipts and cover notes, correspondence and policies with regard to the Insurances.

6.8 Subject as provided in paragraph 11 (*Additional or Changed Requirements*), Lessee will not make any modification or alteration to any of the Insurances materially adverse to the interests of any other insured party.

6.9 Lessee will be responsible for any deductible, and shall bear any part of any loss or liability which is to be borne by the insured, under any of the Insurances.

6.10 Lessee will:

- (a) promptly notify Lessor of any loss, theft, damage or destruction of or to any item of Equipment or any other occurrence in relation to any item of Equipment which, in any such case, occurs when such item of Equipment is in the possession of Lessee and which will, or is likely to, give rise to a claim under the Insurances in excess of the Relevant Casualty Amount; and
- (b) provide, on a periodic basis, such information as Lessor may reasonably require for the purposes of compiling a full historic insurance claims record for each item of Equipment.

6.11 Lessee will provide to Lessor, on request, details of any negotiations in which it may be involved with the insurance brokers relating to any claim arising under the Insurances and any claim or related information that the lessor may reasonably requires

in order to comply with its claims reporting obligations under the Common Terms Agreement.

- 6.12 Lessee shall comply with any insurance requirements of the Secretary of State, including, without limitation, those set out in the Rail Services Contract.

7. APPLICATION OF INSURANCE PROCEEDS

As between Lessor and Lessee:

- 7.1 all insurance payments received as the result of an Event of Loss occurring with respect to an item of Equipment during the Term relating thereto will be paid to Lessor and applied by Lessor in discharging Lessee's outstanding obligations under Clause 11.2.1 or, if Lessee's obligations under Clause 11.2.1 have already been discharged, Lessor will pay to Lessee, by way of rebate of Rent, an amount equal to the lesser of (i) the amount of such insurance payments so received by Lessor and (ii) the relevant Agreed Value;
- 7.2 all insurance payments received as the result of any property damage to an item of Equipment during the Term relating thereto not constituting an Event of Loss will, if in excess of the Relevant Casualty Amount, be paid by the insurer directly to Lessee upon Lessor authorising such payment in writing, following receipt by Lessor of satisfactory evidence that all required repairs have been completed in accordance with this Agreement (including, if required by Lessor, inspection by Lessor or its designee of the completed repairs);
- 7.3 all insurance payments received as the result of any property damage to an item of Equipment during the Term relating thereto not constituting an Event of Loss may, if equal to or less than the applicable Relevant Casualty Amount, be paid by the insurer directly to Lessee;
- 7.4 all insurance payments received in respect of third party liability claims will be paid to the relevant third party in satisfaction of the relevant liability or to Lessor or Lessee (as the case may be) in reimbursement of any payment so made; and
- 7.5 notwithstanding paragraphs 7.1, 7.2 and 7.3 above, if at the time of payment of any such insurance proceeds an Event of Default has occurred and is continuing, all such proceeds will be paid to Lessor and Lessor shall have no obligations to Lessee under sub-paragraphs 7.1 and 7.2 above unless and until any relevant Event of Default is remedied, and with respect to sub-paragraph 7.3 above, if while such Event of Default is continuing Lessor receives any amount thereunder which would otherwise have been payable direct to Lessee, Lessor shall not be required to pay such amount to Lessee unless and until any relevant Event of Default is remedied, **provided that** Lessor will nevertheless apply any insurance proceeds received by Lessor as a result of the operation of this paragraph 7.5 in discharging amounts outstanding from Lessee to Lessor under this Agreement.

8. GENERAL REQUIREMENTS FOR INSURANCES

All Insurances shall:

- 8.1 be in accordance with normal industry practice of persons owning or, as the case may be, operating similar rolling stock in similar circumstances;
- 8.2 provide cover denominated in Sterling, or provide cover in an amount in a currency other than Sterling which, when converted (at any time) into Sterling, provides cover in the required Sterling amount;
- 8.3 operate subject to such limitations and exclusions and in such amounts as Lessor may reasonably approve (consistent with market practice for the insurance of UK passenger rolling stock against property damage and third party risks) (it being acknowledged that aggregate limits of liability and sums insured may operate across the whole of Lessee's business including other rolling stock owned or operated by Lessee);
- 8.4 have a deductible of £500,000 or such higher amount as may be agreed in writing by Lessor and Lessee from time to time;
- 8.5 include a severability of interests clause which provides that the policy will be treated in all respects as though it were a separate divisible policy in respect of each insured to the extent of such insured's interest in the property insured subject to the insurer's liability not being increased thereby in accordance with the endorsement set out in Appendix 3 of this Schedule 9;
- 8.6 in accordance with the endorsement set out in Appendix 3 of this Schedule 9, contain a provision that the insurers agree not to delay or reduce payment to any insured (liability under the policy otherwise having been admitted) if at the time of any loss, destruction or damage there is any other insurance effected by such insured covering any of the property which has been lost, destroyed or damaged, except that if any such other insurance has been effected by such insured, the insurers may separately seek recovery from the relevant other insurers to the extent of any indemnity paid to such insured for such loss, destruction or damage in accordance with the endorsement set out in Appendix 3 of this Schedule 9;
- 8.7 acknowledge (either in the policy itself or in another related document) that the insurer is aware (and has seen a copy) of this Agreement and that the relevant Equipment is owned by Lessor (or, where appropriate, a Financier) and (if applicable) that Lessor's interest in the Insurances is subject to a security assignment in favour of a Financier;
- 8.8 in accordance with the endorsement set out in Appendix 3 of this Schedule 9 provide that no representation, misrepresentation, disclosure, non-disclosure or other act, omission or error whatsoever or breach of duty or obligation or terms or conditions of the policy by any one insured shall affect the rights of any other insured under its distinct and severable contract of insurance, save to the extent that such other insured knew or ought reasonably to have known of the same (but did not disclose the same to the insurers);
- 8.9 in accordance with the endorsement set out in Appendix 3 of this Schedule 9 provide that the insurers agree not to exercise any rights of subrogation against any insured under the policy notwithstanding the severability of interests and notwithstanding that any insured may have an interest in the property insured varying in time and amount, **provided that** such provision shall not apply to any insured who ceases to be an insured under the Insurances;

- 8.10 in accordance with the endorsement set out in Appendix 3 of this Schedule 9, provide that no additional insured will have any obligation or responsibility for the payment of any premiums due (but reserve the right to pay the same should any of them elect so to do) and that the insurers will not exercise any right of set-off or counter-claim in respect of any premium due against the respective interests of the additional insureds other than outstanding premiums relating to the relevant item of Equipment the subject of the relevant claim;
- 8.11 in accordance with the endorsement set out in Appendix 3 of this Schedule 9, provide that the Insurances will continue unaltered for the benefit of the insureds for at least thirty (30) days after written notice of any cancellation, change, modification or lapse by reason of non-payment of premiums or instalment or otherwise thereof has been received by Lessor, Lessee and any relevant Financier;
- 8.12 where paragraph 3.2 of this Schedule applies, the relevant reinsurance will (i) be on the same terms as the original insurances and will include the provisions of this Schedule, and (ii) provide in the case of any bankruptcy, insolvency, liquidation, dissolution or similar proceedings of or affecting the original insurer that the reinsurers' liability will be to make such payments as would have fallen due under the relevant policy of reinsurance if the original insurer had (immediately before such bankruptcy, insolvency, liquidation, dissolution or similar proceedings) discharged its obligations in full under the original insurance policies in respect of which the then relevant policy of reinsurance has been effected; and
- 8.13 provide for cover to apply on a "claims occurring" basis and not on a "claims made" basis.

9. EMPLOYER'S LIABILITY INSURANCE

Lessee shall (to the extent required by Applicable Laws and Standards) effect, at its own cost and expense, and keep in effect from the date hereof, employer's liability insurance in respect of Lessee's liability to its employees, providing for such indemnity and in such form as to comply with Applicable Laws and Standards.

10. CONTINUING INDEMNITY

- 10.1 In accordance with paragraph 8.13, all Insurances shall provide cover on a "claims occurring" basis and not on a "claims made" basis. If the Insurances do not provide cover on a "claims occurring" basis or Lessor believes that the insurers with respect to any Insurances may not be able to meet their liabilities thereunder, then Lessor may require Lessee to effect and to maintain third party liability insurance relating to any Vehicle after the Term of this Agreement covering Lessee's liability to Lessor under the indemnity in Clause 10 of this Agreement and Lessor's third party liability in its capacity as owner and lessor of the Vehicle.
- 10.2 Lessor may not, however, require the Lessee to effect and maintain any such insurance (a) for any period in excess of two years after the Term, or (b) to the extent that the same is not obtainable in the market on reasonable commercial terms (including, without limitation, with respect to the premium payable). Any such insurance shall name each Indemnatee as an additional insured. Lessee's obligation under this

paragraph 10 shall not be affected by any of the Indemnitees ceasing to have any interest in respect of the Vehicle.

11. ADDITIONAL OR CHANGED REQUIREMENTS

- 11.1 Lessor may from time to time stipulate other requirements for such Insurances which arise out of changes in rolling stock insurance practice, legislation governing or affecting rolling stock or other technical requirements or where so advised to do by Lessor's insurance advisers so that the scope and level of cover is maintained (in each case in accordance with current market practice) and the interests of Lessor and any relevant Financier are protected (in each case in accordance with current market practice).
- 11.2 In addition, Lessor may from time to time require that Lessee effects and maintains other insurances in relation to its business and/or assets if Lessor is of the opinion that such other insurances are required (in each case in accordance with current market practice) to protect the interests of Lessor as a prudent owner and/or lessor of rolling stock and taking into account the financial condition, status and known liabilities of Lessee and provided also that such additional insurance is of a type obtainable in the market on reasonable commercial terms (including, without limitation, with respect to the premium payable).
- 11.3 If Lessor wishes to revoke its approval of any insurer or reinsurer (whether because of doubts as to the financial condition of such insurer or reinsurer or because Lessor is of the opinion that the terms of, and rates for, the Insurances provided by such insurer or reinsurer are not competitive), the parties and/or their respective brokers for the time being will consult regarding whether that approval should be revoked and the insurer changed.
- 11.4 If, following the consultation, Lessor reasonably determines that any such insurer may be unable to meet its obligations as they fall due, Lessor shall so notify Lessee and Lessee will then arrange or procure the arrangement of an alternative insurer satisfying, in the opinion of Lessor, the requirements of paragraph 3 of this Schedule 9.

12. FAILURE TO INSURE

If Lessee fails to maintain any Insurances which it is required to effect and maintain under this Agreement:

- 12.1 Lessor will be entitled but not bound (without limitation to any other rights of Lessor under this Agreement) to pay the premiums due or to effect and maintain insurances reasonably satisfactory to Lessor in accordance with this Schedule 9 or otherwise remedy Lessee's failure in such manner as Lessor reasonably considers appropriate. Any sums so expended by Lessor will become immediately due and payable by Lessee to Lessor upon demand by Lessor, together with interest thereon at the Default Rate, from the date of demand up to (but excluding) the date of repayment by Lessee; and
- 12.2 Lessor may, at any time while such failure is continuing, require the affected Equipment to remain at any location or to proceed to and remain at any location designated by Lessor until the failure is remedied to Lessor's satisfaction.

APPENDIX 1

This Appendix sets out an insurance cover specification in relation to the insurances referred to in Schedule 9 of this agreement. The following provisions are without prejudice to any other cover requirements set out elsewhere in this Schedule 9.

1. PROPERTY DAMAGE INSURANCE

1.1 Insured Party

- (a) The Lessee

1.2 Additional Insured Parties

- (a) The Lessor; and
- (b) The Secured Creditors (as defined in the Common Terms Agreement)
- (c) The Security Trustee (as defined in the Common Terms Agreement)

each for their respective rights and interests.

1.3 Insured Property

Vehicles, Parts and Main Spares (when not installed on a Vehicle) and Special Tools (each as defined in the Lease) and any other Equipment.

1.4 Coverage

"All risks" of physical loss or damage to the Insured Property.

1.5 Sum Insured

- (a) In relation to a Vehicle - an "agreed value" basis in an amount not less than the Agreed Value for such Vehicle; and
- (b) In relation to Parts and Main Spares (when not installed on a Vehicle) and Special Tools - an "agreed value" basis for their full replacement value,

subject to a loss limit sufficient for the Probable Maximum Loss Limit.

1.6 Territorial Limits

Wherever the insured property is located, anywhere in Great Britain.

1.7 Period of Insurance

In relation to any Vehicle and related Parts and Main Spares and Special Tools during the relevant Term and thereafter until such Vehicle, related Parts, Main Spares and Special Tools is redelivered by the Lessee to the Lessor in accordance with this Agreement.

1.8 Principal Extensions

- (a) Terrorism;
- (b) Cash option for non-reinstatement - the insurers are not entitled to replace the relevant Associated Equipment in the event of an insured Event of Loss.

1.9 Principal Exclusions

- (a) War and related perils (UK market agreed wording);
- (b) Nuclear/radioactive risks (UK market agreed wording);
- (c) Pressure waves caused by aircraft and other aerial devices travelling at sonic or supersonic speeds;
- (d) Wear, tear and gradual deterioration;
- (e) Consequential financial losses;
- (f) Cyber risks;
- (g) Losses recovered under the EAR policy.

2. THIRD PARTY LIABILITY INSURANCE

2.1 Insureds parties

Named insured:

- (a) The Lessee

Additional insureds:

- (b) The Lessor;
- (c) The Secured Creditors; and
- (d) The Security Trustee

each for their respective rights and interests.

2.2 Interest

Covering legal liability for death, bodily injury to or disease of any person (including actions of any directors, officers, agents, employees, servants and secondees of the Lessee) and accidental loss of or damage to property caused by or arising directly or indirectly as a result of or connected with the condition, leasing, sub-leasing, possession, control, use, operation, repair, maintenance, overhaul, service, refurbishment, modification, storage, replacement or redelivery of the Equipment (as defined in the Lease) and such other third party liability risks as may be required by applicable law or as the Lessor or Secured Creditors may from time to time require following advice from its insurance advisers.

2.3 Limit of Indemnity

An amount not less than the £155,000,000 or such other amount as may be required by the Office of Rail and Road in accordance with Applicable Laws and Standards (as defined in the Lease), whichever is the greater, in respect of each and every occurrence, subject to aggregates for Products Liability and Pollution.

2.4 Territorial Limits

UK and elsewhere in the world in respect of non manual visits.

2.5 Jurisdiction

English law.

2.6 Period of Insurance

As per the Property Damage Insurance

2.7 Principal Terms and Conditions

- (a) This insurance shall only incorporate such limitations and exclusions that the Lessor has approved provided such terms & condition are generally available in the UK market for rolling stock operators.
- (b) Cross liabilities clause.

APPENDIX 2 FORM OF BROKER'S LETTER OF UNDERTAKING

[On Broker's Letterhead]

TO: []

[] 20[]

Dear Sirs

Agreement: **Operating Lease Agreement relating to [•] Class [•] [Diesel / Electric] Multiple Units**

Operator: []

We confirm that, as Insurance Brokers, we have effected insurances for the account of the Operator covering the above rolling stock, for the risks detailed in the attached Certificates of Insurance (the "**Insurances**") and any subsequent amendments/re-issues/renewals in respect of the above mentioned rolling stock as may be issued from time to time.

Pursuant to instructions received from the Operator and in consideration of your approving the insurers and the policy conditions in respect of such Insurances, we undertake as follows in connection with the Insurances, but only in relation to your interest(s) in the rolling stock:

1. In relation to the insurances, to hold the insurance slips and the benefit of those insurances to your order in accordance with the loss payable provision reflected in the endorsement noted in the said certificate of insurance (the "**Endorsement**"), but subject always to our requirements to operate the insurance policy in so far as it relates to any other rail rolling stock insured thereunder.
2. To advise you, promptly:
 - 2.1 of the receipt by us of any notice of cancellation or material change in the Insurances but such notice of cancellation or material change in the insurances not shall not be effective until thirty (30) days after written notice received by us from insurers; and
 - 2.2 of any act or omission or of any event of which those of our employees directly involved in the placement or administration of the Insurances become aware and which might reasonably be expected to invalidate or render void, avoidable or unenforceable in whole or in part any of the Insurances; and
 - 2.3 if any premiums are not paid to us in accordance with the accounting procedures that exist between the Operator and ourselves before we notify insurers of such non-payment of premiums; and
 - 2.4 upon application from you, of the premium payment situation; and
 - 2.5 if we cease to be Insurance Brokers to the Operator.

3. To notify you not later than within fourteen (14) prior to the renewal date of the Insurances if we have not having received renewal instructions from the Operator.
4. We confirm that upon receipt of any notices of assignment relating to the interest of the lessor in relation to the Insurances we shall, upon your request, send such notices to the insurers and request that the insurers provide any required signed acknowledgements of the notices within two working days of receipt by them of such notices.

The above undertakings are given subject to:

- (a) our continuing appointment for the time being as Insurance Brokers to the Operator; and
- (b) all claims and return premiums being collected through ourselves as Insurance Brokers; and
- (c) our lien, if any, on the said insurance premiums due in respect of the rail rolling stock.

Our aggregate liability to any persons, companies or organisation who acts in reliance on this letter, or on any other broker's letter of undertaking issued by us in respect of the Insurance for this Project, for any and all matters arising from them and the contents thereof shall in any and all events be limited to the sum of [REDACTED] even if we are negligent. We do not limit liability for our fraud.

This letter is given by us on the instructions of the Operator and with the Operator's full knowledge and consent as to its terms as evidenced by the Operator's signature below. Accordingly, the Operator hereby waives any potential liability we might otherwise have had to it arising from actions taken by us to comply with the terms of this letter (including, without limitation, any particular liability relating to conflict of interest).

This letter shall be governed by and construed in accordance with English law.

Yours faithfully

For and on behalf of

.....
[INSURANCE BROKER]

Name:

Title:

For and on behalf of

.....

[OPERATOR]

Name:

Title:

Attachment: Certificate of insurance including required Endorsement

APPENDIX 3 FORM OF POLICY ENDORSEMENT

This Appendix 3 sets out the form of endorsement that is to apply in relation to the property damage and third party liability insurances specified in Appendix 1

Endorsement wording

Notwithstanding any other provision of this policy, the following endorsement shall take effect immediately:

1. DEFINITIONS

In this endorsement:

"Additional Insured" means:

- (a) the Secured Creditor's
- (b) the Security Trustee
- (c) the Operator; and
- (d) the Issuer

"Agreed Value" has the meaning given to it in the Lease;

"Associated Equipment" has the meaning given to it in the Lease;

"Common Terms Agreement" means Common Terms Agreement dated 19 June 2017 between among others, the Issuer, HoldCo, Deutsche Bank Luxembourg S.A. as noteholder agent and noteholder registrar, Deutsche Bank Luxembourg S.A. as intercreditor agent, facility agent and security trustee and the original senior creditors named therein;

"Compensation Account" means account in the name of the Issuer with account number [REDACTED] and sort code [REDACTED] and IBAN [REDACTED]

"Delegate" means any person appointed by the Security Trustee or any Receiver pursuant any security documents securing the obligations and liabilities of the Issuer and/or HoldCo to the Funders, and any person appointed as attorney of the Security Trustee and/or any Receiver or delegate;

"Finance Party" means Deutsche Bank Luxembourg S.A. (as the noteholder agent), Deutsche Bank Luxembourg S.A. (as the noteholder registrar, the intercreditor agent, the facility agent and the Security Trustee), Massachusetts Mutual Life Insurance Company acting through its investment manager Barings Global Advisers Limited, C.M. Life Insurance Company acting through its investment manager Barings Global Advisers Limited, Sun Life Assurance Company of Canada, Sun Life Assurance Company of Canada (U.K.) Limited, Sun Life Assurance Company of Canada, acting through its Bermuda branch, Aviva Life & Pensions UK Limited, Legal & General Assurance Society Limited, Boots Pensions Limited as the Trustee of the Boots Pension

Scheme acting through its investment manager Legal and General Investment Management Limited, Standard Life Assurance Limited acting by its agent Standard Life Investments Limited, Rothesay Life Plc, Munich Re Company United Kingdom Life Branch, Scottish Widows Limited, Metropolitan Life Insurance Company, General American Life Insurance Company by Metropolitan Life Insurance Company, its Investment Manager, Metropolitan Property and Casualty Insurance Company by Metropolitan Life Insurance Company, its Investment Manager, Brighthouse Life Insurance Company by MetLife Investment Advisors, LLC, Its Investment Manager, Dongbu Private and Special Asset Investment Trust No. 25 by Dongbu Asset Management Co., Ltd., as Investment Manager and by MetLife Investment Advisors, LLC, Its Investment Sub-Manager and Pensionskasse des Bundes Publica by MetLife Investment Management Limited, as Investment Manager (as arranger and original institutional investor note holder), any Funder (or, in each case, any of its successors, permitted assignees or novatees);

"Event of Loss" has the meaning given to it in the Lease;

"Funders" means any financial institution which from time to time agrees to provide financing facilities to or for the benefit of the Issuer and who is a beneficiary of any security granted in favour of the Security Trustee;

"HoldCo" means Rock Rail South Western (Holdings) 2 Limited, a company incorporated in England and Wales with registered number 10752611, whose registered office is at Capital Tower, 91 Waterloo Road, London, United Kingdom, SE1 8RT;

"Insured" means those parties so described in the Policy Schedule including any Additional Insured;

"Insurers" means the insurer or insurers underwriting this insurance policy;

"Issuer" means Rock Rail South Western Plc, a company incorporated in England and Wales with registered number 10754652, whose registered office is at Capital Tower, 91 Waterloo Road, London, United Kingdom, SE1 8RT;

"Lease" means the operating lease in relation to the Project entered into between the Issuer and the Operator.

"Operator" means South Western Railway Limited with registered address at Great Minster House 4th Floor, Public Ownership Programme Team, 33 Horseferry Road, London, England, SW1P 4DR;

"Policy" means the insurance policy in relation to which the endorsement applies;

"Project" has the meaning given to it in the Common Terms Agreement;

"Receiver" means an administrative receiver, receiver and manager or other receiver appointed in respect of the assets from time to time subject to the security constituted by any security documents securing the obligations and liabilities of the Issuer and/or HoldCo to the Funders;

"Secured Creditors" means the Finance Parties and any Receiver and/or Delegate; and

"Security Trustee" means Deutsche Bank Luxembourg S.A. (or any of its successors, permitted assignees or novatees) acting in the capacity of security agent and/or trustee for one or more of the Funders.

2. **SEPARATE POLICY**

It is noted and agreed that the Insured comprises more than one party, each operating as a separate and distinct entity and that cover hereunder shall apply in the same manner and to the same extent as if individual insurances had been issued to each such party.

3. **INTEREST OF THE SECURED CREDITORS AND THE ISSUER**

The Insurers acknowledge that the Secured Creditors and the Issuer (and in respect of third party liabilities) their respective officers, directors, employees, secondees and assigns are each additional co-insureds under this Policy and that the premium specified in this Policy provides consideration for their being co-insured parties.

4. **LIABILITY FOR PREMIUM**

Neither the Secured Creditors nor the Issuer shall not be liable for the payment of any premium under this Policy although they may choose to pay the premium. This provision shall not relieve the Lessee from its obligations to pay any premium under this Policy.

5. **DISCLOSURE**

5.1 Neither the Secured Creditors nor the Issuer shall have no duty of disclosure to Insurers in relation to the Policy.

5.2 The Insurers acknowledge to the Secured Creditors and the Issuer that (i) they have received adequate information in order to evaluate the risk of insuring the Secured Creditors, the Issuer and Lessee in respect of the risks hereby insured on the assumption that such information is not materially misleading, (ii) there is no information which has been relied on or is required by Insurers in respect of their decision to co-insure the Secured Creditors or the Issuer or their respective directors, officers, employees or agents, and (iii) in agreeing to enter into this Policy, they have not relied upon or taken into account any information supplied to them by any Secured Creditor or the Issuer. The acknowledgements provided by the Insurers in this Clause 5.2 shall have no effect on any rights that Insurers might have had under or in relation to the Policy against any party other than the Secured Creditors and the Issuer in the absence of such acknowledgements.

5.3 Non-disclosure or misrepresentation by one Insured shall not be attributable to any other Insured who did not actively participate in that non-disclosure or misrepresentation. Without prejudice to the protections afforded to the Insured by this endorsement, no one Insured represents or warrants the adequacy or accuracy of any information provided or representation made by or on behalf of any other Insured.

6. **NON-VITIATION**

The rights and indemnity of any of the parties who are not guilty of any act of neglect, error or omission, fraud, material misrepresentation, material non-disclosure or any

breach of any term or any condition of this Policy shall not be prejudiced by any act of neglect, error or omission, fraud, material misrepresentation, material non-disclosure or by any breach of any term or any condition of this Policy by any other insured party.

Provided always that nothing herein shall increase the limit of liability under this Policy.

7. CANCELLATION, SUSPENSION OR NON-RENEWAL

This Policy shall will continue unaltered for the benefit of the insureds for at least thirty (30) days after written notice by registered mail of any cancellation, change, modification or intent by the insurer to lapse by reason of non-payment of premiums or instalment or otherwise thereof has been received by the Issuer, the Lessee, the Secured Creditors and the Security Trustee.

8. CHANGES IN COVER

The Insurers shall give the Intercreditor Agent at least 30 days' notice in writing before any reduction in cover or increase in excess or deductible under this Policy takes effect. Nothing in this Clause shall give the Insurers any right which they do not otherwise have to reduce cover or increase any excess or deductible under this Policy.

9. AMENDMENTS TO ENDORSEMENT

During the term of this Policy, the provisions of this endorsement may only be amended by written agreement between the Issuer, the Insurers and the Intercreditor Agent, such amendment to be endorsed on the Policy.

10. NOTICE OF CLAIMS

The insurers acknowledge that they have seen a copy of the Lease and that the relevant Associated Equipment (as defined in the Lease) is owned by the Issuer (or, where appropriate, the Secured Creditors);

Notice of any claim by the Issuer or the Secured Creditors or any other party entitled to indemnity under the Policy shall, in the absence of manifest error, be accepted by Insurers as a valid notification of claim on behalf of all other Insureds subject to the full terms of the Policy. The Secured Creditors and the Issuer shall be entitled initiate a claim under this Policy in the event of the refusal or failure of the Lessee to do so.

11. CLAIM PAYMENTS / LOSS PAYEE

The Insurer acknowledges that any claims payment shall be paid pursuant to the terms of the Lease as follows:

- 11.1 All property damage insurance claim payments relating to and Event of Loss will be paid to the Issuer and paid to the Compensation Account or such account as the Intercreditor Agent directs in writing. The Insurer acknowledges that it is not entitled to replace the relevant Associated Equipment that has been the subject of the Event of Loss and any claim payment to the Issuer shall reflect the Agreed Value.

11.2 All property damage insurance claim payments that do not relate to an Event of Loss shall be paid by the Insurer directly to the Lessee;

11.3 All claim payments in respect of a third party liability shall be paid to person(s) whose claim(s) constitute the risk or liability insured against except in the case where the Insured has properly discharged its liability to such person(s), in which case the claim payment shall be paid to the insured party that is the subject of such claim **provided that** where the Issuer is the subject of such claim and any such proceeds payable to the Issuer shall be paid to the Compensation Account or such account as the Intercreditor Agent directs in writing.

11.4 Set-off

Insurers may, at their discretion, deduct overdue unpaid premium from claims settlements but shall not set off or deduct premium that is not overdue or any other amounts payable by the Issuer under or in relation to the Policy.

12. **WAIVER OF SUBROGATION**

Notwithstanding paragraph 2 and notwithstanding that any insured may have an interest in the property insured varying in time and amount, the Insurers waive all rights of subrogation howsoever arising which they may have or acquire against any Insured described within the relevant Policy Schedules arising out of any occurrence in respect of which any claim is admitted and is insured hereunder for the benefit of such Insured except against any such Insured (or officer, director, employee, agent or assign) who has caused or contributed to such an occurrence or claim by fraud, deliberate misrepresentation, deliberate non-disclosure or deliberate breach of policy condition.

13. **PRIMARY INSURANCE**

This Policy is primary without right of contribution and the liability of the insurers will not be affected by any other insurances of which the Lessee, the Issuer or the Secured Creditors may have the benefit so as to reduce the amount payable to any assured under such policy.

14. **NOTICE OF SECURITY INTEREST**

The Insurers acknowledge that by an assignment contained in a Issuer Debenture (as defined in the Common Terms Agreement) dated (the "**Assignment**"), the Lessor assigned by way of security to the Secured Creditors all benefits and rights in respect of this insurance and all claims and returns of premiums in respect thereof to which the Lessor is or may at a future time become entitled. The Insurers confirm that they have not been notified of any other assignment of or security interest in Lessor's interest in this insurance.

15. **NOTICE**

15.1 All notices or other communications under or in connection with the Policy will be given by fax and post. Any such notice given by Insurers will be deemed to be given on the earlier of:

15.1.1 if by fax, when transmitted but only if the sender's fax machine confirms successful transmission; and

15.1.2 if by post, within 2 business days of release from the relevant Insurer's office.

15.2 Where pursuant to the terms of this endorsement notices are required to be provided to the Security Trustee and Secured Creditors such notices shall be provided care of the Intercreditor Agent. The address and fax number of the Intercreditor Agent for all notices under or in connection with the Policy are those notified from time to time by the Secured Creditors for this purpose to the insurance broker at the relevant time. The initial address and fax number of the Intercreditor Agent is as follows:

The Intercreditor Agent: Deutsche Bank Luxembourg S.A

Deutsche Bank Luxembourg S.A.

Address: 2, Boulevard Konrad Adenauer

L-1115 Luxembourg

Luxembourg

Fax No:

[REDACTED]

Attention:

[REDACTED]

16. GOVERNING LAW & JURISDICTION

The Policy shall be governed by and interpreted in accordance with English law.

This endorsement overrides any conflicting provision in this Policy.

SCHEDULE 10 EVENTS OF DEFAULT

Each of the following events or conditions constitute an Event of Default:

1. NON-PAYMENT

Lessee fails to make any payment to Lessor under the Lessee Documents within five (5) Business Days of the due date, unless its failure to pay is caused by administrative or technical error and payment is made within ten (10) Business Days.

2. INSURANCE

Any Insurances required to be effected and maintained by Lessee under this Agreement are not effected or maintained for any reason whatsoever or there is any cancellation, revocation, lapse or non-renewal of any such Insurances in circumstances where there is not a full replacement and/or re-instatement of all such insurances immediately after any such cancellation, revocation, lapse and/or non-renewal.

3. BREACH

Lessee fails to a material extent to comply with any other provision of the Lessee Documents and, where the failure is capable of remedy, the failure continues after a period of no less than twenty (20) Business Days and not more than forty (40) Business Days (such period to be specified in the relevant notice and to be appropriate taking into account the relevant failure in question) from the date of notice from Lessor to Lessee requiring remedy.

4. REPRESENTATION

Any representation made (or deemed to be made) by Lessee in or pursuant to any Contract Document or in any document or certificate issued pursuant to any Contract Document is or proves to have been incorrect in any respect which has a material adverse effect, unless the circumstances giving rise to the misrepresentation:

- 4.1 are capable of remedy; and
- 4.2 are remedied within twenty one days (21 days) of the earlier of (i) the Lessor giving notice, and (ii) the Lessee becoming aware of the misrepresentation.

5. RAIL SERVICES CONTRACT

The Rail Services Contract (or any subsequent equivalent document on the basis of which the Lessee or any SubLessee is entitled to operate rail passenger services on the Relevant Network) is terminated, other than in circumstances of a Permitted Transfer. For the avoidance of doubt, the scheduled expiry of the term pursuant to the Rail Services Contract solely by the effluxion of time shall not constitute an Event of Default pursuant to this paragraph.

6. APPROVALS

Any consent, authorisation, licence, certificate or approval of or registration with or declaration to any Government Authority in connection with this Agreement including, without limitation:

- 6.1 required by Lessee to authorise, or in connection with, the execution, delivery, validity, enforceability or admissibility in evidence of this Agreement or the performance by Lessee of its obligations under this Agreement and the absence of which will have a material adverse effect; or
- 6.2 (if applicable) the registration of the Units in the R2 maintained by RSSB; or
- 6.3 the Lessee's Passenger Licence or Safety Management System or Safety Certificate, is modified (other than any modification to the Safety Management System contemplated by the ROGS), withheld, revoked, suspended, cancelled, withdrawn, terminated or not renewed, or otherwise ceases to be in full force and effect and (in the opinion of Lessor) the same has a material adverse effect, **provided that** an Event of Default shall only occur under sub-paragraph 6.3 if the relevant event occurs or arises by reason of a breach, default or non-compliance by the Lessee with any of its obligations under this Agreement or any Applicable Laws and Standards.

7. INSOLVENCY

- 7.1 Lessee is, or is deemed for the purposes of any relevant law (other than section 123(2) of the Insolvency Act 1986) to be, unable to pay its debts as they fall due or to be insolvent, and for purposes only of section 123(1)(a) of the Insolvency Act 1986, this paragraph 7 (*Insolvency*) shall have effect as if:
 - (a) for "£750" there were substituted [REDACTED] and
 - (b) Lessee shall not be deemed to be unable to pay its debts if any such demand as is mentioned in section 123(1)(a) is satisfied before the expiration of twenty-one (21) days from such demand; or
- 7.2 Lessee admits inability to pay its debts as they fall due, or suspends making payments on all or any class of its debts or announces an intention to do so, or a moratorium is declared in respect of any of its indebtedness.

8. LIQUIDATION

- 8.1 A meeting of the shareholders or directors of Lessee is convened to consider a resolution to present an application for an administration order or to appoint an administrator (whether out of court or otherwise), or any such resolution is passed; or
- 8.2 any step (including petition or application to the court, proposal or convening a meeting or giving of notice) is taken with a view to composition, assignment or arrangement with any creditors of, or the rehabilitation, administration, railway administration (in each case, whether out of court or otherwise), custodianship, liquidation, or dissolution of Lessee or any other insolvency proceedings involving Lessee; or

- 8.3 any order is made or resolution passed for any such composition, assignment, arrangement, rehabilitation, administration, railway administration, custodianship, liquidation, dissolution or insolvency proceedings, or Lessee becomes subject to or enters into any of the foregoing; or
- 8.4 any liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrator, railway administrator, examiner or the like is appointed in respect of Lessee or any of its assets, or Lessee requests any person to appoint any of the foregoing.

9. **ENFORCEMENT OF SECURITY**

- 9.1 Any steps are taken to enforce any Security Interest over all or any part of the assets of Lessee.
- 9.2 Any attachment, sequestration, distress or execution affects any assets of Lessee and is not discharged within fourteen (14) days.

10. **OTHER JURISDICTION**

There occurs in relation to Lessee any event anywhere which, in the opinion of Lessor, corresponds with any of those mentioned in paragraphs 7 (*Insolvency*), 8 (*Liquidation*) or 9 (*Enforcement of Security*).

11. **SUSPENSION OF BUSINESS**

Lessee suspends or ceases or threatens to suspend or cease to carry on all or a substantial part of its business other than for the purpose of a reconstruction or amalgamation the terms of which have received the consent of Lessor or is removed from the register of companies maintained under the Companies Act 2006, **provided that** the termination of the Rail Services Contract shall not constitute an Event of Default under this paragraph and paragraph 5 (*Rail Services Contract*) shall apply in relation to any such termination.

12. **DISPOSAL**

Lessee disposes or threatens to dispose of all or a substantial part of its assets, whether by one or a series of transactions, related or not, other than for the purpose of a reconstruction or amalgamation the terms of which have received the consent of Lessor, **provided that** the termination of the Rail Services Contract (or any other rail services contract or franchise agreement in relation to which Lessee is the the rail services operator or franchisee) shall not constitute an Event of Default under this paragraph and paragraph 5 (*Rail Services Contract*) shall apply in relation to any such termination.

13. **RIGHTS CHALLENGED**

The existence, validity, enforceability or priority of the rights of Lessor or any relevant Financier in respect of the Equipment or under this Agreement are the subject of proceedings in a court of competent jurisdiction initiated by Lessee or any person claiming by or through Lessee.

14. **PROVISION OF SECURITY**

Without prejudice to the generality of paragraph 3 above, Lessee fails to comply with its obligations under Clause 13.8 or (if Clause 13.8.2 does not apply) **13.9** (*Security for Intermediate Inspection Condition and Non-Compliance revealed by a Final Inspection*) or (where no bank or parent company guarantee pursuant to Clause 13.8.2 has been provided), if the Inspection Security Account Charge becomes wholly or partly invalid or unenforceable or otherwise ceases for whatever reason to be available to Lessor.

SCHEDULE 11 NO FAULT EVENT

Each of the following events or conditions constitute a No Fault Event:

1. NON-PAYMENT

Lessor fails to make any payment to Lessee under this Agreement within five (5) Business Days of the due date, unless its failure to pay is caused by administrative or technical error and payment is made within ten (10) Business Days.

2. BREACH

Lessor fails to a material extent to comply with any other provision of this Agreement and, where the failure is capable of remedy, the failure continues for thirty (30) days after the earlier of (i) the date of notice from Lessee to Lessor requiring remedy and (ii) the date on which Lessee becomes aware of such failure.

3. UNENFORCEABILITY

Any obligations of the Lessor under this Agreement cease to be legally valid and binding or it is unlawful for the Lessor to perform or observe any of its material obligations under this Agreement, other than by reason of any act or omission of the Lessee.

4. INSOLVENCY

Lessor is, or is deemed for the purposes of any relevant law (other than section 123(2) of the Insolvency Act 1986) to be, unable to pay its debts as they fall due or to be insolvent, and for purposes only of section 123(1)(a) of the Insolvency Act 1986, this paragraph 9 (*Insolvency*) shall have effect as if:

4.1 for "£750" there were substituted [REDACTED] and

4.2 Lessor shall not be deemed to be unable to pay its debts if any such demand as is mentioned in section 123(1)(a) is satisfied before the expiration of twenty-one (21) days from such demand; or Lessor admits inability to pay its debts as they fall due, or suspends making payments on all or any class of its debts or announces an intention to do so, or a moratorium is declared in respect of any of its indebtedness.

5. ENFORCEMENT OF SECURITY

Any Financier enforces any Security Interest granted in its favour over any Equipment.

SCHEDULE 12 DISPUTE RESOLUTION PROCEDURE

1. INITIAL NEGOTIATIONS AND ESCALATION PROCEDURE

- 1.1 Subject to paragraphs 6 (*Interim Relief*) and 7 (*Excluded Disputes*), neither party shall commence any legal proceedings in connection with any Dispute until the procedures set out in paragraphs 1.2, 2 (*Mediation*) and 3 (*Arbitration*) have been completed, unless it is necessary for that party to do so in order to protect or preserve any cause of action it may have against the other party, in which case the proceedings shall be served on the other party and stayed by consent until such time as the parties have completed the procedures set out in paragraphs 1.2, 2 (*Mediation*) and 3 (*Arbitration*).
- 1.2 The parties shall attempt in good faith to resolve any Dispute promptly by negotiation which shall be conducted as follows:
- (a) any Dispute shall in the first instance be referred by a written Notice of Dispute, from the referring party to the other party. Within ten (10) Business Days after the date on which the Notice of Dispute is received, the party receiving the Notice of Dispute shall deliver to the other party a written response to the Notice of Dispute (the "**Response**"). Both the Notice of Dispute and the Response shall include a statement of the position of the party preparing the Notice of Dispute or Response, and shall annex any documents relied upon by that party;
 - (b) within five (5) Business Days of receiving a Response to a Notice of Dispute, or if no Response is delivered, within ten (10) Business Days of the date upon which the time for delivery of a Response expired, the Lessor's Representative and the Lessee's Representative shall meet at mutually acceptable times and places to discuss and try to reach agreement to resolve the Dispute; and
 - (c) if the Lessor's Representative and the Lessee's Representative are unable to, or fail to, reach agreement to resolve the Dispute within ten (10) Business Days of commencing their discussions pursuant to paragraph 1.2.(b), then within three (3) Business Days Lessor's managing director or his nominee and Lessee's managing director or his nominee (collectively the "**Directors**") shall meet at mutually acceptable times and places to discuss and try to reach agreement to resolve the Dispute.
- 1.3 All negotiations and discussions pursuant to paragraph 1.2 are confidential and shall be treated as compromise and settlement negotiations for the purpose of any applicable rules of evidence.

2. MEDIATION

- 2.1 If the Directors are unable to, or fail to, resolve the Dispute pursuant to paragraph 1.2 (c) the parties shall attempt to resolve the Dispute by mediation in accordance with the then current version of the Centre for Dispute Resolution ("**CEDR**") Model Mediation Procedure (the "**CEDR Model Mediation Procedure**").
- 2.2 To initiate a mediation pursuant to paragraph 2.1 the claiming party must give notice in writing (the "**ADR Notice**") to the other party addressed to its Director and to the Chief

Executive of CEDR requesting a mediation in accordance with paragraph 2.1 and such notice must be given within ten (10) Business Days after the date upon which the time for the Directors to resolve the Dispute pursuant to paragraph 1.2.(c) expired or such longer period as is reasonable in all circumstances.

- 2.3 The parties will sign a mediation agreement in accordance with CEDR's Model Mediation Agreement (or in such other terms as may be agreed by the parties in writing (the "**Mediation Agreement**")). The Mediation Agreement will be signed not less than seven (7) days prior to the date fixed for the mediation of the Dispute.
- 2.4 The mediation shall take place in London, and the language of the mediation will be English. The Mediation Agreement referred to in the CEDR Model Mediation Procedure shall be governed by and construed and take effect in accordance with English law.
- 2.5 If the parties are unable to reach a settlement at the mediation, neither party shall call the mediator(s) as witnesses in any arbitration or court proceedings involving or relating to the Dispute.

3. **ARBITRATION**

- 3.1 If the parties have not settled the Dispute by mediation pursuant to paragraph 2, the parties shall endeavour to agree within ten (10) Business Days after the conclusion of the mediation to resolve the Dispute by arbitration to be conducted in accordance with rules of arbitration to be agreed by the parties.
- 3.2 The parties shall not refer the Dispute to arbitration unless they have both agreed in writing that the decision of the arbitral tribunal shall be final and binding.

4. **COURT PROCEEDINGS**

- 4.1 If the Dispute is not settled by negotiation in accordance with paragraph 1.2 or by mediation in accordance with paragraph 2 (*Mediation*) and the parties do not agree in writing to resolve the Dispute by arbitration in accordance with paragraph 3 (*Arbitration*) within ten (10) Business Days after the date of the conclusion of the mediation, either party may initiate court proceedings in respect of the Dispute pursuant to Clause 18.16 (*Disputes*), and subject to the other provisions of this Agreement.
- 4.2 If proceedings have already been issued and served pursuant to paragraph 1.1, either party may apply for the stay to be lifted and shall give at least ten (10) Business Days' written notice of this application to the other party.

5. **CONTINUED PERFORMANCE OF OBLIGATIONS**

Unless this Agreement has already been terminated, the parties shall continue to perform their obligations under the Agreement regardless of the nature of the Dispute and notwithstanding the referral of the Dispute for resolution pursuant to this Schedule 12.

6. **INTERIM RELIEF**

Nothing in this Agreement shall prevent either party seeking interim relief in any court.

7. EXCLUDED DISPUTES

- 7.1 Any Dispute (whether as to liability or quantum or both) as to any obligation to make any payment under this Agreement shall be an "**Excluded Dispute**".
- 7.2 At any time a party, acting in good faith, may notify the other party in writing that it considers a Dispute to be an Excluded Dispute and may at any time thereafter institute proceedings in the English courts in respect of such Dispute (the "**Notice of Excluded Dispute**"). The Notice of Excluded Dispute shall include the grounds on which the party delivering the notice considers the Dispute to be an Excluded Dispute.
- 7.3 Any disagreement as to whether a Dispute that has been referred to the courts pursuant to paragraph 7.2 is or is not an Excluded Dispute shall be determined by the court in which these proceedings have been initiated.
- 7.4 Excluded Disputes shall not be referred to negotiation, mediation or arbitration in accordance with paragraphs 1.2, 2 (*Mediation*) and 3 (*Arbitration*) but shall be subject to the exclusive jurisdiction of the English courts.

8. CONSOLIDATION OF PROCEEDINGS

- 8.1 If, in respect of a Dispute (in this paragraph 8, a "**Subsequent Dispute**"):
- (a) there are raised issues which are substantially the same as, or connected with, issues raised in any other existing and continuing Dispute (a "**Related Dispute**"); or
 - (b) some common question of law or fact arises in the Subsequent Dispute and the Related Dispute; or
 - (c) the rights to relief claimed in the Subsequent Dispute and the Related Dispute are in respect of, or arise out of, the same event or set of circumstances,

then:

- (i) if the Related Dispute has already been referred for determination by arbitration or by a court in accordance with the preceding provisions of this Schedule 12, on the application of any party prior to entering into the appointment of any other arbitral tribunal or referral to any other court (as the case may be), the Subsequent Dispute shall be referred to the arbitral tribunal or court relating to the Related Dispute finally to determine whether the Subsequent Dispute should be heard at the same time as the Related Dispute by the arbitral tribunal or court to which the Related Dispute has been referred and the terms of such referral; and
- (ii) if the Related Dispute has yet to be referred for determination by arbitration or by a court in accordance with the preceding provisions of this Schedule 12, on the application of any party prior to entering into any appointment of any arbitral tribunal or referral to any court (as the case may be), the Related Dispute and the Subsequent Dispute shall be referred together to the same arbitral tribunal or court, which shall finally determine whether the Subsequent Dispute and Related Dispute

should be heard at the same time as by the arbitral tribunal or court to which they are referred and the terms applicable to any such hearing.

- 8.2 If proceedings have been commenced and either an arbitral tribunal or a court appointed for both the Subsequent Dispute and the Related Dispute, then on application of any party to the Subsequent Dispute or Related Dispute, but at the discretion of the arbitral tribunal or court, as the case may be, proceedings in respect of the Related Dispute and the Subsequent Dispute may be consolidated on such terms as may be agreed by the relevant parties or, in the absence of such agreement, as directed by the relevant arbitral tribunals or courts, as the case may be. If, in the case of two arbitral tribunals, no agreement can be reached between them as to whether proceedings in relation to the Subsequent Dispute and Related Dispute should be consolidated and on what terms, or which arbitral tribunal should determine the consolidated proceedings, the arbitral tribunal shall be selected by the President of the Council of the Bar of England and Wales and that arbitral tribunal shall determine the terms of the consolidation.
- 8.3 If a Dispute arises which is, or is to be, referred to arbitration or to a court under this Agreement or any related agreement, and there exists another dispute to which one or more of the grounds set out in paragraph 8.1 (a) to (c) applies and that other dispute arises under, out of or in connection with an agreement (other than this Agreement and the other agreements referred to in the definition of Dispute) between Lessor and Lessee, then the provisions of paragraph 8.1 and 8.2 shall apply, *mutatis mutandis*, to the determination of that other dispute, **provided that** such other agreement contains provisions for the consolidation of proceedings or concurrent hearings on terms substantially similar to the terms of this paragraph 8.
- 8.4 Any party may object to any proposed consolidation or ordering of concurrent hearings and where an objection is exercised, the relevant proceedings shall not be consolidated unless a relevant tribunal or court considers such objection has been raised unreasonably by the relevant party.
- 8.5 If proceedings are not consolidated, concurrent hearing of those proceedings may, on application by any party who is a party to those proceedings, be ordered on such terms as may be agreed by the relevant party or parties, as the case may be or, in the absence of such agreement, as directed by the relevant arbitral tribunals or courts, as the case may be. In the absence of agreement between the relevant arbitral tribunals or courts, the directions under this paragraph 8.5 shall be made by the President of the Council of the Bar of England and Wales.
- 8.6 Each of the parties acknowledges that the tribunals or courts hearing concurrent proceedings may communicate with each other to enable them to decide the terms on which such hearings are to be conducted and to the extent necessary to permit such communication, the parties waive their rights of confidentiality of proceedings.
- 8.7 Proceedings to which any party is a party which are neither consolidated nor ordered to be heard concurrently, shall remain confidential to the party or parties, as the case may be, party to such hearings. Where consolidation of proceedings or concurrent hearings in respect of proceedings involving any party have been ordered, such proceedings shall cease to be confidential as between the parties involved in such proceedings but shall otherwise remain confidential for all other purposes.

SCHEDULE 13 UNIT DETAILS

UNITS (ten-car)										
UNIT	DM1	PM1	TLW1	M3-1	EM1	EM2	M3-2	TLW2	PM2	DM2
701001	480001	481001	482001	483001	484001	485001	486001	487001	488001	489001
701002	480002	481002	482002	483002	484002	485002	486002	487002	488002	489002
701003	480003	481003	482003	483003	484003	485003	486003	487003	488003	489003
701004	480004	481004	482004	483004	484004	485004	486004	487004	488004	489004
701005	480005	481005	482005	483005	484005	485005	486005	487005	488005	489005
701006	480006	481006	482006	483006	484006	485006	486006	487006	488006	489006
701007	480007	481007	482007	483007	484007	485007	486007	487007	488007	489007
701008	480008	481008	482008	483008	484008	485008	486008	487008	488008	489008
701009	480009	481009	482009	483009	484009	485009	486009	487009	488009	489009
701010	480010	481010	482010	483010	484010	485010	486010	487010	488010	489010
701011	480011	481011	482011	483011	484011	485011	486011	487011	488011	489011
701012	480012	481012	482012	483012	484012	485012	486012	487012	488012	489012
701013	480013	481013	482013	483013	484013	485013	486013	487013	488013	489013
701014	480014	481014	482014	483014	484014	485014	486014	487014	488014	489014
701015	480015	481015	482015	483015	484015	485015	486015	487015	488015	489015
701016	480016	481016	482016	483016	484016	485016	486016	487016	488016	489016
701017	480017	481017	482017	483017	484017	485017	486017	487017	488017	489017
701018	480018	481018	482018	483018	484018	485018	486018	487018	488018	489018
701019	480019	481019	482019	483019	484019	485019	486019	487019	488019	489019
701020	480020	481020	482020	483020	484020	485020	486020	487020	488020	489020
701021	480021	481021	482021	483021	484021	485021	486021	487021	488021	489021
701022	480022	481022	482022	483022	484022	485022	486022	487022	488022	489022
701023	480023	481023	482023	483023	484023	485023	486023	487023	488023	489023
701024	480024	481024	482024	483024	484024	485024	486024	487024	488024	489024
701025	480025	481025	482025	483025	484025	485025	486025	487025	488025	489025
701026	480026	481026	482026	483026	484026	485026	486026	487026	488026	489026
701027	480027	481027	482027	483027	484027	485027	486027	487027	488027	489027
701028	480028	481028	482028	483028	484028	485028	486028	487028	488028	489028
701029	480029	481029	482029	483029	484029	485029	486029	487029	488029	489029
701030	480030	481030	482030	483030	484030	485030	486030	487030	488030	489030
701031	480031	481031	482031	483031	484031	485031	486031	487031	488031	489031
701032	480032	481032	482032	483032	484032	485032	486032	487032	488032	489032
701033	480033	481033	482033	483033	484033	485033	486033	487033	488033	489033
701034	480034	481034	482034	483034	484034	485034	486034	487034	488034	489034
701035	480035	481035	482035	483035	484035	485035	486035	487035	488035	489035
701036	480036	481036	482036	483036	484036	485036	486036	487036	488036	489036
701037	480037	481037	482037	483037	484037	485037	486037	487037	488037	489037
701039	480039	481039	482039	483039	484039	485039	486039	487039	488039	489039
701040	480040	481040	482040	483040	484040	485040	486040	487040	488040	489040
701042	480042	481042	482042	483042	484042	485042	486042	487042	488042	489042

701043	480043	481043	482043	483043	484043	485043	486043	487043	488043	489043
701044	480044	481044	482044	483044	484044	485044	486044	487044	488044	489044
701046	480046	481046	482046	483046	484046	485046	486046	487046	488046	489046
701047	480047	481047	482047	483047	484047	485047	486047	487047	488047	489047
701048	480048	481048	482048	483048	484048	485048	486048	487048	488048	489048
701049	480049	481049	482049	483049	484049	485049	486049	487049	488049	489049
701050	480050	481050	482050	483050	484050	485050	486050	487050	488050	489050
701051	480051	481051	482051	483051	484051	485051	486051	487051	488051	489051
701052	480052	481052	482052	483052	484052	485052	486052	487052	488052	489052
701053	480053	481053	482053	483053	484053	485053	486053	487053	488053	489053
701054	480054	481054	482054	483054	484054	485054	486054	487054	488054	489054
701055	480055	481055	482055	483055	484055	485055	486055	487055	488055	489055
701056	480056	481056	482056	483056	484056	485056	486056	487056	488056	489056
701057	480057	481057	482057	483057	484057	485057	486057	487057	488057	489057
701058	480058	481058	482058	483058	484058	485058	486058	487058	488058	489058
701059	480059	481059	482059	483059	484059	485059	486059	487059	488059	489059
701060	480060	481060	482060	483060	484060	485060	486060	487060	488060	489060

UNITS (five-car)					
UNIT	DM2	M3	TLW	PM	DM1
701501	480101	481101	482101	483101	484101
701502	480102	481102	482102	483102	484102
701503	480103	481103	482103	483103	484103
701504	480104	481104	482104	483104	484104
701505	480105	481105	482105	483105	484105
701506	480106	481106	482106	483106	484106
701507	480107	481107	482107	483107	484107
701508	480108	481108	482108	483108	484108
701509	480109	481109	482109	483109	484109
701510	480110	481110	482110	483110	484110
701511	480111	481111	482111	483111	484111
701512	480112	481112	482112	483112	484112
701513	480113	481113	482113	483113	484113
701514	480114	481114	482114	483114	484114
701515	480115	481115	482115	483115	484115
701516	480116	481116	482116	483116	484116
701517	480117	481117	482117	483117	484117
701518	480118	481118	482118	483118	484118
701519	480119	481119	482119	483119	484119
701521	480121	481121	482121	483121	484121
701522	480122	481122	482122	483122	484122
701523	480123	481123	482123	483123	484123
701524	480124	481124	482124	483124	484124
701525	480125	481125	482125	483125	484125

701526	480126	481126	482126	483126	484126
701527	480127	481127	482127	483127	484127
701528	480128	481128	482128	483128	484128
701529	480129	481129	482129	483129	484129
701530	480130	481130	482130	483130	484130

SCHEDULE 14
OWNER OWNED SPARES

Ref	Item Description	Supplier Part Number	BT Part Number	QTY
1	GRP Cab Assembly - includes the cab end structure.	3EER400027-6448	3EER400027-6448	2
1a	Cab Stand	N/A	N/A	2
2	Cab end structure (will be delivered as part of line 1)	3EER400027-6448	3EER400027-6448	2
3	Wash/Wipe Control Unit	II107138	3EER400026-0969	4
4	Energy absorbers - anti climbs Lower	TBC	3EER400025-4350	2
5	Windscreen	3210293	3EER400026-5342	4
6	Cab side window	N/A	N/A	4
6a	CAB SIDE WINDOW LH	D2506233	3EER400026-5965	2
6b	CAB SIDE WINDOW RH	D2506234	3EER400026-5966	2
7	Bodyside windows - Large (saloon)	N/A	N/A	30
7a	Large Window Unit	E100843	3EER400020-2201	24
7b	Large Window Unit - PIS	E100844	3EER400020-2203	6
8	Small Window Unit	E100845	3EER400020-2202	12
9	Intermediate Gangway Assy	N/A	N/A	16
9a	Full	41268670	3EER400024-8657	12
9b	Half	41267525	3EER400024-8656	4
10	Obstacle Deflectors	N/A	N/A	2

Ref	Item Description	Supplier Part Number	BT Part Number	QTY
10a	Obstacle Deflector Ass'y Painted	TBC	3EER400026-8151	1
10b	Crush Tube Painted Ass'y Obstacle Defle*	TBC	3EER400026-8154	2
10c	Special Bolt	TBC	3EER400025-9724	2
10d	Pivot Pin Obstacle Deflector	TBC	3EER400025-8312	2
10e	Special Bolt	TBC	3EER400025-9777	2
11	Autocoupler - Mechanical Head with pneumatic and electric head	1056616	3EER400024-8654	4
12	Intermediate coupler	1056617	3EER400024-8655	8
13	Cab Valance (LH, RH), phenolic	N/A	N/A	2
13a	Left Hand Valance	TBC	3EER400026-7913	2
13b	Right Hand Valance	TBC	3EER400026-7915	2
13c	Valance Structure Assy Mounting Btm	TBC	3EER400028-0945	2
13d	Mounting Bracket Assy	TBC	3EER400028-0992	2
13e	Mounting Bracket Assy Bottom	TBC	3EER400028-1157	2
13f	Mounting Bracket Assy	TBC	3EER400028-1164	2
14	Trailer Bogie: 5007 - Ta excluding brake equipment	N/A	N/A	19
14a	Tu Leading Trailer with Shoe gear	100502730	100502730	3
14b	Tv Shoe gear Trailer	100502731	100502731	4

Ref	Item Description	Supplier Part Number	BT Part Number	QTY
14c	Tw Base Trailer	100502732	100502732	9
14d	Tx Base Trailer TDR	100502733	100502733	3
15	Motor Bogie: 5009 - Ma including gearboxes but excluding brake equipment and traction motors	N/A	N/A	13
15a	Mo Motor with Sanding & Shoe gear	100502734	100502734	6
15b	Mp Base Motor	100502735	100502735	7
16	Main Compressor	8.121.2.321.174 .9	3EER400023 -8932	6
17	Aux Compressor - NO PANTOGRAPH FITTED TO SOUTH WEST TRAIN Extra Universal Toilet Module	N/A	N/A	6
17a	Vacuum pump	R008149	3EER400026 -8690	1
17b	Inlet gate valve	R008698	3EER400026 -8691	1
17c	Outlet gate valve	R008151	3EER400026 -8692	1
17d	Water inlet valve	R008699	3EER400026 -8693	1
17e	Quick exhaust valve	R008700	3EER400026 -8694	1
17f	Pressure switch	R008154	3EER400026 -8695	1
18	Air Dryer	II99850	3EER400023 -8933	4
19	Battery System - includes ref 20 below as comes as complete system.	800 311	3EER400028 -4435	5
20	Battery Charger	800 311	3EER400028 -4435	5

Ref	Item Description	Supplier Part Number	BT Part Number	QTY
21	Traction Motor - bogie mounted - Contract = Q28 (26 fitted to Bogies)	3EST000235-8881	3EST000235-8881	2
22	Universal Toilet Module	N/A	N/A	2
22a	Vacuum pump	R008149	3EER400026-8690	2
22b	Inlet gate valve	R008698	3EER400026-8691	2
22c	Outlet gate valve	R008151	3EER400026-8692	2
22d	Water inlet valve	R008699	3EER400026-8693	2
22e	Quick exhaust valve	R008700	3EER400026-8694	2
22f	Pressure switch	R008154	3EER400026-8695	2
23	Bio Reactor	65069	3EER400026-5423	1
24	Driver's Seat	810.35.5	3EER400026-0367	4
25	Second Persons Seat	500 90 3	3EER400026-0368	4
26	Seat Passenger Righthand / Lefthand 450mm STD Double + Pick pocket Guard with Cantilever Mount	8-773/0002-00	3EER400025-4502	8
27	Seat Passenger Righthand 450mm STD Single Incl Grabhandle with Cantilever Mount	8-773/0001-00	3EER400025-4503	8
28	Fire Barrier Door	3EER400045-6921	3EER400045-6921	2
29	Combined MCS and TBC	E139325	3EER400025-6857	4
30	VCU-C 2GB CF	N/A	N/A	10

Ref	Item Description	Supplier Part Number	BT Part Number	QTY
30a	Vehicle Control Unit DCY 1550A	3EST000225-5711	3EST000225-5711	2
30b	Vehicle Control Unit DCY 2510A	3EST000232-1980	3EST000232-1980	2
30c	Vehicle Control Unit DCY 1660A	3EST000221-6430	3EST000221-6430	2
30d	Vehicle Control Unit DCY 1550B	3EST000225-7224	3EST000225-7224	2
30e	Vehicle Control Unit DCY 2510B	3EST000237-2055	3EST000237-2055	2
31	MCG-C (3G) (Definitely 4G)	3EST000234-1560	3EST000234-1560	8
32	HMI Monitor -10.4"	3EST000232-8862	3EST000232-8862	13
33	Vehicle Control Unit - DUPLICATE OF LINE 30, CUSTOMER CONFIRMED TO ORDER EXTRA	N/A	N/A	10
33a	Vehicle Control Unit DCY 1550A	3EST000225-5711	3EST000225-5711	2
33b	Vehicle Control Unit DCY 2510A	3EST000232-1980	3EST000232-1980	2
33c	Vehicle Control Unit DCY 1660A	3EST000221-6430	3EST000221-6430	2
33d	Vehicle Control Unit DCY 1550B	3EST000225-7224	3EST000225-7224	2
33e	Vehicle Control Unit DCY 2510B	3EST000237-2055	3EST000237-2055	2
34	Cab DOO Monitor	3EER400022-5183	3EER400022-5183	8
35	DRA (Drivers Reminder Appliance)	3EER400020-3692	3EER400020-3692	4

Ref	Item Description	Supplier Part Number	BT Part Number	QTY
36	Juridical Recording Unit (JRU) - including driving data recorder.	5.2423.005/09	3EER400024-8963	8
37	GSM-R Voice Radio Unit	668/1/03201/016	3EER400026-4669	9
38	PIS System Controller (PSC)	9001904-1066	3EER400025-0205	8
39	PIS/Audio - (PIU)	9001902-1032	3EER400024-6621	8
40	Drivers Audio Handset (HAS)	9001898	3EER400020-1220	8
41	Cab loudspeakers (CLS)	9002055	3EER400024-5447	8
42	Saloon PA Loudspeaker (SLS)	9002055	3EER400024-5447	40
43	Passenger Emergency Alarm (PEA) Unit	9001899-1066	3EER400025-0206	20
44	Internal Saloon Display (Single Sided)	40.4310.1168	3EER400026-8366	17
45	Internal Saloon Display (Double sided = 34)- Same as above order a total of 51.	40.4310.1168	3EER400026-8366	34
46	Internal Side Display	40.4310.1167	3EER400026-7407	32
47	PIS External Front Displays (EFD)	9001896-1032	3EER400024-6624	4
48	PIS External Side Displays (ESD)	9001897-1032	3EER400024-6625	22
49	Sliding Plug Cab Door System	N/A	N/A	4
49a	Header Unit RH	2E13-A013000-01	3EER400027-5057	2
49b	Header Unit LH	2E13-A01900-01	3EER400027-7118	2

Ref	Item Description	Supplier Part Number	BT Part Number	QTY
50	External Sliding Plug Passenger Doors System (+ Doorgear & Control) Bi-parting	TBC	TBC	40
50a	Control panel with FLEX DCU incl. AntiDrag+GOP	3ED00058R64	3EER400026-3003	40
50b	Header gear with header gear adaptors	3TD17086R01	3EER400019-9538	40
51	Cab HVAC module	DB01317180000	3EER400025-8185	4
52	HVAC (Saloon) Module	DB01317190000	3EER400025-8187	12
53	Power Wheelset w/o gearbox and motor	100502358	100502358	16
54	Trailer Wheelset	N/A	N/A	24
54a	Trailer Wheelset - Type 967	100500967	100500967	22
54b	Trailer Wheelset - Type 910	100500910	100500910	2
55	Train set Bogie mounted brake equipment	N/A	N/A	3
55a	BRAKE CALLIPER UNIT (RZKK) SERVICE BRAKE	II92418/22VX	3EER400019-6016	72
55b	BRAKE CALLIPER UNIT (RZTS) SERVICE BRAKE	II91925/27VX	3EER400019-6026	24
55c	BRAKE CALLIPER UNIT (RZTS) PARKING BRAKE	II91400/58127VX	3EER400019-6028	24
55d	Release Cable - 690mm	II87566/0690	3EER400019-6044	24
55e	Release Cable - 2450mm	II87566/2450	3EER400019-6052	24
55f	Release Cable - 2880mm	II87566/2880	3EER400020-1840	24
55g	Release Cable - 1090mm	II87566/1090	3EER400020-1841	24

Ref	Item Description	Supplier Part Number	BT Part Number	QTY
56	Sanding Unit	N/A	N/A	4
56a	Sand Hopper (20L) – Left Hand	II109952/1	3EER400029-3130	4
56b	Sand Hopper (20L) – Right Hand	II109952/2	3EER400029-3131	4
56d	Sand Control Panel	II09670/1	3EER400029-9719	4
57	Surge Reservoirs (2 x 110 litre + 1 x 220 litre per vehicle)	N/A	N/A	30
57a	Surge Raft (200L)	3EER400018-6021	3EER400018-6021	20
57b	Surge Raft (250L)	3EER400020-8286	3EER400020-8286	10
58	Brake supply reservoir	N/A	N/A	20
58a	Reservoir Assemblies	3EER400020-4991	3EER400020-4991	5
58b	Reservoir Assemblies	3EER400020-4996	3EER400020-4996	5
58c	Reservoir Assemblies	3EER400020-4998	3EER400020-4998	5
58d	Reservoir Assemblies	3EER400027-8408	3EER400027-8408	5
59	Cab Door System complete with door leaf - Left Hand	N/A	N/A	1
59a	Complete Portal Frame LH	1024659	3EER400027-7097	1
59b	Swing Arm - LH	1024610	3EER400027-7099	1
59c	Emergency Egress Device	1024602	3EER400030-2143	1
59d	EDCU Unit	2AA1-A020000-01	3EER400027-7115	1

Ref	Item Description	Supplier Part Number	BT Part Number	QTY
59e	Fixing Kit - Door Leaf	1024646	3EER400027-7116	1
59f	Header Gear Unit LH	2E13-A019000-01	3EER400027-7118	1
59g	Harnesses - EDCU	2E13-A020000-01	3EER400027-7119	1
59h	Harness OcSL	2B11-A036000-01	3EER400027-8670	1
59i	Door Leaf - LH	1024655	3EER400027-7053	1
59j	Emergency Access Device	1024598	3EER400027-5055	1
59k	Bowden Cable - EED	2B41-A045000-01	3EER400027-7113	1
59l	Bowden Cable EAD	2B41-A045000-02	3EER400027-7114	1
60	Cab Door System complete with door leaf - Right Hand	N/A	N/A	1
60a	Complete Portal Frame RH	1024579	3EER400027-7096	1
60b	Swing Arm - RH	1024589	3EER400027-7098	1
60c	Emergency Egress Device	1024602	3EER400030-2143	1
60d	EDCU Unit	2AA1-A020000-01	3EER400027-7115	1
60e	Fixing Kit - Door Leaf	1024646	3EER400027-7116	1
60f	Header Gear Unit - RH	2E13-A013000-01	3EER400027-5057	1
60g	Harnesses - EDCU	2E13-A020000-01	3EER400027-7119	1

Ref	Item Description	Supplier Part Number	BT Part Number	QTY
60h	Harness OcSL	2B11-A036000-01	3EER400027-8670	1
60i	Door Leaf - RH	1024501	3EER400027-7052	1
60j	Emergency Access Device	1024598	3EER400027-5055	1
60k	Bowden Cable - EED	2B41-A045000-01	3EER400027-7113	1
60l	Bowden Cable EAD	2B41-A045000-02	3EER400027-7114	1
61	Shoegear assembly - Contract = Q16	100502921	100502921	3
62	1 x set of passenger doors complete with door leaf - 2LH & 2RH	N/A	N/A	2
62a	Header gear w. header gear adaptors	3TD17086R01	3EER400019-9538	2
62b	Control panel with FLEX DCU incl. AntiDrag+GOP	3ED00058R64	3EER400026-3003	2
62c	Doorleaf - Right PC (blue) incl. AntiDrag	3TD17720R07	3EER400026-3004	2
62d	Doorleaf - Left PC (blue) incl. AntiDrag	3TD17720R08	3EER400026-3005	2
62e	Pivot Bar Package	0060N71A_PB P	520133370	1
	Pivot Bar - Right	3TD17087R01	3EER400019-9539	4
	Pivot Bar - Left	3TD17087R02	3EER400019-9540	4
	Connection Cable (Door leaf monitoring)	3GE302712R28	3EER400020-8815	8
	Excentric Bolt (Door leaf brackets)	3TD16778R01	3EER400019-9623	8
62f	Sealing Frame Package	0060N71A_SFP	520116713	1

Ref	Item Description	Supplier Part Number	BT Part Number	QTY
	Sealing Angle - Top	3TD17062R01	3EER400019-9530	4
	Sealing Angle - Rear Right	3TD17062R02	3EER400019-9531	4
	Sealing Angle - Rear Left	3TD17062R03	3EER400019-9532	4
	Angle (Seal frame - rear)	3TD17062R04	3EER400020-3836	8
62g	Emergency Egress Device (EED)	3TD14729R32	3EER400019-9545	2
62h	Emergency Access Device PC grey (EAD)	3TD14729R56	3EER400026-3006	2
62i	Emergency Access Device CC blue (EAD)	3TD14729R61	3EER400026-6792	2
62j	Emergency device back cover (EED)	3TD14351R02	100204658	2
62k	Emergency device back cover (EAD)	3TD14351R03	3EER400021-5259	2
62l	Bowden cable - Inside (EED)	3TD17167R01	3EER400019-9620	2
62n	Bowden cable - Outside (EAD)	3TD17167R02	3EER400019-9621	2
62o	Light barrier - Transmitter / Receiver	3GE302712R33	3EER400023-0744	2
62p	Light barrier - Reflector	3ED01188R11	3EER400023-0745	2
63	Motor Converter Module (MCM)	3EST000222-1580	3EST000222-1580	2
64	Auxiliary Converter Module (ACM)	3EST000222-1610	3EST000222-1610	2
65	line Converter Module (LCM)	3EST000222-1400	3EST000222-1400	2

Ref	Item Description	Supplier Part Number	BT Part Number	QTY
66	DC Circuit Breaker	3EST000234-5439	3EST000234-5439	2
67-86	STD unit HV Jumper Assembly 1	6630514910200	3EER400031-2722	2
67-86	STD unit HV Jumper Assembly 2	6630514910300	3EER400031-2723	2
67-86	LV Jumper Assy DM-PM	6630514906300	3EER400028-5080	1
67-86	LV Jumper Assy TLW-M3, M3-EM	6630514906400	3EER400028-5081	2
67-86	LV Jumper Assy PM-TLW	6630514906600	3EER400028-5094	1
67-86	DC Busline Jumper Assembly	6630514906500	3EER400028-5090	4
87	1 vehicle of base interior panels, comprising the set described below (below is updated list)	N/A	N/A	1
	<i>Lock Budget Special - RH</i>	3EER400021-9145	3EER400021-9145	86
	<i>Retainer Panel Ceiling</i>	3EER400019-4905	3EER400019-4905	61
	<i>Lanyard Assembly</i>	3EER400024-2875	3EER400024-2875	48
	<i>Lanyard Assembly</i>	3EER400019-5213	3EER400019-5213	25
	<i>Infill panel</i>	3EER400025-9232	3EER400025-9232	23
	<i>Protective Cover</i>	3EER400026-5905	3EER400026-5905	21
	<i>Panel Ceiling Centre</i>	3EER400025-9980	3EER400025-9980	15
	<i>Block Retainer Light</i>	3EER400019-5209	3EER400019-5209	12

Ref	Item Description	Supplier Part Number	BT Part Number	QTY
	<i>Infill Interface</i>	3EER400025-9408	3EER400025-9408	12
	<i>Infill Interface</i>	3EER400025-9614	3EER400025-9614	12
	<i>Panel Door Header</i>	3EER400026-1798	3EER400026-1798	11
	<i>Window Panel Assembly Type E</i>	3EER400025-9239	3EER400025-9239	10
	<i>Panel Ceiling Centre</i>	3EER400025-9957	3EER400025-9957	10
	<i>Protective Cover</i>	3EER400026-5890	3EER400026-5890	8
	<i>Dado Interface LH</i>	3EER400026-1621	3EER400026-1621	8
	<i>Dado Interface RH</i>	3EER400026-1622	3EER400026-1622	8
	<i>Window Panel Assembly Type C</i>	3EER400025-9216	3EER400025-9216	8
	<i>Window Panel Assembly Type A</i>	3EER400025-9220	3EER400025-9220	6
	<i>Window Panel Assembly Type D</i>	3EER400025-9214	3EER400025-9214	6
	<i>Access Panel PIS</i>	3EER400025-9396	3EER400025-9396	6
	<i>Panel Ceiling Centre</i>	3EER400026-0048	3EER400026-0048	6
	<i>Window Panel Assembly Type B</i>	3EER400025-9213	3EER400025-9213	6
	<i>Panel Ceiling Centre</i>	3EER400025-9910	3EER400025-9910	5
	<i>Kick Panel - RH</i>	3EER400025-8721	3EER400025-8721	5

Ref	Item Description	Supplier Part Number	BT Part Number	QTY
	<i>Window Panel Assembly Type F</i>	3EER400025-9240	3EER400025-9240	4
	<i>Panel Ceiling Centre</i>	3EER400026-0068	3EER400026-0068	4
	<i>Window Panel Assembly Tpye G</i>	3EER400025-9433	3EER400025-9433	4
	<i>Panel Ceiling Centre</i>	3EER400025-9982	3EER400025-9982	4
	<i>Ceiling Frame - Centre</i>	3EER400025-9023	3EER400025-9023	4
	<i>Panel Ceiling Centre</i>	3EER400026-0058	3EER400026-0058	3
	<i>Bearing Slide</i>	3EER400022-7471	3EER400022-7471	3
	<i>Grommet</i>	3EER400014-3272	3EER400014-3272	3
	<i>Slam Latch</i>	3EER400022-7761	3EER400022-7761	3
	<i>Panel Ceiling Centre</i>	3EER400026-0076	3EER400026-0076	2
	<i>Infill panel Cab End</i>	3EER400025-9404	3EER400025-9404	2
	<i>Framework Ceiling</i>	3EER400025-6573	3EER400025-6573	1
	<i>Framework Ceiling</i>	3EER400025-6578	3EER400025-6578	1
	<i>Plate Ceiling End-Bonded</i>	3EER400022-0206	3EER400022-0206	1
	<i>Single Sided - EPID</i>	3EER400026-5439	3EER400026-5439	1
	<i>Panel Ceiling - Centre</i>	3EER400025-9920	3EER400025-9920	1

Ref	Item Description	Supplier Part Number	BT Part Number	QTY
	<i>Panel Door Header</i>	3EER400026-2523	3EER400026-2523	1
	<i>Panel Ceiling Centre</i>	3EER400025-9900	3EER400025-9900	1
	<i>Dado Panel Assembly</i>	3EER400026-0088	3EER400026-0088	1
	<i>UAT Interface Bonded</i>	3EER400026-4557	3EER400026-4557	1
	<i>Window Panel Assembly Type H</i>	3EER400026-0390	3EER400026-0390	1
	<i>Window Panel Assembly Type I</i>	3EER400026-0400	3EER400026-0400	1
	<i>Window Panel Assembly Type J</i>	3EER400026-3015	3EER400026-3015	1
	<i>Infill panel</i>	3EER400026-4511	3EER400026-4511	1
	<i>Panel Ceiling - Centre</i>	3EER400025-9873	3EER400025-9873	1
	<i>Panel Ceiling Centre</i>	3EER400025-9954	3EER400025-9954	1
	<i>Panel Ceiling Centre</i>	3EER400026-0007	3EER400026-0007	1
	<i>Panel Ceiling - Centre</i>	3EER400026-0033	3EER400026-0033	1
	<i>Panel Ceiling Centre</i>	3EER400026-0799	3EER400026-0799	1
	<i>Dado Panel</i>	3EER400026-1721	3EER400026-1721	1
	<i>Dado Panel</i>	3EER400026-1723	3EER400026-1723	1
	<i>Dado Panel</i>	3EER400026-1726	3EER400026-1726	1

Ref	Item Description	Supplier Part Number	BT Part Number	QTY
	<i>Dado Panel</i>	3EER400026-1728	3EER400026-1728	1
	<i>Dado Panel</i>	3EER400026-5450	3EER400026-5450	1
	<i>DOO Infill Panel</i>	3EER400026-0275	3EER400026-0275	1
	<i>Infill panel</i>	3EER400026-0996	3EER400026-0996	1
	<i>DOO Access Panel Assy</i>	3EER400026-0944	3EER400026-0944	1
	<i>Panel Ceiling Centre</i>	3EER400026-2907	3EER400026-2907	1
88	Autocoupler - Mechanical Head with pneumatic and electric head with WIFI connectors	N/A	N/A	2
88a	Intermediate Coupler A	1056618	3EER400024-8653	1
88b	Intermediate Coupler B	1095757	3EER400026-2569	1
EXTR A	Motor frame painted SGI frame	100502712	100502712	4
EXTR A	Trailer frame painted SGI frame	100502716	100502716	6
EXTR A	Hygenisation tank	63261	3EER400030-0945	10
EXTR A	Tubular Heating Element 5Kw	62910	3EER400030-0995	20
EXTR A	Sensor LMT incl. Gasket	62554	3EER400030-0955	10
EXTR A	Angle - Vestibule	3EER400022-2913	3EER400022-2913	1
EXTR A	Angle - Vestibule	3EER400022-2911	3EER400022-2911	1

Ref	Item Description	Supplier Part Number	BT Part Number	QTY
EXTR A	Support - Kick Plate Assembly - Vestibu*	3EER400022-2923	3EER400022-2923	1
EXTR A	Deflector Plate - RH	3EER400027-4999	3EER400027-4999	1
EXTR A	Angle - Vestibule	3EER400022-2499	3EER400022-2499	1
EXTR A	Angle - Upper	3EER400022-2501	3EER400022-2501	1
EXTR A	Panel - Doorside Assembly	3EER400026-6663	3EER400026-6663	1
EXTR A	Panel - Doorside Assembly - Vestibule	3EER400027-5021	3EER400027-5021	1
EXTR A	Gasket	3EER400026-1790	3EER400026-1790	1
EXTR A	Grab Handle Assembly	3EER400026-1831	3EER400026-1831	1
EXTR A	Flange	3EER400026-1810	3EER400026-1810	1
EXTR A	Grab Handle Assembly	3EER400026-5843	3EER400026-5843	1
EXTR A	Bracket - Grab Pole Assembly	3EER400026-1835	3EER400026-1835	1
EXTR A	Bracket - Kick Plate Assembly - Vestibu*	3EER400022-2497	3EER400022-2497	1
EXTR A	Panel - Doorside Assembly - Vestibule	3EER400027-5016	3EER400027-5016	1
EXTR A	Standback Hinged - RH Std Assembly	3EER400026-2094	3EER400026-2094	1
EXTR A	Standback - Guards Panel Assembly	3EER400026-6472	3EER400026-6472	1
EXTR A	Standback Hinged - LH Std Assembly	3EER400028-2102	3EER400028-2102	1

Ref	Item Description	Supplier Part Number	BT Part Number	QTY
EXTR A	Grab Handle Spigot Assembly	3EER400029-0825	3EER400029-0825	1
EXTR A	Deflector Plate - LH	3EER400027-5001	3EER400027-5001	1
EXTR A	Insulation Spacer	3EER400026-5774	3EER400026-5774	1
EXTR A	Insulation Bush	3EER400026-7867	3EER400026-7867	1
EXTR A	Bracket - Reflector	3EER400020-4661	3EER400020-4661	1
EXTR A	Bracket	3EER400023-6352	3EER400023-6352	1
EXTR A	Litter Bin - LH Assembly	3EER400027-0429	3EER400027-0429	1
EXTR A	Litter Bin - RH Assembly	3EER400027-0315	3EER400027-0315	1
EXTR A	Double Sided EPID	3EER400023-9019	3EER400023-9019	1
	Hygienisation Tanks			10

**SCHEDULE 15
SPECIAL TOOLS**

Asset No.	Tool Description	QTY	BT Part number	Manufacturer Part No.
SWR/WBL/001	Go-No Go Flange Thickness, Height & Toe Radius Gauges	1		HB013
SWR/WBL/002	Go-No Go Flange Thickness, Height & Toe Radius Gauges	1		HB013
SWR/WBL/003	Single Speed Air Gun	1	3EER400016-2725	C-RAD 34
SWR/WBL/004	Lubro Control Unit and Hose	1	3EER400016-2725	LCU-B
SWR/WBL/005	Rim Thickness Gauges (with out magnets)	1	3EEC20002-3227	HB023
SWR/WBL/006	Rim Thickness Gauges (with out magnets)	1	3EEC20002-3227	HB023
SWR/WBL/007	Adjustable Flange Thickness & Height Gauges	1	3EEC200006-8964	HB011
SWR/WBL/008	Adjustable Flange Thickness & Height Gauges	1	3EEC200006-8964	HB011
SWR/WBL/009	Series 56/57 Bezel Removal Tool	4	3EEC200006-5219	57-9901
SWR/WBL/010	Grease Gun with Grease Meter	1		0102525-GG
SWR/WBL/011	[Not used]			
SWR/WBL/012	Grease Gun with Grease Meter	1		0102525-GG
SWR/WBL/013	[Not used]			
SWR/WBL/014	Seat with Cantilever and CBW	5		6-N32/0140 ES-0000025876

Asset No.	Tool Description	QTY	BT Part number	Manufacturer Part No.
	Tip-up TU1 - Tip-up TU2			4-N32/0147 733/02-UT 733/01-UT
SWR/WBL/015	25L Oil Dispenser Unit	1	3EST000235-5791	ZZ000901271235
SWR/WBL/016	25L Oil Dispenser Unit	1	3EST000235-5791	ZZ000901271235
SWR/WBL/017	Pressure Gauge (Air)	1		1705-13G-2388
SWR/WBL/018	100L Screenwash Filler	1	3EEC200006-4217	ZZ000901271212
SWR/WBL/019	100L Screenwash Filler	1	3EEC200006-4217	ZZ000901271212
SWR/WBL/020	100L Screenwash Filler	1	3EEC200006-4217	ZZ000901271212
SWR/WBL/021	100L Screenwash Filler	1	3EEC200006-4217	ZZ000901271212
SWR/WBL/022	7mm Special Pin Punch	1	3EEC200006-8997	450-007
SWR/WBL/023	7mm Special Pin Punch	1	3EEC200006-8997	450-007
SWR/WBL/024	8mm Special Pin Punch	1	3EEC200006-8998	450-008
SWR/WBL/025	8mm Special Pin Punch	1	3EEC200006-8998	450-008
SWR/WBL/026	Rotary Column Adjust	1	3EEC200007-2135	3TD17453R07
SWR/WBL/027	Rotary Column Adjust	1	3EEC200007-2135	3TD17453R07
SWR/WBL/028	Dead Centre Locking Check	1	3EEC200007-2137	3TD17453R08

Asset No.	Tool Description	QTY	BT Part number	Manufacturer Part No.
SWR/WBL/029	Dead Centre Locking Check	1	3EEC200007-2137	3TD17453R08
SWR/WBL/030	Toothed Racked Jig	1	3EEC200007-2136	3TD17453R11
SWR/WBL/031	Toothed Racked Jig	1	3EEC200007-2136	3TD17453R11
SWR/WBL/032	Socket Wrench Adaptor	1	3EEC200006-8960	3TD17453R01
SWR/WBL/033	Socket Wrench Adaptor	1	3EEC200006-8960	3TD17453R01
SWR/WBL/034	AWS Magnet with Poles	1		0062/008833
SWR/WBL/035	AWS Magnet with Poles	1		0062/008833
SWR/WBL/036	Infrared Thermometer	1		FLU5161615A
SWR/WBL/037	Heat Gun 2000w 240v	1		OSA2799600K
SWR/WBL/038	Test Fitting (Air System)	1	3EGH000030-9633	I87308
SWR/WBL/039	Test Fitting (Air System)	1	3EGH000030-9633	I87308
SWR/WBL/040	CAN Case XL2.0	1		7129
SWR/WBL/041	CAN Case XL2.0	1		7129
SWR/WBL/042	CAN Case XL2.0	1		7129
SWR/WBL/043	CAN Case XL2.0	1		7129
SWR/WBL/044	Wheelset Cradle	1	100502409	14068
SWR/WBL/045	Wheelset Cradle	1	100502409	14068
SWR/WBL/046	Wheelset Cradle	1	100502409	14068
SWR/WBL/047	Wheelset Cradle	1	100502409	14068
SWR/WBL/048	Cab Windscreen Vacuum Lifter	1	3EEC200006-7020	16559/A

Asset No.	Tool Description	QTY	BT Part number	Manufacturer Part No.
SWR/WBL/049	Bodyside Door Vacuum Lifter	1	3EEC200006-7019 3EEC200006-5201	16559/B
SWR/WBL/050	Headlight Alignment Board	1	3EEC200006-9006	SWR/WBL/050
SWR/WBL/051	Brake Reservoir Cradle and Lift Table	1	3EEC200006-9003	17166-1-1
SWR/WBL/052	Surge Tank Cradle and Lift Table	1	3EEC200006-9053	17166-1-2
SWR/WBL/053	46mm 1/2" Drive Impact Sockets	1	3EEC200006-2107	CRIS46S
SWR/WBL/054	46mm 1/2" Drive Impact Sockets	1	3EEC200006-2107	CRIS46S
SWR/WBL/055	Cab Door Plastic Wedges	4	3EEC200006-9055	
SWR/WBL/056	Wheel Lathe Hold Down Tools	4	100500708/100500709	
SWR/WBL/057	60 x 30 Saloon Door Obstacle Detection Gauge	1	3EER400016-2725	
SWR/WBL/058	60 x 30 Saloon Door Obstacle Detection Gauge	1	3EER400016-2725	
SWR/WBL/059	Low pressure pump	1	3EST000235-5892	3EST000235-5892
SWR/WBL/060	Axial Pressure Unit	1	3EST000235-7810	3EST000235-7810
SWR/WBL/061	Hand Pump Set	1	3EST000235-5889	3EST000235-5889
SWR/WBL/062	Pressure Measurement Device	1	3EST000236-6120	3EST000236-6120
SWR/WBL/063	Motor/Gearbox Alignment Tool	1	3EST000236-6546	3EST000236-6546

Asset No.	Tool Description	QTY	BT Part number	Manufacturer Part No.
SWR/WBL/064	Stroke Measurement Device	1	3EST000236-6101	3EST000236-6110
SWR/WBL/065	SETRA Box Keys	8	3EST 82-758	3EST 82-758
SWR/WBL/066	Assembly Tool for Converters	1	3EST000216-2022	3EST000216-2022
SWR/WBL/067	DC LCB Test Cable	1	3EST000237-2954	3EST000237-2954
SWR/WBL/068	Stroke and Speed Measurement Devices	1	3EST000236-6110	3EST000236-6110
SWR/WBL/069	Opto Receiver 567XL	1	3EST 68-567	3EST68-567
SWR/WBL/070	Opto Transmitter 573XL	1	3EST 68-596	3EST68-596
SWR/WBL/071	Short Circuit Devices	16	3EST000227-4770	3EST000227-4770
SWR/WBL/072	Earth Cable	1	3EST000224-6105	3EST000224-6105
SWR/WBL/073	Voltage Tester	1	3EST000225-2600	3EST000225-2600
SWR/WBL/074	Torque Tool Connector	1	3EGM006141R0001	3EGM006141R001
SWR/WBL/075	Operating Levers	100	3EST 79-160	3EST 79-160
SWR/WBL/076	DC Power Supply	1	3EST000236-4292	3EST000236-4292
SWR/WBL/077	Operation Pole	1	3EST000200-8020	3EST000200-8020
SWR/WBL/078	Aluminium Bottles	10	3EST000236-1876	3EST000236-1876
SWR/WBL/079	GDU Test Unit	1	3EST000218-6352	3EST000218-6352
SWR/WBL/080	Oil Filling/Draining/Venting Tool	1	3EST000236-1874	3EST000236-1874

Asset No.	Tool Description	QTY	BT Part number	Manufacturer Part No.
SWR/WBL/081	USB Programming Adaptor	1	3EGM039400R0001	3EGM039400R0001
SWR/WBL/082	USB to M12 Programming Adaptor	1	EGM006511R0001	3EGM006511R0001
SWR/WBL/083	MVB USB Access Kit	1	3EGM006400R0010	3EGM006400R0010
SWR/WBL/084	IP Access Kit	1	3EGM035300R0010	3EGM035300R0010
SWR/WBL/085	DC Contactor Gap Gauge	1	3EST000236-1506	3EST000236-1506
SWR/WBL/086	Oil Sampling kit	1	3EST000236-1875	3EST000236-1875
SWR/WBL/087	TPWS Tester	1	3EEC200006-6085	TY331
SWR/WBL/088	AWS Tester and Grids	1	3EEC200006-6084	TY287
SWR/WBL/089	TPWS Tester Grid and Support Arms	1	3EEC200006-6085	GRP03
SWR/WBL/090	Horn System Flow Meter	1	3EER400029-8442	5100-03-20-ASSY
SWR/WBL/091	IP TCN Cable Tester	1	3EGM006502R0002	DTX 1500
SWR/WBL/092	Enerpac Hydraulic Pump Kit 1	1		Hand Pump - P39 Hose - HC7206C Gauge - GA45GC
SWR/WBL/093	Enerpac Hydraulic Pump Kit 2	1		Hand Pump - P39 Hose - HC7206C Gauge - GA45GC
SWR/WBL/094	Enerpac Hydraulic Pump Kit 3	1		Hand Pump - P39 Hose - HC7206C Gauge - GA45GC

Asset No.	Tool Description	QTY	BT Part number	Manufacturer Part No.
SWR/WBL/095	Enerpac Hydraulic Pump Kit 4	1		Hand Pump - P39 Hose - HC7206C Gauge - GA45GC
SWR/WBL/096	Enerpac Hydraulic Pump Kit 5	1		Hand Pump - P39 Hose - HC7206C Gauge - GA45GC
SWR/WBL/097	BSI Coupler Adaptor	1	3EER400023-7635	1011531
SWR/WBL/098	BSI Coupler Adaptor	1	3EER400023-7635	1011531
SWR/WBL/099	BSI Coupler Adaptor	1	3EER400023-7635	1011531
SWR/WBL/100	BSI Coupler Adaptor	1	3EER400023-7635	1011531
SWR/WBL/101	BSI Coupler Adaptor	1	3EER400023-7635	1011531
SWR/WBL/102	BSI Coupler Adaptor	1	3EER400023-7635	1011531
SWR/WBL/103	Transition Clevis	1	3EER400008-5196	1010709
SWR/WBL/104	Transition Clevis	1	3EER400008-5196	1010709
SWR/WBL/105	Transition Clevis	1	3EER400008-5196	1010709
SWR/WBL/106	Transition Clevis	1	3EER400008-5196	1010709
SWR/WBL/107	Transition Clevis	1	3EER400008-5196	1010709
SWR/WBL/108	Transition Clevis	1	3EER400008-5196	1010709
SWR/WBL/109	Latch Adaptor Type 12	1	3EER400008-5195	1008133

Asset No.	Tool Description	QTY	BT Part number	Manufacturer Part No.
SWR/WBL/110	Latch Adaptor Type 12	1	3EER400008-5195	1008133
SWR/WBL/111	Latch Adaptor Type 12	1	3EER400008-5195	1008133
SWR/WBL/112	Universal Hook Adaptor	1	3EER400010-4578	1030305
SWR/WBL/113	Universal Hook Adaptor	1	3EER400010-4578	1030305
SWR/WBL/114	Universal Hook Adaptor	1	3EER400010-4578	1030305
SWR/WBL/115	Universal Hook Adaptor	1	3EER400010-4578	1030305
SWR/WBL/116	Universal Hook Adaptor	1	3EER400010-4578	1030305
SWR/WBL/117	Universal Hook Adaptor	1	3EER400010-4578	1030305
SWR/WBL/118	Digital Grease Meters	1	3EST000203-3724	102525-GG
SWR/WBL/119	Digital Grease Meters	1	3EST000203-3724	102525-GG
SWR/WBL/120	Digital Grease Meters	1	3EST000203-3724	102525-GG
SWR/WBL/121	150x12x7mm Lock Pin for Armrest	3		9940022
SWR/WBL/122	150x12x8mm Lock Pin for Armrest	3		9940023
SWR/WBL/123	[Not used]			
SWR/WBL/124	[Not used]			
SWR/WBL/125	Door Jig for Adjusting Door Closed Limit Switch	1		
SWR/WBL/126	Gangway Repair Kit	1		4910066200

Asset No.	Tool Description	QTY	BT Part number	Manufacturer Part No.
SWR/WBL/127	Saloon HVAC Lifting Frame	1	3EEC200006-6082	94130/1
SWR/WBL/128	Saloon HVAC Lifting Frame	1	3EEC200006-6082	94130/2
SWR/WBL/129	Cab HVAC Lifting Frame	1	3EEC200006-6083	94130/3
SWR/WBL/130	Cab HVAC Lifting Frame	1	3EEC200006-6083	94130/4
SWR/WBL/131	Camera Alignment Kit	1	3EER400023-3140, 3EER400023-3139, 3EER400024-8421	PJL.ENG.DWG.33 30 PJL.ENG.DWG.27 02 x 2
SWR/WBL/132	CCTV Viewing Station	1	3EEC200006-8936	56LY3Z2 1165391762079
SWR/WBL/133	Gauge Tool Kit	1		1049295
SWR/WBL/134	Main Control Tool	1		1001558
SWR/WBL/135	MRP Blocking Tool	1	3EEC400022-1431	1042500
SWR/WBL/136	MRP Blocking Tool	1	3EEC400022-1431	1042500
SWR/WBL/137	Cab Door Lifting Tool	1	3EEC200007-8429	16708
SWR/WBL/138	50 x 10 Obstacle Detection Gauge	1	3EER400016-2725	WD012
SWR/WBL/139	50 x 10 Obstacle Detection Gauge	1	3EER400016-2725	WD013
SWR/WBL/140	Dellner Coupler Test Equipment: Wrench Seal Holder UC Tool	1		157383 1049483 1044989 1032916

Asset No.	Tool Description	QTY	BT Part number	Manufacturer Part No.
	Mounting Tool			1048060
	Mounting Tool			1032915
	Air Connection Tool			
	Drifter			
SWR/WBL/141	ENERPAC Hydraulic Cylinder	5		RSM201B100
SWR/WBL/142	2.8m GRP Straight Edge	1		GRP006
SWR/WBL/143	2.8m GRP Straight Edge	1		GRP007
SWR/WBL/144	Gangway Splitting Kit: Net Assy. x8 Lever Assy. x24 Wrap Tarpaulin x8 Rod Assy. x16 Trolley x8	8 sets	3EEC200008-1061 3EER400028-2107 3EER400028-2106 3EER400028-2089	041256254 041260149 041264007 041264271 045100076
SWR/WBL/145	Manual Hollow Axle Test Kit	1	MHATL45-5	100502862
SWR/WBL/146	Sand Filling Machine	1	3EEC200006-9373	
SWR/WBL/147	Digital Force Gauge	1		FK500
SWR/WBL/148	Valve Lock-Out	6	3EEC200006-5199	3EEC200006-5199
SWR/WBL/149	Emergency Rescue Hoses	2	3EER400023-7439 3EER400023-7450	S110-425 S110-424
SWR/WBL/150	Bodyside Window Wedge Tools	2	3EEC200006-6081	3EEC200006-6081
SWR/WBL/151	Gangway Bellow Support Plates	4	3EEC200008-0352	3EEC200008-0352

Asset No.	Tool Description	QTY	BT Part number	Manufacturer Part No.
SWR/WBL/152	Shoegear Height Measurement Gauge	1		M07638-09-A
SWR/WBL/153	Bogie Towing Frames & Beams	1		16523
SWR/WBL/154	Wheelset Lifting Chains	2		644867-1 644867-2
SWR/WBL/155	Bogie Lifting Slings	2		644867-1 644867-2
SWR/WBL/156	Bogie Lifting Eyes	4		Az6/BS6/AX6
SWR/WBL/157	Coding Disc Protectors	10	3EER400026-1555	B88951/001
SWR/WBL/158	Battery Tray Removal Tool	1	3EER400031-0623	19011010-2/061
SWR/WBL/159	Gates sonic belt tension meter U-508c	1	3EEC200008-1262	
SWR/WBL/160	Shoegear Maintenance Tool x 4	4		
SWR/WBL/161	Automatic Coupler Alignment Jig (Removal Fixture)	1	3EEC200006-6086	
SWR/WBL/162	Shoegear Height Measurement Gauge	1		M07638-09-A
SWR/WBL/163	Sensitive Edge Tools x5	5		3TD01548R54
SWR/WBL/164	Intermediate Coupler Alignment Jig	1	3EEC200006-9278	SC-450-D-M-BE
SWR/WBL/165	Universal Maintenance Leads	1		C85735/002
SWR/WBL/166	Universal Maintenance Leads	1		C85735/002
SWR/WBL/167	Rapid Coupling	1		C105707/2

Asset No.	Tool Description	QTY	BT Part number	Manufacturer Part No.
SWR/WBL/168	Horn Muffler	1	3EER400025-4931	66-1012
SWR/WBL/169	Horn Muffler	1		66-1012
SWR/WBL/170	Horn Muffler	1		66-1012
SWR/WBL/171	Horn Muffler	1		66-1012
SWR/WBL/172	DOO Playback Unit	1		OPU-BT-093
SWR/WBL/173	OTMR USB Download Memory stick	2	3EER400012-1083	
SWR/WBL/174	Air Bag Lifting Tool	1		
SWR/WBL/175	USB-RS232C Converter Cable	1	3EEC200008-0787	
SWR/WBL/176	Connection Cable	1	3EEC200008-0805	
SWR/WBL/177	Torque Wrench	1	3EEC200008-0806	
SWR/WBL/178	Emergency Rescue Hoses (Red and Schraeder)	5	3EER400023-7450 3EER400023-7439	S110-425 S110-424
SWR/WBL/179	Saloon HVAC Transportation Stillage	1	3EEC200008-0339	
SWR/WBL/180	Saloon HVAC Transportation Stillage	1	3EEC200008-0339	
SWR/WBL/181	Cab HVAC Transportation Stillage	1	3EEC200008-0338	
SWR/WBL/182	Cab HVAC Transportation Stillage	1	3EEC200008-0338	
SWR/WBL/183	Latch Adaptor Type 12	1	3EER400008-5195	1008133
SWR/WBL/184	Latch Adaptor Type 12	1	3EER400008-5195	1008133

Asset No.	Tool Description	QTY	BT Part number	Manufacturer Part No.
SWR/WBL/185	Latch Adaptor Type 12	1	3EER400008-5195	1008133
SWR/WBL/186	Crimping Tool for Heater Film	1		
SWR/WBL/187	Dell Tower for CCTV playback	1		40026421
SWR/WBL/188	IP Camera Test Monitor	1	3EEC200006-9004	40026475
SWR/WBL/189	Bogie Lifting Eyes	1		
SWR/WBL/190	Bogie Lifting Eyes	1		
SWR/WBL/191	Bogie Lifting Eyes	1		
SWR/WBL/192	Bogie Lifting Eyes	1		
SWR/WBL/193	HVAC Reeveable Links	1		
SWR/WBL/194	HVAC Reeveable Links	1		
SWR/WBL/195	HVAC Reeveable Links	1		
SWR/WBL/196	HVAC Reeveable Links	1		
SWR/WBL/197	Spring Tang Lever	10	3EEC20002-0649	BWM20233-01-J
SWR/WBL/198	Brake Caliper Holding Tool	1		
SWR/WBL/199	Drivers Keys	16		400-0540-53
SWR/WBL/200	CCTV Access Key for HDD	8	3EER400022-4532	
SWR/WBL/201	Bogie Towing Frames & Beams	3	EEC200008-0431 Spreader EEC200008-0432 Tow bar	18459-001
SWR/WBL/202	Brake Valve (Gateway/Smart) Removal Tool	1	3EEC200006-8994	

Asset No.	Tool Description	QTY	BT Part number	Manufacturer Part No.
SWR/WBL/203	OTDR Software			Oliphant.lic EVA2.v 2606.2.7.4/TDR cl 345 Hasler SG v9026.03.02.02
SWR/WBL/204	Brake System Software Maintenance Tool			Brake Consultant [V4.8.0.0]
SWR/WBL/205	CCTV Laptop (Maintenance) Software Tool		N/a	Brickcom_EasyCo nfig_v1.1.3.33_
SWR/WBL/206	OTMR Analysis Software License		N/a	EVA2
SWR/WBL/207	[Not used]			
SWR/WBL/208	HVAC PTE Maintenance Software		N/a	Melco HVAC Maintenance Software [V5.00]
SWR/WBL/209	[Not used]			
SWR/WBL/210	GSM-R Software		N/a	PMU [V8.2.1]
SWR/WBL/211	Toilet Software		N/a	WC Maintenance Application [V2.6]
SWR/WBL/212	Passenger Doors (EDCU) Application Software		N/a	Latest release is: DDEF21045S01 V01_02
SWR/WBL/213	Wash Wipe Diagnostic Software		N/a	KB_HM-Interface
SWR/WBL/214	GDU (Propulsion) Software Tool		N/a	GDUTool_2.0.0.0_ SETUP files
SWR/WBL/215	DOO Playback Station Software		N/a	Cryptovision 5.82
SWR/WBL/216	CCTV Playback Station Software		N/a	Playback_Tool_4.6 .607_
SWR/WBL/217	[Not used]			

Asset No.	Tool Description	QTY	BT Part number	Manufacturer Part No.
SWR/WBL/218	Auxiliary DC Power Supply Software: PTE			PTE [V1.1 or V1.2]
SWR/WBL/219	TCMS Application Software: TCMS Application Software MITRAC_CC_VCDL-2.17.0.1 incl PIS Software Tool (MTVD)			MITRAC_CC_VCDL- 2.19.0.1
SWR/WBL/220	TCMS Application Software: MITRAC_CC_TERMINAL 1.5.0.0, incl DCUTerm Software			MITRAC_CC_TERMINAL 1.5.0.0
SWR/WBL/221	MKIII Wheel Skate	1	100500859	N/A
SWR/WBL/222	Sand Hopper Removal Tool	1		16526/001
SWR/WBL/223	Sand Hopper Removal Tool	1		16526/001
SWR/WBL/224	Tightlock (Buckeye) Coupler Adaptor	1		1011464
SWR/WBL/225	Tightlock (Buckeye) Coupler Adaptor	1		1011464
SWR/WBL/226	Tightlock (Buckeye) Coupler Adaptor	1		1011464
SWR/WBL/227	Tightlock (Buckeye) Coupler Adaptor	1		1011464
SWR/WBL/228	Tightlock (Buckeye) Coupler Adaptor	1		1011464
SWR/WBL/229	Tightlock (Buckeye) Coupler Adaptor	1		1011464
SWR/WBL/230	Citric Acid Portable Pumping Trolley	1		3-13630
SWR/WBL/231	Cab Door Software	1	3EER400030-5203	

Asset No.	Tool Description	QTY	BT Part number	Manufacturer Part No.
SWR/WBL/232	Mobile Shore Supply Battery Charger	1		
SWR/WBL/233	Mobile Shore Supply Battery Charger	1		
SWR/WBL/234	Mobile Shore Supply Battery Charger	1		
SWR/WBL/235	Haulage Mode Delivery Interface Box	1		BTUK15
SWR/WBL/236	Haulage Mode Delivery Interface Box	1		BTUK16
SWR/WBL/237	Haulage Mode Delivery Interface Box	1		BTUK17
SWR/WBL/238	Haulage Mode Delivery Interface Box	1		BTUK18
SWR/WBL/239	Additional MKIII Skate	1		
SWR/WBL/240	Additional AWS Testing equipment: AWS Tester and Grids	1		TY287-GRP03
SWR/WBL/241	Additional TPWS Testing equipment	1		TY331-GRP03
SWR/WBL/243 SWR/WBL/244	Bioreactor Disposal Unit	2	3EEC200008-3018	
SWR/WBL/250	Suction Cups with gauge	12	3EEC400032-9044	BO 601.1BL
SWR/WBL/251	Spreader beams	4	3EEC200008-3295	
SWR/WBL/252	1 tonne sling (1 meter)	12	3EEC200008-3295	
SWR/WBL/253	1 tonne sling (0.5 meter)	12	3EEC200008-3295	
SWR/WBL/254	Chain hoist	8	3EEC200008-3295	

Asset No.	Tool Description	QTY	BT Part number	Manufacturer Part No.
SWR/WBL/255	Floor support stands	12	3EEC200008-3296	
SWR/WBL/256	D shackles	8	3EEC200008-3295	
SWR/WBL/257	Floor brackets	4	3EEC200008-3295	
SWR/WBL/258	Luggage rack brackets	8	3EEC200008-3295	
SWR/WBL/259	Suction Cups without gauge	4	3EEC200008-3295	
	Wire6 Special Tool	1		
	AKW Protec v12 software	1		
	Cab GRP Mould Tool	1		
	Petards DVR	1		
	ABDO/ ETCS Programme	TBC		
	Annax Loader V6.1.4.0 Software	1	N/A	
	CM Player License Software	1	N/A	
	Battery Charger software	1		
	Bioreactor software	1		
	Vector Driver setup	1		
	Cab doors software	1		
	DOO laptop config file	1		
	HVAC software	1		
	PIS ADS Adaptor	1		
	Vertical damper gauge tool	1	100511080	

Asset No.	Tool Description	QTY	BT Part number	Manufacturer Part No.
	KB Breakout Lead and Vector Box KB Brakes Explorer with the correct South-West Config loaded, including Brake Checker	1		

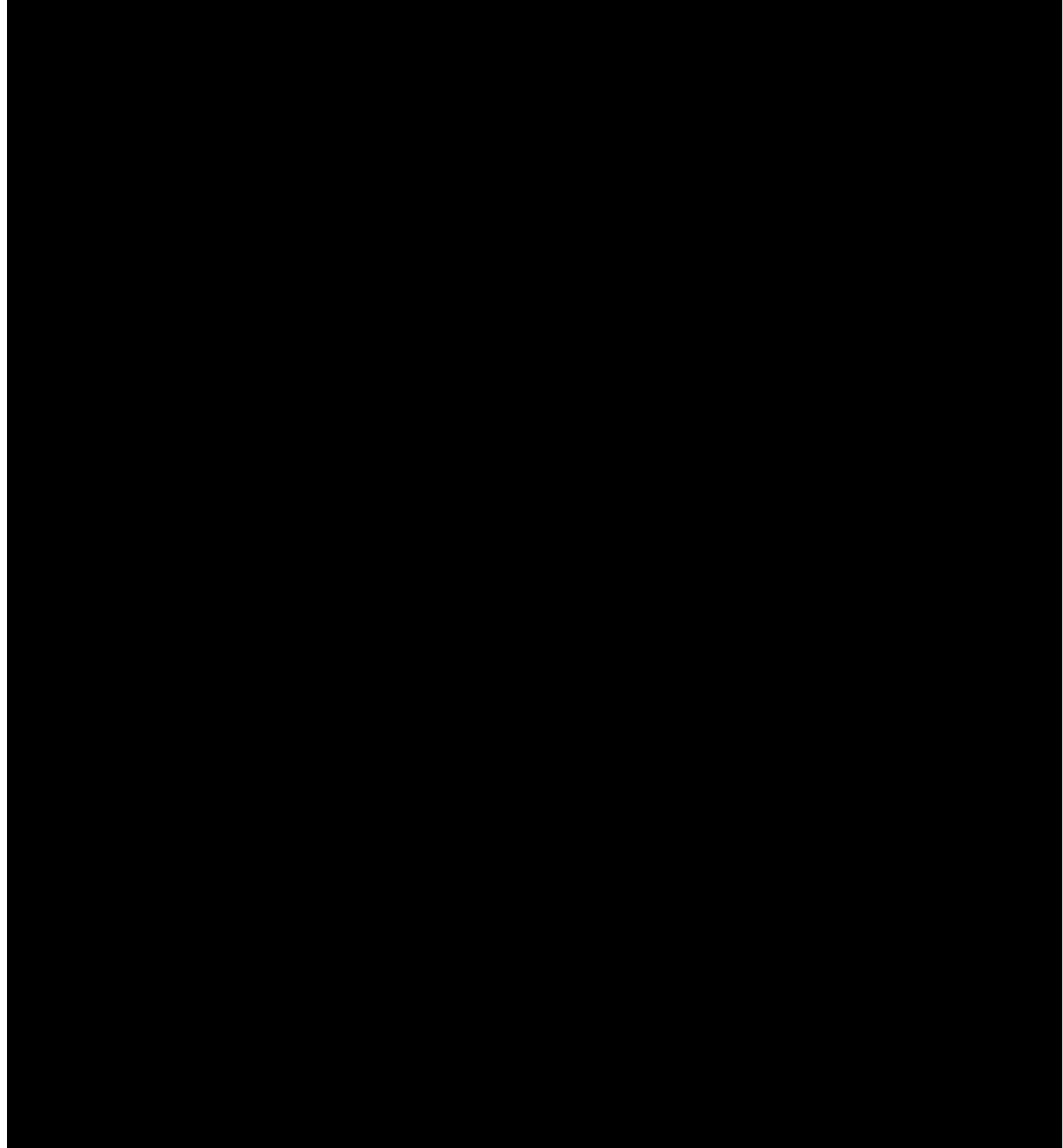
SCHEDULE 16
DRIVING CAB SIMULATOR REPLACEMENT COST

[To be inserted]

APPENDIX 1

REVISED CASH FLOW

(see pdf document attached)



**SCHEDULE 17
FORM OF QEL**

From: [X] [Name of Financier¹]

To: [X] (the "Lessee")

[Date]

Dear Sirs,

Regarding the Lease (the "Lease") dated [X] between [X] (the "Lessor") and the Lessee

1. Unless the context otherwise requires, capitalised terms used in this letter shall bear the meanings given to them in the Lease.
2. Pursuant to clause 7 of the Lease we hereby covenant on and from the date of this letter that we will not (and we will procure that our employees will not), save to the extent permitted by or set out in the Lease, interfere with or do anything which would, or would reasonably be expected to result in interference with the quiet use, possession and enjoyment by you of the Units, Vehicles or items of Equipment.
3. We hereby covenant on and from the date hereof that we will keep the Lease, all other Contract Documents and all other documents related thereto and all information and data furnished thereunder confidential and that the Lease and all such documents, information and data will not be furnished or disclosed by us to any other person without the consent of the Operator (save to the extent permitted under clause 18.10 (Confidentiality) of the Lease, as if we were a party to the Lease for this purpose).
4. This letter is intended to create legally binding obligations on us.
5. This letter and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law.
6. This letter has been executed and delivered as a deed on the date stated above.
7. Please acknowledge receipt of this letter.

Yours faithfully

[Insert Relevant Party name]

By: _____

Name: _____

Witness:

¹ Will be from the Security Trustee whilst a Security Trustee is in place.

By: _____

Name: _____

SCHEDULE 18
HEAVY MAINTENANCE EVENTS

	Task Number	Task Description	Cost per unit £ (Dec 2024 prices)	
			5-car	10-car
1.	BUK00434_TASK_K	Autocoupler: Automatic Coupler - Overhaul (Level 1)		
2.	BUK00578_TASK_K	Battery & Charger: Battery Tray - Overhaul (Level 1)		
3.	BOG00027_TASK_K	Bogies: Bogie - Overhaul (Level 1)		
4.	BUK00863_TASK_H	Bogies: Parking Brake Emergency Release Cables (C21, C22, C23, C24) - Replace		
5.	BUK00102_TASK_K	Bogies-EMEA: Shoe gear - Overhaul (Level 1)		
6.	BUK00618_TASK_H	Brakes & Air: Main Air Compressor, Flexible Hose - Replace		
7.	BUK00855_TASK_K	Brake Caliper Units - Overhaul (Level 1)		
8.	BUK00860_TASK_H	Brakes & Air: Brakes, Double Check Valve - Replace		
9.	BUK00792_TASK_K	Brakes & Air: Compressor Set (VV120-T) - Overhaul (Level 1)		
10.	BUK00793_TASK_K	Brakes & Air: Compressor Set (VV180-T) - Overhaul (Level 1)		
11.	BUK00868_TASK_K	Brakes & Air: Sanding Control Panel - Overhaul (Level 1)		
12.	BUK00807_TASK_H	Brakes & Air: Main Reservoir Drain Plug - Replace		
13.	BUK00809_TASK_K	Brakes & Air: Air Dryer Unit (VV120-T) - Overhaul (Level 1)		
14.	BUK00810_TASK_K	Brakes & Air: Air Dryer (VV180-T) - Overhaul (Level 1)		
15.	BUK00813_TASK_K	Brakes & Air: Air Suspension Levelling Valve - Overhaul (Level 1)		
16.	BUK00814_TASK_K	Brakes & Air: Gateway Valve (B08) - Overhaul (Level 1)		

	Task Number	Task Description	Cost per unit £ (Dec 2024 prices)	
			5-car	10-car
17.	BUK00821_TASK_K	Brakes & Air: RIO Valve (B09) - Overhaul (Level 1)		
18.	BUK00822_TASK_K	Brakes & Air: Smart Valve (B10) - Overhaul (Level 1)		
19.	BUK00826_TASK_H	Brakes & Air: Brakes Water Separator/Filter - Replace		
20.	BUK00827_TASK_H	Brakes & Air: Rescue Pressure Regulator - Replace		
21.	BUK00830_TASK_H	Brakes & Air: Brake Reservoir Drain Plug - Replace		
22.	BUK00834_TASK_H	Brakes & Air: BSR Check Valve - Replace		
23.	BUK00835_TASK_H	Brakes & Air: Bypass Check Valve (W11) - Replace		
24.	BUK00841_TASK_H	Brakes & Air: AS Deflation Magnet Valve (L10) - Replace		
25.	BUK00842_TASK_H	Brakes & Air: Low Main Reservoir Pressure Switch - Replace		
26.	BUK00879_TASK_K	Brakes & Air: Sand Box Hopper - Overhaul (Level 1)		
27.	BUK00899_TASK_H	Brakes & Air: Flexible Sand Pipe - Replace		
28.	BUK00873_TASK_H	Brakes & Air: Sanding Hose - Replace		
29.	BUK00846_TASK_A	Brakes & Air: Air Reservoirs - Internal and External Inspection		
30.	BUK00848_TASK_H	Brakes & Air: Brake Reservoir Filter – Replace		
31.	BUK00852_TASK_H	Brakes & Air: Rescue Selector Valve - Replace		
32.	BUK00825_TASK_H	Brakes & Air: Surge Reservoir Drain Plug (L04.01/L05.01) - Replace		
33.	BUK00853_TASK_H	Brakes & Air: Uncoupling Magnet Valve (W14) - Replace		
34.	BUK00421_TASK_K	Cab Door: Cab Door Header Gear - Overhaul (Level 1)		
35.	BUK00412_TASK_K	Cab Door - Overhaul (Level 1)		

	Task Number	Task Description	Cost per unit £ (Dec 2024 prices)	
			5-car	10-car
36.	BUK00921_TASK_H	Cab Door, Door Frame Gasket - Replace		
37.	BUK00432_TASK_K	Cab Door: Swing Arm Assembly - Overhaul (Level 1)		
38.	BUK00531_TASK_H	CCTV: Network Video Recorder, Battery - Replace		
39.	BUK00475_TASK_H	CCTV: Intermediate Automatic Coupler Camera - Replace		
40.	BUK00547_TASK_H	CCTV - DOO: DOO CCTV, Cab Monitor - Replace		
41.	BUK00543_TASK_H	CCTV - DOO: DOO CCTV Digital Video Recorder - Replace		
42.	BUK00548_TASK_H	CCTV - DOO: DOO CCTV Monitor PSU - Replace		
43.	BUK00545_TASK_H	CCTV - DOO: DOO CCTV Video Combining Unit - Replace		
44.	BUK00550_TASK_H	CCTV - DOO: DOO CCTV Camera - Replace		
45.	BUK00082_TASK_K	Energy Metering: Energy Meter - Overhaul/Calibrate (Level 1)		
46.	BUK00360_TASK_K	Exterior Passenger Doors: Passenger Door - Overhaul 15 Years (Level 2)		
47.	BUK00360_TASK_K2	Exterior Passenger Doors: Passenger Door - Overhaul 20 Year (Level 2)		
48.	BUK00360_TASK_K3	Exterior Passenger Doors: Passenger Door - Overhaul 30 Years (Level 2)		
49.	BUK00407_TASK_H	Exterior Passenger Doors: Passenger Door Contactor K21 - Replace		
50.	BUK00657_TASK_H	Footrest / DSD: Footrest Up/Down Limit Switch - Replace		
51.	BUK00650_TASK_H	Footrest / DSD: DSD Pedal Limit Switch - Replace		
52.	BUK00915_TASK_H	Footrest/DSD: Driver Leg Detector - Replace		
53.	BUK00466_TASK_K	Gangway: Gangway (Double Corrugated Bellows) - Overhaul (Level 1)		

	Task Number	Task Description	Cost per unit £ (Dec 2024 prices)	
			5-car	10-car
54.	BUK00464_TASK_K	Gangway: Gangway Treadplate Assembly - Overhaul (Level 1)		
55.	BUK00467_TASK_H	Gangway: Gangway Scissor Assembly Wear Parts - Replace		
56.	BUK00469_TASK_K	Gangway Split Interface: Splittable Gangway Corrugated Bellows - Overhaul (Level 1)		
57.	BUK00471_TASK_H	Gangway Split Interface: Splittable Gangway Scissor Assembly Wear Parts - Replace		
58.	BUK00472_TASK_K	Gangway Split Interface: Splittable Gangway Treadplate Assembly - Overhaul (Level 1)		
59.	BUK00195_TASK_H	Hoses: UAWC Fresh Water Filler Flexible Hose - Replace		
60.	BUK00645_TASK_H	Hoses: Underframe/Bogie Hoses - Replace		
61.	BUK00299_TASK_K	HVAC - Cab: Cab HVAC Unit - Overhaul (Level 1)		
62.	BUK00309_TASK_K	HVAC - Cab: Cab HVAC Supply Air Fan - Overhaul (Level 1)		
63.	BUK00316_TASK_K	HVAC - Cab: Cab HVAC Condenser Fan - Overhaul (Level 1)		
64.	BUK00323_TASK_K	HVAC - Cab: Cab HVAC Condenser Fan Bearings- Overhaul (Level 1)		
65.	BUK00351_TASK_H	HVAC - Cab: Cab Fan Electrical Heater - Replace		
66.	BUK00308_TASK_A	HVAC - Cab: Cab HVAC Air Ducts - Inspection		
67.	BUK00326_TASK_H	HVAC - Cab: Heated Cab Desk Panels - Replace		
68.	BUK00328_TASK_K	HVAC - Saloon: Saloon HVAC Unit - Overhaul (Level 1)		
69.	BUK00333_TASK_K	HVAC - Saloon: Saloon HVAC Supply Air Fan - Overhaul (Level 1)		

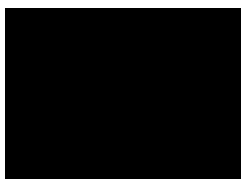
	Task Number	Task Description	Cost per unit £ (Dec 2024 prices)	
			5-car	10-car
70.	BUK00334_TASK_K	HVAC - Saloon: Saloon HVAC Condenser Fans - Overhaul (Level 1)		
71.	BUK00280_TASK_H	Interior Lighting: Cab Ceiling Light Battery - Replace		
72.	BUK00287_TASK_H	Interior Lighting: Standback Light, Battery - Replace		
73.	BUK00291_TASK_H	Interior Lighting: Ceiling Emergency Light, Battery - Replace		
74.	BUK00292_TASK_H	Interior Lighting Equipment Battery - Replace		
75.	BUK00474_TASK_K	Intermediate Automatic Coupler: Intermediate Automatic Coupler - Overhaul (Level 1)		
76.	BUK00500_TASK_K	Intermediate Coupler: Intermediate Coupler - Overhaul (Level 1)		
77.	BUK00502_TASK_H	Jumper Cables: Jumper Cables - Replace		
78.	BUK00675_TASK_K	PIS: PIS Internal TFT Display - Overhaul (Level 1)		
79.	BUK00677_TASK_K	PIS: PIS External Front Display, LED Boards - Overhaul (Level 1)		
80.	BUK00600_TASK_H	PIS: Side Ceiling TFT Display - Replace		
81.	PPC00031_TASK_K2	Propulsion: DC HV Box - DC LCB – Overhaul (Level 1)		
82.	PPC00147_TASK_K	Propulsion: Shoe gear Isolation Switch - Overhaul (Level 2)		
83.	PPC00035_TASK_K2	Propulsion: DC HV Box - External Fan - Overhaul (Level 3)		
84.	PPC00148_TASK_H	Propulsion: Traction Return Contactor Box - Cover Seal - Replace		
85.	PPC00081_TASK_B	Propulsion: Drive Control Unit - Software Load		
86.	PPC00087_TASK_B	Propulsion: Gate Drive Unit - Software Load		

	Task Number	Task Description	Cost per unit £ (Dec 2024 prices)	
			5-car	10-car
87.	PPC00107_TASK_H	Propulsion: Front Section MCM-M - Internal Fan - Replace		
88.	PPC00117_TASK_H	Propulsion: Front Section ACM - Internal Fan - Replace		
89.	PPC00153_TASK_H	Propulsion: Converter Box Cover Seals - Replace		
90.	PPC00029_TASK_H	Propulsion: DC HV Box - Cover Seal – Replace		
91.	PPC00132_TASK_H	Propulsion: Mid Section AC1 - 3-Phase Capacitor - Replace		
92.	PPC00060_TASK_B	Propulsion: Gearbox Coupling - Oil Change		
93.	BUK00098_TASK_K	Propulsion - EMEA: Shoe gear Isolation Switch - Overhaul (Level 1)		
94.	BUK00100_TASK_K	Propulsion - EMEA: Traction Motor - Overhaul (Level 1)		
95.	BUK00104_TASK_K	Propulsion - EMEA: Brake Resistor Banks - Overhaul (Level 1)		
96.	BUK00106_TASK_K	Propulsion – EMEA: Front Section Cooling - Cooling Unit - Overhaul (Level 1)		
97.	BUK00563_TASK_H	Saloon Floor: Cab/Saloon Floor Covering - Replace		
98.	BUK00111_TASK_K	TCMS: TCMS HMI-S Driver Display - Overhaul (Level 1)		
99.	BUK00112_TASK_H	TCMS: TCMS HMI-S Compact Flash Card - Replace		
100.	BUK00109_TASK_H	TDR: Train Data Recorder, Battery - Replace		
101.	BUK00196_TASK_K	Toilet Bio-reactor: Toilet Bio-reactor - Overhaul (Level 1)		
102.	BUK00188_TASK_H	UAWC Door Electric Motor - Replace		
103.	BUK00909_TASK_H	UAWC Toilet Control Unit - Replace		

	Task Number	Task Description	Cost per unit £ (Dec 2024 prices)	
			5-car	10-car
104.	BUK00910_TASK_H	UAWC Toilet Door Slider Roller Bearings (Upper) - Replace		
105.	BUK00181_TASK_H	UAWC Toilet Water Pump - Replace		
106.	BUK00110_TASK_K	Traction Brake Controller & Master Control Switch: Traction Brake Controller - Overhaul (Level 1)		
107.	BUK00110_TASK_B	Traction Brake Controller & Master Control Switch: Traction Brake Controller & Master Control Switch - Service (Level 1)		
108.	BUK00718_TASK_K	Windscreen Wipers: Windscreen Wiper Drive - Overhaul (Level 1)		
109.	BUK00715_TASK_H	Windscreen wipers: Wiper Arm and Blade - Replace		
110.	N/a	Half Life Refurbishment		

EXECUTION PAGE

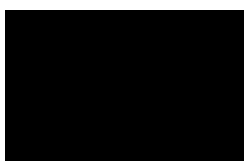
SIGNED by



as attorney-in-fact for and on behalf of

ROCK RAIL SOUTH WESTERN PLC

SIGNED by



as director for and on behalf of

**SOUTH WESTERN RAILWAY
LIMITED**